

1987 April 22

[SAVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

FLORENTIA DEMETRIOU,

Applicant,

v.

THE THEATRICAL ORGANIZATION OF CYPRUS,

Respondent.

(Case No. 252/83).

The Theatrical Organization of Cyprus — Promotions — The Theatrical Organization of Cyprus Law 71/70 as amended by Laws 36/72 and 68/79 — Section 5 — Artistic Committee — Functions of — Recommendations of — Cannot be disregarded without special reasons — Section 4(7) — Personnel Committee — Its views should not outweigh the views of the Artistic Committee. 5

By means of this recourse the applicant challenges the decision of the respondents to promote the interested parties Phaedros Stasinou and Alkistis Pavlidou to the post of Senior Actor instead of her.

The applicant and interested party Stasinou were included in the list of those recommended for promotion by the Artistic Committee, set up in virtue of section 5 of Law 71/70 as amended by Law 68/79. Interested party Pavlidou was not among those recommended. 10

The recommendations of the Artistic Committee were sent to the Personnel Committee of the Organization. This Committee was set up in accordance with section 4(7) introduced by section 2(d) of Law 36/72. Both interested parties were included in the list of those recommended for promotion by this Committee, whereas the applicant was not. 15

Finally the Board of the respondent selected for promotion the interested parties. 20

Held, (1) It is clear from the provisions of sub-section (4) of section 5 of Law 71/70 as amended by Law 68/79 that the Board of the respondent when dealing with matters touching the appointment, the evaluation and the dismissal of the artistic and technical staff has to seek the opinion of the Artistic

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Committee which, notwithstanding its advisory nature, has to be taken into consideration and be given due weight.

5 (2) Special reasons should have been given by the respondent for not adopting the recommendations of the Artistic Committee. No such reasons were given in this case as to why interested party Pavlidou, who had not been recommended by the Artistic Committee was promoted instead of the applicant, who had been so recommended. The recommendations of the Personnel Committee should not, in any event, outweigh the views of the Artistic Committee.

10 (3) In the light of the above the promotion of interested party Pavlidou has to be annulled.

(4) The selection of interested party Stasinou was reasonably open to the respondent.

15 *Sub judice promotion of interested party Pavlidou annulled. Recourse as against interested party Stasinou dismissed. No order as to costs.*

Recourse.

20 Recourse against the decision of the respondent to promote the interested party to the post of Senior Actor in preference and instead of the applicant.

C. Anastasiades, for the applicant.

M. Photiou, for the respondent.

25 *Cur. adv. vult.*

SAVVIDES J. read the following judgment. The applicant by this recourse challenges the decision of the respondent to promote the interested parties, namely, Phaedros Stasinou and Alkistis Pavlidou to the post of Senior Actor instead of her.

30 The respondent is the Cyprus Theatrical Organization, a statutory body set up under Law 71/70, charged with the promotion of the theatrical art including, inter alia, the organization and operation of one or more theatres sponsored by it. A number of actors and actresses are employed on contractual
35 basis for fixed periods of time which, as a matter of practice, are renewed in such a way as a number of such actors are treated as

the regular theatrical personnel of the organization.

The sub judge decision was taken by the respondent on 12.4.1983, to give effect to a previous decision taken for the promotion of 13 out of the 20 Actors A to the post of Senior Actor. Both the applicant and the interested parties were amongst the 20 candidates considered. Interested party Phaedros Stasinou was amongst those unanimously selected for promotion. Interested party Alkistis Pavlidou was selected by five votes in favour and three against, whereas the applicant was amongst those who were unanimously rejected. As a result, the applicant filed the present recourse challenging the sub judge decision.

It is the contention of counsel for applicant that the respondent in reaching its decision, acted in abuse and/or in excess of powers; the decision was taken under a misconception of fact, in violation of the law and in failure by the respondent to discharge its duty to select the best candidate for promotion in view of the fact that the applicant compared to the interested parties is by far better than them.

By his written address counsel for applicant contended that since the applicant was amongst those recommended by the Artistic Committee set up under the Law whilst interested party Pavlidou was not recommended, the respondent had to give due weight to the recommendations of the said Committee and give proper reasons for not acting upon them, a thing which it failed to do.

Under the provisions of the original section 5 of Law 71/70 an Artistic Committee (Καλλιτεχνική Επιτροπή) was set up, appointed for the purpose of advising the Board of the Organization on matters touching the selection of actors, the programming of shows and the appointment, evaluation and dismissal of the artistic and technical personnel. Any opinion on such matters would only be of an advisory nature. Section 5 was repealed by section 3 of Law 36/72. Law 71/70 was amended by Law 68/79 by the introduction of a new section 5 for the setting up of an Artistic Committee with advisory powers, consisting of a chairman and four members appointed by the Council of Ministers from persons of higher education and knowledge, experience or ability in theatrical and artistic matters and of the Director of the Organization and one representative of the Board, as well as the regular producers, as ex officio members. The functions of such

Committee are set out in sub-section (4) of the new section 5, as follows:

5 «(4) Η Επιτροπή έχει καθήκον όπως συμβουλευή το Διοικητικόν Συμβούλιον, είτε αυτεπαγγέλτως είτε κατόπιν αναφοράς του Διοικητικού Συμβουλίου προς την Επιτροπήν, επί παντός καλλιτεχνικού ζητήματος:

Νοείται ότι επί παντός θέματος αφορώντος εις καλλιτεχνικά ζητήματα

10 και της προσλήψεως αξιολογήσεως και απολύσεως του καλλιτεχνικού και του δια τας καλλιτεχνικής εργασίας τεχνικού προσωπικού το Διοικητικόν Συμβούλιον προ πάσης αποφάσεως αυτού δέον να ζητή την επί του θέματος γνώμην της Επιτροπής, ήτις
15 συνιστά βαρύνουσαν γνώμην καίτοι συμβουλευτικού χαρακτήρος.»

(«(4) The Committee has a duty to advise the Administrative Board, either on its own initiative or upon reference from the Administrative Board to the Committee on any artistic matter:

20 Provided that for any question regarding artistic matters and the appointment, evaluation and dismissal of the artistic and technical for artistic work personnel the Administrative Board must, before any decision, seek the opinion of the Committee on the matter,
25 which is weighty although of an advisory character.»)

It is clear from the provisions of sub-section (4) that the function of such Committee is not merely of an advisory nature but the Board of the respondent when dealing with matters touching the appointment, the evaluation and the dismissal of the artistic and
30 technical staff has to seek the opinion of such Committee which notwithstanding its advisory nature has to be taken into consideration and be given due weight.

In the case under consideration the Advisory Committee held several meetings to evaluate the candidates for promotion to the
35 post of Senior Actor. After evaluating each one of the candidates, the Committee selected 13 out of the 20 candidates whom it recommended for promotion. The applicant and interested party Stasinou were amongst those selected and recommended,

whereas interested party Pavlidou was amongst the seven actors who were not selected. The recommendations in respect of each one of the candidates appear in the minutes of the Artistic Committee which were submitted to the Board.

The recommendations of the Artistic Committee were submitted by the respondent to the Personnel Committee of the Organization, a committee set up by the respondent under section 4(7), introduced by section 2(d) of Law 36/72, chaired by a member of the Board and consisting also of another member of the Board, the Director-General of the Organization and the Administrative Secretary

Sub-section (7) of section 4 provides as follows:

«(7) Ανεξαρτήτως της γενικότητας του εδαφίου (6) το Διοικητικόν Συμβούλιον κέκτηται εξουσίαν, τη εισηγήσει του Προέδρου, όπως καταρτίζη εκ των μελών αυτού τοιαύτας επιτροπάς συνισταμένας εκ τοιούτου αριθμού μελών και υπό τοιούτους όρους ως ήθελε κρίνει πρέπον δι' οιονδήποτε σκοπόν ο οποίος κατά την κρίσιν του Διοικητικού Συμβουλίου θα προήγετο μέσω επιτροπής. Εκάστη τοιαύτη επιτροπή ρυθμίζει τα των εργασιών αυτής, την κατά τας συνεδριάσεις αυτής ακολουθουμένην διαδικασίαν και την τήρησιν των πρακτικών, και υποβάλλει εις την ολομέλειαν του Διοικητικού Συμβουλίου προς λήψιν αποφάσεως τας εισηγήσεις αυτής.

Εις οιαδήποτε τοιαύτην επιτροπήν δύναται όπως, κατόπιν αποφάσεως του Διοικητικού Συμβουλίου, συμμετέχη και ο Διευθυντής.»

«(7) Notwithstanding the generality of sub-section (6) the Administrative Board is empowered, on the recommendation of the Chairman, to set up from its members such committees, composed of such number of members and on such conditions which he would deem fit for any purpose which would according to the opinion of the Administrative Board be promoted through a committee. Each such committee regulates its proceedings, the procedure to be followed during the proceedings and the keeping of minutes, and submits its recommendations to the Administrative Board in its full constitution for the taking of a decision.

The Director may also take part in any such committee, if the Administrative Board so decides»).

5 The Personnel Committee at its meeting of 11.4.83, adopted the recommendations of the Artistic Committee concerning the first nine candidates, in which interested party Phaedros Stasinou was included, and expressed its doubts as to whether it was necessary to fill the remaining four posts, and not to postpone such filling at the beginning of the new theatrical season in September next. Notwithstanding the doubts expressed, the said Committee
10 selected another three candidates who were not amongst those recommended, by the Artistic Committee and also one of the candidates recommended, namely, Neophytos Neophytou, and submitted a list of the names to the Board of the respondent. The applicant who had been selected by the Artistic Committee was
15 not included in such list, whereas interested party Pavlidou who had not been selected by the Artistic Committee was included in the list. The decision of the Personnel Committee concludes as follows:

20 «The Committee on the basis of the same criteria which have been used for the evaluation of the actors, referred to in paragraph (3), finds that the actors whom it has selected as the more suitable and who are referred to in paragraphs (3) and (4) are clearly superior to actors Florentia Demetriou, Nicos Shafkalis and Stavros Louras (who were selected by the
25 Artistic Committee) and Annita Santorineou, Andreas Marangos and Maria Miha (who were not selected by the Artistic Committee either).»

At its meeting dated 12.4.1983, the respondent had before it -

30 (a) the minutes of the meetings of the Artistic Committee at which it selected the 13 candidates which it recommended for promotion;

(b) A full statement of all the candidates recommended or not;

35 (c) the minutes of the meeting of the Artistic Committee containing its reasoned recommendations and evaluation of the candidates; and

(d) the minutes of the meeting of the Personnel Committee. The Board, after considering the matter, decided to fill all the vacant posts.

The minutes then proceed as follows:

«The Board having considered the recommendations of the Artistic Committee and the Personnel Committee and having heard the Director of the Organization Mr. Gavrielides who read his views to the Council concerning the artistic evaluation of each candidate separately and after the Board had taken into consideration the artistic ability and experience of the candidates as actors in the Organization, their professional devotion and their qualifications as well as their performance in various parts which they have played during the last years, decided as follows:

(1) The Board unanimously approves the recommendations of the Artistic Committee and the Personnel Committee for the promotion to the post of Senior Actor of the Following actors A who are included in the attached statement under serial No. 1-9 whom it finds superior to the other candidates.»

(then the names of the nine candidates so selected are set out. The name of interested party Phaedros Stasinou appears as No. 8 on the list).

After that, according to the record, one of the members of the Board left the meeting and the rest proceeded to vote for each one of the other candidates. The result of such voting was that interested party Pavlidou, who was not amongst those recommended by the Advisory Committee was selected by five votes in favour and three against, whereas the applicant was not selected.

No reasons were given by the respondent as to why the opinion of the Artistic Committee, a body entrusted by law with the function of evaluating and selecting candidates for promotion was not adopted with regard to the applicant who was recommended and interested party Pavlidou, though not recommended, was promoted instead.

What emanates from the minutes of the respondent is that it was influenced to some extent by the recommendations of the Personnel Committee in preferring interested party Pavlidou to the applicant and did not give due weight to the recommendations of the Artistic Committee to which it was bound by law to give such weight. The recommendations of the Personnel Committee should not, in any event, outweigh the recommendations of the

Artistic Committee and special reasons should have been given by the respondent for not adopting its recommendations.

Before however concluding on the matter, I wish to draw a distinction between the case of the applicant vis-a-vis interested party Stasinou and the applicant vis-a-vis interested party Pavlidou. Interested party Stasinou was amongst those selected and recommended by the Artistic Committee, together with the applicant. Therefore, from the point of view of recommendation the applicant has no reason to complain against such party and on the material before me, which was before the respondent, it was reasonably open to it to select this interested party. Concerning, however, interested party Pavlidou who was not recommended by the Artistic Committee, the failure of the respondent to give special reasons for not following the recommendation of the said Committee renders its decision vulnerable.

For the above reasons I find that the recourse concerning the promotion of interested party Stasinou fails but succeeds with regard to interested party Pavlidou and the sub judice decision is hereby annulled to that extent.

There will be no order for costs.

*Sub judice decision
partly annulled. No
order as to costs.*