1965
Nov. 25
1966
Jan. 4,
June 15

IRO PASCHALI
and
THE REPUBLIC OF CYPRUS, THROUGH
1. THE PUBLIC SERVICE COMMISSION
2. THE MINISTER OF FINANCE

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IRO PASCHALI,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
1. THE PUBLIC SERVICE COMMISSION,
2. THE MINISTER OF FINANCE,

Respondents.

(*Case No.* 48/65).

Public Officers—Public Service—Scheme of service—Public Service Commission—Appointment of public officers—Termination—Decision of the Commission to degrade applicant annulled on a recourse under Article 146 of the Constitution—On the ground that the said decision was based on a vital misconception of the relevant legal position—And as being, also, a decision taken in excess and abuse of powers within the meaning of paragraph 1 of Article 146 of the Constitution—The aforesaid misconception of law consisting in that the Commission took the decision to degrade applicant relying on the terms of a scheme of service which in law was invalid—Because that scheme was made by an organ—i.e. the Public Service Commission—which has no competence to make such schemes—The competence to set up schemes of services being vested under Article 54 of the Constitution in the Council of Ministers—Decision of the Commission that applicant should not receive an increment, left undisturbed—On the ground that the recourse in that respect was not filed within the period of 75 days prescribed by paragraph 3 of Article 146 of the Constitution—And, also, because applicant, having voluntarily and unreservedly accepted that decision and having acted upon it, has no longer any legitimate interest under paragraph 2 of Article 146 of the Constitution entitling her to make a recourse in respect thereof.

Public Service Commission—Scheme of service—The Commission has no competence to make schemes of service—It can only deal with "officers" and not "offices"—Such schemes of service

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can only be made by the Council of Ministers under Article 54 of the Constitution—See also above.

Schemes of service—Competence to make schemes of service—See above.

Council of Ministers—Competence to make schemes of service—Article 54 of the Constitution—See above.

Public Officers—Appointment of—The appointment of public officers is an administrative act—Not a mere contractual engagement.

Administrative Law—Constitutional Law—Recourse under Article 146 of the Constitution for annulment of an act or decision—"Act" or "decision"—Paragraph 1 of Article 146—Executory act—As distinct from (a) *acts of execution, and* (b) *mere confirmatory acts of previous decision—Only an executory act can be made the subject of a recourse under Article 146—In the instant case it was held that the decision, challenged by this recourse, to degrade applicant was, regard being had to the circumstances of the case, a new executory act within the meaning of Article 146, paragraph 1, of the Constitution—And not an act of execution or a mere confirmatory act of the previous decision taken in the matter.*

Administrative Law—Constitutional Law—Recourse under Article 146 of the Constitution—Legitimate interest required under Article, 146, paragraph 2—Acquiescence—Voluntary and unreserved acceptance of an administrative decision deprives the person concerned of the legitimate interest entitling him to file a recourse for annulment under Article 146 of that decision—As in this case in respect of certain claims regarding certain decisions which the applicant has accepted voluntarily and unreservedly and has acted upon it—On the contrary, regarding the decision of the Public Service Commission to degrade applicant there has been acceptance thereof which, however, was not voluntary and which, moreover, was made under protest and with contemporaneous alteration of all applicant's rights to challenge the said decision in due course—Therefore, the applicant has the required legitimate interest entitling him to make this recourse against that decision.

Administrative Law—Administrative act—Revocation or withdrawal of—General principles applicable—Withdrawal of a regular administrative act creating rights—Circumstances

under which withdrawal even of an irregular administrative act will not be allowed.

Constitutional Law—Discrimination—The question of discrimination can only arise as between persons being in equal situations.

Cases referred to:

Papapetrou and *The Republic*, 2 R.S.C.C. 61, at p. 66 *applied*;

Decisions of the Greek Council of State:

No. 720/1930;
No. 397/1932, *followed*;
No. 954/1933;
No. 439/1934;
No. 590/1934;
No. 1336/1950 *followed*;
No. 2048/1956, *distinguished.*

The facts sufficiently appear in the judgment of the Court.

Recourse.

Recourse against the decision of the Respondents concerning (a) the degrading of applicant from the post of Stenographer, 2nd Grade, to the post of Clerical Assistant, (b) the non-granting to her of an increment on the 1st April, 1964 and the 1st April, 1965 (c) the reduction of her salary to £336 per annum; and (d) the keeping of her salary, at £390, per annum, instead of £408, in January and February, 1965.

A. Triantafyllides, for the Applicant.

L. Loucaides, Counsel of the Republic, for the Respondents.

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANTAFYLLIDES, J.: By this recourse the Applicant complains, in effect:-

(a) Against her being degraded from the post of Stenographer, 2nd grade, to the post of Clerical Assistant;

(b) Against the non-granting to her of an increment on the 1st April, 1964 and the 1st April, 1965;

(c) Against the reduction of her salary to £336 per annum; and

(d) Against keeping her salary, per annum, at £390, instead of £408, in January and February, 1965.

The history of relevant events is as follows:-

On the 2nd December, 1960, by advertisement under Not. 280 in the official Gazette, applications were invited for appointment to the post of Stenographer, 2nd grade; the salary scale for such post was £354x18-426x24-522; among the qualifications required for appointment was the ability to take down Greek shorthand at a speed of not less than 60 words per minute; it was added that a person to be appointed would be required to attain, within one year, a speed of 80 w.p.m. in Greek shorthand, and that he would not receive a salary above £426 until and unless he passed a test for a speed of 90 w.p.m. in Greek shorthand.

The above advertisement of the post of Stenographer, 2nd grade, was based on a scheme of service (*exhibit* 10) which had been prepared by the Public Service Commission, without being approved also, at the time, by the Council of Ministers;—as counsel for Respondents has informed the Court during the hearing of this Case.

Applicant, who had already been given employment on daily wages by the Ministry of Foreign Affairs—as from the 7th November, 1960—applied for appointment in answer to the said advertisement.

On the 13th March, 1961, the Commission met to consider the applications for appointment; it is recorded in the relevant minutes (*exhibit* 21) that out of 16 persons invited to take a test only one had passed it "and should be appointed as Stenographer, 2nd grade". It was, however, decided also that three others, including the Applicant, "be appointed as Stenographers, 2nd grade on condition that they should not be granted any increments until and unless they pass a test in Greek shorthand at 60 w.p.m.".

So on the 16th March, 1961, an appointment was accordingly offered to Applicant (*exhibit* 1). It was stated in the conditions of service attached to such offer of appointment that the salary of the post would be £354 per annum, in the relevant salary scale, with an efficiency bar at £426; it

was added that "the employee will not, however, be granted any increments in this scale unless and until she passes a test in Greek shorthand at 60 words a minute to be held by the Public Service Commission".

On the 21st March, 1961, Applicant accepted the said appointment (*exhibit* 2).

On the 28th March, 1961, the Chairman of the Public Service Commission wrote to Applicant confirming her appointment; it was to be on an unestablished basis and was to take effect from the 1st April, 1961 (see *exhibit* 3).

On the 26th October, 1961, the Council of Ministers approved a scheme of service for Stenographers, 2nd grade, in the General Clerical Staff (see Decision 1289, *exhibit* 11, copy of which is *exhibit* 4). The salary scale remained the same, as before; the same remained, also, the requirements regarding speed in Greek shorthand. This scheme of service was brought to the knowledge of, inter alia, Applicant by means of a circular dated the 19th September, 1962 (*exhibit* 4A).

On the 11th November, 1963 (see minutes *exhibit* 14) the Commission, having regard to the requirements of the advertisement under which Applicant's appointment was made, decided that no further increments should be granted to her until and unless she attained a speed of 80 w.p.m. in Greek shorthand, and that the passing of the efficiency bar at £426 be subject to her attaining a speed of 90 w.p.m. in Greek shorthand.

Applicant was informed of this decision by letter dated 15th November, 1963 (*exhibit* 5) and she was informed, also, that the Commission would arrange for a test for her in Greek shorthand at a speed of 80 w.p.m.

On the 17th February, 1964, the Commission decided (see minutes *exhibit* 15) to hold this test on the 4th March, 1964, and that Applicant was to be one of the persons who would take this test.

On the 30th March, 1964 (see minutes *exhibit* 16) the Commission, after examining the papers of the candidates who took the test, decided that all candidates except one —not the Applicant—had failed such test.

On the 20th April, 1964 (see minutes *exhibit* 13) the Commission considered the position of Stenographers, 2nd grade, who had failed to pass the shorthand tests required of them, within the prescribed period, and decided that a number of them, including Applicant, be informed that in view of their failure the Commission contemplated the termination of their appointments as Stenographers, 2nd grade, and that upon such termination they would be offered appointment to the post of Clerical Assistant, on an unestablished basis, with effect from the 1st May, 1964.

In the cases, however, of two other Stenographers, 2nd grade (Ladaki and Ioannou), who had also failed to pass the test of the 4th March, 1964, for a speed of 80 w.p.m. in Greek shorthand, the Commission did not decide to terminate their employment as Stenographers, 2nd grade, but decided only that their increments would be withheld until they would pass such a test. (See minutes *exhibit* 13).

On the 22nd April, 1964, a letter (*exhibit* 6) was written to Applicant in accordance with the aforesaid decision of the Commission; she was informed that she would enter the salary scale of Clerical Assistant (£264x18–£426) at £318 per annum.

Applicant who was still employed at the time at the Ministry of Foreign Affairs placed, apparently, the matter in the hands of her superiors and so, on the 28th April, 1964, the Minister of Justice, who was then Acting Minister of Foreign Affairs, wrote a letter (*exhibit* 17) to the Chairman of the Public Service Commission in which it was, inter alia, stated:-

> ". It is to be noted that this Stenographer, having passed the test of 60 words stipulated in the letter of her appointment, has fulfilled *all the conditions* set out for such appointment. Such conditions are those contained in the letter of the Commission dated 16th March, 1961, and cannot include other conditions which were not stipulated in such letter either expressly or by reference. Therefore Mrs. Paschalis' services cannot be terminated on the ground that she has not satisfied the conditions of her appointment, since she has, in fact, fully satisfied such conditions. Furthermore, Mrs. Paschali

is, on the same grounds, entitled to the payment of her increment.....It would be extremely unfair to degrade Mrs. Paschali, after over three years of very satisfactory service as a Stenographer II, to the post of Clerical Assistant and to offer her a salary by £72 less than she is actually drawing.....For the above reasons, the Public Service Commission is requested to re-examine the case of Mrs. Paschali and cancel the letter P.9263 dated 22nd April, 1964, addressed to her....."

No reply was received to this letter and so on the 23rd May, 1964, the Minister of Foreign Affairs wrote a reminder (*exhibit* 18) to the Chairman of the Public Service Commission, seeking a reply to, and stating that he was in full agreement with, the letter of the 28th April,1964 (*exhibit* 17).

As no reply was received, on the 15th October, 1964 the Minister of Foreign Affairs wrote another reminder to the Chairman of the Commission (*exhibit* 19).

Eventually, on the 5th February, 1965, the Chairman of the Public Service Commission replied to the Minister of Foreign Affairs (*exhibit* 20). In this letter the Chairman, after referring to the advertisement of the 2nd December, 1960, for the post in question, and to the fact that in the instrument of appointment of Applicant it was only stipulated that she would receive no increment unless and until she reached a speed of 60 w.p.m. in Greek shorthand, had this to say, inter alia:-

".. ...This was in no way meant that the officer is relinquished from fulfilling the second requirement of passing 80 w.p.m. as required. This was imperative and no question of necessity was coming in for disregarding it except that the officer should be given later after she has attained a speed of 60 w.p.m. time to attain that speed. This requirement was in the scheme of service which was published and within the knowledge of the officer and under which she was appointed..... The fact that the condition to attain a speed of 80 w.p.m. was not included in the letter of her appointment does not relieve Mrs. Paschali from her obligation to fulfil the requirements of the scheme of service in full. Any departure from the requirements of the scheme of service in her case would have been rightly considered by other Stenographers, 2nd grade, as discriminatory....."

On the same day the Commission wrote to Applicant (*exhibit* 7) stating that if she failed to accept the offer of appointment to Clerical Assistant (unestablished), by the 15th February, 1965, her appointment under the Government woul be terminated.

Applicant replied, through her advocate, on the 10th February, 1965 (*exhibit* 8) stating that on the strength of her instrument of appointment of the 16th March, 1961, she was entitled to receive her increments, having attained the speed of 60 w.p.m. in Greek shorthand, and that the Commission was not entitled to degrade her or dismiss her. Applicant by means of the said letter requested, through her advocate, a reconsideration of the Commission's decision, and payment to her of increments as per the instrument of her appointment. The letter concluded (see paragraph 4) as follows:- "If, however, you are not prepared to comply with our request contained hereinabove and you decide to adhere to your decision contained in your letter of the 5th February, 1965 then our client will accept and hereby accepts the offer for the post of clerical assistant, fully reserving her rights to pursue the matter before the Supreme Court".

On the 12th February, 1965 the Commission met (see minutes *exhibit* 12) and having considered the matter decided that Applicant's appointment as Stenographer, 2nd grade, be terminated with effect from the 1st March, 1965, that she be appointed to the post of Clerical Assistant with effect from the same date, and that she should enter the salary scale of such post at £336 per annum.

On the 15th February, 1965 Applicant was informed of this decision by letter (*exhibit* 9).

This recourse was filed on the 13th March, 1965.

Out of the four claims of Applicant in this recourse, claims (b) and (d) are interrelated, in that they both refer to the decision to deprive Applicant of increments until and unless she would attain a speed of 80 w.p.m. in Greek shorthand.

This decision is the one taken by the Public Service Commission on the 11th November, 1963 (*exhibit* 14) and communicated to Applicant on the 15th November, 1963 (*exhibit* 5).

Applicant filed this recourse against the said decision of the Commission long after the period of 75 days, prescribed under Article 146(3) of the Constitution, had elapsed.

Also, such decision was accepted and acted upon, at the time, by Applicant who sat for the relevant test on the 4th March, 1964; there is, moreover, nothing before the Court to show that Applicant in any way has reserved her rights or protested against the decision in question of the Commission.

In the circumstances, I am of the opinion, that claims (b) and (d) of Applicant fail, in that, in so far as they are concerned;

(a) This recourse is out of time under Article 146(3); and

(b) Applicant does not possess a legitimate interest entitling her to file this recourse, because, irrespective of the validity or not of the Commission's relevant decision, she has accepted it unreservedly and has acted upon it (see, also, Kyriakopoulos on Greek Administrative Law, 4th edition, vol. 3, p. 124; and Decision 1336/1950 of the Greek Council of State).

This recourse is, thus, dismissed in so far as claims (b) and (d) are concerned.

Coming now to claims (a) and (c) of Applicant, it is first to be observed that they relate both to the termination of Applicant's appointment as a Stenographer, 2nd grade, and her appointment as a Clerical Assistant; in my opinion the said termination of her appointment as Stenographer, 2nd grade, and her appointment as a Clerical Assistant, are inter-related and inseparable, forming parts of one and the same course of action of the Commission, decided upon initially on the 20th April, 1964 (see *exhibit* 13) and affirmed after further consideration on the 12th February, 1965 (see *exhibit* 12).

The relevant decision of the Commission, which as stated, was first taken on the 20th April, 1964, was communicated to Applicant by letter of the 22nd April, 1964 (*exhibit* 6). Had matters remained at that I would have had no difficulty in dismissing this recourse, as being out of time under Article 146(3), as this recourse was filed only on the 13th March, 1965.

After, however, Applicant received the letter of the 22nd April, 1964 (*exhibit* 6) she did not reply to it, and the matter was taken up by the Acting Minister of Foreign Affairs and the Minister of Foreign Affairs; *exhibits* 17, 18 and 19 followed, addressed to the Chairman of the Public Service Commission; then followed the Chairman's reply of the 5th February, 1965; and until then no action was taken to make Applicant reply to the letter of the 22nd April, 1964.

Then, on the 5th February, 1965, Applicant was asked (see *exhibit* 7) to act on the letter of the 22nd April, 1964, by the 15th February, 1965 at the latest. On the 10th February, 1965 Applicant replied through her advocate (see *exhibit* 8) protesting against the action taken in her case by the Commission and seeking reconsideration of the matter; failing that, she accepted appointment as Clerical Assistant with reservation of her right of recourse. The matter came up before the Commission on the 12th February, 1965, when it was decided to terminate the appointment of Applicant as Stenographer, 2nd grade, as from the 1st March, 1965 and to appoint her as from that date as Clerical Assistant (see *exhibit* 12); this decision was communicated to Applicant by letter of the 15th February, 1965 (*exhibit* 9).

In the circumstances I am of the view that as the final decision of the Public Service Commission in the matter of the termination of the appointment of Applicant as Stenographer, 2nd grade, and of her appointment as Clerical Assistant, was taken on the 12th February, 1965 with effect from the 1st March, 1965, this recourse which was filed on the 13th March, 1965 is within time.

Counsel for Respondents has agreed during the hearing—acting very fairly—that on the strength of *exhibit* 12 i.e. the minutes of the Commission of the 12th February, 1965, there does appear to have been a further consideration of the matter by the Commission. But he submitted that the decision taken on the 12th February, 1965, may be regarded as taken in execution of the previous decision of the Commission in the matter, of the 20th April, 1964; he has argued, further, that the later decision of the 12th February, 1965, which was communicated on the 15th February, 1965 to Applicant, was not an executory one, but a confirmatory one only.

Bearing in mind the long time which elapsed between the first decision of the Commission on the 20th April, 1964

(*exhibit* 13) and the later decision of the Commission on the 12th February, 1965 (*exhibit* 12); bearing in mind that in the meantime Applicant was not asked to reply to *exhibit* 6—the letter of the 22nd April, 1964—while the representations made in her case by the Acting Minister of Foreign Affairs were pending for consideration before the Commission bearing, further, in mind that Applicant's advocate placed her case before the Commission, by the letter of the 10th February, 1965 (*exhibit* 8) seeking a reconsideration; I am of the view that the later decision, *exhibit* 12, is neither a mere act of execution of the earlier decision, *exhibit* 13, nor simply confirmatory of such previous decision, but it is a final executory decision of the Commission against which this recourse properly lies.

Counsel for Respondents has, next, contended that Applicant has no legitimate interest to attack the validity of her appointment as Clerical Assistant, because this is an appointment which she, herself, has accepted by means of paragraph 4 of the letter of her advocate of the 10th February, 1965 (*exhibit* 8).

But, as stated already, the appointment of Applicant as a Clerical Assistant cannot be approached by itself, separately from the termination of her appointment as Stenographer, 2nd grade; and that an existing legitimate interest of Applicant's has been directly and adversely affected by the whole composite action of depriving her of a post, with a higher salary, and giving to her in return only a post of lower remuneration, I think it is so clear matter that it needs no elaboration.

A question which arises is whether or not the acceptance by Applicant of her new appointment as Clerical Assistant disentitles her from filing this recourse, against both the termination of her old appointment and the offer to her of her new one.

It is clear, as pointed out earlier in this Judgment, that once a person accepts an administrative act and acts upon it, then a right of recourse is no longer open to him, because he no longer possesses a legitimate interest in the matter.

But, as stated in Decision 1336/1950, of the Greek Council of State, which has been referred to earlier, the acceptance of the relevant administrative action must be without reservation. It is, useful, in this respect, to refer, also, to Decision

397/1932 of the Greek Council of State, whereby it was held that when compliance by an Applicant with a decision challenged by recourse is not voluntary, it cannot be regarded as an acceptance thereof; in that case it was held that compliance with the decision challenged was not voluntary, because it obviously took place under the pressure of the possible adverse consequences of non-compliance.

In the present Case by the letter of the 5th February, 1965 (*exhibit* 7) Applicant was clearly threatened with dismissal from service, had she not accepted the appointment of Clerical Assistant offered to her; so I am of the view that in accepting such appointment by means of *exhibit* 8, she has not accepted such appointment voluntarily, in a manner depriving her of legitimate interest and disentitling her to file this recourse; counsel for Respondents has conceded himself, during the hearing, that he could not argue that the acceptance of her new appointment by Applicant was voluntary in the full sense.

Moreover, it is to be noted that Applicant, in the letter of acceptance, *exhibit* 8, has expressly reserved her right of recourse to this Court.

In Decision 2048/1956 of the Greek Council of State it was held that the fact that the Applicant in that case had declared that he was going to challenge before the Council of State his dismissal, before he had proceeded, later on the same day, to declare formally that he accepted such dismissal as valid, was not sufficient to render his acceptance non-voluntary, so as to entitle him to file a recourse, notwithstanding his acceptance.

The present Case is however, different from that case before the Council of State in Greece; there the declaration of the intent to file a recourse and the acceptance of the decision complained of, though made on the same day, were not contemporaneous, and the declaration was followed later by the acceptance—and this point is stressed in the Council's judgment; here, by one and the same letter, in one and the same breath, the acceptance was qualified by the reservation to have recourse to the Court; moreover, the Applicant in the present Case was acting under the threat of the consequences of her non-acceptance, as they were pointed out by *exhibit* 7, whereas in the aforesaid case before the Council of State in Greece the eventual acceptance of Applicant appears to have been voluntary in every sense.

For all the above reasons I am of the opinion that Applicant is not prevented from filing this recourse, both against the termination of her appointment as a Stenographer, 2nd grade. and against her appointment as Clerical Assistant, merely because she accepted her new post, in the circumstances in which she did so.

We come next to examine the validity of the relevant administrative action of the Commission:

The reasoning for such action is set out in the letter of the Chairman of the Commission to the Minister of Foreign Affairs dated the 5th February, 1965 (*exhibit* 20). Such reasoning—which has been quoted, in part, earlier in this Judgment—has been reproduced in the Opposition and is relied upon as justifying the relevant action of the Commission.

It is correct that the said letter, *exhibit* 20, was written on the 5th February, 1965, before the decision of the Commission of the 12th February, 1965 (*exhibit* 12); but according to counsel for Respondents its contents were communicated to the members of the Commission at the time, and, also, again according to counsel for Respondents, the said letter, *exhibit* 20, was before the Commission when it took its decision of the 12th February, 1965. So we may safely and properly regard the reasoning, contained in the said letter of the Chairman of the Commission, as the reasoning behind the said decision of the Commission.

Such reasoning is based on a fandamental premise, viz. that Applicant was bound by, and that it was necessary for the Commission to comply with, the contents of the advertisement, of the 2nd December, 1960, in answer to which Applicant applied for appointment, because such advertisement embodied the terms of "the scheme of service" for the post of Stenographer, 2nd grade.

That the Commission has thought along these lines is also clear from the minutes of the Commission of the 11th November, 1963 (*exhibit* 14) when it came to deal with the question of stopping the increments of Applicant's salary; the same line of thought appears to run through the decision of the Commission of the 20th April, 1964 (*exhibit* 13) and this is made abundantly clear in the letter of the 22nd April 1964 (*exhibit* 6) communicating to Applicant such decision.

Was there, however, a scheme of service validly in force at the time, the terms of which were reproduced by the advertisement of the 2nd December, 1960, and with which Applicant and the Commission had to comply?

Schemes of service are being made by the Council of Ministers under Article 54 of the Constitution, and actually, as already stated, a scheme of service for the post of Stenographers, 2nd grade, was adopted by the Council of Ministers on the 26th October, 1961, after Applicant had been appointed to such post. No attempt—and quite rightly so—has been made by the Public Service Commission, at any stage of the relevant administrative action, to rely on this scheme of service, which was subsequent to the appointment of Applicant, and which would only apply to new appointees, for purposes of qualifications.

The Public Service Commission, itself, has no competence to make schemes of service, because it can only deal with "officers" and not "offices" (see *Papapetrou and The Republic* 2 R.S.C.C., p. 61 at p. 66); as counsel for Respondents has disclosed to the Court, the "scheme of service" (*exhibit* 10) on the basis of which the advertisement of the 2nd December, 1960, was drafted, was made by the Commission; obviously at a time when the limits of the competence of the Commission had not yet been clearly recognized.

It follows that, at the time of the advertisement of the 2nd December, 1960, and Applicant's appointment, there was no scheme of service in force with which either the Commission or Applicant had to comply, as the existing "scheme" had been made without competence.

The said advertisement, not being backed by a scheme of service validly in force at the time, can only be taken to be an attempt by the Commission to find candidates possessing certain qualifications. As we know from the relevant minutes of the Commission, of the 13th March, 1961 (*exhibit* 21) only one candidate—not Applicant— was found to be qualified for appointment as per the requirements in the advertisement; but the Commission, nevertheless, decided to appoint some other persons, too, including Applicant, specifying expressly that no increments would be granted to them until and unless they would pass a test for Greek shorthand at a speed of 60 w.p.m., though in the advertisement the increment bar was only provided for by reference to

a speed of 80 w.p.m. in Greek shorthand, and the 60 w.p.m. speed was laid down as a sine qua non for appointment, in the first place.

There is nothing in the relevant minutes, *exhibit* 21, to the effect that eventually Applicant would be asked to comply with the requirement of attaining a speed of 80 w.p.m. in Greek shorthand; nor was anything stated in the terms of appointment of Applicant about such a requirement.

It is correct that the Chairman of the Public Service Commission in his letter of the 5th February, 1965 (*exhibit* 20) explains why no such requirement was mentioned in the terms of appointment of Applicant's; he has stated, in effect, that it was all along the intention of the Commission to insist eventually on such requirement, and it ought to have been within the contemplation of Applicant, too, in view of the contents of the advertisement of the 2nd December, 1960.

But, the appointment of a public officer is an administrative act, not a mere contractual engagement (see Decision 954/1933 of the Greek Council of State).

It is clear that by an administrative act comes into force what is stated therein and nothing else. So, what was not stated in the terms of appointment of Applicant (*exhibit* 1) —not even in the relevant decision of the Commission (*exhibit* 21)—cannot now be of any effect vis a vis Applicant, irrespective of what was within the intention of the Commission without becoming part of its relevant act or decision, too.

It is, also, wrong to say that Applicant ought to have known that she would be bound by the terms of the advertisement, notwithstanding what is stated in her instrument of appointment, when by the said instrument of appointment the Public Service Commission appears clearly to have decided to appoint Applicant *on terms other than those advertised.*

I am of the view that the terms of appointment of Applicant are those to be found set out in *exhibit* 1, and no others.

As the "scheme of service", on the basis of which the advertisement of the 2nd December, 1960, was made, has already been held in this Judgment not to have been a valid scheme of service, in view of its having been made, without competence, by the Public Service Commission, it follows

that the appointment of Applicant, as made, was not contrary to a scheme of service, in force at the time in relation to the post concerned, and no other scheme of service appears to have been in force then in relation to such post Thus, the appointment of Applicant, on the terms on which it was made, was a valid and lawful administrative act, made in the proper exercise of the discretion of the Commission, in view of the absence of better qualified candidates—as this is clearly stated by the Chairman of the Commission in *exhibit* 20, and is repeated, also, in the Opposition.

For this reason the position taken by the Commission, in terminating the appointment of Applicant as Stenographer, 2nd grade, viz that this was a course made necessary because of the provisions of the "scheme of service", on the basis of which the advertisement of the post and the appointment of Applicant to such post had been made, is clearly erroneous, in that it was based on the wrong assumption that there existed at the time validly in force a scheme of service, the terms of which were reproduced in the said advertisement, this is a vital misconception of the relevant legal position, which is bound to lead this Court to the conclusion that the administrative action taken by the Commission, on the very basis of such misconception, i e to terminate the appointment of Applicant as Stenographer, 2nd grade, and to offer her, instead, appointment as Clerical Assistant, has to be annulled, and it is hereby so declared accordingly

There is, also, a further reason why the aforesaid administrative action of the Commission ought to be annulled Once the appointment of Applicant, as made in 1961, was validly made—and it has been stated already that it did not contravene the provisions of a scheme of service in force at the time—it could not be revoked by the Commission, because no administrative act validly made, and creating rights in any person, can be revoked thereafter (See Kyriakopoulos on Greek Administrative Law, 4th edition, vol. 3 p 181, Stassinopoulos on Law of Administrative Acts (1951) p 419, Stassinopoulos on Discourses in Administrative Law (1957) p. 323; also, Decision 590/1934 of the Greek Council of State) So the said action of the Commission was taken in contravention of a basic principle of Administrative Law and in excess of powers

Of course, the irrevocable of an appointment has to be qualified, in the case of an unestablished officer like Applicant,

by the possibility of such appointment being terminated, in the proper exercise of the discretion of the Commission, on a ground rendering valid the termination of the appointment of an unestablished officer; but we are not concerned here with such a case at all.

Assuming, now, contrary to what has been already held, that the "scheme of service" (*exhibit* 10) as made by the Commission, was validly in force and that, therefore, the appointment of Applicant, as made in 1961, was contrary to it, it is well-settled that, where the irregularity of an administrative act is due to the action of the Administration, and is not due to any fraudulent conduct of the person concerned, then such act is irrevocable after the lapse of a reasonable period of time;—what is reasonable period being determined in the light of the circumstances of each particular case. (See Kyriakopoulos, supra, vol. 3, p. 182; Stassinopoulos (1957) supra, p. 325). Also, in Decisions 720/1930 and 439/1934 of the Greek Council of State it has been held that the revocation of even an illegal administrative act, effected after the lapse of what is a reasonable period of time in the circumstances of the particular case, is—unless the illegal act was made due to the fraudulent conduct of the person concerned—an invalid act itself, as contrary to the notions of proper administration and to the good faith which should govern relations between the Administration and those subject to it.

In the present Case it is to be borne in mind that the Applicant was appointed as Stenographer, 2nd grade, in March, 1961, and the decision to revoke her appointment was not taken, initially, until, April, 1964; that Applicant is not guilty of any fraudulent conduct in the matter of her appointment; that in November, 1963, when the question of the increments of Applicant was dealt with by the Commission, it was decided only not to grant her any further increments until she attained the speed of 80 w.p.m. in Greek shorthand and nothing was said, at the time, about terminating her appointment had she failed to pass the relevant test. To revert in 1964 and decide to terminate Applicant's appointment for the same reason, for which it was decided originally in 1963 to withhold only her increments, is, in my opinion a decision which is invalid, as being contrary to basic principles of Administrative Law, and in excess of powers, in that

the revocation of the appointment of Applicant—even if she was illegally appointed initially—was made long after the lapse of a reasonable period of time, in the circumstances of this particular Case.

Independently of all the foregoing I would annul, also, the termination of the appointment of Applicant as Stenographer, 2nd grade—as made by the Public Service Commission—for being a decision taken in excess and abuse of powers, in view of the following: Applicant, by her terms of appointment would not be entitled to any increments until she passed a test at 60 w.p.m. in Greek shorthand; she sat for such a test in May, 1962, but she failed; she sat again in March, 1963, and she passed it (see *exhibit* 20); later, the Commission decided—though this was not stated in the terms of her appointment—that she would receive no further increments until she attained a speed of 80 w.p.m. in Greek shorthand; no warning was given to Applicant that, if she failed, her appointment would be terminated; Applicant sat for the relevant test in March, 1964, and she failed; then, suddenly, the Commission proceeded, on the ground of Applicant having failed *once*, in March, 1964, to attain 80 w.p.m., to terminate her appointment. This was a course definitely *not open* to the Commission, in a reasonable and proper exercise of its descretion, in the circumstances of this particular Case.

In the result, for all the reasons stated in this Judgment, I have come to the conclusion that the sub judice decision of the Public Service Commission (taken initially on the 20th April, 1964, *exhibit* 13, and finally affirmed, after reconsideration, on the 12th February, 1965, *exhibit* 12) to terminate the appointment of Applicant as Stenographer, 2nd grade, and to appoint her as Clerical Assistant, should be declared to be null and void and of no effect whatsoever; Applicant, thus, remains, all along, without break, a Stenographer, 2nd grade, (unestablished). On the other hand this recourse fails, as against the decision of the Commission (of the 11th November, 1963, *exhibit* 14) that Applicant should not receive any increments so long as she does not attain a speed of 80 w.p.m. in Greek shorthand; it fails, not because such decision could not have been found to be annullable for some of the reasons set out in this Judgment—in relation to the other decision which was annulled—but because such decision cannot, as held already in this Judgment, be challenged by means of the present recourse.

Before concluding this Judgment, I would observe that I cannot agree with the view taken by the Chairman of the Public Service Commission, in his letter of the 5th February, 1965 (*exhibit* 20), to the effect that not terminating the appointment of Applicant as a Stenographer, 2nd grade, after she failed to attain a speed of 80 w.p.m. in Greek shorthand, would be discriminatory towards other Stenographers, 2nd grade; it must be recollected that Applicant was appointed as Stenographer, 2nd grade, in the special circumstances prevailing at the time, and that, thus, there can be no question of discriminating against other Stenographers, who were appointed in normal circumstances; discrimination can only arise as between persons being in *equal* situations. On this issue of discrimination I would like to point out that if anybody could complain of discrimination, that would be Applicant, in view of the fact that her appointment was terminated for failing to pass the test of 80 w.p.m. in Greek shorthand, whereas two others, again Stenographers 2nd grade, who had failed the relevant test together with Applicant, were allowed to retain their posts and were deprived only of increments unless and until they attained the speed in question. (See minutes *exhibit* 13).

As regards the Minister of Finance this recourse fails in toto, because nothing has been established to the effect that the Respondent Minister has taken any decision in the sub judice matter; this recourse succeeds, in part only, as above, against the Respondent Commission.

Regarding costs, it is ordered that Applicant should be paid by the Republic part of her costs, which I assess at £30.

Application succeeds, in part, as against the Respondent Public Service Commission; and fails, in toto, as against the Respondent Minister of Finance. Order for costs as aforesaid.