

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANTELIS TH. MICHANICOS AND ANOTHER,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

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v.
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(Cases Nos. 374/74 and 380/74).

Public Officers—Promotions—Consideration of candidates for promotion—Minutes of Public Service Commission not mentioning applicant by name—Presumption that the administrative act was reached after a correct ascertainment of the relevant facts—Kyrianiou (No. 2) v. Republic (1975) 3 C.L.R. 187 distinguished.

Administrative Law—Administrative Act—Relating to promotion of public officers—Presumption that it was reached after a correct ascertainment of the relevant facts.

Public Officers—Promotions—Head of Department—Recommendations—No statutory requirement for their communication to the candidates—Section 44(3) of the Public Service Law, 1967 (Law 33 of 1967).

Natural Justice—Audi alteram partem—Rule of—Public officers—Promotions—Recommendations of Head of Department—Non disclosure of, to candidates—Does not amount to violation of the said rule.

Public Officers—Promotions—Promotion office—Filling of vacancies in—Public Service Commission under no duty to inform candidates and ask them to supply their qualifications—Section 31(2) of the Public Service Law, 1967 (Law 33 of 1967).

Public Officers—Promotions—Head of Department—Presence and participation at the deliberations of the Public Service Commission—Section 18 of the Public Service Law, 1967 (Law 33 of 1967).

Public Officers—Confidential Reports—Adverse confidential reports—

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Non communication to officer concerned—Effect—Section 45(4) of the Public Service Law, 1967 (Law 33 of 1967).

Public Officers—Promotions—Post of Assistant Collector of Customs—Selection of the most suitable candidate—Factors to which the Public Service Commission is required to have due regard—Section 44(3) of the Public Service Law, 1967—Merit, qualifications, seniority and recommendations of Head of Department—Respondent Commission did not fail in its paramount duty to select the most suitable candidate, in the circumstances of this particular case. 5 10

Public Service Commission—Decision of, relating to promotions—Cannot be interfered with unless it has been established that the persons not selected did have striking superiority over those selected—Onus in such a case lies always on the applicants—Who have failed to discharge this burden in the instant case. 15

Public Officers—Promotions—Head of Department—Recommendations—Should weigh with the Public Service Commission and should not be lightly disregarded.

Public Officers—Promotions—Seniority—Is not by itself the determining factor but part of the overall picture of each candidate. 20

The applicant Pantelis Michanicos by means of Recourse No. 374/74 challenges the validity of the promotion of interested parties Lambis, Antoniadis and Chrysochou to the post of Assistant Collector of Customs in the Department of Customs and Excise and applicant HadjiIosif challenges the promotion of interested party Lambis only by means of recourse No. 380/74. 25

Regarding the qualifications of the two applicants and the interested parties, with the exception of interested party Chrysochos, who was the holder of a diploma in law from Athens University, no one else possessed any qualification which constituted an advantage under the relevant scheme of service. Applicant Michanicos, however, has passed more General Certificate of Education subjects, both ordinary and advanced, than any of the interested parties. And with regard to their seniority interested party Lambis was senior to both applicants but applicant Michanicos was senior to the two other interested parties. 30 35

The picture of the merit of the candidates appeared in the confidential reports (see pp. 251–252 *post*).

By means of a letter of recommendation dated May 23, 1974,

addressed to the Public Service Commission, the Head of Department named the officers who were considered by him as suitable for promotion. Applicant HjiIosif was included in this letter but applicant Michanicos was not.

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5 The Head of Department who was present at the relevant meeting* of the Commission stated that he considered interested parties Lambis, Antoniadis and Chrysochou as the best and recommended them for promotion.

Counsel for the applicants contended:

- 10 (1) That applicant Michanicos was excluded from the list of candidates considered by the respondent Commission because he was neither mentioned in its minutes nor included in the letter of recommendation of the Head of Department dated May 23, 1974.
- 15 (2) That the said recommendation of the Head of Department (dated May 23, 1974) was not communicated to applicant Michanicos and that the omission to communicate it amounted to a violation of the *audi alteram partem* rule of natural justice.
- 20 (3) That although under section 31(2) of the Public Service Law, 1967 (Law 33 of 1967) a vacancy in a promotion office shall be filled without advertisement by the promotion of an officer service in the immediately lower grade or office the administration had a duty to inform the candidates and ask them to supply their qualifications.
- 25 (4) That there was no room for a Head of Department to be present at the deliberations of the respondent Commission and that such presence made the composition of the collective organ faulty and any decision taken null and void.
- 30 (5) That the choice was not made by the Commission but by the Head of Department himself.
- 35 (6) That the omission of the Head of Department to disclose to applicant Michanicos an unfavourable comment made by the former in the annual confidential report of 1971 amounted to a violation of section 45(4) of the Public

* See the minutes of the Commission at pp. 247-248 *post*.

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Held, (I) with regard to contention (1) above:

That as according to its minute the respondent Commission considered "the merits, qualifications, seniority, service and experience of all the officers serving in the post of Customs and Excise Officer 1st Grade", and as applicant was one of the officers serving in the said post, his complaint that he was excluded from the list of candidates considered by the Commission, cannot stand; and that, in this case, the presumption that the administrative act in question was reached on this point, after a correct ascertainment of the relevant facts, is applicable (see *Republic v. Ekkeshis* (1975) 3 C.L.R.: 548 at pp. 556-557; *Kyprianou (No. 2) v. The Republic* is clearly distinguishable on its very facts).

Held, (II) with regard to contention (2) above:

That under section 44(3) of the Public Service Law, 1967, in making a promotion, the Commission must have due regard to the recommendations made in that respect by the Head of the Department in which the vacancy exists; that there is no statutory requirement calling for the communication of such recommendation to the candidates; and that the non-disclosure of the said recommendation does not amount to a violation of the *audi alteram partem* rule of natural justice, which is neither provided for in the statute nor is it to be read into it because of the nature of the inquiry conducted for the purpose of a promotion.

Held, (III) with regard to contention (3) above:

That the administration had no duty, under section 31(2) of the Public Service Law, 1967, to inform the candidates and ask them to supply their qualifications; that it is not the function of this Court to supplement the legislation and read into it provisions that cannot be found in it; and that apart from the personal file which normally contains all necessary material regarding a public officer's career in the Government Service, there are the confidential reports which every year afford a public officer the opportunity of himself including on the front page in Section I thereof, everything relating to his duties and additional qualifications obtained during the year covered by such confidential report.

Held, (IV) with regard to contentions (4) and (5) above:

5 (1) That as it appears from its relevant minute the respondent Commission inquired into the merits of the recommendations of the Head of the Department, as compared with the annual
10 confidential reports on all the candidates who had been considered by the Commission and then it is stated that having regard to the assessments made in their annual confidential reports as well as their seniority and qualifications, he (the Head of Department) considered Messrs. Charalambos Lambis, Antonios
15 Antoniadēs and Eleftherios Chrysochos as the best and recommended them for promotion; that this is not a participation in the deliberations of the Commission but a review by him, for the reasons stated in the minute, of his own original recommendation; and that this was duly authorized by the Law (s. 18) and consistent with the practice of the respondent Commission to summon the Head of the Department to be present at their meetings, as it appears from the reports of this Court.

20 (2) That the Commission having ascertained what the final recommendation of the Head of the Department was, proceeded to deliberate itself, by saying in another paragraph of its minutes, "Bearing in mind all the above and after giving due regard to the annual confidential reports accordingly decided that the candidates in question be promoted"; that there is nothing in the aforesaid minute showing or suggesting that the
25 Head of the Department was present when the principal face of their meeting, that is, that of discussion and voting, took place, nor any evidence was called, to that effect, by the applicant; and that it is, therefore, not necessary for this Court to decide whether the decision should have been annulled had he remained
30 there until the end of their meeting although it is doubtful if mere presence is enough reason to annul a decision.

Held, (V) with regard to contention (6) above:

35 That the non-communication to the applicant of the adverse comment in his confidential report (see s. 45(4) of the Public Service Law, 1967) is not a reason for annulment of the *sub judice* decision but its only consequence is the disciplinary liability of the person responsible for the non-communication (see, *inter alia*, *Kyriacopoulou v. The Republic*, (1973) 3 C.L.R. 1 at p. 12).

40 *Held, (VI) on the question whether the respondent Commission chose the most suitable candidates for the post in question:*

(1) That there was a complete record regarding each candidate

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including the confidential reports on the candidates and the recommendations made for the purpose of the said promotion by the Head of the Department, factors to which the respondent Commission is required by section 44(3) of the Public Service Law, 1967 to have due regard, particularly so, to the recommendations of the Head of the Department which, as repeatedly stated, should have weighed with the respondent Commission and should not have been lightly disregarded (see *Theodossiou and The Republic*, 2 R.S.C.C. 44 at p. 48); and that the *sub judice* decision was reached after due inquiry in a proper exercise of administrative discretion inasmuch as all relevant factors were taken into account, there has been no misconception of fact and it is duly reasoned. 5 10

(2) That being a selection for promotion on merit, qualifications and seniority, the respondent Commission did not fail in their paramount duty to select the candidate most suitable, in the circumstances of the particular case for the post in question, and this Court, as it has been repeatedly stated, cannot interfere with such a decision and set aside same, unless it has been established that the persons not selected did have striking superiority over those selected and the onus in such a case lies always on the applicant in a recourse (see *Evangelou v. The Republic*, (1965) 3 C.L.R. 292 at p. 300 and *Georghiades and Another v. The Republic*, (1970) 3 C.L.R. 257 at 263); and that in the present case both applicants have failed to discharge this burden. 15 20 25

(3) That with regard to the seniority of applicant Michanicos as against the two of the three interested parties, this Court repeats what was said in the case of *Evangelou v. The Republic* (1965) 3 C.L.R. 292, that seniority by itself is not the determining factor but part of the overall picture of each candidate; that in the present case seniority had to be weighed in relation to the contents of the confidential reports and the recommendations made by the Head of the Department, and in the case of interested party Chrysochos his diploma in law as well which constitutes an advantage under the scheme of service; and that, therefore, both recourses will have to be dismissed. 30 35

Applications dismissed.

Cases referred to:

Republic v. Ekkeshis (1975) 3 C.L.R. 548 at pp. 556-557;
Kyprianou (No. 2) v. The Republic (1975) 3 C.L.R. 187; 40
Pearlberg v. Varty (Inspector of Taxes) [1972] 2 All E.R. 6 at pp. 11, 17;

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Arsalides v. Republic (1965) 3 C.L.R. 706 at p. 711;
Pierides v. Republic (1971) 3 C.L.R. 233 at p. 250;
Kyriacopoulou v. Republic (1973) 3 C.L.R. 1 at p. 12;
5 *Korai and Another v. C.B.C.* (1973) 3 C.L.R. 546 at pp. 570 and
573;
Petrides v. Republic (1975) 3 C.L.R. 371;
Theodossiou and Republic, 2 R.S.C.C. 44 at p. 48;
Evangelou v. Republic (1965) 3 C.L.R. 292 at p. 300;
10 *Georgiades and Another v. Republic* (1970) 3 C.L.R. 257 at p.
263.

Recourses.

Recourses against the decision of the respondent Public Service Commission to promote the interested parties to the permanent post of Assistant Collector of Customs in preference
15 and instead of the applicants.

A. Emilianides with K. Talarides, for the applicant in case No. 374/74.

L. Papaphilippou, for the applicant in Case No 380/74.

Gl. Michaelides, for the respondent in both Cases.

Cur. adv. vult.

The following judgment was delivered by:-

A. LOIZOU, J.: The respondent Commission at its meeting of the 27th May, 1974 considered the filling of vacancies in the Department of Customs and Excise and, *inter alia*, it promoted
25 to the permanent post of Assistant Collector of Customs, with effect from the 1st June, 1974, Charalambos Lambis, Antonios Antoniadis and Eleftherios Chrysochou. The validity of the decision for the promotion of all three interested parties is challenged by Pantelis Michanicos in Recourse No. 374/74, whereas
30 applicant Iosif HadjiIosif is challenging by Recourse No. 380/74, the promotion of Charalambos Lambis only. The two recourses were, by consent of the parties, tried together, as they presented common questions of law and fact and they related to the same administrative decision.

35 According to the relevant scheme of service (*exhibit 1*, encl. 2), the post of Assistant Collector of Customs is a promotion post from the immediately lower post of Customs and Excise Officer, 1st Grade. The qualifications for the said post are, "a good general education not below the standard of a six-year second-

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ry school. Wide practical experience of the department's work. The ability to encourage, manage and control staff and to deal tactfully but firmly with subordinates and members of the public as necessary. Ability to write clear and balanced reports. A very good knowledge of Greek and English or of Turkish and English. A University diploma or degree or other equivalent qualification in commerce, economics, law (including Barrister-at-law), or accountancy will be an advantage". 5

Persons appointed in the Civil Service before the 1st December, 1961, either permanently or temporarily and/or serving on a monthly basis on the 1st February, 1968 who had a certificate of a five-year secondary school or other equivalent qualification or although they do not possess such a certificate or qualification, have a general knowledge of a standard considered as equal to the level of a five-year secondary school, could be considered as suitable for appointment or promotion, if they possess the other qualifications. 10 15

According to its minute the respondent Commission considered "the merits, qualifications, seniority, service and experience of all the officers serving in the post of Customs and Excise Officer, 1st Grade, as reflected in their personal files and in their annual confidential reports". The complaint therefore, of applicant Michanicos that he was neither mentioned in the minutes of the respondent Commission by name, not included in the letter of recommendation of the Director of the 23rd May, 1974 (*exhibit 1, encl. 5*) cannot stand, as he was one of the officers "serving in the post of Customs and Excise Officer, 1st Grade" expressly stated to have been considered by the respondent Commission for promotion. In the absence of any evidence or other indication to the contrary that he was either intentionally or mistakenly, as claimed, excluded from the list of candidates considered by the respondent Commission, this complaint must fail. If anything, it applies in this instance, the presumption that the administrative act in question was reached on this point, after a correct ascertainment of the relevant facts. (See *The Republic v. Ekkeshis*, (1975) 3 C.L.R. 548 at pp. 556–557 and the authorities therein stated). The case of *Pantelis Kyprianou (No. 2) v. The Republic* (1975) 3 C.L.R. 187, is clearly distinguishable on its very facts. 20 25 30 35

In the aforementioned letter of recommendation the Director of the Department of Customs and Excise, informed the respon- 40

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dent Commission that from among the officers 1st Grade he considered as suitable for promotion, in order of seniority, Messrs. Charalambos Lambis, P.M. Papadopoulos, Antonios Antoniadis, Costas Hj. Stylianou, Eleftherios Chrysochou, 5 Loizos Constantinou, Iosif Hj. Iosif, Georghios Asprou and Andreas Petrou, and added that special attention should be given to Eleftherios Chrysochou who possessed a University Diploma in law, Loizos Constantinou who was the back-bone in the Administration Section of the Headquarters and Iosif 10 Hj. Iosif, the applicant in Recourse No. 380/74 who "impresses with his unprecedented and effective action in the anti-smuggling Investigation Section of the Department".

The said recommendation was not communicated to the applicant and it has been argued that this omission amounted to 15 a violation of the rules of natural justice, which, I take it to refer to the rule regarding the right of one to be heard, the *audi alteram partem* rule.

Under section 44(3) of the Law, in making a promotion, the Commission must have due regard to the recommendations 20 made in that respect by the Head of the Department in which the vacancy exists. There is no statutory requirement calling for the communication of such recommendation to the candidates. As stated by Lord Hailsham in *Pearlberg v. Varty* (*Inspector of Taxes*) [1972] 2 All E.R. p. 6 at p. 11,

25 "It is true, of course, that the Courts will lean heavily against any construction of a statute which would be manifestly unfair. But they have no power to amend or supplement the language of a statute merely because on one view of the matter a subject feels himself entitled to a 30 larger degree of say in the making of a decision than the statute accords him".

In the same case, Lord Pearson, at p. 17, also said:-

35 "But where some person or body is entrusted by Parliament with administrative or executive functions, there is no presumption that compliance with the principles of natural justice is required, although, as 'Parliament is not to be presumed to act unfairly', the Courts may be able in suitable cases (perhaps always) to imply an obligation to act with 40 fairness. Fairness, however, does not necessarily require a plurality of hearings or representations and counter-representations. If there were too much elaboration of

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procedural safeguards, nothing could be done simply and quickly and cheaply. Administrative or executive efficiency and economy should not be too readily sacrificed”.

In the present case, justice and fairness cannot be invoked to supply the absence of a legislative provision calling for the disclosure of a recommendation to the candidates concerned or likely to be affected thereby. A recommendation made under section 44(3) of the Law and at that a recommendation of the nature of the one in hand submitted to the Public Service Commission as part of the material to be considered by it in deciding a promotion, does not cast a duty on the Commission to communicate its contents to a candidate. Its non-disclosure does not amount to a violation of the *audi alteram partem* rule which is neither provided for in the statute nor is it to be read into it because of the nature of the inquiry conducted for the purpose of a promotion.

The next point raised is that although under section 31(2) of the Public Service Law, 1967 (Law 33/67) a vacancy in a promotion office shall be filled without advertisement by the promotion of an officer serving in the immediately lower grade or office of the particular section or sub-section of the Public Service, yet, the administration had a duty to inform the candidates and ask them to supply their qualifications, and this, in spite of the fact that the applicant does not claim to have obtained any qualifications between the period covered by the last confidential report that was before the Commission, namely, the one for the year 1973 and May, 1974 when the *sub judice* decision was taken.

I am afraid I cannot subscribe to that view; it is not the function of this Court to supplement the legislation and read into it provisions that cannot be found in it. Apart from the personal file which normally contains all necessary material regarding a public officer's career in the Government Service, there are the confidential reports which every year afford a public officer the opportunity of himself including on the front page in Section I thereof, everything which relates to his duties, hobbies, courses and additional qualifications during the year covered by such confidential report. (See also the case of *Arsalides v. The Republic* (1965) 3 C.L.R. p. 706 at p. 711).

Before dealing with the grounds of law relating to the choice of the most suitable candidate for the post and questions of

5 qualifications, merit and seniority argued also by Mr. Emilia-
nides on behalf of applicant Michanicos, I think it is proper, at
this stage, to turn to the legal grounds that have been argued on
behalf of the same applicant, by Mr. Talarides who also ap-
peared for him; but it will be helpful, however, if I quote from
the minutes of the respondent Commission, (*exhibit 1*, encl. 4)
which, after referring to the contents of the letter of recommen-
dation, read as follows:-

10 " The Director of the Department of Customs and Excise,
who was present at this meeting reiterated the above and
stated that the services of all the officers referred to above
had been very satisfactory; the Director of the Department
added that Messrs. E. Chrysochou, L. Constantinou and
15 J. Hadji Joseph were better than the remaining candidates
and could perform the duties of the post of Assistant Col-
lector of Customs in an excellent manner. The Director of
the Department added further that Mr. E. Chrysochou
possesses a legal qualification and is an excellent officer
and that Messrs. L. Constantinou and J. Hadji Joseph were
20 devoted to their work. The Director of the Department
agreed, however, that seniority should be taken into con-
sideration in selecting the most suitable candidates. With
regard to Mr. A. K. Kousoulides, who was one of the most
senior candidates, the Director of the Department stated
25 that the candidate in question did not show willingness to
assume more responsibilities.

30 After the Annual Confidential Reports of all the candi-
dates had been considered by the Commission, the Director
of the Department of Customs and Excise stated that having
regard to the assessments made in their Annual Confidential
Reports as well as their seniority and qualifications, he
considered Messrs. Charalambos Lambis, Antonios Anto-
niades and Eleftherios Chrysochou as the best and recom-
mended them for promotion.

35 Bearing in mind all the above and after giving due con-
sideration to the Annual Confidential Reports of all the
candidates as well as to the views and recommendations of
the Director of the Department of Customs and Excise, the
Commission came to the conclusion that the following
40 candidates were on the whole the best. The Commission
accordingly decided that the candidates in question be

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promoted to the permanent post of Assistant Collector of
Customs w. e. f. 1. 6. 1974:

Charalambos Lambis
Antonios Antoniadis
Eleftherios Chrysochou.”

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Two main points, divided in more parts, were made by Mr. Talarides. The first part of the first point is that on the law as it stands, there is no room for a Head of a Department to be present at the deliberations of the respondent Commission, that such presence makes the composition of the collective organ faulty and any decision taken null and void. 10

The second part of the first point is that the choice was not made by the Commission but by the Head of the Department himself.

Counsel for the respondent relied on the provision of section 18 of the Public Service Law, 1967, which empowers the Commission to require any public officer—which term includes the Head of a Department—“to attend . . . or assist the Commission concerning any matter which the Commission is required to consider in the exercise of its functions.....”. 15 20

As it appears also from the minute set out hereinabove, the respondent Commission inquired into the merits of the recommendations of the Head of the Department, as compared with the annual confidential reports on all the candidates who had been considered by the Commission and then it is stated that having regard to the assessments made in their annual confidential reports as well as their seniority and qualifications, he considered Messrs. Charalambos Lambis, Antonios Antoniadis and Eleftherios Chrysochos as the best and recommended them for promotion. This is not a participation in the deliberations of the Commission but a review by him, for the reasons stated in the minute, of his own original recommendation. This was duly authorized by the Law (s. 18 *supra*) and consistent with the practice of the respondent Commission to summon the Head of the Department to be present at their meetings, as it appears from the reports of this Court. 25 30 35

The Commission having ascertained what the final recommendation of the Head of the Department was, proceeded to deliberate itself, by saying in another paragraph of its minutes, “Bearing in mind all the above and after giving due regard to the 40

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annual confidential reports accordingly decided that the candidates in question be promoted". There is nothing in the aforesaid minute showing or suggesting that the Head of the Department was present when the principal face of their meeting, that is, that of discussion and voting, took place, nor any evidence was called, to that effect, by the applicant. It is, therefore, not necessary for me to decide whether the decision should have been annulled had he remained there until the end of their meeting although I doubt if mere presence is enough reason to annul a decision.

The second point of Mr. Talarides arises from the fact that in the case of his client there was in the annual confidential report for the year 1971, an unfavourable comment by the Head of the Department, which reads: "Despite his academic advancement his work suffers from lack of zeal and tact in his dealings with the public. Unsuitable to hold a higher post". Of course, there followed two other annual confidential reports, namely one for 1972 and the other for 1973, the two years preceding the *sub judice* decision, and, therefore, this is not an instance that falls within section 44(1)(c) of Law 33/67, to the effect that he could not be promoted as he had been reported upon in the last two annual confidential reports as unsuitable for promotion. More so, because in the said last two confidential reports, the comment of the Head of the Department is in respect of 1972 that "he has the ability and should do better than at his work", and in respect of 1973, "an officer of high academic merit. In the performance of his duties he shows considerable improvement".

The point made is that under section 45(4) the person preparing a confidential report of 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 and, therefore, the omission to disclose to him amounts to a violation of the aforesaid statutory provision and a ground for annulment of the *sub judice* decision.

The question of non-disclosure of unfavourable reports and the effect of such omission, was considered in a number of cases. In *Pierides v. The Republic* (1971) 3 C.L.R. p. 233 at p. 250 where Hadjianastassiou, J. had this to say:

"In the absence of any authority, lack of communication to the officer concerned does not make the report null and

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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 the Lessons on Administrative Law, 1957, 2nd edn. at p. 347".

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Then we have the case of *Kyriacopoulou v. The Republic* (1973) 3 C.L.R. p. 1 at p. 12 where I said with reference to the corresponding section 36(3) of the Public Educational Service Law, 1969 (Law 10/69).

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"... I would again say that the non-communication to the applicant of such part that had to be communicated was not a reason to annul a decision subsequently taken, in view of the wording of the section which did not provide for the annulment of a decision taken in reliance to such a report. Similar approach has been consistently taken by the Greek Council of State in relation to analogous provisions to be found in section 92 of the Code of the Civil Administrative Servants. It was found that the obligation to communicate to civil servants adverse reports has a consequence only the disciplinary liability of the person responsible for such violation, but not the annulment of the non-communicated report and the annulment of the decision based thereon. (See Decisions of the Greek Council of State, Nos. 2345/62, 1438/67, 732/68 & 1213/69)".

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The third case is that of *Korai and Another v. Cyprus Broadcasting Corporation* (1973) 3 C.L.R. 546 at pp. 570 and 573 where reference is made to the similar situation in Greece and in particular to Decisions of the Greek Council of State Nos. 1438/67 and 742/1968 and recently in the case of *Petrides v. The Republic* (1975) 3 C.L.R. 371, where L. Loizou, J. approached the matter in the same way.

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In the light of the aforesaid exposition of the law and the consistency with which cases were decided along the same line by this Court, I see no reason why I should depart from it and annul a decision for the non-disclosure of an expression of opinion, adverse in character, in a confidential report.

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Regarding the qualifications of the two applicants and the interested parties, it should be pointed out that with the exception of interested party Chrysochos who is the holder of a

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5 diploma in law from Athens University, no one else possesses any qualification which, under the scheme, constitutes an advantage. It would be an omission, however, if it was not noted that applicant Michanicos has passed more General Certificate of Education subjects both ordinary and advanced, than any of the interested parties.

10 With regard to their seniority, interested party Lambis was promoted to the post of Customs and Excise Officer, 1st Grade, on 1. 3. 1964. Applicant Michanicos on 1. 7. 1965, applicant Hj. Iosif on 1. 8. 1967 on which date interested parties Antonios Antoniadis and Eleftherios Chrysochos were also promoted to the same post. It is apparent, therefore, that interested party Lambis is senior to both applicants under section 46(1) of the Public Service Law, 1967, whereas applicant Michanicos is senior
15 to interested parties Antonios Antoniadis and Eleftherios Chrysochos.

20 I need not determine under section 46(2) of the Public Service Law, the seniority of applicant Hj. Iosif as against interested parties Antoniadis and Chrysochos by examining these officers' previous seniority, as their promotion is not challenged by him.

25 The picture of the merit of each candidate, is to be found, of course, in the confidential reports prepared annually in respect of each one of them. In addition to the comments made regarding applicant Michanicos, to which I have already referred, he is rated in the more recent confidential reports, namely for the years 1970, 1971, 1972 and 1973, as very good on most ratable items, and for some of them, especially in the last two reports, he is rated as excellent.

30 Applicant Hj. Iosif is rated as excellent in the last confidential report and in the remaining reports, for the years 1970, 1971 and 1972, he is rated, generally speaking, as excellent. The Head of the Department makes for him the following observation in the 1973 report: "He does not only possess to an admirable degree an inherent talent for investigation work; he is also widely experienced in customs procedures and can discharge and has
35 often been entrusted with duties beyond the compass of an officer of his grade". Similar observations are to be found in the reports for the two preceding years; in particular, in the 1972 report, his reporting officer recommends him for accelerated
40 promotion.

Interested party Lambis is rated on the whole as excellent in

the reports of the three years preceding the *sub judice* decision and is described by the Head of the Department, in the last report, as "a bright officer with wide experience, hard-working, tactful and of a pleasant personality". Similar or stronger observations are to be found in the reports of the preceding years. His reporting officer also recommends him unreservedly for promotion to the post of Assistant Collector. 5

Interested party Antoniades is rated as excellent in all reports since 1970. His reporting officer for 1973 strongly recommends him for promotion to the post of Assistant Collector when opportunity arises, after describing him as an officer of outstanding ability, integrity and competence. The Head of the Department as counter-signing officer expresses the view that he is an officer of outstanding merit, "he is not only an authority in the field in which he is currently employed, but is also of high calibre and can discharge any higher duties assigned to him". Similar observations are also to be found in the reports for the preceding years. 10 15

Interested party Chrysochos is also rated as excellent, very reliable, remarkable, commendable, etc. He is described by his reporting officer of 1973 as "a hardworking officer and his qualification in law makes him of invaluable assistance to the Department in legal matters." The Head of the Department expresses the view that "his background qualification and high acumen raise him above the level of officers in his grade. His promotion on the first opportunity is imperative". 20 25

There are no confidential reports for him for the 4 preceding years, as the said officer was on study leave abroad during that time. Because of this situation, Mr. Talarides has argued that he was selected by the Head of the Department, first of all because of the University qualification to which undue weight was given and there was no evidence before the Commission whether he was during those four years in a position to carry out the duties of Customs and Excise Officer, 1st Grade. The recommendation of the Head of the Department is not restricted only to the officers' academic qualifications but also to his overall performance in the Department. In fact, he had served as Customs and Excise Officer, 1st Grade just over a year before proceeding on study leave. There is a confidential report covering part of this period where he is described by his reporting officer as one of the best officers of the Department, very intelligent and hard working, thorough, studious and solidly reliable, 30 35 40

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can manage subordinate staff with efficiency and to which the then Head of the Department, Mr. Philippides, as counter-signing officer, agrees and expresses the view that he is a sharp minded and persevering officer who aspires to higher level of education and efficiency. In addition, the officer was on active service for about a month in the summer of 1969 and then since the completion of his studies in 1972, he resumed his duties at the Customs Headquarters and was so serving for about a year and five months until the *sub judice* decision was taken, and there is the confidential report already referred to covering the year 1973.

In my view, he was long enough on actual service as a 1st Grade officer for anyone to judge his merit and there was sufficient material for the respondent Commission to decide about his actual experience and performance in office.

The aforesaid gives a general picture of the merits of the candidates, their qualifications and experience which the respondent Commission had before it when it took the *sub judice* decision. There was a complete record regarding each candidate including the confidential reports on the candidates and the recommendations made for the purpose of the said promotion by the Head of the Department, factors to which the respondent Commission is required by section 44(3) of the Public Service Law, 1967 to have due regard, particularly so, to the recommendations of the Head of the Department which, as repeatedly stated, should have weighed with the respondent Commission and should not have been lightly disregarded. (Vide *Theodosiou and The Republic*, 2 R.S.C.C. 44 at p. 48). In my view, the *sub judice* decision was reached after due inquiry in a proper exercise of administrative discretion inasmuch as all relevant factors were taken into account, there has been no misconception of fact and it is duly reasoned.

Being a selection for promotion on merit, qualification and seniority, the respondent Commission did not fail in their paramount duty to select the candidate most suitable, in the circumstances of the particular case for the post in question, and this Court, as it has been repeatedly stated, cannot interfere with such a decision and set aside same, unless it has been established that the persons not selected did have striking superiority over those selected and the onus in such a case lies always on the applicant in a recourse. (See *Evangelou v. The Republic*, (1965) 3 C.L.R. 292 at p. 300 and *Georghiades and Another v. The Re-*

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public, (1970) 3 C.L.R. 257 at 263). In the present case both applicants have failed to discharge this burden.

With regard to the seniority of applicant Michanicos as against the two of the three interested parties, I can repeat what was said in the case of *Evangelou v. The Republic*, (1965) 3 C.L.R. 292, that seniority by itself is not the determining factor but part of the overall picture of each candidate and in the present case it had to be weighed in relation to the contents of the confidential reports and the recommendations made by the Head of the Department, and in the case of interested party Chrysochos his diploma in law as well which constitutes an advantage under the scheme of service.

For all the above reasons both recourses are dismissed, but in the circumstances, I make no order as to costs.

Applications dismissed. No order as to costs.