

1982 February 22

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS GEORGHIADES,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH THE
PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 248/80).

Public Officers—Promotions—Combined establishment—Not made after comparison of the merits of the various candidates—But only on the basis whether officer concerned satisfies the requirements of the general directions made by the Council of Ministers under the proviso to section 44(1)(a) of the Public Service Law, 1967 (Law 33/67)—Decision not to promote applicant because of contents of confidential report which was found to be invalid—Annulled. 5

Administrative Law—Discretionary powers—Vested by legislation in an administrative organ—Cannot be assumed or regulated, except with regard to legality, by a hierarchically superior organ—Public Officers—Confidential reports—Within the unfettered discretion of the reporting and countersigning officers—Reporting officer in assessing performance of applicant influenced by directives or instructions from his superiors to use stricter criteria in the evaluation of officers—Said directives extraneous matters which could not and ought not to be taken into consideration by the reporting officer—And by so doing he exercised his discretion in a defective manner thus acting contrary to law and in abuse of his powers rendering the confidential report in question invalid—Section 45 of the Public Service Law, 1967 (Law 33/67). 10 15 20

Administrative Law—Administrative acts or decisions—Composite administrative act—Intermediate act—Its invalidity leads to the

invalidity of all subsequent acts for the issue of which the invalid act constitutes a prerequisite—Public Officers—Promotions—Non-promotion of applicant due to contents of confidential report—Said confidential report found to be invalidly prepared—Decision not to promote applicant annulled.

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Public Officers—Confidential reports—Preparation—Evaluation of performance of officers—Within unfettered discretion of reporting and countersigning officers—Exercise of this discretion cannot be regulated by any directives or instructions of a hierarchically superior organ.

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The applicant, a Secretary Grade 'B' in the Diplomatic Service was recommended by the Director-General of the Ministry of Foreign Affairs, together with other officers who were holding the same post, for promotion to the post of secretary Grade 'A' or Consul. These two offices are with a combined establishment and under the proviso to section 44(1)(a)* of the Public Service Law, 1967 (Law 33/67) promotions to the higher office of Secretary Grade 'A' or Consul may be made irrespectively of whether there is a vacancy in the higher office or grade and in accordance with any general directions given by the Council of Ministers in this respect. Under these directions** officers serving in the lower office or grade may be promoted to the higher office or grade only if they are of exceptional merit and ability and in such a case there has been given proof for the immediate preceding two years of their service. The respondent Committee decided that seven of the above officers fulfilled the prerequisites laid down by the above general directions and promoted them to the higher office but applicant and another Officer were found not to fulfil the said prerequisites; and in respect of the applicant the reason was that for the year 1978 he was rated as "very good" in all ratable items of the confidential report. The Director-General of the Ministry of Foreign Affairs requested*** the Commission to re-examine the question of the promotion of applicant because in 1978 he was rated more strictly than appropriately for the reason that the reporting Officer was influenced by directives or instructions of the Ministry

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* Section 44(1)(a) is quoted at p. 20 *post*.

** The directions are quoted at p. 20 *post*.

*** See the relevant correspondence at pp. 21-26 *post*.

for the use of stricter criteria in the evaluation of officers. This was confirmed, also, by the reporting Officer for the year 1978. The respondent Commission did not accede to the request of the Director-General; and hence this recourse whereby applicant challenged the validity of the decision of the respondent Commission not to promote him and at the same time the validity of the promotion of the other seven officers who were duly promoted at that time.

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Since the year 1975 both the reporting and the countersigning Officer, in relation to applicant were the same; and for the years 1975, 1976, 1977 the assessment of the reporting officer on the applicant in respect of all ratable items in the confidential reports was that he was of "excellent degree" ("ἀρίστου βαθμοῦ"). The countersigning officer agreed with this assessment and expressed no views of his own. For the year 1978, the assessment of the reporting officer on the applicant was "very good" on all ratable items and the countersigning officer agreed with this assessment with no views of his own. By then the reporting officer had known the applicant for six and the countersigning Officer for eight years.

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Held, (1) that the legality of the decision regarding the applicant has no relation whatsoever with the promotion of these other officers, as promotion in respect of combined establishments is not made after comparison of the merits, qualifications, etc., of the various candidates in respect of an existing vacancy but only of the basis whether the officer concerned satisfies the requirements of the general directions made by the Council of Ministers in that respect; and that, therefore, there is no need to make an examination of the promotions of these officers.

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(2)(a) That the report for the year 1978 was clearly influenced by the oral directives or instructions given by the Ministry to the Heads of Diplomatic Missions regarding the assessment of the performance of Diplomatic Officers, as there appears no other explanation for this sudden change of the assessment of the applicant; that under section 45 of the Public Service Law, 1967 and the relevant General Orders an unfettered discretion is given to both the reporting and countersigning Officers in relation to the preparation of confidential reports; that this is a discretionary power vested by legislation in these two admi-

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5 nistrative organs and its exercise cannot be assumed or regulated
 except with regard to legality by any hierarchically superior
 organ unless there exists express provision to that effect (see
Araouzos & Others v. The Republic (1968) 3 C.L.R. p. 287);
 that, consequently, directives and instructions as to assessments
 of the performance of officers being more strict are extraneous
 matters which could not and ought not to have been taken into
 10 consideration by the officers entrusted with the task of their
 preparation under section 45 of the Law and the relevant General
 Orders; that by taking them, therefore, into consideration and
 allowing themselves to be influenced thereby, the reporting
 officer has exercised his discretion in a defective manner and
 in my view he has acted contrary to Law and in abuse of his
 powers which renders the confidential report for the year 1978
 15 invalid.

(2)(b) That in matters of promotion and in particular those
 made under the proviso to section 44(1)(a) of the Law, confi-
 dential reports are intermediate acts and the ascertainment of
 their invalidity brings the invalidity of all subsequent acts for
 20 the issue of which the act found to be illegal constitutes a legal
 prerequisite (see *Stavros Agrotis v. Electricity Authority of
 Cyprus* (1981) 3 C.L.R. 503, at p. 513, and the authorities
 referred to therein); and that, therefore, the sub judice decision
 must be annulled.

25 *Sub judice decision annulled.*

Cases referred to:

Araouzos and Others v. The Republic (1968) 3 C.L.R. 287;
Agrotis v. Electricity Authority of Cyprus (1981) 3 C.L.R. 503
 at p. 513.

30 **Recourse.**

Recourse against the decision of the respondent not to promote
 the applicant to the post of Secretary Grade "A" or Consul
 from the post of Secretary Grade "B" in the Diplomatic service
 of the Republic.

35 *S. Yiordamlis*, for the applicant.

M. Kyprianou, Senior Counsel of the Republic, for the
 respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. The complaint

of the applicant in this case is that the respondent Commission failed to promote him to the post of Secretary Grade "A" or Consul from the post of Secretary Grade "B" in the Diplomatic Service, which he held and which are offices with a combined establishment and in respect of which under the proviso of section 44(1)(a) of the Public Service Law 1967, Law No. 33 of 1967: (To be referred to as the Law). 5

"...in the case of offices with a combined establishment, promotion from the lower to the higher office or grade of that office may be made irrespectively of whether there is a vacancy in the higher office or grade or not, and in accordance with any general directions given by the Council of Ministers in this respect;" 10

The general directions given by the Council of Ministers are contained in paragraph (b) of the Schedule to the circular of the Ministry of Finance under No. 372, dated 12th June, 1975 (Appendix 3 in the bundle of documents attached to the opposition), which to the extent that is relevant in this case reads as follows: 15

"(b) The promotion of officers holding combined offices or grades in the Public Service will be made on the basis of the established principles which are as follows: 20

(i) Subject to the provisions of the relevant Schemes of Service, officers serving in the lower office or grade may be promoted to the higher office or grade only if they are of exceptional merit and ability and in such a case there has been given proof for the immediate preceding two years of their service". 25

The facts of the case are as follows: 30

The Director-General of the Ministry of Foreign Affairs by letter dated 9th January 1980, informed the respondent Committee that the services of ten officers in the Foreign Office who were serving in the post of Secretary Grade "B" as from the 1st September 1977, among whom the applicant, were in all respects satisfactory and that they were officers of exceptional merit and ability and recommended that they be promoted to the combined office of Secretary Grade "A" or Consul, on the basis of the regulations applicable in such cases. 35

After obtaining the confidential reports for the year 1979, in respect of all these officers, the respondent Commission bearing in mind all relevant considerations contained in the aforementioned circular of the Ministry of Finance, as well
 5 as their merit, service and experience on the basis of the personal files and confidential reports, decided that seven of them fulfilled the prerequisites of the general directions of the Council of Ministers and decided to promote them to the post of Secretary Grade "A" or Consul, as from 15th March, 1980. The applicant
 10 and another officer were found not to fulfill the said prerequisites and in respect of the applicant the reason was that for the year 1978 he was rated as very good in all ratable items of the confidential report. The Director-General of the Ministry of Foreign Affairs by his letter dated 14th April 1980, requested the respon-
 15 dent Committee to re-examine the question of the promotion of the applicant mentioning therein that he had been rated for the year 1978 more strictly than appropriately, for the reason that the reporting officer was influenced by recommendations of his Ministry for the use of stricter criteria in the evaluation
 20 of officers. That was confirmed also by the Ambassador in Athens in his capacity as the reporting officer for the year 1978, by his letter dated 28th March 1980.

Both these letters are Appendices 8 and 9 respectively in the bundle of documents attached to the opposition.

25 It is pertinent to reproduce here in full both letters:

“Λαμβάνω την τιμήν να αναφερθῶ εἰς τὴν ὑπόθεσιν τῆς προ-
 αγωγῆς τοῦ κ. Ἀνδρέα Γεωργιάδη, Γραμματέως Β' εἰς τὸ
 Ὑπουργεῖον Ἐξωτερικῶν. Ὡς γνωρίζετε, ἡ ἐν λόγῳ προ-
 30 αγωγή δὲν κατέστη δυνατὴ λόγῳ τοῦ ὅτι μία ἐκ τῶν δύο
 τελευταίων ἐμπιστευτικῶν ἐκθέσεων συνταχθεῖσα ὑπὸ τοῦ
 προϊσταμένου Πρέσβευς του εἰς Μόσχαν, ἐχαρακτήριζε
 τὴν ἀπόδοσίν του μὲ βαθμολογίαν Ἄλιαν Καλῶς'. Ὁ Πρέσβυς
 ἐβαθμολόγησε τὸν κ. Γεωργιάδην αὐστηρότερα τοῦ δέοντος
 35 ἐπιρρασθεὶς ἀπὸ συστάσεις τοῦ Ὑπουργείου πρὸς ὅλους
 τοὺς Ἀρχηγούς Διπλωματικῶν Ἀποστολῶν νὰ χρησι-
 μοποιῶν τὰ αὐστηρότερα δυνατὰ κριτήρια. Δὲν εἶχε δὲ
 ὑπ' ὄψιν του ὅτι τὸ Ἄλιαν Καλῶς' ἀποτελεῖ ἐμπόδιον διὰ
 προαγωγήν. Λόγῳ τούτου ὁ Πρέσβυς ἔγραψε τὴν συνημ-
 μένην ἐπιστολὴν διὰ τῆς ὁποίας διορθώνεται ἡ βαθμολογία.

40 Εἶναι δίκαιο νὰ εἶπω ὅτι παρηκολούθησα ἐκ τοῦ πλησίον

τὴν ἐπίδοσιν τοῦ κ. Γεωργιάδη, τόσον διὰ μεταβάσεών μου εἰς Μόσχαν πολλάκις, ὅσον καὶ διὰ τῶν ἀναφορῶν τὰς ὁποίας οὗτος ἠτοίμαζε κατὰ τὴν διάρκειαν ποὺ ἐξετέλει χρέη Ἐπιτετραμμένου πέραν τῶν 10 μηνῶν κατὰ τὴν διάρκειαν τῆς θητείας του εἰς Μόσχαν. Ὡς προσυπογράφων προϊστάμενος δύναμαι νὰ εἶπω ὅτι πρόκειται περὶ ἑξαιρέτου ὑπαλλήλου ποὺ χωρὶς δισταγμούς, θὰ τὸν ἐχαρκτήριζα, ἐάν θὰ τὸν ἔκρινα ἐγὼ, 'Ἐξαιρέτον'. Λόγω τῆς ἑξαιρέτου ἐπιδόσεώς του εἰς Μόσχαν, τὰ τελευταῖα δύο ἔτη ἰδιαίτερως, ὅταν ἀνέλαβεν ὑπηρεσίαν εἰς τὸ κέντρον, παρ' ὅλον τὸν μικρὸν βαθμὸν του εἰς τὴν ἱεραρχίαν, τοῦ ἀνετέθησαν ὑπὸ τοῦ κ. Ὑπουργοῦ κοσθήκοντα προϊσταμένου τοῦ Τμήματος Οἰκονομικῶν Ὑποθέσεων.

Διὰ τοὺς ἀνωτέρω λόγους, παρακαλῶ θερμῶς καὶ ἐκ μέρους τοῦ κυρίου Ὑπουργοῦ καὶ τοῦ Πρέσβευος κ. Χατζημιλιτῆ, ὅπως ὀσκοῦντες τὴν ἐγνωσμένην ἀκριβοδικαίαν κρίσιν σας, λάβετε τὰ ἀναγκαῖα μέτρα πρὸς δικαίωσιν ἑνὸς ἀρίστου καὶ ἑξαιρέτου ὑπαλλήλου".

And in English it reads:

"I have the honour to refer to the question of the promotion of Mr. Andreas Georgiades, Secretary B', in the Ministry of Foreign Affairs. As you know, the said promotion was not rendered possible because one of the two recent confidential reports prepared by his reporting Officer, the Ambassador at Moscow, described his performance as 'very good'. The Ambassador graded Mr. Georgiades more strictly than necessary having been influenced by directions of the Ministry to all the Heads of Diplomatic Missions to make use of as strict criteria as possible. And he did not have in mind that 'very good' constitutes an impediment to promotions. For this reason the Ambassador wrote the attached letter whereby the grading is corrected.

It is fair to say that I have followed closely the performance of Mr. Georgiades, both through my going to Moscow on many occasions, as well as through the reports which he was preparing in the course of his term of office as Chargé d' Affaires for a period of more than ten months in Moscow. As a countersigning Officer I

can say that he is an excellent Officer whom, without hesitation, if I were to grade him, I would have described him as 'excellent'. Due to his excellent performance in Moscow, particularly during the last two years, when he assumed
 5 duty at the Central Service, notwithstanding his inferior grade in the hierarchy he was assigned by the Minister the duties of the Head of the Department of Financial Affairs.

For the above reasons, I warmly request both on behalf
 10 of the Minister and Ambassador Mr. HadjiMiltis that in the exercise of your known fair judgment, you take the necessary steps to do justice to an excellent and exceptional officer".

" 'Αναφερόμενος στο θέμα τῆς ἐτήσιας ἐμπιστευτικῆς ἐκθέσεως
 15 διὰ τὸν κ. Α. Γεωργιάδη, Γραμματέα Β', διὰ τὸ ἔτος 1978, πληροφοροῦ ὅτι ἡ βαθμολόγησις τοῦ ἐν λόγω λειτουργοῦ εἰς 'Λίαν Καλῶς' ἐγένετο κατόπιν συστάσεων ὑπὸ τοῦ 'Υπουργείου περὶ χρησιμοποίησεως αὐστηροτάτων ἀξιολογικῶν κριτηρίων. Ὡς ἐκ τούτου, στὴν περίπτωσι τοῦ κ. Γεωργιάδη, οὐδεμίαν ἐνστάσι ἔχω νὰ μετατραπῆ τὸ 'Λίαν Καλῶς' εἰς 'Ἐξάριτος', γιὰ σκοποὺς προαγωγῆς, λαμβανομένων ὑπ' ὄψιν τῶν ρηθέντων αὐστηρῶν κριτηρίων μὲ τὰ ὁποῖα ἀρχικῶς εἶχε κριθῆ".

And in English it reads:

25 "Referring to the question of the annual confidential report for Mr. A. Georghlades, Secretary B', for the year 1978, I would inform you that the grading of the said officer as 'very good' was made upon the directions of the Ministry for the use of very strict grading criteria. In view of this,
 30 in the case of Mr. Georghlades, I have no objection to the 'very good' being altered to 'excellent' for purposes of promotion, taking into consideration the said strict criteria with which he had originally been graded".

There upon receipt of these letters the Chairman of the respondent Commission, wrote on the 22nd April 1980 (Appendix
 35 10) to the Attorney-General of the Republic for his advice, which is to be found in Appendix 11. In effect he advises that once the respondent Commission had decided that the applicant could not be described as exceptional on the basis of the material

which they had in mind at the stage of their decision they could revoke such valid decision, so long as that was justified from a new inquiry which was caused after the submission of new material and that it was not permissible to revoke an administrative act only on the ground of a different evaluation of the same factual circumstances. Furthermore it was stated in the said opinion that the decision which the respondent Committee was asked to take on the basis of the aforesaid legal principles about revocation was more a factual than a legal matter, namely whether the facts which had been placed before it come to an appreciation of the factual circumstances which lead to the decision of the Commission, not to consider the applicant as exceptional or whether they constitute new and substantial different facts which change the factual basis of the said decision so as to justify its revocation.

The respondent Committee at its meeting of the 19th June 1980, the minutes of which are to be found in recd 63, of exhibit 1, decided to ask from the Director General of the Ministry of Foreign Affairs a supplementary information and clarifications which were communicated to him by their letter of the 4th July 1980, Appendix 13.

On the 4th October 1980, the Director General of the said Ministry wrote (exhibit 1, Recd 66), the following to the Chairman of the respondent Committee.

“Θέμα: Προαγωγή του κ. Ανδρέα Γεωργιάδη
Γραμματέως Β' εις τὸ Ὑπουργεῖον
Ἐξωτερικῶν

*Εντιμὲ Κ. Πρόεδρε,

Ἐναφέρομαι εἰς τὴν ἐπιστολὴν σας ὑπ' ὄρ. Π. 14782 τῆς 4ης Ἰουλίου 1980, σχετικὰ μὲ τὸ ἀνωτέρω θέμα καὶ σᾶς πληροφοροῦ ὡς ἀκολουθῶς:—

(α) Αἱ συστάσεις τοῦ Ὑπουργείου πρὸς τοὺς Ἀρχηγοὺς τῶν Διπλωματικῶν Ἀποστολῶν, ἐν σχέσει πρὸς τὴν ἀξιολόγησιν τῶν διπλωματικῶν ὑπαλλήλων, ἐδόθησαν διὰ προφορικῶν ὁδηγιῶν.

(β) Ὁ Προσυπογράφων Λειτουργὸς δὲν προέβη, ἐκ ποροδρομῆς, εἰς παρατηρήσεις εἰς τὸ Μέρος III τῆς Ἐτησίως Ἐμπιστευτικῆς Ἐκθέσεως τοῦ 1978.

(γ) Κατά τὸ ὑπὸ κρίσιν ἔτος 1978, ὁ κ. Α. Γεωργιάδης ἦτο ὁ μόνος διπλωματικός Λειτουργὸς τῆς ἐν Μόσχᾳ Πρεσβείας τῆς Δημοκρατίας, πλὴν τοῦ Πρέσβευς.

5 2. Θὰ ἤθελα νὰ ἐπαναλάβω ὅτι ἡ προαγωγή τοῦ κ. Γεωργιάδη εἶναι δι' ἐμὲ θέμα δικαιοσύνης."

And in English it reads:

"Re: Promotion of Mr. Andreas Georghiades, Secretary B' in the Ministry of Foreign Affairs.

Hon. Mr. Chairman,

10 I refer to your letter No. P. 14782 of the 4th July, 1980, in connection with the above matter and I inform you as follows:-

15 (a) The directions of the Ministry to the Heads of Diplomatic Missions in relation to the grading of the diplomatic officers were given orally.

(b) The Countersigning Officer has not by inadvertence made observations in Part III of the Annual Confidential Report for 1978.

20 (c) During the year in question, 1978, Mr. A. Georghiades was the only diplomatic officer of the Moscow Embassy of the Republic, besides the Ambassador.

2. I would like to repeat that the promotion of Mr. Georghiades is for me a matter of justice".

25 The respondent Committee then wrote on the 27th October 1980, to the Director-General of the said Ministry (exhibit 1 red 67), observing that the question put in paragraph (b) in the letter of the 4th July 1980, which corresponds to question (b) in the minute of the respondent Committee of the 19th June 1980 (exhibit 1, red 63(A)) remained unanswered and asked
30 that the question be communicated to Ambassador HadjiMiltis in order to answer same. Question (b) reads as follows:

35 "(β) Ἐπειδὴ εἰς τὴν ὡς ἄνω ἐπιστολὴν τοῦ ὁ Πρέσβυς ἀναφέρει ὅτι 'οὐδεμίαν ἐνστάση' ἔχει 'νὰ μετατραπεῖ ἡ βαθμολογία ἀπὸ 'Λίαν Καλὸς' εἰς 'Ἐξαιρετός', γιὰ σκοποὺς προαγωγῆς' καὶ ἐπειδὴ τὸ θέμα δὲν εἶναι ἐὰν ὁ Ἀξιολογῶν Λειτουργὸς δὲν ἔχη ἐνστάσιν νὰ ἀλλαγῇ ἡ βαθμολογία διὰ σκοποὺς

προαγωγής, αλλά εάν ούτος ζητή να του επιτραπή να τροποποιήση την βαθμολογία, να διευκρινισθή κατά πόσον, ως αποτέλεσμα των συστάσεων του 'Υπουργείου 'γιά χρησιμοποίηση αύστηροτάτων αξιολογικών κριτηρίων', ο 'Αξιολογών Λειτουργός επλανήθη εις την κρίσιν του και ήδίκησε 5
 τον υπάλληλον με την δοθείσαν βαθμολογία, καθώς επίσης και κατά πόσον δια λόγους ίσης μεταχειρήσεως ζητή το ίδιον και δια τούς λοιπούς υπαλλήλους, τούς όποιους έβαθμολόγησε κατά το ίδιον έτος".

And in English it reads: 10

"(b) As the Ambassador in his above letter states that he 'has no objection whatsoever' to the 'alteration of the grading from 'very good' to 'excellent' for purposes of promotion' and as the question is not whether the reporting officer has no objection to the alteration of the grading for purposes 15
 of promotion, but whether he is applying to be allowed to amend the grading, to be clarified, whether, as a result of the directions of the Ministry for the use of very strict grading criteria the reporting officer was misled in his judgment and did injustice to the officer with the grading 20
 he gave, as well as whether for purposes of equal treatment he is applying to do the same in relation to the remaining officers who were graded by him during the same year".

Ambassador HadjiMiltis, replied by his letter of the 9th January 1981, (exhibit 1, red 69), that he considered the contents 25
 of his letter, dated 28th March 1980, to the Chairman of the Public Service Commission, sufficiently clarifying. There followed other correspondence but I am of the view that there has been sufficient material given in this judgment rendering 30
 a detailed reference to it unnecessary.

The applicant filed the present recourse and challenges the validity of the decision of the respondent Commission not to promote him and at the same time the validity of the promotion of the other seven officers who were duly promoted at that time. I may say here and now that this is one of the cases where the 35
 legality of the decision regarding the applicant has no relation whatsoever with the promotion of these other officers, as promotion in respect of combined establishments is not made after comparison of the merits, qualifications, etc., of the various

5 candidates in respect of an existing vacancy but only on the basis whether the officer concerned satisfies the requirements of the general directions made by the Council of Ministers in that respect. Therefore I need not make an examination of the promotions of these officers.

10 Relevant to the issues raised in this recourse are also the contents of the confidential reports on the applicant, and for that purpose I shall deal with the more recent ones, as since the year 1975, both the reporting and the countersigning officer are the same, namely Ambassador HadjiMiltis and the Director General of the Ministry Mr. G. Pelaghias.

15 For the years 1975, 1976, 1977 the assessment of the reporting officer on the applicant in respect of all ratable items in the confidential reports is that he is of "excellent degree" "ἀρίστου βαθμοῦ". The countersigning officer agrees with this assessment and expresses no views of his own. For the year 1978, the assessment of the reporting officer on the applicant is "very good" on all ratable items and the countersigning officer agrees with this assessment with no views of his own. By 20 then the reporting officer had known the applicant for six and the countersigning officer for eight years. An assessment that he is "excellent" on all ratable items except on intelligence, which is rated as "very good" is to be found in the confidential report for the year 1979 which is prepared in this case by Mr. 25 Psiloinis, Head of the Section of Economic and Cultural Affairs at the Ministry and with which assessment also agrees the same Director General.

30 What transpires from the contents of these confidential reports viewed in the light of the subsequent correspondence between the Director-General and Ambassador HadjiMiltis and the Chairman of the respondent Commission, is that the report for the year 1978 was clearly influenced by the oral directives or instructions given by the Ministry to the Heads of Diplomatic Missions regarding the assessment of the performance of 35 Diplomatic Officers, as there appears no other explanation for this sudden change of the assessment on the applicant. In fact, it has not been attributed to any other factor and in no way to any change in the conduct and the performance of the duties of the applicant during that particular year, as compared 40 with same during the preceding and subsequent years.

In fact, the countersigning officer clearly admits in paragraph (b) of the letter of the 4th October, 1980, (exhibit 1, red 66) that he did not make the appropriate observations in Part III of the Annual Confidential Report for the year 1978, by mere oversight; this coupled with his concluding remark that the promotion of Mr. Georghiades was for him a matter of justice and also the tenor of the letters of Ambassador HadjiMiltis support this conclusion of mine regarding the matter that influenced the different assessment for the year 1978.

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The question, therefore, that poses for determination is whether under the provisions of the Public Service Law and the general principles of Administrative Law, such directives or instructions could legitimately be taken into consideration by the reporting officer or whether this is an interference with the exercise of his discretion in the matter.

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Section 45 of the law and the relevant general orders regulate the matter of confidential reports and an unfettered discretion is given thereby to both the reporting and counter signing officers. It is a discretionary power vested by legislation in these two administrative organs and its exercise cannot be assumed or regulated except with regard to legality by any hierarchically superior organ unless there exists express provision to that effect (see *Araouzos & Others v. The Republic* (1968) 3 C.L.R., p. 287). Consequently, directives and instructions as to assessments of the performance of officers being more strict are extraneous matters which could not and ought not to have been taken into consideration by the officers entrusted with the task of their preparation under section 45 of the Law and the relevant general orders. By taking them, therefore, into consideration and allowing themselves to be influenced thereby, the reporting officer has exercised his discretion in a defective manner and in my view he has acted contrary to Law and in abuse of his powers which renders the confidential report for the year 1978 invalid.

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In matters of promotion and in particular those made under the proviso to section 44(1)(a) of the Law, confidential reports are intermediate acts and the ascertainment of their invalidity brings the invalidity of all subsequent acts for the issue of which the act found to be illegal constitutes a legal prerequisite (see *Stavros Agrotis v. Electricity Authority of Cyprus* (1981) 3 C.L.R. p. 503, at p. 513, and the authorities referred to therein).

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Therefore, the decision of the respondent Commission whereby the applicant was not promoted because of the contents of the confidential report of the year 1978 found to be invalid for the reasons given in this judgment, is null and void and of no effect
5 whatsoever.

For all the above reasons this recourse succeeds, as far as the applicant himself is concerned, but the acts relating to the seven interested parties remain valid as they should not have been challenged by this recourse for the reasons that I have
10 already explained and in the circumstances there will be no order as to costs.

Sub judice decision annulled. No order as to costs.