

1980 November 22

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS SAVVA,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 344/77).

5 *Public Officers—Appointments and promotions—Chief Co-ordination
Officer—Interview of candidates—Undue weight should not
be placed on the impression created by—Especially when schemes
of service do not make provision for ability to supervise and guide
subordinate staff.*

10 *Public Officers—Appointments and promotions—Public Service Com-
mission—Decisions of, have to be duly reasoned—Applicant
having more qualifications, better confidential reports and more
overall experience in the Government service than interested
party—Commission expected to give full reasons in its minutes
for selecting the interested party—Reasons given definitely contrary
to the relevant administrative records and incompatible with
the other factors taken into account by the Commission i.e. the
qualifications of the parties and the annual confidential reports.*

15 *Public Officers—Appointments and promotions—Head of Department
—Recommendations—Principles applicable—Public Service Com-
mission taking into consideration recommendation, from Head
of Department, only in favour of the interested party who was
working in the Department concerned—And no recommendation
20 in favour of applicant who was working in another Department—
It has contravened Article 28 of the Constitution by not affording
equal treatment to both candidates.*

Public Officers—Appointments and promotions—Qualifications—Sche-

me of service—Applicant possessing a qualification constituting an advantage thereunder—Duty of the Public Service Commission to conduct an inquiry regarding such issue—And to give reasons for not taking into account such qualification.

Administrative Law—Administrative decisions—Due reasoning—Need for—Appointments and promotions in the Public Service—Public Service Commission has to reason duly its decisions—Reasons given by the Commission for selecting the interested party contrary to the relevant administrative records and incompatible with the factors taken into account by it. 5
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Constitutional Law—Equality—Principle of—Article 28 of the Constitution—Appointments and promotions in the Public Service—Public Service Commission taking into consideration a recommendation from Head of Department only in favour of one of the candidates—Principle of equality contravened. 15

Administrative Law—Inquiry—Due inquiry—Appointments in the Public Service—No inquiry carried out by Public Service Commission regarding issue of whether or not a candidate possessed a qualification constituting an advantage under the Schemes of Service—Discretion of Commission exercised in a defective manner. 20

The applicant, a senior Administrative Officer General Administrative Staff, was a candidate for the post of Chief Co-ordination Officer in the Planning Bureau, a first entry and promotion post. Amongst the qualifications required by the relevant scheme of service* was a university degree or diploma in a suitable subject e.g. Law (including Barrister-at-Law), Public Administration, Economics; and a post graduate qualification in any of these subjects constituted an advantage. Following the interview of the candidates in the course of which the Commission, as well as the Director-General, Planning Bureau, (“the Director-General”) put several questions to them on matters of general knowledge and on matters connected with the duties of the post, the Commission considered the merits, qualifications, service and experience of the candidates interviewed, as well as their performance during the interview. Then the Commission (three out of the four members) proceeded to observe that during the interview Mr. Christofi (“the interested 25
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* The scheme of service is quoted at pp. 681-83 *post*.

5 party") gave very satisfactory replies to questions put to him and generally he proved to be the best candidate for appointment or promotion to the post of Chief Co-ordination Officer. The fourth member of the Commission, its Chairman, held the view that the applicant was the best candidate for appointment or promotion to the above post having regard to his performance at the interview. There followed a statement from the Director-General that the interested party was the senior Co-ordination Officer of the Department and "has been performing the duties of the post of Chief Co-ordination officer for the last one and 10 a half years, he is an excellent officer—in fact he is an example to the other officers—and that he considered him very suitable for promotion to the post of Chief Co-ordination Officer". Then the Commission proceeded to examine whether the interested party possessed an excellent knowledge of Greek and 15 English, as required by the relevant scheme of service, and having found so, came to the conclusion* (its Chairman dissenting) that the interested party was on the whole the best and appointed him to the above post.

20 The applicant had more qualifications, better confidential reports and more overall experience in the Government Service** than the interested party. Both the applicant and the interested party possessed the qualifications required by the relevant scheme of service but applicant possessed a qualification, namely 25 a post-graduate diploma in Public Administration of the University of London (Part I), which constituted an advantage thereunder. The applicant was serving in the Ministry of Health and the interested party in the Planning Bureau.

30 Upon a recourse by the applicant against the validity of the above appointment counsel for the applicant mainly contended:

- 35 (a) That the Commission erred by being unduly influenced by the performance of the candidates at the interview once no provision was made in the schemes of service for possession by the candidates of administrative ability and ability to supervise and guide subordinate staff.

* See the relevant minutes at p. 690 *post*.

** Particulars of the qualifications, service and confidential reports of the parties appear at pp. 683–88 *post*.

- (b) That the Commission failed to give its reasons for preferring the interested party.
- (c) That the Commission took into consideration the recommendation of the Director-General of the Planning Bureau in favour of the interested party only, and has failed to ask for additional recommendation from the Director-General of the Ministry of Health, with respect to the applicant, and in effect it failed to afford to the applicant equal treatment. 5
- (d) That the Commission failed to conduct an inquiry into the issue of whether the applicant possessed a qualification which under the scheme of service constituted an advantage. 10

Held, (1) that the interview should be held only as a way of forming an opinion about the possession by the candidates of the required qualifications, and undue weight should not be placed on the impression created by such interview; that as no provision is made in the relevant scheme of service for ability to supervise and guide subordinate staff or for possession of administrative experience the Commission erred in giving undue weight to the performance of the candidates during the interview; and therefore the *sub judice* decision must be annulled. 15
 (Myrtilotis v. Republic (1975) 3 C.L.R. 58 followed; Panayiotou and Another v. Republic (1968) 3 C.L.R. 639 and Duncan v. Republic (1977) 3 C.L.R. 153 distinguishable on the facts). 20 25

(2) That the requirement of due reasoning must be more strictly observed in the case of a decision taken by a collective organ particularly when it is unfavourable to the subject; that the whole object of the rule requiring reasons to be given by the Commission in its 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; that as on the whole the applicant had more qualifications, better confidential reports, and more overall experience in the Government service, the Commission was expected to give full reasons for preferring the interested party; that the reasons given by the respondent Commission in its minutes for selecting the interested party appear to be definitely contrary to the relevant administrative records and incompatible with the factors taken into account 30 35

by it, i.e. the qualifications of the candidates and the annual confidential reports; and, therefore, the *sub judice* decision must be annulled for this reason too (see, *inter alia*, *Korai and Another v. C.B.C.* (1973) 3 C.L.R. 546).

5 (3) That out of the two candidates only the interested party was working in the Planning Bureau; that a Head of Department, in this case the Director of the Planning Bureau, has to make a comparison of the merits of the candidates as to who is more suitable for a post when there are more than one candidates
10 for such post; that the Commission in taking into consideration a recommendation in favour of the interested party only from the Director of Planning Bureau has contravened Article 28 of the Constitution by not affording equal treatment to the applicant and the interested party; and, therefore, the *sub judice*
15 decision must be annulled on this ground as well (*HjiSavva v. The Republic* (1967) 3 C.L.R. 155 and *Gavriel v. The Republic* (1971) 3 C.L.R. 185 followed).

(4) That an inquiry had to be conducted by the Commission regarding the issue of whether or not the applicant possessed
20 the qualifications which under the scheme of service constituted an advantage; that the Commission has failed to conduct such an inquiry, and as no reasons have been given in not taking into consideration a most material factor, viz., the additional qualification which under the relevant scheme of service consti-
25 tuted an advantage, the Commission exercised its discretion in a defective manner; and, therefore, the *sub judice* decision must be annulled on this ground also (*Tourpeki v. Republic* (1973) 3 C.L.R. 592 followed).

Sub judice decision annulled.

30 Cases referred to:

Gavriel v. The Republic (1971) 3 C.L.R. 185 at p. 200;

Myrtiotis v. The Republic (1975) 3 C.L.R. 58 at p. 68;

Triantafyllides and Others v. The Republic (1970) 3 C.L.R. 235 at pp. 245-46;

35 *Panayiotou and Another v. The Republic* (1968) 3 C.L.R. 639 at p. 642;

Duncan v. The Republic (1977) 3 C.L.R. 153 at p. 163;

Korai and Another v. C.B.C. (1973) 3 C.L.R. 546 at pp. 555, 556;

Bagdades v. The Central Bank of Cyprus (1973) 3 C.L.R. 417
at pp. 428, 429;

Eleftheriou and Others v. Central Bank of Cyprus (1980) 3 C.L.R.
85;

Hji Savva and Another v. Republic (1967) 3 C.L.R. 155 at p. 5
180;

Tourpeki v. Republic (1973) 3 C.L.R. 592 at pp. 602, 603.

Recourse.

Recourse against the decision of the respondent to appoint
or promote the interested party to the post of Chief Co-ordina- 10
tion Officer in the Planning Bureau in preference and instead
of the applicant.

E. Efstathiou with *C. Loizou*, for the applicant.

Cl. Antoniadès, Counsel of the Republic, for the respondent.

E. Odysseos, for the interested party. 15

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment. In
these proceedings, under Article 146 of the Constitution, the
applicant, Andreas Savva, seeks a declaration of this Court
that the decision of the respondent Commission dated 12th 20
July, 1977, published in the official Gazette of the Republic
on 23rd September, 1977, to appoint or promote the interested
party Christofi Kyriakos to the post of Chief Co-ordination
Officer in the Planning Bureau, is null and void and of no effect
whatsoever. 25

The facts:

The Director-General of the Planning Bureau, by a letter
dated 14th March, 1977, informed the Chairman of the Com-
mission that the Minister of Finance had approved, *inter alia*,
the filling of one vacancy in the post of Chief Co-ordination 30
Officer in the Planning Bureau, and requested him to take
the necessary steps for its filling. On 26th March, 1977,
the Commission at its meeting, decided that the vacancy in
question be advertised in the official Gazette of 31st March,
1977, allowing 2 weeks for the submission of applications. 35
On 23rd May, 1977, the Commission decided that the three candi-
dates for the post in question, including the applicant and the
interested party, be invited for an interview on 12th July, 1977,

and that the Director-General of the Planning Bureau should be present.

The scheme of service:

5 According to the relevant scheme of service, the post of Chief Co-ordination Officer in the Planning Bureau is a first entry and promotion post. The duties and responsibilities of the post in question are:

10 “Προβλεπεται τοῦ Κλάδου Συντονισμοῦ, Ἐκτελέσεως τῶν Σχεδίων Ἀναπτύξεως καὶ Τεχνικῆς Βοηθείας τοῦ Γραφείου Προγραμματισμοῦ. Ἐκτελεῖ καθήκοντα Γραμματέως τῆς Κεντρικῆς Ἐπιτροπῆς Προγραμματισμοῦ καὶ εἶναι ὑπεύθυνος διὰ τὴν διοικητικὴν ἐργασίαν τοῦ Γραφείου Προγραμματισμοῦ. Ὑπὸ τὴν ἐπίβλεψιν τοῦ Γενικοῦ Διευθυντοῦ, ἀναλαμβάνει εὐθύνην, διὰ τὸν καταρτισμὸν τοῦ Ἐτησίου Προϋπολογισμοῦ Ἀναπτύξεως, διὰ τὸν συντονισμὸν τῆς ἐφαρμογῆς τῶν διαφόρων σχεδίων ἀναπτύξεως ὡς ἐπίσης καὶ τῶν λοιπῶν δραστηριοτήτων ἀναπτύξεως μεταξὺ τῶν διαφόρων Ὑπουργείων Ἡμικρατικῶν Ὄργανισμῶν κλπ. Καταρτίζει ἐκθέσεις προόδου ἐπὶ τῆς ἐφαρμογῆς τῶν δημοσίων προγραμμάτων ἀναπτύξεως καὶ ὑποβάλλει εἰσηγήσεις ὡς πρὸς τὰ ληφθ-
20 σόμενα μέτρα διὰ τὴν ἀποτελεσματικωτέραν ἐφαρμογὴν τῶν Σχεδίων. Ἀναλαμβάνει εὐθύνην διὰ τὸν συντονισμὸν τῆς ἐξασφαλίσεως καὶ χρήσεως τεχνικῆς βοήθειας. Ἐκτελεῖ οἰαδήποτε ἄλλα καθήκοντα τὰ ὁποῖα ἤθελον ἀνατεθῆ εἰς αὐτὸν”.

25 The required qualifications of the post are these:

- “(α) Πανεπιστημιακὸν δίπλωμα ἢ τίτλος εἰς κατάλληλον θέμα (π.χ. Νομικὰ (περιλαμβανομένου τοῦ Barrister-at-Law), Δημοσίαν Διοίκησιν, Οἰκονομολογίαν).
- 30 (β) Μακρὰ πείρα διοικητικῆς φύσεως εἰς τὴν Κυβερνητικὴν Ὑπηρεσίαν περιλαμβανομένης καὶ πείρας εἰς τὸν καταρτισμὸν, συντονισμὸν καὶ ἐφαρμογὴν σχεδίων ἀναπτύξεως.
- (γ) Καλὴ γνώσις τῆς οἰκονομίας τῆς Νήσου καὶ τῶν κανονισμῶν καὶ διαδικασιῶν τῶν Ἐξειδικευμένων Ὄργανισμῶν καὶ τοῦ Εἰδικοῦ Ταμείου τῶν Ἠνωμένων Ἐθνῶν.
- 35 (δ) Πολὺ καλὴ γνώσις τῶν Κυβερνητικῶν δραστηριοτήτων εἰς τὸν τομέα τῆς οἰκονομικῆς ἀναπτύξεως.
- (ε) Ἀρίστη γνώσις τῆς Ἑλληνικῆς καὶ Ἀγγλικῆς γλώσσης.

- (ζ) Πρωτοβουλία και ευθукρισία.
- (η) Μεταπτυχιακόν προσόν εις οίονδήποτε τῶν θεμάτων τῶν ἀναφερομένων εις τὸ (α) ἀνωτέρω ἀποτελεῖ πλεονέκτημα”.

And in English it reads:—

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“He is in charge of the Co-ordination Section, the Execution of the Development Plans and Technical Assistance of the Planning Bureau. He performs the duties of a Secretary of the Central Planning Commission and is responsible for the administrative work of the Planning Bureau. Under the supervision of the Director-General, he undertakes responsibility for the preparation of the Annual Development Budget, for the co-ordination for the implementation of the various development plans as well as the various development activities between the various Ministries, Semi-Official Organizations etc. Prepares reports for the progress in respect of the implementation of the public development plans and makes suggestions for the steps to be taken for the more effective implementation of the Plans. Undertakes responsibility for the co-ordination for the secure and use of technical assistance. Performs any other duties that may be assigned to him”.

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Required Qualifications:

- “(a) University degree or diploma in a suitable subject (e.g. Law (including Barrister-at-Law) Public Administration, Economics). 25
- (b) Long experience of an administrative nature in the Government Service including experience in preparation, co-ordination and implementation of development plans. 30
- (c) Good knowledge of the economy of the Island and the regulations and procedures of the Specialized Organizations and the Special Fund of the United Nations.
- (d) Very good knowledge of the Government activities in the field of economical development. 35
- (e) Excellent knowledge of the Greek and English language.

- (f) Initiative and sound judgment.
- (g) Post graduate qualification in any of the subjects referred to in para. (a) above shall be considered an advantage".

5 *Particulars of Service:*

According to a table showing particulars of the Government service and the qualifications of both candidates, the applicant joined the service as a Temporary Clerical Assistant on 16th March, 1953, and became permanent on 1st May, 1953, and remained in that post until 31st March, 1962. On 1st April, 1962, he became Administrative Assistant, 2nd Grade, G.A.S. until 30th November, 1967. He became Administrative Officer, 1st Grade, on 1st December, 1967, and was promoted to Senior Administrative Officer G.A.S. on 15th July, 1971.

15 His qualifications are these:-

	"(i) English School, Nicosia)	1947-1952
	(ii) Civil Service Part I (
	(iii) English Language (O.L.))	
	(iv) Classical Work (O.L.) (G.C.E.	
20	(v) Pure Mathematics (O.L.))	
	(vi) Modern Greek (A.L.) (
	(vii) Ancient History (A.L.))	1957
	(viii) Book-keeping (Elementary) of the	
	L.C.C. (with distinction)	1952
25	(ix) English Higher (Distinction))	1952
	(x) English Lower (Distinction) (1951
	(xi) Greek Higher (Distinction))	1952
	(xii) Turkish Lower (Pass) (1957
	(xiii) History (Credit))	C.C.E.
30	(xiv) Geography (Distinction) (
	(xv) Mathematics "A" (Distinction)	
	(xvi) Mathematics "B" (Distinction) (
	(xvii) First Aid to the Injured	
	(two exams)	
35	(xviii) Financial Sections of the Colonial	
	Regulations and Financial Instructions	1954
	(xix) General Orders, Colonial Regulations	
	and Stores Regulations	1954
	(xx) Cyprus Statute Laws	1954

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|---------|--------------------------------------------------------------------------------------------------------|-----------|---|
| (xxi) | B.A. Degree of the University of London (Third Division) (External Student) | 1962-1966 | |
| (xxii) | Post-graduate Diploma in Public Administration of the University of London (Part I) (External Student) | 1969 | 5 |
| (xxiii) | Diploma in Public Administration of the University of London (External Student). | 1970" | |

The interested party Kyriacos Christofi has joined the Government Service as Clerical Assistant (Unest.) on 3rd April, 1957, and became permanent in that post on 17th May, 1962. On 1st June, 1962, he was promoted to Clerk, 2nd Grade G.C.S. On 1st March, 1966 he became Administrative Assistant 3rd Grade (Temporary on Secondment) and became permanent on 1st August, 1966. He became a Co-ordination Officer on 1st June, 1970, and became Senior Co-ordination Officer on 15th November, 1975; and on 1st August, 1977, he was promoted to Chief Co-ordination Officer.

His qualifications are the following:- 20

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|--------|-----------------------------------------------------------------------------------------------------|---------------|----|
| (i) | English School Nicosia | 1951-1957 | |
| (ii) | British Constitution (A.L.) (Grade E) | (1963 | |
| (iii) | Modern Greek (A.L.) (Gr. E) |) G.C.E. | |
| (iv) | Ancient History (A.L.) (Grade E) | (1963 | 25 |
| (v) | English Lower (Distinction) |) 1954 | |
| (vi) | English Higher (Pass) | (1955 | |
| (vii) | Turkish Lower (Pass) |) C.C.E. 1955 | |
| (viii) | History (Pass) | (1956 | 30 |
| (ix) | Geography (Credit) |) 1956 | |
| (x) | Mathematics "A" (Credit) | (1957 | |
| (xi) | Mathematics "B" (Pass) |) 1957 | |
| (xii) | General Orders | 1960 | |
| (xiii) | Financial Instructions | 1964 | 35 |
| (xiv) | Batchelor of Arts in Public Administration (with Distinction) of the American University of Beirut. | 1966-1969 | |

Confidential Reports

The applicant from January 1, 1970 till 31st December, 1970, was rated, according to the reporting officer Mr. A. Andronicou in a special confidential report as being a most
5 competent officer and hardworking officer. Under General Assessment, he is rated as either excellent or very good, and there is a recommendation to be given accelerated promotion. Between 1st February, 1971 and 31st January, 1972, the reporting officer Mr. Iacovos Aristidou had this to say: "This
10 Officer is very experienced, hard working and efficient. For his performance during the latter part of the period under review see the attached report of the Director of the Personnel Department." Indeed on 22nd January, 1972, the Director of the Personnel Department addressed a letter to the General
15 Director of the Planning Bureau and had this to say regarding the applicant:

"I have been instructed to refer to our today's conversation (Dr. Aristidou-Olympios), on the subject of preparing the annual confidential report for Mr. A. Savvas, Senior
20 Administrative Officer and to inform you that during the service of Mr. Savvas with the Committee of Re-organizing the Public Service till today his work and conduct were excellent".

From 1st January, 1972 to 31st December, 1972, the applicant
25 in filling his annual confidential report and particularly paragraph 3, with regard to whether he was content with his present duties, his answer was no and in stating his reasons he says that the duties assigned to him (regarding the re-organization of the Public Service) were in nature and scope entirely different
30 from and of a lower standard than the duties and responsibilities expressly laid down in the scheme of service for his post and thus has given him no job satisfaction. He wanted to be assigned the duties of his post and had made repeated representations in the past to this effect. The reporting officer Mr.
35 A. Andronicou had this to say:

"I do not agree that the statement made by the officer in paragraph 3 overleaf, that the duties assigned to him are of a lower standard. As Secretary of the Public Service Re-organization Committee and as the most senior member
40 of the staff of the Public Service Re-organization Unit

he has been assigned very difficult and exacting duties calling for a high degree of initiative and judgment. He has done his best in this respect and has demonstrated good qualities of imagination, judgment and has put forward useful ideas. The task ahead, however, is difficult, complex and complicated and cannot be easily solved. That is why he is probably disappointed". 5

On 28th December, 1973, for a period of six months the reporting officer Dr. Vassos Vassilopoulos in a special confidential report had this to say: 10

"This officer has a very good educational background and broad experience which has enabled him to render outstanding services over the second half of 1973 during which he served in the Ministry of Health. He has taken on additional work in connection with the planning of the New Nicosia General (Hospital) and the preparation of a National Health Scheme which he performed in an excellent manner. He has shouldered a really heavy load of work". 15

Then in the light of the above assessment, Dr. Vassilopoulos recommended the following: 'This officer has demonstrated beyond doubt his capacity for sustained high level administrative work, and he should be considered for promotion to a more senior administrative post at the earliest opportunity. 20

For the year 1974 Dr. Vassilopoulos, in a special report, repeated himself and praised the work of this officer. For the year 1975, once again in a special confidential report Dr. Vassilopoulos said that "this officer has discharged his duties in an outstanding manner and has rendered exceptional services which should be placed on record". Then having stated that he knew that officer for a period of fifteen years had this to say: 25 30

"Mr. Savva has continued during the year under review to render services of a very high standard and has contributed effectively towards the good management of the Ministry of Health by providing readily all possible assistance to the Director General in policy-making and general management including the co-ordination of the various Services of the Ministry and the exercise of supervision over them. He has shouldered a really heavy 35

load of work and has replaced in a competent manner the Director-General in his absence”.

Then in the light of his assessment, Dr. Vassilopoulos said:

5 “I have no hesitation in recommending Mr. Savva’s promotion to a higher administrative post and I can predict, having regard to his qualifications, experience and past performance, that he will prove a complete success in any such higher post”.

10 For the year 1976, the reporting officer, Mr. C. Vakis, the Director-General, made the following observations.

15 “This assessment is made by a new reporting officer whose criteria and standards may differ from those of his predecessor. Any significant variations may not therefore necessarily reflect a change in the officer’s performance and ability. The officer is devoted and loyal. Works hard, is productive and dependable”.

In the general assessment of the applicant, the Director-General assessed him in all ratable items as “excellent”, and with regard to his general intelligence “high”.

20 For the year 1977, the following observations were recorded regarding the applicant:

“Mr. Savva is an experienced, conscientious and responsible officer. Works hard, if necessary outside office hours, takes initiative and shows leadership qualities”.

25 As to the general assessment he was rated as excellent in all ratable items including general intelligence.

Turning now to the confidential reports of the interested party, the reporting officer, Mr. A. Andronicou made these observations for the year 1970:—

30 “A very good co-ordination officer. With more experience he will become an invaluable asset for the Planning Bureau. He is hardworking and efficient”.

For the year 1971, the reporting officer, Mr. I. Aristidou, made the following observations:

35 “The officer is very well qualified for the post of Co-ordi-

nation Officer. He has been working very hard and conscientiously. He has a very sound judgment and his performance has been very satisfactory”.

For the year 1972, the same reporting officer recorded the following observations:-

“The officer is very well equipped and very conscientious, persevering and hard working. He has understood his role and managed to perform his duties and responsibilities in an excellent manner”.

For the year 1973, the same reporting officer rated the interested party under general assessment as very good in eight out of ten ratable items, and as excellent in two of them. He was described as hard working and methodical, willing, efficient and pleasant. For the year 1974, he was rated by the same officer as a very good officer in all respects. For the year 1975, he was described as “a very hard-working, thorough, reliable and able co-ordination officer. Since last November, he is performing also the duties of the Chief Co-ordination Officer. A very good officer in all respects”. For the year 1976, Mr. I. Aristidou made the following observations:

“Mr. Christofi is a very good to excellent Senior Co-ordination Officer, who performs also the duties of the Chief Co-ordination Officer. He is very well qualified for the job, intelligent, hardworking and efficient. Mr. Christofi is ready for promotion on first opportunity”.

For the year 1977, Mr. I. Aristidou who by that time knew the interested party for ten years, made the following observations: “An excellent officer in all respects”. No special confidential report appears in the file of the interested party respecting the period between 1970-1977.

Turning now to the minutes of the Commission dated 12th July, 1977, it appears that the two candidates were interviewed, and according to the record, the Commission, as well as the Director-General, Planning Bureau, put several questions to all the candidates on matters of general knowledge and on matters connected with the duties of the post as shown in the relevant scheme of service. The Commission considered the merits, qualifications, service and experience of the candidates

interviewed, as well as their performance during the interview (personality, alertness of mind, general intelligence and the correctness of answers to questions put to them, etc.) The personal files and Annual Confidential Reports of the above candidates were also taken into consideration.

Then, in spite of the fact that all the material was before them—as the record shows, so as to make up their mind who was the better candidate for promotion, and without having before them the recommendation of the Director-General of the Planning Bureau, always according to the minutes, the three Members of the Commission (namely Messrs. D. Protestos, C. Lapas and Y. Louca) observed that, during the interview, Mr. Kyriacos Christofi gave very satisfactory replies to questions put to him and generally he proved to be the best candidate for appointment or promotion to the post of Chief Co-ordination Officer. The Chairman held the view that Mr. Andreas Savva was the best candidate for appointment or promotion to the above post having regard to his performance at the interview. Pausing here for a moment I would observe that the Commission inevitably must have been unduly influenced by the performance during the interview when they took the view that generally the interested party proved to be the best candidate for appointment or promotion, once they hastened to record their views without even waiting to hear what the Director-General had to say. With this in mind the Director-General of the Planning Bureau stated that Mr. Kyriacos Christofi is the Senior Co-ordination Officer of the Department and “has been performing the duties of the post of Chief Co-ordination Officer for the last one and a half years, he is an excellent officer—in fact he is an example to the other officers—and that he considered him very suitable for promotion to the post of Chief Co-ordination Officer”.

The Commission then proceeded to examine whether the interested party possessed the requirements of the relevant scheme of service, viz., an excellent knowledge of Greek and English, and had this to say:

“The Commission observed that Mr. Kyriacos Christofi is a graduate of the English School, Nicosia, where both the English and Greek languages are taught. The Commission observed also that Mr. Kyriacos Christofi has passed, *inter alia*, the Modern Greek (Advanced Level) Examination

of the General Certificate of Education as well as the English Higher Examination of the Cyprus Certificate of Education. The Commission further observed that the above officer is the holder of the B.A. Degree in Public Administration which he obtained from the American University of Beirut. In view of the above, and having regard to his long and satisfactory service in the Government, the Commission was satisfied that the officer in question did possess 'an excellent knowledge of Greek and English'." 5 10

But with the greatest respect to the Commission, although the Commission had before it two candidates who both attended the English School, nevertheless, nothing was said about the applicant on this point. The question which is posed is: Doesn't this attitude show that the Commission in weighing the qualifications of the candidates were unduly influenced because of the better performance of the applicant during that interview. Finally, the Commission, without even examining whether the applicant possessed a qualification which under the relevant scheme of service constituted an advantage, proceeded to state: 15 20

"After considering all the above and after taking into consideration all the facts appertaining to each one of the candidates, and after giving proper weight to the merits, qualifications, abilities, service and experience of these candidates, as well as to their suitability for appointment to the above post as shown at the interview, the three members of the Commission came to the conclusion that Mr. Kyriacos Christofi was on the whole the best. The Commission accordingly decided by majority of 3 votes to 1 (the Chairman dissenting) that Mr. Kyriacos Christofi be promoted to the permanent (Dev.) post of Chief Co-ordination Officer w.e.f. 1.8.77. 25 30

The Chairman preferred Mr. Andreas Savva to Mr. Kyriacos Christofi having regard to their performance at the interview". 35

Grounds of law.

Counsel for the applicant in support of his grounds of law, put forward in a strong and able argument that the Commission

erred in promoting the interested party, and has acted contrary to the law once from the material before them the applicant had more qualifications, better confidential reports, an overall experience in the Government service, and he possessed a post-graduate qualification which under the relevant scheme of service constituted an advantage. Counsel further contended that the Commission was unduly influenced from the interview, and in doing so they acted contrary to section 44 of Law 33/1967, and contrary to the provisions of the Constitution, and/or in excess and/or in abuse of powers vested in such organ. Counsel further complained that the Commission took into consideration the recommendations of the Director-General of the Planning Bureau only and failed to warn themselves that such a recommendation was made without a comparison of the merits as to who is the more suitable for the post in question. Counsel relies on the case of *Georghios Gavriel v. The Republic (Public Service Commission and/or the Director of the Department of Lands and Surveys)* (1971) 3 C.L.R. 185 at p. 200. Finally counsel concluded that the Committee has further failed in the light of those facts and circumstances to give reasons for taking the stand that the interested party was on the whole the best candidate.

I have considered it pertinent to deal first with the complaint that the Commission erred by being unduly influenced by the performance of the parties during the interview, once no provision is made in the scheme of service for possession by the candidates of administrative ability and ability to supervise and guide subordinate staff. In *Panayiotis Ioannou Myrriotis v. The Republic (Educational Service Commission)* (1975) 3 C.L.R. 58, dealing with this very point, I had this to say at p. 68:-

“However, there is a further point which is worrying me in this case, because in one of the minutes of the Committee, during the interview of the many candidates who appeared before them, they stated that they have also taken into account the impression created by such candidates. Regretfully, no specific reference was made with regard to the interested parties and the applicant, and although I do not underestimate their difficulties, nevertheless, once the Commission in promoting the two interested parties in preference and instead of the applicant, took that also

into consideration, one would have expected a note to have been made of their impressions regarding the three candidates. Of course, I do not want to be taken that I do not approve of such a practice, because certainly the Committee, in considering the merits, qualifications and experience of a candidate may also take into account the impression created by such candidate at the relevant interview. However, I would like to point out that such interview should be held only as a way of forming an opinion about the possession by the candidates of the required qualifications, and undue weight should not, therefore, be placed on the impression created by such interview”.

In *Andreas Triantafyllides and Others v. The Republic (Public Service Commission)* (1970) 3 C.L.R. 235, Triantafyllides J., as he then was, had this to say regarding the performance of candidates during the interview before the Commission, at pp. 245–246:–

“In its relevant decision, which has been quoted earlier on in this judgment, the Commission stated that it considered ‘the merits, qualifications and experience’ of the candidates ‘as well as their performance during the interview’.

It should be observed that it was not right to treat the performance at the interviews as something apart from the merits, qualifications and experience of the candidates; it was only a way of forming an opinion about the possession by the candidates of the said basic criteria; and not the most safe way because, *inter alia*, of the necessarily rather short duration of each interview and of the undeniable possibilities of an adroit candidate making the Commission think more highly of him than he deserves or of a timid or nervous candidate not being able to show his real merit.

Though the Commission did record expressly that it took into account the ‘experience’ of the candidates it seems that, because of the impression made by Interested Party Shiammas at the interviews, it lost completely sight of the fact that the Head of Department of this Interested Party had only a few months ago described him, in a con-

fidential report on him, as not being fit yet for promotion due to lack of sufficient training and experience.

5 Actually, the evidence of Mr. Stathis, which has already been referred to, shows, indeed, that he, in all good faith, allowed himself—like the Commission, too—to be carried away by impressions at the interviews; he could not tell the Court for certain whether, while on the 11th June, 1968, he was under the influence of the impression created by Interested Party Shiammas at the interviews, he did have in mind the actual performance at work of this candidate since the 1st March, 1968, when he had expressed the view that such candidate needed ‘more training and experience before being promoted’. It is beyond doubt, on the basis of the evidence of Mr. Stathis, that though he may have had opportunities to follow the work of Interested Party Shiammas during the very short period of time between March and June, 1968, it was not his performance during such period which led Mr. Stathis to agree with the Commission’s evaluation of him, but his performance when interviewed”.

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In *Milia Panayiotou and Another v. The Republic (Public Service Commission)* (1968) 3 C.L.R. 639, the very same point viz., the performance of candidates during the relevant interview came up again, and Triantafyllides J., as he then was, had referred to the personality of the candidates as being an important factor, and had this to say at p. 642:—

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“As it appears from its minutes (*exhibit 7*) the Commission, in deciding to prefer for appointment the Interested Parties, took into account the views of the Director of the Department of Medical Service, Dr. Panos, of the Matron, Miss Shellish, and of Dr. Drymiotis, who is a Medical Officer at the Psychiatric Institution; the Commission based itself, also, on the merits, qualifications and experience of each of the candidates interviewed—(both the Applicants as well as the Interested Parties were all interviewed)—and on their performance during the interviews, noticing things such as ‘alertness of mind, correctness of answers to questions put to them, etc.’.....”

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As the persons to be appointed were to work as nursing staff, and especially at the Psychiatric Institution, it is

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obvious that their personalities were important factors to be weighed by the Respondent Commission; nurses dealing with patients have to possess a suitable personality in many material respects. So, rightly, in my view, the Commission paid due regard to the evaluation of the candidates made through the interviews and was, to a certain extent, guided accordingly in reaching its decision; in the present instance I would say that the results of the interviews were more important than they would have ordinarily been”.

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In *Eleni Eliadou Duncan v. The Republic (Public Service Commission)*, (1977) 3 C.L.R. 153, Mr. Justice A. Loizou tried to justify the stand taken by the Commission with regard to the performance of the candidates at the interview, and had this to say at p. 163:-

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“Furthermore, the respondent Commission gave due regard to the performance of the candidates at the interview and both interested parties were found to have given very satisfactory replies to questions put to them and generally, ‘they proved to be the best candidates for appointment or promotion to the post in question’. This was proper, in the circumstances, because their personality was an important factor to be weighed by the respondent Commission, particularly so, in view of the qualifications required under the schemes of service, for possession by the candidates of organizing and administrative ability and ability to supervise and guide subordinate staff, for which the personality of the leader is most significant. If any authority is needed for this proposition, a similar approach is to be found in the case of *Panayiotou and another v. The Republic*, (1968) 3 C.L.R. 639 at p. 642, where it was stated by Triantafyllides, J. as he then was, ‘So, rightly, in my view, the Commission paid due regard to the evaluation of the candidates made through the interviews and was, to a certain extent, guided accordingly in reaching its decision’”.

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In my opinion, these last two cases are distinguishable on the facts. In the present case no provision is made in the scheme of service for the post in question, e.g. for ability to supervise and guide subordinate staff or for possession of administrative

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experience, and I, therefore, follow and adopt the stand taken by me in *Panayiotis Ioannou Myrriotis v. Republic*, (*supra*), and I find that in this case the Commission erred in giving undue weight to the performance of the candidates during the inter-
5 view.

Turning now to the second question as to whether the Commission erred in not giving reasons for preferring the interested party, going through the relevant administrative records, I find that on the whole the applicant has more qualifications, better confidential reports, and more overall experience in the
10 Government service, and, therefore, I would have expected, and I agree with counsel for the applicant, that the Commission should have given full reasons for preferring the interested party. The whole object of the rule requiring reasons to be
15 given by the Commission in 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.

In *Elli Chr. Korai and Another v. The Cyprus Broadcasting Corporation*, (1973) 3 C.L.R. 546, dealing with this very same point, viz., the lack of due reasoning, I had this to say at pp. 555, 556:—
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“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
25 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
30 would understand them, and must be stated in terms fulfilling the objects 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
35 decision. See *Zavros v. The Council for Registration*
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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. (*Georgiades & 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, *Papadopoulos v. The Republic*, (1968) 3 C.L.R. 662 at pp. 670–671 supports this proposition. See also the law of Administrative Disputes by Stassinopoulos, 4th edn. 1964 at p. 227 and the Decisions of the Greek Council of State referred to in note (2) of the same page".

See also on the same point of lack of due reasoning the case of *Kyriacos G. Bagdades v. The Central Bank of Cyprus*, (1973) 3 C.L.R. 417 at pp. 428, 429, and *Iordanis Eleftheriou and Others v. The Central Bank of Cyprus*, (1980) 3 C.L.R. 85.

With these principles in mind, I would like to state that the reasons given by the respondent Commission in its minutes for selecting the interested party, appear to be definitely contrary to the relevant administrative records and incompatible with the factors taken into account by them, viz., the qualifications of the candidates concerned and the annual confidential reports. This is another reason why the *sub judice* promotion of the interested party should be annulled.

The third complaint of counsel is that the Commission took into consideration the recommendation of the Director General of the Planning Bureau in favour of the interested party only,

and has failed to ask for additional recommendation from the Director-General of the Ministry of Health with respect to the applicant, and in effect they failed to afford to the applicant equal treatment. Counsel further submitted that the Commission should not have given any weight to the statement of the Director-General of the Planning Bureau, regarding the interested party, once out of the two candidates only the interested party was working in his department; and because the Commission, had that statement before them, coming from a high ranking officer in favour of the interested party only; and inevitably, counsel concluded, the applicant was not equally treated, because he had not had the benefit of a similar recommendation or any other statement. The case of *Theofanis HjiSavva and Another v. The Republic (Public Service Commission)*, (1967) 3 C.L.R. 155, provides the answer to this. Triantafyllides, J., as he then was, dealing with the recommendations of the Head of the Department concerned, had this to say at p. 180:-

“In doing so, the Commission has also contravened Article 28 of the Constitution, by not affording equal treatment to the Applicants and the Interested Party, and by treating the Interested Party more favourably without sufficient grounds justifying such a course”.

Counsel in order to make the point of equal treatment more lucid, relied on *Georghios Gavriel v. The Republic (Public Service Commission) and/or The Director of the Department of Lands and Surveys*, (1971) 3 C.L.R. 185, where at p. 200 I had this to say:-

“I have no doubt in my mind that a head of department inevitably has to make a comparison of the merits of candidates as to who is more suitable for a post when there are more than one candidates for promotion; especially when a post requires, as in the present case, specialised knowledge and ability, and where they all work in the same department”.

With these two cases in mind, with respect, I think no justice and no equal treatment was afforded to the applicant, because out of the two candidates, only the interested party was working in the department of the Director of the Planning Bureau. But with respect, there is another reason why the *sub judice* promotion should be annulled, and that is because of the fact

that the Commission had failed to conduct an inquiry into the issue whether the applicant possessed the qualification which under the scheme of service constituted an advantage. The case of *Vasso Tourpeki v. The Republic of Cyprus, through the Public Service Commission*, (1973) 3 C.L.R. 592, provides the answer to this issue. Mr. Justice A. Loizou, dealing with this very same point, had this to say at pp. 602, 603:- 5

“...As already mentioned, under the scheme of service, ‘a college diploma or certificate in agriculture or another subject related to Animal Husbandry will be an advantage’. What is sufficient inquiry is, to my mind, a question of degree depending upon the nature of the matter to be inquired into. Whether such an inquiry has been duly carried out or not, is a matter to be deduced from the relevant minutes kept for the purpose. 10 15

In relation to the position created by the aforesaid circumstances, one has to observe that nowhere in the minutes of the Commission or in the recommendation of the Head of the Department, relied upon by the Commission, appears any reference whatsoever to this diploma. An inquiry had to be conducted regarding the issue whether or not the applicant possessed the qualifications which under the scheme of service would be an advantage to a candidate over the other candidates. The general reference to the qualifications of all the candidates serving in the post, does not, in my view, sufficiently disclose whether such material fact, as the possession or not, of a qualification possibly constituting an additional advantage was duly inquired into, and in particular in view of the fact that the details of this course were not in the relevant file before the Commission, but in the possession of the Ministry. Consequently, I find that the Commission has not conducted the sufficiently necessary inquiry into such a most material factor and, therefore, it exercised its discretion in a defective manner; so the *sub judice* decision of the respondents having been arrived at contrary to the accepted principles of Administrative Law and in abuse or excess of powers, is null and void and of no effect whatsoever. 20 25 30 35

Moreover, the outcome of such inquiry should have appeared in the reasoning of the *sub judice* decision and 40

in case it was found by the Commission that the diploma possessed by the applicant was constituting an advantage, then convincing reasons should have been given for ignoring it, inasmuch as the interested party was holding the lower post on secondment, as against the applicant who had been holding same substantively, such preferment, as already stated, constituting an exceptional course. I, therefore, annul the decision for lack of due reasoning which makes the *sub judice* decision contrary to law and in excess and abuse of power”.

I think that before I conclude my judgment, I would state—in fairness to all counsel—how much I owe to them in helping me to reach and conclude this judgment.

Once, therefore, the Commission has failed to conduct an inquiry, and as no reasons have been given in not taking into consideration a most material factor, viz., the additional qualification which under the relevant scheme of service constituted an advantage, the Commission exercised its discretion in a defective manner. I, therefore, annul the decision of the respondent on this ground also.

Finally, having regard to the facts and circumstances of the present case, and in the light of the weighty authorities I have quoted earlier, and for the long reasons I have given, the *sub judice* decision of the Commission has to be declared null and void and of no effect whatsoever.

Decision annulled. No order as to costs.

Sub judice decision annulled. No order as to costs.