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[STAVRINIDES, J.]

DINOS PAPACHRISTODOULOU  
v.  
REPUBLIC  
(MINISTER OF  
FINANCE)

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

DINOS PAPACHRISTODOULOU,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF FINANCE,

*Respondent.*

(Case No. 36/66).

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*Public Officers—Examiner of Accounts 2nd Grade in the Audit Office—Decision of Respondent not to grant Applicant increments retrospectively from the date of his appointment—Sub judice decision annulled because of a misconception in it as to the ground on which Applicant's claim was based.*

*Administrative Law—Misconception—A misconception in the decision of the administration as to the ground on which Applicant's claim for increments was based vitiates the said administrative decision—Administrative act or decision—Executory act or decision as distinct from a merely confirmatory decision of a previous one—See, also, below.*

*Administrative and Constitutional Law—Recourse under Article 146 of the Constitution—Act or decision within the ambit of Article 146.1—A decision rejecting a claim based on an event which happened after Applicant's appointment to the post of Examiner of Accounts, 2nd Grade, is a new decision and not one merely confirmatory of a previous decision concerning the terms of Applicant's said appointment—Therefore, the sub judice decision whereby the Respondent refused to grant the Applicant the increments applied for is clearly a decision of "an organ, authority or person exercising an executive or administrative function" within Article 146.1 of the Constitution—And as such it can be made the subject of a recourse under that Article.*

*Confirmatory act or decision—See above.*

*Executory act or decision—See above.*

*Misconception—A misconception as to the grounds upon which a claim is based vitiates the decision so taken—See, also, above.*

The Applicant holds a post of Examiner of Accounts, 2nd grade, in the Audit Office of the Republic. At the time of his appointment to that post *viz.* on November 1961, the post was carrying a salary scale of £570 to £720 per annum and he was placed at the bottom of that salary scale. In May, 1963, a Mr. A. Tapakis was appointed to another such post at a starting salary of £642 per annum; and on November 1965, the Applicant wrote to the Director of the Ministry of Finance a letter (*Exhibit 1*) in which, after setting out his professional qualifications and “stating that he had been informed” of Mr. Tapakis appointment “with a starting salary of £642 per annum”, he continued:

“To the best of my knowledge and belief my qualifications entitle me to have the same treatment as that of Mr. A. Tapakis, *i.e.*, to be placed on an initial salary of £642 per annum as from the 1st November, 1961, retrospectively”.

The relevant scheme of service provides:

“Qualifications required:

For first entry:

.....  
(iii) the Higher certificate in Book-keeping and Accountancy of the London Chamber of Commerce or some other examination approved as of equivalent standard; or (b) a university degree in commercial subjects or other appropriate post-secondary education. Such candidates may be allowed to enter the post at a higher point in the salary scale”.

The Applicant claimed that his qualifications satisfied the alternative of “other appropriate post-secondary education” contained in (b) of the aforesaid Scheme of Service. On the other hand he never disputed that the said Mr. A. Tapakis was the holder of a university degree in commercial subjects.

In January 1966, the Acting Director of Personnel wrote to the Acting Auditor-General the following letter (*Exhibit 2*):

“I am directed to refer to your minute of November 8, 1965, forwarding an application from Mr. N. Papa-christodoulou (the Applicant), Examiner of Accounts, 2nd Grade, since November 1, 1961, in which he *requests*

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that he may be granted increments on the ground that his qualifications are equivalent to a University degree, and to request you to inform him that his qualifications cannot be regarded as equivalent to a university degree. In any case it was decided six months ago that additional increments should not be granted to holders of university degrees appointed to accounting or audit posts carrying a salary scale of £570-£720 per annum. In the circumstances, Mr. N. Papachristodoulou's (*Applicant's*) request cannot be granted".

It is against this decision in *Exhibit 2* that the present recourse is made on the main ground that the decision complained of discriminates against Applicant since the aforementioned A. Tapakis was placed at the starting salary point of £642 per annum. On the other hand an objection was raised by counsel for the Republic to the effect, *inter alia*, that the document *Exhibit 2 (supra)* contains no 'decision' within Article 146.1 of the Constitution, at any rate not "one that is new the decision affecting the Applicant having been taken when he was appointed and having been accepted by him".

In annulling the refusal complained of, the Court:

*Held*, (1). The refusal was clearly a decision of "an organ, authority or person exercising an executive or administrative function" (within Article 146.1 of the Constitution); and since the claim for increments is based on an event, *viz.* the grant of increments retrospectively to Mr. A. Tapakis which happened after the appointment in November 1, 1961 of the Applicant, it is a new decision and not one merely confirmatory of a previous decision concerning the Applicant. It follows that the Respondent's objection fails.

(2) (a) The refusal complained of is expressly based, in the first place, on the ground that Applicant's "qualifications cannot be regarded as equivalent to a university degree" (*supra*); and *exhibit 2 (supra)* states that such equivalence had been "the ground" on which the Applicant (by his letter of the 5th November, 1965 *exhibit 1 (supra)*) "requests that he may be granted increments".

(b) In fact what the Applicant had relied on was, not such equivalence, but "other appropriate post-secondary education". It is any education answering the latter des-

cription (and not necessarily one "equivalent to a university degree") that was required as an alternative to a university degree by the practice applied in Mr. A. Tabakis's case and that *exhibit 1 (supra)* mentions in referring to that practice; in fact there is nothing in the latter document (*i.e.* the Applicant's said letter of the 5th November, 1961 *exhibit 1*) about "equivalence".

(c) Thus, there is, truly, a misconception in *exhibit 2 (supra)* of the ground upon which Applicant's claim for increments was based.

(d) The refusal, therefore, must be annulled, unless, indeed, it can be supported by the alternative ground given in *exhibit 2 i.e.* the decision to abolish increments. (Passage from Πορίσματα Νομολογίας του Συμβουλίου Έπικρατείας 1925-1959 p. 188, para. 3, (quoted in the judgment, post) *applied*).

(3)(a) The aforesaid decision to abolish increments has not been produced before me. But it is not disputed that in December 1965, *i.e.* not only after it had been taken but in fact after the Applicant had written *exhibit 1 (supra)*, four Accounting Officers, 2nd Grade, were granted increments retrospectively from January of that year.

(b) In view of that it is fair to presume that the decision to abolish increments did not purport to affect officers in the public service who already possessed the qualifications required to bring them within the scope of the practice in question.

(c) Therefore the alternative ground relied upon in *exhibit 2* also fails.

(4) In view of the conclusion at which I have arrived it is unnecessary to go into any other point whether raised on behalf of the Applicant or on behalf of the Respondent, not covered by the foregoing.

(5) For the above reasons the subject decision is annulled and the matter must be reconsidered by the appropriate authority on the basis of *exhibit 1* and all relevant facts. The Respondent to pay the Applicant £10 costs.

*Sub judice decision annulled.  
Order for costs as aforesaid.*

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Cases or authorities referred to:

Πορίσματα Νομολογίας Συμβουλίου Έπικρατείας  
1929-1959 at p. 188, para. 3 (passage quoted in the  
Judgment *post*), *applied*.

### Recourse.

Recourse against the decision of the Respondents not to grant to Applicant additional increments and/or not to place him retrospectively on the salary of £642 per annum upon his appointment to the post of Examiner of Accounts 2nd Grade, in the Audit Office of the Republic.

A. *Triantafyllides*, for the Applicant.

A. *Frangos*, Senior Counsel of the Republic, for the Respondent.

*Cur. adv. vult.*

The following Judgment was delivered by:

STAVRINIDES, J.: The Applicant holds a post of Examiner of Accounts, 2nd Grade, in the Audit Office of the Republic. At the time of his appointment to that post (hereafter "the appointment"), *viz.* on November 1, 1961, the post was carrying, as it did until the enactment, on the 19th instant, of the Public Servants (Revision of Salaries and Salary Scales) Law, 1968, a salary of £570x24—690x30—720 per annum, and he was placed at the bottom of the salary scale. In May, 1963, a Mr. A. Tapakis was appointed to another such post at a starting salary of £642 per annum; and on November 5, 1965, the Applicant wrote to the Director-General of the Ministry of Finance through the Acting Auditor—General, a letter in English (*exhibit 1*) in which, after setting out his professional qualifications and stating that "he had been informed" of Mr. Tapakis's appointment "with a starting salary of £642 per annum", he continued:

"I have been informed that Mr. A. Tapakis, who is a graduate of the Athens School of Economics and Business Science, was appointed as an Examiner of Accounts, 2nd Grade, in the Audit Office in May, 1963, with a starting salary of £642 per annum.

The placing of Mr. A. Tapakis on a salary higher than the initial of his scale was made on the ground that in the Treasury, for the post of Accounting Officer,

2nd Grade (which is identical to the post of Examiner of Accounts, 2nd Grade, as far as qualification requirements and salary scale), candidates being holders of a university degree in commercial subjects or other appropriate post-secondary education were being placed on their appointment at a salary higher than the initial of their scale, *i.e.* £642 per annum.

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To the best of my knowledge and belief my qualifications entitle me to have the same treatment as that of Mr. A. Tapakis, *i.e.* to be placed on an initial salary of £642 as from the 1st November, 1961, retrospectively.

In anticipation of your reply,

I remain,

.....”

On January 24, 1966, the Acting Director of Personnel wrote to the Acting Auditor-General (also in English) the following letter (*exhibit 2*):

“I am directed to refer to your minute of November 8, 1965, forwarding an application from Mr. N. Papachristodoulou, Examiner of Accounts, 2nd Grade since November 1, 1961, in which he requests that he may be granted increments on the ground that his qualifications are equivalent to a university degree, and to request you to inform him that his qualifications cannot be regarded as equivalent to a university degree. In any case it was decided six months ago that additional increments should not be granted to holders of university degrees appointed to accounting or audit posts carrying a salary scale of £570x24—690x30—720 per annum. In the circumstances, Mr. Papachristodoulou’s request cannot be granted.”

This application is for a declaration that

“the decision.....contained in *exhibit 2*.....not to grant to Applicant additional increments and not to place Applicant retrospectively since November 1, 1961, on the £642 per annum salary point of Examiner of Accounts, 2nd Grade, is *null* and *void* and of no effect whatsoever.”

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It is stated to be

“based on the following points of law:

The decision complained of discriminates against Applicant since other persons, *i.e.* a certain Mr. A. Tapakis of the Audit Office was placed at the starting salary point of £642 per annum, his qualification being that he is a graduate of Anotati Emporiki School in Athens. Furthermore, Respondents have treated many persons appointed in the Treasury Department in the same way as Mr. Tapakis.”

The opposition makes four points: (a) Mr. Tapakis had a “university degree”; (b) the Applicant’s “qualifications... were properly considered as not being equivalent to a university degree”; (c) “Mr. Tapakis’s application for increments was made immediately after his appointment”; and (d) “when Applicant applied for increments in 1965 Government had already decided that no additional increment would be granted in any case to holders of university degree (s) appointed to accounting (or) audit posts carrying a salary scale of £570x24—690x30—720 per annum.”

At the time of the appointment there was in force a scheme of service for the post of Accounting Officer, 2nd Grade (hereafter “the post of Accountant”), to prove which two documents were produced, one by each side. The document produced by counsel for the Applicant (*exhibit 3*) is in Greek, being a copy of the official Gazette of the Republic dated March 14, 1961; that produced by counsel for the Respondent is in English (*exhibit 7*). In *exhibit 7* there is this:

“*Qualifications required:*

*For first entry:*

(a)(i) Leaving certificate of a secondary school with a six-year course; and a knowledge of English of the standard of English higher; or

(ii) the following subjects of the Cyprus Certificate of Education Examination at the levels indicated:

1. English Higher .. credit level
2. Greek Higher
- or
3. Turkish Higher .. pass level

4. Mathematics 'A' .. credit level
5. Mathematics 'B' .. pass level
6. Any *three* other subjects at .. pass level; and

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(iii) the Higher Certificate in Book-keeping and Accountancy of the London Chamber of Commerce or some other examination approved as of equivalent standard; or

(b) a university degree in commercial subjects or other appropriate post-secondary education. Such candidates may be allowed to enter the post at a higher point in the salary scale.

*Note:* Persons appointed from outside the service will be required to pass the examinations in Colonial Regulations and General Orders and Financial Instructions within two years from the date of their appointment and before confirmation."

(Incidentally, the lettering of the part quoted, giving, as it does, the impression, on any but the most careful perusal, that the "university degree in commercial subjects or other appropriate post-secondary education" is an alternative requirement to (i), (ii), (iii), is misleading, since in fact it can only be alternative to (iii)). In the translation, (b) of *exhibit 3* reads:

"A university degree in commercial subjects or other appropriate higher education. These candidates will be entitled to be appointed at an initial salary higher than the lowest point of the salary scale of the post."

It was stated by counsel for the Respondent, and not disputed by counsel on the other side, that the text approved by the Council of Ministers was in English, being that set out in *exhibit 7*. Hence *exhibit 3*, in so far as it does not agree with *exhibit 7*, is wrong.

The corresponding part of the scheme of service relating to the post of Examiner, 2nd Grade (hereafter the "post of Examiner"), in force at that time (*exhibit 8*) read:

*"Qualifications required:*

*A. First entry:*



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1. (i) Leaving certificate of a secondary school with a six-year course and a good knowledge of English of the standard of English Higher, or the following subjects of the Cyprus Certificate of Education examination at the levels indicated:

1. English Higher .. credit level
2. Greek Higher or  
Turkish Higher .. pass level
3. Mathematics 'A' .. credit level
4. Mathematics 'B' .. pass level
5. Any three other subjects at pass level; and

(ii) the Higher Certificate in Accountancy of the London Chamber of Commerce or some other examination approved as of equivalent standard; or

2. University degree in Economics (including Accountancy as a subject) or in commercial subjects or other appropriate post-secondary education.

3. Previous auditing experience or a university degree would be an advantage."

It will be noted that this scheme made no provision for the grant of an initial salary above the minimum of the scale contained in it. It was replaced on December 16, 1963, by one (*exhibit 9*) not only containing no such provision, but entirely replacing the requirements for first entry set out in *exhibit 8* by one, without any alternative, of

"A university degree in commercial subjects, including Accountancy, or other appropriate post-secondary commercial education approved as equivalent."

Meanwhile the scheme of service relating to the post of Accountant had been amended on May 24, 1964, and on December 16, 1965, it was further amended, one of the results being that it no longer contained a provision for first entry into that post at a salary above the minimum of the scale applicable to it (*exhibit 10*).

No evidence was called on either side.

On the basis of his counsel's address the case for the Applicant may be stated in the form of a number of propositions as follows:

1. The duties of the post of Examiner and those of the

post of Accountant are analogous, and the two posts carry the same salary.

2. Notwithstanding the fact that the scheme of service relating to the post of Examiner which was in force at the time of the appointment made no provision for the grant of an initial salary above the minimum of the scale contained in it, "it had been Government policy to extend the same treatment in all respects, including salary, to persons appointed to the post of Examiner (as had been applied under the scheme of service *exhibit 7* to persons appointed to the post of Accountant), and this was implemented in the case of Mr. Tapakis".

3. By a decision of the Council of Ministers (*exhibit 6*) "the Intermediate Examination (in full) of the Association of International Accountants" and "Section 1 of the Intermediate Examination of the Association of Certified and Corporate Accountants" were recognised as being "of equivalent standard to the Higher Certificate in Book-keeping and Accountancy of the London Chamber of Commerce" (referred to by its correct description in (iii) of *exhibit 7* and without the words "and Accountancy" in (ii) of *exhibit 8*); and in consequence of that decision a "Mr. S. Hadjisoteriou, Accounting Officer, was granted retrospectively one increment". (Counsel did not say when.)

4. At the time of the appointment the Applicant had already passed the examination of the Association of International Accountants and also was a holder of the Commercial Administration Certificate of the Balham and Tooting College of Commerce, an institution run by the London County Council. (Counsel produced two official booklets, each containing information regarding one of these institutions—*exhibits 5* and *4* respectively.) Those qualifications satisfied the alternative of "other appropriate post-secondary education" contained in (b) of *exhibit 7*.

5. In the 1965 Appropriation Law there was a provision whereby "Accounting Officers, 2nd Grade, with an appropriate university degree or professional accounting qualifications might be promoted to the post of Accounting Officer, 1st Grade, on completion of one year on the maximum of the salary scale of their post..."; and in pursuance of that provision "an Accounting Officer, 2nd Grade, Mr. Alecos Aivaliotis, who is the holder of the Association of International Accountants, was promoted to the 1st Grade in 1965".

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6. The statement in *exhibit 2* that “In the circumstances Mr. Papachristodoulou’s request cannot be granted” (hereafter “the refusal”) is based on a misconception as to the ground on which the Applicant’s claim “to be placed on an initial salary of £642 per annum as from November 1, 1961, retrospectively” (hereafter “the claim for increments”) was based; and that misconception is of itself sufficient to vitiate the refusal.

7. The decision referred to in *exhibit 2* that “additional increments should not be granted” (hereafter “the decision to abolish increments”) “cannot apply to cases where the right had arisen earlier”; and this view was adopted in the case of four Accounting Officers named by counsel, all “graduates of the Anotati Emporiki of Athens”, who “were granted increments retrospectively from January, 1965, in December of that year”.

Before I embark on a consideration of any of those propositions I must deal with an objection raised by Counsel of the Republic at the commencement of the hearing, which I did not decide at the time because I considered that I could not conveniently do so without going into the general facts of the case. He submitted that the application to the court had been filed out of time, (i) because “there is nothing to show that *exhibit 2* was communicated to the Applicant” and (ii) because “that document contains no ‘decision’ (within art. 146, para. 1, of the Constitution), at any rate not” one that is “new”, “the decision affecting the Applicant having been taken when he was appointed and having been accepted by him”. With regard to (i), *exhibit 1* had been sent by the Applicant to the Director-General of the Ministry of Finance through the “Acting Auditor-General”; what “the Auditor-General” was required by *exhibit 2* to do was, in effect, to bring the whole contents of that document to the knowledge of the Applicant; that request it was his duty to carry out; and since the Applicant got to know those contents it is only reasonable to infer that they were communicated to him by the Auditor-General. As to (ii), the refusal was clearly a decision of “an organ, authority or person exercising an executive or administrative function” (within art. 146, para. 1, of the Constitution); and since the claim for increments is based on an event, *viz.* the grant of increments retrospectively to Mr. Tapakis, which happened after the

appointment, it is a new decision and not one merely confirmatory of a previous decision concerning the Applicant. It follows that the objection fails.

It is convenient to deal first with proposition 6. The refusal is expressly based, in the first place, on the ground that "his qualifications cannot be regarded as equivalent to a university degree"; and *exhibit 2* states that such equivalence had been "the ground" on which the Applicant (by *exhibit 1*) "requests that he may be granted increments". In fact what the Applicant had relied on was, not such equivalence, but "other appropriate post-secondary education". It is any education answering the latter description (and not necessarily one "equivalent to a university degree") that was required as an alternative to a university degree by the Treasury practice applied in Mr. Tapakis's case and that *exhibit 1* mentions in referring to that practice; in fact there is nothing in the latter document about "equivalence". Thus there is, truly, a misconception in *exhibit 2* of the ground on which the claim for increments was based. The question then is, does this vitiate the refusal? In the book on the case-law of the Greek Council of State (Πορίσματα Νομολογίας του Συμβουλίου Ἐπικρατείας) I find the following at page 188, para. 3:

"It is to be noted that when the administration rejected an application on the ground that preconditions do not exist which the Applicant did not invoke, it was held that the decision must be annulled with a view to its being referred for reconsideration on the basis of its contents."

In my Judgment that passage is clearly applicable to the refusal in so far as it rests on lack of equivalent qualifications, and therefore it must be annulled, unless, indeed, it can be supported by the alternative ground given, *viz.* the decision to abolish increments; which brings me to proposition 7.

The last-mentioned decision has not been produced before me. But it was stated by counsel for the Applicant, and not disputed by Counsel of the Republic, that in December, 1965, *i.e.* not only after it had been taken but in fact after the Applicant had written *exhibit 1*, four Accounting Officers, 2nd Grade, whom he named, were granted increments retrospectively from January of that year; and in view of that it is fair to presume that that decision did not purport to

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affect officers in the public service who already possessed the qualifications required to bring them within the scope of the Treasury practice in question. Therefore the alternative ground relied upon in *exhibit 2* also fails.

In view of the conclusions at which I have arrived regarding propositions 6 and 7 it is unnecessary to go into any point, whether raised on behalf of the Applicant or on behalf of the Respondent, not covered by the foregoing.

For the reasons given the subject decision is annulled and the matter must be reconsidered by the appropriate authority on the basis of *exhibit 1* and all relevant facts. The Respondent to pay the Applicant £10 costs.

*Sub judice decision annulled.  
Order for costs as aforesaid.*