

1982 April 15

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LOUCAS HAVIARAS;

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR AND DEFENCE,

Respondent.

(Case No. 35/80).

Natural justice—Rules of—Police Force—Promotions—Applicant not promoted though recommended for promotion, because of information from Central Information Service about disloyal to the State activities of his during the abortive Coup d'etat of July, 1974—Applicant never given chance to repudiate the allegations against him—Said information could not legitimately be taken into account—Breach of rules of natural justice which vitiates sub judice decision.

The applicant and the interested party were recommended for promotion by the Chief of Police to the post of Chief Superintendent of Police. The respondent Minister bypassed the applicant and promoted the interested party, who was junior in the service to the applicant, because the Minister had reservations about the loyalty of the applicant in view of a report of the Central Information Service (KYP) containing information about alleged disloyal to the State activities of the applicant during the abortive coup d'etat of July 1974; and hence this recourse.

Applicant came to know for the first time about the said reservations of the respondent Minister when the Opposition of Counsel for the respondent was filed in the present proceedings and he had never faced criminal or disciplinary charges in relation to any alleged activities of his during the said coup d'etat, so as to have an opportunity to defend himself; and Counsel for

the applicant contended that the course which was adopted by the respondent in the present instance was contrary to the rules of natural justice

Held, that since the sub judice decision was based on information which could not legitimately be taken into consideration as the applicant was never given a chance to repudiate the allegations against him, there has occurred a breach of the rules of natural justice which vitiates the promotion of the interested party instead of the applicant, and such promotion has, therefore to be annulled

Sub judice decision annulled

Cases referred to.

Haviaras v Republic (1981) 3 C.L.R. 415 at pp 418-419,
ΗμΓεοργίου v Republic (1981) 3 C.L.R. 587 at pp 589-590
Komodakis v Republic (1982) 3 C.L.R. 81

Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Chief Superintendent of Police in preference and instead of the applicant

K Koushtos with *A. Haviaras*, for the applicant
R Gavriehides, Senior Counsel of the Republic for the respondent.

Cui ad vult

TRIANAFYLLIDIS P. read the following judgment By means of the present recourse the applicant challenges the decision of the respondent to promote, in December 1979, instead of the applicant, Chrysanthos Panayiotou (to be hereinafter referred to as the "interested party"), to the post of Chief Superintendent of Police

By virtue of section 2 of the Police Law, Cap 285, the post of Chief Superintendent is classified as a "Gazetted Officer" and, thus, under section 13(1) of Cap 285, as amended by section 4 of the Police (Amendment) Law, 1964 (Law 21/64), the organ which is competent to decide on promotions to such post is the respondent Minister

The relevant recommendations for the filling of the post concerned were made by the Chief of Police in a letter dated

29th October 1979 and addressed to the respondent Minister. The applicant and the interested party were two out of five candidates so recommended.

5 As it appears from the material before me the applicant was promoted to the post of Superintendent "A" on 1st September 1972 and to the immediately lower post of Superintendent "B" on 1st March 1967. The interested party was promoted to the post of Superintendent "A" also on 1st September 1972 and to the post of Superintendent "B" on 10th July 1968, that
10 is fifteen months after the applicant.

From paragraph 3 of the Opposition and the written address which was filed by counsel for the respondent it appears that the respondent Minister bypassed the applicant and promoted the interested party, who was junior in the service to the
15 applicant, because the Minister had reservations about the loyalty of the applicant in view of a report of the Central Information Service (KYP) containing information about alleged disloyal to the State activities of the applicant during the abortive coup d'etat of July 1974.

20 As has been stated by his counsel the applicant came to know for the first time about the said reservations of the respondent Minister when the Opposition of counsel for the respondent was filed in the present proceedings and the applicant had never faced criminal or disciplinary charges in relation to any alleged
25 activities of his during the said coup d'etat, so as to have an opportunity to defend himself. It has, therefore, been submitted by counsel for the applicant that the course which was adopted by the respondent in the present instance is contrary to the rules of natural justice.

30 In *Haviaras v. The Republic*, (1981) 3 C.L.R. 415, where this same applicant had challenged promotions previous to the sub judice one, Malachos, J. stated the following (at pp. 418-419):

35 "The main argument of counsel for applicant is that the Minister in considering the applicant as a candidate for promotion, was not entitled to take into account the accusations based on information as to his loyalty and activities during the Coup d'Etat since no disciplinary or criminal proceedings were ever instituted against him

to substantiate such accusations. He submitted that mere rumours are not sufficient and that the Minister in acting in the way he did, he acted contrary to the general rules of administrative law and the rules of natural justice.

In a recent case, namely, *Kyriakos Tsangarides and Others v. The Republic*, (1981) 3 C.L.R. 117, I had the opportunity to deal with a similar matter. That was a case for promotion to the rank of Sergeant in the Police Fire Service; and though they were recommended for promotion by the Chief Fire Officer and the appropriate Selection Board, they were not promoted to the above rank for 'reasons of loyalty'. The information regarding their loyalty was supplied to the respondent Chief of Police by the Central Information Service known as KYP and was to the effect that their loyalty was doubted.

It was held that the Chief of Police ought not to have taken into account the report of the Central Information Service as to the doubts that existed regarding the loyalty of the applicants; and that, therefore, the recourse must succeed and the decision complained of must be declared null and void".

When a similar, as in the present case, issue was raised in *HjiGeorghiou v. The Republic*, (1981) 3 C.L.R. 587, L. Loizou J. said (at pp. 589-590):

"It is common ground that neither the grounds upon which the Minister's doubts regarding applicant's loyalty were based nor the existence of such doubts were either brought to the notice of the applicant or that he was given an opportunity to be heard in relation thereto. Learned counsel appearing for the respondents was not, himself, aware what gave rise to the Minister's doubts but he thought that it may have been certain rumours regarding applicant's conduct at the time of the coup. As a matter of fact this seems to be quite likely because it appears from a letter dated 20th July, 1978 (exhibit 2) addressed by the Chief Fire Service Officer to the applicant that there were certain reports against him made under The Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Law, 1977, which were investigated and the Attorney-

General of the Republic had advised that no charge could be brought against him.

5 This being the position it seems to me that it is of no consequence whether the Minister's doubts which led to the sub judge decision were based on the reports to which exhibit 2 relates or on any other reports or information from undisclosed sources as either alternative is equally fatal to such decision because either it was based on grounds which did not constitute an offence of any kind and which could not legitimately be taken into account (see, inter alia, *Tsangarides and Others v. The Republic*, (1981) 3 C.L.R. 117 and *Koudounas v. The Republic*, (1981) 3 C.L.R. 54) or on mere suspicions but, in either case, the applicant was never given an opportunity to be heard on the matter.

1 This is contrary to and offends against well established principles of natural justice and this Court is bound to annul the sub judge decision accordingly".

20 The *HjiGeorghiou* case, supra, was referred to with approval in *Komodikis v. The Republic* (case No. 142/80, decided by Hadji-anastassiou J. on 8.1.1982 but not yet reported)*.

25 On the basis of the principles expounded in the above case-law and bearing in mind the already mentioned facts of the present case, and, particularly, that the sub judge decision of the respondent was based on information which could not legitimately be taken into consideration as the applicant was never given a chance to repudiate the allegations against him, I have come to the conclusion that there has occurred a breach of the rules of natural justice which vitiates the promotion of the interested party instead of the applicant, and such promotion 30 has, therefore, to be annulled.

Thus, the present recourse succeeds; but I am not making any order as to its costs.

*Sub judge decision annulled.
No order as to costs.*

* Reported in (1982) 3 C.L.R. 81.