1987 April 3

[SAVVIDES J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NIOVI PAPAIOANNOU

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE EDUCATIONAL SERVICE COMMISSION,

Respondent

(Case No. 495/85)

Educational Officers — The Educational Officers (Teaching Staff) (Appointments, Promotions, Postings, Transfers and Related Matters) Regulations 205/72 — Regulations 26, 28 and 29 — Declared ultra vires The Public Educational Service Law 10/69 and in particular section 35(2) thereof in Michaeloudes and Another v. The Republic (1979) 3 C.L.R. 56 — Amendment of sections 26 and 35(2) of said Law by Law 53/79 published after the decision in Michaeloudes case or made applicable — Question answered in the negative

Subsidiary legislation — Judicial decision declaring it ultra vires enabling Law — Effect of such decision

Administrative Law — General principles — Retrospectivity of an administrative act — The general rule — Exceptions — Review of the case law

Educational Officers — Promotions — Whether approval of the filling of the post by the Minister of Finance necessary — Question answered in the negative

Educational Officers — Promotions — Scheme of Service — Interpretation and application of — Principles applicable

Educational Officers — Promotions — Request for filling of post made before occurrence of vacancy — Not a ground of annulment as such fact did not in any way prejudice applicant

Educational Officers – Promotions — Merit — Regrading of applicant's last grading made after filing of recourse — Such regrading rendered applicant slightly, but not strikingly superior to some of the interested parties — Not enough to lead by itself to the annulment of the sub judice promotions

Educational Officers — Promotions — Retrospective effect of — The general rule against retrospectivity of an administrative act — Exceptions — Section 35(4) of the Public Educational Service Law 10/69

By means of this recourse the applicant impugns the validity of the promotion of the six interested parties to the post of Headmaster A in the Elementary Education instead of and in preference to her

The facts are briefly as follows The Minister of Education requested, by letter dated 17 12 1984 the filling of 7 posts of Headmaster A in the Elementary Education (promotion posts) which were to become vacant on 31 12 1984

The applicant and the interested parties were holding at the time, the immediately lower post of Headmaster On the 2nd January, 1985, the recommendations of the Department of Elementary Education were submitted through its Director to the respondent, which met on the following day and took the sub judice decision promoting seven candidates to the vacant posts, amongst whom the six interested parties, as from 1 1 1985

Counsel for applicant raised by his written address, the following legal grounds

1 The respondent acted contrary to section 26(3) and 35(2) of the Educational Service Law, No 10/69, as amended by Law No 53/79 which as he submitted provide for a procedure, which includes the preparation and publication of lists of officers eligible for promotion Counsel contended that Regulations 26, 28 and 29 of 1972 (No 205/72) which had been declared invalid in *Michaeloudes and Another v The Republic* (1979) 3 C L R 56, as being ultra vires the Law were revived by the amending regulationsof 1985 (71/85) and that such amending regulations which were enacted after the sub judice decision are indicative of the intention of the legislature that legal force should be given to Regulations 26, 28 and 29 and render them intra vires the law

2 The approval of the Minister of Finance which is an essential prerequisite for the commencement of the procedure for the filling of a vacant post was not obtained in the present case

3 The procedure for the filling of the posts had commenced before such posts became vacant

4 The sub judice decision is the result of lack of due inquiry in that it is not clear that it does not appear anywhere who were the candidates considered by the respondent as eligible for promotion

5 The applicant was superior to the interested parties in merit and qualifications

6 The respondent took into consideration only the last two confidential reports of the candidates instead of their whole career

7 The additional qualifications of the applicant were disregarded without special reasons

8 There is a real probability that the sub judice decision was based on a misconception of fact in that the respondent took into consideration a disciplinary conviction of the applicant, which appeared in her file, whilst such conviction was later delared null and void by the Supreme Court

9 The sub judice promotions were made with retrospective effect, that is with effect from 1 1 85 contrary to the principles of administrative law

Held, *annulling in part the sub judice decision* (1) Regulations 26, 28 and 29 of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations 1972 (205/72) were found to be in *Michaeloudes v The Republic* (1979) 3 C L R 56 ultra vires the Law (Law 10/69) and more specifically section 35(2) thereof Sections 26 and 35(2) were amended by Law 53/79

When a specific regulation is declared by the Courts to be ultra vires the Law, it is not actually repealed or deleted, but it becomes a dead letter and cannot be applied thereafter

This Court cannot share the view that by the enactment of the amending Law 53/79 the Regulations, which had been declared ultra vires, became automatically applicable In the opinion of this Court, besides the enactment of the amending Law, another positive action was needed, that is the making of regulations incorporating the previous regulations or the making of new regulations Such action was in fact taken by the enactment of Regulations 71/85, but this was done after the sub judice decision

(2) There is no provision in the Law about prior approval of the Minister of Finance before a certain post is filled by way of promotion

(3) The request for the filling of the posts was made 14 days before the posts became vacant This, however, did not prejudicially affect the applicant, who was in fact one of the candidates considered as eligible for promotion

(4) Ground 4 has no ment Both the applicant and the interested parties were considered for promotion It is immaterial whether any other of the unsuccessful candidates was considered for promotion or not

(5) The applicant and the interested parties were more or less equal in merit The correction of applicant's last grading from 37 to 38 made after the filing of this recourse makes her slightly but not strikingly superior to some of the interested parties This is not enough on its own to lead to the annulment of the sub judice decision

(6) Ground 6 is not supported by the facts

(7) The interpretation and application of the schemes of service is within the discretionary power of the appointing organ and this Court will not interfere and give a different interpretation once such interpretation was reasonably open to the appointing organ In this case it was reasonably open to the respondents not to treat applicant as possessing an additional qualification under the scheme of service

(8) It does not seem that applicant's disciplinary conviction affected the judgment of the respondents in reaching the sub judice decision

(9) The general rule of administrative Law is that administrative acts cannot have retrospective effect, unless it is so provided by Law or where the decision was taken by the administration either in compliance to an annulling decision of the Court or in the course of re-examination of a case as a result of such annulling decision when retrospective effect may be given as from the date when such decision was annulled

The only instance where the Law provides for retrospective promotions of educational officers is governed by section 35(4) of The Public Educational Service Law 10/69

In the light of the above the sub judice decision, in so far as its retrospectivity is concerned, has to be annulled

Order accordingly No order as to costs

Cases referred to

Michaeloudes and Another v The Republic (1979) 3 C L R 56,

Republic v Pencleous (1984) 3 C L R 577,

Kypnanides v The Republic (1965) 3 C L R 519,

Markou v The Republic (1968) 3 C L R 267,

Michala v The Republic (1968) 3 C L R 465,

Panayides v The Republic (1972) 3 C L R 467, and on appeal (1973) 3 C L R 378,

Afxentiou v The Republic (1973) 3 C L R 309

Recourse.

Recourse against the decision of the respondent to promote the interested parties to the post of Headmaster A' in the Elementary Education in preference and instead of the applicant.

A.S. Angelides, for the applicant.

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

Cur. adv. vult.

SAVVIDES J read the following judgment. The applicant challenges the decision of the respondent published in the official Gazette of the Republic on 22.2.1985, whereby the interested parties, namely, 1) Klitos Leonidou, 2) Panayis M. Panayides, 3) Ioannis N. Stylianou, 4) Fryne Charalambous, 5) Andreas Poyiadjis and 6) Marios Nicolaides, were promoted, as from 1.1.1985, to the post of Headmaster A΄ in the Elementary Education instead of and in preference to her.

The applicant and the interested parties were holding, at the material time before the sub judice decision, the post of Headmaster in the Elementary Education.

On the 17th December, 1984, the Minister of Education addressed a letter to the Chairman of the respondent requesting the filling of 7 posts of Headmaster A΄ in the Elementary Education which were to become vacant on 31.12.1984, due to the retirement of an equal number of educationalists holding such posts as well as the consequential vacancies in the posts of Headmaster. Such posts were promotion posts.

The respondent held a meeting on the 2nd January, 1985, at which the Director of Elementary Education submitted the recommendations of his department. At its next meeting, which took place on the following day, the respondent after considering the recommendations proceeded to promote seven candidates, six of whom are the interested parties in the present case.

Counsel for applicant raised by his written address, the following legal grounds:

1. The respondent acted contrary to section 26(3) and 35(2) of the Educational Service Law, No. 10/69, as amended by Law No. 53/79.

2. The approval of the Minister of Finance which is an essential prerequisite for the commencement of the procedure for the filling of a vacant post was not obtained in the present case.

3. The procedure for the filling of the posts had commenced before such posts became vacant.

4. The sub judice decision is the result of lack of due inquiry in that it is not clear that it does not appear anywhere who were the candidates considered by the respondent as eligible for promotion.

5. The applicant was superior to the interested parties in merit and qualifications.

6. The respondent took into consideration only the last two confidential reports of the candidates instead of their whole career.

7. The additional qualifications of the applicant were disregarded without special reasons.

8. There is a real probability that the sub judice decision was based on a misconception of fact in that the respondent took into consideration a disciplinary conviction of the applicant, which appeared in her file, whilst such conviction was later declared null and void by the Supreme Court.

9. The sub judice promotions were made with retrospective effect, contrary to the principles of administrative law.

With regard to his first ground counsel contended that in accordance with the provisions of sections 26(3) and 35(2) of Law 10/69, as amended by Law 53/79, promotions must be made on the basis of a procedure which includes the preparation and publication of lists of officers eligible for promotion. The amending law of 1979 was considered necessary in view of the judgment of the Court in the case of *Michaeloudes and Another v. Republic* (1979) 3 C.L.R. 56, by which Regulations 26, 28 and 29 of 1972 (No. 205/72) were declared ultra vires the Law. Counsel argued that the aforesaid Regulations were revived by the amending Regulations of 1985 (No. 71/85) by which the said Regulations were re-numbered thus signifying the intention of the legislature to keep them in force. He further submitted that even though the said Regulations had been declared ultra vires the Law, they could still be taken into consideration by the respondent as a guidance in adherence to the principle of good and proper administration. Lastly counsel argued that the amending Regulations of 1985 which were enacted after the sub judice decision are indicative of the intention of the legislature that legal force should be given to Regulations 26, 28 and 29 and render them intra vires the law, and therefore enforceable.

Section 26 of Law 10/69 read, before its amendment by Law 53/79, as follows:

«26(1) .....

(2) Κενή θέσις προαγωγής πληρούται άνευ δημοσιεύσεως, διά προαγωγής εκπαιδευτικού λειτουργού υπηρετούντος εις την αμέσως κατωτέραν τάξιν, θέσιν ή βαθμόν.»

(«26(1) .....

(2) A vacancy in a promotion post shall be filled, without advertisement, by the promotion of an educational officer serving in the immediately lower class, post or grade.)

Also section 35(2) provided that promotions should be decided on the basis of merit, qualifications and seniority of the candidates.

Regulation 26 of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations of 1972, (No. 205/72) provided that for the purposes of promotion to non-combined posts, the educationalists satisfying the requirements of the schemes of service for the relevant posts are evaluated as promotees 'A' or promotees 'B' in accordance with certain criteria set out in that Regulation.

Regulation 28 of the same Regulations provided for the preparation of lists of promotees 'A' and 'B'. Lastly, Regulation 29 provided that promotions should be made from the said lists, in the proportions specified in the Regulations.

The validity of Regulations 26, 28 and 29 was questioned in the case of *Michaeloudes v. The Republic* (1979) 3 C.L.R. 56, where, it was decided that the said Regulations were ultra vires the Law (Law 10/69) and more specifically section 35(2) thereof. The judgment in the above case was delivered on 27.1.1979. On 29.6.1979 Law 53/79 was published, amending inter alia, sections 26 and 35 of Law 10/69. Thus, section 26 was amended by the addition of a new sub-section (3) which reads as follows:

«(3) Η διαδικασία προς πλήρωσιν κενής θέσεως δυνάμει του παρόντος άρθρου, περιλαμβάνουσα και πρόνοιαν περί καταρτισμού, περιεχομένου και δημοσιεύσεως πινάκων διοριστέων ή προαξίμων, ως

θα ήτο η περίπτωσις, οίτινες έχουσι τα προς τούτο καθωρισμένα προαπαιτούμενα, καθορίζεται.»

(«The procedure for the filling of a vacant post in accordance with this section including also a provision for the preparation, contents and publication of lists of appointees or promotees, as the case may be, who possess the qualifications, prescribed for the purpose, is defined».)

Section 35(2) has been repealed and replaced by the following:

«(2) Κατά την εξέτασιν των διεκδικήσεων των εκπαιδευτικών λειτουργών προς προαγωγήν λαμβάνονται δεόντως υπ' όψιν η αξία, τα προσόντα και η αρχαιότης συμφώνως προς διαδικασίαν ήτις καθορίζεται.»

(«(2) In considering the claims of educational officers for promotion, the merit, qualifications and seniority are duly taken into consideration in accordance with a prescribed procedure»).

When a specific regulation is declared by the courts as ultra vires its enabling law, it is not actually deleted or repealed, but it becomes a dead letter and cannot be applied thereafter. In the present case the effect of *Michaeloudes* case (supra) was that Regulations 26, 28 and 29 could no longer be applied by the respondent in effecting promotions. Although by the amending law of 1979 (Law 53/79) provision was made for the enactment of regulations containing provisions for the preparation and publication of lists of appointees such regulations had not been enacted by the time of the sub judice decision.

I cannot share the view that by the enactment of the above amending law the old regulations which were declared ultra vires, were automatically revived and became applicable. In my opinion, there must be, besides the enactment of the amending law, another positive action giving effect to the intention of the legislature by either making regulations incorporating the previous ones or by enacting new ones. Such action, giving effect to the intention of the legislature was in fact taken by the enactment of the amending regulations of 1985 (No. 71/85) whereby regulations 26, 28 and 29 were re-introduced in the

amended regulations. This, however, took place subsequently to the sub judice decision.

As to the effect of regulation 27 of the same regulations, if this regulation is read alone and not in conjunction with Regulations 26, 28 and 29, its meaning is that educational officers should be evaluated, at least once a year, as to their fitness for promotion. and nothing more. I have, therefore, reached the conclusion that the first ground relied upon by counsel for applicant fails.

In connection with the second ground, counsel for applicant argued that the prior approval of the Minister of Finance is necessary for the filling of any vacant post because of the possible abolition of a certain post.

There is no provision in the Law about the prior approval of the Minister of Finance before a certain post is filled by way of promotion, but, as I understand, such approval is usually obtained in practice. Since, however, no question arises here that the posts in question had been abolished, and since approval does not form part of the process for the selection of the best candidates in case of promotions, I consider this question as not affecting the outcome of the present recourse but I leave the question open as to whether such matter may be of any relevance in case of newly created posts or posts which in the meantime have been abolished. It should be noted that in any case, the letter requesting the filling of the posts was communicated to the Minister of Finance, who did not raise any objection to their filling.

In support of the third ground, counsel relying on the case of *Republic v. Pericleous* (1984) 3 C.L.R. 577, argued that since it was decided, in that case, that a candidate must possess the required qualifications at the time that the request for the filling of the post is made by the appropriate authority to the respondent, it follows that the procedure for the filling of a post cannot commence and the request for the filling of the post cannot be made, unless the post becomes vacant.

It is a fact in the present case that although the respondent did not actually meet to consider the sub judice promotions until after the posts became vacant, the request for the filling of the posts was made, by the Minister of Education, on the 17th December, 1984, that is, 14 days before the posts became vacant. This, however, did not in any way affect the interests of the applicant, who was in

fact considered amongst the candidates eligible for promotion and there is no allegation that she was in any way prejudicially affected or that she was excluded from consideration as not possessing certain qualifications by the 17th December, 1984, which she would have otherwise possessed by the 31st December, 1984. I therefore find no merit in this argument.

With regard to the fourth ground raised, again I find no merit in it either. Both the applicant and the interested parties were considered as eligible for promotion and the applicant was in fact amongst those recommended for promotion. It is therefore immaterial whether any other of the unsuccessful candidates was considered for promotion or not.

I will now consider grounds 5, 6 and 7.

It has been repeatedly stressed by this court that mere superiority of one candidate over another is not sufficient for the annulment of a promotion and that what has to be established by an applicant is striking superiority over those who had been promoted.

It is the allegation of counsel for applicant that the applicant was better in merit and qualifications than the interested parties. The merits of the parties are reflected in their confidential reports. It is apparent from such reports, as well as from a comparative table of the gradings of the parties which was prepared for the purposes of the recourse that all parties are more or less equal in merit. Counsel for applicant argued that the applicant's grading in her last report is not correctly stated in the comparative table and that her correct grading should have been 38 in that year instead of 37. As it appears from her file her grading was changed from 37 to 38 after an objection on her part. This correction was, however, made on 26.1.85, a date subsequent to the recourse. Even if the corrected grading is taken into consideration, she would only be slightly better as compared to interested parties Stylianou and Poyiadjis and this is not enough, on its own, to render her strikingly superior to those, or any of the interested parties.

It is also the contention of counsel that only the last reports of the parties were taken into consideration. It is clear, however, from the minutes of the respondent that all their confidential reports were taken into consideration with a special emphasis on the last ones, which in any event was legitimate. Therefore, the contention of counsel in this respect fails.

With regard to qualifications, it is the case for counsel for applicant that the applicant possessed additional qualifications which are considered an advantage under the schemes of service and which were disregarded by the respondent without giving proper reasons for disregarding them.

Paragraph 3 of the qualifications required by the scheme of service for the relevant post, reads in this respect:

«Μετεκπαίδευση στο εξωτερικό ή επιπρόσθετος τίτλος σπουδών σε εκπαιδευτικά θέματα ή πιστοποιητικό επιτυχούς παρακολούθησης ειδικής σειράς επιμορφωτικών μαθημάτων που οργανώνει το Υπουργείο Παιδείας, θεωρούνται ως επιπρόσθετο προσόν.»

(«Post-graduate training abroad or additional title of studies in educational matters or a certificate of successful attendance of a special series of lessons in vocational training organised by the Ministry of Education will be considered as an additional qualification»).

As it seems from a certificate appearing in blue 88 of Exhibit 1C, the applicant, attended from 1961-1963 evening classes in dress-making, cookery and cake decoration at the Stobswell Evening Educational Institute.

Interested party No. 5 has attended, during the years 1981-1982 and 1982-1983, a course and obtained a Diploma in Applied Educational Studies in the Hatfield Polytechnic in England (blues 81, 88, 111, 116 in Exhibit 2D). Interested party No.6 had attended a course in Maraslios Teaching College in Athens. There is no evidence that any other interested party possessed any additional qualifications.

The interpretation and application of the schemes of service is within the discretionary power of the appointing organ and this court will not interfere and give a different interpretation once such interpretation was reasonably open to the appointing organ.

The respondent found (see minutes of meeting of 3.1.1985) that interested parties Nos 5 and 6 have post-graduate training.

The certificate of attendance of the applicant, was before the respondent and it can be inferred from the contents of the sub

judice decision that it was not treated by it as amounting to an additional qualification under the schemes of service. Such interpretation was, in my view, reasonably open to the respondent, in view of the requirement that post-graduate training etc. had to be in educational matters. In view of this, the applicant cannot be treated for comparison purposes as possessing the additional qualification of post-graduate training in educational matters which would have required the respondent to give special reasons for ignoring it and preferring those of the interested parties not possessing such qualifications to her. This ground also fails.

The next ground to be considered is ground 8 regarding the probability that the respondent took into consideration a disciplinary conviction of the applicant, which was subsequently to the sub judice decision annulled by the Supreme Court on the application of the applicant and which might, according to the contention of applicant's counsel, have led to a misconception of fact. I find no merit in this contention of counsel. The fact of the disciplinary conviction of the applicant does not seem to have affected the judgment of the respondent in reaching the sub judice decision. The applicant was in fact considered for promotion, she was recommended for it, amongst other persons, and the sole reason for not being preferred was, as it seems from the contents of the sub judice decision that there were other candidates, equally good but senior to her whom the respondent considered as more suitable for promotion, a matter which was reasonably open to the respondent to do in the circumstances of the case.

The final point raised is that of the retrospectivity of the sub judice decision. The general rule of administrative law is that administrative acts cannot have retrospective effect, unless it is so provided by law or where the decision was taken by the administration either in compliance to an annulling decision of the Court or in the course of re-examination of a case as a result of such annulling decision when retrospective effect may be given as from the date when such decision was annulled. (See Conclusions from the Case Law of the Council of State in Greece (1929 - 1959) pp. 197 and 358; Kyriacopoulos on Greek Administrative Law, 4th Edition, Vol. B., p. 400).

The relevant law in this respect is section 35(4) of the Public Educational Service Law (Law No. 10/69) which reads as follows:

«(Όταν εκπαιδευτικός λειτουργός προαχθή εις θέσιν

εν τη οποία ενήργει αναπληρωτικώς, η προαγωγή αυτού δυνατόν να γίνη από της ημερομηνίας κατά την οποίαν εκενώθη η θέσις ή από της ημερομηνίας από της οποίας διωρίσθη όπως υπηρετή αναπληρωτικώς, οιαδήποτε των ημερομηνιών τούτων είναι η μεταγενεστέρα.»

(«(4) When an educational officer is promoted to a post in which he was acting, his promotion may take effect from the date on which the vacancy occurred or the date of his acting appointment, whichever is the latest»).

It seems from the above that the only instance for retrospective promotions expressly provided for by the law is in the case of acting appointments. If it was the intention of the legislature to cover any other instances, it should have been expressly stated so in the same law.

The question of the retrospectivity of promotions has been raised before this court in the past. Thus, in the case of *Kyprianides v. Republic* (1965) 3 C.L.R. 519, it was held that the decision of the respondent not to give retrospective effect to the promotion of the applicant was wrong in view of the fact that he was acting in that post for several years. In the case of *Markou v. Republic* (1968) 3 C.L.R. 267, it was found that the decision of the respondent to refuse to give retrospective effect to the promotion of the applicant, who was not acting in the post in question before his promotion, was correctly taken.

In the case of *Michala v. Republic* (1986) 3 C.L.R. 465, it was decided that retrospective appointment could be offered to the applicant, in the circumstances of the case, in view of the fact that a decision had previously been taken to that effect by the Review Committee and the respondent Commission, as a successor to that organ, was merely called upon to give effect to such decision.

In the case of *Panayides v. Republic* (1972) 3 C.L.R. 467, it was held by A. Loizou, J. that the promotion in that particular case could have been made with retrospective effect in view of the provisions to that effect in the Supplementary Budget Law (No. 9) of 1970 (Law No. 34/70). That case was affirmed on appeal, reported in (1973) 3 C.L.R. at p. 378, where the following was said at pp. 384, 385:-

«The question which arises for examination, in this respect, is whether there existed legislative authorization for the retrospectivity of the promotion of the interested party. In our view, Law 34/70, by means of which there was created, in May, 1970, the post in question and provision was made for the payment of the salary of such post as from 1st January, 1970, authorized, by implication, the respondent Commission to make the promotion retrospective (and see *further in this connection Revue du Droit Publique et de la* Science Politique, 1953, p. 45).»

Lastly, in the case of *Afxentiou v. Republic* (1973) 3 C.L.R. 309, it was decided by A. Loizou, J. that retrospective promotion was not justified in the circumstances of the case where there was no express statutory provision to that effect. At p. 319 of the judgment the following was stated:

«Therefore, the creation of this new post could not by itself be considered as amounting to an express statutory provision authorizing the Commission to fill it retrospectively.

Furthermore, there is no other indication in the said Budget Law from which one might infer an implied authorization to make the promotion in question retrospectively. The fact that the applicant was asked inter-departmentally to perform the duties of the post which was to be created, and before his selection for the post by the Commission - the appropriate organ entrusted by the Constitution with the task of promotions - is not sufficient to constitute the authorization that the law requires to exist before retrospective effect is given to a promotion, nor, in my view, the combined effect of the creation of the post by the Budget Law as from 1st of the year coupled with the circumstances of the case was sufficient justification for the Commission to give to the promotion retrospective effect, nor was it such as to call for doing equity to the officer concerned. The duties assigned, as they were, to him by his Department, had given him an opportunity to show his abilities which might have been to his advantage had there *been other candidates for the same post.*»

The above case was decided only a few days before the judgment of the Full Bench of this Court in the case of *Panayides* (supra). The learned trial Judge, however, distinguished in the above case, his own decision in the *Panayides* case which was

reached in the first instance. His decision in this respect reads as follows (p. 318):

«One of such promotions came before me and is reported as Panayides v. The Republic (1972) 3 C.L.R. 467. In the said case it was held that the Supplementary Budget Law was enacted and used as the legislative media for the purpose of the reorganization of the service and the creation of new posts. The provisions therein for funds for such posts retrospectively from the beginning of the year, that is to say five months prior to the promulgation of the said law, was a clear provision that promotions to these posts which were in effect reorganization of already existing posts, were intended to be made with retrospective effect.

That case has to be distinguished from the present one. There, the re-organization of a number of Government Departments had been the subject of negotiations between the Government and the civil service and it had been promised that an agreed settlement would have retrospective effect as from the beginning of the year in question. As a result, the Council of Ministers approved the necessary bill which was laid before the House of Representatives in April or May for the appropriation of the required funds as from the beginning of that year, that is to say, before even laying the bill before the House, a further ground for distinguishing Panayides's case (supra) from the one under consideration.»

I share the view of my learned brother A. Loizou in that the case of *Panayides* is distinguishable from the case of *Afxentiou* and also from the present one. I also share the view that there can be no retrospective promotion unless the case falls within certain exceptions enumerated in the Greek authorities cited earlier which is not the case here. In view of this, I find that the retrospectivity given to the promotions in question with effect as from the 1st January, 1985 is null and void and the sub judice decision, in so far as its retrospectivity is concerned, has to be annulled.

In the result the recourse succeeds only to the extent hereinabove mentioned and an order is made accordingly. In the circumstances I make no order for costs.

Sub judice decision partly annulled. No order as to costs.