

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS  
GAVRIEL

GEORGHIOS GAVRIEL,

*Applicant,*

*and*

v.  
REPUBLIC  
(PUBLIC  
SERVICE  
COMMISSION  
AND/OR THE  
DIRECTOR  
OF THE  
DEPARTMENT  
OF LANDS  
AND  
SURVEYS)

THE REPUBLIC OF CYPRUS, THROUGH

THE PUBLIC SERVICE COMMISSION AND/OR

THE DIRECTOR OF THE DEPARTMENT OF LANDS AND  
SURVEYS,

*Respondents.*

(Case No. 373/70).

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*Public Officers—Promotions—Recommendations by Head of Department—Section 44(3) of the Public Service Law 1967 (Law No. 33 of 1967)—Head of Department entitled to make a comparison of the merits of the candidates for promotion as to who is more suitable for a post—No violation, therefore, of the section in the instant case—Nor has the oral recommendation of the Head of the Department for the interested party been made in any unfair manner.*

*Promotions—Public Officers eligible for promotion—So eligible only a public officer who “has not been punished during the preceding two years for any disciplinary Offence of a serious nature (σοβαράς φύσεως)—Section 44(1) (d) of the said Law—The said words “serious nature” in the section refer to the offence and not to the punishment—The circumstances of the instant case show that the respondent Commission, despite loose language used or even mere misuse of the word “punishment” for the word “offence”, addressed its mind to the offences and the provisions of said section 44(1)(d) supra, and did not act under an erroneous interpretation or any misconception of the law or fact—In any event, the respondent Public Service Commission in considering candidates for promotion in accordance with the said section 44(1)(d) of the Law, has no power to make its own assessment regarding seriousness of disciplinary offences previously dealt with summarily by the appropriate authority under section 81(4) of the same Law—The principle of law in that regard being that “the administrative organs are bound to recognise as valid and as such to*

*apply the acts of other organs so long as externally they bear the legal elements of valid acts; and incidental contention subsequently of their validity (by an administrative organ) is not allowed” (see conclusions of the Jurisprudence of the Greek Council of State 1929–1959, at p. 157 and the case law cited therein.)*

*Promotions—Promotions to the post of Senior Surveyor in the Department of Lands and Surveys—Interested party strikingly senior to applicant, more strongly recommended by Head of Department and with more favourable confidential reports—The respondent Commission has, therefore, not acted under any misconception of the facts as to the suitability of the Interested Party for promotion—All the more so, that its reasoning finds ample support on the confidential reports and other relevant documents in the file as to the respective merits of the candidates.*

*Administrative acts or decisions—Validity—The administrative organs are not allowed to dispute, either directly or incidentally, the validity of acts or decisions done or taken by other administrative organs, so long as such acts or decisions bear externally the elements of valid acts—See also supra under Promotions.*

*Statutes — Construction— Words of a statute when there is doubt about their meaning are to be understood in the sense in which they best harmonise with the subject of the enactment—The word “ συστάσεις ” (“ recommendations ”) in section 44(3) of the Public Service Law, 1967, has to be given its popular meaning rather than be taken as being used in any narrowly legal or technical sense—‘ Loquitur ut vulgus ’.*

*Head of Department—Recommendations by—See supra.*

*Words and Phrases—“ Συστάσεις ” (recommendations) in section 44(3) of the Public Service Law 1967—“ Πειθαρχικόν ἄδίκημα σοβαρᾶς φύσεως ” (disciplinary offence of a serious nature) in section 44(1)(d) of said Law.*

This is a recourse whereby the applicant seeks to challenge the promotion to the post of Senior Surveyor, in the Department of Lands and Surveys, of the interested party, Mr. HjiPanayioutou.

Counsel for the applicant raised three main points in support of this recourse, which briefly are as follows :

*First Point :* The recommendations of the Head of the Department, Mr. Ieronymides at the relevant meeting of the

respondent Commission of October 27, 1970, were unfair, contrary to section 44(3) of the Public Service Law, 1967 (Law No. 33 of 1967) (*infra*), and in the way they were made, as appearing in the relevant minutes (*Exhibit 8*), affected the Commission in the exercise of its discretion to such an extent as to vitiate its decision.

Section 44(3) of the Public Service Law, 1967 (Law No. 33 of 1967) reads as follows :

“(3) In making a promotion the Commission shall have due regard to the annual confidential reports on the candidates and to the *recommendations* made in this respect by the head of the department in which the vacancy exists.”

*Second Point* : Counsel for the applicant further argued that in making recommendations to the Commission the Head of Department can speak only of the respective merits of the candidates and not make a comparison between them as Mr. Ieronymides (the head of department) did by saying, as it is shown in the relevant minute : “Gavriel (the applicant) is not as good as HjiPanayiotou (the interested party)”. This argument is based, counsel submitted, on the true interpretation of the word “*συστάσεις*” (“recommendations”) appearing in section 44(3) of the Law (*supra*).

*Third Point* : The next point raised by counsel for the applicant was based on the following passage from the minutes of the respondent Commission :

“The Commission considered the two punishments imposed on Mr. HjiPanayiotou (the interested party) by the appropriate authority during the last two years and decided that the *punishments* in question were *not of a serious nature* and, therefore, he could be considered for promotion in accordance with section 44(1) (d) of Law No. 33 of 1967.”

Section 44(1)(d) of the Public Service Law, 1967 (Law No. 33 of 1967) reads so far as is material :—

“(1) No officer shall be promoted to another office unless—

(d) he has not been punished during the preceding two years for any disciplinary offence of a *serious nature* (*‘σοβαρᾶς φύσεως’*).”

The submission was that the respondent Commission failed to inquire into the two offences but instead reached its conclusion by examining only the punishments imposed.

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The test he said under the aforesaid section 44(1)(d) is not the seriousness of the punishment but the seriousness of the offence ; and on account of this the promotion of the interested party should be annulled as taken on a misconception of law.

The Court rejected the aforesaid three main submissions made by counsel for the applicant and dismissed the recourse, holding :—

*Held, I. As to the First Point raised by counsel for the applicant (supra) :*

Strong as certain words of the Head of Department, Mr. Ieronymides, were, they could only be taken as part of the picture of the interested party given by him to the Commission. It cannot be said, and this is borne out from the reasons given by the Commission for its decision, that they were in any way the decisive reason for the Commission's decision ; or, that they unfairly affected the Commission in the exercise of its discretion. The reasons for the decision given by the Commission in *Exhibit 8* are the consideration of the merits, qualifications, seniority and experience of the candidates, as reflected in their annual confidential reports, and also " bearing in mind the above, as well as the views expressed by Mr. Ieronymides both orally and in writing " (see *Exhibits 9 and 11*). It is obvious that it was from their totality that the respondent Commission reached the conclusion that the interested party was on the whole the best and should be promoted instead of, and in preference to, the applicant.

*Held, II. As to the Second Point raised by counsel for the applicant (supra) :—*

(1) It is on the meaning of the word " συστάσεις " (" recommendations ") in section 44(3) of the said Law (*supra*) that the second issue raised by counsel for the applicant (*supra*) has to be resolved. It is a principle of interpretation that the words of a statute when there is doubt about their meaning are to be understood in the sense in which they best harmonise with the subject of the enactment (see *Towerfield Owners v. Workington Harbour and Dock Port* [1949] p. 10 and *Freed v. D.P.P.* [1969] 2 W.L.R. 390). The word " συστάσεις " (" recommendations ") in the context of this section 44(3) (*supra*) has to be given its popular meaning rather than be taken as being used in any narrowly legal or technical sense. As stated in *Fusilier* (1865) Br. and L. 341, at p. 393 " *Loquitur ut vulgus* " i.e. according to the common understanding and acceptance of the term.

(2) Such a meaning harmonises with the subject of the enactment and in fact it is the one normally given to the word. It has in fact been so understood in proceedings of this nature. It carries with it the duty of giving a description of the merits of the candidates and by comparing their respective merits and demerits suggest which is more suitable for the post. It was so used both before and after the enactment of the Public Service Law, 1967 (Law No. 33 of 1967) on a number of occasions. See for instance :

*Theodossiou and The Republic*, 2 R.S.C.C. 44 ;  
*Georghios Evangelou v. The Republic* (1965) 3 C.L.R. 292,  
 at p. 297 ; *Arkatitis and Others (No. 1) v. The Republic*  
 (1967) 3 C.L.R. 29.

Two more cases in which a comparative list in order of merit by superiors in relation to promotions, considered after the enactment in June, 1967, of the Public Service Law, 1967, complete the picture on this point. They are : *Vonditsianos and Others v. The Republic* (1969) 3 C.L.R. 83 and *Theocharous v. The Republic* (1969) 3 C.L.R. 318.

(3) I have no doubt in my mind that a head of department inevitably has to make a comparison of the merits of candidates as to who is more suitable for a post when there are more than one candidates for promotion ; especially when a post requires, as in the present case, specialised knowledge and ability, and where they all work in the same department.

(4) In the light of the above I have reached the conclusion that there has been neither a violation of the law nor has the oral recommendation of the head of department been made in any unfair manner, nor was this recommendation in any event the sole decisive reason for the Commission's subject decision.

*Held, III. As to the Third Point raised by counsel for the applicant (supra) :*

*Note :* It should be recalled here that this point as raised boils down to this : Whereas the said section 44(1)(d) of the statute provides that only a public officer who " has not been punished during the preceding two years for any disciplinary offence of a *serious nature* " is eligible for promotion, the respondent Commission, referring to the two disciplinary punishments of the interested party, decided that the "*punishments in question were not of a serious nature* and, therefore,

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he could be considered for promotion in accordance with section 44(1)(d) of the Law” (*supra*). That view, counsel submitted, amounts to a misconception of law, because the “punishment may not be of a serious nature” but the disciplinary offence may be of such “serious nature” as provided by the statute. The Court dealing with this point, held :

(1) It is correct that the words “σοβαρᾶς φύσεως” (“of serious nature”) in the aforesaid section 44(1)(d) of the Public Service Law, 1967 (*supra*) refer to the offence and not to the punishment ; and what is material for the purposes of the section is the nature of the (disciplinary) offence and not the seriousness of the (disciplinary) punishment. It is useful, therefore, to examine the material that the respondent Commission had before it regarding the nature of the two disciplinary offences referred to in its decision (*supra*).

(2) (a) In the file containing the confidential reports of the interested party, *Exhibit 16*, there are two copies of letters dated May 7, 1969, and January 27, 1970. They are copies sent to the respondent Commission of the decisions of the Head of the Department on these two disciplinary offences (by the interested party) for which he was authorised under section 81(4) of the said Law to try summarily ; and for each one of those offences he imposed the punishment of severe reprimand. Now, section 80(a) of the Law provides :

“ If it is reported to the appropriate authority concerned that a public officer may have committed a disciplinary offence, the appropriate authority shall forthwith :—

(a) if the offence is one of those specified in Part I of the First Schedule, cause a departmental inquiry to be made in such a manner as the appropriate authority may direct and proceed as provided in section 81 :

Provided that if the appropriate authority is of opinion that owing to the *seriousness* of the offence or the circumstances under which it was committed, it should entail a more *serious* punishment, it may refer the matter to the Commission in which case it shall proceed under paragraph (b) ;”

(b) It follows, that the appropriate authority carried out a department inquiry and on the facts revealed, it thought fit not to invoke the proviso to section 80(a) hereinabove set out. This shows that the appropriate authority decided that

these two offences were neither of a serious nature nor committed in circumstances that should entail a more serious punishment ; and as this decision has never been attacked by recourse or revoked, it was not open to the respondent Commission to take a different view than the one taken by the appropriate authority when it carried out the departmental inquiry into the matter as stated above. See *Conclusions of the Jurisprudence of the (Greek) Council of State, 1929-1959*, at p. 157, where it is stated :—

“ In accordance with the general principle of public law, the administrative organs are bound to recognize as valid and as such to apply the acts of other organs so long as externally they bear the legal elements of valid acts : (See the decision of the Greek Council of State No. 1255/52), incidental contention subsequently of their validity (by an administrative organ) is not allowed : (See the decision of the Greek Council of State No. 1396/52). ”

(See also the opinion of Professors A. Tsirintani and F. Vegleri in “ *Ephimeris Ellinon Nomikon* ” Vol. 28 (1961) p. 264, at p. 268).

(3) If, however, my said approach on this issue was not correct, and it is found that the respondent Commission had to make its own assessment, then I would still find that there has been no misconception of law or fact on the part of the respondent Commission, inasmuch as there was ample material before it to reach its own conclusions that the two offences were not of a serious nature so as to be an impediment to the promotion of the interested party ; and there is nothing to show that the Commission failed to carry an inquiry into them or even to raise a doubt as to same. In my view the word “ punishments ” used by the Commission in their minute (*supra*) is loose language or a mere misuse for the word “ offences ”. This is borne out by the reference in their reasons they made to section 44(1)(d) of the statute (*supra*) under which they could promote the interested party only if they were of the opinion that he had not been punished during the two previous years for any disciplinary offence of a serious nature.

*Held, IV.* In the result I am satisfied that the respondent Commission has dealt with the *sub judice* promotions after considering all the relevant material before it, and in due conformity with the provisions of section 44 of the Public Service Law, 1967. It properly exercised its discretion in

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deciding to promote the interested party ; and it has not in any way acted in abuse of its powers ; the applicant failed to discharge the onus of proving that the appointment of the interested party should be annulled on this ground. In taking this view, I have adopted what has been stated repeatedly to be the proper judicial approach to matters of this nature. See *Theodosiou v. The Republic (supra)* ; *Georghios Evangelou v. The Republic (supra)* ; *Triantafyllides v. The Republic (1970) 3 C.L.R. 235* ; *Ch. Georghiades v. The Republic (1970) 3 C.L.R. 257*, and the case law referred to therein.

*Application dismissed.*  
*No order as to costs.*

Cases referred to :

*Towerfield Owners v. Workington Harbour and Dock Port [1949] P. 10* ;

*Freed v. D.P.P. [1969] 2 W.L.R. 390* ;

*Fusilier (1865) Br. and L. 341*, at p. 393 ;

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*Vonditsianos and Others v. The Republic (1969) 3 C.L.R. 83* ;

*Theocharous v. The Republic (1969) 3 C.L.R. 318* ;

*Triantafyllides and Others v. The Republic (1970) 3 C.L.R. 235* ;

*Ch. Georghiades v. The Republic (1970) 3 C.L.R. 257*, and the case law referred to therein ;

*Papanicolaou (No. 1) v. The Republic (1968) 3 C.L.R. 225*, at p. 232 ;

*Decisions of the Greek Council of State* : Nos. 1255/52, 1396/52, 730/47 and 659/47 ;

*Conclusions of the Jurisprudence of the (Greek) Council of State 1929–1959*, at p. 157.

### Recourse.

Recourse against the decision of the respondents to promote the Interested Parties Georghios HjiPanayiotou and Gavriel L. Loucaides to the post of Senior Surveyor, in the Department of Lands and Surveys, in preference and instead of the applicant.

*L. Papaphilippou*, for the applicant.

*S. Nicolaidis*, Counsel of the Republic, for the respondents.

*L. Clerides* for the Interested Party, *G. HjiPanayiotou*.

*Cur adv. vult.*



The following judgment\* was delivered by :

A. LOIZOU, J. : The applicant by this recourse attacks the promotion to the post of Senior Surveyor, in the Department of Lands and Surveys, of two persons who thus become interested parties in these proceedings. During the hearing, however, the applicant discontinued his recourse as regards the promotion of one of them with the result that we are now concerned only with the validity of the promotion of Georghios HjiPanayiotou, hereinafter referred to as the interested party. The post of Senior Surveyor is a promotion post from the lower post of Surveyor Grade I, (see *exhibit* 13).

The applicant and the interested party were, at the material time, both holding the post of Surveyor Grade I. The applicant was first appointed in the Department of Lands and Surveys on the 23rd August, 1948, and promoted to the post of Surveyor Grade I on the 1st July, 1963 ; whereas the interested party was first appointed in the same department on the 1st April, 1948, and promoted to the post of Surveyor Grade I on the 1st June, 1956. There is evidently a marked seniority of the interested party over the applicant, which is not in dispute. Before the promotion both were tried in the duties of the post of Senior Surveyor ; the applicant for a period of four months whereas the interested party for over a year. (See *exhibits* 22 and 11).

The applicant between November, 1959 and August 1960 acted, by virtue of a departmental arrangement and on the ground of seniority *vis-a-vis* ex interested party Loukaides and other officers, as Surveyor Grade I. This appears in *exhibit* 23 where it is made explicitly clear that it was of a temporary nature and that "the Board" which made this selection "was just concerned with finding two persons for this particular job". The interested party was not and could not be a candidate on that occasion as he was already a Surveyor Grade I.

When the filling of the posts of Senior Surveyors was decided upon (see *exhibit* 1), and in view of the fact that Mr. Ieronymides the Director of the Department of Lands and Surveys was invited to be present at the meeting of the Commission to be held on the 27th October, 1970, he convened a meeting of senior officers of his department who, on account of their position, could speak of the merits of the various candidates for these promotions. The

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\* For final judgment on appeal see p. 434 in this Part *post*.

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participants in that meeting, apart from Mr. Ieronymides were Mr. Theodotou the acting Senior Land Survey Officer, Mr. Kyprianou Senior Surveyor, both in the section in which the present parties were normally working, and Mr. Praxytelis Christodoulou a Senior Lands Officer in charge of the administration section of the Department of Lands and Surveys. This officer appears also as the reporting officer for the interested party in the confidential report for the period of 1.1.1969 to 30.6.1969, because during that time the interested party acted as Instructor in a course for newly appointed Surveyors Grade II. This course was under the direction and supervision of Mr. Christodoulou and in the circumstances, he should, undoubtedly, be the reporting officer for that particular period, the head of the department acting as countersigning officer. For the remaining part of 1969 another confidential report was prepared, this time, as usual, by Mr. Theodotou with Mr. Christofi as counter-signing officer, the interested party having by then returned to his normal duties. It cannot therefore be validly said that the preparation of the confidential report for the first six months of 1969 by Mr. Christodoulou was improper and contrary to General Orders as claimed by learned counsel for the applicant. Admittedly, Mr. Christofi did not participate at the afore-said meeting the reason being his absence from Cyprus. In anticipation, however, of his expected absence he was asked and prepared on the 20th October, 1970, a comparable table on Surveyors 1st Grade eligible for promotion. (See *exhibit* 22). Under the column "suitability for promotion" he makes the following remarks :

" G. HjiPanayiotou : Suitable for the post of Senior Surveyor under the ordinary estimates.

G. Gavriel : Suitable for the post of Senior Surveyor under the development estimates."

It may be useful to note here that in the said table Loukaides, the ex interested party, was described as " suitable but as young, he must wait until Mr. K. Panayiotou is promoted to Survey Officer and then be promoted ". This may afford an explanation to his remark—made use of by learned counsel for the applicant—in the confidential report for the applicant for 1970 where it is said :

" It is unfortunate that my recommendation for his promotion in the post of Senior Surveyor was not followed."

Obviously, this was said by comparison with ex interested party Loukaides. The report *Exhibit* 22 by Mr. Christofi

answers also the argument of learned counsel for the applicant that a report should have been prepared for the applicant in view of the remark in the last confidential report for the applicant dated the 22nd December, 1969, where Mr. Christofi states :

“ This officer is not above the average but has matured and has all round practical survey experience. His readiness for promotion will depend on the report he will get from acting as a Senior Surveyor.”

The new report called for by the aforesaid observation was asked for and it is ~~Exhibit 22~~, considered before ~~Exhibit 9~~ and 11 were prepared.

A note of the departmental meeting hereinabove mentioned has been produced as *Exhibit 24*. It reads as follows :

“ At a meeting with the acting Senior Land Survey Officer and Senior Surveyor Mr. Kyprianou, it was reported that of the three Surveyors 1st Grade, Messrs. HjiPanayiotou, Gavriel and Loukaides, were tried only in the cadastral part of the duties of the post of Senior Surveyor. It was reported that of the three G. Gavriel ranked as the third as regards suitability for promotion.”

On the 26th October, 1970, Mr. Ieronymides addressed to the Chairman of the Public Service Commission a letter, *Exhibit 9*, with two lists attached thereto, the one relevant to the present proceedings being the second one, *Exhibit 11*. He says, *inter alia*, “ both lists have been prepared in consultation with the most senior officers of the Survey Branch to which all the vacancies belong and their purpose is to facilitate the Commission in its work ”. In the “ suitability for promotion ” column of *Exhibit 11*, the interested party, the applicant, the ex interested party and a certain Marinos are described “ as suitable ”. Therefore, the Commission had before it, apart from the personal files and the files with the annual confidential reports of all candidates, *Exhibit 11* regarding their suitability for promotion and other comparative data. Mr. Ieronymides, when attending the meeting of the Commission on the following day, was already conversant with the merits of each candidate and in particular of the comparative merits of the interested party and the applicant. When making a comparison at that meeting regarding their merits, he was not merely giving his personal view but conveying also the views of the best suited officers of his department regarding same.

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The filling of the two vacancies in the post of Senior Surveyor was considered and determined at the meeting of the Commission of the 27th October, 1970. The relevant minutes of this meeting (see *Exhibit 8*) read as follows :

“ 1. *Filling of vacancies in the Department of Lands & Surveys.*

Mr. Th. Ieronymides, Director of the Department of Lands and Surveys, present.

The Director of the Department of Lands and Surveys stated that, in order to assist the Commission in selecting the most suitable candidates to fill the existing vacancies, he had submitted to the Commission lists of candidates, showing their suitability for promotion ; these lists have been submitted under cover of his letter No. 495/57/4 of 26.10.70 and have been prepared in consultation with the most senior officers of the Survey Branch, to which all vacancies belong.

(a) *Senior Surveyor.*

2 vacancies (one permanent and one temporary (Dev.) plus any consequential ones.

The post of Senior Surveyor is a Promotion Post from the lower post of Surveyor, 1st Grade.

The Commission considered the merits, qualifications seniority and experience of all the officers serving in the post of Surveyor, 1st Grade, as reflected in their Annual Confidential Reports.

The Director of the Department of Lands & Surveys stated as follows :

“ *G. HjiPanayiotou* : He is the most senior officer in his grade. He was severely reprimanded by the Appropriate Authority in May, 1969, and in January 1970 for showing negligence and indifference during the performance of his duties. He repented for what he did. Since then he has improved considerably and is very careful. His mistakes may be attributed to his belief that an injustice was done to him at the previous promotions. He has now found himself. He has performed the duties of Senior Surveyor for over a year and proved to be very good. If he is not promoted at this stage, he will be destroyed.

*G. Gavriel* : He is not so good as *G. HjiPanayiotou*.

*G. P. Loucaides* : Mr. Ieronymides stated that he was related to this officer and, in view of this, he did not wish to make any comments about him."

The Commission observed that although Mr. G. Gavriel was senior to Mr. G. P. Loucaides, the latter's Annual Confidential reports were better.

The Commission considered the two punishments imposed on Mr. HjiPanayiotou by the Appropriate Authority—the last two years—and decided that the punishments in question were not of a serious nature and, therefore, he could be considered for promotion in accordance with section 44 (1) (d) of Law 33/67.

The Commission considered the merits, qualifications, seniority and experience of all the officers serving in the post of Surveyor, 1st Grade, as reflected in their Annual Confidential Reports. Bearing in mind the above, as well as the views expressed by Mr. Ieronymides both orally and in writing (his letter No. 495/57/4 of 26.10.70 refers) the Commission decided that the following officers were on the whole the best and that they be promoted/seconded to the post of Senior Surveyor w.e.f. 1.12.70, as shown opposite their names :

*G. HjiPanayiotou*—to be promoted to the permanent post.

*G. P. Loucaides*—to be seconded to the temporary (Dev.) post."

It has been argued by learned counsel for the applicant that the recommendations of the head of the department, Mr. Ieronymides, at the meeting of the Commission of the 27th October, 1970, as appearing in *Exhibit 8* hereinabove set out, were unfair, contrary to section 4 (3) of the Public Service Law, 1967, and in the way they were made affected the Commission in the exercise of its discretion to such an extent as to vitiate the decision. I was referred in this respect to the last phrase in the statement of Mr. Ieronymides, namely "if he is not promoted at this stage he will be destroyed". To my mind this phrase, should not be isolated from the preceding part of the statement. What Mr. Ieronymides did, was to explain that the interested party had a striking seniority, that he was disappointed

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on account of his belief that an injustice was done to him when on previous occasions he was not promoted and that, as a result of such disappointment, he showed negligence and indifference in the performance of his duties that constituted the disciplinary offences of that nature for which he was severely reprimanded in May 1969 and January 1970. Strong as these words of Mr. Ieronymides were, they could only be taken as part of the picture of the interested party given by him to the Commission. It cannot be said, and this is borne out from the reasons given by the Commission for its decision, that they were in any way the decisive reason for the Commission's decision ; or, that they unfairly affected the Commission in the exercise of its discretion. The reasons for the decision given by the Commission in *Exhibit 8* hereof are, the consideration of the merits, qualifications, seniority and experience of the officers serving in the post of Surveyor, 1st grade, as reflected in their annual confidential reports, and also "bearing in mind the above, as well as the views expressed by Mr. Ieronymides both orally and in writing (see *Exhibits 9 and 11*)". It is obvious that it was from their totality that the Respondent Commission reached the conclusion that the interested party was on the whole the best and should be promoted. This view taken by me will be further supported when I deal later with the question of the merits in relation to the confidential reports and the other material that was before the Commission at the time.

The argument, however, of learned counsel under this heading does not stop at that. He argued that in making recommendations to the Commission the head of the department can speak only of the respective merits of the candidates and not make a comparison between them as Mr. Ieronymides did by saying, as the minute in *exhibit 8* reads : "G. Gavriel : He is not as good as G. Hji Panayiotou". This argument is based on the interpretation he has invited me to give to the word "συστάσεις" (recommendations) appearing in section 4 (3) of the Law ; which reads as follows :

«4. (3) Κατά την προαγωγήν ή Ἐπιτροπή λαμβάνει δεόντως ὑπ' ὄψιν τὰς περὶ τῶν ὑποψηφίων ἐτησίας ἐμπιστευτικὰς ἐκθέσεις καὶ τὰς ἐπὶ τούτῳ συστάσεις τοῦ Προϊσταμένου τοῦ Τμήματος ἐν τῷ ὁποίῳ ἡ κενὴ θέσις.»

The unofficial English translation of same being as follows :

"(3) In making a promotion the Commission shall have due regard to the annual confidential reports

on the candidates and to the *recommendations* made in this respect by the head of the department in which the vacancy exists.”

It is on the meaning of this word “*συστάσεις*” (recommendations) that this issue has to be resolved. It is a principle of interpretation that the words of a statute when there is doubt about their meaning are to be understood in the sense in which they best harmonise with the subject of the enactment. See *Towerfield Owners v. Workington Harbour and Dock Port* (1949) p. 10 and *Freed v. D.P.P.* [1969] 2 W.L.R. 390 referred to in Maxwell on Interpretation of Statutes 12th Ed. at p. 76. The word “*συστάσεις*” (recommendations) in the context of this section has to be given its popular meaning rather than be taken as being used in any narrowly legal or technical sense. As stated in *Fusilier* 1865, Br. & L. 341 at p. 393 “*Loquitur ut vulgus*”, i.e. according to the common understanding and acceptance of the term. Such a meaning harmonises with the subject of the enactment and in fact it is the one normally given to the word. It has in fact been so understood in proceedings of this nature. It carries with it the duty of giving a description of the merits of the candidates and by comparing their respective merits and demerits suggest which is more qualified for the post. It was so used both before and after the enactment of the Public Service Law, 1967, on a number of occasions. I will mention only some of the instances in decided cases: *Theodossiou* and *The Republic*, 2 R.S.C.C. p. 44, where the head of the department had strongly recommended the applicant as being the only one of the candidates suitable for promotion and the then Supreme Constitutional Court not only did it not find anything objectionable to it but it did, in fact, hold that “the recommendation of a head of department . . . . especially where specialised knowledge and abilities were required was a most vital consideration not likely to be disregarded”. In *Georghios Evangelou v. The Republic* (1965) 3 C.L.R. page 292 at p. 297, it is stated “. . . . and had applicant been described therein as *more fit for promotion* than these other two candidates, the Commission would normally have been expected to either follow it or give reasons for not doing so . . . .”. It was expected therefore that a comparison could be made. In *Arkatitis and Others (No. 1) v. The Republic* (1967) 3 C.L.R. p. 29 (decided on another point) this question was asked and in fact allowed by the ruling of the Court “Did you express before the Commission any views about the comparative merits of the candidates?” and nothing objectionable was found about it.

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Two more cases in which a comparative list in order of merit by superiors in relation to promotions, considered after the enactment of the law, Law 33/67, complete the picture on this point. They are : *Vonditsianos and Others v. The Republic* (1969) 3 C.L.R. p. 83 and *Theocharous v. The Republic* (1969) 3 C.L.R. p. 318.

I have no doubt in my mind that a head of department inevitably has to make a comparison of the merits of candidates as to who is more suitable for a post when there are more than one candidates for promotion ; especially when a post requires, as in the present case, specialised knowledge and ability, and where they all work in the same department. In the light of the above I have reached the conclusion that there has been neither a violation of the law nor has the oral recommendation of the head of department been made in any unfair maner, nor was this recommendation in any event the sole decisive reason for the Commission's decision.

I turn now to the next point raised by learned counsel for the applicant. This is based on the following passage from the minutes of the Respondent Commission (*Exhibit No. 8*) which reads as follows :—

“ The Commission considered the two punishments imposed on Mr. HjiPanayiotou by the appropriate authority during the last two years and decided that the punishments in question were not of a serious nature and, therefore, he could be considered for promotion in accordance with section 44 (1)(d) of Law 33/67.”

The submission was that the Respondent Commission failed to inquire into the two offences but instead decided by examining only the punishments imposed. The test he said under the aforesaid section is not the seriousness of the punishment but the seriousness of the offence and on account of this the promotion of the interested party should be annulled as taken on a misconception of the law ; this he bases on the principle that in disciplinary offences there is no “antistibia” direct correlation between disciplinary offences and their punishment and, therefore, the nature of a punishment is not indicative of the nature of the offence.

I was referred on this point to Ch. Fthenaki “*Systima Ippalilikou Dikeou*”, (1967), Vol. 3, p. 217.



Section 44 (1) (d) of Law 33/67 reads as follows :—

«(1) Ούδεις δημόσιος υπάλληλος προάγεται εις άλλην θέσιν, εκτός εάν—

(δ) δέν έτιμωρήθη διαρκούσης τής προηγουμένης διετίας διὰ πειθαρχικόν άδίκημα σοβαράς φύσεως.”

“(1) No officer shall be promoted to another office unless—

(d) He has not been punished during the preceding two years for any disciplinary offence of a *serious nature*.”

It is correct that the words “*sovava fysis*”—serious nature—in the said section refer to the offence and not to the punishment ; and what is material is the nature of the offence and not the seriousness of the punishment.

It is useful, therefore, to examine the material that the Respondent Commission had before it regarding the nature of these offences.

In the file containing the confidential reports of the interested party, *Exhibit 16*, there are two copies of letters dated 7th May, 1969, and 27th January, 1970. They are copies sent to the Respondent Commission of the decisions of the Head of the Department on these two disciplinary offences for which he was authorized under section 81 (4) of Law 33/67 to try summarily. This delegation could be done under section 81 (2) :—

“When as a result of a departmental inquiry carried out in accordance with paragraph (a) of section 80 it appears to the appropriate authority concerned that a disciplinary offence has been committed which can be dealt with summarily.”

It is pertinent to quote here also section 80 (a) of Law 33/67 which reads :—

“If it is reported to the appropriate authority concerned that a public officer may have committed a disciplinary offence, the appropriate authority shall forthwith—

(a) if the offence is one of those specified in Part I of the First Schedule; cause a departmental inquiry to be made in such a manner as the appropriate

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authority may direct and proceed as provided in s. 81 : Provided that if the appropriate authority is of opinion that owing to the seriousness of the offence or the circumstances under which it was committed, it should entail a more serious punishment, it may refer the matter to the Commission in which case it shall proceed under paragraph (b) ;”

Therefore, the appropriate authority carried out a departmental inquiry and on the facts revealed, it thought fit not to invoke the proviso to section 80 (a) hereinabove set out, that is to say, by not sending them to the Public Service Commission it was satisfied that the two disciplinary offences should not entail a more serious punishment because they were not of such seriousness, or, because the circumstances under which they were committed were not such as not to warrant a summary trial, and that they could be appropriately punished by the punishments provided in Part II of the First Schedule. The decisions, therefore, not to refer the matters to the Public Service Commission for a severer punishment are executory acts which by the completion of the disciplinary proceedings constituted part of the composite action completed by the final act of the imposition of the punishment by the Head of the Department. They are in effect, these disciplinary proceedings, executory final acts which could be the subject of a recourse. Support to this view is given by the decision of Triantafyllides, J., in *Panos Papanicolaou (No. 1) v. The Republic* (1968) 3 C.L.R. p. 225 at p. 232.

In Conclusions of the Jurisprudence of the Council of State at p. 157 under the title “Κρίσις περι πράξεων ἐτέρων ἀρχῶν” it is stated :—

«Κατὰ γενικὴν ἀρχὴν τοῦ δημοσίου δικαίου, αἱ διοικητικαὶ ἀρχαὶ ὑποχρεοῦνται νὰ ἀναγνωρίζωσιν ὡς ἰσχυράς καὶ ὡς τοιαύτας νὰ ἐφαρμόζωσι τὰς πράξεις ἐτέρων διοικητικῶν ἀρχῶν, ἐφ’ ὅσον ἐξωτερικῶς φέρουσι τὰ κατὰ νόμον γνωρίσματα ἐγκύρων πράξεων : 1255/52, παρεμπίπτουσα δὲ ἀμφισβήτησις τοῦ κύρους αὐτῶν μεταγενεστέρως (ἐκ μέρους διοικητικῆς ἀρχῆς) δὲν εἶναι ἐπιτρεπτή.»

“(In accordance with the general principle of public law, the administrative organs are bound to recognise as valid and as such to apply the acts of other organs so long as externally they bear the legal elements of valid acts : (See the decision of the Greek Council of State 1255/52), incidental contention subsequently

of their validity (by an administrative organ) is not allowed: (See the Decisions of Council of State, 1396/52).”

Once, therefore, the appropriate authority decided that these offences were neither of a serious nature nor committed in circumstances that should entail a more serious punishment, and this decision has never been attacked by recourse or revoked, it was not open to the Respondent Commission to take a different view than the one taken by the appropriate authority when it carried out a departmental enquiry into the matter. The opinion of Professor A. Tsirintani and F. Vegleri in “Ephimeris Ellinon Nomikon”, Vol. 28 (1961) p. 264 at p. 268, which reads as follows is also pertinent:—

“Αν πράγματι είναι αμφίβολος ή εύχέρεια διοικητικής τινος άρχής όπως αμφισβητή τὸ κύρος τῆς πράξεως άλλης άρχής ως παρανόμου, είναι άκατανόητος ή άπόκρουσις ως έσφαλμένου πραγματικού τινος στοιχείου τὸ όποίον περιέχεται εις έκδοθείσαν νομοτύπως διοικητικὴν πράξιν και ή άποδοχή ταύτης κατὰ τὰ λοιπά.”

“(If in fact the power of an administrative organ to contest the validity of an act of another organ as being unlawful is doubtful, the dismissal as being wrong of a factual element which is contained in a lawfully taken decision and the acceptance of that act as far as the rest is concerned, is unthinkable).”

If, however, my said approach on this issue was not correct, and it is found that the Respondent Commission had to make its own assessment, then I would still find that there has been no misconception of law or fact on the part of the Respondent Commission, inasmuch as there was ample material before it to reach its own conclusions that the two offences were not of a serious nature so as to be an impediment to the promotion of the interested party. This is borne out from the fact that the two offences are set out briefly in the said two decisions appearing in *Exhibit 2*. Reference to the nature of the offences was made by the Head of the Department whilst he was explaining their causes and the subsequent behaviour of the interested party. In *Exhibit 8* Mr. Ieronymides is quoted as having said:—

“He repented for what he did. Since then he has improved considerably and is very careful. His mistakes may be attributed to his belief that an in-

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justice was done to him at the previous promotions. He has now found himself ; he has performed the duties of Senior Surveyor for over a year and proved to be very good."

This passage is consistent with the contents of the confidential reports and is in a way a summary thereof.

Furthermore the classification of offences under Law 33/67 into two categories, namely, those that could be tried summarily, and entailing lesser punishments, and those that could be tried by the Public Service Commission entailing heavier punishments, shows that the non-direct correlation between offence and punishment which exists in the sphere of administrative law is modified by the provisions of Law 33/67 to a great extent and the decision to try summarily offences is an element which, coupled with the other factors, could be taken into consideration by the Respondent Commission in arriving at its own conclusion that the offence was not of a serious nature. There has been nothing to show that the Commission failed to carry an inquiry into them or even to raise a doubt as to same.

Having considered all the above, I have come to the conclusion that the word "Punishments" is loose language or a mere misuse for the word "Offences". The reference in the reasons made to section 44 (1) (d) under which they could promote the interested party only if they were of the opinion that he had not been punished during the previous years for any disciplinary offences of a serious nature shows that the Respondent Commission addressed its mind to the offences and the provisions of the said section and did not act under an erroneous interpretation or misconception of the law, or of fact.

The submission of learned counsel for the applicant was that the interested party was unsuitable and that the applicant was more suitable for promotion. With due respect to him this cannot, in my view, stand for the following reasons : The interested party had a striking seniority ; he had stronger recommendations from his head of department, whereas the applicant was not considered as good as HjiPanayiotou ; and a comparison of the confidential reports of the two parties—*Exhibit* 14 for the applicant and *Exhibit* 16 for the interested party—is most material.

In the confidential report 1966/67, the interested party is described by his reporting officer Mr. Theodotou as "just able to perform higher duties". Mr. Christofi makes no comments. For 1967/68, he is described as

“working very hard and quite satisfactorily ; he does not feel content with his present duties because he thinks he is being ‘unjustified’ (sic unjustly treated) by not being promoted. Suitable for promotion now”. Mr. Christofi the counter-signing officer says : “This officer given the necessary opportunity will develop into an excellent Senior Surveyor. He had personal troubles with the late Director. As a Surveyor he is very good indeed”. For the period 1.1.68 to 31.12.68, Mr. Theodotou makes the following observations : “During the last twelve months this officer occasionally slipped down”. Whereas Mr. Christofi, his counter-signing officer, says : “This officer’s promotion is long overdue. He has been the cricket ball of the Survey Branch in the last two to three years. This treatment affected his temperament and caused retardation. I am convinced that when promoted he will find himself once again”. From January to June, 1969, Mr. Christodoulou, as the reporting officer, says : “During the period he worked under me as Instructor in land surveying, i.e. he carried out a full training course for newly appointed Surveyors, Grade II, he worked hard with zeal and energy and produced excellent results. The productive work of trained Surveyors does credit to him, because it is a proof of his methodical and painstaking work”. As to general intelligence, he is rated as “above average”. Mr. Ieronymides as a counter-signing officer states : “He now shows interest in his work and improves his work and abilities rapidly. Expected to become very soon suitable for promotion”. For the period 1.7.69 to 31.12.69, Mr. Theodotou describes him as “having showed considerable improvement and interest in his work” and Mr. Christofi as counter-signing officer gives his own views as “if this officer continues to improve, the door for his promotion will automatically be open”.

For the corresponding periods, the confidential reports of the applicant appearing in *Exhibit 14*, are as follows : 1966/67 : “He works hard and satisfactorily ; he is a normal surveyor in his grade”. No views expressed by Mr. Christofi the counter-signing officer. The same assessment is given for 1967/68, Mr. Christofi the counter-signing officer expressing the view “A steady and honest Surveyor who reached the maximum of his capacity”. For 1968, Mr. Theodotou describes him as “hard working and very conscientious Surveyor”, and Mr. Christofi gives his views : “A steady and loyal worker in the field and a pleasant person to deal with”. For 1969, Mr. Theodotou records the observations “This officer is tested

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for higher duties, *i.e.* Senior Surveyor Duties ; his work is satisfactory”. Mr. Christofi gives his own views as counter-signing officer by saying “ This officer is not above the average. He is matured and has all round practical survey experience. His readiness for promotion will depend on the report he will get from being Acting Senior Surveyor”.

It appears that neither of the parties has been reported upon in the last two annual confidential reports as unsuitable for promotion, whereby either would not be entitled to be promoted under section 44 (1) (c) of the aforesaid law. The confidential reports viewed as a whole for the last three years preceding the promotions, were more favourable for the interested party than the applicant. It cannot, therefore, be said that the respondent Commission acted under a misconception of the facts as to the suitability of the interested party for promotion since their reasoning finds support on the documents in the file and especially the confidential reports as to the respective merits of the parties. This appears to be a principle followed by the Greek Council of State, see “ Sympliroma Nomologias ” Vol. I 1955-1962. Decision of the Greek Council of State 730/47 and 659/47.

I am satisfied that the Commission has dealt with the promotions after considering all the relevant material before it, and in due conformity with section 44 of the Public Service Law, 1967. It properly exercised its discretion in deciding to promote the interested party ; it was reasonably open to the Respondent Commission to do so, and no ground existed entitling or requiring me to interfere with the result of the exercise of its discretion. The Commission has not in any way acted in abuse of its powers ; the applicant failed to discharge the onus of proving that the appointment of the interested party should be annulled, on this ground.

In taking this view, I have adopted what has been stated repeatedly to be the proper judicial approach to matters of this nature. See *Theodossiou and The Republic (supra)* ; *Georghios Evangelou v. The Republic, (supra)* ; *Triantafyllides v. The Republic* (1970) 3 C.L.R. 235 ; *Ch. Georghiadis v. The Republic* (1970) 3 C.L.R. 257, and the case law referred to therein.

In the result this application is dismissed but in the circumstances I make no order for costs.

*Application dismissed. No order as to costs.*