

1981 April 9

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PHIVOS B. ZACHARIADES.

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE PUBLIC SERVICE COMMISSION,
2. THE MINISTER OF INTERIOR,
3. THE COUNCIL OF MINISTERS,

Respondents.

(Case No. 58/80).

Public Officers—Appointments and promotions—Unless perfected or completed by offer and acceptance they can be freely revoked—Sections 37(1) and (2) and 44(5) of the Public Service Law, 1967 (Law 33/67)—Decision promoting applicant to post of Director-General Ministry of Interior—Revoked before perfection—Applicant has not acquired a legitimate interest and is not entitled to judicial redress. 5

Administrative Law—Administrative acts—Revocation—Intended but never completed administrative act—Can be freely revoked—Public Officers—Appointments or promotions—Unless completed by offer and acceptance they can be revoked—Sections 37(1) and (2) and 44(5) of the Public Service Law, 1967 (Law 33/67). 10

Recourse under Article 146 of the Constitution—Legitimate interest—Article 146.2—Decision promoting applicant to post of Director-General Ministry of Interior—Revoked before it was perfected—Applicant has not acquired a legitimate interest—Not entitled to judicial redress. 15

Following the decision of the Council of Ministers to authorise the Minister of Interior to proceed, in concert with the Public Service Commission, to take steps for the filling of the post of Director-General of the Ministry of Interior (“the said post”) 20

a letter signed on behalf of the Director-General of that Ministry was sent to the Chairman of the Commission requesting it to proceed forthwith with its filling. As the said post was a first entry and promotion post the Commission advertised the vacancy and a number of persons, including the applicant who was holding the post of District Officer, submitted applications. The candidates were interviewed on the 11th, 22nd and 23rd January, 1980 and on the 30th January, 1980, the respondent Public Service Commission after deliberations and discussions on each candidate found* that the applicant was in every respect superior to all the other candidates and decided to promote him to the said post.

On the 31st January, 1980, the Minister of Interior wrote a letter to the Chairman of the Commission and informed him that he was withdrawing the request for the filling of the "said post", giving as a reason for doing so a study that was being carried out for the re-organization of his Ministry. In view of this letter, the Commission met on the 2nd February, 1980, and decided to revoke their decision which had not, in the meantime, been communicated to the applicant.

On the 25th February, 1980, all candidates interviewed for the "said post" were, by letter, informed by the Commission that the post was not to be filled as a result of a request by the appropriate authority which was studying schemes for the re-organization of the Ministry. Hence this recourse by applicant against the decision of the respondent Public Service Commission not to proceed to give formal effect to its decision to appoint him to the said post.

On the question whether the applicant, as a result of the decision of the respondent Commission to promote him to the said post, has acquired a legitimate interest and, thus, is entitled to judicial redress:

Held, that it is clear that unless a promotion is perfected or completed by offer and acceptance, the Public Service Commission can freely revoke the "intended but never completed

* See its minutes at pp.-132-33 *post*.

administrative act" (see sections 37(1) and (2)* and 44(5)** of the Public Service Law, 1967 Law 33/67 and *Panayides v. Republic* (1972) 3 C.L.R. 467 and (1973) 3 C.L.R. 378 (C.A.)); that in this case the respondent Commission revoked its decision before it was perfected and therefore the applicant has not acquired a legitimate interest and is not entitled to judicial redress; accordingly his recourse must fail.

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Application dismissed.

Cases referred to:

Contopoulos v. Republic, 1964 C.L.R. 347 at pp. 351-352;
Panayides v. Republic (1972) 3 C.L.R. 467 at p. 480; (1973) 3 C.L.R. 378 at p. 383 (C.A.);
Geodelekian v. Republic (1970) 3 C.L.R. 64 at p. 68.

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Recourse.

Recourse against the decision of respondent No. 1 not to proceed with the filling of the vacant post of Director-General of the Ministry of Interior after they had selected the applicant for appointment to the said post.

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G. Cacoyannis, for the applicant.

N. Charalambous, Senior Counsel of the Republic, for the respondent.

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Cur. adv. vult.

DEMETRIADES J. read the following judgment. By his recourse the applicant attacks the decision of the respondents and in particular the decision of the first respondents not to proceed to give formal effect to their decision to appoint him in the post of Director-General of the Ministry of Interior and prays:-

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1. Declaration of the Court that the omission of respon-

* Section 37(1) and (2) reads as follows:

"S.37(1) A permanent appointment shall be effected by a written offer made by the Commission to the person selected for appointment and accepted by him in writing.

(2) The offer shall state the remuneration offered and the other terms and conditions of service attached to the office to which appointment is offered".

** Section 44(5) reads as follows:

"(5) 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".

- 5 dents No. 1 to proceed with the filling of the vacant post of the Director-General of the Ministry of Interior after they had selected the applicant for appointment to that post was null and void, as such omission was contrary to the provisions of the Constitution and/or the Law and/or because it was made in excess or abuse of powers; and/or
- 10 2. Declaration of the Court that the omission of respondents No. 1 to appoint the applicant to the post of Director-General of the Ministry of Interior, having selected him for such appointment, was null and void being contrary to the provisions of the Constitution and/or the Law and/or because it was made in excess or abuse of powers; and/or
- 15 3. Declaration of the Court that the decision of respondents No. 1 not to proceed with the filling of the post of Director-General of the Ministry of Interior on the excuse of instructions received on 31.1.1980, from respondent No. 2, not to proceed with the filling of that post, because
- 20 apparently there existed, under consideration, plans for the re-organization of the Ministry of Interior, is null and void and of no legal effect whatsoever, being contrary to the provisions of the Constitution and/or the Law and/or because it was made in excess or abuse of powers; and/or
- 25 and/or
- 30 4. Declaration of the Court that the act or decision of respondents No. 1 to accept and/or follow instructions and interventions from incompetent persons or authorities, and/or not the "proper authority" as specified in the Law, which led to the non filling of the post of Director-General of the Ministry of Interior by them, is null and void and of no legal effect whatsoever, being
- 35 contrary to the provisions of the Constitution and/or the Law and/or because it was made in excess or abuse of powers; and/or
5. Declaration of the Court that the decision of respondents No. 1 not to appoint "for the time being" the applicant to the vacant post of Director-General of the Ministry of Interior, communicated to the applicant

- by their letter dated the 25th February, 1980, is null and void and of no legal effect whatsoever, being contrary to the provisions of the Constitution and/or the Law and/or in that it was taken in excess or abuse of powers; and/or 5
6. Declaration of the Court that the intervention of respondent No. 2 to the duties and competences of respondents No. 1, and/or the "instruction" given by him to respondents No. 1 not to proceed "for the time being" to the filling of the post of Director-General of the Ministry of Interior, because apparently there existed, under consideration, plans for the re-organization of the Ministry of Interior, was a decision and/or an act null and void and of no legal effect whatsoever, being contrary to the provisions of the Constitution and/or the Law and/or outside the powers and competences of respondent No. 2 and/or because it was made in excess or abuse of powers and therefore such intervention and/or instruction ought to have been ignored by respondents No. 1; and/or 10 15 20
7. Declaration of the Court that the instruction given by respondent No. 2 to respondents No. 1 not to proceed with the filling of the post of Director-General of the Ministry of Interior (communicated to respondents No. 1 by his letter dated 31.1.1980), was a decision and/or an act null and void and of no legal effect whatsoever, being contrary to the provisions of the Constitution and/or the Law and/or in that it was made in excess or abuse of powers; and/or 25
8. Declaration of the Court that any act, decision or omission of respondents No. 3, which in any way confirms and/or adopts and/or tolerates the "instruction" and/or intervention of respondent No. 2 to respondents No. 1 as described in sub-paragraphs (1) to (7) above, was null and void and of no legal effect whatsoever, being contrary to the provisions of the Constitution and/or the Law and/or in that it was made in excess or abuse of powers. 30 35

The applicant has been serving in the Public Service since

January 1940. He is a B.Sc (Economics) of the London University, a degree which he obtained in 1957 whilst serving in the Civil Service. He is, also, a Fellow of the Royal Statistical Society and a Fellow of the Royal Economic Society. He is now a District Officer posted at Paphos.

As a result of a submission made to the Council of Ministers by the Minister of Interior, dated the 20th October, 1978 (see copy of Annex 1 appended to the opposition), the Council of Ministers, by their decision No. 17.354 dated 26th October, 1978, decided—

- (a) to extend the services of the Director-General of the Ministry of Interior, who was then due for retirement, until the 24th March, 1979, and
- (b) to authorise the Minister of Interior to proceed, in concert (en sinennoisi) with the first respondents, to take the soonest possible all necessary steps for the filling of the post of the Director-General of the Ministry of Interior.

Copy of the decision of the Council of Ministers, which is appended to the opposition as Annex 1, was, on the 4th November, 1978, communicated by the Secretary of the Council of Ministers to the Chairman of the first respondents.

On the 8th November, 1978, a letter signed by an official of the Ministry of Interior on behalf of the Director-General of that Ministry, was sent to the Chairman of the first respondents with regard to the said decision of the Council of Ministers. This letter, which is Annex 2 to the opposition, reads:

“ Ένετάλην ὅπως ἀναφερθῶ εἰς τὴν Ἀπόφασιν τοῦ Ὑπουργικοῦ Συμβουλίου ὑπ’ ἀρ. 17.354 τῆς 26ης Ὀκτωβρίου, 1978, ἣτις ἐκοινοποιήθη εἰς ὑμᾶς, ἐπὶ τοῦ θέματος τῆς πληρώσεως τῆς θέσεως τοῦ Γενικοῦ Διευθυντοῦ τοῦ Ὑπουργείου Ἑσωτερικῶν, καὶ νὰ πληροφωρήσω ὑμᾶς ὡς ἀκολουθῶς:—

2. Ὁ κ. Ἀ. Ἀναστασίου, Γενικός Διευθυντής τοῦ Ὑπουργείου Ἑσωτερικῶν, θὰ ἐξακολουθήσῃ νὰ ἐκτελῇ τὰ καθήκοντα τῆς θέσεως του μέχρι τῆς 31ης Δεκεμβρίου, 1978. Ἀπὸ τῆς 1ης Ἰανουαρίου, 1979, οὗτος θὰ διατελῇ ἐπ’ ἀδεία μέχρι τῆς 24ης Μαρτίου, 1979, ὅτε ἀφυπηρετεῖ.

3. Λαμβανομένων ὑπ’ ὄψιν τῶν πολλαπλῶν εὐθυνῶν

τῆς θέσεως τοῦ Γενικοῦ Διευθυντοῦ τοῦ Ὑπουργείου Ἐσωτερικῶν καθὼς καὶ διὰ τὴν ὁμαλὴν καὶ ἀπρόσκοπτον λειτουργίαν τῶν ὑπηρεσιῶν τοῦ Ὑπουργείου τούτου, τὸ ἡμέτερον Ὑπουργεῖον θεωρεῖ ἀναγκαῖον ὅπως ἡ θέσις τοῦ Γενικοῦ Διευθυντοῦ πληρωθῆ ἀπὸ τῆς 1ης Ἰανουαρίου, 1979, ἡμερομηνίας καθ' ἣν ἀρχίζει ἡ περίοδος ἀδείας τοῦ κ. Ἀναστασίου.

4. Παρακαλεῖσθε ὄθεν ὅπως προβῆτε εἰς τὰς σχετικὰς διευθετήσεις διὰ τὴν ἔγκαιρον δημοσίευσιν τῆς θέσεως οὕτως ὥστε νὰ καταστῆ δυνατὴ ἡ πλήρωσις τῆς ἀπὸ τῆς 1.1.1979.

5. Ἡ πλήρωσις θέσεως κατὰ τὴν διάρκειαν τῆς περιόδου ἀπουσίας τοῦ κατόχου αὐτῆς ἐπ' ἀδείας πρὸ τῆς ἀφυπηρητησεῶς του προβλέπεται ὑπὸ τοῦ ἀρθροῦ 21 τοῦ περὶ Ἑρμηνείας Νόμου, Κεφ. 1.

(Ὑπ.) Χρ. Μαμμίδης .
διὰ Γενικὸν Διευθυντὴν
Ὑπουργείου Ἐσωτερικῶν".

("I have been directed to refer to the Decision of the Council of Ministers No. 17.354 of the 26th October, 1978, which has been communicated to you, on the subject of the filling of the post of Director-General of the Ministry of Interior and to inform you as follows:-

2. Mr. A. Anastassiou, Director-General of the Ministry of Interior, will continue to perform the duties of his post until the 31st December, 1978. As from 1st January, 1979 he will be on leave until the 24th March, 1979, when he will retire.

3. Taking into consideration the multiple responsibilities of the post of Director-General of the Ministry of Interior and for the smooth and unobstructed functioning of the services of this Ministry, our Ministry considers it necessary that the post of Director-General be filled as from 1st January, 1979, the date on which the leave of absence of Mr. Anastassiou commences.

4. You are therefore requested to make the necessary arrangements for the advertisement of the vacancy in time, so that the filling of the post may be rendered possible as from the 1.1.1979.

5. The filling of a post during the absence on leave

prior to retirement of its holder is provided for by section 21 of the Interpretation Law, Cap. 1.

(Sgd) Chr. Mammides
for Director-General
Ministry of Interior”).

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At their meeting of the 11th November, 1978, the first respondents considered the filling of the vacancy in the post of the Director-General of the Ministry of Interior—hereinafter to be mentioned as the “said post”—and decided that as the
10 “said post” was a first entry and promotion post, to advertise the vacancy and to allow two weeks for the submission of applications (this decision of the first respondents is appended to the opposition as Annex 3), but on the 19th December, 1978, the Minister of Interior himself wrote to the Chairman of the
15 first respondents a letter (this is Annex 4 to the opposition) by which he informed him that certain difficulties connected with the scheme of service of the “said post” had arisen; that the Council of Ministers was studying the possibility of amending them, and that as the decision on this matter could take
20 some time he requested him to postpone the publication of the post until a final decision was taken. Complying to this request of the Minister, the first respondents took no further action on the matter.

On the 12th March, 1979, another letter, signed on behalf
25 of the Director-General of the Ministry of Interior (see Annex 5 to the opposition), was sent to the Chairman of the first respondents by which he was informed that there was going to be no change in the scheme of service of the post of the
30 Director-General of the Ministry of Interior and was requested to proceed forthwith with its publication, if possible, in the issue of the Gazette of the following Friday, the 16th March, 1979. In compliance with this request, the post was advertised in Gazette No. 1508 of the 16th March, 1979 (photocopy of same was produced and is *exhibit A*).

35 As a result of the publication of the “said post”, a number of persons, one of whom was the applicant, submitted applications and on the 12th April, 1979, the first respondents decided to invite 19 of them, including the applicant, for interview (see Annex 6 to the opposition). As it appears from Annex
40 7 to the opposition, which are the minutes of the meeting of

the first respondents held on the 8th May, 1979, all 19 persons were interviewed on that day. However, before the first respondents took their decision, their term of office expired and a new Chairman and new members were appointed.

At their meeting of the 12th November, 1979 (see Annex 8 to the opposition), the new Public Service Commission decided, and very rightly so according to learned counsel appearing for the applicant, that they had to consider the filling of the "said post" afresh and that they had to invite all persons interviewed by the previous Public Service Commission, for a new interview. The candidates were interviewed on the 11th, 22nd and 23rd January, 1980 and on the 30th January, 1980, the first respondents, as it appears from the minutes of their meeting (Annex 13 to the opposition), after deliberations and discussions on each candidate, found that the applicant was in every respect superior to all other candidates and decided to promote him to the "said post".

The relevant extract from the minutes of the meeting of the first respondents of the 30th January, 1980, reads as follows:-

“ Έν κατακλείδι, ή Έπιτροπή Δημοσίας Ύπηρεσίας, άφοϋ έξήτασε και συνέκρινε τήν άξία, τά προσόντα, τήν πείραν και τήν σταδιοδρομία, των ύποψηφίων καθώς και τήν άρχαιότητα των ύποψηφίων δημοσίων ύπαλλήλων, βάσει των αίτήσεων (μετά των δικαιολογητικών), των Προσωπικών Φακέλων και των Έμπιστευτικών Έκθέσεων περι των ύποψηφίων δημοσίων ύπαλλήλων, και άφοϋ έλαβε ώσαύτως ύπ' όψιν τήν άπόδοσιν όλων των ύποψηφίων κατά τάς χωριστάς συνεντεύξεις των μετά τής Έπιτροπής, έκρινεν ότι ό κ. Φοΐβος ΖΑΧΑΡΙΑΔΗΣ ύπερτερεί έν τώ συνόλω των ύπολοίπων ύποψηφίων, εύρε τοϋτον ώς τον πλέον κατάλληλον και άπεφάσισε νά προαγάγη αυτόν εις τήν θέσιν του Γενικού Διευθυντου του Ύπουργείου Έσωτερικών άπό τής 15.2.80”.

(“In conclusion, the Public Service Commission, having considered and compared, the merits, qualifications, experience and service of the candidates as well as the seniority of the candidates who are public officers, on the basis of the applications (with the justifications) the personal files and the confidential reports on the candidates who are public officers and having also taken into consi-

deration the performance of all candidates during their personal interview with the Commission has found that Mr. Phivos ZACHARIADES was as a whole superior to all the other candidates found him to be the most suitable and decided to promote him to the post of Director-General Ministry of Interior as from 15.2.80").

On the 31st January, 1980, the Minister of Interior wrote a letter to the Chairman of the first respondents and informed him that he was withdrawing the request for the filling of the "said post", giving as a reason for doing so a study that was being carried out for the re-organization of his Ministry. In view of this letter (which is Annex 14 to the opposition), the first respondents met on the 2nd February, 1980, and decided to revoke their decision which had not, in the meantime, been communicated to the applicant (see Annex 16 to the opposition).

On the 25th February, 1980, all candidates interviewed for the "said post" were, by letter (Annex 17 to the opposition), informed by the first respondents that the post was not to be filled as a result of a request by the appropriate authority which was studying schemes for the re-organization of the Ministry.

On the 6th March, 1980, counsel for the applicant wrote the following letter to the Chairman of the first respondents:

"Κύριοι,

Ο πελάτης μας κ. Φοῖβος Β. Ζαχαριάδης (Έπαρχος Πάφου) ὁ ὁποῖος ἔχει ὑποβάλει αίτηση γιά τή θέση τοῦ Γενικοῦ Διευθυντῆ στοῦ Ὑπουργεῖο Ἐσωτερικῶν, μᾶς ἔδωσε ἐντολή ν' ἀπαντήσουμε στήν ἐπιστολή σας ἡμερομηνίας 25 Φεβρουαρίου, 1980.

Γιά νά μπορέσουμε νά συμβουλευσομε τόν πελάτη μας γιά τὰ διαβήματα πού δικαιούται νά λάβει, θά σᾶς παρακαλέσομε νά μᾶς δώσετε τίς ἀκόλουθες ἐπεξηγηματικές πληροφορίες:-

- (1) Πότε καί πῶς ἡ 'ἀρμοδία Ἀρχή' σᾶς ἔχει πληροφορήσει ὅτι μελετᾶ σχέδιο γιά νέα διάθρωση τοῦ Ὑπουργεῖο Ἐσωτερικῶν.
- (2) Ποιά εἶναι στήν προκειμένη περίπτωση ἡ 'ἀρμοδία Ἀρχή'.
- (3) Κατά πόσο τὰ σχέδια πού μελετοῦνται προβλέπουν

κατάργηση τῆς θέσης τοῦ Γενικοῦ Διευθυντῆ τοῦ Ὑπουργείου Ἐσωτερικῶν.

- (4) Κατὰ πόσο ἔχετε ἔγκυρη καὶ θετικὴ πληροφορία ὅτι τὸ Ὑπουργικὸ Συμβούλιο σὰν τὸ μόνο ἀρμόδιο σῶμα πράγματι μελετᾷ ἀναδιάρθρωση τοῦ Ὑπουργείου Ἐσωτερικῶν. 5

Ὅπως θ' ἀντιλαμβάνεσθε, οἱ πληροφορίες ποὺ ζητοῦμε θὰ μᾶς βοηθήσουν νὰ συμβουλευθῶμε τὸν πελάτη μας κατὰ πόσο θὰ πρέπει νὰ καταχωρηθεῖ προσφυγὴ στὸ Ἀνώτατο Δικαστήριον σύμφωνα μὲ τὸ ἄρθρο 146 τοῦ Συντάγματος γιὰ τὴν παράλειψη τῆς Ἐπιτροπῆς σας νὰ προβεῖ στὸ σχετικὸ διορισμὸ ἐφόσον μάλιστα, ὅπως ἔχει περιέλθει σὲ γνώση μας, μετὰ τὶς συνεντεύξεις τῆς μὲ τοὺς διαφόρους ὑποψηφίους ἢ Ἐπιτροπῆς σας πῆρε τὴν ἀπόφαση νὰ διορίσει τὸν πελάτη μας στὴν πιὸ πάνω θέση. 10 15

Βέβαια, δὲν χρειάζεται νὰ σᾶς ὑπευθυμίσουμε τὶς πρόνοιες τοῦ ἄρθρου 29 τοῦ Συντάγματος σχετικά μὲ τὰ χρονικὰ ὅρια μέσα στὰ ὁποῖα θὰ πρέπει νὰ μᾶς ἀπαντήσετε.

Διατελοῦμε μετὰ τιμῆς
Π. Λ. ΚΑΚΟΓΙΑΝΝΗΣ & ΣΙΑ". 20

("Gentlemen,

Our client Mr. Phivos B. Zachariades (District Officer Paphos) who has submitted an application for the post of Director-General, Ministry of Interior, has instructed us to reply to your letter dated 25th February, 1980. 25

In order to be able to advise our client on the steps he is entitled to take, we would request you to give us the following explanatory information:-

- (1) When and how the 'appropriate authority' has informed you that it is studying a scheme for the re-organization of the Ministry of Interior. 30
- (2) Which is in the present case the 'appropriate authority'.
- (3) Whether the schemes under consideration provide for the abolition of the post of Director-General of the Ministry of Interior. 35
- (4) Whether you have valid and positive information

that the Council of Ministers as the only appropriate body is in fact studying the re-organization of the Ministry of Interior.

5 As you understand, the information we are asking will help us advise our client whether he should file a recourse to the Supreme Court in accordance with Article 146 of the Constitution for the omission of your Commission to proceed with the said appointment since, as has come to our knowledge, after the interviews with the various candidates your Commission has decided to appoint our client to the above post.

10 Of course there is no need to remind you of the provision of Article 29 of the Constitution regarding the time limit within which you must reply.

15 Yours sincerely
P. L. Cacoyannis & Co.").

The reply of the first respondents to counsel's letter, which gave rise to these proceedings, is the following:-

20 "Έχω οδηγίες να αναφερθώ στην έπιστολή σας με αριθμό Γ.14/80, σχετικά με την κενή θέση Γενικού Διευθυντή του Υπουργείου Έσωτερικών, και να σας δώσω τις ακόλουθες πληροφορίες:

25 (α) Στις 31.1.80 ή άρμοδίη άρχή με έπιστολή της ζήτησε από την Έπιτροπή Δημοσίας Υπηρεσίας να μην προχωρήσει επί του παρόντος στην πλήρωση της θέσεως, γιατί βρίσκονται υπό μελέτη σχέδια για νέα διάρθρωση του Υπουργείου.

(β) Άρμόδια άρχή είναι ο Υπουργός Έσωτερικών.

30 (γ) Στις έρωτήσεις στις παραγράφους (3) και (4) της έπιστολής σας ή Έπιτροπή Δημοσίας Υπηρεσίας είναι άναρμόδια να άπαντήσει.

Με έκτίμηση,
Γιά Πρόεδρο
Έπιτροπής Δημοσίας Υπηρεσίας".

35 ("I am directed to refer to your letter C. 14/80 regarding the vacant post of Director-General, Ministry of Interior, and to give you the following information:-

- (a) On 31.1.80 the appropriate authority has by letter asked the Public Service Commission not to proceed for the time being with the filling of the post, because schemes for the re-organization of the Ministry are under consideration. 5
- (b) The appropriate authority is the Minister of Interior.
- (c) The Public Service Commission is incompetent to reply to the questions in paragraphs (3) and (4) of your letter.

With respect. 10
For Chairman
Public Service Commission”).

As I understand the complaints of the applicant in this recourse, they are the following: —Whether—

- (1) the first respondents, having reached their decision to fill in the said vacant post, were entitled to revoke it; 15
- (2) the Minister of Interior is the appropriate authority in matters relating to the appointment of the Director-General of his Ministry; and
- (3) the first respondents, once they had reached their decision, were bound to perfect and/or complete the promotion 20

Before proceeding, however, to deal with the above issues, I feel that I must examine which is the Body that decided to submit the request to the first respondents for the filling of the said post and who in fact did submit such a request. After carefully reading and comparing the contents of Annexes 1 and 2 to the opposition, which are appended herewith, I find that the decision was taken by the Council of Ministers; that after this decision was taken, the Council of Ministers, acting through their Secretary, submitted the request to the first respondents, and that the Minister was only authorised to see that this decision was to be put into effect the soonest possible. 25 30

Having considered the facts of this case, I find that the first issue that has to be decided is whether the applicant, as a result of the decision of the first respondents to promote him to the post of Director-General of the Ministry of Interior, has 35

acquired a legitimate interest and, thus, is entitled to judicial redress.

As I have earlier mentioned, the "said post" is a first entry and promotion post and the matter is governed, therefore,
5 by the provisions of sections 37 and 44 of the aforesaid law, Law 33/67, which read:-

S.37--"(1) A permanent appointment shall be effected by a written offer made by the Commission to the person selected for appointment and accepted by him in writing.

10 (2) The offer shall state the remuneration offered and the other terms and conditions of service attached to the office to which appointment is offered.

15 (3) When the person selected has signified his acceptance of the offer made to him and the report of the Government Medical Officer who has examined him is satisfactory, the Commission shall inform the person selected in writing that he has been appointed and specify the date from which his appointment takes effect.

20 (4) A permanent appointment shall be published in the official Gazette of the Republic as soon as possible after it has taken effect.

25 (5) Save with the prior approval of the Council of Ministers, no person shall be appointed to, or serve in, an office in a Department where his spouse, child, brother or sister is serving".

S.44--"(1) No officer shall be promoted to another office, unless—

(a) a vacancy exists in that office:

30 Provided that in the case of offices with a combined establishment, promotion from the lower to the higher office or grade of that office may be made irrespectively of whether there is a vacancy in the higher office or grade or not, and in accordance with any general directions given by the Council of Ministers in this respect;

35 (b) he possesses the qualifications laid down in the schemes of service for that office;

- (c) he has not been reported upon in the last two annual confidential reports as unsuitable for promotion;
- (d) he has not been punished during the preceding two years for any disciplinary offence of a serious nature.

(2) The claims of officers to promotion shall be considered on the basis of merit, qualifications and seniority. 5

(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 Department in which the vacancy exists. 10

(4) When an officer is promoted to an office in which he has been acting, his promotion may take effect from the date on which the vacancy occurred or the date from which he was appointed to act, whichever is the later.

(5) 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. 15

(6) Promotions shall be published in the official Gazette of the Republic. 20

(7) For the purposes of this section 'offices with a combined establishment' mean two or more separate offices or two or more grades of the same office which have a common establishment". 25

Counsel for the applicant argued that once the Public Service Commission had decided to promote the applicant to the "said post", they were under a duty to proceed and perfect and/or complete it. The question whether the Public Service Commission is under a duty to fill a vacant post existing in the Public Service was answered in the case of *Contopoulos v. The Republic*, 1964 C.L.R. p. 347, in which Triantafyllides J., as he then was, in delivering the unanimous judgment of the Full Bench of this Court, said at pp. 351-352:- 30

"In the opinion of the Court the duties of the Public Service Commission under Article 125 are limited to matters con- 35

cerning the officers and not the offices involved (vide Papatrou and the Republic, 2 R.S.C.C. p. 61 at p. 66). It is not for the Public Service Commission, therefore, to decide when a vacancy is to be filled by way of promotion as this matter lies within the competence of the Executive Branch of the Government. It is only when such a vacancy is to be filled that the Commission has exclusive competence to decide on who is to be promoted or appointed to the post in question.

In the present case, therefore, the Commission quite properly took into account the request of the Ministry of Interior not to fill the vacancies in the post of Land Officer pending the re-organization of the Department concerned".

Stasinopoulos, in his book "Mathimata Diikitikou Dikeou, 1957 ed. p. 311, expresses his opinion on the matter as follows:-

"Ο διορισμός υπαλλήλου κατατάσσεται, κατά τους γενικούς κανόνες του δικαίου των διοικητικών πράξεων, εις την κατηγορίαν των πράξεων διακριτικής έξουσίας. Η δημοσία άρχή εν γένει δέν έχει υποχρέωσιν ίνα πληρώση μίαν κενωθεΐσαν θέσιν, αλλά κέκτηται διακριτικήν έξουσίαν ίνα άποφασίση, έάν θά προέλθη η ού εις την πλήρωσιν αύτης, ώς και να κρίνη πότε θά έπιστῆ ό εϋθετος χρόνος διά την πλήρωσιν ταύτην. Ένεκα τούτου, λέγομεν ότι, κατά γενικών κανόνα, ό διορισμός δέν είναι υποχρέωσις τῆς Διοικήσεως, έν περιπτώσει δέ καθ' ην ή Διοίκησις άρνεΐται να πληρώση μίαν θέσιν, δέν είναι δυνατόν να θεωρηθῆ ότι παραλείπει όφειλομένην ένεργειαν".

("The appointment of an employee is classified, according to the general principles of the law of administrative acts, in the category of acts of discretionary power. The public authority in general has no obligation to fill a vacant post, but has a discretionary power to decide, whether to proceed or not with its filling, and also to Judge when the proper time for its filling will come. Because of this, we say that, as a general rule, the appointment is not an obligation of the administration, and in case the administration refuses to fill a post, it is not

possible to consider that it omits to do an act which ought to be done”).

The question as to when a promotion or appointment is effected, i.e. when the lawful existence of an administrative act commences, is dealt with in the case of *Panayides v. The Republic*, (1972) 3 C.L.R. 467. A. Loizou J. in his judgment in that case had this to say at p. 480:— 5

“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. 10 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 15 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”.

And at p. 482:—

“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 25 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 30 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 35 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 admi-

nistrative act, it cannot be freely revoked thereafter. Whereas before the administration can freely amend or abandon, the intended but never completed administrative act”.

- 5 It is clear from the above quoted authority and sections 37(1) and (2) and 44(5) that unless a promotion is perfected or completed by offer and acceptance, the first respondents can freely revoke the “intended but never completed administrative act”. This view was also held by the Full Bench of this Court in the
10 case of *Panayides v. The Republic*, (1973) 3 C.L.R. 378 at p. 383, and *Geodelekian v. The Republic*, (1970) 3 C.L.R. 64 at p. 68.

- In the present case, the first respondents revoked their decision before it was perfected and I, therefore, find that the appli-
15 cant has not acquired a legitimate interest and is not entitled to judicial redress.

In view of the above, I find it unnecessary to deal with the other issues arising in this case.

- The application is hereby dismissed with costs in favour of
20 the respondents, if claimed.

Application dismissed with costs.

“ΠΑΡΑΡΤΗΜΑ 1

ΑΝΤΙΓΡΑΦΟΝ

- 25 ‘Απόσπασμα εκ τῶν Πρακτικῶν τῆς Συνεδρίας τοῦ Ὑπουργικοῦ Συμβουλίου Ἡμερομηνίας 26.10.78

Παράτασις τῶν ὑπηρεσιῶν τοῦ κ. Α.Κ. Ἀναστασίου, Γενικοῦ Διευθυντοῦ Ὑπουργείου Ἐσωτερικῶν

‘Απόφασις ὑπ’ (Πρότασις ὑπ. ἀρ. 855/78)

‘Αρ. 17.354 14. Τὸ Συμβούλιον ἀπεφάσισεν—

- 30 α) ἀναφορικῶς πρὸς τὴν Ἀπόφασιν ὑπ’ Ἀρ. 16.225, ὅπως ἐπιτρέψη, πρὸς τὸ δημόσιον συμφέρον, δυνάμει τοῦ ἔδαφίου (4) τοῦ ἀρθροῦ 8 τοῦ περὶ Συντάξεων Νόμου, Κεφ. 311 καὶ Νόμων 17 τοῦ 1960Α, 9 καὶ 18 τοῦ 1967, 51 καὶ 119 τοῦ 1968, 9 τοῦ 1971, 65 τοῦ 1973 καὶ 42
35 τοῦ 1976, εἰς τὸν κ. Α.Κ. Ἀναστασίου, Γενικὸν Διευ-

θυστήν τοῦ Ὑπουργείου Ἐσωτερικῶν, νὰ παραμείνῃ εἰς τὴν ὑπηρεσίαν διὰ μικρὰν εἰσέτι περίοδον, ἤτοι μέχρι τῆς 24ης Μαρτίου, 1979· καὶ

- β) ἔξουσιοδότηση τὸν Ὑπουργὸν Ἐσωτερικῶν νὰ προβῇ ἐν συνεννοήσει μετὰ τῆς Ἐπιτροπῆς Δημοσίας Ὑπηρεσίας, εἰς τὰ δέοντα διὰ τὴν πλήρωσιν τῆς θέσεως Γενικοῦ Διευθυντοῦ Ὑπουργείου Ἐσωτερικῶν, τὸ ταχύτερον δυνατὸν. 5

Πρόεδρον

Ἐπιτροπῆς Δημοσίας Ὑπηρεσίας, 10

Ἡ ὑπερθεν Ἀπόφασις, ὁμοῦ μετὰ τῆς Προτάσεως ὑπ. Ἐρ. 855/78, διαβιβάζεται πρὸς ἀπὸ κοινοῦ συνεργασίαν μετὰ τοῦ Γ.Δ., Ὑπουργείου Ἐσωτερικῶν, πρὸς τὸν ὁποῖον ἀπεστάλη ἀντίγραφον τῆς ὡς ἄνω Ἀποφάσεως, ἀναφορικῶς πρὸς τὴν ὑποπράγραφον (β) αὐτῆς. 15

(Ὑπ.) Κ. Κλεάνθους

Γραμματεὺς

Ὑπουργικοῦ Συμβουλίου

4η Νοεμβρίου, 1978.

(Κν.: Γ.Δ., Ὑπουργείου Οἰκονομικῶν).” 20

“(APPENDIX I

COPY

Extract from the Minutes of the meeting of the Council of Ministers dated 26.10.78.

Extension of the services of Mr. A.K. Anastassiou, Director-General of the Ministry of Interior. 25

(Submission No. 855/78)

Decision

No. 17.354

14. The Council decided— 30

- (a) With reference to Decision No. 16.225, to allow, in the public interest, in accordance with sub-section (4) of section 8 of the Pensions Law, Cap. 311 and Laws 17 of 1960A, 9 and 18 of 1967, 51 and 119 of 1968, 9 of 1971, 65 of 1973 and 42 of 1976, Mr. A.K. Anastassiou, Director-General, Ministry of 35

Interior, to remain in the service for a still short period, i.e. until the 24th March, 1979; and

- 5 (b) authorize the Minister of Interior to proceed, in concert with the Public Service Commission, with the necessary arrangements for the filling of the Post of Director-General, Ministry of Interior, the soonest possible.

Chairman,
Public Service Commission,

- 10 The above Decision, together with submission No. 855/75, is transmitted for co-operation with the D.G., Ministry of Interior to whom copy of the above Decision was sent, with regard to sub-paragraph (b) thereof.

- 15 (Sgd) C. Cleanthous
Secretary
Council of Ministers.

4th November, 1978.

(Copy to: D.-G., Ministry of Finance))”.

“ΑΝΤΙΓΡΑΦΟΝ

- 20 ΠΡΟΤΑΣΙΣ ΠΡΟΣ ΤΟ ΥΠΟΥΡΓΙΚΟΝ ΣΥΜΒΟΥΛΙΟΝ

Παράτασις τῶν ὑπηρεσιῶν τοῦ κ. Α.Κ. Ἀναστασίου,
Γενικοῦ Διευθυντοῦ Ὑπουργείου Ἐσωτερικῶν

- 25 Τὸ Ὑπουργικὸν Συμβούλιον διὰ τῆς ἀποφάσεώς του ὑπ’ ἀρ. 16225 τῆς 27ης Σεπτεμβρίου, 1977, ἀπεφάσισεν ὅπως, πρὸς τὸ δημόσιον συμφέρον, παρατείνῃ τὰς ὑπηρεσίας τοῦ κ. Α.Κ. Ἀναστασίου, Γενικοῦ Διευθυντοῦ τοῦ Ὑπουργείου Ἐσωτερικῶν, μέχρι τῆς 31ης Δεκεμβρίου, 1978.

- 30 2. Ἐπειδὴ οἱ λόγοι διὰ τοὺς ὁποίους ἐλήφθη ἡ ὡς ἄνω ἀπόφασις ἐξακολουθοῦν νὰ ὑφίστανται, ἦτοι ἡ ἀναδιοργάνωσις τοῦ Ὑπουργείου Ἀμύνης καὶ ἡ ὑπεύθυνος διαχείρησις τῶν ἠϋξημένων εὐθυνῶν τοῦ Ὑπουργείου Ἐσωτερικῶν, τὸ Ὑπουργεῖον Ἐσωτερικῶν θεωρεῖ ἀναγκαίαν τὴν περαιτέρω παράτασιν τῶν ὑπηρεσιῶν τοῦ κ. Ἀναστασίου διὰ μικρὰν περίοδον ἦτοι μέχρι τῆς 24.3.1979 διὰ νὰ δοθῇ ἡ εὐκαιρία εἰς τὴν Ἐπιτροπὴν Δημοσίας Ὑπηρεσίας νὰ προβῇ εἰς τὸν διορισμὸν καταλλήλου διαδόχου του ἀπὸ τῆς 35 1ης Ἰανουαρίου, 1979. Ἀπὸ τῆς 1.1.79 ὁ κ. Ἀναστασίου θὰ εἶναι ἐπ’ ἀδεία πρὸ τῆς ἀφυπηρετήσεώς του μέχρι τῆς 24.3.79.

3. 'Ο Υπουργός Έσωτερικών, ό όποϊός θά είσαγάγη τό θέμα, θά είσηγηθῆ όπως αί ύπηρεσίαι του κ. 'Αναστασίου παραταθοῦν, πρός τό δημόσιον συμφέρον, μέχρι τῆς 24.3.1979 και όπως δοθῆ έγκρισις διά τήν πλήρωσιν τῆς θέσεως.

ΥΠΟΥΡΓΕΙΟΝ ΕΣΩΤΕΡΙΚΩΝ
ΛΕΥΚΩΣΙΑ

5

(Y.E. Π. 11)

20 'Οκτωβρίου, 1978".

“(SUBMISSION TO THE COUNCIL OF MINISTERS

Extension of the services of Mr. A.K. Anastassiou,
Director-General, Ministry of Interior.

10

The Council of Ministers by its decision No. 16225 of the 27th September, 1977, decided that, in the public interest, the services of Mr. A.K. Anastassiou, Director-General of the Ministry of Interior be extended up to the 31st December, 1978.

15

2. Because the reasons for which the above decision was taken continue to exist, i.e. the reorganization of the Ministry of Defence and the reliable administration of the increasing responsibilities of the Ministry of Interior, the Ministry of Interior considers expedient the further extension of the services of Mr. Anastassiou for a short period i.e. until 24.3.1979, in order to give the chance to the Public Service Commission to proceed with the appointment of suitable successor as from 1st January, 1979. As from 1.1.1979 Mr. Anastassiou will be on leave prior to retirement until the 24.3.79.

20

25

3. The Minister of Interior, who will propose the subject, will submit that the services of Mr. A.K. Anastassiou, be extended, in the public interest, until 24.3.79 and that approval be given for the filling of the post.

30

Ministry of Interior
Nicosia

(Y.E.II.11)

20th October, 1978").

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“ΠΑΡΑΡΤΗΜΑ 2

ΑΝΤΙΓΡΑΦΟΝ

‘Αρ. Φακ. Υ.Ε. 290/60/5

ΥΠΟΥΡΓΕΙΟΝ ΕΣΩΤΕΡΙΚΩΝ

ΛΕΥΚΩΣΙΑ

5

8 Νοεμβρίου, 1978

Πρόεδρον ‘Επιτροπῆς
Δημοσίας ‘Υπηρεσίας,

10 ‘Ενετάλην ὅπως ἀναφερθῶ εἰς τὴν ἀπόφασιν τοῦ ‘Υπουργικοῦ Συμβουλίου ὑπ. ἀρ. 17.354 τῆς 26ης ‘Οκτωβρίου, 1978, ἣτις ἐκοινοποιήθη εἰς ὑμᾶς, ἐπὶ τοῦ θέματος τῆς πληρώσεως τῆς θέσεως τοῦ Γενικοῦ Διευθυντοῦ τοῦ ‘Υπουργείου ‘Εσωτερικῶν, καὶ νὰ πληροφορήσω ὑμᾶς ὡς ἀκολούθως:—

2. ‘Ο κ. ‘Α. ‘Αναστασίου, Γενικὸς Διευθυντὴς τοῦ ‘Υπουργείου ‘Εσωτερικῶν, θὰ ἐξακολουθήσῃ νὰ ἐκτελῇ τὰ καθήκοντα τῆς θέσεώς
15 του μέχρι τῆς 31ης Δεκεμβρίου 1978. ‘Απὸ τῆς 1ης ‘Ιανουαρίου 1979, οὗτος θὰ διατελῇ ἐπ’ ἀδεία μέχρι τῆς 24ης Μαρτίου, 1979, ὅτε ἀφυπηρετεῖ.

3. Λαμβανομένων ὑπ’ ὄψιν τῶν πολλαπλῶν εὐθυνῶν τῆς θέσεως τοῦ Γενικοῦ Διευθυντοῦ τοῦ ‘Υπουργείου ‘Εσωτερικῶν καθὼς
20 καὶ διὰ τὴν ὀμαλὴν καὶ ἀπρόσκοπτον λειτουργίαν τῶν ὑπηρεσιῶν τοῦ ‘Υπουργείου τούτου τὸ ἡμέτερον ‘Υπουργεῖον θεωρεῖ ἀναγκαῖον ὅπως ἡ θέσις τοῦ Γενικοῦ Διευθυντοῦ πληρωθῇ ἀπὸ τῆς 1ης ‘Ιανουαρίου 1979, ἡμερομηνίας καθ’ ἣν ἀρχίζει ἡ περίοδος ἀδείας τοῦ κ. ‘Αναστασίου.

25 4. Παρακαλεῖσθε ὅθεν ὅπως προβεῖτε εἰς τὰς σχετικὰς διευθετήσεις διὰ τὴν ἔγκαιρον δημοσίευσιν τῆς θέσεως οὕτως ὥστε νὰ καταστῇ δυνατὴ ἡ πλήρωσις της ἀπὸ τῆς 1.1.1979.

5. ‘Η πλήρωσις θέσεως κατὰ τὴν διάρκειαν τῆς περιόδου ἀπου-
30 πρίας τοῦ κατόχου αὐτῆς ἐπ’ ἀδεία πρὸ τῆς ἀφυπηρετήσεώς του προβλέπεται ὑπὸ τοῦ ἀρθροῦ 21 τοῦ περὶ ‘Ερμηνείας Νόμου, Κεφ. 1.

(‘Υπ.) Χρ. Μαμίδης
διὰ Γενικὸν Διευθυντὴν
‘Υπουργείου ‘Εσωτερικῶν

35 Κοιν.: Γενικὸν Διευθυντὴν
‘Υπουργείου Οἰκονομικῶν.”

("APPENDIX 2

No. M.I.290/60/5

COPY

MINISTRY OF INTERIOR

NICOSIA

8th November, 1978

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Chairman

Public Service Commission

I have been directed to refer to the Decision of the Council of Ministers No. 17.354 of the 26th October, 1978, which has been communicated to you, on the subject of the filling of the post of Director-General of the Ministry of Interior and to inform you as follows:-

2. Mr. A. Anastassiou, Director-General of the Ministry of Interior, will continue to perform the duties of his post until the 31st December, 1978. As from 1st January, 1979 he will be on leave until the 24th March, 1979, when he will retire.

3. Taking into consideration the multiple responsibilities of the post of Director-General of the Ministry of Interior and for the smooth and unobstructed functioning of the services of this Ministry, our Ministry considers it necessary that the post of Director-General be filled as from 1st January, 1979, the date on which the leave of absence of Mr. Anastassiou commences.

4. You are therefore requested to make the necessary arrangements for the advertisement of the vacancy in time, so that the filling of the post may be rendered possible as from the 1.1.1979.

5. The filling of a post during the absence on leave prior to retirement of its holder is provided for by section 21 of the Interpretation Law, Cap. 1.

(Sgd) Chr. Mammides
for Director-General
Ministry of Interior").