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[TRIANTAFYLIDIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

POLYVIOS NICOLAOU,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF FOREIGN AFFAIRS  
AND / OR THE MINISTRY OF FOREIGN  
AFFAIRS THROUGH THE DIRECTOR-GENERAL,

*Respondent.*

(Case No. 384/68).

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*Foreign Service of the Republic—Diplomatic Missions of the Republic—Embassies—Composition and organic structure thereof to be prescribed by the Council of Ministers—The Foreign Service of the Republic Law, 1960 (Law 10/60), section 7(2)—In similar terms and to the like effect the new section 7(2) as introduced by the Foreign Service of the Republic (Amendment) Law 1966 (Law 35/66)—Embassy of the Republic in Bonn—Organic structure thereof prescribed by decision No. 30 of the Council of Ministers, dated September 10, 1960, taken under section 7(2) supra—Transfer of Applicant a Secretary Grade A, serving in the central service, Ministry of Foreign Affairs, Nicosia to the said Embassy to take up the duties of Mr. I. an attaché Grade A serving in the Bonn Embassy at the time—But no post either of Secretary or Attaché Grade A is included in the organic structure of the Bonn Embassy as prescribed by the aforesaid decision No. 30 of the Council of Ministers, supra—Consequently the Applicant's transfer thereto has to be annulled as made in an invalid manner and without legal foundation—See immediately below.*

*Administrative Law—Public Service—When the organic structure of a specified sector of a service is laid down by law or prescribed by a certain organ acting within its competence, all other organs have to exercise their respective competences, such as transfers, appointments and the like, by reference to, and within such organic structure—See, also, above.*

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by Law 35/66 supra—Decision thereon substantially taken by the Director-General of the Ministry, the Minister merely approving such decision—Consequently, the transfer is not valid—But assuming that the decision was that of the Minister himself, still it cannot be upheld as a valid one due to lack of essential reasoning.

*Administrative Decision—Lack of reasoning—Administrative decision purported to have been taken by the Minister whereas in reality it was taken by the Director-General of the Ministry—The Minister merely approving—Decision not a valid one—See, also, immediately above.*

*Words and Phrases—Central Service—Diplomatic and Consular Service in section 3(2) of the Foreign Service of the Republic Law, 1960 (Law 10/60)—“The posting in any post abroad or in the Ministry..... of persons serving in the diplomatic service.....” in section 5(4) of Law 10/60 as amended by Law 35/66 supra.*

*The Foreign Service of the Republic Law, 1960 (Law 10/60) as amended by the Foreign Service of the Republic (Amendment) Law, 1966 (Law 35/66), sections 3 and 4 (none amended); section 5(1)(2)(3) and (4); section 7(2) before and after its amendment; sections 6 and 9 of the said Law 10/60, now both sections repealed by the latter Law 35/66 supra.*

*The Foreign Service of the Republic (Qualifications for Appointments or Promotion, Duties and Competence of each Post) Regulations, 1966 (see Notification 534 in the 3rd Supplement to the Official Gazette of 1966) paragraphs 8 and 9.*

*The Public Service Law, 1967 (Law 33/67) sections 2, 3 and 5.*

By this recourse the Applicant, a Secretary Grade A, in the Ministry of Foreign Affairs in Nicosia, challenges the decision of the Minister of Foreign Affairs to transfer him from Nicosia to the Embassy of the Republic in Bonn West Germany.

The text of this decision (*Exhibit 6*) consists, first, of a comprehensive minute signed by the Director-General of the Ministry and addressed to the Minister. After dealing with commendable diligence and clarity with various relevant aspects of the matter including objections raised by the Applicant, the Director-General concluded his own minute by stating that in the circumstances the exigencies of the service required that

*Foreign Service of the Republic—Division—Central Service—Diplomatic and Consular Service—The Foreign Service Law, 1960 (Law 10/60) section 3(2)—Transfer of an officer serving in the Central Service, for service abroad in the Diplomatic Service—Not within the competence of the Minister of Foreign Affairs—But within the competence of the Public Service Commission—Minister competent to effect postings abroad and back to the Ministry of persons already serving abroad at the material time—Section 5(4) of the Foreign Service of the Republic Law, 1960 (Law 10/60) as amended by the Foreign Service of the Republic (Amendment) Law, 1966 (Law 35/66)—Cf. sub-sections (1) (2) and (3) of section 7 of Law 10/60 as amended by Law 35/66 supra; section 6 (now repealed) of the said Law 10/66; Articles 124 and 125 of the Constitution and the Public Service Law, 1967 (Law 33/67).*

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*Foreign Service—Branch of the Public Service—Foreign Service divided into the Central Service and the Diplomatic and Consular Service—Section 3 of Law 10/60 supra—Appointments, promotions and transfers in the Foreign Service—To be effected by the Public Service Commission unless otherwise provided by law—Section 5(1)(2) and (3) of Law 10/60 as amended by Law 35/66 supra—Postings—Postings as distinct from transfer—Sub-section (4) of the said section 5—Cf. section 6 (now repealed) of the said Law 10/60; Articles 124 and 125 of the Constitution; The Public Service Law, 1967 (Law 33/67).*

*Public Service—See above.*

*Diplomatic and Consular Service—See above and below.*

*Embassies and Consulates—See above.*

*Public Service Commission—See above.*

*Public Officers—See above.*

*Transfers in the Foreign Service—See above.*

*Posting—As distinct from transfer—See above.*

*Central Service—See above and below.*

*Administrative Law—Administrative decision—Mere approval—Lack of essential reasoning—Transfer of Applicant from the Ministry of Foreign Affairs to the Bonn Embassy—Effected by the Minister purporting to act under section 5(4) of Law 10/60 as amended*

the Applicant be transferred to Bonn and suggesting that the Minister should "approve" the said transfer with effect as from February 18, 1969 under section 5(4) of the Foreign Service of the Republic Law, 1960 (Law 10/60) as amended by the Foreign Service of the Republic (Amendment) Law, 1966 (Law 35/66).

The second part of the *sub judice* decision consists of a minute by the Minister of Foreign Affairs, dated November 28, 1968, which immediately follows the said minute of the Director-General, it merely states:

"approved" ("έγκρίνεται")

Section 5(4) *supra* provides: "Subject to the provisions of sub-sections (2) and (3) the posting in any post abroad or in the Ministry of Foreign Affairs of persons serving in the *Diplomatic Service* is made by the Minister of Foreign Affairs."

Sub-sections (2) and (3) of the same section 5 relate to appointments and postings in the *Diplomatic Service* made by the Council of Ministers; and sub-section (1) provides that subject to the said sub-sections (2) and (3), appointments and promotions in the *Foreign Service* are made by the Public Service Commission.

It is expedient at this stage to note that section 3 of the *Foreign Service of the Republic Law, 1960 (Law 10/60 supra)* which established the *Foreign Service of the Republic* as a special branch of the *Public Service*, provides that the *Foreign Service* would comprise two sections: The *Central Service*, composed of all public officers serving in the Ministry of Foreign Affairs, and the *Diplomatic and Consular Service* (to be known as the *Overseas Service*) composed of all public officers serving abroad in Embassies and Consulates.

It is common ground that the Applicant, a Secretary Grade A, was transferred from the *Central Service Nicosia* to the *Bonn Embassy* to take over the duties carried out there till then by an Attaché Grade A. Strangely enough, neither post is included in the organic structure of the *Bonn Embassy*; the relevant decision of the Council of Ministers No. 10 of the 10th September, 1960 taken under section 7(2) of the *Law (Law 10/60 supra)*, does not provide for the post of a Secretary or Attaché, of any grade in the organic structure of the *Bonn*

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Embassy, but only provides that an Ambassador, a Counsellor and a Commercial Attaché are to be posted at such Embassy; and it is common ground that the Commercial Attaché in question is an officer coming under the Ministry of Commerce and Industry, and not the Attaché, Grade A, serving at the Bonn Embassy as aforesaid at the time of the *sub judice* transfer.

Annuling the Applicant's said transfer on all and each of the following grounds:—

*Held*, (1)(a). In the absence of a proper decision of the Council of Ministers under section 7(2) of Law 10/60 (*supra*) (either before or after its amendment by Law 35/66 *supra*) providing for the posting at our Bonn Embassy of a Secretary, Grade A, or an Attaché, Grade A, (*supra*) it is not in law possible to post there, by way of transfer or otherwise a Secretary, Grade A, such as the Applicant in the present case.

(b) When the organic structure of a specified sector of a Service is laid down by law or prescribed by a certain organ—in this case by the Council of Ministers—acting by virtue of a law, all other organs have to exercise their respective competences by reference to, and within such structure.

(c) Consequently, the transfer complained of has to be annulled because it was made in an invalid manner without the requisite legal foundation.

(2)(a) Assuming that the Minister of Foreign Affairs was competent under section 5(4) of the Law (*supra*) to decide on the transfer of the Applicant from the Ministry to Bonn, I have reached the conclusion on the basis of *Exhibit 6* (the relevant Minutes of the Director-General and of the Minister himself, *supra*) that the Minister did not proceed to decide, himself on the transfer in question, but he only approved a decision to that effect which was substantially taken by the Director-General of the Ministry.

(b) But even if the minute of the Minister (*supra*) could be deemed to be a decision by him in the matter of the Applicant's transfer, and not merely an approval of a decision reached by the Director-General, I would be of the view that such decision of the Minister could not be upheld as a valid one, due to lack of essential reasoning.

(3)(a) Apart from the foregoing, I am of the view that the Minister of Foreign Affairs has no competence to deal with the matter of the transfer in question of the Applicant under section 5(4) of Law 10/60 as amended by Law 35/66 (*supra*). Section 5(4) empowers the Minister to make postings of persons "serving in the Diplomatic Service" (*supra*), in other words of persons serving abroad at the time, and not of persons such as the Applicant, serving in the Central Service at the Ministry of Foreign Affairs (see section 3 of Law 10/60 (*supra*)).

(b) It follows that the transfer of the Applicant abroad while he was serving in the Central Service at Nicosia, and not in the *Diplomatic Service* at the material time—was not within the competence of the Minister; of course, the Applicant is under section 4 of the said Law 10/60 liable to serve abroad but the competence to transfer him accordingly is vested—failing any provision to the contrary—in the Public Service Commission now functioning under the Public Service Law, 1967 (Law 33/67) and not under Articles 124 and 125 of the Constitution.

(c) Once the *sub judice* transfer was found to be invalid on the above grounds, I think it would not be proper, or even necessary, to deal with the question whether "posting" in the said section 5(4) (*supra*) covers "transfers" as such and not only postings made on first appointment or promotion.

*Sub judice decision annulled. Only £15 awarded to Applicant towards his costs his transfer having been decided upon in all good faith.*

Cases referred to:

*Constantinides v. The Republic* (1967) 3 C.L.R. 7;

*Bagdassarian v. The Electricity Authority of Cyprus* (1968)  
3 C.L.R. 736.

### Recourse.

Recourse against the validity of a decision to transfer Applicant from the Ministry of Foreign Affairs in Nicosia, to the Embassy of the Republic in Bonn, West Germany.

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*L. Papaphilippou*, for the Applicant.

*L. Loucaides*, Counsel of the Republic, for the Respondent.

*Cur. adv. vult.*

The following judgment was delivered by:—

TRIANTAFYLLIDES, J.: By this recourse the Applicant complains against a decision to transfer him from the Ministry of Foreign Affairs, in Nicosia, to the Embassy of the Republic in Bonn, West Germany.

The history of the matter is as follows:—

By a letter dated the 19th July, 1968, the Applicant, who is a Secretary, grade A, in the Foreign Service of the Republic, and has been posted, ever since his appointment, at the Ministry of Foreign Affairs in Nicosia, was informed that he was being transferred to the Bonn Embassy, as from the 1st October, 1968; this letter was addressed to him by the Director-General of the Ministry of Foreign Affairs (see *exhibit 3*).

The Applicant wrote back protesting against his transfer on, mainly, personal grounds, (see *exhibit 2*); but, on the 2nd August, 1968, the Director-General of the Ministry of Foreign Affairs replied to him that the decision to transfer him to Bonn, as from the 1st October, 1968, could not be revoked in view of the exigencies of the service (see *exhibit 4*).

Then the Applicant filed, on the 19th August, 1968, a recourse, 295/68, against his transfer (see *exhibit 5*); such recourse was withdrawn on the 22nd October, 1968, upon a statement by counsel for the Respondent Ministry of Foreign Affairs to the effect that the decision to transfer the Applicant was revoked and that a new decision would be reached after a fresh consideration of the matter.

On the 29th November, 1968, the Applicant was informed, by the Director-General of the Ministry of Foreign Affairs, that the matter of his transfer to Bonn had been re-examined by the Minister and that, in the light of the exigencies of the service, his transfer was necessary; therefore, he should take up duties in Bonn by the 10th January, 1969 (see *exhibit 1*).

It is common ground that the date of the 10th January, 1969, was erroneously specified, and that the proper relevant date is the 18th February, 1969.

The text of the *sub judice* decision has been produced (see exhibit 6):

It consists, first, of a comprehensive minute signed by the Director-General of the Ministry, Mr. Veniamin, and dated the 11th October, 1968; such minute was addressed to the Minister of Foreign Affairs, and therein the Director-General dealt, with commendable diligence and clarity, with various relevant aspects of the matter, including objections raised by the Applicant against his transfer.

The second part of the decision to transfer the Applicant to Bonn consists of a minute by the Minister of Foreign Affairs, which is dated the 28th November, 1968, and follows after the aforesaid minute of the Director-General; it states "Approved" ("Εγκρίνεται").

Actually, the Director-General had concluded his own minute by stating that, in the circumstances, the exigencies of the service required that Applicant be transferred to Bonn and it was suggested that the Minister should "approve" the transfer of the Applicant to Bonn, with effect as from the 18th February, 1969, "under section 5(4) of Law 10 of 1960 as amended by Law 35 of 1966"—in other words, under section 5(4) of the Foreign Service of the Republic Law 1960 (Law 10/60) as amended by the Foreign Service of the Republic (Amendment) Law 1966 (Law 35/66).

It is not in dispute that the transfer of the Applicant was never dealt with by, or put before, the Public Service Commission, and that it was decided upon in the Ministry of Foreign Affairs, as aforesaid.

The relevant provision, section 5(4), which was introduced into Law 10/60 by Law 35/66, reads as follows:—

«Τηρουμένων τῶν διατάξεων τῶν ἐδαφίων (2) καὶ (3) ἡ τοποθέτησις εἰς οἰανδήποτε θέσιν ἐν τῷ ἔξωτερικῷ ἢ ἐν τῷ Ὑπουργείῳ τῶν Ἐξωτερικῶν προσώπων ὑπηρετούντων ἐν τῇ Διπλωματικῇ Ὑπηρεσίᾳ διενεργεῖται ὑπὸ τοῦ Ὑπουργοῦ τῶν Ἐξωτερικῶν».

("Subject to the provisions of sub-sections (2) and (3) the posting in any post abroad or in the Ministry of Foreign Affairs of persons serving in the Diplomatic Service is made by the Minister of Foreign Affairs").

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Sub-sections (2) and (3) of section 5 relate to appointments and postings in the Diplomatic Service made by the Council of Ministers; and sub-section (1) of the same section provides that, subject to the provisions of sub-sections (2) and (3), appointments and promotions in the Foreign Service are made by the Public Service Commission.

When Law 35/66 introduced into Law 10/60 the said section 5, it, at the same time, repealed, *inter alia*, sections 5, 6 and 9 of Law 10/60. By virtue of section 6 of Law 10/60 it was provided that, subject to the provisions of Article 54(b) of the Constitution and of section 9 of Law 10/60 (regarding certain powers of the Council of Ministers), all appointments, transfers or promotions in the Foreign Service were to be made by the Public Service Commission.

It is convenient at this stage to add, also, that by virtue of section 3 of Law 10/60, which is still in force—having remained unaffected by the amendments introduced into such Law by Law 35/66—there has been founded the Foreign Service of the Republic (‘Εξωτερική Υπηρεσία τῆς Δημοκρατίας) as a special branch of the Public Service, and it was provided, furthermore, that the Foreign Service would comprise two sections: The Central Service, composed of all public officers serving in the Ministry of Foreign Affairs, and the Diplomatic and Consular Service (to be known as the Overseas Service), composed of all public officers serving abroad in Embassies or Consulates.

Holders of certain posts—including the post of Secretary, grade A, held by the Applicant—were rendered liable to service either in the Central Service or in the Overseas Service (see section 4 of the legislation concerned).

Another one of the posts, the holder of which is liable to be required to serve (under the said section 4) in either the Central Service or the Overseas Service, is the post of Attaché, grade A; and it is common ground that the Applicant, a Secretary grade A, is being transferred to the Bonn Embassy to take over the duties carried out there till now by an Attaché, grade A—Mr. Ioannou—who is being transferred back to the Ministry of Foreign Affairs.

In this respect counsel for the Applicant has submitted that the transfer of the Applicant entails his demotion. On the other hand, counsel for the Respondent has submitted that though the post of the Applicant is higher in rank, from the

Point of view of salary, than that of an Attaché, grade A, nevertheless both posts involve the carrying out of the same duties, as laid down by paragraphs 8 and 9 of the Foreign Service of the Republic. (Qualifications for Appointment or Promotion, Duties and Competence of each Post) Regulations, 1966 (see Not. 534 in the 3rd Supplement to the Official Gazette of 1966).

In dealing with this aspect of the Case it has become necessary to examine whether or not it was possible, at all, for a Secretary, grade A, to be posted at the Bonn Embassy; and this, because of the provisions of sub-section (2) of section 7 of Law 10/60, as re-enacted by Law 35/66.

Both the old and the new sub-sections (2) provide, in similar, though not identical, terms, that it is for the Council of Ministers to prescribe the composition of foreign missions of the Republic, such as the Bonn Embassy; under the sub-section (2) in force at the material time the Council of Ministers prescribes, *inter alia*, "the composition of a diplomatic mission" (τὴν σύστασιν τῆς διπλωματικῆς ἀποστολῆς).

In my view, in the absence of a proper decision, for the purpose, of the Council of Ministers, providing for the posting at our Bonn Embassy of a Secretary, grade A—or, perhaps, in view of the similarity of the duties, of an Attaché, grade A—it is not possible in law to post there, by way of transfer or otherwise, a Secretary, grade A, such as the Applicant. When the organic structure of a specified part of a service is laid down by law, or it is provided by law that a certain organ—in this case the Council of Ministers—does prescribe such organic structure, all other organs have to exercise their respective competences by reference to, and within, such structure; therefore, the Applicant could not be transferred to the Bonn Embassy as a Secretary, grade A, or as replacement of an Attaché, grade A, unless his posting there was possible within the organic structure prescribed by the only organ competent for the purpose under the Law, namely, the Council of Ministers.

The only relevant decision of the Council of Ministers which has been produced before the Court—and, according to counsel for the Respondent, no other, later, relevant decision exists—is a decision, No. 30, taken on the 10th September, 1960, (see *exhibit 7*), which does not provide for the post of a Secretary

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or Attaché, of any grade, in the organic structure of the Bonn Embassy, but only provides that an Ambassador, a Counsellor and a Commercial Attaché are to be posted at such Embassy; and it is not in dispute that the Commercial Attaché in question is an officer coming under the Ministry of Commerce and Industry, and not the Attaché, grade A—Mr. Ioannou—who is being transferred back to Nicosia, and who apparently, has, himself, been posted at Bonn without the requisite authorization from the organic structure point of view.

In view of the foregoing, I am forced to the conclusion that the transfer of the Applicant to the Bonn Embassy was made in an invalid manner, without the requisite legal foundation; and it cannot be said that such foundation was provided by the decision, itself, to transfer the Applicant—as such decision was taken in the Ministry of Foreign Affairs—because the Ministry, or the Minister, of Foreign Affairs have no competence in the matters which by virtue of section 7(2), of the relevant legislation, are entrusted to the Council of Ministers.

For this reason, among others, the *sub judice* decision has to be annulled, and it is, therefore, declared to be *null* and *void* and of no effect whatsoever.

A further reason, for which the said decision has to be annulled, is the following:—

Assuming, for the moment, that the Minister of Foreign Affairs was competent under section 5(4) of the Law to decide on the transfer of the Applicant, from the Ministry of Foreign Affairs to Bonn, I have reached the conclusion, on the basis of *exhibit* 6 (the relevant minutes of the Director-General of the Ministry and of the Minister himself) that the Minister did not proceed to decide, himself, on the transfer in question, but he only approved a decision to that effect which was substantially taken by the Director-General of the Ministry.

In reaching this conclusion I have not been influenced by any particular expressions used by either the Director-General or the Minister; one must look to the substance and not to the form.

But, looking at the aforementioned minutes as a whole, I do not think that (though no doubt the Director-General and the Minister acted with the best of intentions) it can be

fairly said that it was not, in fact, the Director-General who dealt with the matter of the transfer of the Applicant and reached a decision thereon, and then submitted it to his Minister for approval, which was given.

Of course, it was perfectly open to the Director-General to make an extensive analysis of the matter, as he has done, and to even put forward his own views, by way of a recommendation as to the course to be adopted in the light of the exigencies of the service; but—(especially in the circumstances of the present Case)—there had to be reached a decision, by the Minister himself, setting out the basic reasons, out of all the material contained in the minute of the Director-General, for which the Minister thought fit to consider the transfer of the Applicant as unavoidable, notwithstanding the case made against such transfer by the Applicant, by means of his letter *exhibit 2*.

Thus—and moreover—even if the minute of the Minister of Foreign Affairs could be deemed to be a decision by him in the matter of the transfer of the Applicant, and not merely an approval of a decision reached by the Director-General, I would be of the view that such decision of the Minister could not be upheld as a valid one, due to lack of essential reasoning.

Out of all the factors that were mentioned by the Director-General in his minute the Minister may have found some to be more decisive than others, or even some not to be really relevant, or he may have treated them all as being of equal, and cumulative, weight; but by saying that he approved what was suggested by his Director-General it cannot be deduced, with any certainty, whether he found all the said factors to be of equal weight, or all relevant, or whether he treated some as being more decisive than others, and in such a case which were they; so, in effect, in the particular circumstances of this Case, we do not have on record a reasoned decision taken by the Minister himself, because it is impossible to know, for certain, the specific reasons behind his approval of the view of the Director-General (see *Constantinides and The Republic*, (1967) 3 C.L.R. 7).

All that we have, in reality, is a reasoned decision of the Director-General which was approved by the Minister; and the relevant provision, section 5(4) (assuming the Minister could decide thereunder to transfer the Applicant) surely envis-

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ages a reasoned decision of the Minister, himself, and not merely an approval of a reasoned decision reached by the Director-General of his Ministry.

Moreover, without a reasoned decision reached by the Minister, himself, it is impossible either for the Applicant to attack its validity, as he is entitled to do under Article 146 of the Constitution, or for this Court to decide on such validity, as it is bound to do under the same Article.

For this reason, too, namely the mere approval, instead of a decision—or, at any rate, of a reasoned decision—by the Minister of Foreign Affairs, himself, the *sub judice* transfer has to be annulled; and it is hereby so declared.

I pass on next to the issue of the competence—assumed until now in this judgment—of the Minister of Foreign Affairs to deal with the matter of the transfer in question of the Applicant, under section 5(4) of Law 10/60, as amended by Law 35/66.

Counsel for the Applicant, in arguing this Case at the hearing, has appeared to adopt the view taken by this Court, on the 28th December, 1968, in its Interim Decision in *Bagdassarian v. The Electricity Authority of Cyprus* (1968) 3 C.L.R. 736, to the effect that, as from the 1st July, 1967, there has not been in existence, and functioning, a Public Service Commission as envisaged under Articles 124 and 125 of the Constitution, but there has only been in existence, and functioning, a Public Service Commission set up under the Public Service Law, 1967, (Law 33/67); and he has submitted that the question of the transfer of the Applicant was a matter within the competence of the said Commission.

By virtue of the definition of “public service” in section 2 of Law 33/67, read in conjunction with the provisions of sections 3 and 5 of the same Law, the Commission would be the competent organ regarding a matter such as the present one, unless section 5(4) were to be found to be a legislative provision making, validly, other provision in this connection.

Bearing in mind the division of the Foreign Service, as set up under section 3 of Law 10/60, into Central Service and Diplomatic and Consular Service (known as Overseas Service), and also that section 5(4) empowers the Minister to make postings of persons “serving in the Diplomatic Service”—in-

other words, of persons serving abroad, and not in the Central Service at the Ministry of Foreign Affairs—I think that the proper construction to be put on section 5(4) is that the Minister can effect postings abroad of persons *already* serving abroad or transfer from posts abroad to the Ministry of Foreign Affairs, in Nicosia, persons *already* serving abroad; in both instances such persons being officers serving, at the material time, in the Diplomatic Service.

It has been submitted by counsel for the Respondent that the transfer of the Applicant abroad renders him automatically a member of the Diplomatic Service; but section 5(4) refers explicitly to “persons serving in the Diplomatic Service”; and such Service is defined in section 3(2) of the Law as comprising those who *are* serving abroad.

It is not in dispute that, at the time of his transfer, the Applicant was a person serving in the Ministry of Foreign Affairs; in other words, in the Central Service, as defined by section 3(2); and had never, since his appointment, served abroad; I fail, therefore, to see how the Applicant could be deemed to be, by any means, a person serving, at the material time, in the Diplomatic Service, in the sense of sections 3 and 5(4) of the Law.

It has also been submitted by learned counsel for the Respondent that “Diplomatic Service” in section 5(4) was intended to mean the Foreign Service, in general.

I have, indeed, considered whether I could construe “Diplomatic Service” in section 5(4) as meaning Foreign Service; but I have reached the conclusion that once, for the purposes of the Law, Diplomatic Service has been given a specialized meaning, making it only a part of the Foreign Service, and contradistinguishing it from another part thereof, namely, the Central Service, I would be, in effect, usurping the powers of the Legislature and amending section 5(4)—a thing which I have no competence to do—if, in accordance with the alleged, by the Respondent, intention behind such section 5(4), I were to read “Foreign Service” in the place of “Diplomatic Service”.

: Furthermore, I am not at all convinced that it was the intention of the Legislature to refer to the Foreign Service as a whole by means of the words “Diplomatic Service” in section 5(4); because, when it wanted to refer to the Foreign Service,

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as a whole, it has done so in unmistakable terms—see subsection (1) of the same section 5.

In any case, I would require much more express and clear legislative language before I could hold that section 5(4) deprives all the members of the Foreign Service—and not only some of them, for the sake of the exigencies of the service—of the independence ensured to them by having their transfers decided upon by a Public Service Commission, be it the one under Article 124 of the Constitution or the one under Law 33/67; because, without putting in doubt at all the good faith of any Minister or Head of Department, it is plainly obvious that a public officer feels more independent if his fate in the service depends not on his superiors but on a separate autonomous organ.

In the light of what has been stated on the point of the competence vested in the Minister of Foreign Affairs under section 5(4) of the Law, I have reached, as already indicated, the conclusion that the transfer of the Applicant abroad—while he was serving in the Central Service, and not in the Diplomatic Service, at the material time—was not within the competence of the Minister; of course, the Applicant is, under section 4 of the Law, liable to serve abroad, but the competence to transfer him for service abroad, in the Diplomatic Service, is vested—failing any relevant provision to the contrary in any other legislation—in the Public Service Commission now functioning under Law 33/67.

Before concluding this judgment I would like to point out that I have assumed, for the purposes of such judgment, that section 5(4) covers transfers, as such, and not only postings made on first appointment or promotion; and that, further, the said provision was, when enacted, constitutional, as not being in conflict with Article 125.1 of the Constitution, or does not have, at least, to be construed in such a manner as to avoid being in conflict with Article 125.1—presumably by giving to the word “τοποθέτησις” (posting) its primary meaning, namely, a posting on first appointment or promotion, and not a wide meaning which might be taken to include a transfer.

The above assumptions were made as the serious issues arising in relation to them did not have to be resolved, once the *sub judice* transfer was found to be invalid, in any case, on other grounds; and it would not be proper, or necessary

to turn this judgment into an academic exercise merely for the sake of deciding on such issues.

Finally, I would beg to be permitted to suggest to the appropriate authorities that if an opportunity for amendment of the relevant legislation arises, and if it is deemed by them expedient that the Minister of Foreign Affairs, and not the Public Service Commission under Law 33/67, should make all transfers in respect of the whole of the Foreign Service, then section 5(4) might be amplified accordingly.

In the result this recourse succeeds and the transfer of the Applicant to Bonn is annulled as being, for the reasons stated, contrary to law and in excess and abuse of powers.

As I have no doubt in my mind that the transfer in question was decided upon in all good faith, and without, at all, any deliberate violation of the law or excess or abuse of powers, I award to Applicant, and against Respondent, only £15 towards costs.

*Sub judice decision annulled;  
order for costs as aforesaid.*

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