

1980 February 6

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SAVVAS HADJIDEMETRIOU,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 140/76).

*Public Officers—Promotions—Statement by Head of Department about applicant's knowledge of English, which was relied upon by the Commission, not consistent with the administrative records that were before it—No inquiry by the Commission into this aspect of the case—Sub judge promotion annulled because reasons therefor contrary to the relevant administrative records and incompatible with the factors which were taken into account by the respondent Commission—Moreover sub judge promotion annulled for absence of due and proper inquiry.* 5

*Administrative Law—Administrative acts or decisions—Reasoning—Administrative records—Reasoning contrary to the relevant administrative records and incompatible with the factors that were taken into account in reaching sub judge administrative decision which was annulled on this ground.* 10

*Administrative Law—Due and proper inquiry—Public Officers—Promotions—Statement by Head of Department, about applicant's knowledge of English, which was inconsistent with the relevant administrative records—No inquiry by respondent Commission into this aspect of the case—Sub judge promotions annulled for absence of due and proper inquiry.* 15  
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The applicant, a Chief Inspector in the Department of Prisons, challenged the validity of the decision of the respondent Commission to promote Nicos Nicolaidis and Charalambos Spyrou

(“the interested parties”) to the post of Assistant Superintendent of Prisons. Amongst the qualifications required for the post in question was a “good knowledge of English”; and in making the promotions complained of the Commission took, *inter alia*,  
5 into consideration a statement by the Head of Department that the applicant had “a very poor knowledge of English”.

Before entering the service the applicant had served in the Cyprus Regiment from 1940–1950 and was discharged with the rank of Warrant Officer II. He served in Palestine and in the  
10 United Kingdom and in the testimonial given by the Officer Commanding his Unit he was reported to speak good English. In his personal file his knowledge of English was recorded as far back as 1955 as good and the same assessment was recorded for the years 1956 and 1957. He, also, attended a course for  
15 Motor Transport Officers in England which inevitably presupposed knowledge of English.

*Held*, that the statement of the Head of Department does not appear to be consistent with the administrative records that the respondent Commission had before it; that the Commission  
20 does not appear to have inquired into the aspect of applicant’s knowledge of English; that, on the contrary, it stressed in its relevant minutes that it considered the aspect of applicant’s qualifications and had regard to the views and the recommendations made by the Head of Department which contained an  
25 element that was contrary to the material records; and that, therefore, the *sub judice* decision has to be annulled because the reasons given by the respondent Commission in its minutes appear to be definitely contrary to the relevant administrative records and incompatible with factors which were taken into  
30 account by it.

*Held*, further, that in view of these differences in the contents of the above records the respondent Commission does not appear to have carried out the due and proper inquiry which was called for in the circumstances of the case, and this failure, also, constitutes a ground for annulling the *sub judice* decision.  
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*Sub judice decision annulled.*

Cases referred to:

*Ioannou v. Republic* (1976) 3 C.L.R. 431 at p. 442;

*Georgiou v. The Republic* (1976) 3 C.L.R. 74 at p. 84;

*Iacovides v. The Republic* (1966) 3 C.L.R. 212;

*Lardis v. The Republic* (1967) 3 C.L.R. 64 at p. 78;

*Decisions of the Greek Council of State in Cases 254/1957 and 1839/1958.*

### Recourse.

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Recourse against the decision of the respondent Public Service Commission to promote the interested parties to the post of Assistant Superintendent of Prisons in preference and instead of the applicant.

*K. Michaelides*, for the applicant.

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*S. Nicolaidis*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. The applicant by the present recourse challenges the validity of the decision of the respondent Commission published in the official Gazette of the Republic on 26.3.1976, to promote Nicos Nicolaidis and Charalambos Spyrou (hereinafter referred to as the interested parties) to the post of Assistant Superintendent of Prisons as from 15.3.1976 instead of the applicant, is null and void and of no effect whatsoever.

The grounds of law relied upon by the applicant are the following:-

- (a) Respondent in disregarding applicant's striking seniority acted in excess or abuse of powers. 25
- (b) Respondent's decision is not duly reasoned.
- (c) In view of applicant's qualifications, merit and striking seniority, respondent failed in its duty to select the best candidate.
- (d) Respondent Commission paid undue regard to the recommendations of the Senior Superintendent of Prisons who attended the meeting at which the *sub judice* decision was taken and which recommendations amounted to a misstatement of facts and/or by accepting his recommendations the Committee abdicated from its duties and responsibilities, and/or that the respondent Commission failed to carry out a proper inquiry 30  
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into the question of the knowledge of the applicant of English.

Relevant to the examination of the several issues raised are the minutes of the meeting of the respondent Commission of the 12th February, 1976, (enclosure No. 5) which read as follows:-

“The post of Assistant Superintendent of Prisons is a Promotion Post from the immediately lower post of Chief Inspector. Under the relevant scheme of service, candidates must have a good general education not below the standard of a Leaving Certificate of a Five-years' Secondary School; a high moral character, strong personality and stability of temperament; ability to impose and maintain discipline and experience in handling men. Candidates should have passed the examination in Prisons Legislation and Regulations and in Criminal Law and Procedure and should possess a good knowledge of English. Knowledge of Turkish would be an advantage.

There are four officers serving in the lower post of Chief Inspector.

The Commission considered the merits, qualifications, seniority, service and experience of all the officers serving in the post of Chief Inspector, as reflected in their Personal Files and in their Annual Confidential Reports.

The Commission observed that most of the candidates' Annual Confidential Reports between 1960 and 1975 were countersigned by the Ag. Director-General, Ministry of Justice who in some cases made certain comments. The Commission believes that the countersigning of the Annual Confidential Reports by the Ag. Director-General, Ministry of Justice, was quite irregular. In view of this and as there was no indication to show that the appropriate authority concerned required its own views to be expressed on those Reports as a special case in accordance with Section 45(3) of Law No. 33/67, the Commission decided not to take into consideration the statements made in Section III of the Reports in question.

The Senior Superintendent of Prisons stated that all the officers serving in the post of Chief Inspector had passed the Examinations in Prisons Legislation and Regulations

and in Criminal Law and Procedure. With regard to these candidates, the Senior Superintendent of Prisons added the following:—

- (i) S. Hji Demetriou: He has a very poor knowledge of English; he has a weak personality and a poor educational background. 5
- (ii) P. Kyrou: He has a very poor knowledge of English; he has a weak personality and a poor educational background; he is unstable and inconsistent.
- (iii) N. Nicolaides: He has a good knowledge of English; in 1969 he had attended a three-months' course of instruction in the Management of Penal Institutions in the U.K. after having been selected by the Scholarships Selection Board. He has a good general educational background; he writes theatrical acts and has contributed greatly to the general recreation of the staff and the inmates; he is very loyal. 10  
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- (iv) Char. Spyrou: He has a very good educational background and has obtained the Leaving Certificate of the Night Gymnasium of Nicosia in 1974; he possesses a very good knowledge of English, having passed the English Higher Examination; in 1967 he had attended a three-months' course of instruction in the Management of Penal Institutions in the U.K. after having been selected by the Scholarships Selection Board. He has ability to impose and maintain discipline and order. He possesses knowledge of Turkish. 20  
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The Senior Superintendent of Prisons added further that he considered Messrs. N. Nicolaides and Char. Spyrou as the best and strongly recommended them for promotion. 30

After considering all the above and after taking into consideration all the facts appertaining to each one of the officers serving in the post of Chief Inspector and after giving proper weight to the merits, qualifications, seniority, service and experience of these candidates, and, having regard to the views and recommendations made by the Senior Superintendent of Prisons, the Commission came to the conclusion that the following officers were on the whole the best. The Commission accordingly decided that the 35

officers in question be promoted to the permanent post of Assistant Superintendent of Prisons, w.e.f. 15.3.76:

Nicos Nicolaides  
Charalambos Spyrou”.

5 As already seen, under the relevant scheme of service (enclosure 3) the required qualifications for the post of Assistant Superintendent of Prisons, include a good general education not below the standard of a leaving certificate of a five-year secondary school and a good knowledge of English. The Head of  
10 the Department is recorded in the relevant minutes hereinabove set out to have said about the applicant that he has a very poor knowledge of English and a poor educational background. The educational background of the applicant as appearing in his personal file is that he attended the Kyrenia Greek Gymnasium  
15 for two years, The English School of Kyrenia for one year and he passed the examinations on Criminal Law and Procedure and the examinations in Prison Legislation and Regulations.

Before entering the service, the applicant served in the Cyprus Regiment from 1940-1950 and was discharged with the rank of  
20 Warrant Officer II. He served in Palestine and in the United Kingdom and in the testimonial given by the Officer Commanding of his Unit and which is to be found in his Discharge Certificate he is reported to speak good English. In his personal file (*exhibit 2A*) his knowledge of English is recorded as far back  
25 as 1955 as good and that is the assessment to be found in reports for the subsequent years, i.e. 1956 and 1957. To be rated as having a very poor knowledge of English by his Head of the Department, though obviously a matter of opinion, does not appear to be consistent with the administrative records that the  
30 respondent Commission had before it and to which I have already made a reference. Needless to say that in addition to them there was the fact that he attended a course for Motor Transport Officers in England which inevitably presupposes knowledge of English.

35 The respondent Commission on the other hand, does not appear to have inquired into this aspect of the case. On the contrary it stressed in its relevant minute that it considered all the above which includes this aspect of the applicant's qualifications, and had regard to the views and the recommendations

made by the Head of the Department which again contained this element which was contrary to the material records. The *sub judice* decision, therefore, has to be annulled because the reasons given by the respondent Commission in its minutes appear to be definitely contrary to the relevant administrative records and incompatible with factors which were taken into account by it. If any authority is needed for this proposition it can be found in the case of *Niki Ioannou v. The Republic* (1976) 3 C.L.R., p. 431, at p. 442, and the case of *Georghiou v. The Republic* (1976) 3 C.L.R., 74, at p. 84, where reference is made also to the conclusions from the Case Law of the Council of State in Greece 1929–1959, p. 188; to *Iacovides v. The Republic* (1966) 3 C.L.R., p. 212; and *Lardis v. The Republic* (1967) 3 C.L.R., 64, at p. 78, as well as the decisions of the Greek Council of State in Cases 254/1957 and 1839/1958.

Furthermore, in view of these differences in the contents of these records, the respondent Commission does not appear to have carried out the due and proper inquiry which was called for in the circumstances of the case and this failure constitutes a ground for annulling the *sub judice* decision also.

For all the above reasons the *sub judice* decision is annulled, but in the circumstances I make no order as to costs.

*Sub judice decision annulled.*  
*No order as to costs.*