1979 June 9

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS PERISTIANIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTRY AND/OR THE MINISTER OF INTERIOR,

Respondents.

(*Case No.* 126/77).

Administrative Law—Administrative acts—Lawful administrative acts—Revocation—General principles applicable—Promotions in the Police Force—Suspension pending an inquiry into certain information against the applicants—Promotions have created rights—They were binding and they could not be cancelled nor revoked indefinitely—Because the indefinite revocation is tantamount to the cancellation of the act—Ioannou and Another *v.* Republic (1979) 3 *C.L.R.* 423 *adopted and applied.*

Police Force—Promotions—Revocation—Cancellation—General principles.

Administration of Justice—Hearing of cases—Delays—Adjournments.

By letter of the Director-General of the Ministry of Interior ("the Director-General") dated the 14th January, 1977, the applicant, a Chief Inspector of the Police, was informed that the Minister of Interior decided to offer him promotion to the post of Chief Superintendent B in the Police Force with effect from the 1st January, 1977. The applicant accepted the offer of promotion by a letter to the Director-General dated the 5th January, 1977. By letter dated 8th February, 1977 the Director-General informed the applicant that the Minister

of Interior suspended his promotion pending an inquiry regarding information which has been received against him in that Ministry. Hence this recourse.

Held, (1) that the administrative authorities ought not to revoke their lawful acts which have created rights for those serving in the Republic; that since the administrative act of promotion has created rights in the police hierarchy and since the promotion falls within the domain of public law, it cannot be cancelled nor be revoked indefinitely, because the indefinite revocation is tantamount to the cancellation and/or revocation of the act; that, therefore, this Court has come to the conclusion that the cancellation and/or revocation of the said promotion is contrary to the provisions of the Constitution, and the Law, and was made in excess or abuse of the power vested in the administrative organ; accordingly the *sub judice* decision must be annulled (reasoning in *Ioannou and Another* v. *Republic* (1979) 3 C.L.R. 423 adopted and applied).

Sub judice decision annulled.

Observations with regard to the delays and adjournments in the hearing of cases (*p.* 97 *post*).

Cases referred to:

Panayides v. *Republic* (1972) 3 C.L.R. 467;

Tzavelas and Another v. *Republic* (1975) 3 C.L.R. 490;

Ioannou and Another v. *Republic* (1979) 3 C.L.R. 423.

Recourse.

Recourse against the decision of the respondent suspending applicant's promotion to the rank of Chief Superintendent in the Police Force.

E. Efstathiou, for the applicant.

V. Aristodemou, Counsel of the Republic, for the respondent.

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment. In these proceedings, under Article 146 of the Constitution, the applicant

A. Peristianis of Nicosia, seeks a declaration that the decision of the respondent, Minister of Interior, communicated to him on 8th February, 1977, suspending his promotion to the rank of Chief Superintendent, is null and void and of no effect whatsoever.

The facts:

The applicant has joined the ranks of the Police Force on 4th September, 1944, and in March 1957 he was promoted to the rank of sergeant. On 16th August, 1960, he was again promoted to inspector and finally he was promoted to Chief Inspector in the year 1971. On 14th January, 1977, the Director General of the Ministry of Interior Mr. Anastasiou addressed a letter to the applicant informing him that the Minister of the Interior had decided to offer him promotion to the post of Chief Superintendent B in the Police Force as from 1st January, 1977. Finally the writer concluded his letter in these terms: "Please let me know as quickly as possible whether you would accept that offer".

On 5th January, 1977, the applicant in reply to that letter—having expressed his thanks for the offer made to him he accepted that offer. Then the applicant received a letter dated 8th February, 1977, by the same Director–General informing him that he was instructed by the Minister of the Interior to refer to his offer made to him on 4th January, 1977 and to inform him that the Minister suspended his promotion pending an inquiry regarding information which has been received against him in that Ministry. There is no doubt that the applicant felt aggrieved and in reply to that letter on 15th March, 1977, having expressed his disappointment and surprise that his promotion was suspended and he told the Minister that he was ready to place himself into the hands of any investigating officer to investigate his loyalty and in order to draw safe conclusions and to do justice to his case. As there was no reply by the Minister of the Interior the applicant feeling aggrieved filed the present recourse on 22nd April, 1977.

Counsel for the respondent in his opposition dated 22nd June, 1977, put forward that the applicant after the acceptance of the

offer for promotion to the post of Chief Superintendent B, information and/or facts came to the knowledge of the respondent Minister of the Interior regarding his loyalty and respect of the law and to the lawful authority of the Republic and that such information connected the applicant with the rebels.

Article 146 of the Constitution:

Time and again it is said that the Supreme Court of this land shall have exclusive jurisdiction to adjudicate finally on a recourse made to it or on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person. There is no doubt that this constitutional command gives a safeguard to all those persons who have a real grievance against abuses of powers vested in an organ or authority or person of the state.

Grounds of law of the applicant:

Counsel in support of the grounds of law relied on these legal points: (a) that the decision of the respondent was taken in excess or in abuse of powers vested in such organ; (b) that the decision of the respondent in suspending the promotion of the applicant is not duly reasoned; (c) that the decision of the respondent is contrary to the Police Law and/or to the regulations; and (d) that the decision attacked was based on the misconception of facts (πλάνη περί τὰ πράγματα); and that the decision attacked was based on a decision of an incompetent organ.

On the contrary counsel for the respondent relied on the following legal ground, viz., that the decision attacked was taken by the competent organ, the Minister of the Interior rightly and lawfully and in accordance with section 13 of the Police Law Cap. 285, and the well settled principles of the Administrative Law regarding suspension and/or revocation of administrative acts in the public interest, and within a reasonable time from the date it was taken.

I think that it is necessary to state before dealing with the submission of counsel that because of the nature of this case and or some other similar cases it was inevitable that counsel should seek a number of adjournments, and quite rightly counsel for the respondent was seeing the Minister of the Interior, with a view of finding a correct formula, in order to do justice to a number of applicants before this Court. In fact, on 11th December, 1978, Mr. Aristodemou was informing the Court that the decision of the appropriate authority was expected sometime in January and applied for the case to be fixed on 16th January, 1979 for further directions along with the rest of the other cases of similar nature in order to know the decision of the Minister of the Interior.

On the contrary, counsel who appeared on behalf of Mr. E. Efstathiou did not agree for further adjournments and applied for a date of hearing. The case was fixed for hearing on 9th March, 1979, but on that date, as the record reads, Mr. Aristodemou informed the Court and counsel for the applicant that they needed some more time to see the appropriate organs and to take a final decision on the matter, and had no alternative than to apply for an adjournment once again. In fact quite rightly he put forward that he already notified counsel for the other side in advance. Mr. Efstathiou having not objected to the adjournment, in view of the reasons given, the Court had no alternative, once it was to the interest of the applicant granted the adjournment, and fixed this case on 29th March, 1979. On that date Mr. Aristodemou, who apparently had no definite information as to the fate of this case, addressed the Court in these terms:-

> "I am speaking first because I propose requesting Your Honour, instead of appearing in Court to argue the case, to deliver our addresses in writing, once we have already completed two other cases of a similar nature, and my submission would be supported with authorities. If the other side agrees to this procedure it will save the time of the Court and everybody else's time".

Mr. Loizou on behalf of Mr. Efstathiou having agreed, the Court granted leave to counsel exceptionally because of the

nature of this case, to file their written addresses in Court by the 16th April, 1979. On that date both counsel filed their written addresses and judgment was reserved.

Pausing here for a moment, I would add, that all these adjournments were intended to be in the interest of all parties concerned. It is true of course, that there were delays, but the reason for such delays comes mostly from the parties and all their counsel appearing in these cases, who take the view, that it is to the benefit of their clients to try and reach an amicable solution to their problems. I am not saying of course that the Courts are not equally to be blamed for such delays, but again there is a tendency now by almost every section of our people to come before the Supreme Court, mainly to lodge their complaints against the organs of the State for acting in excess and/or in abuse of their powers, and inevitably, our Courts are flooded with cases. But it is fair to add that even the Courts in England, Germany, Italy and the rest of the European countries are also flooded by a lot of cases, and inevitably the same complaints are lodged by the litigants of those countries without finding so far an answer to this problem. In our country, particularly, I am afraid, these delays will continue unless we find a more flexible system, or introduce a similar system to that which was in force before the separation of our Courts.

With those observations in mind, I would add that the promotions of police officers are governed by the Police Law Cap. 285, as amended by various laws and particularly by Laws 19/60, 21/64 and 29/64. There is no doubt that the applicant is within the provisions of section 13(1) of Cap. 285 and to the Regulations governing promotions which are made in accordance with section 10 of the Law as well as the general Regulations which provide for disciplinary offences and the conduct of the members of the Police Force. The Regulations for disciplinary offences are in force and if in fact disciplinary offences have been committed by the present applicant, and it is for the appropriate authority to make it clear that there was such a violation, then the procedure laid down by the Law and the Regulations ought to have been followed by the administration and not to act contrary to these provisions.

Having considered very carefully the addresses of both counsel it is useful to add that on police matters the legislation follows by analogy the provisions of section 44(6) of the Public Service Law 33/67; and that is also useful to point out that section 13(1) of Cap. 285, as amended, is of a general nature.

With that in mind I have reached the view that when the Minister of the Interior decided to offer promotion to the applicant, and before the acceptance of the promotion by the applicant for the completion of the administrative act only then the agreement between the administration and the applicants could have been revoked. If any authority is needed the case of *Panayides* v. *The Republic through the Public Service Commission* (1972) 3 C.L.R. 467, in my opinion supports the above stand. But even the omission to publish in the Official Gazette is not an obstacle to the promotion once the legal effect of the promotion begins as from the date of its offer and its acceptance, therefore, it cannot be freely revoked. See also *Tzavelas and another* v. *The Republic* (1975) 3 C.L.R. 490.

In view of the fact that when I had delivered the case of *Ioannou and another* v. *The Republic* (1979) 3 C.L.R. 423, all counsel appearing in the present case made it clear to me that they would adopt and apply the reasoning of that case, once the present case deals almost with the same problems raised earlier, I have decided to adopt, as indeed I have been asked to earlier, my own judgment where I had this to say at pp. 455, 457, 458 and 459:-

> "There is no doubt that the administrative authorities generally cannot revoke their lawful acts from which there emanated vested rights of civil servants or members of the police force. Furthermore it is equally right to emphasize that an act of the administration cannot be revoked indefinitely if this amounts to the annulment of the act.
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> The grounds of public interest invoked by the Minister of the Interior cannot stand, once the promotions were lawful according, also, to certain authorities cited by counsel. It is also unthinkable to say that the adminis-

tration could revert after the promotions, because new information has been received and to justify itself by saying: 'Our decision to promote you to the post which you are holding today was wrong and we take this stand because it is in the public interest that you should not have been in the post that you are holding'.

It is also indicative that the acts of retrospective revocation of lawful administrative acts show that they are only acts which continue from day to day and in my opinion then the administration can interfere. Particularly with regard to promotions it is implied and the authorities support this principle, that the holder of the post will continue to hold it until he is promoted again or leaves the service or is dismissed from the service or for other reasons. On this subject see Supplement of Case Law 1969–1971, paragraph 421 at p. 190. And for misconception of fact see paragraphs 433, 434, 435, 437, 498 and 39. See also manual of Administrative Law, 1977 edition at p. 168, paragraph 174, under the heading 'Repeal and revocation of the administrative act'. See also page 170, para. 176.

It was further stated that the administration should in principle have in its possession sufficient material against the applicants in order to revoke the administrative act and in order to be able to invoke the public interest. I have no doubt in this connection that the administration should have had such information as would have warranted a decision, and not to have revoked the decision taken by it for the purpose of making inquiries, in order to find out whether there is sufficient information for its revocation subsequently. This stand in consonant with the English authorities. It was, also said earlier that if they accepted that the applicants committed offences of a disciplinary nature, then the procedure laid down for disciplinary offences ought to have been put into effect, so that the applicants would have been able to defend themselves.

The question remains whether the administration acted properly in accordance, also, with the principles of natural justice.

In the case of *Ridge* v. *Baldwin and Others* [1963] 2 W.L.R. 935, the question arose whether the dismissal of a police constable was made contrary to the principles of natural justice i.e. without giving him the opportunity of answering the charges preferred against him. Lord Reid in delivering his judgment held that the rules of natural justice have been violated.

The position of the applicants was, and still is, that the Ministry failed to carry out a due inquiry earlier and before the revocation of the promotion of the applicants with a view of collecting all the material in relation to the two cases. Counsel for the Republic Mr. Aristodemou in addressing the Court on this issue, rightly in my opinion argued that if the Court was persuaded that no due inquiry has been carried out then admittedly the administration has exercised its discretionary powers upon wrong legal criteria and the decision has been taken in excess of power. See *Athos Georghiades* v. *The Republic* (1967) 3 C.L.R. 653 at p. 669, *Ioannides Constantinos* v. *The Republic* (1972) 3 C.L.R. 318 at p. 326 and *Michael Zenieris* v. *The Republic* (1975) 3 C.L.R. 224. It was further emphasized by counsel that the revocation of the promotions was made without setting any time limit and consequently the administration was wrong, because the administrative act is equivalent to the revocation of the promotions. In support of this view see Decisions of the Council of State Nos. 3030/66, 801/69, 2879/69, 1716/70, which support the stand and the legal view of counsel for the Republic.

Furthermore both counsel of the applicants and counsel of the Republic argued that, even if the administration possessed material warranting disciplinary proceedings against the two applicants—which the first applicant had requested from the Minister of the Interior—then again the administration has failed according to the principles of natural justice, to put before the applicants the information which it had in order to give them the opportunity of answering and duly face the charges against them. See *Peristeronopighi Transport Co. Ltd.* v. *The Republic* (1967) 3 C.L.R. p. 451, *HadjiPetris* v. *The Republic* (1968) 3

C.L.R. 702, *Psaltis* v. *Republic* (1971) 3 C.L.R. 372 at p. 378 as well as decisions of the English Courts which I have mentioned earlier.

I am of the opinion that there is no doubt that the principles governing the legal position that once the administrative acts have created rights in the hierarchy of the Police Force and once I accept that promotions are within the realm of public law they cannot be concelled nor revoked indefinitely, as was done in the present recourses, because the indefinite revecation is tantamount to the cancellation of the act and/or its revocation.

I repeat that the administrative authorities, should not revoke their lawful acts by which rights have been created in favour of persons serving in the Republic of Cyprus. I am positive that the administration is aware that, during the present critical times the Republic of Cyprus is facing, the legality of administrative acts is consistent with a state which supports the rule of law and a state which does justice to all its citizens and creates a feeling of security and confidence. But whenever the act issued was issued lawfully, as in the present applications, it is obligatory on the public authority, once it is bound by the law to issue it, and because the promotions of the applicants have been made after the Minister of Interior has taken into consideration the merits of each candidate. I would further like to add that once rights have emanated by the act of promotions the authority cannot revoke the promotions.

It is useful to add that illegal administrative acts should be revoked unless a long time has elapsed from their issue. In any case I fully adopt the views of Proffessor Parahatzis[1] in the light of the circumstances of the present case.

For all the aforementioned reasons I came to the conclusion that the cancellation or revocation of the promotions to the rank of Chief Superintendent and Superintendent B' is contrary to the provisions of the Constitution and the law, and was made in excess or abuse of the power

1. Professor Papahatzis "Studies on Administrative Disputes" 4th Ed. 1961, at p. 406.

vested in the administrative organ. Therefore both recourses succeed, and I declare the decision or the act void as a whole and of no legal effect whatsoever and that whatever has been omitted should have been performed. Because applicants did not ask for costs, I do not intend to make an order as to costs".

For the reasons I have given and in the light of my judgment which I have adopted and followed, I repeat, I came to the conclusion that the cancellation or revocation of the promotion of the applicant to the rank of Chief Superintendent B' is contrary to the provisions of the Constitution and the law and was made in excess or abuse of the power vested in the administrative organ.

Recourse succeeds once the decision or the act is void as a whole and is of no legal effect whatsoever.

Sub judice decision annulled.
No order as to costs.