1984 November 19

[L. LOIZOU, HADJIANASTASSIOU, MALACHTOS, SAVVIDES, JJ.]

PHIVOS ZACHARIADES,

Appellant,

v.

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

Respondents.

(*Revisional Jurisdiction Appeal No.* 251).

Public Officers—Filling of posts—Post of Director-General Ministry of Interior—Appropriate Authority—The Authority which took the decision for the filling of the post and authorised the Public Service Commission to proceed with its filling—In this case the Council of Ministers—And once the Council of Ministers, has been seized of the matter, the Minister of Interior could not on his own, countermand the course set out by the Council of Ministers and ask the Commission not to proceed with the filling of the post—Act of Minister contrary to law and the Constitution and in excess and abuse of powers—Decision of Commission to revoke the appointment of the appellant to the above post on the ground that the appropriate authority withdrew the request for its filling annulled as taken under the misconception of fact that the appropriate Authority was the Minister of Interior.

Legitimate interest—Article 146.2 *of the Constitution—Selection of appellant by respondent Public Service Commission for appointment to post of Director-General Ministry of Interior—Public Service Commission not proceeding to the formalities necessary for the implementation of the appointment—As a result of an unlawful interference by the Minister of Interior—Act of Minister, which prevented appellant from being appointed to the post, adversely and directly affected an existing legitimate interest of the appellant, in the sense of the above Article—Moreover*

both the decision of the Commission not to proceed with the appointment and the act of the Minister can be made the subject-matter of a recourse under Article 146 of the Constitution.

Act or decision in the sense of Article 146.1 of the Constitution—Which can be made the subject-matter of a recourse thereunder—Selection of appellant by respondent Commission for appointment to a post in the Public Service—Commission not implementing its decision and revoking it as a result of an unlawful interference by the Minister of Interior—Both the act of revocation and the act of the Minister can be made the subject-matter of a recourse.

Administrative Law—Misconception of fact—Annulment of administrative decision because it was taken under a misconception of fact.

Practice—Recourse for annulment—Revisional appeal—Subject matter of, continues to be the administrative decision challenged by the recourse.

Executive Powers—Residue of—Vested in the Council of Ministers—Article 54 of the Constitution.

On the 26th October 1978 and upon a submission of the Minister of Interior, the Council of Ministers, decided to authorise the Minister of Interior to proceed, in concert with the Public Service Commission to take the soonest possible all the necessary steps for the filling of the post of Director-General of the Ministry of Interior ("the said post"). This decision was communicated to the Commission by the secretary of the Council of Ministers; and, also, in pursuance thereof the Ministry of Interior requested the Commission to proceed with the filling of the said post. Before advertising the vacancy, however, the respondent Commission was requested by the Minister of Interior to postpone the publication of the post until a final decision was taken with regard to the amendment of the relevant schemes of service; and the Commission complying with this request took no further action. On the 12th March the Commission was asked again by the Ministry of Interior to proceed with the filling of the post and following the completion of the interviews of the candidates, the Commission decided to "adjourn its final decision for another meeting and until the President of the Republic has been consulted". Before taking its final decision on the matter the term of office of the Commission

expired and new members were appointed. The newly appointed members of the Commission decided to consider the filling of the said post afresh and to invite all persons interviewed by the previous Commission for a new interview. Following the interviews the respondent Commission, after deliberations and discussions on each candidate found on 30.1.80 that the appellant was in every respect superior to all 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 "due to the fact that plans for the restructuring of the Ministry are under consideration". In view of this letter, the Commission met on the 2nd February, 1980 and decided* to revoke its decision, which had not in the meantime been communicated to the appellant. On the 25th February, 1980, all candidates interviewed for the "said post" were informed by the respondent 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.

The trial Judge dismissed appellant's recourse, which was directed against the decision of the Commission not to proceed with the filling of the said post and against the instructions given by the Minister of Interior to the Commission not to proceed with the filling of the post, having held on a preliminary objection raised by the respondents, that the Commission revoked its decision before it was perfected and therefore appellant had not acquired a legitimate interest and was not entitled to judicial redress. Hence this appeal.

Held, (1) that when a revisional appeal is taken, the subject matter of such appeal continues, in substance, to be an administrative decision which is challenged by the recourse and whether or not the applicant is entitled to the relief claimed; and that therefore, irrespective of the fact that this recourse was dismissed on the preliminary objection raised, this Court is entitled to examine all the issues before it and which the trial Court did not consider necessary to examine in view of its finding that the recourse was not maintainable due to the absence of legitimate interest.

* The relevant decision is quoted at pp. 1208–1210 post.

(2) That the residue of the executive powers on all matters other than those for which express provision is made under the Constitution, are vested in the Council of Ministers (see Article 54 of the Constitution); that once the Minister of Interior chose to submit the matter to the Council of Ministers and this hierarchically superior organ in the exercise of its powers under Article 54 of the Constitution decided for the filling of the post and communicated i's decision to the respondent Commission authorising it to proceed with the filling of the post, the Minister had no longer any competence on his own to act as he did (see s.29 of the Interpretation Law, Cap. 1 as to the power to amend, rescind, vary or revoke the exercise of any power vested in an authority under the Law and the Constitution); that the only appropriate Authority, in the circumstances of the present case, to rescind its decision for the filling of the post and withdraw the request for such filling from the Commission was the Authority which took the decision for the filling of the post and such Authority was the Council of Ministers and not the Minister of the Interior and once the Council of Ministers has been seized of the matter, the Minister could not, on his own, countermand the course set out by the Council of Ministers; and that, therefore, this Court is in agreement with the trial Judge that the appropriate authority in this case was the Council of Ministers and not the Minister of the Interior; that in view of this conclusion the act so taken by the Minister of the Interior, to interfere in the way he did, for the purpose of preventing the implementation of the decision of the first respondent was an act contrary to law (including the Constitution) and was in excess and abuse of powers.

(3) *On the questions whether an existing legitimate interest of the appellant has been adversely and directly affected, in the sense of Article* 146.2 *and whether the matters complained of are proper subjects of recourse under Article* 146:

That the unlawful interference by the Minister of the Interior which prevented the appellant from being appointed to a post for which he had been selected by the competent organ, the Public Service Commission, and as a result of which the Commission did not, in the circumstances, proceed to the formalities necessary for the implementation of his appointment as already decided by it is an act which has adversely and directly affected, in the sense of Article 146.2, an existing legitimate interest

of the appellant; that, furthermore, the unauthorised act of the Minister of the Interior an incompetent organ in the present case, for the the purpose of frustrating the implementation of the decision taken by the Commission in the exercise of its exclusive competence is by its nature so closely linked with such competence and individual administrative decision taken by the Commission under it, that it is itself subject to recourse under Article 146, in the same way as the relevant decision of the Commission would have been subject to such recourse; and, that, therefore the finding of the trial Court that the appellant had not acquired a legitimate interest and is not entitled to a redress is wrong and is hereby set aside (*Georghiou* v. *The Electricity Authority of Cyprus and Another* (1965) 3 C.L.R. 177 followed).

(4) *On the question whether the decision of the respondent Commission taken on the 2nd February* 1980 *whereby it revoked its previous decision of the 30th January* 1980 *by which it had decided to promote the appellant to the post of Director-General of the Ministry of Interior as from the 15th February*, 1980, *was a proper one in the circumstances of the present case*:

Bearing in mind the facts of the case and in particular the record of the minutes of the meeting of the first respondent of the 2nd February, 1980 there is no room for doubt that the first respondent in taking such decision acted under a misconception of fact that the appropriate authority was the Minister of the Interior; that both in the record of the said meeting and in the letter sent by the first respondent in answer to a letter of counsel for the appellant it is admitted by the first respondent that it had to annul its previous decision on the ground that (a) the appropriate authority withdrew the request for the filling of the post and (b) that the appropriate authority, at the request of which it acted, was the Minister of the Interior; that having found that the Minister of the Interior was not, in the circumstances, the appropriate authority and that his interference with the implementation by the first respondent of its decision was unlawful the decision of the first respondent of the 2nd February, 1980 annulling its previous decision for the appointment of the applicant, is also tainted with illegality and it has, therefore, to be annulled.

Appeal allowed.

Cases referred to:

Kazamias v. *Republic* (1982) 3 C.L.R. 239 at p. 301;

President of the Republic v. *Louca and Another* (1984) 3 C.L.R. 241;

Pikis v. *Republic* (1968) 3 C.L.R. 303;

Christou and Others v. *Republic* (1982) 3 C.L.R. 634 at p. 639;

Papapetrou v. *Republic*, 2 R.S.C.C. 61 at pp. 65, 66;

Contopoulos v. *Republic*, 1964 C.L.R. 347 at pp. 351, 352;

Panayides v. *Republic* (1972) 3 C.L.R. 467 at p. 480;

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

Papapetrou v. *Republic*, 2 R.S.C.C. 115 at p. 118;

Georghiou v. *Electricity Authority of Cyprus and Another* (1965) 3 C.L.R. 177.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Demetriades, J.) given on the 9th April, 1981 (Revisional Jurisdiction Case No. 58/80)* whereby his recourse against the decision of the respondents not to give formal effect to the decision to appoint applicant to the post of Director-General of the Ministry of Interior was dismissed.

G. Cacoyiannis, for the appellant.

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

Cur. adv. vult.

L. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Savvides.

SAVVIDES J.: This is an appeal against the dismissal by a Judge of this Court, sitting in the first instance, of a recourse by the appellant challenging the decision of the respondents and

* Reported in (1981) 3 C.L.R. 124.

in particular the decision of the first respondent not to give formal effect to its decision to appoint him to the post of Director -General of the Ministry of Interior.

By the said recourse appellant was seeking the following relief:

1. Declaration of the Court that the omission of Respondent No. 1 to proceed with the filling of the vacant post of Director-General of the Ministry of Interior after it selected the applicant for appointment to the 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

2. Declaration of the Court that the omission of Respondent 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

3. Declaration of the Court that the decision of Respondent No. 1 not to proceed with the filling of the post of Director-General of the Ministry of Interior on the excuse of instruction received on 31.1.1980, from Respondent No. 2, not to proceed with the filling of that post, because 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

4. Declaration of the Court that the act or decision of Respondent 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 it, 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

5. Declaration of the Court that the decision of Respondent 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 its 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

6. Declaration of the Court that the intervention of Respondent 2 to the duties and competences of Respondent No. 1, and/or the "instruction" given by him to Respondent 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 Respondent No. 1; and/or

7. Declaration of the Court that the instruction given by Respondent No. 2 to Respondent No. 1 not to proceed with the filling of the post of Director–General of the Ministry of Interior (communicated to Respondent 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

8. Declaration of the Court that any act, decision or omission of Respondent No. 3, which in any way confirms and/or adopts and/or tolerates the "instruction" and/or intervention of Respondent No. 2 to Respondent 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.

The facts of the case as emanating from the judgment of the learned trial Judge and the material before us, are as follows:

The appellant had been serving in the Public Service since January, 1940. He is the holder of the degree of B.Sc. (Economics) of the University of London, which he obtained in 1957 whilst serving in the Civil Service. He is, also, a Fellow of the Royal Statistical Society. At the material time he was holding the post of a District Officer and he was posted at Paphos. From what has transpired in the course of the hearing the appellant retired from the Public Service some time in or about September, 1981.

On the 20th October, 1978, the Minister of Interior made a submission to the Council of Ministers for the extension, in the public interest, of the services of Mr. Anastassiou, the holder of the post of Director-General of the Ministry of Interior till 24.3.1979 and for its approval of the filling of the post.

As it appears from the contents of such submission (which is attached as Annex 1 of the record) the matter of the filling of the post of the Director-General came up before the Council of Ministers once again in September, 1977, and by Decision No. 16225 of the 27th September, 1977 it decided to extend the services of Mr. Anastassiou, in the public interest till 31st December, 1978.

The submission of the Minister of Interior copy of which is appended to the opposition as Annex 1, was considered by the Council of Ministers on the 26th October, 1978, which, by its decision No. 17354 of the same date 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 (Εν συνεννοήσει) with the first respondent, to take the soonest possible all necessary steps for the filling of the post of Director-General of the Ministry of Interior.

The said decision was communicated by the Secretary of the Council of Ministers to the Chairman of the Public Service Commission by letter dated 4.11.1978 which reads as follows:

"Chairman
Public Service Commission,

The above decision, together with submission No. 855/78 is forwarded to you for joint action with the Director –General of the Ministry of Interior to whom copy of the said decision has been forwarded with reference to sub–paragraph (b) of same.

K. Kleanthous
Secretary,
Council of Ministers".

On the 8th November, 1978, a letter signed on behalf of the Director–General of the Ministry of Interior was sent to the Chairman of the Public Service Commission, the contents of which read as follows:

" 'Ενετάλην όπως άναφερθῶ εἰς τὴν 'Απόφασιν τοῦ 'Υπουργικοῦ Συμβουλίου ὑπ' ἀρ. 17.354 τῆς 26ης 'Οκτωβρίου, 1978, ἥτις 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 ἐξακολουθήση νὰ ἐκτελῆ τὰ καθήκοντα τῆς θέσεως του μέχρι τῆς 31ης Δεκεμβρίου, 1978. 'Απὸ τῆς 1ης 'Ιανουαρίου, 1979, οὗτος θὰ διατελῆ 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 καὶ διὰ τὴν ὁμαλὴν καὶ ἀπρόσκοπον λειτουργίαν τῶν ὑπηρεσιῶν τοῦ 'Υπουργείου τούτου, τὸ ἡμέτερον 'Υπουργεῖον θεωρεῖ ἀναγκαῖον ὅπως ἡ θέσις τοῦ Γενικοῦ Διευθυντοῦ πληρωθῆ ἀπὸ τῆς 1ης 'Ιανουαρίου, 1979, ἡμερομηνίας καθ' ἣν ἀρχίζει ἡ περίοδος ἀδείας τοῦ κ. 'Αναστασίου.

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

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

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

("I am directed to refer to the decision of the Council of Ministers No. 17.354 of the 26th October, 1978, which was 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 as well as the smooth and unhindered functioning of the services of this Ministry, our Ministry considers it is necessary that the post of Director-General be filled as from 1st January, 1979 on which date the period of leave of Mr. Anastassiou begins.

4. You are therefore requested to proceed with the necessary arrangements for the publication of the post in time so that the filling of the post will be possible as from 1.1.1979.

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

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

At its meeting of the 11th November, 1978, the first respondent considered the filling of the vacancy in the post of Director-General of the Ministry of Interior—hereinafter to be mentioned as the "said post"—and decided that as the "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 respondent 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 first respondent 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 some time he requested him to postpone the publication of the post until a final decision was taken. Complying with this request of the Minister, the first respondent took no further action on the matter.

On the 12th March, 1979, another letter, signed on behalf of the Director-General of the Ministry of Interior (see Annex 5 to the opposition), was sent to the Chairman of the first respondent informing him that there was going to be no change in the scheme of service of the post of the Director-General of the Ministry of Interior and requesting him 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.—

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 respondent decided to invite 19 of them, including the applicant, for interview (see Annex 6 to the opposition). As it appears from Annex 7 to the opposition, which are the minutes of the meeting of the first respondent held on the 8th May, 1979, all 19 persons were interviewed on that day.

The sequence of events after such interviews were completed, as recorded in the minutes of the meeting, was as follows:

> "The Commission considered the merit qualifications and experience of the candidates interviewed as well as their performance during the interview (personality, alertness of mind, general intelligence and the correctness of answers to questions put to them, etc.).
>
> The Personal Files and the Annual Confidential Reports of all the candidates were also taken into consideration.

The Commission then discussed the abilities and suitability of all the candidates for appointment or promotion to the post of Director-General, Ministry of Interior.

The Chairman informed the Members of the Commission that the President of the Republic expressed the wish to be consulted before a final decision was taken regarding the filling of the vacancy in the above post.

Having regard to the Chairman's statement referred to above, the Commission decided to adjourn its final decision for another meeting and until the President of the Republic has been consulted".

Pausing here for a moment, we do not wish to overlook the contents of the last two paragraphs of the above decision and the lamentable way that the then Chairman and member of the first respondent Commission acted in postponing the taking of a decision on the matter for the reasons stated therein. The information conveyed by the Chairman of the first respondent to the other members of the Commission that the President of the Republic expressed the wish to be consulted before a final decision was taken as to the person to be appointed and the decision that followed to adjourn its final decision for another meeting "and until the President of the Republic has been consulted", is most unacceptable, unfortunate and undermining the impartiality and independence from political influence of the Public Service Commission as contemplated by the Constitution. The said statement of the then Chairman of the first respondent and the action that followed tends to show that the executive had a keen interest in the selection of the person to be appointed who had to be approved by the executive. By the above action the Public Service Commission, a body which had to be independent and impartial and bound to exercise its own unhindered discretion in the selection of the best candidate, relinguished its task to the executive and submitted its own authority and independent discretion to the wish and approval of the Executive. As to the importance of the function of the Public Service Commission and its independence from Governmental or any other influence, we wish to adopt what was said by this Court in *Kazamias* v. *Republic* (1982) 3 C.L.R. 239 where at p. 301, it is stated:-

"The object of the introduction in our Constitution of Article 125.1, as already explained, was to entrust the safeguarding of the efficiency and proper functioning of the public service of the Republic, expressly including the exercise of disciplinary control over public officers, to the Public Service Commission, an independent and impartial organ outside the governmental machinery, and, at the same time, safeguarding the protection of the legitimate interests of public officers".

This was reiterated and followed in a number of cases (see, inter alia, the recent decision of the Full Bench in President of the Republic v. Louca and Another (Rev. Jur. Appeals 323, 324, 325, 326, (1984) 3 C.L.R. 241.

As a result of the said decision the process of selection and appointment of the Director-General was postponed. However, before respondent 1 took any final decision on the matter, its term of office expired and a new chairman and new members were appointed.

At its meeting of the 12th November, 1979 (see Annex 8 to the opposition), the newly appointed Chairman and members of the Public Service Commission decided, and very rightly so, that it had to consider the filling of the "said post" afresh and that it 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 respondent, as it appears from the minutes of its 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 respondent of the 30th January, 1980, reads as follows:

" Ἐν κατακλείδι, ἡ Ἐπιτροπὴ Δημοσίας Ὑπηρεσίας, ἀφοῦ ἐξήτασε καὶ συνέκρινε τὴν ἀξίαν, τὰ προσόντα, τὴν πεῖραν καὶ τὴν σταδιοδρομίαν τῶν ὑποψηφίων καθὼς καὶ τὴν ἀρχαιότητα τῶν ὑποψηφίων δημοσίων ὑπαλλήλων, βάσει τῶν αἰτήσεων (μετὰ τῶν δικαιολογητικῶν), τῶν Προσωπικῶν Φακέλλων καὶ τῶν Ἐμπιστευτικῶν Ἐκθέσεων περὶ τῶν ὑποψηφίων δημοσίων ὑπαλλήλων, καὶ ἀφοῦ ἔλαβε ὡσαύτως

ὑπ' ὄψιν τὴν ἀπόδοσιν ὅλων τῶν ὑποψηφίων κατὰ τὰς χωριστὰς συνεντεύξεις των μετὰ τῆς 'Επιτροπῆς, ἔκρινε ὅτι ὁ κ. Φοῖβος ΖΑΧΑΡΙΑΔΗΣ ὑπερτερεῖ ἐν τῷ συνόλῳ τῶν ὑπολοίπων ὑποψηφίων, εὗρε τοῦτον ὡς τὸν πλέον κατάλληλον καὶ ἀπεφάσισε νὰ προαγάγῃ αὐτὸν εἰς τὴν θέσιν τοῦ Γενικοῦ Διευθυντοῦ τοῦ 'Υπουργείου 'Εσωτερικῶν ἀπὸ τῆς 15.2.1980".

("In concluding, the Public Service Commission, after having examined and compared the merit, the qualifications, the experience and the career 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 after taking also into consideration the performance of all candidates during their separate interviews with the Commission, found that Mr. Phivos Zachariades is superior as a whole of the rest of the candidates, and found him as the most suitable and decided to promote him to the post of Director-General of the Ministry of Interior as from 15.2.1980").

On the 31st January, 1980, the day following that on which the decision of respondent (1) was taken regarding the selection of the applicant as the most suitable candidate for appointment to the post of Director-General, the following letter was sent by respondent (2) to the Chairman of respondent (1):-

"Dear Mr. Chairman,

I refer to the previous correspondence by which the filling of the post of Director-General of the Ministry of Interior was requested.

Due to the fact that plans for the restructuring of the Ministry are under consideration, the above request is withdrawn and you are requested not to proceed with the filling of the post for the time being. I shall communicate with you when the time is considered ripe in the light of new circumstances.

(Sgd) Chr. Veniamin
Minister of Interior".

Such letter was sent early in the morning of the 31st January, 1980, obviously by hand, as later on the same morning respondent (1) asked the opinion of the Attorney-General of the Republic on the matter which was given by the later in a memorandum sent to respondent (1) on the same morning. (Such opinion is attached as Annex 16, to the opposition).

In view of the said letter of the second respondent and the opinion of the Attorney-General, the first respondent met on the 2nd February 1980 and decided to revoke its previous decision which had not, as yet been communicated to the appellant. Such decision reads as follows:

"1. Ἐπανεξέτασις τοῦ θέματος τῆς πληρώσεως τῆς κενῆς θέσεως τοῦ Γεν. Διευθυντοῦ τοῦ Ὑπ. Ἐσωτερικῶν.

Ἀναφορὰ εἰς τὸ θέμα 1 τῶν πρακτικῶν τῆς συνεδριάσεως τῆς Ἐπιτροπῆς ἡμερ. 11.11.1978 εἰς τὸ θέμα 3 τῶν πρακτικῶν τῆς συνεδριάσεως τῆς Ἐπ. ἡμερ. 12.4.1979 εἰς τὸ θέμα 1 τῶν πρακτικῶν τῆς συνεδριάσεως τῆς Ἐπ. ἡμερ. 8.5.1979 τῶν πρακτικῶν τῆς συνεδριάσεως τῆς Ἐπ. ἡμερ. 12.11.1979 εἰς τὸ θέμα 1 τῶν πρακτικῶν τῆς συνεδριάσεως τῆς Ἐπ. ἡμερ. 31.12.1979 εἰς τὸ θέμα 2 τῶν πρακτικῶν τῆς συνεδριάσεως τῆς Ἐπιτροπῆς ἡμερ. 11.1.1980 εἰς τὸ θέμα 1 τῶν πρακτικῶν τῆς συνεδριάσεως τῆς Ἐπ. ἡμερ. 22.1.1980 εἰς τὸ θέμα 1 τῶν πρακτικῶν τῆς συνεδριάσεως τῆς Ἐπ. ἡμερ. 23.1.1980 καὶ εἰς τὸ θέμα 1 τῶν πρακτικῶν τῆς συνεδριάσεως τῆς Ἐπ. ἡμερ. 31.1.1980.

Ἡ Ἐπιτροπὴ κατὰ τὴν συνεδρίασιν τῆς 30.1.1980 ἀπεφάσισεν ὅπως προαγάγη τὸν κ. Φοῖβον Ζαχαριάδην εἰς τὴν θέσιν Γενικοῦ Διευθυντοῦ τοῦ Ὑπουργείου Ἐσωτερικῶν ἀπὸ τῆς 15.2.1980.

Προτοῦ κοινοποιηθῇ ἡ ἐν λόγω ἀπόφασις εἰς τὸν κ. Ζαχαριάδην ὁ Ὑπ. Ἐσωτερικῶν, ὡς ἁρμοδία ἀρχή, δι' ἐπιστολῆς του πρὸς τὸν Πρόεδρον τῆς Ἐπ. ἡμερ. 31.1.1980 ἀπέσυρε τὴν πρότασιν διὰ τὴν πλήρωσιν τῆς θέσεως τοῦ Γενικοῦ Διευθυντοῦ τοῦ Ὑπ. Ἐσωτερικῶν καὶ παρεκάλεσεν ὅπως ἐπὶ τοῦ παρόντος μὴ πληρωθῇ ἡ θέσις, ἐπειδὴ εὑρίσκονται ὑπὸ μελέτην σχέδια διὰ νέαν διάρθρωσιν τοῦ Ὑπ. του.

Ὁ Γενικὸς Εἰσαγγελέας τῆς Δημοκρατίας ἀπαντῶν εἰς τεθὲν εἰς αὐτὸν ἐρώτημα ὑπὸ τοῦ Προέδρου τῆς Ἐπ. ποία

ἡ νομικὴ θέσις εἰς περίπτωσιν καθ' ἣν ἀποφασίζεται ὑπὸ τῆς Ἐπιτροπῆς ὁ διορισμὸς ἢ ἡ προαγωγὴ ὡρισμένου προσώπου εἰς κενὴν θέσιν προτοῦ ὅμως κοινοποιηθῆ εἰς αὐτὸ ἡ τοιαύτη ἀπόφασις ἀποσύρεται ὑπὸ τῆς ἁρμοδίας ἀρχῆς ἡ πρότασις διὰ τὴν πλήρωσιν τῆς κενῆς θέσεως συνεβούλευσε διὰ σημειώματος του ὑπ' ἀρ. 34 /61/4 καὶ ἡμερ. 31.1.1980 ὅτι ἡ Ἐπιτροπὴ ἀνακαλεῖ ἢ/καὶ ματαιώνει τὴν ληφθεῖσαν ἀπόφασιν της.

Εἰς τὸ ἐν λόγω σημείωμα του ὁ Γεν. Εἰσαγγελέας ἀναφέρει ὅτι "ἡ Ἐπ. Δ.Υ. σύμφωνα μὲ τὸ ἄρθρο 37 τοῦ περὶ Δημοσίας Ὑπηρεσίας Νόμου δὲν ἔχει ἐξουσία νὰ προβεῖ στὴν πλήρωση τῆς κενῆς αὐτῆς θέσης ἐφόσον ἡ ἁρμοδία ἀρχὴ τώρα ζητεῖ νὰ μὴ πληρωθεῖ ἡ θέση" καὶ περαιτέρω ὅτι ' ἐφόσο δὲν κοινοποιήθηκε ὁ διορισμὸς στὸν ἐνδιαφερόμενο σύμφωνα μὲ τὴν διάταξη τοῦ ἄρθρου 37 αὐτὸς δὲν μπορεῖ νὰ παραγάγει ὁποιοδήποτε νομικὸ ἀποτέλεσμα' καὶ 'ἡ Ἐπιτροπὴ Δημοσίας Ὑπηρεσίας κατὰ συνέπεια δὲν μπορεῖ νὰ στηριχθεῖ στὴν ἀπόφαση μὲ τὸ διορισμὸ ὡρισμένου προσώπου γιὰ πλήρωση τῆς κενῆς θέσης ποὺ δὲν ἀνακοινώθηκε σ' αὐτὸ σύμφωνα μὲ τὸ ἄρθρο 37 τοῦ περὶ Δημοσίας Ὑπ. Νόμου'.

Ἐν ὄψει τῆς ἐπιστολῆς τοῦ Ὑπουργοῦ Ἐσωτερικῶν καὶ στηριζομένη ἐπὶ τῆς γνωματεύσεως τοῦ Γενικοῦ Εἰσαγγελέως τῆς Δημοκρατίας ἡ Ἐπ. ἀπεφάσισεν ὅπως ἀνακαλέση τὴν ἀπόφασίν της τῆς 30.1.1980 ἡ ὁποία τοιουτοτρόπως καὶ ματαιοῦται".

("1. *Re-examination of the subject of the filling of the post of Director-General of the Ministry of Interior.*

Reference to item 1 of the minutes of the meeting of the Commission dated 11.11.1978, to item 3 of the minutes of the meeting of the Commission dated 12.4.1979, to item 1 of the minutes of the meeting of the Commission dated 8.5.1979, the minutes of the meeting of the Commission dated 12.11.1979, to item 1 of the minutes of the meeting of the Commission dated 31.12.1979, to item 2 of the minutes of the meeting of the Commission dated 11.1.1980, to item 1 of the minutes of the Commission dated 22.1.1980, to item 1 of the minutes of the meeting of the Commission dated 23.1.1980 and to item 1 of the minutes of the Commission dated 30.1.1980.

The Commission at the meeting of 30.1.80 decided to promote Mr. Phivos Zachariades to the post of Director-General of the Ministry of Interior as from 15.2.1980.

Before the said decision had been communicated to Mr. Zachariades the Minister of Interior, as the appropriate authority, by his letter to the Chairman of the Commission dated 31.1.1980 has withdrawn his proposal for the filling of the post of Director-General of the Ministry of Interior and requested that, for the time being, the post should not be filled because plans for the new restructuring of his Ministry are under consideration.

The Attorney-General in answering a question put to him by the Chairman of the Commission as to which is the legal position in the case in which the appointment or the promotion of a certain person to a vacant post is decided by the Commission but before the communication to him of such decision the submission for the filling of the vacant post is withdrawn by the appropriate authority has advised by his note No. 34/61/4 dated 31.1.1980 that the Commission revokes and/or frustrates the decision taken.

In his said note the Attorney-General states that 'The Public Service Commission in accordance with section 37 of the Public Service Law has no power to proceed with the filling of this vacant post since the appropriate authority now asks that the post should not be filled' and further that 'since the appointment has not been communicated to the interested party in accordance with the proviso to section 37 it cannot produce any legal result' and the Public Service Commission therefore cannot rely on the decision for the appointment of a certain person for filling the vacant post which has not been communicated to him in accordance with section 37 of the Public Service Law.

In view of the letter of the Minister of Interior and basing itself on the legal advice of the Attorney-General of the Republic the commission decided to revoke its decision of 30.1.1980 which is thus also frustrated").

On the 25th February, 1980, all candidates interviewed for the "said post" were, by letter (Annex 17 to the opposition),

informed by the first respondent 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 respondent:

"Κύριοι,

'Ο πελάτης μας κ. Φοῖβος Β. Ζαχαριάδης ('Επαρχος Πάφου) ὁ ὁποῖος ἔχει ὑποβάλει αἴτηση γιὰ τὴ θέση τοῦ Γενικοῦ Διευθυντῆ στὸ 'Υπουργεῖο 'Εσωτερικῶν, μᾶς ἔδωσε ἐντολὴ ν' ἀπαντήσουμε στὴν ἐπιστολὴ σας ἡμερομηνίας 25 Φεβρουαρίου, 1980.

Γιὰ νὰ μπορέσουμε νὰ συμβουλεύσουμε τον πελάτη μας γιὰ τὰ διαβήματα ποὺ δικαιοῦται νὰ λάβει, θὰ σᾶς παρακαλέσουμε νὰ μᾶς δώσετε τὶς ἀκόλουθες ἐπεξηγηματικὲς πληροφορίες:-

(1) Πότε καὶ πῶς ἡ 'Αρμοδία 'Αρχὴ' σᾶς ἔχει πληροφορήσει ὅτι μελετᾶ σχέδιο γιὰ νέα διάρθρωση τοῦ 'Υπουργείου 'Εσωτερικῶν.

(2) *Ποία εἶναι στὴν προκειμένη περίπτωση* ἡ 'Αρμοδία 'Αρχὴ'.

(3) Κατὰ πόσο τὰ σχέδια ποὺ μελετοῦνται προβλέπουν κατάργηση τῆς θέσης τοῦ Γενικοῦ Διευθυντῆ τοῦ 'Υπουργείου 'Εσωτερικῶν.

(4) Κατὰ πόσο ἔχετε ἔγκυρη καὶ θετικὴ πληροφορία ὅτι τὸ 'Υπουργικὸ Συμβούλιο σὰν τὸ ἁρμόδιο σῶμα πράγματι μελετᾶ ἀναδιάρθρωση τοῦ 'Υπουργείου 'Εσωτερικῶν.

'Οπως θ' ἀντιλαμβάνεσθε, οἱ πληροφορίες ποὺ ζητοῦμε θὰ μᾶς βοηθήσουν νὰ συμβουλεύσουμε τὸν πελάτη μας κατὰ πόσο θὰ πρέπει νὰ καταχωρηθεῖ προσφυγὴ στὸ 'Ανώτατο Δικαστήριο σύμφωνα μὲ τὸ "Αρθρο 146 τοῦ Συντάγματος γιὰ τὴν παράλειψη τῆς 'Επιτροπῆς σας νὰ προβεῖ στὸ σχετικὸ διορισμὸ ἐφόσο μάλιστα, ὅπως ἔχει περιέλθει σὲ γνώση μας, μετὰ τὶς συνεντεύξεις της μὲ τοὺς διαφόρους ὑποψηφίους ἡ 'Επιτροπή σας πῆρε τὴν ἀπόφαση νὰ διορίσει τὸν πελάτη μας στὴν πιὸ πάνω θέση.

Βέβαια, δεν χρειάζεται νά σᾶς ὑπενθυμίσουμε τὶς πρόνοιες τοῦ ἄρθρου 29 τοῦ Συντάγματος σχετικὰ μὲ τὰ χρονικὰ ὅρια μέσα στὰ ὁποῖα θὰ πρέπει νὰ μᾶς ἀπαντήσετε.

Διατελοῦμε μετὰ τιμῆς
Π.Λ. ΚΑΛΟΓΙΑΝΝΗΣ & ΣΙΑ".

("Sirs,

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

In order to be able to advise our client as to the steps he is entitled to take, you are requested to give us the following explanatory information:-

(1) When and how has the 'appropriate authority' informed you that it is considering a scheme for the new restructuring of the Ministry of Interior.

(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.

(4) Whether you have valid and positive information that the Council of Ministers as the appropriate body is in fact considering the restructuring of the Ministry of Interior.

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

Of course, it is not necessary to remind you of the provisions of Article 29 of the Constitution with regard to the time limits within which you have to give us a reply.

Your sincerely
P. L. Cacoyiannis & Co.").

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

" Έχω όδηγίες νὰ ἀναφερθῶ στην ἐπιστολή σας μὲ ἀριθμὸ Γ. 14/80, σχετικὰ μὲ τὴν κενὴ θέση Γενικοῦ Διευθυντῆ τοῦ Ὑπουργείου Ἐσωτερικῶν, καὶ νὰ σᾶς δώσω τὶς ἀκόλουθες πληροφορίες:

(α) Στὶς 31.1.1980 ἡ ἁρμοδία ἀρχὴ μὲ ἐπιστολή της ζήτησε ἀπὸ τὴν Ἐπιτροπὴ Δημοσίας Ὑπηρεσίας νὰ μὴν προχωρήσει ἐπὶ τοῦ παρόντος στὴν πλήρωση τῆς θέσεως, γιατὶ βρίσκονται ὑπὸ μελέτη σχέδια γιὰ νέα διάρθρωση τοῦ Ὑπουργείου.

(β) Ἁρμοδία ἀρχὴ εἶναι ὁ Ὑπουργὸς Ἐσωτερικῶν.

(γ) Στὶς ἐρωτήσεις στὶς παραγράφους (3) καὶ (4) τῆς ἐπιστολῆς σας ἡ Ἐπιστολὴ Δημοσίας Ὑπηρεσίας εἶναι ἀναρμόδια νὰ ἀπαντήσει.

Μὲ ἐκτίμηση".

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

(a) On 31.1.1980 the appropriate authority by a letter asked from the Public Service Commission not to proceed, for the time being, with the filling of the post, because plans for the new restructuring of the Ministry are under consideration.

(b) Appropriate authority is the Minister of Interior.

(c) To questions (3) and (4) of your letter the Public Service Commission is incompetent to reply.

With respect").

The learned trial Judge after reviewing the principles emanating from the Greek Administrative Law and the decisions of this Court, proceeded to examine whether, in the light of such authorities, the appellant as a result of the decision of the first respondent to promote him to the post of Director-General of the Ministry of Interior had acquired a legitimate interest entitling him to judicial redress and came to the following

conclusion: (see *Zachariades* v. *The Republic* (1981) 3 C.L.R. 124, at pp. 140, 141).

"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.

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 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 applicant has not acquired a legitimate interest and is not entitled to judicial redress".

As a result of such conclusion the present appeal was filed and the following grounds have been set out in support of same:

1. Once the learned trial Judge found that the decision to fill the post of Director-General of the Ministry of Interior was taken by respondent No. 3 and the request to respondent No. 1 to proceed with the filling of such post came from the respondent No. 3, and that respondent No. 2 "was only authorised to see that this decision was to be put into effect the soonest possible", the Court was wrong in concluding that "the first respondents revoked their decision before it was perfected" and that the applicant-appellant "has not acquired a legitimate interest and he is not entitled to judicial redress".

2. The learned trial Judge was wrong in failing to proceed (notwithstanding his finding on the basis of which he dismissed the recourse) to determine the following questions:

(1) Whether viewing the clear decision of respondent No. 3 to fill the post of Director-General of the Ministry of Interior which was duly communicated to respondent

No. 1, respondent No. 1 did not have a duty to proceed the soonest possible" with the filling of such post and whether or not its failure to do so did not amount to an omission capable of being challenged by a recourse by a person (like the appellant) who had a present legitimate interest especially by reason of the fact that he had been selected for such appointment by respondent No. 1.

(2) Whether or not respondent No. 2 was the "appropriate authority" within the meaning given to this term in the Public Service Law, 1967, with power to revoke the decision already taken by the Council of Ministers, a hierarchically higher administrative organ.

(3) If the respondent No. 2 was not the appropriate authority in the said sense and with such power, whether respondent No. 1 ought not to have ignored his letter dated 31.1.1980 and proceed to communicate to the appellant his appointment as provided by Law 33/67.

(4) Whether respondent No. 2 in addressing to the respondent No. 1 the letter dated 31.1.1980 was not acting in abuse and/or in excess of powers.

(5) Whether or not respondent's No. 1 failure to communicate to the appellant his appointment to the post of Director-General of the Ministry of Interior was not in the circumstances an omission which the appellant could have challenged by recourse.

(6) Whether the act of respondent No. 2 in writing the letter dated 31.1.1980 addressed to respondent No. 1 was not an act capable of being challenged by recourse by the appellant.

The determination of the above issues was a necessary prerequisite to the determination of the recourse as a whole, including the issue as to whether or not the appellant had a present legitimate interest in the sense of Article 146.2 of the Constitution.

3. This was a case in which, even if the recourse were lost on the technical point on which it was decided by the learned trial Judge, the costs should have been awarded in favour of appellant let alone the appellant being ordered to pay the respondents' costs (if claimed) as he in fact was in this case (*Contopoulos* v. *The Republic*, 1964 C.L.R. 347—the case relied upon by the Court).

In arguing this appeal learned counsel for the appellant submitted that in the light of the authorities of this Court and the practice held and adopted, this appeal being an administrative appeal is not only an appeal against the judgment in the ordinary sense but it is a rehearing of the administrative recourse. The subject-matter still being the administrative decision or omission that is challenged by the recourse, the hearing, before this Court, of an appeal, is as a matter of fact a rehearing of the whole recourse. Counsel went on arguing his case on two legs: First, that it was directed against the failure of the Public Service Commission to take the remaining steps that were necessary to perfect the appellant's promotion and appointment and this was by the alternative remedies of declarations against the omission not to complete the appointment and/or the decision to frustrate the appointment; and the second leg of the recourse was aimed at the letter of the Minister of Interior, dated 31st January, 1980, which is the administrative act that interrupted the normal course of events that would have ended up in the perfection of the appointment of the applicant.

Counsel argued his case on the following five submissions:

(1) In support of the first leg of his argument he drew the distinction that the procedure to make appointments in Cyprus is different from that contemplated in the Greek Administrative Law, as in Cyprus the decision to make appointments vests in two bodies. The creation of a post and the decision to fill same lies with the administration, which is the appropriate authority, whereas the actual filling of the post is with the Public Service Commission.

(2) The appropriate authority in the present case in taking the decision to fill the post was the Council of Ministers and not the Minister of Interior.

(3) The Public Service Commission had no power to interrupt and discontinue or frustrate the filling of a post on the directions of the Minister of the Interior who was not the appropriate authority in the present case once the appropriate authority which took the decision and directed the Public Service Commission was the Council of Ministers.

(4) The decision not to fill the post was a decision taken in circumstances that rendered it subject to annulment under the principles of administrative law and also such

decision could be challenged by a recourse because it is an act or decision in abuse or excess of powers.

(5) The decision of the Minister of Interior to postpone the filling of the post is so closely connected with the actual filling of the post and the selection of the appellant as a candidate as to taint the decision of the Public Service Commission with illegality, once it accepted to act on it and renders the decision of the Public Service Commission to frustrate the appointment of the appellant null and void and of no effect whatsoever. He made extensive reference to the provisions in our legislation and to the decisions of this Court and in particular to the decision in *Tatianos Georghiou* v. *Electricity Authority of Cyprus* (1965) 3 C.L.R. 177 the facts of which, counsel submitted, are similar to the ones in the present case.

Counsel completed his argument by submitting that the appropriate authority in the present case to take the decision for the filling of the post and communicate such decision to the Public Service Commission for immediate action was the Council of Ministers and that the intervention of the Minister, after he came to know that the Public Service Commission had selected the appellant for appointment, was illegal and/or in abuse of power. The Minister, counsel submitted, acted ultra vires his powers to stop the completion of an act decided by the Council of Ministers and such intervention on his part was unauthorised and illegal and should have been ignored.

Counsel for the respondents, on the other hand, argued that the filling of a post is a matter within the discretion of the administration, i.e. the appropriate authority and the Public Service Commission. He went on to support his contention that the appropriate authority under the law in this case was the Minister of Interior. Counsel further contended that the decision of the Public Service Commission for promotion of the appellant did not acquire its formal validity and, therefore, it has not produced any legal effect. Therefore, the decision of the Minister to withdraw the proposal for the filling of the post and the decision of the Public Service Commission not to fill the post in consequence thereof, have not violated any direct interest of the applicant, as correctly found by the learned trial Judge. He finally submitted that the decision of the Mini-

ster to withdraw the proposal could not be challenged by itself as it was part of a composite administrative act and after the final decision of the Public Service Commission not to fill the post the decision of the Minister lost its executory nature.

As to the function of this Court when dealing with a revisional appeal it has been held time and again that when a revisional appeal is taken, the subject matter of such appeal continues, in substance, to be an administrative decision which is challenged by the recourse and whether or not the applicant is entitled to the relief claimed. (See, *Pikis* v. *The Republic* (1968) 3 C.L.R. p. 303). In the recent case of *Christou and others* v. *The Republic* (1982) 3 C.L.R. 634 at p. 639, Triantafyllides, P., in dealing with the function of the Full Bench of the Supreme Court in revisional jurisdiction appeals, said:

> "____in the light of the relevant provisions of section 11 of Law 33/64, a revisional jurisdiction appeal is to be regarded as a continuation before the Full Bench of the Supreme Court of the proceedings in the recourse concerned which took place, in the first instance, before a Judge of the Court; and what, in essence, continues to be in issue at the stage of the revisional jurisdiction appeal is still the validity of the subject-matter of the particular recourse in which the appealed from judgment has been given".

Therefore, irrespective of the fact that this recourse was dismissed on the preliminary objection raised, this Court is entitled to examine all the issues before it and which the trial Court did not consider necessary to examine in view of its finding that the recourse was not maintainable due to the absence of legitimate interest.

Before embarking on the issues before us, we find it necessary to review briefly the position in Cyprus concerning the creation and filling of posts in the public service.

As early as 1961 the then Supreme Constitutional Court in the case of *Papapetrou and The Republic* (Case No. 26/61) 2 R.S.C.C. 61 at pp. 65, 66, explained the situation as follows:

> "By the Constitution of the Republic of Cyprus express provision is made regarding the public service of the Republic in Part VII of the Constitution which comprises Articles 122 to 125.

Paragraph 1 of Article 125 provides that, save where other express provision is made in the Constitution and subject to the provisions of any law, 'it shall be the duty of the Public Service Commission to make the allocation of public offices between the two Communities and to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer, retire and exercise disciplinary control over, including dismissal or removal from office of, public officers'.

In the opinion of the Court the Public Service Commission, which is established under Article 124, is vested under the Constitution with only those powers which it has expressly been given under Article 125.

The residue of any executive power in respect of any matters concerning the public service of a State, which by its constitution has not been expressly given to an independent body such as a Public Service Commission, remains vested in the organ of the State which exercises executive power and within whose province the public service of the State normally otherwise comes and in the case of the Republic of Cyprus such organ, under Article 54 of the Constitution and particularly paragraphs (a) and (d) thereof, is the Council of Ministers.

It is clear from the wording of paragraph 1 of Article 125 that the Public Service Commission, in addition to being entrusted with the task of the allocation of public offices between the two Communities in accordance with Article 123, is only entrusted with powers, such as appointment, confirmation, etc., relating to public officers, as holders of public offices but not to the public offices in question themselves.

As the executive power relating to the creation on new posts in the public service of the Republic and to the making and amending of schemes of service concerning existing or new posts, is a power relating to public offices and not to the public officers, as holders of such offices, it is not, thus, included among the powers which are entrusted to the Public Service Commission by Article 125 and such power remains vested in the Council of Ministers.

This view regarding the effect of paragraph 1 of Article 125 is clearly consonant with the powers of the Council of Ministers under Article 54 of the Constitution, particularly paragraphs (a) and (d) thereof".

The *Papapetrou* case was cited with approval in the case of *Contopoullos and The Republic*, 1964 C.L.R. 347, where at pp. 351, 352, Triantafyllides, J., as he then was, had this to say:

"In the opinion of the Court the duties of the Public Service Commission under Article 125 are limited to matters concerning the officers and not the offices involved. (Vide *Papapetrou 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 1967, the Public Service Law (Law 33/67) was enacted providing for the functioning of the Public Service Commission, its powers and the mode they were to be exercised including, inter alia, the appointment, promotion, emplacement, transfer, secondment, retirement, etc. of public officers and also disciplinary proceedings over them (see s. 5 and ss. 73–85 of Law 33/67), powers emanating from Article 125.1 of the Constitution.

It is clear from the above that when the filling of a vacancy by way of promotion has been approved by the Executive Branch of the Government within the competence of which such matter lies and the Public Service Commission is informed accordingly then exclusive competence to decide on who is to be promoted or appointed to the post in question lies with the Public Service Commission. As to when the competence of the Public Service Commission begins s. 17 of the law provides as follows:

"The Commission shall not proceed to fill any vacancy in any public office or to retire, before the age of retirement, or to take disciplinary action against any public officer

except upon the receipt of a written proposal to that effect from the appropriate authority concerned".

As to when an appointment or promotion takes effect the matter is governed by sections 37 and 44 of Law 33/67. Section 37 provides 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.

(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.

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

(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".

Section 44 provides, inter alia, as follows:

"(1) ----------

(2) ----------

(3) ----------

(4) ----------

(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.

(6) ----------

(7) ----------".

As to the requirement of publication in the official Gazette of the Republic contemplated by sub-section (4) of section 37 and by sub-section (6) of section 44, the position in Cyprus, unlike that in Greece, where for an administrative decision to take effect publication is necessary (see Kyriacopoulos on Greek Administrative Law, 4th Edition, Vol. C. at p. 179), has been considered in *Panayides* v. *The Republic* (1972) 3 C.L.R. 467, and we subscribe to the view expressed therein by Mr. Justice A. Loizou at p. 481 in this respect, as follows:

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

Section 44(5) was interpreted by the Full Bench of this Court in *Geodelekian* v. *The Republic* (1970) 3 C.L.R. 64, where Triantafyllides, J. as he then was, had this to say at page 68:

> "..... though their promotions to Assistant Collectors had been decided upon by the Respondent, they had not yet been 'effected', in the sense that they had not yet been perfected or completed, in accordance with the provisions of section 44(5) of Law 33/67.....".

In *Papapetrou* v. *The Republic* (Case No. 127/61) 2 R.S.C.C. 15 at p. 118, it was held that the Public Service Commission was not bound to appoint any particular candidate even though he might have been found to possess the required qualifications specified in the relevant schemes of service, if the Public Service Commission was of the opinion that such candidate was not on the whole qualified for appointment to the post in question; nevertheless, no existing legitimate interest of his was thereby adversely and directly affected in the sense of paragraph 2 of Article 146 of the Constitution. Such conclusion was reached in view of the decision of the Public Service Commission that none of the existing candidates was qualified for appoint-

ment, and, that, therefore, applications for such post should be invited again.

The position in Greece as to when an appointment is perfected is explained in Kyriacopoulos Greek Administrative Law, 4th Edition, Vol. C at p. 178:

"Διορισμὸς καλεῖται ἡ παρὰ τοῦ ἁρμοδίου ὀργάνου δήλωσις τῆς βουλήσεως τοῦ κράτους πρὸς σύναψιν μεθ' ὡρισμένου προσώπου δημοσίας ὑπαλληλικῆς σχέσεως".

("Appointment is the expression of the will of the state by the appropriate organ for the contracting with a certain person of public service relationship").

and at p. 180:

" Ἐπὶ τῷ τέλει, ὅπως καταστῇ γνωστὴ εἰς τὸν ἐνδιαφερόμενον ἡ βούλησις τοῦ κράτους καὶ πληρωθῇ ὁ ἕτερος ὅρος τῆς δημοσίας ὑπαλληλικῆς σχέσεως, ἤτοι ἡ ἀποδοχὴ τοῦ διορισμοῦ παρὰ τοῦ πρὸς ὃν οὗτος ἀπευθύνεται, δέον, μετὰ τὴν δημοσίευσιν, νὰ ἐπακολουθήσῃ ἡ κοινοποίησις τοῦ διορισμοῦ (ἄρθ. 30 1 ΚΔΔΥ).

Διὰ τῆς κοινοποιήσεως τοῦ διορισμοῦ γνωστοποιεῖται εἰς τὸν ἐνδιαφερόμενον ἡ βούλησις τοῦ κράτους καὶ οὕτω πληροῦται ὁ πρῶτος ὅρος τῆς δημοσίας ὑπαλληλικῆς σχέσεως. Ὁ δεύτερος ὅρος, ἤτοι ἡ ἀποδοχὴ τοῦ διορισμοῦ παρὰ τοῦ πρὸς ὃν ἐγένετο ἡ κοινοποίησις τούτου, πληροῦται διὰ τῆς συναινέσεως τοῦ διοριζομένου, ἥτις δέον νὰ ἐκδηλωθῇ ἐντὸς τακτῆς προθεσμίας".

("For the purpose of making the will of the state known to the interested person and of fulfulling the other condition of the public service relationship i.e. the acceptance of the appointment by the person to whom it is addressed, there must, after the publication, follow the communication of the appointment.

By the communication of the appointment the interested person is notified of the will of the state and thus the first

condition of the public service relationship is fulfilled. The second condition i.e. the acceptance of the appointment by the person to whom it is communicated is fulfilled by the consent of the appointee which should be manifested within a fixed time").

Furthermore at p. 181:

" 'Εφ' ὅσον, κατὰ τὰ προειρημένα, ἡ δημοσία ὑπαλληλικὴ σχέσις τελειοῦται διὰ τῆς ἀποδοχῆς τοῦ διορισμοῦ, συμφώνως πρὸς τὰ περὶ συμβατικῆς θεωρίας διδασκόμενα, πρὸ τῆς ἀποδοχῆς, ἡ ἐν τῷ γίγνεσθαι τελοῦσα δημοσία ὑπαλληλικὴ σχέσις εἶναι δυνατὸν νὰ ματαιωθῆ μονομερῶς παρὰ τῆς δημοσίας διοικήσεως δι' ἀνακλήσεως τοῦ διορισμοῦ. 'Η τοιαύτη ἀνάκλησις οὐδέποτε δύναται νὰ θεωρηθῆ ὡς προσβάλλουσα κεκτημένα δικαιώματα, ἐφ' ὅσον ἡ ὑπαλληλικὴ σύμβασις δὲν κατηρτίσθη εἰσέτι. Μόνον διὰ τῆς ἀποδοχῆς τοῦ διορισμοῦ τελειοῦται ἡ ὑπαλληλικὴ σχέσις, διό καὶ δὲν δύναται πλέον ν' ἀνακληθῆ οὗτος".

("Since, according to the aforesaid, the public service relationship comes to an end by the acceptance of the appointment, according to lessons about conventional theory, before acceptance, the public service relationship to be created is possible to be cancelled by the administration by the revocation of the appointment. Such revocation can never be considered as offending vested rights since the service contract has not been prepared yet. Only with the acceptance of the appointment the service relationship is finalised and thus it cannot be revoked any more").

Also in Kyriacopoulos Greek Administrative Law, 4th Ed. Vol. B at pp. 396–397 it is stated:

" 'Η βεβαία διατύπωσις τῆς βουλήσεως τοῦ διοικητικοῦ ὀργάνου ἐν τῇ διοικητικῇ πράξει διὰ τῆς συντάξεως καὶ ὑπογραφῆς ταύτης, δηλοῖ ὅτι ἡ πρᾶξις ἐξεδόθη. 'Αλλ' ἡ ἔκδοσις μόνη δὲν συνεπιφέρει τὰ ἐξ αὐτῆς ἀναμενόμενα ἔννομα ἀποτελέσματα. 'Η διοικητικὴ πρᾶξις, ὡς δήλωσις βουλήσεως, διὰ ν' ἀποκτήση νομικὴν ἐνέργειαν, δέον νὰ παύση ἀποτελοῦσα internum καὶ ἐξωτερικευθῆ, ἤτοι νὰ περιέλθη εἰς τὸ πρόσωπον, εἰς ὃ ἀφορᾶ. 'Επομένως, ἡ διοικητικὴ πρᾶξις δέον ν' ἀνακοινοῦται εἰς τὸν ἐνδιαφερόμενον.

·Κατὰ τίνα τύπον δέον νὰ γίνῃ ἡ ἀνακοίνωσις αὕτη, ἐξαρτᾶται ἐξ αὐτῆς τῆς φύσεως τῆς πράξεως, ἐφ' ὅσον ἐν τῇ συγκεκριμένῃ περιπτώσει ὁ νόμος δὲν ὁρίζῃ ἰδιαίτερον τύπον". (See also p. 398 of the same authority).

("The positive expression of the will of the administrative organ in the administrative act by the drawing up and signing it shows that the act has been issued. But the issuing only does not entail the legal results expected from it. For the administrative act, as an expression of will, to acquire legal action, it must cease to form internum and be expressed, i.e. to reach the person to whom it refers. Therefore the administrative act must be communicated to the interested person. Under what form should this notification be made, depends on the nature of the act, since in this case the law does not fix a special form").

In Stasinopoulos "The Law of Administrative Acts" 1951 Edition p. 366 it reads:

"Πρὸ τῆς δημοσιεύσεως ἢ τῆς κοινοποιήσεως κατὰ τὰς ἄνω διακρίσεις, μὴ ἐπιστάσης τῆς δεσμεύσεως τῆς Διοικήσεως, ἡ ἀνάκλησις τῆς πράξεως εἶναι ἐλευθέρα. Ἀλλὰ μὴ δηλωθείσης τῆς βουλήσεως, οὐδὲ περὶ ἀνακλήσεως δύναται νὰ γίνῃ κατ' ἀκριβολογίαν λόγος καὶ δὴ καταχρηστικῆς, κατὰ τινὰ ἔκφρασιν, ἀνακλήσεως, ἀλλὰ κυρίως περὶ ματαιώσεως τῆς πράξεως, διὰ τῆς ματαιώσεως τῆς δηλώσεως τῆς ἐν τῇ πράξει περιεχομένης βουλήσεως, ἥτις ἀποτελεῖ εἰσέτι internum τῆς Διοικήσεως". (See also Stassinopoulos 'Lessons on Administrative Law', 1957 Edition at pp. 311, 320, 321).

("Before the publication or the communication under the above distinctions, the obligation of the Administration not having been studied thoroughly, the revocation of the act is free. But without the expression of the will not even mention of the revocation, and especially abusive, so to say, revocation may be made, but mainly for the annulment of the act, by the frustration of the expression of the will included in actual fact which still constitutes internum of the Administration").

Some of the opinions expressed above have been adopted in *Panayides* v. *The Republic* (1972) 3 C.L.R. 467 where A. Loizou, J. at p. 482, had this to say:

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

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

In the *Panayides* case (supra) the learned trial Judge in dealing with the question as to when the formal validity of an administrative act begins said at pp. 480, 481:

"It is important therefore in this respect to examine the exact moment at which the formal validity of the administrative act that is to say its lawful existence commences. For that matter a distinction should be drawn between this and the substantial effect of the administrative, act, that is to say their legal effect. The former commences from the time at which the procedure under the law by which they came into existence is completed. The latter commences from a certain time which may either coincide with the time of the commencement of their formal validity or it may be a subsequent or prior point in time. In this respect is will be useful to look to section 44 of the Public Service Law 33/67 which governs the question of promotion in the public service.....

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

At this stage we consider it necessary to make a brief reference to the facts of the cases of *Contopoullos* and *Panayides* to which reference has already been made.

In the *Contopoullos* case the applicant had applied to the Public Service Commission for his appointment to the vacant post of Land Officer in the Department of Lands and Surveys contending that he was entitled to be so promoted. The Public Service Commission considered the question and called for interview a number of Land Clerks 1st Grade one of whom was the applicant. Before, however, the Commission had effected any promotion a letter was written by the Ministry of Interior to the Commission, requesting them not to proceed with the filling of the vacancies in view of the impending re-organization of the Lands and Surveys Department. As a result the Public Service Commission abstained from taking any decision as to the appointment of the applicant and the other candidates concerned and informed them accordingly. The Court dismissed the recourse having been satisfied that the Ministry of Interior was the appropriate Authority to decide as to the existence of a vacancy and the need of its filling and that the Commission quite properly took into account the request of the Ministry of Interior, the appropriate authority in that case, not to fill the vacancies in the post of Land Officer pending the re-organization of the Department concerned. It is of significance to observe that in the *Contopoullos* case (a) the Public Service Commission had not taken any decision as to the appointment of the applicant (b) the submission for postponing the appointment emanated from the appropriate authority.

In *Panayides* case the applicant challenged the promotion of another person in preference to him, and in which some of the issues which had to be considered were the validity of the retrospective effect given to the decision and also the time from which

the formal validity on the one hand and the substantial effect on the other hand of an administrative act commences.

In *Geodelekian* case also, the applicant was challenging the promotions of others.

All the above cases are distinguishable from the present one as the appellant in the present case is not challenging the promotions of others but the non-implementation of his own appointment, decided by respondent 1, as a result of the illegal interference of the Minister of the Interior.

The last case to which useful reference may be made is that of *Tatianos Georghiou* v. (1) *The Electricity Authority of Cyprus* (2) *The Republic of Cyprus* (1965) 3 C.L.R. 177 which though decided before the enactment of the Public Service Law, nevertheless, is very enlightening in the present case. The facts of such case were as follows:

> "On the 25th September, 1961, the Board of the Authority considered the vacant post of Internal Auditor of the Authority and it was decided that the person to be appointed should be 'a Chartered Accountant or a Certified Accountant, preference to be given to a Chartered Accountant'.
>
> Consequently a letter was written on the 27th September 1961, by the Secretary of the Authority to the Commission, conveying its effect and stating that as none of the existing staff possessed the necessary qualifications it was necessary to advertise the post. In a document, however, attached to the said letter and setting out the qualifications, duties and remuneration of the post in question the aforesaid decision of the Board of the Authority was not reproduced fully, and it was only stated therein that the person to be appointed should be either a Chartered or a Certified Accountant, no mention being made about preference to be given to a Chartered Accountant.
>
> The post of Internal Auditor was advertised by the Commission and Applicant applied and became one of the candidates.
>
> On the 23rd January, 1962, after the interviews, it was decided by the Commission that Applicant should be appointed to the post of Internal Auditor and a letter

was written to the Authority accordingly, on the 25th January, 1962, requesting the preparation by the Authority of the usual offer of appointment; such offer was to be forwarded to the Commission for the purpose of implementing the appointment which had already been decided upon.

On the 2nd February, 1962, the Board of the Authority informed the Commission that the decision of the Board to the effect that preference should be given to a Chartered Accountant had not been clearly conveyed to the Commission and that the Commission was requested not to proceed to fill the post of Internal Auditor unless a candidate possessing the qualification of Chartered Accountant was available; the Commission, therefore, was requested not to take action in relation to implementing the appointment of Applicant to such post.

It had been submitted in that Case that Applicant could not allege that any existing legitimate interest of his has been adversely and directly affected in the sense of Article 146.2 because the abolition of the post of Internal Auditor was not an administrative act directed at him, and, moreover, he had not any acquired right in the matter of his appointment, as such appointment had not been finally implemented by the Commission".

The Full Bench in dealing with the question as to whether the applicant had an existing legitimate interest, under Article 146.2 of the Constitution, had this to say at pp. 184, 185 (per Triantafyllides, J., as he then was):

"The first question that has to be examined in determining this Case is the question of legitimate interest, both from the point of view of its existence when the recourse was filed as well as from the point of view of its existence when the recourse is being determined.

The question of legitimate interest of a candidate who has applied for appointment to a vacant post, has been examined in the case of *Papapetrou and The Republic* (2 R.S.C.C. p. 61 at p. 64) as well as in the later case of *Neophytou and The Republic*, 1964 C.L.R. p. 280.

Those were cases, however, in which there was being challenged the validity of the appointment of another, whereas in the present Case the Applicant is complaining against his own non-appointment, without anybody else having been appointed.

It has been submitted in this Case that Applicant cannot allege that any existing legitimate interest of his has been adversely and directly affected in the sense of Article 146.2, because the abolition of the post of Internal Auditor was not an administrative act directed at him, and, moreover, he had not any acquired right in the matter of his appointment, as such appointment had not been finally implemented by the Commission.

The Applicant complains that his appointment has been, in effect, frustrated through the abolition of the post of Internal Auditor.

There can be no doubt whatsoever that the abolition of the post of Internal Auditor was decided upon by the Board of the Authority in order to prevent the final implementation, by the commission, of the appointment of Applicant to such post. The said post was abolished by way of an ultimate measure taken by the Authority in an effort to prevent Applicant, a person who was only a Certified Accountant, and not also a Chartered Accountant, from being appointed to such post. This measure was taken after the Board came to know that Applicant had been finally selected for appointment.

To all intents and purposes the Commission had completed the discharge of its relevant function under its competence under Article 125 and there was nothing further to be done by it under such competence in order to complete Applicant's appointment".

And concluded as follows at pp. 185, 186:

"Irrespective, therefore, of whether in other circumstances the abolition of a post in the establishment of the Authority or of any other independent body might not be taken as directed against anybody aspiring for appointment or promotion to such post, in the present Case it is abundantly

clear that the abolition of the post of Internal Auditor was purposely aimed at preventing Applicant from being appointed to a post for which he had been selected by the competent organ, the Commission, and, thus, it is an act which has adversely and directly affected, in the sense of Article 146.2, an existing legitimate interest of Applicant.

During argument reference was made to a decision of the French Council of State, in the case of Syndicat national autonome du cadre de l'administration generale des colonies, on the 20th May, 1955 (Recueil des arrets du Conseil d'Etat, 1955, p. 273). In that case it was held that the cancellation of a competition for filling vacancies in the French overseas administration did not affect acquired rights of candidates in the competition. The difference with the present Case is that the present Applicant was not just a candidate in a competition which was cancelled but he had been actually finally selected for appointment.

Likewise, the relevant legitimate interest of Applicant has been directly and adversely affected by the fact that the Commission did not, in the circumstances, proceed to the formalities necessary for the implementation of his appointment, as already decided upon by it.

The fact that since the filing of this recourse Applicant has ceased to be interested in appointment to the post in question does not deprive him of the right to have his recourse duly determined, because Applicant has already suffered the detriment involved in the frustration of his appointment. In this respect Applicant continued to have still a legitimate interest at the time when this recourse came up for hearing and, therefore, he is entitled to have this Case determined".

As to whether the matters complained of were the proper subject of a recourse under Article 146, at page 187 of the same judgment we read:

"The Court is of the opinion that whenever an act is done by an organ, other than the Commission, for the very purpose of frustrating the implementation of an individual administrative decision taken by the Commission in the

exercise of its exclusive competence, that act is by its nature so closely linked with such competence and the individual administrative decision taken by the Commission under it, that it is itself subject to recourse under Article 146, in the same way as the relevant decision of the Commission would have been subject to such recourse".

It should be noted that the decision of the Public Service Commission in the *Georghiou* case, had not been formally communicated to the applicant but it came to his knowledge through the Head of his Department who happened to hear about it. It was only the decision of the non-implementation of his appointment that was formally communicated to him by letter of the Commission.

In *Georghiou* case the non-implementation of applicant's appointment was the result of the act of the Board of the Electricity Authority which was the appropriate authority and it was at its request that the machinery through the Public Service Commission was set in motion for the selection of the most suitable candidate for appointment.

The question, therefore, which has to be considered first is as to which was the appropriate organ in the present case which initiated the process for the filling of the post. The learned trial Judge in his judgment in dealing with this issue, found as follows:

"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".

There has not been a cross-appeal against the above finding of the trial Court. Nevertheless in the course of the hearing of the appeal counsel for respondents argued that the appropriate

authority in the present case was the Minister of Interior and not the Council of Ministers and in support of this argument he sought to rely on two decisions of the Council of Ministers dated March 1964 and 12th December 1968. Such decisions are contained in two circulars dated the 17th March, 1964 and the 27th December, 1968 addressed, inter alia, to the Public Service Commission, the Directors-General of the Ministries etc., copies of which were produced before us as exhibits 'A' and 'B'. The material part of the first circular, reads as follows:

"We are directed to inform you that the Council of Ministers has decided that, in view of the present situation:

(a) ----------

(b) ----------

(c) in any case where the Ministry of Independent Office concerned considers that any vacancy or new post should be filled, it should refer the case to the Ministry of Finance for its views and then arrange for the necessary Submission to be made to the Council incorporating the views of the Ministry of Finance; and

(d) where the Council approves that a vacancy or new post should be filled, the method of filling it should be either on a temporary month to month basis or on a casual assistance basis, except that—

(i) where the post is permanent and a permanent officer is selected to fill it, the appointment or promotion should be made on a permanent basis;

(ii) where the post is temporary and a permanent officer is selected to fill it, the filling should be on secondment.

(Sgd) T.E. MARKANTONIS
Secretary,
for Secretaries, Council of Ministers".

The second circular embodies the decision of the Council of Ministers dated 12th December, 1968 (Decision No. 8367) whereby all previous circulars concerning the filling of vacant posts were withdrawn and the following directions were given:

"(1) Vacant posts included in the Annual Estimates and vacant permanent posts in the Development Estimates may be filled without reference to the Council of Ministers, where the appropriate Minister or the Head of the appropriate Independent Office, considers the filling of such posts as necessary for the effectiveness of the administration and the Minister of Finance agrees.

(2) ----------

(3) In case of disagreement between the appropriate Minister or the Head of the appropriate Independent Office and the Minister of Finance, in relation to the filling of the vacant post, the appropriate Minister or the Head of the appropriate Independent Office may place the matter before the Council of Ministers, together with the views of the Minister of Finance.

(4) No vacant post will be filled by the Public Service Commission, unless the said Commission receives a request to that effect from the appropriate Minister or the Head of the appropriate Independent Office, stating that the Minister of Finance has agreed.

(5)-(10) ----------

(Sgd) T.E. MARKANTONIS
Secretary
to the Council of Ministers".

What we have to consider in the present case is not whether in normal circumstances the Minister of the Interior or any other Minister, acting in respect of his Ministry, in relation to matters concerning the appointment or promotion in the permanent establishment of the Republic, is the appropriate authority either under the provisions of section 2 of the Public Service Law, 1967 (Law 33 of 1967) or under the powers delegated to him by the Council of Ministers by its decision No. 8367 of the 12th December, 1968, but whether in the circumstances of the present case the Minister of the Interior was the appropriate authority to act in the way he did by withdrawing from the Public Service Commission the request for the filling of the vacant post of the Director-General of the Ministry of Interior, a request which emanated from the Council of Ministers.

Under Article 54 of the Constitution, the residue of the executive powers on all matters other than those for which express provision is made under the Constitution, or which are within the competence of a Communal Chamber, are vested in the Council of Ministers. In *Papapetrou* v. *The Republic* (supra) the Supreme Constitutional Court in construing Article 54 of the Constitution, held that (page 66):-

> "The residue of any executive power in respect of any matters concerning the public service of a State, which by its constitution has not been expressly given to an independent body such as a Public Service Commission, remains vested in the organ of the State which exercises executive power and within whose province the public service of the State normally otherwise comes and in the case of the Republic of Cyprus such organ, under Article 54 of the Constitution, and particularly paragraphs (a) and (d) thereof, is the Council of Ministers".

Under the Statutory Functions (Conferment of Exercise) Law, 1962 (Law 23/62) the Council of Ministers may delegate any power vested in it and emanating from any law, to the appropriate Minister or the appropriate head of an independent office, unless such delegation is prohibited by the Law (see section 3) but such delegation does not deprive the Council of Ministers or other delegating authority from exercising itself such power (see section 4).

What happened in the present case is that the Minister of the Interior for reasons which do not appear in the record, probably due to the importance that the Government attached to this post, and its concern about its filling, if one takes into consideration the decision of respondent 1 of the 8th May, 1979 to which reference has already been made, chose to submit the matter to the Council of Ministers and this hierarchically superior organ in the exercise of its powers under Article 54 of the Constitution decided for the filling of the post and communicated its decision to the first respondent authorising it to proceed with the filling of the post. The Minister had no longer any competence on his own to act as he did. He was only authorised to see, in concert with respondent 1, that such decision was to be given effect the soonest possible.

As to the power to amend, rescind, vary or revoke the exercise of any power vested in an authority under the Law and the Constitution we read in section 29 of The Interpretation Law, Cap. 1, the following:

"29. Where any Law confers power on any authority to make any appointment or to make or issue any public instrument, the following provisions shall, unless the contrary intention appears, have effect with reference to the making, issue and operation of such instrument.

(a) *the instrument may be at any time amended, varied, rescinded, or revoked by the same authority and in the same manner by and in which it was made;*

(b) ——————————————————————————

(c) ——————————————————————————

(d) ——————————————————————————".

(the underlining is ours).

The only Appropriate Authority, in the circumstances of the present case, to rescind its decision for the filling of the post and withdraw the request for such filling from respondent 1, was the Authority which took the decision for the filling of the post and such Authority was the Council of Ministers and not the Minister of the Interior and once the Council of Ministers has been seized of the matter, the Minister could not, on his own, countermand the course set out by the Council of Ministers.

We, therefore, find ourselves in agreement with the learned trial Judge in his judgment that the appropriate authority in this case was the Council of Ministers and not the Minister of the Interior.

In view of the conclusion we have reached, we find that the act so taken by the Minister of the Interior, to interfere in the way he did, for the purpose of preventing the implementation of the decision of the first respondent was an act contrary to law (including the Constitution) and was in excess and abuse of powers.

The next question which we have to consider is whether an existing legitimate interest of the appellant has been adversely

and directly affected, in the sense of Article 146.2 and whether the matters complained of are proper subjects of recourse under Article 146.

The answer to this question may be found in the powerful dicta of the Full Bench in the *Georghiou* case to which reference has already been made and which we need not narrate in length once again. Suffices to say, relying on such dicta that the unlawful interference by the Minister of the Interior which prevented the appellant from being appointed to a post for which he had been selected by the competent organ, the Public Service Commission, and as a result of which the Commission did not, in the circumstances, proceed to the formalities necessary for the implementation of his appointment as already decided by it, is an act which has adversely and directly affected, in the sense of Article 146.2, an existing legitimate interest of the appellant. Furthermore the unauthorised act of the Minister of the Interior, an incompetent organ in the present case, for the purpose of frustrating the implementation of the decision taken by the Commission in the exercise of its exclusive competence "is by its nature so closely linked with such competence and the individual administrative decision taken by the Commission under it, that it is itself subject to recourse under Article 146, in the same way as the relevant decision of the Commission would have been subject to such recourse" (*Georghiou* case (supra) at p. 187). Therefore the finding of the trial Court that the appellant had not acquired a legitimate interest and is not entitled to a redress is wrong and is hereby set aside.

The last question which we have to consider is whether the decision of the first respondent taken on the 2nd February 1980 whereby it revoked its previous decision of the 30th January 1980 by which it had decided to promote the appellant to the post of Director-General of the Ministry of Interior as from the 15th February, 1980, was a proper one in the circumstances of the present case. Bearing in mind the facts of the case as already explained and all material before us, and in particular the record of the minutes of the meeting of the first respondent of the 2nd February, 1980, there is no room for doubt that the first respondent in taking such decision acted under a misconception of fact that the appropriate authority was the Minister of the Interior. Both in the record of the said meeting

and in the letter sent by the first respondent in answer to a letter of counsel for the appellant it is admitted by the first respondent that it had to annul its previous decision on the ground that (a) the appropriate authority withdrew the request for the filling of the post and (b) that the appropriate authority, at the request of which it acted, was the Minister of the Interior.

Having found that the Minister of the Interior was not, in the circumstances, the appropriate authority and that his interference with the implementation by the first respondent of its decision was unlawful the decision of the first respondent of the 2nd February, 1980 annulling its previous decision for the appointment of the applicant, is also tainted with illegality and it has, therefore, to be annulled.

In the result, the appeal succeeds and the following acts and/or decisions are hereby annulled:

(a) The act and/or decision of the Minister of Interior, respondent 2, to interfere with the implementation by the first respondent of its decision to promote the applicant.

(b) The decision of the first respondent of the 2nd February, 1980, whereby it annulled its previous decision for the promotion of the applicant.

Regarding costs, we have decided to award to the appellant a lump sum of £150.- towards his costs and we make an order accordingly against the respondents.

Appeal allowed. Sub judice decisions annulled.