

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DOROS L. PIERIDES AND OTHERS,

*Applicants,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH

1. THE PUBLIC SERVICE COMMISSION,

2. THE MINISTER OF FOREIGN AFFAIRS,

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AND OTHERS

v.

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*Respondents.*

(Cases Nos. 130/69, 140/69 and 141/69).

*Public Officers—Promotions—Promotions to the post of Counsellor 'B' or Consul-General 'B' in the Foreign Service—Reasonably open to the respondent Public Service Commission in view of the material before it, viz. the confidential reports and the recommendations of the Head of the Department—Proper exercise by the Commission of its discretionary powers—Cf. Foreign Service Law, 1960 (Law No. 10 of 1960) (as amended by Law No. 35 of 1966) and the Regulations made under section 10 (2) (b) of the said Law; Scheme of service made by the Council of Ministers under section 7 (1) of the said Law; Regulation 14 of October 25, 1968, of the said Regulations.*

*Public Officers—Promotions and Appointments—Non-interviewing of candidates by the Public Service Commission—Whether it necessarily involves a wrong exercise of its discretion—The Public Service Law, 1967 (Law No. 33 of 1967) section 35 (6).*

*Interviewing of candidates for appointment or promotion—Section 35 (6) of said Law No. 33 of 1967—See immediately hereabove.*

*Public Officers—Confidential reports—Promotions—Criticism for negligence in said report affecting a public officer—Duty to communicate such part of the report to the officer concerned—Section 45 (4) of the said Public Service Law 1967 (Law No. 33 of 1967)—Whether lack of such communication to the officer concerned renders the report null and void.*

*Confidential reports—Criticism therein—Duty of communication to the officer concerned—See immediately hereabove.*

*Public Service Commission—Minutes of meetings—Failure to record therein the reasons for a majority or minority vote—Effect of such failure—Section 11 (3) of the said Public Service Law 1967.*

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*Public Service Commission—Allegation that it failed to consider the case of all the candidates—Burden of proof lies on the applicant—Such burden not discharged in the instant case.*

*Discretionary powers of the administration—Principles on which the Court will interfere with the exercise of such discretion.*

In these consolidated recourses under Article 146 of the Constitution the applicants, all public officers, Ministry of Foreign Affairs, seek to challenge the decision of the respondent Public Service Commission to promote the two interested parties to the post of Counsellor 'B' or Consul-General 'B' as from January 1, 1969, instead of, and in preference to, the said applicants.

In support of their applications, counsel acting for them made the following main submissions :

(1) The respondent Commission failed to consider all the candidates for the said promotion and, thus, has acted in excess or abuse of power ;

(2) The respondent Commission, generally, has exercised its discretion in the matter in a defective manner ;

(3) The respondent Commission having omitted, admittedly, to interview the candidates, has exercised wrongly its discretion ;

(4) One of the applicants was criticized in the relevant confidential report for certain failures ; still this part of the report was not communicated to the officer concerned as required under section 45 (4) of the Public Service Law, 1967 ;

(5) The uncontested failure to record in the relevant minutes the reasons for the majority or minority vote vitiates the proceedings of the Public Service Commission and their subject decision.

Rejecting all the above submissions and dismissing the recourses, the Court :

*Held, I. As regards the submission that the respondent Commission failed to consider all the candidates :*

The burden of proof to substantiate such allegation lies on the applicants who failed, in the instant case, to adduce any evidence on this issue.

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*Held, II. As regards the general submission that the respondent Public Service Commission has exercised its discretion in a defective manner :*

(1) I would like to reiterate once again what has been stated in a number of cases decided by this Court, that when the Public Service Commission has exercised its discretion in reaching its decision, after paying due regard to all relevant considerations, this Court will not interfere with the exercise of such discretion, unless it can be shown to the satisfaction of the Court that such exercise has been made in disregard of any provision of the Constitution or of any law, or has been made in excess or abuse of the powers vested in the Public Service Commission.

(2) On the facts of these cases I have reached the conclusion that it was reasonably open to the respondent Public Service Commission in view of the material before it, *viz.* the confidential reports, recommendations of the Head of the Department etc., to promote the Interested Parties ; and that the said decision of the Commission was not taken contrary to any provision of the Constitution or of any law or regulation ; or in excess or abuse of the powers vested in that collective organ.

*Held, III. As regards the non-interviewing of all the candidates by the respondent Public Service Commission :*

(1) Under the provisions of section 35 (6) of the Public Service Law 1967 “ the Commission shall select the persons to be appointed or promoted from amongst the candidates recommended by the advisory Board : Provided that the Commission may interview the candidates recommended by the advisory board before making the selection.”

It would be observed that even under this proviso, the Commission is not bound but has a discretion to interview recommended candidates.

(2) Moreover, I would further add, that there is ample authority supporting this view even before the enactment in June 1967, of the said Public Service Law, *viz.* “ the mere fact that the Commission did not call the candidates for an interview does not involve a wrong exercise of discretion ”. (See *Petsas v. The Republic*, 3 R.S.C.C. 60, at p. 63). This principle was followed in *Neofytou v. The Republic*, 1964 C.L.R. 280, at p. 286 and in *Christofi v. The Republic* (1967) 3 C.L.R. 615, at pp. 619-620.

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(3) For these reasons, and in view of the fact that the Commission had before it all material documents, including the recommendations of the Director-General of the Ministry, I have reached the conclusion that the non-interviewing of the candidates by the Commission does not involve a wrong exercise of its discretion.

*Held, IV. With regard to the complaint that the respondent Commission has not recorded the reasons for the majority or minority vote :*

(1) I take the view that the Commission has acted in the matter within the provisions of section 11 (3) of the Public Service Law, 1967 which reads :

“ There shall be kept minutes of the proceedings of every meeting in which there can be recorded in a summary form what has taken place at the meeting. Any member present at the meeting may require his views which are material to a decision to be recorded in the minutes.”

(2) Going through the minutes, I may recall that no member exercised his rights to require his views to be recorded therein.

*Held, V. Regarding the submission that the confidential report criticizing one of the applicants for failure in the performance of his duties was not communicated to this public officer in accordance with the provisions of section 45 (4) of the Public Service Law 1967 :*

(1) After quoting section 45 (4) (see the text *post* in the judgment), the learned Judge went on : In the absence of any authority to the contrary, I am of the opinion that lack of communication to the officer concerned does not make the report null and void. If such a serious consequence was intended by the legislature, it ought to have been specifically referred to in the Public Service Law, 1967. I think the view I have taken is supported by Stassinopoulos in his text book on Lessons on Administrative Law, 1957, 2nd ed., at p. 347.

*Recourses dismissed.  
No order as to costs.*

Cases referred to :

*London County Council v. The Bermondsey Bioscope Co. Ltd.* [1911] 1 K.B. 445 ;  
*Petsas and The Republic*, 3 R.S.C.C. 60, at p. 63 ;  
*Neophytou v. The Republic*, 1964 C.L.R. 280, at p. 296 ;  
*Christofi v. The Republic* (1967) 3 C.L.R. 615, at pp. 619-620.

## Recourses.

Recourses against the decision of the respondents to promote the two Interested Parties to the post of Counsellor 'B' or Consul-General 'B' in the Foreign Service in preference and instead of the applicants.

L. *Papaphilippou*, for the applicants in Cases Nos. 130/69 and 141/69.

L. *Clerides* with *Sp. Spyridakis*, for the applicant in Case No. 140/69.

M. *Kyprianou*, Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

The following judgment was delivered by:—

HADJIANASTASSIOU, J. : In these proceedings, the applicants, Messrs. Doros L. Pierides, Vantias Markides and Polyvios Nicolaou, seek to challenge under Article 146 of the Constitution, the decision of the respondents to promote the interested parties, Messrs. Elias Ipsarides and Costas Pilavakis, to the post of Counsellor 'B' or Consul-General 'B', in the Foreign Service as from January 1, 1969.

On November 25, 1960, the Foreign Service of the Republic Law, 1960 (Law 10/60) was enacted providing for the establishment and organisation of the Foreign Service of the Republic. The establishment and constitution of the Foreign Service is within the provisions of section 3(1) and sub-section 3 is in these terms:—

“The members of the Foreign Service shall be members of the public service of such ranks and grades as specified in this Law.”

Under the provisions of sub-section 4:—

“The appointment, remuneration as well as all other matters concerning the conditions of service of officers of the Foreign Service shall be subject to the provisions of this Law.”

I then turn to section 5, which deals with the qualifications required for appointment which reads:—

“.....no person may be appointed to an office in the Foreign Service unless he has the general

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qualifications for appointment in the public service and, in addition, the following special qualifications :

(a) To be graduate of any University or Barrister-at-Law, preference being given to holders of a diploma in law, or political or economic sciences or commercial studies.

(b) Perfect knowledge of the Greek language

(c) Perfect knowledge of either the English or the French language or sufficient knowledge of either of them and of any other foreign language."

Under the provisions of s. 6 (1), subject to paragraph (b) of Article 54 of the Constitution and of section 9 of this law, "all the appointments, transfers or promotions in the Foreign Service shall be made by the Public Service Commission, and under sub-section 2 the conditions of entry and appointment to, or promotion in the Foreign Service shall be prescribed by regulations made under this law".

The first applicant has joined the Foreign Service as Secretary 'B' or Vice Consul on May 18, 1961, and on May 1, 1965, he was promoted to the rank of Secretary A or Consul. The second applicant was appointed on June 12, 1961 as a Secretary B or Vice Consul, and on May 1, 1965, he was promoted to the rank of Secretary A or Consul. The third applicant, before the date of the coming into operation of the Constitution, held an office in the public service since 1944 in the Department of the Land Registry until June 1, 1952. On July 1, 1961, he joined the Foreign Service as a Secretary B or Vice Consul, and on May 1, 1965, he was promoted to the same rank as the other applicants.

Both the interested parties have joined the Foreign Service on June 11, 1961, and on June 16, 1961 as Secretary B or Vice Consul. On May 1, 1965, both were promoted to the rank of Secretary A or Consul.

I should have added that the appointments of two of the applicants, namely, Messrs. Nicolaou and Pierides, and of the interested party Mr. Elias Ipsarides, were made by the Public Service Commission under the transitional provisions of section 8 (1) of the law, "without strict compliance with the provisions of this law, and especially those relating to qualifications for appointment".

On July 7, 1966, Law No. 35/66 was enacted in order to amend the Foreign Service of the Republic Law, 1960. Section 6 amended section 10 of the principal law, and is in these terms :—

“ 6. Paragraph (b) of sub-section (2) of section 10 of the principal Law is hereby repealed and the following sub-section substituted therefor :—

‘ (b)—(i) the qualifications required for appointment or promotion to each office in the Foreign Service :

(ii) the duties and functions of each office in the Foreign Service :

Provided that any Regulations made under subparagraph (i) of paragraph (b) of this sub-section shall be laid before the House of Representatives. If within fifteen days of such laying the House of Representatives does not by resolution amend or annul, in whole or in part, the regulations so laid, they shall then, soon after the expiry of the period hereinbefore mentioned, be published in the Official *Gazette* of the Republic, and they shall come into force as from such publication. In the event of their amendment, in whole or in part, by the House of Representatives, such Regulations shall be published in the official *Gazette* of the Republic as so amended by the House and they shall come into force as from such publication.”

On May 9, 1968, the Council of Ministers by its decision No. 7718, authorised the filling of two vacancies in the post of Counsellor in the Foreign Service of the Republic. On November 25, 1968, the Director-General of the Ministry of Foreign Affairs wrote to the Chairman of the Public Service Commission informing him of the decision No. 7718 of the Council of Ministers, as well as the decision of the Ministers of Foreign Affairs and of Finance who decided to fill one more vacancy in the post of Counsellor B.

In accordance with the scheme of service, the post of Counsellor Consul-General B is a promotion post from the lower post of Secretary A or Consul. The scheme of service was made by the Council of Ministers under the provisions of section 7 (1) and the regulations made under section 10 (2) (b) of the Foreign Service Law, 10/60, as amended by Law 35/66. Regulation 14, which has been published in

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the *Official Gazette* of the Republic dated 25th October, 1968, is attached to the opposition, and reads as follows in Greek :—

«Ανεξαρτήτως οιασδήποτε διατάξεως των παρόντων Κανονισμών άφορώσης εις τὰ άπαιτούμενα άκαδημαϊκά προσόντα εκάστης θέσεως πρόσωπον τελούν εν τη έξωτερική υπηρεσία της Δημοκρατίας κατά την 11ην Αύγουστου 1966, δύναται νά προαχθῆ κατά παρέκκλησιν από της διατάξεως ταύτης εάν ή θέσις εις ην θα προαχθῆ δέν θα είναι άνωτέρα της θέσεως Συμβούλου ή Γενικού Προξένου Α' Τάξεως και ή σταδιοδρομία και εύδόκιμος υπηρεσία αυτού θα έδικαιολόγουν τοιαύτην παρέκκλισιν.»

On December 19, 1968, the Public Service Commission met for the purpose of filling two vacancies in the post of Counsellor or Consul-General, in the Foreign Service of the Republic, in the presence of the Director-General of the Ministry of Foreign Affairs. An extract from the minutes of that meeting reads as follows :—

“The Commission at its meeting on 27.7.68 considered the question of filling of vacancies in the post of Counsellor or Consul-General B in the Foreign Service and decided to fill only one vacancy at that time. Two vacancies remained unfilled.

The Director-General Min. of Foreign Affairs has now requested that the Commission might proceed with the filling of the remaining two vacancies.

The post of Counsellor or Consul-General B is a Promotion Post from the lower post of Secretary a or Consul.

The Commission considered the merits, qualifications, experience and seniority of all officers holding the post of Secretary A or Consul, as reflected in their Annual Confidential Reports.

Mr. Benjamin stated that there are two categories of officers who are eligible for promotion to the post of Counsellor or Consul-General B. One category comprises of officers who have a University Diploma or Degree and the other category comprises of officers who have no University Diploma or Degree but whose service in the Foreign Service or in matters of administrative nature would be most satisfactory. Mr. Benjamin stated that he considered Mr. C. N. Pilavakis as the most suitable officer for promotion having in mind both the categories of officers referred to above and added that Mr. Pilavakis' services have been outstanding.



Mr. Benjamin added that Mr. E. Th. Ipsarides and Mr. D. Papasavvas were the best from the category of officers who have no University Diploma or Degree. The first officer is better in Foreign Service matters whereas the second one is better in matters connected with administration. Mr. Benjamin stated further that, on the whole, he considered Mr. Ipsarides as the best officer for promotion having in mind all the remaining officers with or without a University Diploma or Degree.

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Bearing in mind the above, the Commission decided that the following officers were on the whole the best and that they be promoted to the post of Counsellor or Consul-General B w.e.f. 1.1.69 :-

C.N. Pilavakis, E. Th. Ipsarides.

The decision regarding Mr. Pilavakis was taken unanimously whereas that regarding Mr. Ipsarides was taken by majority of 4 votes to 1 (Mr. Proestos dissenting)."

The applicants, feeling aggrieved because of the decision of the Public Service Commission to promote the two interested parties, made a separate recourse to this Court on May 3, 10 and 12, 1969, respectively. The grounds of law raised by the first and third applicants are identical, and are to the effect that the decision of the respondents was made in excess or in abuse of power, because the Public Service Commission disregarded experience, seniority and qualifications of the applicants 1 and 3 ; and that the respondents were influenced against these applicants because of favouritism shown by the Minister of Foreign Affairs, and/or because of illegal intervention by the Council of Ministers, and/or the Ministry of Foreign Affairs.

With regard to the second applicant, Mr. Vantias Markides, the grounds of law are :— "(1) That the respondents disregarded the superior qualifications, merits, experience and seniority of the applicant, vis-a-vis to the interested party (Mr. Elias Ipsarides) ; (2) that the respondents acted contrary to the basic principle of administrative law ; (3) that the interpretation of the scheme of service by the Public Service Commission is, in any case, wrong ; (4) that the respondents, in making the appointment acted on wrong premises."

There is a well recognized principle that where there is a competent authority to which an Act of Parliament

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entrusts the power of making regulations, it is for that authority to decide what regulations are necessary, and any regulations which they may decide to make should be supported, unless they are manifestly unreasonable or unfair. Cf. *London County Council v. The Bermondsey Bioscope Co. Ltd.* [1911] 1 K.B. 445.

Counsel on behalf of the applicant in recourse No. 140/69 did not attack Regulation 14 in *exhibit* 18 as being manifestly unreasonable or unfair, but he mainly argued (a) that the interpretation given by the Public Service Commission to it is contrary to the intention of the Regulation ; (b) that the Commission, in placing all the candidates on the same footing, proceeded to promote the interested party, Mr. Ipsarides, before even considering the effect of Regulation 14 ; (c) that in view of the nature of the Foreign Service, an interview of the candidates was a most essential requirement, and since the Commission has failed to do so, it has failed in its paramount duty of selecting the best and most suitable candidate for the particular post ; (d) that it failed to consider the applicant Mr. Vantias when the promotions were made, as it appears from the minutes of its meeting, *exhibit* 19 ; (e) that the applicants' confidential reports were better than those of Mr. Ipsarides, who has two adverse comments in his reports.

Counsel on behalf of the applicants in recourses 130/69 and 141/69, having adopted the argument of Mr. Clerides, mainly argued on four grounds : (i) That the Public Service Commission in promoting the interested parties has acted contrary to the provisions of s. 44 (2) of the Public Service Law, 1967, because it relied only on what the Director-General of the Ministry of Foreign Affairs told them ; (ii) that the Commission failed to give proper weight or due regard to the recommendations of the previous officers holding the rank of Director-General, and relied only on Mr. Benjamin, who was promoted to that rank in 1967 ; (iii) that the Minister of Foreign Affairs in strongly recommending for promotion Mr. Pilavakis to the Council of Ministers, *exhibited* a bias in favour of that officer vitiating his promotion.

Before dealing with the submission of counsel, I feel I must add that before I have completed writing this judgment, counsel on behalf of the applicant Mr. Vantias Markides, filed on June 10, 1971, a notice of abandonment of Recourse No. 140/69, and in the light of these developments, I am making an order for the dismissal of this recourse, but with no order as to costs. I feel, however,

that I ought to add that although counsel for applicants Nos. 1 and 3 did not raise as a ground of law that the Public Service Commission erred in interpreting Regulation 14, nevertheless, in view of the fact that counsel has adopted the argument of Mr. Clerides, I am of the view, that I ought to try to deal with this question also.

I think I find it convenient to deal first with the complaint that the Public Service Commission failed to consider the two applicants in effecting the promotions of the interested parties—a most damning allegation—and I would reiterate what I have said in other cases, that the burden of proof to substantiate such allegations lies always on the shoulders of the applicants, *viz.* that the Commission has acted in excess or in abuse of its constitutional powers. Unfortunately, not only the applicants have failed to adduce any evidence on this issue, but on the contrary, anyone reading the minutes of the Commission in which it is expressly stated that the Commission considered the merits, qualifications, experience and seniority “of all officers holding the post of Secretary ‘A’ or Consul, as reflected in their annual confidential reports”, would clearly take the view, as I do in this judgment, that the Commission considered all the candidates including the two applicants. I would, therefore, dismiss this allegation as being unfounded.

The next point is that because the Commission admittedly has failed to interview all the candidates, it has fallen into the error of a wrong exercise of its discretion, and that, counsel argued, its decision should be vitiated. I must confess that I know of no authority in which such a principle has been formulated, and I would, therefore, be inclined to take the opposite view, because even in accordance with the provisions of s. 35 (6) of the Public Service Law, 1967, “the Commission shall select the persons to be appointed or promoted from amongst the candidates recommended by the advisory board: Provided that the Commission may interview the candidates recommended by the advisory board before making the selection”. It would be observed that even under this proviso to subsection 6, the Commission in effecting promotions to a specialized office is not bound, but has a discretion to interview recommended candidates. Moreover, I would further add, that there is ample authority supporting this view even before the enactment of Law 33/67, that “the mere fact that the Commission did not call the candidates for an interview does not involve a wrong exercise of discretion”.

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In a matter like this, it is not improper for the Commission to base its decision on the application forms and other relevant documents as per Forsthoff P., in *Christoforos G. Petsas and The Republic* (P.S.C.) 3 R.S.C.C. 60 at p. 63. This principle was followed in *Neophytou v. The Republic* 1964 C.L.R. 280 at p. 296, and in *Christofi v. The Republic* (1967) 3 C.L.R. 615 at pp. 619-620.

For these reasons, and in view of the fact that the Commission had before it all relevant documents, including the recommendations of the Director-General of the Ministry, I have reached the view that the non-interviewing of the candidates by the Commission does not involve a wrong exercise of its discretion. I would again dismiss this contention of counsel.

I am in agreement, however, with counsel for the applicants, that the Commission in promoting Mr. Pilavakis would have acted improperly had it been influenced by biased recommendations. In this respect, there is, of course, the submission made by the Ministry of Foreign Affairs dated May 6, 1968, (*exhibit* 14) on the question of filling the posts of Counsellor, in which, *inter alia*, the excellent work of Mr. Pilavakis in Bonn of West Germany is praised, and his promotion is recommended, but as counsel for the Republic has pointed out, this submission has never reached the Council of Ministers. In any case, no evidence at all on behalf of the applicants was adduced to substantiate the allegation of bias, and there is not even an allegation that the Commission was aware of the existence of such a recommendation, or indeed, that anyone in hierarchy tried to influence its decision. I should have also added that in the case of confidential reports, these are prepared usually by the officer in charge of the department and not by the Minister. Cf. *Petsas'* case (*supra*) at p. 63.

Whilst on this topic, I find it more convenient to examine now the qualifications and the confidential reports of the applicants, as well as those of the interested parties. Mr. Pierides is a graduate of the Greek Gymnasium of Famagusta, 1949-1955, and also a Bachelor of Laws (Athens University); Mr. Nicolaou is a graduate of the Greek Gymnasium of Limassol, 1936-1942, but he has no academic qualifications. On the other hand, the interested party Mr. Pilavakis is a graduate of the Greek Gymnasium of Paphos, 1948-1953, and is a Barrister-at-Law (Middle Temple) since 1957. Mr. Ipsarides is also a graduate of the Pancyprrian Gymnasium, 1945-1951, but has no academic qualifications, although he has been admitted in Gray's Inn. in 1952.

Having had the opportunity to peruse the confidential reports relating to Mr. Pierides for the period of June, 1966, to July, 1967, I quote the following observations which were made by the reporting officer, Mr. Fisentzides on May 16, 1967 : " He is an exceptionally good diplomat and very industrious. He is of sound judgment. His present duties fit him like a glove. He has force of personality and tact ". For the period July, 1967 to January, 1968, the reporting officer Mr. Pelagias made the following observations : " He is a hard working and thorough officer with--a high sense of duty and highly qualified...Very courteous ". For the period of February, 1968, to January, 1969, one can find the following observations made by the reporting officer, Mr. Pelagias on February 4, 1969 : " This officer possesses great abilities and is very hard-working. At times his work becomes a little spasmodic because he has periods of depression. Generally, he has proved to be a first class officer ". However, in the same report there is this note written by Mr. Benjamin, the present Director-General of the Ministry of Foreign Affairs. It reads : " He could do better. He has a tendency of not getting too deep into problems. His judgment on many occasions has been wrong ".

With regard to the confidential reports of Mr. Nicolaou, for the period under review, 1st June, 1966 to 30th May, 1967, Mr. Fisentzides made the following observations : " There is no doubt that he is a capable officer, but he is very frustrated. He thinks he did not get what he was entitled to. He is a rather difficult case, but I hope there will be improvement in his attitude. I am watching the situation very closely ". For the period July, 1967 to January, 1968, Mr. Pelagias, on January 25, 1968, made these observations : " This officer is very intelligent, but he is lacking in adaptability, and his record of work suffers because of this ". For the period February, 1968 to January, 1969, the same reporting officer made these observations : " This officer seems to be unable to adapt himself to desk work. Although very intelligent, he has not done justice to his ability. It is a pity, because he could do much better. He possesses a mentality which prevents him from developing into a good officer ". On May 25, 1969, the counter-signing officer Mr. Benjamin expressed his own views in this manner : " He is unfit for the Ministry of Foreign Affairs. He has no manners and has a tendency to talk in a disrespectful way for his superiors. I have not seen any reliable work by him, he just tries to get rid of papers ".

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With regard to the confidential reports of Mr. Pilavakis, on June 13, 1967, the reporting officer Mr. Fisentzides for the period July, 1966, to June, 1967, recorded the following observations : “ He is a very efficient officer who is performing his duties to my full satisfaction both as Charge d’ Affaires and as permanent representative of Cyprus in the Council of Europe. He is highly spoken of his work. If he continues like this, the next report will be a special confidential report ”. On January 25, 1968, the reporting officer Mr. Pelagias, recorded his observations as follows : “ This officer has been in charge of the Embassy of Cyprus in Bonn for about four years, and has done admirably well. He is also the Cyprus permanent representative at the Council of Europe where he distinguished himself ”. For the period 31st May, 1968 to 31st December, 1968, he was recommended for accelerated promotion, and on May 25, 1969, Mr. Benjamin, the counter-signing officer said : “ He is the best officer the Ministry has. Well-behaved, and a high degree of aptitude for diplomatic work ”.

With regard to Mr. Ipsarides, on May 11, 1967, Mr. Fisentzides, the reporting officer for the period July, 1966 to June, 1967, made the following observations : “ A highly intelligent and quick-minded diplomat, a very hard-working and conscientious officer. He is tactful and has established very good relations with the diplomatic corps in Cyprus. His only drawback is that he cannot be concise. I warned him and watched over him, and can quite safely say he is showing improvement ”. On January 25, 1968, the reporting officer Mr. Pelagias made the following observations : “ This officer has for some time now been the head of political affairs in the Ministry, and has shown exceptional aptitude and devotion to duty ”. On February 4, 1969, the same reporting officer recorded these observations : “ This officer is very hard-working and reliable. A little too prolific in his writings. Generally he is doing first class work ”.

Let me now proceed to examine, in the light of the confidential reports and all the other documents before me, to see whether the Public Service Commission rightly and properly exercised its discretionary power in promoting Mr. Pilavakis in preference and instead of the applicants. I would like, however, to reiterate once again what has been stated in a number of cases decided by this Court, that when the Public Service Commission has exercised its discretion in reaching a decision, after paying due regard to

all relevant considerations, this Court will not interfere with the exercise of its discretion unless it can be shown to the satisfaction of the Court that such exercise has been made in disregard of any provisions of the Constitution or of any law, or has been made in excess or abuse of power vested in the Public Service Commission.

After giving the matter my best consideration, I have reached the view that the confidential reports of Mr. Pila-vakis were on the whole much better than those of, the applicants Messrs. Pierides and Nicolaou, and because he was also strongly recommended by the head of the department Mr. Benjamin, I have reached the view that, under the circumstances, it was reasonably open to the Public Service Commission to promote him. I would, therefore, dismiss both applications with regard to Mr. Pila-vakis' promotion.

It is common ground that both Messrs. Nicolaou and Ipsarides do not possess the special academic qualifications required under the scheme of service in order to be eligible for promotion to the Post of Counsellor or Consul-General B. The question, therefore, is what are the requisites of Regulation 14, in which case, if they both bring themselves within the true meaning of that regulation, it would enable them to be considered along with the other candidates for promotion. In my opinion, the Public Service Commission had to be satisfied whether these two officers could be promoted in deviation of the requirement with regard to academic qualifications once the career of each officer, as well as his successful service would justify such deviation.

Having considered the matter carefully, I find myself unable to agree with the contention of counsel that the Public Service Commission misinterpreted the effect of Regulation 14, and that it acted contrary to the true intent of that regulation. It is true, of course, that before embarking to promote the interested party Mr. Ipsarides in preference and instead of the applicants, the Public Service Commission did not place on record its views regarding the construction of Regulation 14. But, I would, at the same time, state that after going through the minutes, it is made clear to me that when the Commission embarked in deciding the question of promotions, it was aware that both Mr. Ipsarides and Mr. Nicolaou did not possess the special academic qualifications ; and in considering them as candidates, and after hearing the recommendations of the Director-General of the Ministry of Foreign Affairs,

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the Commission must have decided that in the case of Mr. Ipsarides, it was satisfied that he brought himself within the four corners of that regulation, *viz.*, that because of his career and of his successful service, a deviation from the special academic qualifications was justified in his case. I would, therefore, dismiss this contention of counsel.

The next question is whether in view of the confidential reports and the personal files of the applicants and Mr. Ipsarides, it was reasonably open to the Public Service Commission to promote the interested party in preference and instead of the applicants.

*I find it convenient to start first with the case of Mr. Nicolaou, and having compared his confidential reports with those of the interested party, I am definitely of the view that Mr. Ipsarides' reports are much better, and that it was reasonably open to the Public Service Commission in the light of all the material before it and the recommendations of the head of the department, Mr. Benjamin, to prefer Mr. Ipsarides to the applicant. Needless to add, I find myself in difficulty in view of his confidential reports, to see how he could bring himself within Regulation 14.*

With regard to the applicant Mr. Picrides, I must confess that at the beginning I found myself at some difficulty, and after having had the benefit of going through the confidential reports as well as the personal files—which I am sure were before the Public Service Commission at the material time—I have reached the view that it was reasonably open to the Public Service Commission to promote the interested party in preference and instead of the applicant. I am aware, of course, that as a matter of general principle, the competent organ, in effecting the promotions, has to consider the whole of the service of each candidate and all the elements pertaining to his efficiency and status as an officer in order to select the most suitable candidate in each case. I am sure that the Public Service Commission, in order to decide who was the most qualified candidate for promotion out of these two officers has weighed the substantive qualifications of the candidates emanating from all information relating not only to their scientific qualifications and other administrative qualifications, but also with regard to the general conduct of each officer, both in and out of the service with regard to deciding the point as regards the question of satisfactory service. I have no doubt that the personal file of the interested party is more impressive than that of the applicant relating to his activities connected in some ways with the foreign service. See



particularly the report prepared by Mr. Justice Triantafyllides, as he then was, paying a special tribute to Mr. Ipsarides : also that of the Attorney-General, Mr. Tornaritis.

Regarding the submission of counsel that the interested party had adverse comments against him by the head of the department in his confidential reports, *i.e.* that he is " a little too prolific ", I am sure that after going through his personal file, the writer of that word did not mean to use it in the way it has been suggested by counsel for the ex-applicant, and, in fact, I am inclined to take the view that it was meant to be a compliment in that this officer was too productive in his writings. One must not forget that the writer was using a foreign language and not his own.

For the reasons I have endeavoured to explain, I have reached the view that once the Public Service Commission has exercised its discretion in reaching a decision after paying due regard to all relevant considerations, including the recommendation of the head of the department, this Court will not interfere with the exercise of its discretion, unless it can be shown to the satisfaction of the Court that such exercise has been made in disregard of any provisions of the Constitution or of any law, or has been made in excess or abuse of power vested in the Public Service Commission. In the light of these principles, I am bound to add that the applicant has failed to convince me in order to interfere with the discretion of the Public Service Commission, and I would, therefore, dismiss the contention of counsel.

Moreover, I would state that with regard to the complaint of counsel that the Public Service Commission has not recorded the reasons for the majority vote or the minority vote, I take the view that the Commission has acted within the provisions of section 11 paragraph 3 of Law 33/67, which reads :—

" There shall be kept minutes of the proceedings of every meeting in which there can be recorded in a summary form what has taken place at the meeting. Any member present at the meeting may require his views which are material to a decision to be recorded in the minutes. "

Going through the minutes, I may recall that the decision regarding Mr. Pilavakis was taken unanimously, whereas as regards Mr. Ipsarides, it was taken by a majority of four votes to one, and that no member exercised his rights to require his views which were material to a decision to be recorded in the minutes.

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Finally, counsel argued that because the confidential report prepared by Mr. Benjamin criticizing Mr. Nicolaou for failures in the performance of his duties was not communicated to Mr. Nicolaou in accordance with the provisions of sub-section 4 of section 45 of our law, he invited the Court to take the view that the decision of the Public Service Commission with regard to promotions should be vitiated.

I turn to sub-section 4 of section 45 of our law which is in these terms :—

“ The person preparing a confidential report on a particular officer in which the latter is criticized for negligence, failures or improper behaviour in the performance of his duties must, on the submission thereof, communicate to the officer concerned this part of the report.

Within fifteen days of the communication to him, the officer is entitled to require in writing from the competent authority concerned to strike out or modify this part of the report and the competent authority shall consider the matter and decide thereon.”

With respect to counsel's argument, I hold a different view. In the absence of any authority, lack of communication to the officer concerned does not make the report null and void, simply because if such a serious consequence was intended by the legislature, it ought to have been specifically referred to in the Public Service Law, 1967. I think the view I have taken in this judgment is supported by Stassinopoulos in his textbook on Lessons on Administrative Law, 1957, 2nd edn., at p. 347.

Having dealt with all the points raised by counsel, and for the reasons I have tried to explain, I have reached the view that the decision of the Public Service Commission to promote the interested parties was not made contrary to any of the provisions of the Constitution or of any law, or was it made in excess or in abuse of powers vested in such organ. I would, therefore, dismiss both applications, but under the circumstances, I make no order as to costs.

*Applications dismissed ;  
no order as to costs.*