[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ELLI CHR. KORAI AND ANOTHER,

Applicants,

and

THE CYPRUS BROADCASTING CORPORATION.

Respondent.

(Cases Nos. 5/70 and 45/70).

Promotions or appointments—Cyprus Broadcasting Corporation (C.B.C.)—Appointment or promotion to the post of Musical Programme Officer 'A'—Interested party more senior than applicants—But applicants possessing more qualifications—Interested party recommended for promotion by the Head of Department—Interested party selected as being the best candidate, regard being had to experience, seniority and merit—Mere fact that both applicants possess superior qualifications not enough—Because no striking superiority over the interested party was established—On the totality of the material before the Court it cannot be said that the respondent acted in abuse or excess of power—Cf. infra.

Cyprus Broadcasting Corporation—Promotions or appointments—Recourse—See supra.

*Administrative decisions—Due reasoning—Need for due reasoning—What is a due reasoning—Clear and unambiguous reasons should be given—Object of the rule requiring that reasons should be given for administrative decisions—Such requirement must be more strictly observed in the case of decisions of collective organs—Particularly when such decisions are unfavourable to the subject—Reasoning may be found in the official records put before the Court—*Sub judice *decision duly reasoned through being supplemented by the official records.*

Reasoning of administrative decisions—Principles applicable—See supra.

Collective organ—Rule requiring due reasoning of administrative decisions should be observed more strictly in the case of decisions of collective organs—See further supra.

Collective organ—Decision—Majority decision is the only executory (and binding) decision—Minority or dissenting decision—As a rule, the views of the minority need not be included in the decision itself or recorded—Principles applicable—Frangides *v.* The Republic *(1968) 3 C.L.R. 90,* distinguished.

Confidential reports or recommendations adverse to the officer concerned—Failure to communicate contents to such officer—A matter which in a proper case may entail disciplinary liability on the person responsible for such failure—But it does not vitiate the report or the decision which was reached as a result of such adverse report—Cf. Section 45 of the Public Service Law, 1967 (Law No. 33 of 1967)—Frangides *case,* supra, distinguished.

By these recourses the applicants are challenging the decision of the respondent Cyprus Broadcasting Corporation (C.B.C.) to appoint or promote Mrs. N.R. (hereinafter referred to as the interested party) to the post of Musical Programme Officer "A" in preference and instead of the applicants.

It was argued by counsel for the applicants that the *sub judice* decision should be annulled on any of the following grounds :

(1) The said decision was not duly reasoned.

(2) The said decision of the Board of the respondent Corporation does not include the views both of the majority and minority (the latter having not been recorded in the relevant minutes).

(3) The Board acted in excess and abuse of powers in that they have disregarded the striking superiority of the applicants regarding qualifications, experience, ability and merit.

(4) The respondent did not bring to the knowledge of one of the applicants two confidential letters, the first

containing adverse comments about her and the second not recommending her for the post in question.

Dismissing the recourses, the learned Judge of the Supreme Court :-

Held, I : *As to ground under (1) hereabove to the effect that the* sub judice *decision is not duly reasoned :*

(1)(a) The whole object of the rule requiring reasons to be given for administrative decisions is to enable the person concerned as well as this Court on review to ascertain in each case whether the decision is well founded in fact and in law.

(b) Therefore, the reasons must be stated clearly and unambiguously; they must be expressed in the sense in which reasonable persons affected thereby would understand them, and must be stated in terms fulfilling the object of the rule.

(c) Some doubt, however little, so long as it is not fanciful, as to the meaning of the reasons behind the administrative decision is sufficient to vitiate such decision (see *Zavros* v. *The Council for Registration of Architects etc.* (1969) 3 C.L.R. 310, at pp. 315 - 317; see also *Hadji-Savva* v. *The Republic* (1972) 3 C.L.R. 174, and *Papazachariou* v. *The Republic* (1972) 3 C.L.R. 486, at pp. 504 - 505).

(2) The requirement of due reasoning must be more strictly observed in the case of decisions taken by collective organs (see *Michalakis Constantinides* v. *The Republic* (1967) 3 C.L.R. 7, at p. 14).

(3) Such due reasoning need not, as a rule, be found in the decision itself; it may be found also in the relevant official records which are put before the Court. (See *Papadopoullos* v. *The Republic* (1968) 3 C.L.R. 662, at pp. 670 - 671; Stassinopoulos, on Administrative Disputes, 4th ed. 1964, at p. 227 and the Decisions of the (Greek) Council of State referred to in note (2) of the same page).

(4) With this in mind, I find that the official records contain sufficient, clear and adequate reasons given by the respondents in reaching their decision complained of in the instant case *i.e.* the decision to select the interested party to the said post of Music Programme Officer 'A'

Held, II : *As regards point under (2) hereabove* i.e. *that the* sub judice *decision does not contain the views of the minority (which views were not recorded) :*

(1) It is clear that the majority decision binds the respondent Corporation. Furthermore, in the absence of any regulation as to the keeping of the minutes of the Board and in the absence of any record where the minority has asked for their opinion to be recorded, the concept of administrative law should be followed regarding the keeping of records (*see* Conclusions from the Case-Law of the (Greek) Council of State 1929 - 1959, p. 113).

(2) Thus the majority decision alone is an executory one and binds the collective organ concerned; furthermore, there is no record showing that the (dissenting) opinion of the minority was formulated during the relevant meeting. Consequently, I am unable to hold that an otherwise lawful and valid decision becomes invalid through the failure to record the (dissenting) opinion of the minority (*Athos Georghiades* v. *The Republic* (1967) 3 C.L.R. 653, *distinguished;* cf. also *Demosthenous* v. *The Republic* (reported in this Part at p. 354 *ante* at pp. 364 - 365); *Pierides* v. *The Republic* (1971) 3 C.L.R. 233, at p. 249).

Held, III : *As to point under (3) hereabove* i.e. *that the respondents acted in abuse and excess of their powers in that they disregarded the applicants' striking superiority over the interested party regarding qualifications, experience, ability and merit :*

(1)(a) In my view the respondents exercised their discretion in a valid manner, took into consideration all material factors, including the re-

commendations of the Head of Department and they have not acted under any misconception of fact or law.

(b) In my view, on the totality of the circumstances the respondents have properly discharged their paramount duty to select the most suitable candidate.

(2) It is now well settled principle that the Court will not interfere with the discretion exercised by the appropriate organ in effecting appointments or promotions, provided such discretion has been exercised validly for the purposes for which it was given; in which case the Court is not entitled to substitute its own discretion, even if in exercising its own discretion on the merits the Court would have reached a different conclusion.

Held, IV: *As to point under (4) hereabove* i.e. *that the respondents omitted to bring to the knowledge of the applicants two confidential letters containing adverse comments etc.* (supra):

In my view, in the absence of any statutory provision to the contrary, lack of communication of the said letters does not make the *sub judice* decision null and void. As it appears from the trend of the decided cases, the obligation to communicate to civil servants adverse reports creates, where such obligation exists, a disciplinary liability of the organ responsible for his failure to meet such obligation; but such failure does not vitiate the administrative decision reached as a result of such reports (*Frangides* v. *The Republic* (1968) 3 C.L.R. 90, *distinguished*; *Pierides and Others* v. *The Republic* (1971) 3 C.L.R. 233, *followed;* cf. *Decisions of the Greek Council* of State Nos. 732/1968 in 1968 Vol. A at pp. 840-41; 1438/1967 in 1967 Vol. B 1597, at p. 1598.

Recourses dismissed.
No order as to costs.

Cases referred to:

Zavros v. *The Council for Registration of Architects and Civil Engineers* (1969) 3 C.L.R. 310, at pp. 315 - 317;

HadjiSavva v. *The Republic* (1972) 3 C.L.R. 174;

Papazachariou v. *The Republic* (1972) 3 C.L.R. 486, at pp. 504 - 505;

Michalakis Constantinides v. *The Republic* (1967) 3 C.L.R. 7, at p. 14;

Athos Georghiades and Others v. *The Republic* (1967) 3 C.L.R. 653, at pp. 666 - 667;

Papadopoullos v. *The Republic* (1968) 3 C.L.R. 662, at pp. 670 - 671;

Demosthenous v. *The Republic* (reported in this Part at p. 354 *ante*, at pp. 364 - 365);

Pierides and Others v. *The Republic* (1971) 3 C.L.R. 233, at p. 249;

Theodossiou and The Republic (1961) 2 R.S.C.C. 44, at p. 48;

Geodelekian v. *The Republic* (1969) 3 C.L.R. 428, at pp. 434 - 435;

Bagdades v. *The Central Bank of Cyprus* (reported in this Part at p. 417, *ante*);

Frangides v. *The Republic* (1968) 3 C.L.R. 90, at p. 100;

Decisions of the Greek Council of State Nos. 732/1968 and 1438/1967.

Recourses.

Recourses against the decision of the respondent to appoint or promote the interested party to the post of Musical Programme Officer "A" in preference and instead of the applicants.

L. Papaphilippou, for the applicant in Case No. 5/70.

E. Lemonaris, for the applicant in Case No. 45/70.

G. Polyviou, for the respondent.

X. Clerides, for the interested party.

Cur. adv. vult.

The following judgment was delivered by:-

HADJIANASTASSIOU, J.: In these two cases which have been heard together, each applicant seeks a declaration that the decision of the respondent to appoint or promote the interested party Mrs. Nayia Roussou to the post of musical programme officer 'A' in preference and instead of each applicant is null and void and of no effect whatsoever.

The facts as shortly as possible are as follows: The first applicant, Elli Chr. Korai, has been serving with the Cyprus Broadcasting Corporation (hereinafter referred to as Corporation) since August 26, 1965, as a programme officer 'B'. The second applicant, Tasoulla Papaneofytou, was appointed by the Corporation on December 1, 1964, as an assistant programme officer at the musical department. On October 1, 1967, she was promoted to the post of programme officer 'B'. The interested party Mrs. Nayia Roussou, was appointed by the Corporation on April 1, 1956 as an assistant clerk, and continued serving in that capacity until July 31, 1956, when she became an assistant news editor until November 30, 1959, and on December 1, 1959, she became a records and tapes librarian and remained serving in that capacity until November 30, 1969.

In May, 1969, the post of music programme officer 'A' (a first entry and promotion post) was advertised and both the applicants and the interested party applied. The scheme of service regarding the post in question reads as follows:-

"Duties and responsibilities:-

To originate, prepare, produce and supervise major musical programmes. To write and adapt accompanying scripts to musical programmes or other independent scripts (musical talks). To provide and if required to present musical and all other effects for various types of programmes (plays, talks, and features etc.).

Qualifications required:-

A high standard of musical education. A high degree of general education not below the gradua-

tion standard of a Secondary School with a very good knowledge of Greek and knowledge of one other European language. Should be able to write musical scripts and should be well informed of the world of classical, and/or light and/or popular and/or folk music, at the discretion of the Corporation. Previous experience in broadcasting with particular reference to music will be an advantage. A Diploma or Certificate from a recognised school of Music will also be an advantage."

In accordance with the new section 5(1) of the Cyprus Broadcasting Corporation Cap. 300A (amending by Law 21/69 the old section 5), the constitution of the Corporation "shall consist of not more than seven members appointed by the Governor (hereinafter referred to as 'the members') one of whom shall be designated by the Governor (now the Council of Ministers) as Chairman. Provided that the members need not be persons whose full time services shall be required........ (4) the Corporation may act notwithstanding any vacancy in its membership"; and regarding the quorum of the members of the Board, s. 7(1) (as amended by Law 21/60) provides that at all meetings of the Corporation "shall be three members present in addition to the Chairman; (2) the Chairman shall be present at all meetings; and (3) when the votes of the persons present at a meeting with regard to any question shall be equally divided, the Chairman shall have a casting vote in addition to his own".

On December 22, 1969, the Board met, and after considering the applications regarding the post in question, and having studied the report of both the manager and assistant manager of the musical department. as well as the reports of the general manager—who presented his views before the Board—and after examining the case of each one of the candidates of the Corporation, as well as studying the report of the advisory committee regarding the selection of each candidate, proceeded to take into consideration the report of the advisory selection committee. Having heard again the general manager and his explanations and clarifications regarding each candidate, and having taken into consideration the needs of the service, the qualifications, the

experience and the output of the servants of the Corporation in conjunction with the scheme of service, decided to assign the duties of music programme officer 'A' to Mrs. Nayia Roussou. (See *exhibit* 5).

In accordance with the minutes of the Board, the decision was taken by majority in favour of the interested party, because the members of the Board were equally divided (one having abstained) the Chairman had given a casting vote in addition to his own.

On January 7 and February 10, 1970, both applicants, feeling aggrieved because of the decision of the Board not to appoint or promote them to the post in question, filed a separate recourse, and the grounds of law are identical in both cases, *viz.*, that (a) the respondents acted in excess and/or in abuse of their power because in exercising their discretionary powers disregarded the striking superiority of the applicants as compared with that of the interested party regarding the qualifications and experience for the production of musical programmes, their ability and merit; (b) the respondents in taking their decision were labouring under a misconception of the facts because (1) they did not take into account that the interested party had not prepared any musical programmes; and (2) that applicant Korai had completed work of a higher standard regarding the production of musical programmes; and (3) that the post of programme officer 'A' is a first entry and promotion post; and (c) that taking into consideration all the elements of each case as they appear in the statement of facts of each application, the respondent ought to have preferred the applicant in each case instead of the interested party for the post in question.

The opposition was filed on March 7 and February 10, 1970, and was indentical in both cases to the effect that the appointment or promotion and/or assignment of the duties of the post in question to the interested party instead of the applicant in each case was rightly taken by the Board exercising properly their discretionary powers.

On May 4, 1970, on the date of the hearing, after the opening address on behalf of both applicants, the case on the application of counsel had to be adjourned

to June 8, 1970, for mention, in order to enable counsel for the applicants to file an additional ground of law, *viz.*, that the decision of the respondent is not duly reasoned. In the meantime, counsel for the respondent agreed to prepare a bundle of all the relevant documents and place them at the disposal of counsel for the other side. In fact, on May 4, 1970, counsel for both applicants had filed two grounds of law; (a) that the act and/or decision was not duly reasoned, and (b) that the act and/or decision attacked in this recourse does not include and/or does not refer to the decision and/or the views of the minority of the members of the Board. On May 23, the opposition regarding the additional grounds was filed on behalf of the respondent, and although the case was fixed at a convenient time to all counsel concerned, *i.e.* to November 2, for various reasons appearing on record, counsel agreed that the case should be fixed for continuation of addresses on January 15, 1971. Unfortunately, once again, because I was engaged in the Court of Appeal, the cases were refixed on February 6. On that date, much to my surprise, there was a change of counsel regarding the applicant in case No. 45/70, and inevitably the case had to be adjourned once again. I think I should have added that this is one of the classic cases in which for various grounds, which I need not refer to and which appear on record, these two cases had to be adjourned on numerous occasions, and were finally concluded on April 2, 1973.

Regarding the contentions of counsel, I find it convenient to deal first with the two additional grounds filed on behalf of counsel for the applicants, and I find myself in agreement with counsel that administrative decisions must be duly reasoned. On this point there is a long line of cases supporting this proposition. The whole object of the rule requiring reasons to be given for administrative decisions is to enable the person concerned as well as this Court on review, to ascertain in each case whether the decision is well-founded in fact and in law. The reasons, therefore, must be stated clearly and unambiguously; must be expressed in the sense in which reasonable persons affected thereby would understand them, and must be stated in terms fulfilling the object of the rule. The mere fact, of course, that some doubt, however little, so long as it is not merely fanciful, is possible as

to the meaning of the reason behind an administrative decision, is sufficient to vitiate such decision. See *Zavros* v. *The Council for Registration of Architects and Civil Engineers* (1969) 3 C.L.R. 310 at pp. 315 - 317. See also *HadjiSavva* v. *The Republic* (1972) 3 C.L.R. 174 and *Papazachariou* v. *The Republic* (1972) 3 C.L.R. 486 at pp. 504 - 505.

I think I should have added that in the case of *Michalakis Constantinides* v. *The Republic* (1967) 3 C.L.R. 7 at p. 14, it was stressed by the Court that the requirement of due reasoning must be more strictly observed in the case of a decision having been taken by a collective organ, particularly when it is unfavourable to the subject. What amounts, of course, to due reasoning is a question of fact depending upon the nature of the decision concerned. (*Georghiades & Others* v. *The Republic* (1967) 3 C.L.R. 653 at pp. 666 - 67). Although due reasoning is also required in order to make possible the ascertainment of the proper application of the law and to enable the due carrying out of judicial control, yet such reasoning may be found also in the official records which are before the Court, and if authority is needed, *Papadopoullos* v. *The Republic* (1968) 3 C.L.R. 662 at pp. 670 - 671 supports this proposition. See also the law of Administrative Disputes by Stassinopoullos, 4th edn. 1964 at p. 227 and the Decisions of the Greek Council of State referred to in note (2) of the same page.

With this in mind, let me now deal with the official records which were before the Board when they reached their decision to select the interested party and assign to her the duties of the post of music programme officer 'A', with a view to deciding whether or not these records provide the reasoning required in this case. I propose, therefore, reading in English, *inter alia,* the letter of June 12, 1969 addressed to the General Manager of the Corporation by the Manager of the Musical Programmes. He said :-

> "Out of the candidates examined by the selection committee I am of the opinion that, at first sight,

only the following four could be regarded as suitable for the post of Music Programme Office 'A':

1. Nayia Roussou,
2. Zanin Bayianda,
3. Lena Christoforou,
4. Elli Korai.

Taking into consideration factors such as the maturity of the candidates, their character, the work and progress made by them heretofore, their reliability, their accuracy and their ability to write scripts (in respect of which I have consulted the assistant manager of my department in charge of scripts) as well as all the remaining factors which shall prove decisive in the course of the performance of the duties of the post, I can conscientiously and with full sense of responsibility recommend only the the following as suitable:

1. Nayia Roussou,
2. Zanin Bayianda or Lena Christoforou."

Finally he concluded :-

"Although some of the rest of the candidates possess some of the qualifications required for this post, I do not consider for the time being that they are ready to be appointed to this post. This refers mainly to the basic factors, such as maturity and psychological preparation." (See *exhibit* 15).

In fact, the selection committee, as the minutes show, met on June 6, 10 and 14, 1969 under the chairmanship of the general manager Mr. Christofides, in order to examine the applications of nine candidates for the post in question. Having interviewed seven of the candidates and considering the personal files of the candidates, the committee found that Miss Anastassia Papaneofytou (as she then was) although not unsuitable, was not fully suitable (see the report of the chief of the department which speaks about the weaknesses in preparing scripts and the offhandedness in her work). Then the minutes show that Miss Korai, Miss Bayianda and Mrs. Roussou and Lena Christoforou were found to possess the required

qualifications and were suitable to be appointed to the post in question. Then the qualifications and experience appear regarding the persons recommended, including Miss Korai and Mrs. Roussou, (see *exhibit* 11).

On August 10, Mr. Loizides, the Senior Manager of the Musical Programmes wrote *inter alia* to the General Manager in these terms :-

> "It is true that Miss Papaneofytou is 'not unsuitable' a fact which refers to certain of the required qualifications but not all, *i.e.* regarding the fact that she appears willing and speedy in carrying out her work and that she possesses certain academic qualifications. Furthermore, that she possesses sufficient experience in her work in the service of Greek musical programmes. On the other hand, she is not yet fully suitable in view of her existing weaknesses *viz.* in the preparation of scripts, offhandedness and carelessness in her work, as well as because she has a tendency to find ready excuses which show that she is not willing to admit her mistakes."

Then the writer concludes as follows :-

> "As a result, one has to wait longer for her to develop the required feeling of obligations and maturity, particularly for this post of grade 'A'."

Then on December 19, 1969, a note was apparently prepared by the General Manager (*exhibit* 17) and, *inter alia,* is in these terms :-

> "The question of promotion in the musical department I have discussed repeatedly with the responsible head of the department : His views (as he has expressed them) I have already put before the committee. The committee has also before it my notes dated July 31, 1969 and November 27, 1969. In addition to what I have said, I put forward the following....."

The writer, after inserting the duties of the post in question and giving the reason why they wanted to fill this post, proceeded to give a picture of the candidates, *i.e.* Korai, Bayianda, Roussou and Christoforou and concluded as follows :-

«Πιστεύω ὅτι ἐπὶ τῇ βάσει τῆς κεκτημένης πείρας, ὡς καὶ τῆς συνολικῆς εἰκόνος ἡ ὁποία παρουσιάζεται εἰς τὰ προηγούμενα σημειώματα πλέον σχετικὴ πρὸς τὴν 4ην θέσιν εἰς τὸ Μουσικὸν Τμῆμα παρουσιάζεται ἡ κα Ρούσου. Ἔχει ἐνημερότητα εἰς θέματα λόγου καὶ ἐνημερότητα ἐπὶ τοῦ ὑπάρχοντος μουσικοῦ ὑλικοῦ, τὴν ὁποίαν οὐδεὶς ἄλλος εἰς τὸ Ἵδρυμα διαθέτει. Ἡ ἀρχαιότης της πιστοποιεῖται ἀπὸ τὴν ἡμερομηνίαν διορισμοῦ της εἰς τὸ Μουσικὸν Τμῆμα, εἰς θέσιν ἡ ὁποία μισθολογικῶς εἶναι ἀνωτέρα αὐτῆς τοῦ Λειτουργοῦ Προγραμμάτων Β΄ καὶ ἡ ὁποία δὲν εἶναι ἄσχετος πρὸς τὰ μουσικὰ προγράμματα. Ἡ θέσις τοῦ Δισκοθηκαρίου, ἀντιθέτως, ἐπιτρέπει εἰς τὸν κατέχοντα στενὴν παρακολούθησιν τοῦ μουσικοῦ ὑλικοῦ ὅλων τῶν κατηγοριῶν, ἐλαφρᾶς, Ἑλληνικῆς, ξένης, κλασσικῆς, κ.λ.π. Καταρτισμὸς δὲ μουσικῶν προγραμμάτων (ὡς εἶναι ἐν μιᾷ λέξει καὶ γενικῶς τὰ καθήκοντα τοῦ Λειτουργοῦ Προγραμμάτων εἰς τὸ Μουσικὸν Τμῆμα) δὲν σημαίνει κατ' οὐσίαν παρὰ καλὴν γνῶσιν τοῦ ὑπάρχοντος ὑλικοῦ καὶ καλὴν ἐπιλογὴν διὰ συγκεκριμένον πρόγραμμα. Τὰ ἀπαιτούμενα μουσικὰ προσόντα, ὡς ἐμφανίζονται εἰς τὰ σχέδια ὑπηρεσίας, ἡ κα Ρούσου τὰ κατέχει, αἱ ὑπόλοιποι κατέχουν περισσότερα ἀλλὰ ἡ κα Ρούσου εἶναι κατὰ 6 τοὐλάχιστον ἔτη ἀρχαιοτέρα ὅλων τῶν ὑπολοίπων εἰς τὸ Μουσικὸν Τμῆμα, διαθέτει δὲ ἐκείνην τὴν ἐνημερότητα ἡ ὁποία ἀπαιτεῖται διὰ τὰ καθήκοντα τῆς θέσεως. Ὡς ἐκ τούτου δὲν βλέπω κανένα λόγον νὰ ἀγνοηθῇ ἡ ἀρχαιότης· ἀντιθέτως, πιστεύω ὅτι ἡ ἐν γένει πεῖρα, προσκτηθεῖσα εἰς τὴν εἰδικὴν θέσιν τὴν ὁποίαν κατέχει ἡ κα Ρούσου θὰ ἐπιτρέψῃ τὴν καλυτέραν δυνατὴν ἐκτέλεσιν τῶν καθηκόντων τῆς θέσεως».

("I believe that on the basis of the experience acquired, and on the whole of the picture as presented in the previous notes Mrs. Roussou appears to be the one most familiar with the 4th post in the musical department. She possesses an up-to-date knowledge on matters of speech and of the existing musical material which is not possessed by any one else at the corporation. Her seniority is confirmed by the date of her appointment in the musical department to a post which, regarding salary, is higher

than the one of Programme Officer B' and which is not irrelevant with the musical programmes. On the contrary the post of records keeper affords to its holder the opportunity to follow closely the musical material of all categories, light, Greek, foreign, classical etc. And preparation of musical programmes (which in one word and in general comprises the duties of programme officer in the musical Department) in substance does not mean but good knowledge of the existing material and a good selection for a particular programme. Mrs. Roussou possesses the qualifications required under the schemes of service the others possess more qualifications but Mrs. Roussou is by six years senior than all the others in the musical department and she possesses that up-to-date knowledge which is required for the duties of the post. In view of the above I see no reason why seniority should be ignored; on the contrary I believe that the experience in general which has been acquired by the particular post held by Mrs. Roussou will permit the best possible performance of her duties").

I propose now reading certain extracts from the confidential reports of both the applicants and the interested party.

Regarding the first applicant, for the year 1967 the general observations of the Manager of the Musical Department read :-

"She is very willing to improve herself and to learn, but she needs to mature more".

For the year 1968 the manager made these observations :-

"She is improving slowly regarding the question of her maturity, but she has a rather superfluous tendency of praising herself".

As regards the second applicant, for the year 1967 the manager made the following observations :-

"She is a good and willing servant. She requires more preciseness and maturity".

And for 1968 :-

"Some *improvement in preciseness and maturity*, but not sufficient".

Finally, regarding the interested party, the same person made these general observations for the year 1967 :-

"I am very satisfied from her output".

And for the year 1968 the same manager commented as follows :-

"I am very pleased with her obvious improvement regarding her co-operation with the rest of the staff and exceptionally satisfied with her output. She has remarkable creative abilities".

I should have also added that the qualifications of all candidates were also before the Board and in fairness, the general manager of the corporation in his note made it clear that Elli Korai had better musical qualifications than Mrs. Roussou. Needless to add, the second applicant was found by the selection committee earlier not to be fully suitable to be considered for the post in question. See also the letter of the senior manager, Mr. Loizides (*exhibit* 14).

I think that I have presented sufficient material from the official records which were before the Board and which clearly show and provide the reasoning for which counsel for the applicants were complaining. With this in mind, I would adopt and follow the reasoning expounded in *Papadopoullos* v. *The Republic* referred to earlier in this judgment and I would, therefore dismiss this contention of counsel, as I am of the opinion that the decision of the Board was duly reasoned (supplemented by the official records to which I have referred to earlier) as to why they have preferred and have assigned the duties of the post in question to the interested party Nayia Roussou.

Reverting now to the second leg of the additional grounds *viz., that the decision of the Board does not* include the views both of the majority and minority (having not been recorded) counsel argued that such an omission is fatal to the administrative act or decision of the Board and should be annulled. In support of this proposition, counsel relies on a passage from the text-

book of Kyriakopoullos on the Greek Administrative Law, 4th edn., 1961, vol. B at p. 25; on the reports of Porismata Nomologhias 1929 - 59 at p. 113, and on the authority of *Athos Georghiades and Others* v. *The Republic* (1967) 3 C.L.R. 653.

As I have said earlier in this judgment, the decisions of the Board at their meetings are taken by majority of the members present (s. 7(3)) and it is clear that the majority decision binds the Corporation and not that of the minority. Furthermore, in the absence of any regulations as to the keeping of the minutes of the Board (s. 8 of the Law), in the absence of a record where the minority has asked for their opinion to be recorded, the concepts of administrative law should, in my view, be followed regarding the keeping of minutes.

I think it is convenient to read a passage from Porismata Nomologhias of the Council of State, which supports the principle how the decision of the majority and the opinion of the minority of a collective organ should be recorded in the minutes :-

> «'Εν τῇ ἐκδιδομένῃ πράξει τοῦ συλλογικοῦ ὀργάνου δέον νὰ καταχωρίζηται καὶ ἡ γνώμη τῆς μειοψηφίας τῶν μελῶν, ἐφ' ὅσον διετυπώθη τοιαύτη ἐν τῇ συνεδριάσει : 199(44). Τὴν ἀπόφασιν πάντως ἀποτελεῖ ἡ γνώμη τῆς πλειοψηφίας καὶ οὐχὶ ἡ τυχὸν κατὰ τὰ ἄνω διατυπουμένη γνώμη τῆς μειοψηφίας : 1861(48), 640, 2019(50), 822(54), τοῦ τμήματος τούτου τῆς ἀποφάσεως μὴ φέροντος ἐκτελεστὸν χαρακτῆρα καὶ μὴ ὑποκειμένου εἰς προσβολὴν ἐπὶ ἀκυρώσει : 640, 2019(50), 155(60)».

> ("The opinion of the members of the minority should also be recorded in the decision of a collective organ when such opinion has been formulated during the meeting : 199(44). The decision consists of the majority opinion and not of any opinion of the minority formulated as above, 1861 (48), 640, 2019(50), 822(54), this part of the decision not being of an executory character and not being subject to a recourse for annulment : 640, 2019(50), 155(60)").

Thus it appears from the passage I have just read that the majority decision binds the collective organ and not that of the minority which decision is not a decision of an executory nature. This passage further provides that the opinion of the minority should have been recorded in the minutes when such opinion was formulated during the meeting.

In *Georghiades* v. *The Republic* (*supra*) the Court, adopting a passage which appears in the well-known textbook of Tsatsos on the Recourse for Annulment before the Council of State, 2nd edn., at p. 151 pointed out the need for due reasoning of decisions of collective organs which arises mainly out of the fact that they are the result of deliberations of the principles of such organs, and after stressing that such need is all the more greater in case of a majority decision of a collective organ, had this to say at pp. 666 - 67:

> "In the circumstances I am of the view that whatever reasoning may be gleaned from the minutes of the Commission, (*exhibit* 15), or even from any records related thereto, such as the personal file of interested party Georghiou, (*exhibit* 22), it falls far short of what could be considered as due reasoning for the decision to appoint him; it is not possible to deduce clearly and with certainty the views on this matter of either the majority or the minority in the Commission, so as to be able to decide whether the Commission, through its majority, has acted lawfully and within its powers; it is not possible to know clearly how the majority of the Commission weighed the academic qualification of the interested party—which was not required, even as an additional advantage, by the scheme of service—and reached the conclusion that this interested party should be preferred over candidates with considerable length of experience, and over one of them—applicant in 203/66—with qualifications directly related to the duties of a Labour Officer 2nd grade; we do not know, in fact, the exact grounds on which this interested party was found to be so outstandingly better as to justify his being appointed as a first entrant though there were other suitable candidates already in service; and we do not know on what

ground the minority in the Commission disagreed with such a course and felt that the recommendation made by Mr. Sparsis, in favour of this interested party, ought not to be acted upon; and on this point we do not know whether the majority in the Commission was unduly influenced by such recommendation or whether it weighed it duly against all relevant factors."

With respect to the arguments of counsel, the passage I have just read does not support the proposition that failure by a collective organ to record in the minutes the opinion of the dissenting members, (once they have not asked for their opinion to be recorded) and once the majority decision was taken lawfully in accordance with the law, the said decision of the Court intended to have such far reaching results *i.e.* that the failure of recording a dissenting opinion would have made a decision or act taken lawfully by the collective organ invalid. I, therefore, share the view of counsel for the respondent that that case is not an authority for the proposition put forward by counsel for the applicants, and in any event, it can be distinguished from the facts of the present case. Furthermore, *Georghiades* case does not answer the question what is to be done regarding the lack of due reasoning by the minority members. However, I find further support in Kyriakopoullos Vol. B, and at p. 26 he says :-

> «Ἡ μὴ τήρησις πρακτικῶν δὲν ἐπάγεται ἀκυρότητα τῆς ἀποφάσεως (Σ.Ε. 107/1935), ἐπὶ τοῦ κύρους τῆς ὁποίας δὲν ἐπιδρᾷ, κατὰ μείζονα λόγον, οὔτε ἐλάττωμα αὐτῶν (Σ.Ε. 166/1929, 266/1933). Ἐνδέχεται ὅμως ἡ μὴ τήρησις πρακτικῶν νὰ ἐμφανίσῃ τὴν ἀπόφασιν ἀναιτιολόγητον (βλ. κατ. & 84, 6β). Τὰ πρακτικὰ τῶν συλλογικῶν ὀργάνων τῶν τοπικῶν ὀργανισμῶν εἶναι εἰς τὴν διάθεσιν τῶν ἐκλογέων, οἵτινες δύνανται νὰ λάβωσι καὶ ἀντίγραφον αὐτῶν (ἄρθ. 94 & 5 ΔΚΚ)».

and in English it reads :-

> "The non-keeping of minutes does not bring about the invalidity of the decision and does not affect its validity, and all the more so nor does a defect of such minutes. It is probable, however, that the

non-keeping of minutes may present the decision as not reasoned. The minutes of the collective organs of the local authorities are at the disposal of the voters who can also obtain a copy thereof."

See also *Demosthenous* v. *The Republic* (reported in this Part at p. 354 *ante*, at pp. 364 - 365), with regard to the minority decision; and *Pierides and Others* v. *The Republic* (1971) 3 C.L.R. 233, at p. 249.

I would, therefore, dismiss this leg of the argument of counsel. I would also state that reading the said passage (in *Georghiades* case (*supra*)), one clearly would see that the learned trial Judge was expressing his anxiety, in reading the minutes of the Public Service Commission in that case, that neither the majority decision nor the minority expressed their views as to why in the first place the interested party was preferred to be appointed to the post in question and in the second place why the minority have disagreed. I would, therefore, reiterate, that once I have found that the decision is duly reasoned, having been supplemented by the official records before me, I would dismiss the additional grounds of relief.

Reverting now to the first ground of law raised by counsel, that the Board acted in excess or abuse of power in preferring the interested party from the applicants, and that they had disregarded the striking superiority of both applicants regarding the qualifications, their experience for the production of musical programmes, their merit and their abilities, I think I ought to state that it is a well-known concept of administrative law that the paramount duty of a collective organ in effecting appointments or promotions is the selection of the most suitable candidate for the particular post in question, having regard to the totality of circumstances pertaining to each one of the qualified candidates, according to the scheme of service in question.

At the same time, it has also been stressed that the Court will not interfere with the discretionary power exercised by that organ in effecting such appointments or promotions, but a power, once it is exercised, must be exercised for the purposes for which it was given. As long as a discretion therefore is exercised in a valid manner, this Court will not interfere with the exercise

of such discretion by the substitution of its own discretion for that of the authority concerned, even if in exercising its own discretion on the merits the Court could have reached a different conclusion.

Furthermore, it has been said in a number of cases that a discretion is exercised in a valid manner, if in its exercise, all material considerations have been taken into account, due weight is given to material facts, and it has not been based on misconception of law or facts.

The question posed is : have the members of the Board acted in excess or in abuse of powers in preferring the interested party? I think I have made it quite clear in this judgment in presenting all the material which was before the Board, and it is clear from the observations of the general manager that the first applicant Korai admittedly had a more high standard of musical education from the rest of the candidates. There is no doubt that this was all along in the mind of the Board, but at the same time, in taking their decision, no doubt, they had in mind also the recommendation of the head of the department regarding the interested party. There is ample authority which clearly states that such recommendations should weigh with the collective organ in coming to a decision in a particular case, and such recommendation should not lightly be disregarded. (*Theodossiou* v. *The Republic* (1961) 2 R.S.C.C. 44 at p. 48). It is true, of course, that every diploma or degree signifies an additional accomplishment and definitely, at the expense of repeating myself, Korai, much to her credit, had more qualifications which were before the Board and which no doubt were properly weighed in reaching their decision. However, one should not lose sight of the fact that a diploma or certificate from a recognized school of music is considered under the scheme of service as an advantage only.

In support of the question of the qualifications and the experience of both the applicants regarding the writing of musical scripts, there was a lot of evidence before me, which one may think that it was unnecessary, simply because anyone glancing at the diplomas could not have reached a different view. Regarding, however, the preparation of musical programmes, I propose quoting

certain passages from the evidence of Mr. Kotsonis, who at the time was holding the post of the music programme officer 'A', and he said at pp. 3 and 4 of the notes :-

> "I have also in mind the programmes which have been prepared by Miss Korai and I have also in mind certain programmes which were prepared by the interested party. In comparing the sets of programmes prepared by Miss Korai and Mrs. Roussou, the interested party, I would answer, without wanting to make remarks about anyone, that the programmes of Miss Korai are far better and they cannot be compared. I would like to qualify my statement; to anyone who would see those programmes, it would be obvious that applicant Korai, because of her musical knowledge, could present them lucidly, and I do not want to touch the work of the interested party, but it was obvious that she was doing her very best to do her job. After her promotion I must add that I had only twice the occasion to see two of the programmes prepared by her which supports the opinion I have expressed earlier as compared to the work of applicant Korai, that Korai's work is much more superior."

Regarding the second applicant, who like the first one holds the post of programme officer 'B', he says :-

> "I have also in mind the musical qualifications of Miss nee Papaneofytou (Mrs. Lekaki) and the views I have expressed earlier regarding Miss Korai as to the programmes, I would extend them also to her vis-a-vis the work of the interested party. I would also add that in the absence of the person in charge of the Greek musical programmes in the music division she was given instructions to control or check the work of officers belonging to the same grade as herself."

Thus it apears from the evidence before me that the two applicants and the interested party prepared musical programmes, but in the opinion of Mr. Kotsonis, both applicants were better than the interested party.

Having regard, however, to the evidence of Mr. Kotsonis as a whole, it appears to me that he exhibited

feelings of bitterness against the Board for not appointing him as a senior programme producer in 1969—I am not examining whether he was justified in feeling so—and allowed himself because of his personal differences with the interested party, to give the impression that his evidence was not given with an impartial mind. I feel, therefore, in fairness to everyone concerned, that I should not attach the weight I would have normally given to his evidence in view of his qualifications and experience.

With these considerations in mind, as I have said earlier, the Board had before it a complete picture of all the candidates regarding their merit, qualifications, experience and seniority, and had the two applicants felt that the head of their department was biased against them for any reason, (no such allegation was made before me) it was up to them to ask Mr. Kotsonis who was instructed, as he said, to supervise or control the work of officers holding the post of musical officer 'B' to prepare a report about the quality of their work. This was not done and in any event, in the light of the observations I made about the evidence of Mr. Kotsonis, going back to the majority decision of the Board, it appears to me that having regard to the totality of the material before them, their decision was reached not under a misconception of the facts, and, indeed, they had selected the interested party as being the best candidate, giving more weight, in my view, to the merit, experience and seniority. (*Vahak Geodelekian* v. *The Republic* (1969) 3 C.L.R. 428 at pp. 434 - 435). The mere fact, of course, that both applicants had superior qualifications was not enough in my opinion, because no superiority of a striking nature was established on the whole of the material before me to enable me to say that the Board acted in abuse or in excess of powers. I would reiterate that it is well-settled judicially that the onus of establishing excess or abuse of power rests with the applicants who made these allegations, and in the present cases having in mind the very careful and fair way the General Manager of the Corporation presented the case to the Board, and in view of his recommendation regarding the interested party, and after taking everything into consideration, I am of the view that the existence of excess or abuse of powers had not been established to my

satisfaction, and I would, therefore, dismiss this contention of both counsel. Cp. *Demosthenous* v. *The Republic,* (*supra*) at p. 363 also the recent decision of *Bagdades* v. *The Central Bank of Cyprus*. (Now reported in this Part at p. 417 *ante*).

Before dealing with the final argument of counsel for the second applicant (now Mrs. Lekaki) I think I ought to state that as a rule confidential reports on all serving officers are prepared by the heads of departments and submitted to the organ dealing with appointments, promotions, etc., and usually contain all elements relating to the quality of the service of an officer and regarding his ability. The importance of such confidential reports has been stressed in a number of cases, and I need not say anything more except that heads of departments are not only under an obligation to prepare reports—in order to fulfil their duty—about the quality of officers, but it is also considered as an additional element of the relevant administrative procedure, and absence of such reports about serving officers may have adverse effect on an administrative act especially regarding promotions. Whether or not, of course, the personality, the quality, the ability and experience of an officer is accurately or properly weighed by the head of department is a matter which is not free from difficulties or criticism as it appears from the number of recourses reaching this Court.

Reverting now to the argument of counsel, it was contended that the respondents did not bring to the knowledge of Mrs. Lekaki the two confidential letters *exhibits* 14 and 15, the first containing adverse comments about the applicant and the second not recommending her for the post in question. Counsel relies on the authority of *Frangides* v. *The Republic* (1968) 3 C.L.R. 90 at p. 110.

Having considered carefully the argument of counsel and having had the opportunity to peruse once again the judgment of the learned trial Judge in *Frangides* case, I am of the view that the reasoning of that case does not help the case of the applicant and it is distinguishable

from the present case because, as the learned trial Judge found, the Minister of Health, and not the head of department placed before the Public Service Commission a letter of a most serious list of accusations against Dr. Frangides about a month before its *sub judice* decision. In the present case, as I made it quite clear, it was part of the duty of the heads of the departments to prepare a report for the second applicant to enable the Board of the Corporation to select the most suitable candidate for the post in question. It is true, of course, that in *exhibit* 14 the second applicant is criticised for the performance of her work and in *exhibit* 15 she is not recommended for promotion. Furthermore, it is equally true that both persons who prepared the confidential reports of this particular officer did not communicate to the officer concerned that part of their report.

Having perused carefully the first report, one may take the view that the criticism against the second applicant is due to a failure on her part regarding the performance of her duties, *i.e.* of her shortcomings, and in the second place that she was not recommended for promotion. But whether or not such criticism is of a nature falling within the ambit of s. 45 of Law 33 of 1967, *viz.*, "negligence, and failure in the performance of her duties", is not free from doubt.

In any event, it appears that those two reports (*exhibits* 14 and 15) were prepared because the appropriate authority concerned considered that its own views on the second applicant should be brought and were transmitted through it to the Board together with its own views, and for the purposes of this judgment, I would be prepared, in spite of what I said earlier, to agree that such criticism amounts to a criticism of failure of the second applicant regarding the performance of her duties.

I think that the question posed in this case is similar to the one in *Pierides and Others* v. *The Republic* (1971) 3 C.L.R. 233, where one of the officers was complaining that the head of the department criticised him in his confidential report for failures in the performance of his duties, and such report was not communicated to him in accordance with the provisions of subsection 4 of section 45 of Law 33 of 1967, and counsel invited the

Court to take the view that the decision of the Commission with regard to promotions should be vitiated. In dismissing the proposition put forward by counsel, I have said this at p. 964 :-

"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. 342."

In Greece, under subsections 3 & 4 of section 92 of the Civil Administrative Code for Public Servants, there is a similar provision and in the Decision of the Greek Council of State No. 732/1968 reported in 1968 Vol. A at pp. 840 - 1, the Council of State, after quoting subsections 3 & 4 which deal with the confidential reports of the public officers and the obligation of a person preparing a confidential report for which the latter are criticised or are not recommended for promotion, had this to say :-

«Ἐπειδή, καθ' ἃ παγίως ἐκρίθη ἤδη παρὰ τοῦ Δικαστηρίου τούτου, διὰ τῶν παρατεθεισῶν διατάξεων θεσπίζεται μὲν ὑποχρέωσις ἀνακοινώσεως τῆς δυσμενοῦς ἐκθέσεως εἰς τὸν ἐνδιαφερόμενον ὑπάλληλον, πλὴν ἡ παράλειψις τῆς ὑποχρεώσεως ταύτης συνεπάγεται μόνον πειθαρχικὴν εὐθύνην τοῦ υπαιτίου τῆς παραλείψεως, οὐχὶ δὲ καὶ ἀκυρότητα τῆς μὴ ἀνακοινωθείσης ἐκθέσεως καὶ τῆς τυχὸν στηριχθείσης ἐπ' αὐτῆς κρίσεως τοῦ ὑπηρεσιακοῦ συμβουλίου. Ὅθεν, ὁ πρῶτος λόγος ἀκυρώσεως δι' οὗ προβάλλεται ἀκυρότης τῆς προσβαλλομένης κρίσεως, ἐκ μόνου τοῦ λόγου, ὅτι δὲν ἀνεκοινώθη πρὸς τὸν αἰτοῦντα ἡ δυσμενὴς περὶ αὐτοῦ ὑπηρεσιακὴ ἔκθεσις τοῦ ἔτους 1965, τυγχάνει νόμῳ ἀβάσιμος καὶ ἀπορριπτέος».

("Whereas, according to what has already firmly been decided by this Court, under the provisions cited there is indeed enacted an obligation to com-

municate an adverse report to the officer concerned such failure, however, creates a disciplinary liability for the person responsible therefor, but no annulment of the non-communicated report and of any decision of the Service Council which has been reached as a result of such report. Therefore, the first ground for annulment whereby the subject matter decision is sought to be annulled on the sole ground that the adverse report on the applicant for the year 1965 was not communicated to him, is legally unfounded and has to be dismissed").

See also Decision 1438/67 reported in 1967 Vol. B. 1597 at p. 1598 :-

«Ἐπειδὴ ὁ λόγος ἀκυρώσεως ὅτι *παρὰ τὸν νόμον* ἐλήφθησαν ὑπ' ὄψιν αἱ δυσμενεῖς περὶ αὐτοῦ ὑπηρεσιακαὶ ἐκθέσεις, αἵτινες δὲν εἶχον προηγουμένως γνωστοποιηθῆ εἰς τοῦτον δέον ν' ἀπορριφθῇ ὡς ἀβάσιμος, διότι ἐπιβάλλεται μὲν ὑπὸ τῆς διατάξεως τοῦ ἄρθρου 92 παρ. 3 τοῦ ὑπαλληλικοῦ κώδικος ἡ πρὸς τὸν ὑπάλληλον ἀνακοίνωσις τῶν ἐν τῇ διατάξει ταύτῃ ἀναφερομένων δυσμενῶν περὶ αὐτοῦ ἐκθέσεων, *ἡ μὴ τήρησις ὅμως τῆς ὑποχρεώσεως ταύτης* συνεπάγεται μὲν πειθαρχικὴν εὐθύνην τῶν ὑπαιτίων τῆς παραλείψεως, οὐχὶ ὅμως ἀκυρότητα τῆς μὴ ἀνακοινωθείσης ἐκθέσεως καὶ τῆς ἐπ' αὐτῆς βασισθείσης κρίσεως.

Ἐπειδὴ κατὰ ταῦτα ἡ ὑπὸ κρίσιν αἴτησις εἶναι ἀπορριπτέα ὡς ἀβάσιμος»

("Whereas the ground for annulment that the adverse service reports, which had not been communicated to him beforehand, were taken into consideration against the law, should be dismissed as unfounded, because though it is provided by the provisions of Article 92 paragraph 3 of the Civil Service Code, that the adverse reports referred to *in the said provisions should be communicated to* the officer, non-compliance with this obligation creates only a disciplinary liability for those responsible for such failure, but no annulment of the non-communicated report and the decision reached as

a result thereof. Whereas for these reasons the subject matter application is dismissed as unfounded").

Thus is appears from the trend of the decided cases that the obligation to communicate to civil servants adverse reports is a matter which creates a disciplinary liability of the person responsible for his failure to communicate to the officer concerned that part of the report, but failure to do so does not annul the said report and/or the decision which was reached as a result of such report.

Directing myself with these judicial pronouncements I would dismiss also this complaint of counsel for the second applicant.

I think I should have stated that since the coming into force of Law 33/67 the Public Service Commission was no longer the proper organ for appointments and promotions regarding the three corporations, *viz.*, C.B.C. C.Y.T.A. and the Electricity Authority. The House of Representatives, in order to regularize the matters pertaining to the appointments, promotions, transfers, etc. regarding the employees of those corporations and for various other reasons, enacted on June 12, 1970, the Public Corporations (Regulation of Personnel Matters) Law 1970, (No. 61/70).

Although this point was not taken before me by counsel, perhaps I would venture an opinion that the reason why the Board decided on December 22, 1969 to assign the duties of musical programme officer 'A' to the interested party, and not to appoint her or promote her to that post (being a first entry and promotion post) is because the Board in the absence of any law, approached the matter very cautiously. However, although I have decided the final argument of counsel on behalf of the second applicant, basing myself on the statutory provisions of Law 33/67, yet, in my view, there was no legal impediment for the Board to adopt and follow those principles which have been enunciated by our Courts and the Courts in Greece regarding appointments, promotions etc., and confidential reports.

For the reasons I have endeavoured to explain, I am of the view that the decision of the Board is neither

contrary to any of the provisions of the Constitution or of any law or is made in excess or in abuse of powers vested in the said Board, and I would, therefore, dismiss both applications.

Regarding the question of costs, I have decided not to make an order of costs against the applicants.

Application dismissed.
No order as to costs.