

1986 January 11

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

ALEXANDROS PANTAZIS,

*Applicant,*

v.

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

*Respondents.*

*(Case No. 117/84).*

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*Administrative Law—Annulment of an administrative act—  
The obligation of the administration to comply with the  
annulling decision—Scope of such obligation—Constitution,  
Article 146.5—General Principles of Administrative Law  
as evolved in continental countries (Greece, France and  
5 Germany) govern the obligation under Article 146.5.*

*Public Officers—Promotions—Promotion of applicant in 1978  
followed by another promotion in 1979 and a further pro-  
mation in 1981—First of said promotions annulled by the  
10 Supreme Court—In compliance with its obligation to  
comply with the annulling decision, the respondent com-  
mission correctly “revoked” the second and third promo-  
tions so as to restore the position as it was before the  
annulled decision was taken—Such revocation is not a  
15 revocation in the ordinary sense and, therefore, it is not  
governed by the principles applicable to revocation of  
lawful administrative acts—Notwithstanding that the appli-  
cant in the recourse impugning the first promotion, had  
also impugned by another recourse the second of the above  
20 promotions, but later withdrew the same, the revocation  
of second and third of the said promotions did not violate*

*the doctrine of Res Judicata—Decision 4213/79 of the Greek Council of State not followed.*

*Natural Justice—Right to be heard—Rule applicable in proceedings of a penal or disciplinary matter, but not in respect of purely administrative matters.*

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*Constitutional Law—Constitution Article 146.5.*

The applicant was promoted as from 1.1.78 to the Permanent (Development Budget) post of Senior Surveyor in the Department of Lands and Surveys. He was further promoted as from 15.5.79 to the post of Lands Officer Permanent (Development Budget), and as from 1.12.1981 to the post of Land Officer 1st Grade (Surveys)—Permanent (Ordinary Budget).

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The first of the above promotions was impugned by a recourse to this Court (Recourse 499/80). This recourse was successful and as a result the said promotion was annulled (see *Koufettas v. The Republic* (1983) 3 C.L.R. 1252, upheld by the Full Bench in Revisional Appeal 358 (1985) 3 C.L.R. 1950).

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It should be noted that the second of the above promotions of the applicant had been challenged by two recourses, namely recourse 113/81 filed by the applicant in recourse 499/80 and recourse 333/79 filed by another unsuccessful candidate. Recourse 333/79 was dismissed on the ground that as the applicant had died his heir did not possess a legitimate interest to continue pursuing the recourse (See *Georghiou v. The Republic* (1984) 3 C.L.R. 1571). Applicant in recourse 113/81, withdrew it on the 13.1.83.

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After the annulment of the first of the above promotions the Public Service Commission, acting on the basis of the legal advice of the Attorney-General of the Republic to the effect that the annulment of the promotion of an officer carries along with it (συμπαράσφρει) the subsequent promotions to higher posts and having also in mind the obligation of the administration to reinstate matters to the situation which was in force before the annulled de-

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cision of the Commission was taken, decided that the said annulment carries along with it applicant's two subsequent promotions and that the applicant be notified that he reverts to the post he was holding before he received the first of the above promotions, i.e. the promotion to the post of Permanent (Development Budget) Senior Surveyor in the Department of Lands and Surveys.

As a result the applicant filed the present recourse. His counsel submitted that the sub judge decision is null and void on the following grounds, namely; a) The prerequisites for the revocation of lawful administrative acts were not satisfied in the circumstances of this case, b) The rules of Natural Justice had been violated because the applicant was not given an opportunity to be heard before the sub judge decision to revoke the second and third of his above promotions was taken and c) That the sub judge decision was contrary to law as there has been a res judicata as regards the second of the said promotions.

*Held*, dismissing the recourse (1) The principles governing the revocation of lawful administrative acts do not apply in case of revocation of an act in close link with an act which was annulled as the obligation to comply with the annulling judgment of the Administrative Court prevails. The revoking act, being an indirect, but necessary consequence of the annulling decision, does not constitute a revocation in the ordinary sense. If the principles governing revocation of lawful administrative acts were to be applied, there could be no compliance with the annulling judgments of the Court.

(2) The rules of Natural Justice require that an opportunity be given to a party to be heard in proceedings of a penal or disciplinary character. No comparable duty is cast upon administrative bodies with regard to purely administrative matters.

(3) (a) In case 4213/79 the Greek Council of State decided by majority that the administrative authorities must, in discharge of the obligation to comply with an annulling

decision, revoke the acts which are contrary to what was decided by the Council and even those which had been issued before the annulled decision. Such obligation, however does not exist when as against the acts to be revoked there had been filed by the interested party a recourse for annulment in respect of which there has been a "resignation". 5

(b) Unlike Greece where the jurisdiction of the Council of State and its powers are regulated by Law, no statutory enactment has as yet been legislated in Cyprus and the question of compliance to the decisions of the Supreme Court is governed by Article 146.5 of the Constitution. Inevitably the principles upon which the obligation to comply is governed must be the General Principles of Administrative Law evolved in the continental countries (Greece, France and Germany) and applied there and elsewhere with such degree of consistency as to render them part of the science of Administrative Law. 10 15

In accepting the traditionally established position the Court was guided by the way Article 146.5 is framed. The principle that the annulment of an act carries with it subsequent acts in close link with it is a basic principle of good administration. Furthermore in non-following the majority decision in the said case of the Council of State the Court had in mind that it is not certain what is the legal connotation of the word "resignation" in Greece and whether it is the same or not with the "withdrawal" of a recourse in our law. 20 25

There must be a differentiation between a res judicata which covers only what is decided therein between the parties and the obligation of the administration to comply, which is much wider in its content. 30

Moreover the obligation to reinstate legality cannot be thwarted by the action of anyone as it is a duty towards all and in particular to all possible candidates. 35

*Recourse dismissed.  
No order as to costs.*

Cases referred to:

*Kontemeniotis v. C.B.C* (1982) 3 C.L.R. 1027;

*Group of Five Bus Tour Ltd. and Others v. The Republic*  
(1983) 3 C.L.R. 793;

5 *Morsis v. The Republic* (1965) 3 C.L.R. 1;

*Decisions of the Greek Council of State in cases Nos.:*  
1072/50, 1776/66, 4213/79, 3731/74.

**Recourse.**

10 Recourse against the decision of the respondents revoking their decisions to promote the applicant to the Permanent (Development) Post of Lands Officer and to the Permanent (Ordinary Budget) Post of Lands Officer 1st Grade.

*L. Papaphilippou*, for the applicant.

15 *R. Gavrielides*, Senior Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

20 A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the act or decision of the respondent Commission dated the 31st December, 1983, by virtue of which they decided to revoke their decisions by which he had been promoted to the Permanent (Development) Post of Lands Officer and to the Permanent (Ordinary Budget) Post of  
25 Lands Officer 1st Grade, is null and void and of no effect whatsoever.

The Attorney-General of the Republic, by letter dated the 21st December 1983, (Appendix 1), sent to the respondent Commission copy of the judgment of the Supreme  
30 Court given in a previous case regarding the same officer, reported now as *Koufettas v. The Republic* (1983) 3 C.L.R. 1252, by which the Supreme Court annulled the decision of the respondent Commission, by which the present applicant had been promoted as from 1st January 1978, to the  
35 Permanent (Development Budget) post of Senior Surveyor

in the Department of Lands and Surveys. The relevant minute of the respondent Commission of its meeting of the 30th December, 1983. Appendix 3, reads as follows:

“

After the annulment by the Supreme Court of the promotion of Alexandros Pantazis to the post of Senior Surveyor in the Department of Lands and Surveys, the Commission acting on the basis of the legal advice of the Attorney-General of the Republic under file No. 34/61/63 and dated 21st June, 1980, which was given in a previous similar instance regarding the same officer and in accordance with which the annulment of the promotion of an officer carries along with it (συνπαράσχει) the subsequent promotions to higher promotion posts and having also in mind the obligation of the administration to reinstate matters to the situation which was in force before the decision of the Commission was annulled, decided:

- (a) That the annulment of the promotion of Alexandros Pantazi to the post of Senior Surveyor in the Department of Lands and Surveys carries along with it (συνπαράσχει) also these subsequent promotions to the higher posts of Lands Officer Permanent (Development Budget)—from 15th May 1979, and Lands Officer, 1st Grade (Surveys)—Permanent (Ordinary Budget)— from the 1st December, 1981 and
- (b) That the Officer be notified in writing that he reverts to the post at which he was serving before he was promoted to the Permanent (Development Budget) Post of Senior Surveyor in the Department of Lands and Surveys. The notice to be communicated also to the appropriate Authority.”

Copy of the letter with which this decision was communicated to the applicant is attached both to the application and to the opposition, (Appendix 4).

The legal opinion referred to above (Appendix 2) is as follows:

5 "I refer to your letter under No. LSD 203/77 and dated 18th June, 1980, in which you asked me if the annulment by the Supreme Court of the promotion of Mr. Pantazis to the post of Senior Surveyor affects his subsequent promotion to the post of Lands Officer and consequently the legality of the composition of the Departmental Board in which Mr. Pantazis participates on account of the fact that he holds the post of Lands Officer.

10 I am of the opinion that the reply to the above question must be in the affirmative as the promotion of Mr. Pantazis to the post of Lands Officer has as a direct basis the act which was annulled by the Supreme Court, that is his promotion to the post of Senior Surveyor and consequently participates in the defects of this act (see F. Vegleri, *The Compliance of the Administration to the Decisions of the Council of State*, 1934 edition pp. 103 - 106).

20 E. Kyriakapoulos in his Textbook *Greek Administrative Law*, 4th Edition Volume C, p. 155 states the following:

25 *'The obligation of the administration to exact compliance to an annulling judgment given on an executed already act, consists of the elimination of its results, that is in the reinstatement of the previous real situation. The obligation of the administration for compliance is not confined only to the taking of the necessary administrative measures for immediate execution of the annulling judgment but imposes immediately on the administration the duty, that by executory administrative acts it reinstates matters to the legal situation as it was before the annulled act. For this purpose the administration is obliged to revoke also every act which is in close connection with the annulled one.'*

Also in foot-note 58, of the same page of the aforesaid text-book it is stated:

*'Nor is it permitted to enforce or continue enforcing the acts issued on the basis of the annulled ones.'*"

The authorities from which the aforesaid principles are discerned, set out in foot-note 52 - 53 are the same as those to which I shall be immediately referring.

To the above authorities relied upon by the Attorney-General of the Republic there are some more to which counsel for the respondents has referred me. The first one is from The Supplement to the Case Law of the Council of State (1935 - 1952) Vol. 1 at p. 135 paragraphs 3855, 3856 which read:

«3855 - Εις συμμόρφωσιν προς ακυρωτικήν απόφασιν του Σ.τ.Ε. η Διοίκησις υποχρεούται να ανακαλέσῃ καὶ πάσαν πράξιν τελούσαν εν στενώ συνδέσμῳ προς την ακυρωθείσαν, ἵνα επαναφέρῃ τα πράγματα εις την προ της εκδόσεως της ακυρωθείσης πράξεως κατάστασιν, 2309 - 2320, 2326, 2328, 2330/46, 1072/50.»

3856 - ... η δ' ανακλητική πράξις ἐμμεσοσ, ἀλλ' αναγκαία συνέπεια της ακυρωτικής αποφάσεως, δεν αποτελεί ἀνάκλησιν κατὰ την κοινήν ἔννοια δι' ὃ και δια την νομιμότητα της δεν απαιτεῖται να συντρέχωσιν αι ουσιαστικαί προς ἀνάκλησιν διοικητικῆς πράξεως προϋποθέσεισ και τηρηθῆ η σχετική διαδικασία, 1072/50.»

In English they are as follows:

“3855.- In compliance to the annulling decision of the Council of State the Administration is bound to revoke also every act being in close link with the annulled one in order to reinstate matters to the situation as it was before the annulled act, 2309-2320, 2326, 2328, 2330/46, 1072/50.”

3856.- .... the revoking act, indirect, but necessary consequence of the annulling decision, does not constitute a revocation in the ordinary sense, hence for its legality it is not essential that there should exist the substantial for the revocation of an administrative act prerequisites and observe the relevant procedure, 1072/50.”

In an article by Themistoclis Tsatsos, published in “Themis” (Year N) entitled, “The Obligation Cast on the Administration for Compliance to the Decision of the Council of State”, it is said at p. 115:



«Δηλαδή ενδέχεται να είναι η προς συμμόρφωσιν υποχρέωσις ευρύτερα του δεδिकाσμένου, ήτοι να αφορά πρόσωπα, ως προς τα οποία δεν υφίσταται δεδικασμένον, ιδίως οσάκις συντρέχει περίπτωσης καθ' ήν η συμμόρφωσις απαιτεί ενέργειαν ή παράλειψιν παρά μη δι-  
 5 αδικου αρχής, αλλά και αντιστρόφως να υφίσταται δε-  
 δικασμένον εν σχέσει προς πρόσωπα μη προς συμμόρ-  
 φωσιν υπόχρεα, ιδίως οσάκις υπήρξαν τρίτοι διάδικοι  
 παρεμβάντες ή τριτανακόψαντες την εκδοθεήσαν από-  
 10 φασιν.

Τέλος η προς συμμόρφωσιν υποχρέωσις είναι πολλάκις ευρύτερα του δεδικασμένου ως προς το περιεχόμενον οσάκις απαιτείται θετική προς τούτο ενέργεια.

Εις το δεδικασμένον εμπεριέχεται μόνον, ό,τι έχει αποφασισθή. Εις την υποχρέωσιν όμως της διοικήσεως να συμμορφωθή προς την ακυρωτικήν απόφασιν του Συμβουλίου της Επικρατείας δεν εμπεριέχεται μόνον η υποχρέωσις να λάβη αύτη ως δεδομένον ό,τι και όπως έκρινεν η απόφασις, αλλά και να ενεργήση, ό,τι απαιτείται και να παραλείψη ό,τι αντιβαίνει εφεξής εις την συγκεκριμένην πραγματοποιήσιν του σκοπού της επιταγής, ένεκα παραβάσεως της οποίας η προσβληθείσα πράξις ηκυρώθη ή απερρίφθη τυχόν η αίτησις ακυρώσεως.»

25 In English it reads:

“That is, it is likely that the obligation for compliance to be wider than *res judicata*, that is to refer to persons, for which there does not exist *res judicata* especially when there exists an instance for which the compliance demands, act or omission by a non-litigant organ, but also the reverse to exist *res judicata* in relation to persons not bound for compliance especially when there existed third parties taking part or intervening or who stopped the judgment delivered.

35 Lastly the obligation for compliance is much wider than *res judicata* as regards its content whenever a positive action for it is demanded.

Only what was decided is contained in the *res ju-*

dicata. In the obligation of the administration to comply with the annulling decision of the Council of States there is contained not only the obligation to take for granted what and as it was decided by the judgment, but also to perform what is commanded and to omit what is contrary thereafter in the definite realization of the purpose of the command on account of the violation of which the challenged act was annulled or the application for annulment was dismissed.”

Furthermore in *Themis* (supra) foot-note 1, at p. 116, it is also stated that:-

«(1) Η ανάκλησις των πράξεων, αι οποίαι στηρίζονται εις άκυρον πρ άξειν της διοικήσεως, αποτελεί την αναγκαίαν συνέπειαν της γενομένης υπό του Συμβουλίου της Επικρατείας δεκτής αρχής, καθ' ήν ακυρωθείσης πράξεως τινος ακυρωτέαι τυγχάνουσι και αι εις ταύτην στηριζόμεναι, ως εφεξής εστερημένοι νομίμου ερείσματος. Βλ. Ολ. 20/1934, 33/1934, 15/1934, 121/1934, Β' 508/1934, Ολ. 588/1934, 724/1934, 880/1934, 942/1934, 186/1935.»

In English it reads:

“(1) The revocation of the acts which are based on the null act of the administration, is a necessary consequence of the principle, accepted by the Council of State by which upon the annulment of one act they are capable of being annulled and those based on it, as being thereafter devoid of a lawful basis. See Full Bench 20/1934, 33/1934, 15/1934, 121/1934, B' 508/1934, Full Bench 588/1934, 724/1934, 880/1934, 942/1934, 186/1935.”

I was referred also to “The Consequences of the Annulment of Administrative Acts vis-a-vis the Administration” (1980) by Demetra Kontoyiorga-Theocharopoulou where the topic is dealt at length in pages 133-145. I shall only quote from page 143 where it is stated:-

«Δηλαδή, εις συμμόρφωσιν προς ακυρωτικήν απόφασιν του ακυρωτικού δικαστού η Διοίκησις υποχρεούται

να ανακαλέση και κάθε άλλην πράξιν τελούσαν έν στενώ συνδέσμω προς την ακυρωθείσαν.

5 Η δε ανακλητική πράξις, αναγκαία συνέπεια της ακυρωτικής αποφάσεως, δεν αποτελεί ανάκλησιν κατά την κοινήν έννοιαν, δια τούτο και δια την νομιμότητά της δεν απαιτείται να συντρέχουν αι ουσιαστικάί προς ανάκλησιν διοικητικής πράξεως προϋποθέσεις, ούτε να τηρηθή η σχετική διαδικασία.»

In English it reads:

10 “That is in compliance to the annulling decision of the annulling Judge, the Administration is obliged to revoke and every other act being in close link to the annulling one.

15 And the revoking act a necessary consequence of the annulling decision does not constitute revocation in the ordinary sense, hence for its legality it is not required that there should exist the substantial for the revocation of an administrative act prerequisites nor the relevant procedure to be observed.”

20 By way of a foot-note to the aforesaid passage which merely repeats the principles earlier referred to, reference is made to two decisions of the Greek Council of State, namely Decisions No. 1072/50, 1776/66. Foot-note 66, however, invites a comparison of those decisions to Decision  
25 No. 4213/79 by which it was decided that such obligation does not exist when as regards those acts to be revoked there has been pursued by the interested party an application for annulment which he abandoned (ούτος παρητήθη). I shall be dealing with this decision at some  
30 length later in this judgment but before doing so I find it convenient at this stage to deal with some other grounds of Law relied upon on behalf of the applicant.

35 It was one of the arguments of learned counsel for the applicant that it was not possible to revoke the two successive promotions because the general principles governing the revocation of lawful administrative acts should apply and in the circumstances of the particular case their prerequisites were not satisfied. The simple answer to this conten-

tion is that in the case of revocation of acts being in close link with the annulled one in compliance to an annulling judgment of the Administrative Court, the principles governing the revocation of administrative acts do not apply as the obligation to comply prevails. This is clearly born out from the Decision of the Greek Council of State 1072/50 already referred to in this judgment in which it was held that the revoking act being indirect, but necessary consequence of the annulling decision, does not constitute a revocation in the ordinary sense, hence for its legality there are not required all the substantial for the revocation of an administrative act prerequisites and the relevant procedure need not be followed. In fact if these principles were to be applied there could be no compliance with the annulling judgments of the Court. (See Conclusions of the Case Law of the Greek Council of State p. 200, Theocharopoulou (supra) p. 143, Decision 3731/74, at p. 4770 and Supplement of the Case Law of the Greek Council of State 1953 - 1960 Volume A - K p. 218, paragraph 3348.

Another point that may briefly be disposed of is the one referring to the violation of the Rules of Natural Justice in the sense that the applicant was not given the opportunity to be heard before the sub judice decision to revoke the subsequent acts of promotion was taken. The matter is well settled by the judgment of the Full Bench of this Court in *Kontemeniotis v. C.B.C* (1982) 3 C.L.R. 1027 in which it was held that the Rules of Natural Justice require in Law that an opportunity be given to a party to be heard in proceedings of a penal or disciplinary character and that no comparable duty is cast upon administrative bodies with regard to purely administrative matters.

This principle was followed inter alia in the *Group of Five Bus Tour Ltd., and others v. The Republic* (1983) 3 C.L.R. 793.

I come now to what I consider the main issue in this recourse. This relates to the litigation in relation to the subsequent promotion of the applicant and its outcome. The relevant facts are these. The successful applicant in Recourse No. 499/80—(*Antonios Koufettas v. The Repu-*

blic (1983) 3 C.L.R. 1252, upheld by the judgment of the Full Bench in Revisional Appeal 358 delivered on 19th September 1985)\*—had filed Recourse No. 113/81 challenging thereby the subsequent promotion of the present applicant as from the 15th May, 1979 to the permanent post of Lands Officer which he withdrew on the 13th January, 1983. Also another unsuccessful candidate namely, Evripides Georghiou filed Recourse No. 333/79, seeking thereby the annulment of the same decision of the respondent Commission by which it promoted the interested parties A. Kotsonis and A. Pantazis to the permanent post of Lands Officer as from the 15th May, 1979 which was dismissed on the 30th August 1983 by the judgment of the President of this Court. This case is reported as *Georghiou v. The Republic* (1984) 3 C.L.R. 1571. The ground for its dismissal was that, as that applicant had died whilst the Recourse was still pending, his heir and son did not possess a legitimate interest of his own entitling him to continue pursuing the Recourse.

It was argued that as a result of this situation the revocation of the subsequent promotions was contrary to Law as there has been a *res judicata* and consequently the respondent Commission could not and ought not to revoke the said act which was challenged by these two recourses.

I am grateful to counsel for the applicant for making readily available a copy of Decision 4213/79, of the Council of State to which I have already referred. That application was originally to be heard by a Bench of three Judges of the Third Section of the Council of State but it was introduced by that Court for hearing by a Bench of five Judges on account of the major importance of the issue that arose. The facts of the case appear in the text and I need not repeat them. The reasoning, however, of the Decision is as follows:

«Επειδή κατά το άρθ. 50 παρ. 4 του Π. Δ. 170/1973, ως τούτο αντικατεστάθη δια του άρθ. 30 του Ν. 702/1977, αι διοικητικάί αρχαί δέον εις εκτέλεισιν της εν άρθ. 95 παρ. 5 του Συντάγματος υποχρέωσσεως των

\* Reported as *Republic v. Koufettas* in (1985) 3 C.L.R. 1950.

συμμορφώσεως προς τας ακυρωτικές αποφάσεις του Συμβουλίου, της Επικρατείας να συμμορφούνται δια θετικής ενεργείας προς το περιεχόμενον της αποφάσεως του Συμβουλίου, συνισταμένης εις την αποκατάστασιν της διαταραχθείσης δ'α των παρανόμων πράξεων ή παραλείψεων νομιμότητος όπως αυτή διαπιστούται υπό της αποφάσεως του Συμβουλίου της Επικρατείας. Εις εκτέλεσιν δε αυτής της υποχρέωσης η Διοίκησης οφείλει να ανακαλέση τας αντθέτους προς τα υπό του Συμβουλίου της Επικρατείας κριθέντα πράξεις της και εκείνας ακόμη αι οποίαι είχαν εκδοθή προ της ακυρωθείσης πράξεως ή παραλείψεως. Τοιαύτη όμως υποχρέωσις δεν υφίσταται όταν κατά των ανακλητέων κατά τα ανωτέρω πράξεων είχαν ασκηθή υπό του ενδ'αφερομένου αίτησις ακυρώσεως, άφ' ής όμως υπεβλήθη παραίτησις. Κατά την άποψιν όμως ενός εκ των εχόντων αποφασιστικήν ψήφον μελών του Δικαστηρίου η υποχρέωσις της Διοικήσεως προς αποκατάστασιν της νομιμότητος, έχει ως αναγκαίαν συνέπειαν την ανάκλησιν όλων των παρανόμων πράξεων της, η υποχρέωσις δε αυτή δεν δύναται να αδρανή από την συγκεκριμένην συμπεριφοράν των ενδιαφερομένων (εάν ήσκησαν δηλ αίτησιν ακυρώσεως ή παρητήθησαν από ασκηθείσαν κλπ). Δότι απορρέει απ' ευθείας εκ του Συντάγματος και του Νόμου

Επειδή, εν προκειμένω, κατά της προαγωγής του παρεμβαίνοντος εις ανασπληρωτήν γενικόν διευθυντήν και της παραλείψεως της Διοικήσεως να κρίνη προς προαγωγήν εις τον βαθμόν τούτον τον αιτούντα, ούτος είχε ασκήσει την από 19 4 1977 αίτησιν ακυρώσεως, άφ' ής όμως παρητήθη (πρακτικόν παραίτησεως 163/1978). Κατ' ακολουθίαν, η Διοίκησης, κατά τα εις την προηγουμένην σκέψιν εκτεθέντα, δεν παρέλειψε οφειλομένην νόμιμον ενέργειαν, όταν, μετά την προμησθείσαν υπ' αοιθμ 285/1975 ακυρωτικήν απόφασιν του Συμβουλίου της Επικρατείας, δεν επανέλαβε την όλην διαδικασίαν ήτις απέληξε εις την προαγωγήν του παρεμβαίνοντος, δια της κρίσεως του αιτούντος προς προαγωγήν και ενδεχομένως συγκρίσεως του με τον προαχθέντα παρεμβαίνοντα »

In English it reads:-

5           “Whereas under section 50 para. 4 of P.D. 170/  
1973 as same was replaced by section 30 of N. 702/  
1977 the administrative authorities must, in discharge  
of their obligation under Article 95, para. 5 of the  
10 Constitution for compliance to the annulling decisions  
of the Council of State, comply by positive action to  
the content of the Decision of the Council consisting  
in the reinstatement of the disturbed by the unlawful  
acts or omissions legality as ascertained by the decision  
15 of the Council of State. And in the discharge of this  
obligation the Administration must revoke the acts  
which are contrary to what was decided by the Council  
of State and also those which had been issued before  
the annulled act or omission. Such obligation,  
however, does not exist when as against the acts to  
be revoked in accordance with the above there had  
been filed by the interested party a recourse for annulment  
20 and for which there has been ‘resignation’  
(παραιτήσις). In the opinion, however, of one of those  
members of the Court having a decisive vote, the  
obligation of the Administration for reinstatement of  
the legality has as a necessary consequence the revocation  
of all its unlawful acts, and this obligation  
25 cannot be made inactive on account of the concrete  
conduct of those interested (if they filed, for example,  
a recourse for annulment or ‘resigned’ from a filed  
one etc) because it emanates directly from the Constitution  
and the Law.

30           Whereas in the present case, as against the promotion  
of the intervener to deputy director-general and  
the omission of the Administration to select for promotion  
to that grade the applicant, he had filed as  
35 from 19.4.1977 application for annulment, from  
which, however, he ‘resigned’ (παρητήθη) (minute of  
resignation 163/1978). It follows in accordance with  
the aforesaid reasoning that the administration did  
not omit a due lawful action, when, after the aforementioned  
annulling decision under No. 285/1975 of  
40 the Council of State, it did not repeat the whole process  
which resulted in the promotion of the inter-

vener, by the selection of the applicant for promotion and possibly comparing him with the promoted intervener."

I have quoted at some length from text-books and decided cases so that the issue which is of paramount importance as the answer to it will regulate the obligation of the administration in Cyprus for compliance to the decisions of this Court given in the exercise of its Revisional Jurisdiction under Article 146 of the Constitution, has to be settled and I thought that it would be useful to do so. so that if the case goes before the Full Bench they will have, as far as I could be of help the maximum of the relevant material.

Unlike Greece where the jurisdiction of the Council of State and its powers are regulated by Law, no statutory enactment has as yet been legislated in Cyprus and the question of compliance to the decisions of the Supreme Court in its revisional jurisdiction is to be found in paragraph 5, of Article 146 of the Constitution which provides that "any decision given under paragraph 4 of this Article shall be binding on all Courts and on all organs or authorities in the Republic and shall be given effect to and acted upon by the organ or authority or person concerned."

Inevitably the principles upon which this obligation is governed must be the General Principles of Administrative Law evolved, as said in the case of *Morsis v. The Republic* (1965) 3 C.L.R. 1, in the continental countries (i.e. Greece, France and Germany) and applied there and elsewhere with such degree of consistency and universal applicability as to render them part of the science of Administrative Law,

I must say that in accepting the traditionally established position as enunciated in the numerous cases and commented upon by the various authors and the reference also by them to the approach of French Administrative Law, I was guided by the explicit way in which paragraph 5, of Article 146 of the Constitution is framed demanding in clear and unambiguous terms compliance with the deci-



sions of this Court by the administration. It commands them to give effect to and act upon such a decision and no doubt the principle that the annulment of an act carries with it all subsequent acts in close link with it is a basic principle of good administration and has to be given effect to the utmost, as without strict compliance there cannot be effective judicial control of the administration, and reinstatement of legality which it commands.

Furthermore in nonfollowing the majority view in the aforesaid decision of the Council of State I had in mind that it is not certain what the legal connotation in Greek Law and in its procedure in particular, the term "resignation" (paretisis) is and whether it is the same or not is the withdrawal of a recourse in our law which to my mind it does not by itself amount to abatement. It should not be forgotten that when the applicant of recourse No. 113/81 withdrew same the law was generally accepted as hereinabove explained to be. In fact there must be made a differentiation between res judicata which covers only what it decided therein between the parties and the obligation of the administration to comply, which is much wider as regards its content. Moreover the obligation to reinstate legality has a necessary consequence the revocation of the subsequent acts in close link with the annulled one and this cannot be thwarted by the action of anyone as it is a duty towards all and in particular to all possible candidates.

It is not, however, without regret, I should say, that I dismiss the present recourse. The applicant has gone through obviously tremendous strain, over a long period of years through litigation, though apparently he is a duly qualified officer. I am sure that ways will be found to do justice to him whilst at the same time observe the principles of good administration.

For all the above reasons the recourse is dismissed but in the circumstances there will be no order as to costs.

*Recourse dismissed.*  
*No order as to costs.*