

1988 July 14

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

STELIOS PITSILLIDIS,

Applicant.

THE CYPRUS TOURISM ORGANISATION,

Respondent.

(Case No. 616/84).

Public Corporations—Cyprus Tourism Organization—The Cyprus Tourism Organization Law, 1978 (Section 48/78), sections 5(5) and 5(6)—Sub-committees appointed by the Administrative Board—Whether Director of the Organization entitled to vote in such committees—Question determined in the negative.

Public Corporations—Cyprus Tourism Organization—The Cyprus Tourism Organization Law, 1978, section 5(5) and 5(6)—Sub-committees appointed by the Board—Quorum—Absence of a specific provision—General principle is that quorum is half its members plus one—Therefore the quorum of a five member committee is four—The Director of the Organization, who has no vote, is not counted for the purpose of forming a quorum.

Collective organs—Quorum—Absence of specific provision—Half its members plus one.

The legal principles emanating from this case sufficiently appear from the hereinabove headnote.

Sub judice promotions annulled.

No order as to costs.

Cases referred to:

Maratheftis v. The Republic (1965) 3 C.L.R. 576.

Recourse.

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

5.

A.S. Angelides, for the applicant.

A. Dikigoropoulos, for the respondent.

Cur. adv. vult.

A. LOIZOU P. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the decision of the respondent Organization to promote the interested parties to the post of Senior Tourist Officer, instead of the applicant is null and void and of no legal effect whatsoever.

10

The facts so far as relevant to the issues in this case are as follows:

15

In response to the relevant advertisement for the post which is according to the scheme of service a first entry and promotion post, thirty five candidates applied including ten members of the staff of the respondent Organization. Eighteen candidates were interviewed including the aforesaid ten members of the staff, certain of whom however did not satisfy all the requirements of the Scheme of Service but were invited as it had been agreed with their Trade Union. The applicant was also interviewed.

20

The interviews were carried out by the Selection Committee which was especially set up for the purpose by virtue of section 5(6) of the Cyprus Tourist Organization Law 1969 (Law No. 54 of 1969), hereinafter to be referred to as the Law, and which con-

25

sisted of six persons including the Director General of the respondent Organization.

15 At its meeting of the 25th September 1984 the Selection Committee Board having considered the material before it on the best
5 candidates, their qualifications, experience and knowledge, their administrative and organizing ability, their personality, responsibility initiative et cetera, as ascertained during the interviews and having studied the confidential reports of those who were serving
10 in the respondent Organization considered that A. Charalambides, and P. Vanezis were on the whole the best and decided to promote them to the post in question as from the 22nd October 1984.

As a result the applicant filed the present recourse on the 13th November, 1984.

At the request of the parties the case was on the 7th June 1985
15 adjourned sine die pending the determination of a question on the constitutionality of those provisions of the Law empowering the
20 respondent Organization to appoint and promote its own employees in Revisional Jurisdiction Appeal No. 665. This case, however, was once again put on the trial list on the 27th February 1988
25 on the application of counsel for the applicant. It was argued on behalf of the applicant that the active participation of the Director General of the respondent Organization in the Selection Committee was wrong and illegal in that in accordance with section 5(5) and (6) of the Law, as amended by section 2 of Law No. 48 of 1978, the Director General has no voting
30 powers when participating in the meetings of the selection Committee but is only there to assist.

Furthermore, it was contended that the Selection Committee when considering the matter at hand and when reaching the sub
30 judice decision was improperly constituted as no proper quorum could be formed by the participation of only three of its five members at its deliberations. According to the applicant the participation of four members was necessary in order to form a quorum

and the presence of the Director General as a fourth person, not being a voting member could not form the necessary quorum.

I consider that the active participation of the Director General by voting was contrary to the express provisions of the Law. From a perusal of the provisions of section 5 of the Law, it is clear that the Director General is not a member of the Administrative Board but in accordance with sub-section (5) thereof, he participates at the meetings of the Board without a vote.

5

Sub-section (6) thereof as amended by Law No. 48 of 1978, provides inter alia as follows:

10

"The Administrative Board may delegate part of its competencies to Committees of its members in which the Director - General may participate."

Had the intention of the legislator been for the Director - General to have voting power when participating in any sub - committee, there would have either been an express provision to that effect, or it would have provided for the setting up of such committees made up of members of the Board and including the Director - General. In this instance, however, the Law merely allows the participation of the Director - General who can certainly not assume any more powers than he is already given expressly by the Law itself and in particular sections 5(5) and 6, thereof.

15

20

Consequently, not having any voting power, the Director - General was not entitled to join in forming the necessary quorum, as the persons forming a quorum are sine qua non to the proceedings.

25

In the present instance therefore the sub judice decision was reached by only three out of the five members of the Selection Committee who did not constitute a quorum as in the absence of specific provision in the relevant Law, the general rule applies i.e. that such quorum is half the members of the collective organ, plus one and in this case such number must necessarily be four. (See

30

Conclusions of the Case Law of the Greek Council of State 1929-1959; also *Maratheftis v. The Republic* (1965) 3 C.L.R. 576 at 581-582.)

5 I find therefore that the sub judge decision must be annulled as contrary to law and as having been reached by a wrongly constituted organ. In view of this, I need not proceed to examine the case on its merits so as not to prejudge the issue.

For the reasons stated above, this recourse succeeds and the sub judge decision is hereby annulled.

10 In the circumstances therefore there will be no order as to costs.

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