

[A. LOIZOU, J.]
IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

PETRAKIS PANAYIDES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 198/71).

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Public Service and Public Officers—Promotions—Public Service Commission—Meeting and deciding on a promotion and communicating relevant offer to successful candidate (the interested party in the instant case)—Applicant not qualified under the relevant schemes of service at the time of such decision—No acceptance of said offer of promotion (or appointment) by the said interested party and no publication in the Official Gazette—Section 44(5) and (6) of the Public Service Law, 1967 (Law No. 33 of 1967)—Respondent Commission meeting subsequently (at a time when the applicant became so qualified) and changing effective date of the said promotion to January 1, 1970 instead of January 1, 1971—Interested party accepting now the offer of promotion which promotion was then published in the Official Gazette under section 44(6), supra—Whether in the circumstances, the applicant public officer should have been considered as a candidate at the aforesaid second meeting of the respondent Commission—And whether the original decision referred to hereabove should be considered as revoked.

Promotions and appointments—Qualifications for a particular office—Must be possessed by the officer concerned at the time when the promotion is being made—Which is the time of the issuing of the administrative act and not any subsequent time relevant to the provisions of section 44(5) and (6) of the said Public Service Law, 1967

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(relating to offer, acceptance, publication, etc)—See further immediately herebelow.

Promotions and appointments—Section 44(5) of above quoted Public Service Law, 1967—Requirements, therein, of offer of promotion and acceptance thereof in writing—Do not relate to the making of the promotion—But only to the completion of the substantial effect or validity of the promotion—Substantial validity of the promotion as distinct from its formal validity—The latter commences at the time when the decision of promotion is communicated to the officer concerned—Whereas the former (viz. the substantial effect of the promotion) may commence from a time which may either coincide with the time of the commencement of its formal validity or it may be subsequent or prior point in time—See further immediately herebelow.

Promotions—Section 44(6) of the said Public Service Law, 1967—Requirement, therein, of publication of promotion in the Official Gazette—Publication not a constituent element for the validity of the promotion but only a declaratory act of the already existing executory decision—Therefore, the formal existence (or validity) of the promotion concerned commences as from the communication of same to the officer concerned—And the promotion cannot be freely revoked after such communication.

Publication of promotion—Section 44(6)—See immediately hereabove.

Administrative acts or decisions—Formal validity and substantial effect (or validity) thereof—When commencing—Distinction between the notion of the formal validity of an administrative act or decision and that of its substantial effect—See also supra.

Formal validity of an administrative act as distinct from its substantial effect—See immediately hereabove.

Administrative acts or decisions—Revocation—Silent or indirect or implied revocation—How it may be brought about—Change in the date when a promotion becomes effective does not, in the circumstances of this case, amount to a revocation of the original decision of promotion—See also supra; see further immediately herebelow.

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Revocation of administrative acts or decisions—It cannot be freely effected after communication of act to party affected thereby—See further immediately hereabove.

Administrative acts or decisions—Retrospectivity of—Principles applicable—The rule against retrospectivity and exceptions—Promotions of public officers—They should not be given retrospective effect unless there is a clear statutory provision to the contrary—Retrospective effect of promotion in the instant case expressly permitted by law viz. the Supplementary Budget Law (No. 9), 1970 (Law No. 34 of 1970).

Retrospective effect of administrative acts—The rule against—Exceptions—See immediately hereabove.

Budget—Budget Laws—They are Laws.

Schemes of Service—Not necessary to be “prepared” by Council of Ministers—It is enough if approved by the Council—The enactment of the Public Service Law, 1967 (Law No. 33 of 1967) has not cancelled all pre-existing Schemes of Service—Sections 29 and 86(1) of the Law.

By this recourse the applicant public officer challenges the decision of the respondent Public Service Commission, published in the Official Gazette on the 30th April, 1971, to promote to the post of Port Officer 1st Grade the interested party instead of him and to give retrospective effect as from January 1, 1970, to the aforesaid promotion.

The facts are very briefly as follows: On December 16, 1970, the respondent Commission decided to promote to the aforesaid post of Port Officer 1st Grade the interested party with effect as from January 1, 1971. The respondent communicated its aforesaid decision to the interested party by sending him the relevant offer provided by section 44(5) of the Public Service Law, 1967 (Law No. 33 of 1967). The interested party, however, did not communicate his acceptance to this offer as, in the meantime, the question of the effective date of all promotions in the Department of Ports was raised by the Ministry which suggested that such effective date should be the 1st January, 1970 (instead of 1st January, 1971). This was in consequence of the reorganisation that was taking place in respect of certain government departments.

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It is not in dispute that the applicant on the 16th December, 1970, (date of the aforesaid decision of the respondent, *supra*) did not possess the qualifications required under the relevant Scheme of Service for the promotion in question. On the other hand, it is common ground that the applicant did possess those qualifications on March 26, 1971, when the respondent Commission eventually decided to make the promotions in the Department of Ports (including the promotion of the interested party) effective retrospectively as from January 1, 1970 (instead of January 1, 1971, *supra*).

It was argued by counsel for the applicant :-

- (A) That the promotion is a composite administrative act and, therefore, the applicant should have been considered as a candidate at the deliberation by the respondent Commission held on March 26, 1971, since by then he acquired the required qualifications (*supra*).
- (B) Alternatively to the above, that the original decision of the Commission of the 16th December, 1970, (*supra*) should be considered as having been revoked by their subsequent decision of March 26, 1971 (*supra*); once it was so revoked, the applicant should again have been considered as a candidate;
- (C) that, in any event, by giving retrospective effect to the *sub judice* promotion of the interested party, the respondent Commission have violated the principle of administrative law against the retrospectivity of administrative acts (or decisions);
- (D) that, independently from the above, the schemes of service requiring the qualifications on which the applicant was excluded as a candidate, are invalid on the ground that they were not prepared in the first place by the Council of Ministers; and, alternatively, since same were prepared before the coming into operation on June 30, 1967 of the Public Service Law, 1967 (Law No. 33 of 1967) they should have been re-enacted by a new decision of the Council of Ministers to be taken after the aforesaid date of the coming into operation of the aforementioned Law No. 33 of 1967.

Dismissing the recourse, the learned Judge :-

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Held, I: *As to (A) and (B) hereabove viz. as to the submissions that (A) the promotion in question being a composite act the applicant should have been considered as a candidate at the second deliberation of the respondent Commission held on March 26, 1971, or (B) alternatively, the original decision of the respondent Commission of December 16, 1970 must be considered as revoked with the result that again the applicant should have been considered as a candidate at the aforesaid second deliberation of March 26, 1971, the applicant possessing by then the required qualifications.*

Held, (1) (a). On December 16, 1970, the respondent Commission decided to promote the interested party with effect as from January 1, 1971. But in the events of this case the Commission on March 26, 1971, changed the date as from which the promotion would be effective making it January 1, 1970 (instead of January 1, 1971). By then the applicant undisputedly came to possess the required qualifications for the promotion in question in these proceedings.

(b) It is important, therefore, in this respect to examine the exact moment at which the formal validity of the administrative act concerned that is to say its lawful existence commences. For that matter a distinction should be drawn between the formal validity and the substantial effect of the administrative act, that is to say its legal effect.

(c) The former commences from the time at which the procedure under the law by which the act came into existence is completed. The latter commences from a certain time which may either coincide with the time of the commencement of its formal validity or it may be a subsequent or prior point in time.

(d) In this respect, considering the joint effect of section 44(1)(2) and (3) of the Public Service Law, 1967 (Law No. 33 of 1967) (Note: Those

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sub-sections are duly explained *post* in the judgment), one can safely arrive at the conclusion that the qualifications for a particular office must be possessed by the candidates for promotion at the time when the promotion is being "made" by the Public Service Commission. And in the context of this section 44 the word "made" cannot but mean the time of the issuing of the act and not any subsequent time only relevant to the provisions of sub-sections (5) and (6) of the said same section. (Note: Sub-section (5) provides: "A promotion shall be effected by a written offer made by the Commission to the officer to be promoted and accepted by him in writing. The offer shall specify, *inter alia*, the date of promotion, the salary payable and the incremental date, if any." And sub-section (6) provides that promotions shall be published in the Official Gazette of the Republic).

- (2) The wording of sub-section (6) of section 44 that promotions shall be published in the Official Gazette, makes it abundantly clear when read in conjunction with the preceding sub-section (5) (*supra*), and the reasons given in the *Geodelekian's* case (*infra*), that the requirement of publication is not a constituent element for its validity but only a declaratory act of the already existing act or decision.
- (3) Having found that the requirement for publication under section 44(6) (*supra*) is not a constituent element for the validity of promotions, the formal existence of the *sub judice* promotion commenced as from the communication of same to the interested party.
- (4) (a) It has now to be examined whether the variation of the date of promotion (from January 1, 1971 to January 1, 1970, *supra*), in other words the giving of retrospective effect to the promotion in this case, amounts to revocation of the act itself and, therefore, this change in the date amounted to the taking of a new decision at a time (*i.e.* March 16, 1971, *supra*) when the

applicant did possess the necessary qualifications and his non-inclusion as a candidate at the time was an omission rendering void the *sub judice* promotion of the interested party.

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(b) It is true that the revocation of an administrative act may be brought about either by an act whose sole object is the revocation of a previous one or by another act regulating in another way the *sub judice* matter so as to amount to an indirect revocation (see *Stassinopoulos*, *The Law of Administrative Acts*, 1951, p. 445).

(c) In the case under consideration there is nothing to suggest that by changing the effective date of the promotion the object of the act was altered and the Commission intended or could be deemed to have intended to revoke the whole administrative act. Nothing was said about revoking the act and as stated by *Stassinopoulos*, *supra*, at p. 456, the silent revocation is excluded by the jurisprudence in the case of revocation of acts regulating the legal relations between the State and the servant carrying with them also financial obligations to the public treasury (see the decision of the Greek Council of State No. 314/1931).

Therefore, one may safely conclude that the change in the date, in the circumstances of this case, does not amount to a revocation of the act in question.

Held, II: *As to (c) hereabove viz. as to the alleged invalidity of the sub judice promotion due to the retrospective effect given to it by the respondent Commission.*

(1) In the absence of a statutory provision to the contrary, there should not be a term giving retrospective effect to promotions (see the *Decisions of the Greek Council of State* Nos. 880/1932, 418/1945, 422/1958; see also the decision of the French Council of State of December 20, 1950, *Demoiselle Coulaud*, *Récueil* p. 627).

(2) Budget Laws in Cyprus are proper legislative enactments. Now, the provisions in the Supple-

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mentary Budget Laws (No. 6, No. 7, No. 8 and No. 9 etc.) 1970 were enacted and used as the legislative media for the purpose of the re-organisation of the service and the creation of new posts. The provision therein for funds for such posts retrospectively from the beginning of the year 1970, that is to say, five months prior to the promulgation of the said Laws is a clear provision that promotions to these posts which were in effect a re-organisation of already existing posts, were intended to be made with retrospective effect.

Held, III : As to (D) hereabove viz. as to the alleged invalidity of the relevant schemes of service.

To my mind it would be far fetched to consider that the mode by which these schemes of service (dated June 2, 1965) were made was not the proper one. "Prepared" does not imply that every preparatory act should have been done by the Council of Ministers, it is enough if after having the draft of the submission, they were approved by the Council as it was done in the present case.

Recourse dismissed.

No order as to costs.

Cases referred to :

Vahak Geodelekian v. The Republic (1970) 3 C.L.R. 64, at p. 68;

Xapolytos and Others v. The Republic (1969) 3 C.L.R. 176;

Papapetrou v. The Republic, 2 R.S.C.C. 61, at p. 67;

Decisions of the Greek Council of State : Nos. 89/1962, 880/1932, 418/1945, 422/1958, 314/1931;

Decision of the French Council of State : Demoiselle Coulaud etc., 20th December, 1950, Rec. p. 627.

Recourse.

Recourse for a declaration that the act or decision of the respondent to promote the interested party, Kekkos Frangopoulos, to the post of Port Officer 1st Grade, in preference and instead of the applicant and to give

retrospective effect to the said promotion is null and void.

L. Papaphilippou, for the applicant.

S. Georghiades, Senior Counsel of the Republic,
for the respondent.

No appearance for the interested party.

Cur. adv. vult.

The following judgment * was delivered by :

A. LOIZOU, J.: By the present recourse the applicant applies for a declaration, "(a) that the act and/or decision of the respondent to promote Kekkos Frangopoulos—the interested party—to the post of Port Officer, 1st Grade, published in the official Gazette on the 30th April, 1971, is contrary to law, null and void; and (b) that the decision of the respondent to give retrospective effect to the aforesaid decision is contrary to law and null and void."

The several grounds of law relied upon in support of the present recourse will be dealt with in the course of this judgment.

The applicant entered the public service on the 1st November 1961, and was promoted to the post of Port Officer, 2nd Grade, on the 1st November, 1966. The interested party entered the public service on the 5th March, 1962, and was promoted to the post of Port Officer, 2nd Grade, on the 15th July, 1969.

On the 7th October, 1970, the Director-General of the Ministry of Communications and Works asked the Public Service Commission to fill six posts in the Department of Ports and any other posts which would be vacated on account of such promotions. These posts were created by the First Part of the Second Schedule of the Supplementary Budget Law (No. 9) of 1970, Law 34/1970; reference to it appears in the letter of the Ministry of Communications and Works dated 19th June, 1970, (*exhibit 1 bl. 7*), whereby the approval of the Ministry of Finance was sought in accordance with established practice. It may be pertinent to point out here that in the

* For final judgment on appeal see (1975) 10 J.S.C. 1484 to be reported in due course in (1973) 3 C.L.R.

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last column of the aforesaid schedule it is stated that the funds provided in the Supplementary Budget were intended to cover the salaries of the newly created posts as from the 1st January, to the 31st December, 1970. In Cyprus, the creation of new posts by making provision for them in the Budget Laws or the Supplementary Budget Laws is something usually resorted to. It is legally possible to do so in this way, since the Budget laws are laws in the full sense of the word and they may be used as means of effecting legislative changes. The position in Greece is different; (see Saripolos Constitutional Law, 2nd edn. Vol. 2 p. 307 et seq.), though before 1911 appointments could be made by making the relevant provisions in the budget. (See Dendias Administrative Law 5th Ed. Vol. 1 p. 262 note 2). In France, however, the position was the same by making in the budget additional provisions. In any event the definition of "Law" in section 2 of the Public Service Law 33/67 "includes.... the Budget."

The filling of the two vacancies in the post of Port Officer, 1st Grade, a promotion post, was considered by the Public Service Commission at its meeting of the 16th December, 1970. Under the relevant schemes of service, (*exhibit 1 bl. 11*), candidates should have passed the examinations in General Orders, Store Regulations and Financial Instructions. It has been conceded that the applicant did not possess the qualifications required under the said schemes of service on the 16th December, 1970, as he had not until then passed the examinations in Financial Instructions, which he did on the 29th December, 1970.

According to the minutes of the meeting of the 16th December, 1970, (*exhibit 1, bl. 12*), the Commission, "after considering the merits, qualifications, seniority and experience of all eligible officers holding the post of Port Officer, 2nd Grade, as reflected in their annual confidential reports and bearing in mind the views expressed by Mr. Kantounas on each one of them" decided that two officers, one of them being the interested party, "be promoted with effect as from the 1st January, 1971". The Public Service Commission communicated its aforesaid decision to the interested party by sending him the relevant offer provided for by section 44(5) of the Public

Service Law 33/67. The interested party, however, did not communicate his acceptance to this offer as, in the meantime, the question of the effective date of all promotions in the Department of Ports was raised by the Ministry which suggested that the effective date should be the 1st January, 1970, instead of 1st January, 1971. This was in consequence of the reorganization that was taking place in respect of certain government departments.

From a letter dated 19th February, 1971, (*exhibit 1 bl. 13*) addressed to the Attorney-General of the Republic by the Ministry of Communications and Works, it appears that in the process of the re-organization of the Department of Civil Aviation, negotiations took place between the Government and the Civil Service side, and it had been promised that any agreed settlement would have retrospective effect as from the 1st January, 1970. As a result, the Council of Ministers approved the necessary Bill for the appropriation of the necessary funds and this is the Supplementary Budget Law (No. 10) of 1970, Law 35/1970. On legal advice, (*exhibit 1 bl. 17*) from the Attorney-General's office, promotions in the re-organized Department of Civil Aviation were made with retrospective effect from the 1st January, 1970. It is clear that this Law 35/1970, regarding the creation of new posts in the Department of Civil Aviation, follows Law 34/1970, already referred to, regarding the re-organization in the Department of Ports. Needless to say that both departments come under the same Ministry and anything that has been said regarding negotiations and agreements in the one department must have been in the minds of all concerned as applying and affecting the position of the other department. It was considered as a matter of equal treatment, to say the least, of officers in the re-organized departments, of the same Ministry.

Furthermore, the Director of Ports by letter dated 22nd March, 1971, informed the Director-General of the Ministry of Communications and Works that the ten employees of his department—one of them being the interested party—who had been promoted by the Public Service Commission, had been performing as from the 1st January, 1970, the same or similar duties to those of the post to which they had been promoted.

The respondent Commission having before it all

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relevant material considered the position at its meeting of the 26th March, 1971, the relevant passage from the minutes (*exhibit* 1 bl. 15) reads as follows :

“The above posts have been created by Law 34/70, which was published in the Gazette, of 15.5.70, as a result of the re-organization of the Department and the necessary funds have been provided as from 1.1.70.

In a similar case regarding the creation of certain posts in the Civil Aviation Department as a result of re-organization, and for which the necessary funds have been provided as from 1.1.70, the Attorney-General in his letter No. 34(C) 1961/2 of 15.3.71 addressed to the Director-General, Ministry of Communications and Works and copied to this Office, advised that in certain cases as explained in his letter under reference, the promotions may be made with retrospective effect from 1.1.70.

The Commission, having in mind the above-mentioned legal advice as well as letter No. 1545 of 22.3.71 addressed by the Director of the Department of Ports to the Director-General, Ministry of Communications and Works, in which he stated that the above officers have been performing w.e.f. 1.1.70 the same or similar duties with those of the post to which they have been promoted, decided that the promotion of the officers in question should be made with retrospective effect from 1.1.70.”

The validity of the schemes of service, on the strength of the required qualifications on which the applicant was excluded as a candidate, has been contested, on the ground that they were not prepared in the first place by the Council of Ministers; and, alternatively, since they were prepared before the coming into operation of the Public Service Law 33/67 they should have been made by a new decision of the Council of Ministers, taken after the coming into operation of the said law.

The schemes of service were the subject of decision No. 4744 of the Council of Ministers dated 2nd June, 1965, which *inter alia* provided that “the Council

considered the schemes of service enclosed with the submission in respect of the following posts of the Department of Ports and decided to approve them....". To my mind it would be far fetched to consider that the mode by which these schemes of service were made was not the proper one. "Prepared" does not imply that every preparatory act should have been done by the Council of Ministers, it is enough if after having the draft of the submission, they were approved by them.

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Regarding the contention that new schemes of service should have been made by decision of the Council of Ministers taken after the coming into operation of Law 33/67, the answer is that the schemes of service have always been a matter of executive power vested in the Council of Ministers and the said section does not but reproduce what already existed. There is nothing to suggest that the enactment of the law cancelled all pre-existing schemes of service; on the contrary, the reiteration by section 29 that they are made by decision of the Council of Ministers shows that they should be regarded as having been impliedly approved by the Council of Ministers and that the Public Service Commission is bound by such schemes of service. This approach is consistent with the view taken in the case of *Papapetrou v. The Republic*, 2 R.S.C.C. p. 61 at p. 67. Furthermore, these schemes of service are preserved as valid by the proviso to section 86(1) of the law which provides that "until such regulations are made or any matter is otherwise prescribed under this law, any regulations or administrative acts and the General Orders and administrative instructions contained in circulars or otherwise and the existing practice relating to the public service or public officers shall continue to be applicable in so far as they are not inconsistent with the provisions of this Law."

It has already been pointed out that on the 26th March, 1971, the respondent Commission for the reasons given hereinabove changed the date as from which the promotion would be effective. This change in the date forms the next point for consideration.

The argument of learned counsel for applicant was that the promotion is a composite administrative act and therefore the applicant should have been considered

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as a candidate at the deliberation by the respondent Commission on the 26th March since by then he had acquired the required qualifications; the omission to do so rendered their decision null and void. Alternatively to the above, it was submitted that the original decision of the Commission should be considered as having been revoked by their decision of the 26th March, 1971, since the original one had neither been accepted by the interested party as provided by s. 44(5) nor published in the Gazette as provided by s. 44(6) of the Public Service Law 33/67. Once therefore it was revoked, the applicant, it has been argued, should have been considered as a candidate.

It is important therefore in this respect to examine the exact moment at which the formal validity of the administrative act that is to say its lawful existence commences. For that matter a distinction should be drawn between this and the substantial effect of the administrative act, that is to say their legal effect. The former commences from the time at which the procedure under the law by which they came into existence is completed. The latter commences from a certain time which may either coincide with the time of the commencement of their formal validity or it may be a subsequent or prior point in time. In this respect it will be useful to look to s. 44 of the Public Service Law 33/67 which governs the question of promotion in the public service. Sub-section 1(a) of the said section provides *inter alia* that the public officer must possess the qualifications which are laid down in the schemes of service for that particular office. Sub-section (2) thereof provides that, "the claims of officers to promotion shall be considered on the basis of merit, qualifications and seniority." By sub-section (3) it is provided that "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 department in which the vacancy exists.

Considering the joint effect of these sub-sections one might safely arrive at the conclusion that the qualifications, for a particular office, must be possessed by an officer at the time when the promotion is being "made" by the Commission when due regard is also given to the

remaining requirements under the section; in the context of this section "made" cannot but mean the time of the issuing of the act and not any subsequent time relevant to the provisions of sub-section (5) and (6), the examination of which will be most useful.

Sub-section (5) of the said section reads as follows :-

"A promotion shall be effected by a written offer made by the Commission to the officer to be promoted and accepted by him in writing. The offer shall specify, *inter alia*, the date of promotion, the salary payable and the incremental date, if any."

In interpreting this section, the Full Bench of the Supreme Court in the case of *Vahak Geodelekian v. The Republic* (1970) 3 C.L.R. 64 at p. 68, found, in dealing with the question whether certain officers had been holding a particular post or not, that they were not duly holding the post, though their promotions had been decided upon by the respondent: They had not yet been 'effected', in the sense that they had not yet been perfected or completed in accordance with the provisions of s. 44(5) of Law 33/67.

This case should be taken as dealing with the question of the substantive validity of the promotions and not with the formal existence of an administrative act by which a promotion is decided. The requirement of an offer and the acceptance in writing do not relate to the making of the promotion, to the issuing of the administrative act for that purpose, but only to the completion of the substantive validity of the promotion.

The wording of s. 44(6) which provides that promotions shall be published in the official Gazette of the Republic, makes it abundantly clear when read in conjunction with the preceding sub-section, and the interpretation given thereof by *Geodelekian's* case (*supra*) that the requirement of publication is not a constituent element for its validity but only a declaratory act of the already existing decision. It is a matter of interpretation how far the requirement under a law for the publication of an administrative act is a matter affecting its validity or not. This distinction is made

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because it has a bearing on the effectiveness of the time that an act of promotion comes into formal existence. As stated by Stassinopoulos, the Law of Administrative Acts, (1951) p. 366, the fixing of the exact time of the perfection of the decision and of the time of its declaration, in the Law of the Administrative Acts, is important, not only from the point of view of the legal effect of the act, but also from the point of view of its legality.

An administrative act as it has been stated, is a declaration of the will of the administrative organ. Before it is declared the will has to take shape towards the stage of the formulation of the administrative will. The administrative procedure for its production corresponds and results to its issuing, *i.e.* to the drafting, the insertion of the date and the signing by the appropriate organ. See Stassinopoulos (*supra*) 359. Hence, "issuing" is called the formulation with certainty of the will which is intended to be declared by the administrative act. Only when the will is declared, *i.e.* when outward direction is given to it towards one or more persons, with the purpose that by its will their position will be affected, it is that this will has social significance and the law is interested in it and its consequences.

Until so declared, the administrative act constitutes *internum* of the administration. After however of its communication, it becomes binding on the administration and it is then that the act, in our case the act of promotion, came into existence. Being as such a favourable administrative act, it cannot be freely revoked thereafter. Whereas before that the administration can freely amend or abandon, the intended but never completed administrative act.

Having found, therefore, that the requirement for publication under s. 44(6) is not a constituent element for its validity, the formal existence of this promotion commenced as from the communication of same to the interested party.

It has to be examined now whether the variation of the date of promotion, the giving, in other words, of retrospective effect to the promotion, as hereinabove set out, amounts to revocation of the act itself and, therefore, this change in the date amounted to the taking of

a new decision at a time when the applicant possessed the qualifications and his non-inclusion as a candidate was an omission making the act void.

It is true that the revocation of an administrative act may be brought about either by an act whose sole object is the revocation of a previous one or by another act regulating in another way the *sub judice* matter so as to amount to an indirect revocation (see Stassinopoulos (*supra*) p. 445). But in cases of implied revocation each instance has to be examined on its own merits so as to be able to ascertain whether the new act contains also a revocation of the previous one. In the textbook of Professor Tsatsos "The Application For Annulment", 3rd Edition, p. 123, reference is made to the decision 89/62 of the Greek Council of State. It is stated therein that the variation or revocation in part only does not erase totally the executory character of a previous act and the repetition of the non-revoked or varied element is a confirmatory act. This statement should of course be examined in relation to each constituent element of the act, that is to say, the legal foundation, the factual issues and the operative part of the decision. As far as the variation of the operative part of an administrative act is concerned there is no difficulty so long as by the variation it is ascertained that the objects of the act are not altered thereby. In the case under consideration there is nothing to suggest that by changing the effective date of the promotion the object of the act was altered and the Commission intended or could be deemed to have intended to revoke the whole administrative act. Nothing was said about revoking the act and as stated by Stassinopoulos (*supra*) at p. 456, the silent revocation is excluded by the jurisprudence in the case of revocation of acts regulating the legal relations between the State and the servant carrying with them also financial obligations to the public treasury. On this point he cites decision 314/31 of the Greek Council of State. Therefore, one may safely conclude that the change in the date, in the circumstances of this case, does not amount to a revocation of the act.

The next point to be considered is whether by giving retrospective effect to the said promotion, the respondents have violated the principle of administrative law against

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the retrospectivity of administrative acts, or whether this is one of the cases that come within the permitted exemptions to the said rule. Greek jurisprudence has accepted that "a promotion with retrospective effect is contrary, on the one hand to s. 124 of the Civil Service Code, and on the other hand to the generally accepted legal principles whereby excepting the case of a clear statutory provision to the contrary, the addition of retrospective terms in cases of promotion is not permissible". (See Council of State Decisions 880/32, 418/45, 422/58). A similar approach was followed by the Conseil d' Etat, decision of the 20th December, 1950, Demoiselle Coulaud etc., R. 627, where it was held that the act of promotion of a civil servant was invalid to the extent that it had retrospective effect prior to its publication. The principle that an administrative act may be annulled to the extent only that it has been given retrospective effect appears in the case of *Xapolytos and Others v. The Republic* (1969) 3 C.L.R. 176 et seq. This principle has considerable consequences in the issue under consideration. If to my mind an act can only be invalid to a certain extent, also an amendment of an act to that extent cannot in a proper case render invalid the act as such and supports my approach to the matter that the decision of the 26th March could not have been considered as revoking the previous one by the mere change of the date as from which such promotion would be effective.

What remains, therefore, to consider is whether this retrospective effect of the promotion is valid or not. It has already been pointed out hereinabove that unless there is a clear statutory provision to the contrary, there should not be a term giving retrospective effect to promotions. In the present case, the administration has decided upon this retrospective clause at the request of the appropriate Ministry, and it is claimed that the provision of the relevant Supplementary Budget Law (No. 9), Law 34/70, has provisions therein that permitted expressly such a course.

It has already been stated that Budget Laws in Cyprus are proper legislative enactments. It is clear in the present case that the Supplementary Budget Laws (No. 6), (No. 7), (No. 8), (No. 9) and (No. 10) Laws 31, 32,

33, 34, 35/70 were enacted and used as the legislative media for the purpose of the re-organization of the service and the creation of new posts. The provisions therein for funds for such posts retrospectively from the beginning of the year, that is to say, five months prior to the promulgation of the said Laws is a clear provision that promotions to these posts which were in effect a re-organization of already existing posts, were intended to be made with retrospective effect.

In the result the present application is dismissed. In view, however, of the nature and importance of the issues raised, I make no order as to costs.

*Application dismissed;
no order as to costs.*

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