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[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEMETRIOS
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AND ANOTHER
v.
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SUB-INSPECTOR DEMETRIOS CHR. TZAVELAS
AND ANOTHER,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF INTERIOR
2. THE COMMANDER OF POLICE,

Respondents,

(Case Nos. 372/72 and 462/72).

Administrative Law—Administrative decision—Based on an irrelevant factor—Should be annulled—Public Officer—Police Officer—Inquiry carried out against him but on advice no disciplinary or other proceeding taken—Or even if taken he is acquitted—Such facts should not be taken into account when he is being considered for promotion—This is so even if disciplinary proceedings are pending without any substantial criteria as regards the basis of the imputed accusations—Promotions in the Police Force—Respondent taking into consideration elements of administrative investigation imputing neglect of duty against applicant in respect of which no disciplinary proceedings were taken—Promotion annulled as based on an irrelevant factor. 5 10

Administrative Law—Acts or decisions by an authority—Should be certain and unambiguous—Appointments to the rank of Chief Inspector in the Police Force—Not clear whether they were made under regulation 10 or 11 of the Police (General) Regulations, 1958—Declared null and void for uncertainty. 15

Administrative Law—Statutory competence—Hierarchically superior organ—Issue of a decision by such organ though it fell within exclusive jurisdiction of a subordinate authority—Affords a ground of annulment—Appointments to rank of Chief Inspector in the Police Force—Regulation 11 of the Police (General) Regulations, 1958—Not taken by Divisional or Unit Commander with approval of Chief of Police under said regulation 11, but by Chief of Police with approval of Minister—Annulled. 20 25

Police Force—Promotions—Appointment to act in a higher rank under regulation 11 of the Police (General) Regulations, 1958—It is not a promotion.

Administrative Acts—Certainty.

5 *Statutory Competence—Hierarchically superior organ.*

Applicant in recourse No. 462/72 (hereinafter referred to as applicant No. 2) attacks the validity of the promotions of the 16 interested parties to the rank of Chief Inspector in the Police Force.

10 Applicant in recourse No. 372/72 (hereinafter referred to as applicant No. 1) attacks only the validity of the promotions of 6, out of 16, of the interested parties and he further complains against the promotion of Inspectors N. Sofocleous and A. Makris to Chief Inspectors.

15 All the promotions were made by the Chief of Police with the approval of the Minister of Interior under section 13 of the Police Law, Cap. 285, as amended by Law 29 of 1966 (quoted in full at pp. 495–496 of the judgment *post*).

20 Applicant No. 1 contended that although he was strongly recommended for promotion and although he was superior to the 6 interested parties as regards merit, qualifications, experience and seniority, they were promoted instead. With regard to the promotion of interested parties Sofocleous and Makris applicant No. 1 contended again that as regards merit, qualifications, seniority and generally the criteria to be taken into account for promotion he was strikingly superior to the said two interested parties.

30 Counsel for the respondent did not deny the applicant's allegations regarding the two interested parties but he argued that they were not promoted either permanently by virtue of section 13 of the Police Law, Cap. 285, or temporarily under regulation 10 of the Police (General) Regulations, 1958, but they were appointed to the acting Rank of Chief Inspector under Regulation 11 of the said Regulations (Note: regulations 10 and 11 are quoted in full at pp. 505–7 of the judgment *post*).

35 Applicant No. 2 contended that at the time the decision complained of was taken, there was placed before the selection Board and the Chief of Police and was taken into account a factor which in no case ought to have been placed before them,

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that is, a minute of the Attorney-General as regards this applicant which runs as follows:-

“ There is no legal proof for the commission of an offence. But the investigations revealed the existence of a suspicious conduct on the part of Inspector Vlasios and it is upon the Chief of Police to act in a way which will serve the interest of the force as well as the public interest”.

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What gave rise to the existence of the said minute was the investigation by a Senior Police Officer into the question of exercising of corrupt practice by members of the Crime Prevention Squad in Famagusta where this applicant was at the material time a town officer. The investigating officer reported, *inter alia*, (see p. 499 of the judgment *post*) that as regards applicant No. 2 the “investigations did not produce any evidence to the effect that he was in any way bribed”.

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The file of the investigation was finally transmitted to the Attorney-General for his views who, as a result, made the afore-quoted minute which found its way into the personal file of this applicant.

Counsel for applicant No. 2 argued in this connection that no proper enquiry was carried out by the Chief of Police in order to ascertain the truth of the said allegations when this applicant would be given a chance to be heard and defend himself. There was, therefore, a misconception on the part of the Chief of Police and the Selection Board as to the character of this applicant. Had it not been for the said minute in his file he stood a chance to be promoted instead of any other interested party.

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Held, (1) With regard to applicant No. 2:

(1) It is a fundamental principle of administrative law that when an enquiry against a public officer is carried out but on advice no disciplinary or other proceedings are taken against him, or when such proceedings are taken but the officer is at the end acquitted, such facts should not in case of his being considered for promotion, be taken into account.

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(2) The fact that disciplinary proceedings are pending against a public officer without any substantial criteria as regards the basis of the imputed accusations against him, are also not taken into account in cases of promotion. (Decision No. 341/

49 of the Greek Council of State is distinguishable from the case in hand as decided on different facts. See, also, Conclusions from the Case Law of the Greek Council of State 1929 to 1959 p. 356).

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5 (3) Since the accusations against this applicant amounted to neglect of duty resulting from his alleged acts or omissions, and since no disciplinary proceedings were taken against him, the Chief of Police when considering him for promotion was not entitled to take this factor into account which, in the circumstances of this case, is an irrelevant one. Needless to say that when an administrative decision is issued by an authority and such decision is based on an irrelevant factor, as in the present case, such decision should be and it is hereby declared null and void.

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15 *Held, (II) With regard to the recourse of applicant No. 1 against the promotion of interested parties Sofocleous and Makris (it being unnecessary to decide on the merits of his recourse against the promotion of the other 6 interested parties whose promotion has been declared null and void as above stated):*

20 (1) It is clear from the wording of regulations 10 and 11 (vide pp. 505-7 of the judgment *post*) that an appointment to act in a higher rank under regulation 11 is not considered as a promotion. However, such appointment should be made by the Divisional or Unit Commander with the approval of the Chief of Police and not by the Chief of Police, as in the present case. Furthermore, the officer appointed should be required to perform the duties of a higher rank due to the temporary absence of the holder of that rank. In the case in hand there is nothing in the file to indicate that these prerequisites were in existence. (See p. 507 of the judgment *post*).

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35 (2) Although it was intended, as it appears from the relevant correspondence (*exhibits* 22 and 23) that these two interested parties were to be appointed in the Acting rank of Chief Inspector under regulation 11, yet it is not clear as it appears from the letter of the Chief of Police to the Minister of Interior (*exhibit* 12) whether they were appointed as such or whether they were temporarily promoted under regulation 10. The act of the respondent, therefore, should be declared null and void for uncertainty.

40 (3) It is a fundamental principle of administrative law that an act or decision by an authority should be certain and un-

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ambiguous. But even if we assume that the two interested parties were appointed in the acting rank under regulation 11, then again such decision should be declared *null* and *void* since it is contrary to the provisions of the said regulation for the following reasons:

(i) it was not a decision taken by the Divisional or Unit Commander with the approval of the Chief of Police as regulation 11 provides, but it was taken by the Chief of Police with the approval of the Minister. This is contrary to the principle of Administrative Law that the issue of a decision by a Higher authority that falls within the exclusive jurisdiction of a subordinate authority, or *vice versa*, affords a cause for annulment of such decision (see Tsatsos Recourse for Annulment, third edition, at page 199. Also *Malais v. The Republic* (1966) 3 C.L.R. 444 at page 459).

(ii) There is nothing in the file to indicate that the holder of the higher rank was temporarily absent and for what period.

(4) Therefore, the recourse of applicant No. 1 as against interested parties Neofytos Sofocleous and Andreas Makris is also bound to succeed.

Sub judice promotions annulled.

Cases referred to:

Decision No. 341/49 of the Greek Council of State;
Malais v. The Republic (1966) 3 C.L.R. 444 at p. 459.

Recourse.

Recourse against the decision of the respondents to promote the interested parties to the rank of Chief Inspector in preference and instead of the applicants.

I. Typographos, for the applicant in Case No. 372/72.

K. Talarides, for the applicant in Case No. 462/72.

N. Charalambous, Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgment was delivered by:—

MALACHTOS, J.: In these two recourses, which were heard together as they attack the same administrative act, the appli-

cants, who are members of the police force, holding the rank of inspector, complain against the decision of the Chief of Police that was published in the Police Gazette of the 18th September, 1972. By the said decision the following officers, holding the rank of Inspector were promoted to Chief Inspector as from 1.9.72: 1. K. Ioannou, 2. Th. Tsvidanides, 3. M. Michaelides, 4. A. Varnava, 5. K. Gregoriou, 6. L. Vassiliou, 7. A. Prokopiou, 8. I. Athanassiou, 9. N. Hji Christodoulou, 10. K. Pafitis, 11. K. Peristianis, 12. P. Stamataris, 13. N. Thrasivoulou, 14. V. Ioannou, 15. M. Christodoulou and 16. A. Elia.

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Only the promotions of the first 13 interested parties were of a permanent nature whereas the last three interested parties were temporarily promoted.

Applicant in Recourse No. 462/72, Ioannis Vlasios, hereinafter referred to as applicant No. 2, attacks the promotions of all the above interested parties.

Applicant in Recourse No. 372/72, Demetrios Chr. Tzavelas, hereinafter referred to as applicant No. 1, attacks only that part of the said decision by which interested parties Nos. 8, 10, 11, 12, 15 and 16, were promoted.

In addition to the above interested parties Recourse No. 372/72 is also directed against, as it is alleged therein, the promotion of Inspectors N. Sofocleous and A. Makris to Chief Inspectors.

All the said promotions were made by the Chief of Police with the approval of the Minister of Interior under section 13 of the Police Law, Cap. 285 as amended by Law 29 of 1966. The said section reads as follows:

“13. *Appointments etc. of Gazetted Officers and other ranks:*

- (1) Gazetted Officers shall be appointed, promoted and discharged by the Minister.
- (2) The Chief of Police shall, with the approval of the Minister, appoint, enlist, promote and discharge all members of the Force up to and including the rank of Chief Inspector.
- (3) The conditions of appointment, enlistment, promotion, service and discharge of members of the Force

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shall be provided by Regulations made by the Council of Ministers under this section and published in the official gazette of the Republic;

Provided that until the regulations provided in this sub-section are made, the regulations and general orders in force on the date of the coming of this law into operation shall continue to apply.

- (4) Regulations made under this section shall be laid before the House of Representatives. If within 15 days of such laying the House of Representatives does not by resolution amend or annul, in whole or in part, the regulations so laid, they shall then, soon after the expiry of the period hereinbefore mentioned, be published in the official gazette of the Republic and they shall come into force as from such publication. In the event of their amendment, in whole or in part, by the House of Representatives, such regulations shall be published in the official gazette of the Republic as so amended by the House and shall come into force as from such publication”.

As no regulations were made under the above section the Police (Promotion) Regulations 1958, which came into force on the first day of May 1958, are still in force.

The procedure for promotion under the said regulations is as follows:

Divisional and Unit Commanders shall, when called upon, submit to the Chief of Police a list of names of qualified members of the Force recommended for promotion, together with a report on each man's characteristics and capabilities on the appropriate form. The “general observations” on the same form shall deal with such matters as health, energy, domestic state, conduct, knowledge of police duties, personal reputation, sense of discipline and ability to get the best out of the men and produce results; and, whether recommended for accelerated promotion.

Selection for promotion up to and including the rank of Assistant Superintendent shall be made by a Selection Board appointed by the Chief of Police from time to time consisting of the Deputy Chief of Police or the Assistant Chief of Police (A) as Chairman, a Chief Superintendent (A) and two gazetted officers as members.

Divisional and Unit Commanders may sit with the Board as advisers. The Board meets at least once each year to interview and report to the Chief of Police upon those recommended for promotion.

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5 In the present case the Chief of Police, after receiving the recommendations of the respective Divisional Commanders and the reports of the Selection Board on the officers eligible for promotion, including the applicants, decided to promote the interested parties as from 1.9.72 and by letter dated 15.9.72,
10 *exhibit 12*, informed the Minister of Interior of his said decision and, at the same time, applied for his approval in accordance with section 13 (2) of the Police Law. The relevant part of this letter is as follows:

15 “ The need of securing of the required suitable inspectorate personnel for the filling of the already existing vacancies in the ranks of the subordinate officers has been repeatedly referred to you and the opportunity has been recently given to us to discuss the whole subject with His Beatitude the President of the Republic. As a result, it was decided
20 the filling of certain supernumerary posts, and I, having taken into consideration the professional and educational qualifications, loyalty, seniority and all the elements of each one of those eligible candidates, the recommendations of the respective Divisional Police Commanders and of the Selection Board, I have decided to promote the following
25 as from 1st September, 1972 and I apply for your approval.

(a) Chief Inspectors (18)

1. Regular promotions by selection to the permanent post (The names of the first 13 Inspectors follow)
- 30 2. Promotions by selection to the temporary post (The names of the 3 officers temporarily promoted follow)

(b) Acting Appointments.

(1) To the Rank of Chief Inspector

1. N. Sofocleous
- 35 2. A. Makris”.

By letter dated 16.9.72, *exhibit 13*, the Ministry of Interior informed the Chief of Police that the Minister approved the said promotions.

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It is the case of applicant No. 1 that although he was strongly recommended for promotion and although he was superior to the interested parties as regards merit, qualifications, experience and seniority, they were promoted instead of him.

The case of applicant No. 2 was mainly based and argued on only one ground, namely, that at the time the decision complained of was taken, it was placed before the Selection Board and the Chief of Police and was taken into account a factor which in no case ought to have been placed before them, that is, a minute of the Attorney-General as regards this applicant and which is as follows:

“ There is no legal proof for the commission of an offence. But the investigations revealed the existence of a suspicious conduct on the part of Inspector Vlasios and it is upon the Chief of Police to act in a way which will serve the interest of the force as well as the public interest”.

The facts as to how this minute of the Attorney-General found its way into the file of applicant No. 2, are shortly as follows:

In June, 1971, the Chief of Police received information that members of the Crime Prevention Squad in the Famagusta District were exercising corrupt practice by receiving protection money from the owners of certain clubs in Famagusta town in order to promote their gambling activities. In particular, P.C. 1903, Theodoros Papandrea, alias Shoris, and P.C. 595 Georghios Psa as, were referred by name as receiving protection money from a certain Michael Hjiapanayi Koungas and a certain Ioannis Theofanous Kalopsidhiotis, who were running gambling clubs in Famagusta town. As a result, the Chief of Police instructed Supt. Theofanis Demetriou to investigate into the matter and informed at the same time the Divisional Police Commander of Famagusta. At the material time applicant No. 2 was town officer of Famagusta under Assistant Supt. Stelios Menelaou. The two police constables referred to above were under him. Supt. Demetriou interviewed a number of persons and obtained statements from them. All these statements are part of the file of the case which has been produced as *exhibit* 26.

In the course of the investigations and when they were at an advanced stage, Supt. Demetriou received an anonymous

telephone call to the effect that Inspector Vlasios, was the adviser and the brains behind the cases of bribery.

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5 It must be noted here that up to that time the investigations and statements obtained from various persons revealed nothing against applicant No. 2. On the other hand, as regards the two police constables Shoris and Psaras, there was ample evidence that they were bribed by both Koungas and Ioannis Kalopsidhiotis.

10 The report of the investigating officer of the case, Supt. Demetriou, which consists of 53 pages and is blue 97 of *exhibit* 26, ends with the following remarks:

15 ' As regards Inspector Ioannis Vlasios the investigations did not produce any evidence to the effect that he was in any way bribed. However, the elements that came to light, and, in particular, the activeness showed on the one hand to report the club of Koungas and that of the civil servants, and his inactiveness showed on the other hand for the club of Yiannis, create indications that he knew as to what was happening or that he tolerated them. I think that the elements collected justify the disciplinary prosecution of Inspector Vlasios for neglect of duty.

20 Personally I believe that the further stay of Inspector Vlasios in the Famagusta Division does not contribute to the upgrading of the name of the Force and does not serve the efforts made for the cooperation of the public with the police".

The file of the case was then transmitted to the Attorney-General for his views who, as a result, made the minute which finally found its way into the personal file of applicant No. 2.

30 It is the allegation of this applicant that as soon as he received information that Supt. Th. Demetriou prepared a report as regards the case of bribery and that the said report contained something unfavourable for him, he wrote a letter to the Chief of Police dated 11th January, 1972, *exhibit* 4, where he protested for the accusations against him and proposed the setting up of a Committee of enquiry to enquire into the matter. On 20.1.72 he received through the Famagusta Divisional Police Commander a copy of a letter from the Chief of Police dated 15th January, 1972, *exhibit* 5, where he was officially informed about
40 the unfavourable minute made by the Attorney-General against

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him. In this letter the said minute was quoted verbatim. According always to his allegations, he protested to his Divisional Commander, the Minister of Interior and the Chief of Police and the latter assured him that the aforesaid element would not be taken into consideration as regards the forthcoming promotions.

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On 31.1.72 applicant No. 2 being eligible for promotion was called and appeared before the Selection Board. Nothing was said to him about the existence in his file of the minute of the Attorney-General. It is significant to note that in the so called report of classification of this applicant, which was before the Selection Board, *exhibit 6*, he was strongly recommended for promotion by the Famagusta Divisional Commander. On the said *exhibit 6* the opinion of the Board about this applicant is recorded as follows: "Very suitable but in view of the comments of the Attorney-General with reference to his conduct (see blue 428 in his personal file), the Selection Board *does not recommend his promotion*".

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Counsel for applicant No. 2 argued that no proper enquiry was carried out by the Chief of Police in order to ascertain the truth of the said allegations where this applicant would be given a chance to be heard and defend himself. There was, therefore, a misconception on the part of the Chief of Police and the Selection Board as to the character of applicant No. 2. Had it not been for this minute in the file of this applicant he stood a chance to be promoted instead of any other interested party.

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On the other hand, counsel for the respondent argued that from the elements appearing in the file as a result of the enquiry carried out by Supt. Th. Demetriou, it is clear that this applicant is guilty of neglect of duty as far as the club of Yiannis is concerned. Therefore, the opinion of the Attorney-General expressed in the minute which found its way into the file of this applicant was justified. Consequently, the Chief of Police was also justified to take into account these elements in considering whether to promote this applicant or not. The fact that no criminal or disciplinary proceedings were taken against this applicant could not prevent the Chief of Police to take the said elements into account. He based this proposition on the Conclusions from Case Law of the Greek Council of State 1929-1959, page 357, paragraph 7 where in cases of promotion of persons in the Public Service we read -

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“ Also it was decided that it is lawful to take into account elements of administrative investigation even if such investigation did not result in disciplinary proceedings against the person concerned: 341/49”.

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5 He further argued that applicant No. 2 was given the opportunity to be heard and, in fact, was heard by making a statement to the investigating officer which is blue 82 in *exhibit* 26.

10 Now, the only point that falls for consideration in the case of applicant No. 2 is whether the report of the investigating officer Supt. Demetriou, as well as the minute of the Attorney-General, could be taken into account by the Selection Board and the Chief of Police in considering this applicant for promotion in view of the fact that no criminal or disciplinary proceedings were taken against him. If any such proceedings were
15 instituted against this applicant then he would be given the chance to defend himself and deny the allegations against him as he did in his statement to the investigating officer. There can be no doubt that if the aforesaid elements were not taken
20 into account by the Chief of Police, applicant No. 2, to say the least, stood a chance to be promoted instead of any one of the interested parties. Very rightly in my view no such proceedings were instituted against this applicant as they stood no chance
25 to be successful since there is no evidence to substantiate the accusations against him. The evidence at first sight tends to throw a mere suspicion on applicant No. 2 for neglect of duty; however, mere suspicion is not enough. Furthermore, this suspicion is alleviated if one goes carefully through the file of the case, *exhibit* 26, and considers the statements obtained by
30 the investigating officer. The only statement which may implicate applicant No. 2 is the statement of a certain Demetrios Papageorghiou, blue 89, an advocate's clerk and a habitual gambler of Famagusta, who, during the Christmas holidays in 1970, proposed to act as a Police provocateur so that the club
35 of Yiannis would be reported for gambling. This offer was made to applicant No. 2 at the Famagusta Police Station in the presence of P.C. 1903 Shoris. One or two days later Yiannis Kalopsidhiotis, the proprietor of the said club, complained to Papageorghiou about this matter, which means that he was
40 informed either by P.C. Shoris or by applicant No. 2. Since as I have already said there is ample evidence that P.C. Shoris was bribed by Kalopsidhiotis, it is clear that he is the person who passed to him the relevant information. Applicant No. 2

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in his statement admitted that an advocate's clerk, whose name he did not remember, visited him at the Famagusta Police Station and proposed to help the Police to report the club of Yiannis for gambling and promised that he would visit the Police again and give them more particulars, but he did not show up.

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It may safely be inferred that Papageorghiou after the complaint made to him by Kalopsidhiotis gave up all his efforts to report this club and this is the reason why he did not visit the Police Station again.

It is also clear from the statements in *exhibit 26*, particularly from the statement of Yiannis Kalopsidhiotis himself, that the allegation that his club was never reported or raided by police is not correct. The said club was visited, during the material period, i.e. the end of 1970 beginning of 1971, every night by members of the Crime Prevention Squad, who were staying therein in order to prevent the gambling activities and that as a result the club closed. It should be noted here that as it appears from the statements in *exhibit 26*, it is extremely difficult for the police without a police provocateur, to secure evidence leading to a conviction for gambling in clubs of this kind since all of them, in addition to any devices, employ watchmen who give notice to the persons gambling therein for the arrival of the police. I, therefore, find that the conclusions reached by the investigating officer, as well as the minute of the Attorney-General as regards this applicant, were not justified.

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It is a fundamental principle of administrative law that when an enquiry against a public officer is carried out but on advice no disciplinary or other proceedings are taken against him, or when such proceedings are taken but the officer is at the end acquitted, such facts should not in case of his being considered for promotion, be taken into account. Furthermore, the fact that disciplinary proceedings are pending against a public officer without any substantial criteria as regards the basis of the imputed accusations against him, are also not taken into account in cases of promotion. (See Conclusions from Case Law of the Greek Council of State 1929 to 1959, page 356). The submission of counsel for the respondent that it was lawful for the Chief of Police to take into account elements of administrative investigation even if such investigation did not result in disciplinary proceedings against the applicant, cannot, in my opinion, stand. This submission is based as it is stated at page 357, paragraph 7, of the Conclusions from

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Case Law of the Greek Council of State 1929–1959 on Decision No. 341/49, which is, in my opinion, distinguishable from the case in hand as decided on different facts. The relevant part of the full report, which is reported in Decisions of the Greek Council of State 1949 Volume A, page 564 at page 566, is as follows:

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10 “Επειδή ναί μὲν καὶ ἐπὶ τῶν καθ’ ἐκλογὴν ἐνεργουμένων
προαγωγῶν ἢ ἀρχαιότης ἀποτελεῖ πρόσθετον στοιχείον
κρίσεως, ἐπιβάλλον τὴν αἰτιολόγησιν τῆς παραλείψεως τοῦ
ἀρχαιοτέρου ἔναντι ἰσαξίων αὐτοῦ νεωτέρων του, ἀλλ’ ἐν
προκειμένῳ ἐκ τῆς προδιαληφθείσης γνωμοδοτήσεως τοῦ Δι-
οικητικοῦ Συμβουλίου τοῦ Ὑπουργείου Προνοίας καὶ δὴ ἐκ τῆς
ἀναφερομένης ἐν αὐτῇ ἐκθέσεως ἐπιθεωρητῶν τοῦ Ὑπουργείου
15 ἐπὶ δοθειῶν ὑπὸ τοῦ αἰτοῦντος ἀφορμῶν καθ’ ὃν χρόνον
οὗτος ὑπηρετεῖ εἰς τὴν ὑπηρεσίαν Κοινωνικῆς Προνοίας Ἀττι-
κῆς καὶ τοῦ σχετικοῦ ἐγγράφου τοῦ Διευθυντοῦ τῆς ὑπηρε-
σίας ταύτης καὶ ἐκ τοῦ γεγονότος ὅτι μετὰ τὴν ἀνάγνωσιν
τῶν ἐγγράφων τούτων καὶ τὴν γενομένην συζήτησιν περὶ τῆς
ὑπηρεσιακῆς καταστάσεως τοῦ αἰτοῦντος, οὗτος δὲν ἐπροτάθη
20 πρὸς προαγωγὴν οὐδ’ ὑπ’ αὐτοῦ τοῦ ἀρχικῶς εἰσηγηθέντος
ὑπὲρ αὐτοῦ μέλους τοῦ συμβουλίου, προκύπτει σαφῶς ὅτι ὁ
αἰτῶν ἐκρίθη μὴ προακτέος ἐν ὄψει τῶν ἀνωτέρω στοιχείων,
ἦτοι τοῦ προκύπτοντος ἐξ αὐτῶν γεγονότος ὅτι καθ’ ὃν
χρόνον ὑπηρετεῖ εἰς τὴν ὡς εἴρηται ὑπηρεσίαν Κοινωνικῆς
25 Προνοίας, προεκάλεσε δυσμενῆ σχόλια καὶ διοικητικὰ ἀνα-
κρίσεις εἰς βάρος του λόγῳ τῆς συμπεριφορᾶς αὐτοῦ ἔναντι
τοῦ θήλεως προσωπικοῦ τῆς ὑπηρεσίας ταύτης. Τὰ στοιχεῖα
δὲ ταῦτα, νομίμως ἐλήφθησαν ὑπ’ ὄψιν ὑπὸ τοῦ ὡς εἴρηται
συμβουλίου, καίτοι ἡ διενεργηθεῖσα διοικητικὴ ἀνάκρισις δὲν
30 ἀπέληξεν εἰς πειθαρχικὴν δίωξιν τοῦ αἰτοῦντος, καθ’ ὅσον
προκειμένης κρίσεως πρὸς προαγωγὴν καὶ δὴ εἰς ἀνωτέρους
βαθμοὺς — ὡς ἐν προκειμένῳ — λαμβάνεται ὑπ’ ὄψιν ἢ ἐν γένει
συμπεριφορὰ τοῦ κρινομένου ἐν τε τῇ ὑπηρεσίᾳ καὶ τῇ κοινω-
νίᾳ καὶ οὐ μόνον αἱ ἐνέργειαι ἢ παραλείψεις αὐτοῦ, αἱ κριθεῖσαι
35 πειθαρχικῶς τιμωρητέαι, ἀρκούντως δι’ αἰτιολογοῦσι τὴν
παράλειψιν τοῦ αἰτοῦντος ἔναντι τῶν νεωτέρων του παρεμ-
βαινόντων, δοθέντος ὅτι οὗτοι, ὡς προκύπτει ἐκ τῶν ἐν τῷ
φακέλλῳ ὑπηρεσιακῶν περὶ αὐτῶν στοιχείων, εἶναι λίαν
40 ἱκανοὶ ὑπάλληλοι καὶ ἀπὸ ἀπόψεως ἡθους καὶ συμπεριφορᾶς
ἀνεπίληπτοι.”

(“Because of the fact that as regards the promotions effected by means of a selection as well, seniority constitutes

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an additional element of judgment that imposes the giving of reasons when rejecting the senior in favour of his equals who are junior to him, in the instant case from the already existing opinion of the Administrative Board of the Ministry of Social Providence and particularly from the report of the Inspectors of the Ministry referred to therein relating to causes given by applicant whilst serving in the Social Providence office of Attica and the relevant memorandum of the Head of this Office and from the fact that after reading these documents and upon discussing the service data of the applicant, he was not proposed for promotion even by the member of the Board who had originally made a proposal in his favour it clearly appears that the applicant was considered as not eligible for promotion in view of the above material that is the fact emanating therefrom that whilst serving in the Social Providence Office he caused adverse comments and administrative inquiries to be made against him due to his behaviour towards the female staff of this office. All this material was lawfully taken into consideration by the said Board even though the administrative enquiry which had been carried out did not result in disciplinary proceedings against the applicant because in deciding on promotions and particularly in higher grades—as in the instant case—the general behaviour of the candidates both in the office and in Society is taken into consideration and not only his acts or omissions, which have been considered disciplinarily punishable and they adequately justify the rejection of applicant in favour of his juniors, given that as it appears from their official personal files they are very efficient officers and irreproachable from the point of view of behaviour and character”).

It is clear that in that case the applicant's behaviour in society did not afford a ground for disciplinary proceedings against him as it did not amount to an act or omission for which such proceedings may be instituted, as in the present case. In the case in hand since the accusations against this applicant amounted to neglect of duty resulting from his alleged acts or omissions, and since no disciplinary proceedings were taken against him, the Chief of Police when considering him for promotion was not entitled to take this factor into account which, in the circumstances of this case, is an irrelevant one. Needless to say that when an administrative decision is issued by an authority

and such decision is based on an irrelevant factor, as in the present case, such decision should be declared *null* and *void*.

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The recourse, therefore, of applicant No. 2 is bound to succeed.

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5 In view of my above decision I consider it unnecessary to decide on the merits of the application of applicant No. 1 since the act of the respondent by which interested parties Nos. 8, 10, 11, 12, 15 and 16 were promoted and whose promotion is attacked by this applicant in Case.No. 372/72, have been declared *null* and *void* in Case No. 462/72.

10 The only thing that remains for consideration is that part of the application by applicant No. 1 as regards interested parties Neofytos Sofocleous and Andreas Makris who, as alleged by this applicant, were promoted from Inspectors to Chief Inspectors.

15 It has been argued on behalf of applicant No. 1 that as regards merit, qualifications, seniority and generally the criteria to be taken into account for promotion he was strikingly superior to the said two interested parties.

20 Counsel for the respondent, on the other hand, did not deny these allegations but argued that the said two interested parties were not promoted either permanently by virtue of section 13 of the Police Law, Cap. 285, or temporarily under regulation 10 of the Police (General) Regulations 1958, but they were appointed to the Acting rank of Chief Inspector
25 under regulation 11 of the said Regulations. This is clear, he argued, from the recommendations of their respective Commanding Officers, *exhibits* 22 and 23, where they are both recommended for appointment to the Acting rank of Chief Inspector. He submitted that appointment to act in a rank
30 under regulation 11 is not a promotion. Consequently, this applicant has no legitimate interest to file this recourse as against these two interested parties. Regulations 10 and 11 of the Police (General) Regulations 1958, read as follows:

“ 10. *Temporary promotions*

35 (1) A member of the Force who is required to perform the duties of a higher rank may be promoted temporarily to that rank by the Chief of Police:

Provided that –

(a) a vacancy exists in the rank;

(b) in the case of Gazetted Officers such promotions are made with the approval of the Council of Ministers (Powers delegated to the Minister of Interior, M.C. decision 768/11.5.61).

(2) Any service in the temporary rank shall – 5

(a) be deemed to be substantive service in that rank when a police officer is appointed permanently to a higher rank and there is no break between temporary and substantive service in the rank;

(b) be subject to the salary scale and allowances applicable to the higher rank. 10

(3) Members of the Force promoted temporarily to a higher rank shall enter the salary scale of the post at the minimum unless the Council of Ministers otherwise directs.

(4) Pension shall be calculated on the salary of a member's substantive rank and not on the salary of the post to which he is temporarily promoted. 15

(5) Where the substantive holder of a rank is temporarily absent on leave or through sickness, the officer appointed to perform the duties of the post will not be temporarily promoted to it, but shall act in the post. 20

(6) Members of the Force shall wear the uniform and insignia of the temporary rank.

11. *Acting rank*

(1) A member of the Force who is required to perform the duties of a higher rank due to the temporary absence of the holder of that rank, may be appointed to act in the rank by the Divisional or Unit Commander; 25

Provided that –

(a) All such appointments are made with the approval of the Chief of Police; 30

(b) notification is sent to Force Headquarters for the purposes of pay and maintaining records.

(2) Any service in the acting rank shall not –

(a) be deemed as approved service in the higher rank; 35

(b) be subject to allowances applicable to the higher rank.

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5 (3) Members of the Force appointed to acting rank shall receive in addition to their pay an allowance at a rate equal to the difference between their pay and the lowest rate for the higher rank:

Provided that in the case of Gazetted Officers the provisions of General Orders shall apply.

10 (4) No member of the Force shall be appointed to acting rank if the period of absence of the holder is less than fourteen days.

15 (5) Constables nominated as acting sergeants may wear two chevrons at all times, but will receive the acting allowance only when required to perform the duties of a sergeant. Members of the Force shall wear the uniform and insignia of the acting rank only when instructed by the Chief of Police to do so”.

20 It is clear from the wording of the above Regulations that appointment to act in a higher rank under regulation 11 is not considered as a promotion. However, such appointment should be made by the Divisional or Unit Commander with the approval of the Chief of Police and not by the Chief of Police, as in the present case. Furthermore, the officer appointed should be required to perform the duties of a higher rank due to the temporary absence of the holder of that rank. In the case in hand there is nothing in the file to indicate that these prerequisites were in existence. On the contrary, from the reasons for recommendation put forward by the respective Divisional Police Commanders it is clear that such prerequisites did not exist. The reason for recommendation of the Divisional Police Commander as regards interested party Neofytos Sofocleous contained in *exhibit 22*, is as follows:

35 “ Inspector Sofocleous is recommended for acting appointment to the rank of Chief Inspector as from 1.9.72. Mr. Sofocleous is attached to the CID and I detailed him for special duties in the department. He is well educated, loyal and intelligent. He is also assigned special security missions by the Chief”.

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The reason for recommendation of the Divisional Police Commander as regards interested party Andreas Makris contained in *exhibit 23* is as follows:

“Inspector A. Makris has been in charge of the CID Branch Larnaca since 21.6.71. He has performed his duties satisfactorily. He is efficient, and loyal and is recommended for promotion to the Acting rank of Chief Inspector”.

Although it was intended, as it appears from *exhibits 22 and 23*, that these two interested parties were to be appointed in the Acting rank of Chief Inspector under regulation 11, yet it is not clear as it appears from the letter of the Chief of Police to the Minister of Interior (*exhibit 12*) whether they were appointed as such or whether they were temporarily promoted under regulation 10. The act of the respondent, therefore, should be declared *null and void* for uncertainty. It is a fundamental principle of administrative law that an act or decision by an authority should be certain and unambiguous. But even if we assume that the two interested parties were appointed in the acting rank under regulation 11, then again such decision should be declared *null and void* since it is contrary to the provisions of the said regulation for the following reasons:

- (i) it was not a decision taken by the Divisional or Unit Commander with the approval of the Chief of Police as regulation 11 provides, but it was taken by the Chief of Police with the approval of the Minister. This is contrary to the principle of Administrative Law that the issue of a decision by a higher authority that falls within the exclusive jurisdiction of a subordinate authority, or *vice versa*, affords a cause for annulment of such decision (see Tsatsos *Recourse for Annulment*, third edition, at page 199. Also *Malais v. The Republic* (1966) 3 C.L.R. 444 at page 459).
- (ii) There is nothing in the file to indicate that the holder of the higher rank was temporarily absent and for what period.

Therefore, the recourse of applicant No. 1 as against interested parties Neofytos Sofocleous and Andreas Makris is also bound to succeed.

For the above reasons the decision of the Chief of Police complained of, in these two recourses, which was published in the Police Gazette of 18th September, 1972, concerning the 18 interested parties, is declared *null and void*.

- 5 On the question of costs, the Order of this Court is that the respondent should pay £15.- against the costs of applicant No. 1 and £25.- against the costs of applicant No. 2.

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

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