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Aug. 30

[TRIANTAFYLLIDES, P.]

—
GEORGHIOS
CHARALAMBOUS
AND OTHERS
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS CHARALAMBOUS AND OTHERS,
Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF INTERIOR,
2. THE COMMANDER OF POLICE,

Respondents.

(Cases Nos. 172/71, 189/71–191/71, 222/71–
225/71, 227/71–229/71, 235/71,
237/71, 238/71, 240/71, 254/71).

*Police Law, Cap. 285—Police Force—Promotions of members of—
Made by the Commander with the approval of the Minister—
Section 13(2) of the Law (as re-enacted by Law 29 of 1966)—
Letter by Commander to Minister informing him of his intention
to promote the officers named therein and seeking the Minister's 5
approval—Looking at essence of said letter and not at its form
it is clearly a communication to the Minister, for his approval,
of a decision already reached by the Commander—Commander
not bound to set out in full all material which, in his opinion,
justified the decisions which by means of the said letter he placed 10
before the Minister for approval.*

*Administrative decision—Due reasoning—Promotions of members of
the Police Force—Made by the Commander with the approval of
the Minister—Section 13(2) of the Police Law, Cap. 285 (as
re-enacted by the Police (Amendment) Law, 1966)—Minister's 15
approval need not be duly reasoned.*

*Police Law, Cap. 285—Police Force—Promotions of members of—
Made by Commander with approval of the Minister—Section 13(2)
of the Law (as re-enacted by Law 29 of 1966)—Not the task of
the Minister to select himself, in the first instance, the most sui- 20
table candidates—Or to decide himself, whether there existed
sufficient grounds for making permanent or temporary or acting
appointments—He had only to decide whether the relevant deci-
sions, as made by the Commander, could properly be approved*

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by him—Moreover in accordance with presumption of regularity, and in the absence of any proof to the contrary the Court, must assume that the Minister did give his approval after considering all material aspects of the decisions to be approved.

5 *Administrative Law—Presumption of regularity.*

The applicants in these recourses challenged the validity of promotions, temporary promotions and acting appointments made to the post of Sub-Inspector in the Police Force of the Republic:

10 By means of a letter* addressed by the Commander of Police to the Minister of Interior on April 3, 1971, (to be referred to hereinafter as Annex A) the Commander stated that for the purpose of securing the necessary suitable supervisory personnel, in order to fill existing gaps in the ranks of junior officers, he
15 intended to make certain promotions to the rank of Sub-Inspector, certain temporary promotions to the rank of Temporary Sub-Inspector and certain acting appointments to the rank of Acting Sub-Inspector. In Annex A the Commander set out the names of all those whom he intended to promote or appoint
20 as above and he was seeking accordingly the approval of the Minister.

The proposals of the Commander were approved by the Minister of Interior and his approval appears recorded at the very end of Annex A; it was expressed in one word “approved”;
25 it was signed by the Minister of Interior and it had the same date as Annex A.

The action taken by the Commander and the Minister was taken in pursuance of section 13(2) of the Police Law, Cap. 285, as re-enacted by Law 29 of 1966, which reads as follows:

30 “The Commander, with the approval of the Minister, appoints, enlists, promotes and discharges all members of the Force up to and including the rank of Chief Inspector”.

Counsel for the applicants contended:

35 (a) That Annex A does not contain decisions by the Commander in the matter of the permanent and temporary promotions and the acting appointments, but only a set of proposals made by him, in this connection, and

* See details of this letter at pp. 231–233 *post*.

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that what was required, so that they could be approved by the Minister, were decisions, and not only mere proposals, by the Commander.

- (b) That the approval of the Minister was not duly reasoned. 5
- (c) That the Minister, when deciding whether to give his approval, ought to have had before him all the relevant material concerning each candidate entitled to be considered for promotion for any reason; and that there ought to have been set out in Annex A sufficient grounds 10 justifying the making of permanent or temporary promotions or of acting appointments, so that the Minister could validly give, in each case, his required approval under the relevant legislation.
- (d) That there was nothing in Annex A to show that the 15 conditions envisaged by regulations 10* and 11* of the Police (General) Regulations, 1958 existed in relation to the making, respectively, of the temporary promotions and of the acting appointments; and that there 20 ought to have been expressly stated in Annex A that the candidates selected had been recommended by a Selection Board, as envisaged by the Appropriate Regulations.

Held, (I) on contention (a) above:

That in deciding on the true nature of the letter of the Commander of the Police to the Minister of Interior one should look 25 at the essence and not the form; that on a fair reading of the contents of Annex A as a whole it becomes clear that the Commander informed thereby the Minister that he made up his mind to take a certain course of action and that he was seeking the 30 Minister's approval for the purpose; and that, accordingly, Annex A does not amount to a mere set of proposals, but it is clearly a communication to the Minister for the approval, of decisions already reached by the Commander.

Held, (II) on contention (b) above: 35

That there does not exist any relevant legislative provision which prescribes that the approval of the Minister should be 40 duly reasoned; that such approval does not seem to belong to any category of decisions, taken in the exercise of discretionary powers, which have to be duly reasoned; that reasoning regard-

* Quoted at pp. 230-231 *post*.

ing a decision taken in the course of the exercise of the discretion of a hierarchically superior organ is really necessary when the decision of a subordinate organ is to be modified (see decision of the Council of State in Greece in Case 492/32); that this is not what has happened in the present case; and that, in the absence of a specific legislative provision to that effect, no reasoning is required for the approval of an appointment even where such appointment has been made after one of the candidates has been selected for appointment instead of another.

Per curiam: Even if it were to be held that the approval of the Minister had to be duly reasoned, then it can be safely said that the contents of Annex A do provide either expressly, or by inevitable implication, the reasons for which such approval was given; and it is well settled that the reasons for the approval of a decision can be found in the decision approved (see, *inter alia*, The Conclusions from the Case Law of the Council of State in Greece, 1929–1959, p. 185).

Held, (III) with regard to contention (c) above:

(1) That it was not the task of the Minister to select himself, in the first instance, the most suitable candidates; that all that he had to do was to give his approval if he thought that the decisions of the Commander could properly be approved; that likewise, it was not for the Minister to decide himself, in the first instance, whether there existed sufficient grounds for making permanent or temporary promotions or acting appointments; that he had only to decide whether the relevant decisions, as made by the Commander, could properly be approved by him.

(2) That, moreover, in accordance with the presumption of regularity (see, *inter alia*, *The Republic v. Ekkeshis*, (1975) 3 C.L.R. 548, *Michael (No. 2) v. The Republic*, (1975) 3 C.L.R. 432), and in the absence of any proof to the contrary, it must be assumed that the Minister of Interior did give his approval after considering all material aspects of the decisions to be approved, including the suitability of the candidates and the existence of grounds justifying the making of permanent or temporary promotions or acting appointments.

Held, (IV) with regard to contention (d) above:

(1) That in his letter to the Minister—Annex A—the Commander did not have to set out in full all the material which, in his opinion, justified the decisions which by means of such letter

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he placed before the Minister for approval, especially, because, as stated in paragraph 3 of Annex A, he had considered the “promotions” together with the Minister before writing to him about them; and for the same reason it was not necessary to refer in Annex A to any recommendations by a Selection Board. 5
Order accordingly.

Cases referred to:

Pancyprian Federation of Labour (PEO) v. Board of Cinematograph Films Censors and Another (1965) 3 C.L.R. 27;
Constantinides v. Republic (1967) 3 C.L.R. 7; 10
Decisions of the Greek Council of State Nos. 492/32 and 845/71;
Republic v. Ekkeshis (1975) 3 C.L.R. 548;
Michael (No. 2) v. Republic (1975) 3 C.L.R. 432.

Recourses.

Recourses against the validity of the promotions, temporary promotions and acting appointments of the interested parties to the post of Sub-Inspector in the Police Force of the Republic. 15

L. Clerides with *P. Kouzoupis*, for applicants in Cases Nos. 189/71–191/71, 224/71–225/71, 227/71–229/71.
E. Liatsos, for applicant in Case No. 245/71. 20
K. Saveriades, for applicant in Cases Nos. 237/71–238/71,
E. Efstathiou, for applicant in Case No. 235/71
M. Christofides, for applicant in Case No. 229/71.
L. Papaphilippou, for applicant in Case No. 240/71.
D. Papachrysostomou, for applicant in Cases Nos. 222/71– 25
223/71.
D. Demetriades, for applicant in Cases No. 172/71.
L. Loucaides, Deputy Attorney-General of the Republic,
for the respondents in all cases.

Cur. adv. vult. 30

The following decision was delivered by:—

TRIANTAFYLLIDES, P.: By these recourses (and two others,

Editor's note: All that the Court was concerned with, at present, was whether or not sufficient grounds appear to exist, *merely* on the basis of the contents of Annex A and of the approval by the Minister of Interior of the decisions set out in Annex A, so as to lead it to the conclusion that it should annul as invalid any of the *sub judice* promotions, temporary promotions or acting appointments; and for all the reasons which it has set out in this Decision it was not satisfied that it should do so at this stage.

Nos. 226/71 and 230/71, which were withdrawn before this Decision was given) the applicants seek the annulment of promotions, temporary promotions and acting appointments made to the post of Sub-Inspector in the Police Force of the Republic.

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5 The recourses have been heard together on common legal issues.

10 The promotions, temporary promotions and acting appointments complained of were published in the Police Weekly Orders in April 1971, and the names of those concerned (to be referred to hereinafter as the "interested parties") are, also, set out in a letter addressed by the Commander of Police to the Minister of Interior on April 3, 1971 (described as "Annex A" in these proceedings).

15 All the interested parties were duly notified about the present proceedings, but none of them is taking part therein, on his own, for the protection of his interests.

20 In Annex A there appear the names of forty-five Police Sergeants who were promoted to the post of Sub-Inspector and (with the exception of four out of them) their promotions are challenged by one or more of the applicants in these recourses; there appear, also, the names of eight Police Sergeants who were temporarily promoted to the said post; and, lastly, there appear the names of ten Police Sergeants who were given acting appointments to the post of Sub-Inspector; all the temporary promotions and acting appointments are challenged by one or more of
25 the applicants.

30 In the course of these proceedings all the applicants who have attacked the acting appointment of Police Sergeant No. 216 A. Theophanous, declared their intention to discontinue their recourses in so far as his acting appointment is concerned; also, the applicants in cases Nos. 222/71 and 223/71 who have attacked the temporary promotions of Police Sergeants No. 653 Pl. Vassiliou, No. 1696 D. Constantinides and No. 1707 V. Loiza, and the permanent promotions of Police Sergeants No. 770 G.
35 Toumazou, No. 899 Cl. Christophorou, No. 604 A. Papacharambous and No. 1576 A. Yiannaki, declared their intention to discontinue their recourses in so far as such interested parties are concerned.

40 It is useful to refer, at this stage, to the relevant legislative provisions which are subsections (2) and (3) of section 13 of the

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Police Law, Cap. 285, as re-enacted by the Police (Amendment) Law, 1966 (Law 29/66); they read as follows:—

“(2) Ὁ Ἀρχηγός, τῆ ἐγκρίσει τοῦ Ὑπουργοῦ, διορίζει, κατατάσσει, προάγει καὶ ἀπολύει πάντα τὰ μέλη τῆς Δυνάμεως μέχρι καὶ συμπεριλαμβανομένου τοῦ Ἀρχιεπιθεωρητοῦ. 5

(3) Οἱ ὄροι διορισμοῦ, κατατάξεως, προαγωγῆς, ὑπηρεσίας καὶ ἀπολύσεως μελῶν τῆς Δυνάμεως προβλέπονται ὑπὸ Κανονισμῶν γενομένων ὑπὸ τοῦ Ὑπουργικοῦ Συμβουλίου ἐπὶ τῆ βάσει τοῦ παρόντος ἀρθροῦ καὶ δημοσιευομένων εἰς τὴν ἐπίσημον ἐφημερίδα τῆς Δημοκρατίας: 10

Νοεῖται ὅτι μέχρι τῆς ἐκδόσεως τῶν ἐν τῷ παρόντι ἐδαφίῳ προβλεπομένων Κανονισμῶν οἱ κατὰ τὴν ἡμερομηνίαν ἐνάρξεως ἰσχύος τοῦ παρόντος Νόμου ἐν ἰσχύϊ Κανονισμοὶ καὶ Γενικαὶ Διατάξεις θὰ ἐξακολουθήσωσιν ἐφαρμοζόμενοι.”

(“ (2) The Commander, with the approval of the Minister, appoints, enlists, promotes and discharges all members of the Force up to and including the rank of Chief Inspector. 15

(3) The conditions of appointment, enlistment, promotion, service and discharge of members of the Force are laid down in Regulations made by the Council of Ministers under this section and published in the official Gazette of the Republic: Provided that until the making of the Regulations envisaged by this subsection the Regulations and General Orders in force at the time of the coming into force of the present Law will continue to be applied”). 20 25

The “Commander” is the respondent Commander of the Police and the “Minister” is the Minister of Interior.

The Regulations referred to in the proviso to subsection (3) above, are, *inter alia*, the Police (General) Regulations, 1958, and the Police (Promotion) Regulations, 1958. 30

Regulations 10 and 11 of the Police (General) Regulations, 1958, relate to temporary promotions and acting appointments, respectively, and their material parts—(subject to the necessary modifications entailed by Article 188 of the Constitution and amendments of Cap. 285 effected by the Police (Amendment) Law, 1960 (Law 19/60), and the Police (Amendment) Law, 1964 (Law 21/64))—read as follows:— 35

“ 10. (1) A member of the Force who is required to perform

the duties of a higher rank may be promoted temporarily to that rank by the Commander:

Provided that -

- (a) a vacancy exists in the rank;
- 5 (b) in the case of Gazetted Officers such promotions are made with the approval of the Minister.

11. (1) A member of the Force who is required to perform the duties of a higher rank due to the temporary absence of the holder of that rank, may be appointed to act in the rank by the Divisional or Unit Commander:

Provided that -

- (a) all such appointments are made with the approval of the Commander;
- 15 (b) notification is sent to Force Headquarters for the purposes of pay and maintaining records".

Also, regulation 6(3) of the Police (Promotion) Regulations, 1958, reads as follows:-

" 6.

(3) Notwithstanding anything in this Regulation contained the Commander:-

- 20 (a) may decide that members of the Force recommended by the Board for advancement should attend a short promotion course;
- 25 (b) may promote any police officer who shows marked ability or exceptional aptitude for special work, irrespective of his length of service, and whether qualified by examination or not".

The "Board" referred to above is the Selection Board envisaged by regulation 4 of the same Regulations.

30 As regards the factual aspect it is necessary to refer at some length to the contents of the aforementioned letter of April 3, 1971 (*Annex A*):-

It is headed " Προαγωγαι εις τας τάξεις κατωτέρων Ἀξιωματικῶν" ("Promotions to the ranks of junior officers").

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At the very outset it is stated by the Commander of the Police that for the purpose of securing the necessary suitable supervisory personnel, in order to fill existing gaps in the ranks of junior officers, he intends to promote those mentioned in respect of each category and that he is seeking accordingly the approval of the Minister of Interior. There are then set out the names of forty-five Sergeants (including all the interested parties concerned) under the heading “Εἰς τὸν βαθμὸν τοῦ Ἀνθυπαστυνόμου (Κανονικαὶ προαγωγαὶ κατ’ ἐπιλογὴν)” (“To the rank of Sub-Inspector (Normal promotions after selection)”).

Next, there are stated the names of another eight Sergeants (all interested parties) under the heading “Εἰς τὸν βαθμὸν τοῦ Προσωρινοῦ Ἀνθυπαστυνόμου” (“To the rank of Temporary Sub-Inspector”); there is a note above their names to the effect that their temporary promotions are subject to the condition that before consideration of the possibility of their being promoted exceptionally (“κατ’ ἐξαιρεσιν”), they should pass the prescribed promotion examination within a period of two years; and opposite the name of each one of them there is stated his special qualification or special duties. After their names there is another note to the effect that though, in most of the instances, there could have been applied regulation 6(3) of the Police (Promotion) Regulations, enabling the making of promotions exceptionally, the Commander of the Police had deemed it fit to adopt the course of making temporary promotions in order to oblige those so promoted to pass, at least, the academic part of the prescribed examination, so that they would be placed on an equal footing with the rest of their colleagues.

Then, there follow the names of another ten Sergeants (all but one of them being interested parties); their names are preceded by a statement that it is intended to appoint them to the rank of Acting Sub-Inspector in order to fill certain further gaps.

In paragraph 2 of Annex A it is stated that as soon as the “promotions” in question are announced there would follow transfers so that the officers concerned would be posted in suitable posts for the purpose of taking up duties pertaining to their new rank.

In paragraph 3 the Commander states that he had had recently the opportunity to consider with the Minister of Interior the proposed “promotions”, but nevertheless he is ready to discuss further the case of any particular candidate and to place,

if necessary, at his disposal any documents relevant to specific recommendations.

5 Paragraph 4 refers to the matter of the supernumerary posts and it is stated, in this respect, that as the Minister knew, too, the approval in this respect of the President of the Republic had already been secured.

10 In the concluding part of Annex A it is explained that by virtue of the approval of the proposed promotions there will be secured the necessary, for the proper functioning of the Force, supervisory personnel, within the frame work provided for by the Budget; it is stated, also, that the vacancies in the rank of Sergeant have been filled and there are gradually being filled the remaining vacancies in the rank of Police Constable; and that
15 such a course, undoubtedly, entails a proportionate increase in the number of officers, so that the necessary control and supervision may be carried out effectively.

20 All the promotions, temporary promotions, and acting appointments in question were approved by the Minister of Interior, and his approval appears recorded at the very end of Annex A; it bears the same date as Annex A; it is expressed in one word "Εγκρίνονται" ("Approved"); and it is signed by the, at the time, Minister of Interior.

25 It has been submitted on behalf of the applicants that Annex A does not contain decisions by the Commander in the matter of the permanent and temporary promotions and the acting appointments, but only a set of proposals made by him, in this connection, and that what was required, so that they could be approved by the Minister, were decisions, and not only mere proposals, by the Commander. I cannot accept this submission as
30 being well-founded; in deciding on the true nature of Annex A one should look at the essence and not the form; and I am of the view that on a fair reading of the contents of Annex A as a whole it becomes clear that the Commander informed thereby the Minister that he made up his mind to take a certain course of
35 action and that he was seeking the Minister's approval for the purpose; therefore, Annex A does not amount to a mere set of proposals, but it is clearly a communication to the Minister, for his approval, of decisions already reached by the Commander.

40 The next complaint of counsel for the applicants is that the approval of the Minister was not duly reasoned:

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I agree that, as stated in, *inter alia*, the two cases referred to by counsel for the applicants, namely *Pancyprian Federation of Labour (PEO) v. Board of Cinematograph Films Censors and Another*, (1965) 3 C.L.R. 27, and *Constantinides v. The Republic*, (1967) 3 C.L.R. 7, when due reasoning is required to be given in relation to an administrative decision and such reasoning is absent then the decision concerned is defective.

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But, in the first place, there does not exist any relevant legislative provision which prescribes that the approval of the Minister should be duly reasoned; furthermore, such approval does not seem to belong to any category of decisions, taken in the exercise of discretionary powers, which have to be duly reasoned (see, in this connection, *The Conclusions from the Case Law of the Council of State in Greece, 1929–1959*, p. 184). Moreover, from the decision of the Council of State in Greece in case 492/32 it is to be derived that reasoning regarding a decision taken in the course of the exercise of the discretion of a hierarchically superior organ is really necessary when the decision of a subordinate organ is to be modified; and this is not what has happened in the present case. Also, from the decision of the same Council in case 845/71 it appears that, in the absence of a specific legislative provision to that effect, no reasoning is required for the approval of an appointment even where such appointment has been made after one of the candidates has been selected for appointment instead of another.

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In any case, even if I were to hold that the approval of the Minister had to be duly reasoned, then I think that it can be safely said that the contents of Annex A do provide either expressly, or by inevitable implication, the reasons for which such approval was given; and it is well settled that the reasons for the approval of a decision can be found in the decision approved (see, *inter alia*, *The Conclusions from the Case Law of the Council of State in Greece, 1929–1959*, p. 185): It appears from the contents of Annex A that the permanent promotions were made after selection (“κατ’ επιλογήν”) from amongst the eligible candidates; and, actually, against the names of three of those so promoted it is expressly stated that their promotions were made exceptionally in view of special qualifications or duties; in relation to the temporary promotions there are again stated in Annex A the special duties or qualifications which apparently led to the selection of those temporarily promoted. There is, indeed, nothing stated in Annex A in relation to any one of those

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5 given acting appointments; but, I do think that whatever is stated in Annex A in relation to any decision set out in it must be read together with its paragraph 3, where it is expressly recorded that all the “promotions”—(and here, obviously, as elsewhere,
10 too, in Annex A, the word “promotion” is used in a wide sense, so as to include, also, an acting appointment)—were considered by the Commander together with the Minister; and it must, therefore, be presumed that the Minister was duly satisfied that they could be properly made before he decided to give his approval. That is why I have stated earlier on that the contents of Annex A provide, either expressly or by inevitable implication, the reasons for the approval of the Minister.

15 It has been contended by counsel for the applicants that the Minister, when deciding whether to give his approval, ought to have had before him all the relevant material concerning each candidate entitled to be considered for promotion for any reason; and, also, that there ought to have been set out in Annex A sufficient grounds justifying the making of permanent or temporary promotions or of acting appointments, so that the Minister
20 could validly give, in each case, his required approval under the relevant legislation.

I am of the view that it was not the task of the Minister to select himself, in the first instance, the most suitable candidates; all that he had to do was to give his approval if he thought that
25 the decisions of the Commander could properly be approved. Likewise, it was not for the Minister to decide himself, in the first instance, whether there existed sufficient grounds for making permanent or temporary promotions or acting appointments; he had only to decide whether the relevant decisions, as made by
30 the Commander, could properly be approved by him. In this connection reference has to be made once again to paragraph 3 of Annex A wherein it is stated clearly that the “promotions” in question had been considered by the Commander together with the Minister, and it is a proper inference that on that occasion all relevant factors were taken into account (including
35 other eligible candidates); it has to be borne in mind, in this respect, that the Commander stated in paragraph 3 that he was ready to discuss further with the Minister the case of any individual candidate and to place, if necessary, at his disposal any
40 documents relevant to particular recommendations.

Moreover, in accordance with the presumption of regularity (see, *inter alia*, *The Republic v. Ekkeshis*, (1975) 3 C.L.R. 548,

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Michael (No. 2) v. The Republic, (1975) 3 C.L.R. 432), and in the absence of any proof to the contrary, I must assume that the Minister of Interior did give his approval after considering all material aspects of the decisions to be approved, including the suitability of the candidates and the existence of grounds justifying the making of permanent or temporary promotions or acting appointments. 5

Two other submissions of counsel for the applicants were, first, that there is nothing in Annex A to show that the conditions envisaged by the relevant Regulations (regulations 10 and 11) existed in relation to the making, respectively, of the temporary promotions and of the acting appointments, and, secondly, that there ought to have been expressly stated in Annex A that the candidates selected had been recommended by a Selection Board, as envisaged by the appropriate Regulations. 10 15

I do not agree that in his letter to the Minister—Annex A—the Commander had to set out in full all the material which, in his opinion, justified the decisions which by means of such letter he placed before the Minister for approval, especially, because, as stated in paragraph 3 of Annex A, he had considered the “promotions” together with the Minister before writing to him about them; and for the same reason I do not think that it was necessary to refer in Annex A to any recommendations by a Selection Board. 20

Of course, whether or not in any individual case there did exist the prerequisites rendering valid the promotion, temporary promotion or acting appointment of the interested party concerned is not a matter which has to, or can, be decided, at this stage of the proceedings, by this interim Decision; this is a matter to be decided later, after the hearing on the merits of these cases. All that I was concerned with, at present, was whether or not sufficient grounds appear to exist, *merely* on the basis of the contents of Annex A and of the approval by the Minister of Interior of the decisions set out in Annex A, so as to lead me to the conclusion that I should annul as invalid any of the *sub judice* promotions, temporary promotions or acting appointments; and for all the reasons which I have already set out in this Decision I am not satisfied that I should do so at this stage. 25 30 35

Consequently, these cases should proceed to be heard on their merits. 40

Order accordingly.