

1982 March 27

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNIS ST. MILIATOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 24/80).

Public Service Law, 1967 (Law 33/67)—Section 4(5) of the Law validly enacted—Not contrary to Article 124.6 of the Constitution—Hadjianastassiou v. Republic, reported in this Part at p. 1173 post adopted.

5 The sole issue in this recourse was whether, in view of the provisions of Article 124.6* of the Constitution, the composition of the respondent Commission at the material time was defective in that the Chairman and one of its members had, prior to their appointment, been public officers and their appointments were
10 made in a manner incompatible with the periods provided by paragraph (2) of the above Article.

15 *Held*, that the appointments of the Chairman and one of the members of the Public Service Commission were validly made under section 4(5)** of the Public Service Law, 1967; accordingly at the material for the purposes of this recourse time the composition of the respondent Commission was not defective (reasoning in *Hadjianastassiou v. Republic*, reported in this Part at p. 1173 post adopted mutatis mutandis).

Order accordingly.

20 Cases referred to:

Hadjianastassiou v. Republic, reported in this Part at p. 1173 post.

* Article 124.6 is quoted at pp. 1162–1163 post.

** Section 4(5) is quoted at p. 1163 post.

Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Migration Officer in preference and instead of the applicant.

A. *S. Angelides* with *G. Michaelides*, for the applicant. 5

Cl. *Antoniades*, Senior Counsel of the Republic, for the respondent.

C. *Loizou*, for the interested party.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment. By means of this recourse the applicant challenges the validity of the decision of the respondent Public Service Commission, reached on 24th January 1980, to promote, instead of the applicant, N. Zavros (to be referred to hereinafter as the "interested party") to the post of Migration Officer in the Ministry of Interior. 10 15

As it appears from the relevant scheme of service the said post is a first entry and promotion post.

On 16th March 1979 a vacancy in such post was advertised in the Official Gazette of the Republic and among those who applied for appointment were the applicant and the interested party. 20

It has been directed by consent of all the parties to the present proceedings that the issue of the validity of the composition of the respondent Commission shall be determined as a preliminary issue; therefore, at this stage of these proceedings, I shall deal only with such issue. 25

In support of the assertion that at the material time the composition of the respondent Public Service Commission was defective counsel for the applicant submitted that the provisions of section 4(5)(c) of the Public Service Law, 1967 (Law 33/67), are repugnant to the provisions of Article 124.6 of the Constitution and that their unconstitutionality cannot be saved by the "law of necessity" on the strength of which Law 33/67 was enacted. 30 35

Article 124.6 of the Constitution, by its relevant part, provides as follows:

"6.(1) _____

(2) No person shall be appointed as, or be, a member of the Commission who is, or within the preceding twelve months in the case of the Chairman or six months in the case of any other member, has been -

- 5 (a) a Minister;
- (b) a member of the House of Representatives or of any Communal Chamber;
- (c) a public officer or a member of any of the armed forces;
- 10 (d) an officer or employee of any local authority or of a body corporate or authority established by law for public purposes;
- (d) a member of a trade union or of a body or association affiliated to a trade union."

Section 4(5)(c) of Law 33/67 provides as follows:

- 15 "(5) No person shall be appointed as, or be, a member of the Commission, unless -
- (a) _____
- (b) _____
- (c) he is not a Minister or a member of the House of Representatives or of a public service or of a trade union or of any association affiliated to a trade union."

- 20 Counsel for the applicant has contended that the omission from section 4(5)(c) of Law 33/67 of the periods of "twelve months" and "six months", respectively, which are provided for in Article 124.6 of the Constitution, renders the said section 4(5)(c) unconstitutional to that extent and, therefore, the ap-
- 25 pointments as Chairman of the Public Service Commission of Mr. Titos Phanos and as a member of the Commission of Mr. Antonios Anastassiou were invalidly made on 20th June 1979 (and published in the Official Gazette on 29th June 1979) with effect as from 1st July 1979, in that they were made in a
- 30 manner incompatible with the aforementioned two periods.

It is not disputed that the contract of service of Mr. Phanos in the Foreign Service of the Republic as Head of a Diplomatic Mission expired on 31st December 1978, that is less than twelve months before his appointment as Chairman of the respondent

Commission, and that Mr. Anastassiou was serving as Director-General of the Ministry of Interior up to 30th June 1979, that is up to the date prior to the taking of effect of his appointment as a member of the respondent Commission.

I am of the opinion that the appointments of Mr. Phanos 5
and of Mr. Anastassiou, as Chairman and member respectively
of the Public Service Commission, were validly made under
section 4(5) of Law 33/67 and my reasons for reaching such
conclusion are, mutatis mutandis, the same as those which I
have given today in the case of *Hadjianastassiou v. The Republic* 10
(case No. 256/80)* in relation to the validity of the appointment
of Mr. Anastassiou as a member of the Commission.

Consequently I cannot find that at the material for the pur-
poses of this recourse time the composition¹² of the respondent
Public Service Commission was defective. 15

Order accordingly.

* Now reported in (1982) 3 C.L.R. 1173.