

1983 August 4

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS GEORGHIOU AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE PUBLIC SERVICE COMMISSION,
2. THE MINISTER OF FINANCE,

Respondents.

(Case No. 405/80).

Public Officers—Relationship between the State not a contractual one but a relationship of public law—Appointment to a post not a contractual act but an administrative act—Conditions attached thereto can be changed.

5 *Administrative acts or decisions—Unlawful administrative act—*
Revocation—Principles applicable—Revocation has to be effected
within reasonable time—What is “reasonable” a matter for
the Court to decide—Determination of salary of Public Officers
10 *by the Public Service Commission—Illegal because by virtue*
of section 7 of the Public Service (Increase of Salaries and Re-
structuring of Salary Scales and Certain Offices) Law, 1979
(Law 58/79) it had to be determined by the Minister of Finance
—Being illegal it could be revoked within reasonable time.

15 *Public Officers—Salaries—Determination—Section 7 of the Public*
Service (Increase of Salaries and Restructuring of Salary Scales
and Certain Offices) Law, 1979 (Law 58/79).

The applicants were, on the 2nd April, 1980, offered by the
respondent Commission appointment to the post of Customs
and Excise Officer, 2nd Grade on salary scale £1,860-96-2820
20 (Salary Scale A6). The applicants accepted the above offers
of appointment and started working at their new posts on 15.4.

1980. On 25.4.1980 the Commission addressed a letter to the Director-General Ministry of Finance requesting him to take the necessary steps for the fixing of the salary of the applicants in accordance with section 2(c)* of Part B of the Schedule to the Public Service (Increase of Salaries and Restructuring of Salary Scales and Certain Offices) Law, 1979, (Law No. 58/79), because it has been ascertained that there are officers serving to the post of Customs and Excise Officer, 2nd Grade, whose salary in their final scale is at a point of its downwards extension. 5

The Ministry of Finance acting in pursuance of the above section 2(c), decided that the applicants must be placed from the date of their appointment at the point of £1668, which is a downwards extension of scale A6 and applicants were informed of this decision by a letter of the Commission dated 27.8.1980. Hence this recourse. 10 15

Counsel for the applicants mainly contended:

- (a) That the offer of appointment and its acceptance by the applicants constituted an administrative contract, subject to the conditions as to salary, etc. as stated therein; and that such condition, cannot be changed, because the applicants have acted on the basis of such offer which they accepted and have acquired a right to receive that salary and any interference with such right will be detrimental to them and was illegal. 20
- (b) That the sub judice decision constituted an indirect revocation of part of the act of appointment of the applicants which was not permitted since the act of appointment has produced results the changing of which caused damage to the applicants; and that the reasonable time within which the decision as to the salary of the applicants could be revoked, has come to an end with the payment to them of their first salary and the decision could not be revoked thereafter. 25 30

Held, (1) that the relationship between the State and its officers, is not contractual but it constitutes a relationship of public law; that, therefore, the appointment of the applicants was not a contractual act but an administrative act; and that, accord- 35

* Section 2(c) s quoted at p. 838 post.

ingly, the conditions attached thereto could be changed; accordingly contention (a) should fail.

5 (2) That since by virtue of section 7 of Law 58/79 the salary of the applicants on their appointment should have been determined only by the Minister of Finance the determination of their salary by the respondent Commission was made contrary to the provisions of such Law and is therefore illegal; that, further, even if one takes the view that since the fixing of the salary was depending on factual considerations, that is whether there
10 existed in fact any other officers on the downwards extension of the scale, then, again, the act is considered to be illegal as based on a misconception of fact.

15 (3) That the revocation of an unlawful administrative act is a course lawfully open to the administration it is based on the notion of the preservation of legality and has to be effected within a reasonable period of time; that the question whether or not the time which has elapsed is reasonable, is a matter for the Court to decide; that bearing in mind that the mistake was discovered after the payment of the first salary of the
20 applicants and that the respondent Commission applied as early as the 24th May, 1980, to the Ministry of Finance for the correct fixing of the salaries of the applicants, the revocation of the salary offered to the applicants and its substitution by the correct one was made under the circumstances of the case,
25 within a reasonable time; accordingly contention (b) should fail.

Application dismissed.

Cases referred to:

- 30 *Paschali v. The Republic* (1966) 3 C.L.R. 593 at p. 607;
Karayiannis v. The Republic (1974) 3 C.L.R. 420 at pp. 433-434;
Yiangou v. Republic (1975) 3 C.L.R. 228 at pp. 240-244; and on appeal (1976) 3 C.L.R. 101 at pp. 105, 106;
Michael v. Republic (1979) 3 C.L.R. 499 at pp. 500-502;
O' Mahony v. Republic (1979) 3 C.L.R. 571 at pp. 579-582.

35 **Recourse.**

Recourse against the decision of the respondents whereby it

was decided that the emplacement of applicants on scale A6 of 1.1.1980 be extended 4 points downwards.

L. Papaphilippou, for applicants.

Cl. Antoniadis, Senior Counsel of the Republic, for the respondents.

5

Cur. adv. vult.

SAVVIDES J. read the following judgment. The ten applicants in this case, pray for a declaration of the Court that the act and/or decision of the respondents which is contained in the letter of the Chairman of the Public Service Commission dated 27.8.80, whereby it was decided that the emplacement of the applicants on scale A6 of 1.1.1980 is extended 4 points downwards, is null and void and of no legal effect whatsoever.

10

The facts of the case are as follows: All applicants hold the post of Customs and Excise Officer, 2nd Grade, having been appointed so on the 15th April, 1980.

15

The posts in question were published in the official Gazette on 11.5.1979. According to the said publication, copy of which is attached to the opposition as enclosure 1, the salary for the said post was £696 x 35 - 906 x 42 - 1200, which was old scale 7 in force at the time. In case any of the persons appointed had a University Degree or Diploma (which was considered to be an advantage), they could be emplaced on the scale £926 x 42 - 1,220, which was old scale 9 in force at that time. In addition to the above salaries, a percentage of 19% had to be added in both cases, in accordance with the Public Officers (Increase of Salaries) Law, 1977, (Law No. 56/77). All applicants are holders of a University degree or title.

20

25

Before the procedure for the filling of the posts was completed, the Public Service (Increase of Salaries and Restructuring of Salary Scales and Certain Offices) Law, 1979 (Law 58/79), was enacted with retrospective effect as from the 1st January, 1979 under the provisions of which the salary scales of public officers were restructured and some of the scales were amalgamated with others with the result that posts in the previous scale 7 came under scale 6 of the new scales. No differentiation is made for the emplacement of holders of University Degree or Diploma in higher scale than those who have no such qualifica-

30

35

tion. New scale 6 bears a salary of £1860 x 96 - £2820 in which the 19% increase of salary under Law 56/77 has been embodied.

5 Law 58/79 provides that in readjusting the scales and salaries of the officers concerned, if the salary of an officer is lower than the minimum salary provided by his new scale, such scale is extended downwards so many points, having regard to the amount of his annual increment, until it reaches his actual salary and thereafter he receives increment every six months until he reaches his new scale. It provides, moreover, that in the case
10 of new appointments on the basis of the new scales, when there are officers serving at the same post as that of the newly appointed officers, whose salary scale has been so extended downwards, the new officer cannot be put in a better position than the old officer or officers and, therefore, his salary scale is also extended
15 downwards accordingly, in order to reach the salary of the said officers; thereafter he, also, receives his increments every six months until he reaches the new salary scale. If no other officers receiving lower salaries exist, then he is placed at the starting point of the new scale.

20 At its meeting of 23.2.1980, the respondent Commission considered the applications submitted as a result of the publication in the official Gazette, and decided to offer appointment to the post of Customs and Excise Officer to a number of candidates amongst whom the applicants. On the 2nd April, 1980,
25 the respondent Commission sent the usual offer of appointment to all applicants, with a copy of the usual conditions of appointment (enclosures 2 and 3 to the opposition). Condition 3 of such offer, reads:

30 "3. *Salary:* The salary scale of the post is:
£1,860 - 96 - 2820."

And with regard to applicant No. 10, who was, before his appointment to the present post, a Clerical Assistant, paragraph 2 of enclosure No. 3 reads:

35 "2. With reference to paragraph 2 of the statement you will enter the salary scale of the post at £1,860 per annum and you will be eligible to draw £1,956 per annum on the 1st April, 1981. Your future incremental date will be the 1st April."

The applicants accepted the above offers of appointment and

started working at their new posts on 15.4.1980, receiving the salary mentioned in the aforesaid offers.

On 24.5.1980 the respondent Commission addressed a letter (enclosure No. 4) to the Director-General of the Ministry of Finance which reads as follows:

5

“I have instructions to refer to the appointment of 17 persons to the post of Customs and Excise Officer, 2nd Grade, in the Department of Customs and Excise, from the 15th April, 1980, and to request you to take the necessary steps for the fixing of their salary in accordance with section 2(c) of Part B of the Schedule to the Public Service (Increase of Salaries and Restructuring of Salary Scales and Certain Offices) Law, 1979, (Law No. 58/79), because it has been ascertained that there are officers serving to the post of Customs and Excise Officer, 2nd Grade, whose salary in their final scale is at a point of its downwards extension.

10

15

2. The persons appointed to the post of Customs and Excise Officer, 2nd Grade, from 15.4.1980 are the following:

20

3. From the above the following were holding other posts in the Public Service with a relevant salary as follows:

| | | | | |
|--------------|----------------|--------|--------|---------|
| Chrysostomos | Hadjivassiliou | 1.1.79 | 1.6.79 | 1.1.80 |
| | | £1,318 | £1,357 | £1,450. |

25

In reply to the above letter, the Ministry of Finance informed the respondent by letter (enclosure 5) dated 16.7.1980 as follows:

“I have instructions to refer to your letter No. 150/75/II dated 24th May, 1980, concerning the subject of the salaries of 17 persons appointed to the post of Customs and Excise Officer 2nd Grade from 15.4.1980 and to inform you that in accordance with the provisions of the Public Service (Increase of Salaries and Restructuring of Salary Scales and Offices) Law, 1979 (Law No. 58/79) the salary of the above officers is fixed as follows:

30

35

A. (1) Costas Panayiotou Georghiou

(2) Argyroulla P. Eliotou

(3) _____

- (4) Kyriaki Georghiou Tappa
 (5) Manolis Rotis
 (6) Isidoros Giorghis
 (7) Chrystalla Leonida Michael
 5 (8) Androulla Constantinou Kourouzidou
 (9) Christakis Pelavas
 (10) Haris Christodoulou
 (11) _____
 (12) _____
 10 (13) _____
 (14) Chrysostomos Hadjivassiliou.

In accordance with section 2(c) (in cases Nos 1 - 13) and 2(d) (in case No. 14) of Part B of the Schedule of Law 58/79, all the above officers must be placed from the date of their
 15 appointment at the point of £1668.- which is a downwards extension of scale A6. Thereafter they will be entitled to increments every six months of service until they reach the starting salary of their scale.

20 The respondent Commission then, informed the applicants accordingly, by letters dated 27.8.1980 (enclosures 6 and 7) who, as a result, filed the present recourse.

The grounds of law on which the application is based are, as set out in the application, as follows:

25 "1. The respondents acted in contravention of the principles of good administration in that by the sub judice act or decision they revoked an act or decision which has produced direct rights in favour of the applicants, the revocation of which causes irreparable damage to them.

30 2. The respondents have acted in abuse of powers in that they deprived the applicants of a right which they acquired by the conditions of their appointment.

35 3. The respondents acted in a way amounting to deceiving the applicants in that it was not mentioned in the offer of appointment of the applicants that their scale would be extended downwards. The applicants accepted the appointment on the basis of the offer.

4. With regard to applicant No. 9 (counsel obviously means No. 10) the respondents acted under a misconception of fact in that they did not take into account and/or did not evaluate the fact that he was in the public service since 1976.”

5

I propose to examine ground 2 first since it is connected with the nature of the act of appointment of the applicants. Counsel for applicants has argued, in this respect, that the offer of appointment and its acceptance by the applicants constitutes an administrative contract, subject to the conditions as to salary, etc. as stated therein. Such condition, he contended, cannot be changed, because the applicants have acted on the basis of such offer which they accepted and have acquired a right to receive that salary and any interference with such right will be detrimental to them and is illegal.

10

15

Counsel for respondents on the other hand, argued that the offer of appointment and its unconditional acceptance, do not constitute an administrative contract, but an administrative act of unilateral nature.

With regard to the nature of the relationship of Government and public officers, there are mainly two theories supported by Greek authors. According to the first theory, the relationship has the characteristics of a contract and is, therefore, contractual. The second theory is that it is of a unilateral nature, requiring, however, the consent of the other party. See in this respect, “*Phthenakis System of Civil Service Law*” 1965, Vol. A. pp. 135 - 137; “*Stassinopoulos Lessons on Administrative Law*” 1972, pp. 331 - 332. These, however, are only theories. In practice, the Greek Council of State has accepted the second theory, that is the unilateral character of the relationship. Thus, in the *Conclusions from the Case Law of the Greek Council of State, 1929 - 1959*, it is stated at p. 313 that:

20

25

30

“ Η νομολογία δέχεται παγίως ότι ή μεταξύ τής Πολιτείας και τών υπαλλήλων αύτής σχέσις, μή ούσα συμβατική, συνιστά σχέσιον δημοσίου δικαίου: 97(29), 389(34). Όθεν αί διέπουσαι τούς δημοσίους υπαλλήλους διατάξεις είναι έλευθέρως μεταβληταί υπό τής νομοθετικής έξουσίας, περιοριζομένης μόνον υπό τών περι προστάσιος τών μονίμων υπαλλήλων συνταγματικῶν διατάξεων: 236(32), 965 (35),

35

362 (39), 2156 (50). Έπομένως οί δημόσιοι υπάλληλοι διέπονται υπό τών έκαστοτε ισχυόντων περί τών δημοσίων υπηρεσιών νόμων και ούδαμώς ούτοι κέκτηνται τό δικαίωμα, όπως καθ' όλην τήν σταδιοδρομίαν των διέπονται υπό
 5 τοῦ καθεστῶτος (π.χ. ὡς πρός τό ὄριον ἡλικίας, μισθολόγιον), ὅπερ ἴσχυε κατά τόν χρόνον τῆς εἰσόδου των εἰς τήν υπηρεσίαν 236 (32), 965 (35), 362 (39), 2156 (50). Συμφωνία ἡ δηλώσεις τροποποιητικαί τών νομοθετικῶν τούτων διατάξεων (π.χ. ἐπὶ τών ἀποδοχῶν), δέν εἶναι ισχυ-
 10 ραί: 658 (30), 389 (34).

Ἡ νομολογία ἐδέχθη, πρό τῆς ἰσχύος τοῦ Ὑπαλ. Κώδικος (ν.1811/51), ὅτι ὁ διορισμός τοῦ υπαλλήλου δέν ἀποτελεῖ σύμβασιν, ἀλλά μονομερῆ πράξιν τῆς διοικήσεως, τελειο-
 15 μένην διὰ τῆς δημοσιεύσεως: 459 (31), 56 (33) 876 (37), 941 (38)".

The English translation of which is as follows:

("The case law accepts that the relationship between the State and its officers, not being contractual, constitutes a
 20 relationship of public law: 97(29), 389(34). Therefore, the provisions regarding the public officers are freely variable by the legislative authority, restricted only by the constitutional provisions with regard to the protection of permanent officers: 236(32), 965(35), 362(39), 2156(50).
 25 The public officers are therefore subject to the public service laws in force from time to time and they in no way possess the right, to be subject to the same status (e.g. with regard to age, salary), which was in force at the time of their entering the service 236(32), 965(35), 362(39), 2156
 30 (50). Agreements or statements amending these legal provisions (e.g. about emoluments), are not valid: 658 (30) 389(34).

The case law had accepted, before the Public Service Code (law 1811(51)) came into operation, that the appointment of the officer does not constitute a contract, but a unilateral act of the administration, finalised by the publication; 459(31), 56(33), 876(37), 941(38)."

See, also, *Paschali and The Republic* (1966) 3 C.L.R. p. 593, where at p. 607 it was held that -

“The appointment of a public officer is an administrative act, not a mere contractual engagement.”

The view taken by the Courts is also strengthened by the fact that any disputes arising out of such relationship are not resolved by the Civil Courts but are tried by the administrative Courts. Moreover the conditions of the appointment are not the result of an agreement reached between the parties but are fixed by the Government either on the strength of Regulations or, as in the case of the salary offered to the appointees, by law, and cannot be altered or waived by agreement.

On the basis of the above, I find that the appointment of the applicants is not a contractual act but an administrative act.

I come now to examine whether the salary originally offered to the applicants on their appointment could be changed afterwards.

Counsel for applicants has argued in this respect, that the existence of officers whose salary is less than the scale provided for the post, is a matter of fact which the applicants did not know and no mention was made in the offer of appointment about any downwards extension of their scale. That the sub judice decision constitutes an indirect revocation of part of the act of appointment of the applicants which is not permitted since the act of appointment has produced results the changing of which causes damage to the applicants. Finally, he argued that the reasonable time within which the decision as to the salary of the applicants could be revoked, has come to an end with the payment to them of their first salary and the decision could not be revoked thereafter.

Counsel for the respondents on the other hand argued that the fixing of the salary of the applicants by the respondent Commission was made contrary to the provisions of the Law, that is contrary to sections 6 and 7 and 2(c) and 2(d) of Part B of the Schedule to Law 58/79 and could therefore be revoked as being contrary to law, and further, that such revocation was made within a reasonable time.

Both counsel have made references to certain Greek authors on the point of revocation of an administrative act to the effect that an illegal administrative act may be revoked if it has produced rights in favour of the applicant, provided such revocation is made within a reasonable time. (See, for example, *Stassinopoulos "Lessons on Administrative Law"* 1957 ed. p. 258 - 260; *Conclusions from the Case Law of the Greek Council of State* 1929 - 1959, pp. 201 - 204; *Tsatsos "Studies on Administrative Law"* 1957, pp. 12 - 16; and, also, *Dagtoglou "General Administrative Law"* 1977, vol. A pp. 179 - 186.)

I have to examine first whether the act concerned, i.e. the offer of the salary mentioned in the offer of appointment, is a legal act.

Section 6 of Law 58/79 and paragraphs 2(c) and 2(d) of Part B of the Schedule incorporated under section 6(1) and to which reference is made in the letter of the Minister of Finance to the respondent Commission, read as follows:

"6.-(1) Τηρουμένων τῶν διατάξεων τοῦ ἐδαφίου (2), ὁ μισθὸς παντὸς δημοσίου ὑπαλλήλου ἀναπροσαρμόζεται συμφῶνως πρὸς τὰς διατάξεις τοῦ Παραρτήματος.

(2) Ἐν τῇ τοιαύτῃ ἀναπροσαρμογῇ ὁ Ὑπουργὸς Οἰκονομικῶν κέκμηται ἐξουσίαν ὅπως ἀρῇ οἰασδήποτε ἀνωμαλίας αἰτίνας δυνατὸν νὰ προκύψωσι περιλαμβανομένων ἀνωμαλιῶν εἰς περιπτώσεις διορισμοῦ, προαγωγῆς ἢ ἀποσπάσεως δημοσίου ὑπαλλήλου εἰς δημοσίαν θέσιν μεταξὺ τῆς 1ης Ἰανουαρίου 1979 καὶ τῆς ἡμερομηνίας δημοσιεύσεως τοῦ παρόντος Νόμου ἐν τῇ ἐπισήμῳ ἐφημερίδι τῆς Δημοκρατίας".

("6.-(1) Subject to the provisions of s-section 2, the salary of every public officer is re-adjusted according to the provisions of the schedule.

(2) In such re-adjustment the Minister of Finance has power to remove any anomalies which might result including anomalies in case of appointment, promotion or secondment of a public officer to a public office between 1st January, 1979 and the date of publication of the present law in the official Gazette of the Republic").

sub-paragraphs (c) and (d) of Paragraph 2 of Part B of the schedule read:

“

(γ) Ἐφ' ὅσον ὑπάρχει οἰοσδήποτε ὑπάλληλος τοῦ ὁποῖου ὁ μισθὸς ἐπὶ τῆς τελικῆς κλίμακός του εὐρίσκεται ἐφ' οἰουδή- 5
ποτε σημείου τῆς πρὸς τὰ κάτω ἐπεκτάσεως τῆς τελικῆς κλίμακος οἰαοδήποτε θέσεως, ὁ μισθὸς οἰουδήποτε διορι-
σθησομένου εἰς τὴν αὐτὴν θέσιν προσώπου καθορίζεται ὑπὸ τοῦ Ἐπιτρόπου Οἰκονομικῶν εἰς τρόπον ὥστε τοῦτο νὰ 10
μὴ τίθεται μισθολογικῶς εἰς πλεονεκτικωτέραν θέσιν ἔναντι οἰουδήποτε ὑπαλλήλου ἤδη κατέχοντος τὴν αὐτὴν θέσιν, τὸ οὕτω δὲ διοριζόμενον πρόσωπον ἀρχίζει κερδίζον προ-
σαύξησιν ἀνὰ ἑξάμηνον περίοδον ὑπηρεσίας μέχρις οὗ φθάσῃ τὸν ἀρχικὸν μισθὸν τῆς τελικῆς κλίμακός του.

Νοεῖται ὅτι εἰς περίπτωσιν καθ' ἣν ὁ μισθὸς τοῦ ὑπαλ- 15
λήλου τοῦ εὐρισκομένου ἐφ' οἰουδήποτε σημείου τῆς πρὸς τὰ κάτω ἐπεκτάσεως τῆς κλίμακός του ἔχει καθ' οἰουδήποτε τρόπον καθηλωθῆ, ὁ μισθὸς τοῦ διορισθησομένου εἰς τὴν αὐτὴν θέσιν προσώπου καθορίζεται ὑπὸ τοῦ Ἐπιτρόπου Οἰκονομικῶν εἰς τρόπον ὥστε τοῦτο νὰ μὴ ζημιούται μισθο- 20
λογικῶς ὡς τῆς τοιαύτης καθηλώσεως.

(δ) Ἡ ὑποπαράγραφος (γ) τῆς παρούσης παραγράφου ἐφαρμόζεται καὶ εἰς τὰς περιπτώσεις προαγωγῆς ἢ ἀποσπά- 25
σεως δημοσίου ὑπαλλήλου ἐὰν ὁ μισθὸς τὸν ὁποῖον δικαιούται νὰ λάβῃ ὁ ὑπάλληλος ἐπὶ τῇ προαγωγῇ ἢ ἀποσπᾷσει αὐτοῦ εἶναι ἴσος ἢ χαμηλότερος τοῦ σημείου ἐπὶ τῆς ἐπεκτά-
σεως τῆς κλίμακος εἰς τὸ ὁποῖον εὐρίσκεται ὁ ἤδη κατέχων τὴν αὐτὴν θέσιν ὑπάλληλος. Ἐν ἔναντι περιπτώσει οὗτος λαμβάνει ἐπὶ τῇ προαγωγῇ ἢ ἀποσπᾷσει αὐτοῦ τὸν μισθὸν 30
τὸν ὁποῖον δικαιούται νὰ λάβῃ ἐπὶ τῇ τοιαύτῃ προαγωγῇ ἢ ἀποσπᾷσει”.

“(c) When there is any officer whose salary on his final scale is on any step extending downwards of the final scale of any post, the salary of any person to be appointed to any post is fixed by the Minister of Finance in such a way that such person will not be placed as from the salary point of view in a more advantageous position against any other officer already holding this post, and the so appointed 35

person starts earning increments every six months of service until he reaches the starting point of his final scale.

5 Provided that in a case in which the salary of an officer who is on any point extending downwards of his scale has in any way been stopped, the salary of the person to be appointed in such post is fixed by the Minister of Finance in such a way as not to suffer damage in his salary from such stoppage.

10 (d) Sub-paragraph (c) of this paragraph is applied also in the cases of promotion or secondment of a public officer if the salary to which the officer is entitled to get on his promotion or his secondment is equal or lower than the point on the scale on which the officer already holding the post is. On the contrary he gets on his promotion or
15 secondment the salary which he is entitled to get on such promotion or secondment”).

By section 7 of Law 58/79 the provisions of the law were given retrospective effect in the case of persons appointed in the public service between the 1st January, 1979 and the date of the
20 publication of the law in the official Gazette of the Republic and it is further provided that their salary on the old salary scales will be readjusted from the date of their appointment on the new scales in accordance with the provisions of the Law.

25 It is clear from the above provision that the salary of the applicants on their appointment should have been determined by the Minister of Finance in accordance with the provisions of the Law. The determination of their salary by the respondent Commission was made contrary to the provisions of such Law and is therefore illegal. Even if one takes the view that since
30 the fixing of the salary was depending on factual considerations, that is whether there existed in fact any other officers on the downwards extension of the scale, then, again, the act is considered to be illegal as based on a misconception of fact. See, in this respect, *Dagtoglou* (supra) p. 179 and *Conclusions from the*
35 *Case Law of the Greek Council of State* (supra) p. 201. The principles, therefore, of revocation of an illegal administrative act, apply in this case.

Our Courts have accepted the above principle in a number of

cases, such as *Karayiannis v. Republic* (1974) 3 C.L.R. 420, 433 - 434, *Yiangou v. Republic* (1975) 3 C.L.R. 228, 240 - 244, where reference is made to a number of other authorities on the point; also, the same case on appeal, by which the judgment of the Court of first instance was upheld and which is to be found in (1976) 3 C.L.R. 101, 105 where it was stated that:- 5

“The revocation of an unlawful administrative act is a course lawfully open to the administration and it is based on the notion of the preservation of legality; the relevant principles are to be found in *Stassinopoulos on the Law of Administrative Acts* (1951), at pp. 398 - 399; and it is useful to refer, too, to the decisions of the Council of State in Greece in cases 796/1964, 1750/1965, 1531/1966. 3027/1967 and 458/1968”. 10

And at page 106, it is stated: 15

“What is ‘a reasonable period of time’ is a matter which, as pointed out in the decision of the Council of State in Greece in case 1026/1966, depends on the circumstances of each particular case; and the relevant criteria have been set out by the said Council in its decision in case 518/1956; whether or not the time which has elapsed is reasonable is a matter for the Court to decide (see, in this respect, the decisions of the same Council in cases 47/1963, 55/1963 and 430/1964).” 20

See, also, the cases of *Michael v. Republic* (1979) 3 C.L.R. 499, 500 - 502; and *O'Mahony v. Republic* (1979) 3 C.L.R. 571, 579 - 582. 25

Having found that the revocation of an unlawful administrative act is permissible, I have now to examine whether such revocation was made within a reasonable time. As stated in the case of *Yiangou v. Republic* (supra) at p. 106 the question whether or not the time which has elapsed is reasonable, is a matter for the Court to decide; and reference is made to cases Nos. 47/63, 55/63, and 430/64 of the Greek Council of State. 30

Bearing in mind that the mistake was discovered after the payment of the first salary of the applicants and that the respondent Commission applied as early as the 24th May, 1980, to the Ministry of Finance for the correct fixing of the salaries of the applicants, I find that the revocation of the salary offered 35

to the applicants and its substitution by the correct one was made under the circumstances of the case, within a reasonable time and the recourse therefore fails on this ground.

5 With regard to the allegation of the applicants raised by ground 3, that is that the respondents in not mentioning in the offer of appointment that the scale would be extended downwards have deceived the applicants, this cannot stand. It is obvious that there has been a mistake in the act of fixing their salary and there is nothing to imply that this was done on purpose. 10 It should not be overlooked that the salary of the posts as published in the official Gazette and on the basis of which the applicants submitted their applications, was much less than their salaries as finally readjusted by the Ministry of Finance.

15 Lastly, with regard to the allegation in ground 4, that the respondents did not take into account the fact that applicant No. 10 was in the public service since 1976, this is not correct and cannot stand either. It is clear from enclosure No. 4 (the letter of the Public Service Commission to the Ministry of Finance, dated 24.5.1980), which is cited earlier, and especially 20 paragraph 3 of such letter, that this fact was always in the mind of the respondents and in any case, it is also clear from the whole correspondence and especially enclosures 4 and 5 that applicant's No. 10 salary was not lower than the one he was receiving in his previous post.

25 In the result this recourse fails and is therefore dismissed, but in the circumstances I make no order for costs.

Recourse dismissed. No order as to costs.