

1983 November 24

[SAVVIDLIS, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOS VOURKOS AND ANOTHER,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent

(Cases Nos 321/80 and 334/80)

*Public Officers—Promotions—Judicial control—Principles applicable
—Applicant has to prove striking superiority over interested
parties—Merit—Qualifications—Seniority—Merit comes first and
seniority is the last consequential—Seniority of applicants over
interested parties and the better qualifications of one of the
applicants cannot be considered as showing striking superiority
over them because the latter were strikingly superior in merit
and they were recommended for promotion by the appropriate
Departmental Committee and the Head of Department.* 5

*Public Officers—Promotions—Qualifications constituting an advantage
under scheme of service—Preference of candidate not possessing
such qualifications to one possessing them—Special reasoning
required for adopting such a course is found in the recommendations
of the Departmental Committee and the Head of Department
in favour of the candidates not possessing these qualifications.* 10 15

*Public Officers—Promotions—Selection of the best candidates—
Departmental Committee—Under no legal duty to carry out
written or oral examinations—And not bound to record questions
and answers given by candidates at the interview—But their
duty is to record their findings as to the performance of each candi-
date at the interview and make their comments on the basis of
such findings.* 20

The applicants in these recourses challenged the validity of

the decision of the respondent to promote the interested parties to the post of Administrative Officer 2nd Grade. The applicants were senior to the interested parties but the latter were better in merit and they were recommended for promotion by the Departmental Committee and the Head of Department. One of the applicants possessed a qualification which constituted an advantage under the relevant schemes of service whereas some of the interested parties did not possess such a qualification.

Counsel for the applicants mainly contended.

1. That the respondent Commission did not exercise its discretionary powers properly in that it failed to select the best candidates for promotion.
2. That the applicants had better merit, qualifications and seniority over most of the interested parties and that in cases where the merit and qualifications were equal the seniority of the applicants was prevailing, and should have been taken into consideration as weighing to their advantage in preference to those with less seniority.
3. That the proceedings before the Departmental Committee were irregular in that:
 - (a) There was no record of the questions and answers of each candidate.
 - (b) Though the Departmental Committee at its meeting of 7.3.1980 decided to meet again to decide whether oral or written examinations were to take place for ascertaining the most suitable candidates for promotion, they failed to take such decision and instead they carried out interviews of the candidates.
4. That the decision of the respondent is not duly reasoned.

Held. (1) that in effecting promotions, merit, qualifications and seniority of the candidates must be duly taken into consideration and in that order merit comes first and seniority is the last consequential; that a mere superiority of one candidate over another is not a sufficient ground for annulling a decision, but for an applicant in a recourse for annulment to succeed, he must prove striking superiority; that since all interested parties have a striking superiority over applicant Simillides on merit, his seniority over all of them is not by itself a matter to be considered

as showing a striking superiority over them as to entitle him to be considered as one of the most suitable candidates for promotion; accordingly his recourse should fail.

(2) That where there is superiority of merit of one candidate over another, as there is in the present case in favour of all interested parties over applicant Vourkos his better qualifications and the seniority of the latter are not enough to make him the most suitable for promotion compared to the former; accordingly his recourse should fail. 5

Held, further, that the recommendations of the Head of Department in favour of a candidate count in his favour and go to his merit; and that since all the interested parties were recommended for promotion by the Departmental Committee and the Head of Department whereas the applicants were not so recommended these factors count in favour of interested parties in considering merit. 10 15

(3) That though where a certain qualification is considered as an advantage under the schemes of service special reasoning is required to be given by the Commission where a person not possessing such qualification is selected in preference to another possessing such qualification the recommendations of the Departmental Committee and the Head of Department in favour of the interested parties not possessing such a qualification constitute a very good reason for not preferring the applicant, in spite of the possession by him of the said qualification. 20 25

(4) That the Departmental Committee was not bound to record the questions and answers given by the candidates but their duty was to record their findings as to the performance of each candidate at the interview and make their comments on the basis of such findings as they did in the present case; accordingly there were no irregularities at the proceedings before the Departmental Committee. 30

(5) That there is no legal duty imposed upon a Departmental Committee to carry out written or oral examinations for the purpose of selecting the best candidates. 35

Applications dismissed.

Cases referred to:

Theodossiou v. Republic, 2 R.S.C.C. 44 at p. 48;

Hadji Savva v. Republic (1982) 3 C.L.R. 76 at pp. 78, 79;

- Hadjiloannou v. Republic* (1983) 3 C.L.R. 286;
Tokkas v. Republic (1983) 3 C.L.R. 361;
Ioannou v. Republic (1983) 3 C.L.R. 449;
Smyrnios v. Republic (1983) 3 C.L.R. 124;
5 *Constantinou v. Republic* (1983) 3 C.L.R. 136;
Polydorou v. Republic (1982) 3 C.L.R. 198;
Karageorghis v. Republic (1982) 3 C.L.R. 435;
Michaeloudis v. Educational Service Commission (1982) 3 C.L.R. 963;
10 *Papadopoulos v. Republic* (1982) 3 C.L.R. 1070;
Ioannou v. Republic (1983) 3 C.L.R. 75;
Marathevtou and Others v. Republic (1982) 3 C.L.R. 1088 at pp. 1091, 1096;
Protopapas v. Republic (1981) 3 C.L.R. 456;
15 *Pieridou v. Republic* (1983) 3 C.L.R. 1;
Skarparis v. Republic (1978) 3 C.L.R. 106 at pp. 115, 116;
Tourpeki v. Republic (1973) 3 C.L.R. 592 at p. 603.

Recourses.

- 20 Recourses against the decision of the respondent to promote the interested parties to the post of Administrative Officer, 2nd Grade in preference and instead of the applicants.

Ch. Ierides, for applicant in Case No. 321/80.

E. Efstathiou, for applicant in Case No. 334/80.

- 25 *Cl. Antoniadis*, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

- SAVVIDES J. read the following judgment. The applicants in these recourses, which were heard together as presenting common questions of law and fact and as challenging the same decision of the respondent Commission, pray for a declaration that the decision of the respondent taken on 5.7.1980 whereby seventeen candidates, the interested parties in these proceedings, were promoted to the post of Administrative Officer, 2nd Grade, instead of the applicants, be declared null and void.
30 Two other recourses were filed challenging the same decision, but they were later withdrawn.

The facts of both cases are not in dispute and they are briefly as follows:

A departmental Committee was set up in accordance with the provisions of section 36 of Laws 33/67 to 31/80 for the purpose of preparing and submitting a list of suitable candidates for the filling up by the respondent Commission of 17 posts of Administrative Officer 2nd Grade which were vacant at the time. For the better evaluation of the candidates such committee decided to interview 52 candidates whom they selected from a list of all Administrative Officers 3rd Grade. The two applicants were amongst the 52 candidates selected for interview. . 5

The Departmental Committee after having interviewed the 52 candidates, selected 36 whom they considered as the most suitable for promotion and submitted to the respondent lists of those recommended and of those not recommended giving the reasons for each candidate, why the 36 candidates were recommended and the rest were not recommended. 10 15

The respondent Commission met on 26.6.1980 and 5.7.1980 for the purpose of filling the vacant posts. According to the minute of the meeting of 5.7.1980, the respondent "having examined and compared the merit, qualifications, experience and seniority of the candidates, on the basis of their personal files and confidential reports and having taken into consideration the conclusions of the Departmental Committee and the recommendations of the Head of the Personnel Department, concluded that the following candidates were superior to the rest, found them as suitable and decided to promote them to the post of Administrative Officer 2nd Grade as from 15.7.1980". 20 25

The candidates so promoted, were the following:

1. Philippides Andreas
2. Kamnarides Nicos
3. Kannaourides Nicos 30
4. Economides Eleftherios
5. Koutouroushi Elpiniki
6. Papparides Michael
7. Morphitis Andreas
8. Matheou Kyprianos 35
9. Philippou Philippos
10. Lambrou Lambros
11. Savva Andreas

12. Patsalis Costas
13. Rouvis Iacovos
14. Vassiliadou Elli
15. Timotheou Phaedra
- 5 16. Charalambous Lais
17. Frangopoulos Kyriacos.

Applicant in recourse No. 321/80 challenges the validity of the promotion of interested parties Nos. 2, 3, 4, 7, 9, 10, 11, 12, 13, 16 and 17.

- 10 Applicant in recourse 334/80 challenges the validity of the promotion of all interested parties with the exception of interested parties Nos. 2 and 3.

The grounds of law set out in support of recourse 321/80 are that the sub judice decision is null and void and taken in abuse and/or excess of powers in that

- 15 (a) Though under Law 33/67 the claim for promotion of public officers is decided on the basis of merit, qualifications and seniority and the applicant in the present case satisfied all these criteria, nevertheless the Commission ignored and/or failed to take into consideration his merits and/or seniority.

(b) The respondent Commission failed to select for promotion the most suitable candidate who was the applicant and acted in contravention of the law and the decision of the Supreme Court in the case of *Michael Theodossiou v. The Republic*, 25 2 R.S.C.C. 44.

(c) The respondent Commission failed to exercise its discretionary powers and/or exercised same in a defective way and acted contrary to the provisions of the law and in abuse of powers because it ignored the striking superiority of the applicant concerning merit, qualifications and seniority.

(d) The sub judice decision is not properly reasoned and/or the reasons given are insufficient.

(e) The respondent wrongly interpreted and applied the law and regulations.

- 35 (f) Facts were taken into consideration which should not

have been taken and facts which should have been taken into consideration were not so taken and there was misconception of fact and lack of due inquiry.

The grounds of law on which recourse 334/80 is based, are the following:

(a) The sub judge decision was taken in abuse and/or in excess of power.

(b) The sub judge decision was based on a misconception of fact and/or wrong criteria.

(c) Had the respondent acted properly it should have concluded that the applicant has a striking superiority over the interested parties and/or some of them, concerning seniority, administrative experience, merit and qualifications and he should have been preferred to the interested parties.

(d) The sub judge decision was reached by taking into consideration facts and other material which should not have been taken into consideration and/or the decision was based on facts and material which are not in line with the notion and the principles of good administration.

(e) The sub judge decision offends the accepted principles of natural justice and is contrary to the rules of natural justice.

(f) The sub judge decision is not reasoned and/or offends the existing law and jurisprudence and the principles governing the promotion of public officers and/or is contrary to the rules of natural justice.

The points of law which emanate from the written addresses of counsel for both applicants and on which they based their contention that the promotion of the interested parties should be annulled, are:

1. That the respondent Commission did not exercise its discretionary powers properly in that it failed to select the best candidates for promotion.

2. That the applicants had better merit, qualifications and seniority over most of the interested parties and that in cases where the merit and qualifications were equal, the seniority

of the applicants was prevailing, and should have been taken into consideration as weighing to their advantage in preference to those with less seniority.

3. That the proceedings before the Departmental Committee
5 were irregular in that:

(a) There is no record of the questions and answers of each candidate.

(b) Though the Departmental Committee at its meeting
10 of 7.3.1980 decided to meet again to decide whether oral or written examinations were to take place for ascertaining the most suitable candidates for promotion, they failed to take such decision and instead they carried out interviews of the candidates.

(c) The confidential reports for each candidate were not
15 taken into consideration by the Departmental Committee in selecting the candidates whom they included in the recommendation list but it relied only on their performance at the interview.

4. That the decision of the respondent is not duly reasoned.

20 Before dealing with the above contentions, I consider it necessary to review briefly some of the established principles concerning promotions, as expounded in our jurisprudence, which are material in deciding the cases under consideration.

In effecting promotions, merit, qualifications and seniority
25 of the candidates must be duly taken into consideration in that order: Merit comes first; seniority is the last consequential (see: *Hadjisavva v. Republic* (1982) 3 C.L.R. pp. 76, 79). Seniority only prevails if all other factors are equal. (See, inter alia: *Hadjioannou v. Republic* (1983) 3 C.L.R. p. 286, *Tokkas v. Republic* (1983) 3 C.L.R. 361, *Ioannou v. Republic* (1983) 30 3 C.L.R. 449, *Smyrnios v. Republic* (1983) 3 C.L.R. 124, *Constantinou v. Republic* (1983) 3 C.L.R. 136, *Polydorou v. Republic* (1982) 3 C.L.R. 198, *Karageorghis v. Republic* (1982) 3 C.L.R. 435, *Michaeloudis v. Educational Service Committee* (1982) 35 3 C.L.R. 963.

A mere superiority of one candidate over another, is not

a sufficient ground for annulling a decision, but for an applicant in a recourse for annulment to succeed, he must prove striking superiority. (See, *HadjiSavva v. Republic* (supra), *Karageorghis v. Republic* (supra), *Michaeloudis v. Educational Service Commission* (supra), *Papadopoulos v. Republic* (1982) 3 C.L.R. 1070, 5
Ioannou v. Republic (1983) 3 C.L.R. 75). Where a candidate shows apparent striking superiority over the one chosen, specific reasons should be given for preferring the latter to the former. (*Marathevtou & others v. Republic* (1982) 3 C.L.R. 1088 at 1096). 10

Recommendation in favour of a candidate counts in his favour and goes to his merit (*Hadjisavva v. Republic* (supra) at p. 78). Such recommendation should not be disregarded without specific reasons for doing so are given in the decision (*Protopapas v. Republic* (1981) 3 C.L.R. 456). 15

Where a certain qualification is considered as an advantage under the schemes of service, special reasoning must be given in cases where a person not possessing such qualification was selected in preference to another possessing one, as to why such qualification was disregarded (*Protopapas v. Republic* 20
 (supra)).

There is nothing wrong in law to attach the necessary importance to the performance of candidates at the interview, because it reveals a candidate's personality and ability (*Pieridou v. Republic* (1983) 3 C.L.R. 1). 25

Having reviewed briefly the above general principles, I am next coming to consider whether the respondent Commission has violated any of them.

Both applicants were amongst the 52 candidates possessing the necessary qualifications for promotion, who were considered 30
 by the Departmental Committee but were not included in the list of those recommended for promotion which was submitted by such Committee to the respondent. The reasons for which they and 14 others, were not recommended, appear in the remarks for each one of them in the list of candidates not 35
 recommended, which was also submitted to the respondent.

Such reasons read as follows (in the case of Simillides, applicant in Case No. 334/80):

“The evaluation for this officer both in his confidential reports and at the interview was comparatively lower than that of those recommended for promotion”.

In the case of Vourkos, applicant in Case No. 321/80:

5 “Although he has been evaluated in the last two confidential reports as a very good officer, he was found at the interview, to be, regarding ability, inferior compared to those recommended and not suitable for promotion at the present post”.

10 (see Annex 7(IV) to the opposition).

For the purpose of comparing the merits of the applicants to those of the interested parties, I have before me all the material which was available to the respondent when considering the promotions, including the last two confidential reports
15 prior to the sub judice decision, in respect of each candidate.

The picture emanating from such reports, as to the evaluation of the applicants and the interested parties, is as follows:

Interested parties:

- | | | |
|----|-----------------|--|
| 20 | 1. Philippides | (a) Very good (6 excellent & 6 very good).
(b) Excellent (6 excellent & 4 very good). |
| | 2. Kaminarides | (a) Excellent (12 excellent).
(b) Special confidential report. |
| | 3. Kannaourides | (a) Excellent (10 excellent & 2 very good).
(b) Very good (1 excellent & 9 very good). |
| 25 | 4. Economides | (a) Very good (2 excellent & 10 very good).
(b) Very good (5 excellent & 5 very good). |
| | 5. Koutouroushi | (a) Excellent (10 excellent & 2 very good).
(b) Excellent (6 excellent & 4 very good). |
| 30 | 6. Papparides | (a) Excellent (7 excellent & 3 very good).
(b) Very good (2 excellent 6 very good, 2 good). |
| | 7. Morphitis | (a) Excellent (9 excellent & 3 very good).
(b) Excellent (6 excellent & 4 very good). |
| | 8. Matheou | (a) Excellent (10 excellent & 2 very good).
(b) Very good (1 excellent & 9 very good). |

9. Philippou (a) Excellent (10 excellent & 2 very good).
(b) Special confidential report.
10. Lambrou (a) Very good (6 excellent & 6 very good).
(b) Excellent (7 excellent & 3 very good).
11. Savva (a) Excellent (7 excellent & 3 very good). 5
(b) Excellent (7 excellent & 3 very good).
12. Patsalis (a) Very good (5 excellent & 7 very good).
(b) Excellent (8 excellent & 2 very good).
13. Rouvis (a) Excellent (10 excellent & 1 very good).
(b) Excellent (9 excellent & 1 very good). 10
14. Vassiliadou (a) Excellent (9 excellent & 3 very good).
(b) Excellent (8 excellent & 2 very good).
15. Timotheou (a) Excellent (7 excellent & 3 very good).
(b) Very good (4 excellent & 6 very good).
16. Charalambous (a) Excellent (9 excellent & 3 very good). 15
(b) Special confidential report
17. Frangopoulos (a) Excellent (10 excellent & 2 very good).
(b) Excellent (10 excellent).

Applicant in Case No. 321/80: Vourkos

- (a) Very good (9 very good & 3 good). 20
(b) Very good (2 excellent & 7 very good).

Applicant in Case No. 334/80: Simillides.

- (a) Good (6 very good & 4 good).
(b) Very good (6 very good & 4 good).

As to the grading of Simillides under (a) as "good", I think 25
it should have been "very good" as he had on 6 items "very
good" and 4 as "good" and his grading as "good" was made
by mistake.

Under the schemes of service "possession of a University 30
diploma or degree in appropriate subjects, e.g. Public Admin-
istration Law (including Barrister-at-law), Economics, Political
Science, Arts. etc. will be an advantage". Out of the candidates
promoted interested parties 1, 4, 5, 6, 8, 9, 10, 11, 13, 14,
15, 16, 17 and applicant Vourkos possessed such university
degree or diploma whereas interested parties 2, 3, 7, 12 and 35
applicant Simillides did not possess such additional qualification.

A comparison on merits between applicant Simillides and the interested parties, makes it quite obvious that all interested parties have a striking superiority over him. The grading of each one of the interested parties with the exception of interested party No. 4 whose average grading on each report is "very good", ranges from "very good" to "excellent" and for some of them there are "special confidential reports", whereas that of applicant is of an average of "very good" in each of the two reports with no grading of "excellent" on any item and with the grading on such items ranging from "good" to "very good".

As to the grading of interested party No. 4 as "very good" which, in the average, is the same as that of the applicant, it should be noted that a comparison of the grading in the individual items shows a supremacy of interested party No. 4 over the applicant. In his first report applicant has 6 "very good" and 4 "good" gradings on the individual items as against 2 "excellent" and 10 "very good" of interested party No. 4 and in the second report 6 "very good" and 4 "good" as against 5 "excellent" and 5 "very good" which reach the border line of "excellent" of interested party No. 4.

Furthermore, all interested parties were recommended by the Departmental Committee and the Head of the Personnel Department who was invited at the meeting of the respondent to express his views and make his recommendations about the candidates, whereas applicant was not so recommended. These factors count in favour of interested parties in considering merit.

As to qualifications interested parties 1, 4, 5, 6, 8, 9, 10, 11, 13, 14, 15, 16 and 17 whose promotion he challenges, have the advantage under the schemes of service, over the applicant, of possessing a university degree or diploma and interested parties 7 and 12 have more or less the same qualifications as the applicant.

Having found that all interested parties have a striking superiority over applicant Simillides on merit, his seniority over all of them is not by itself a matter to be considered as showing a striking superiority over them as to entitle him to be considered as one of the most suitable candidates for promotion on the basis of the principles pertaining to promotion as already briefly expounded. In the result, his recourse on this ground fails.

I am coming next to deal with the position of applicant in Case No. 321/80, Yourkos, who challenges the promotion of interested parties 2, 3, 4, 7, 9, 10, 11, 12, 13, 16 and 17. This applicant is the holder of a university degree which is an advantage under the schemes of service. The same advantage is possessed by interested parties 4, 9, 10, 11, 13, 16, and 17. Interested parties 2, 3, 7 and 12 do not have this advantage. On the question of seniority he is the most senior of all the above interested parties. 5

Comparing this applicant with interested parties 4, 9, 10, 11, 13, 16 and 17, who also possess the advantage of a university degree or diploma, on the basis of the last two confidential reports there is a superiority of all interested parties over him. The gradings of the interested parties range from "very good" to "excellent (in the case of interested party 10), "excellent" in both reports (interested parties 11, 13 & 17), "excellent" with special recommendation (interested parties 9 and 16) and "very good" in both reports (interested party 4), whereas applicant was graded as "very good" in both reports. In the case, however, of interested party 4 whose grading is the same as that of the applicant, the assessment on the individual items as compared to that of the applicant, places interested party 4 at a higher level than the applicant. In the first report such interested party has "excellent" on two items and "very good" on 10 as against "very good" on 9 items and "good" on three items of the applicant. In the second report, interested party 4 has "excellent" on 5 items and "very good" on 5 items (which brings him to the border line of "excellent") as against "excellent" on two items and "very good" on 7 items of the applicant. 10
15
20
25
30

Comparing applicant with interested parties 2, 3, 7, and 1 over whom he has the advantage of university degree, the confidential reports of such parties manifest a superiority of all of them over him, their gradings being "excellent" (12 items excellent" and special confidential report in the case of interested party 2, "excellent" (10 items excellent and 2 very good) and "very good" (1 item excellent and 9 items very good) in the case of interested party 3, "excellent" (9 items excellent and 3 very good) and "excellent" (6 items excellent and 4 very good) in 35

the case of interested party 7, "very good" (5 items excellent and 7 very good) and "excellent" (8 items excellent and 2 very good) in the case of interested party 12.

5 Whilst on the question of merit, I have to observe once again that all interested parties were selected by the Departmental Committee as being amongst the most suitable for promotion and were included in the list of those recommended for promotion, whereas applicant was not so selected and his name was included in the list of those who were not recommended.
10 Furthermore, the interested parties have to their advantage the recommendations of the Head of the Department of Personnel, who was a member of the Departmental Committee for selection, at the meeting at which the sub judice decision was taken, as against his adverse comments about the applicant which, as
15 recorded in the minutes of the meeting, read as follows:

"Nicolaos Vourkos was not recommended by the Departmental Committee because his output at the interview was not good at all. It emanated that he lacks terribly in initiative and personality. A previous Departmental
20 Committee which met on 2.11.1979 and 12.12.1979 for the purpose of filling of five vacant posts of Administrative Officer 2nd Grade, Public Information Office, recommended him, because there were no interviews by the Departmental Committee".

25 Under the principles emanating from our jurisprudence though merit, qualifications and seniority of a candidate must be duly taken into consideration, nevertheless, merit is the first to be considered and where there is superiority on merit of one candidate over another, as there is in the present case in favour
30 of all interested parties over the applicant, the better qualification over some and the seniority of the latter are not enough to make him the most suitable candidate for promotion compared to the former.

35 On the overall, the applicant in Case No. 321/80 has failed to establish striking superiority over interested parties 2, 3, 4, 7, 9, 10, 11, 12, 13, 16, 17 and his recourse in this respect, fails.

Both counsel have also challenged the sub judge decision on the ground of lack of due reasoning. I find myself unable to agree with such contention. The reasoning of the decision is clear from the minutes of the meeting at which the decision was taken and is summarised in the conclusions of the respondent. It is also clear from the written remarks of the Departmental Committee which were before the respondent and to which reference is made in the minutes, regarding each one of the candidates and the reasons why certain of them were recommended and others were not. It also emanates from the personal files and all other material which was before the respondent and to which reference is made in the minutes and the decision.

As to the requirement for special reasoning, where a certain qualification is considered as an advantage under the schemes of service, why a person not possessing such qualification is selected in preference to another possessing such qualification (see *Protopapas v. Republic* (supra)), I find that in the case of applicant in Case No. 321/80, Vourkos, who possessed such an advantage in contrast to interested parties 2, 3, 7 and 12 who did not possess same, such specific reasoning may be found both in the report of the Departmental Committee where specific reasons are given why the applicant was not recommended irrespective of his qualification in contrast to interested parties 2, 3, 7 and 12 who did not possess such qualification and who were so recommended, and in the additional reasons given by the Head of the Personnel Department and which are recorded in the minutes why he did not recommend the applicant for promotion, irrespective of his advantage due to his additional qualification under the schemes of service. The specific reason why he was not preferred for promotion as compared to interested parties 2, 3, 7 and 12 who did not possess the advantage of the additional qualification under the schemes of service is clear from the above and no further explanations were necessary. Before concluding on this point, I wish to refer to what was said in *Skarparis v. Republic* (1978) 3 C.L.R. 106 to the effect that the recommendation of the Head of the Department amounted to a good reason for not preferring the applicant in spite of his postgraduate qualifications. Triantafyllides, P. at pages 115 and 116 had this to say:

5 "If the respondent Commission had been bound to prefer someone like the applicant, who possessed a postgraduate qualification in Public Health, then I would have been inclined to hold that the Commission was bound to appoint the applicant instead of the interested party, who did not possess a postgraduate qualification in Public Health. As I understand, however, the provisions of the relevant scheme of service, and as it was certainly reasonably open to the Commission to understand it too, preference had to be given to a candidate possessing a postgraduate qualification in Public Health only if all other things were equal; in other words, the notion of preference for possessing a qualification in Public Health is equivalent to the notion of such a qualification being considered as an advantage; therefore, the Commission did not act in contravention of the scheme of service by not appointing the applicant.

10 There has to be examined next whether, in the circumstances of this particular case, it was reasonably open to the Commission to select for appointment the interested party instead of the applicant, and whether it had a valid reason for doing so especially in view of the postgraduate qualification of the applicant in Public Health.

20 As has been pointed out in *Tourpeki v. The Republic*, (1973) 3 C.L.R. 592, by A. Loizou J. (at p. 603):-

25 . . . and 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 . . .

30 Having taken into account the overwhelming, in comparison to the applicant, seniority of the interested party, both in the public service and in the grade from which he was promoted to the post concerned, plus the fact that not only both of them had received postgraduate education abroad, and have had, thus, an opportunity to acquaint themselves with the advances of Medicine in various fields, but, also, that, the representatives of the Ministry of Health had, at the relevant meeting of the respondent Commission,

recommended for appointment the interested party and they had, on the other hand, stated that the applicant was not suitable for appointment, I have reached the conclusion that it was reasonably open to the Commission to make the sub judge appointment; and the recommendation of the Ministry concerned constitutes a very good reason for not preferring the applicant in spite of his postgraduate qualification in Public Health; the more so as the post in question was one requiring specialized knowledge and in such a case the recommendation of the Head of Department is even more weighty than usually (see, inter alia, *Theodossiou v. The Republic*, 2 R.S.C.C. 44, 48)".

I come finally to deal with the contention about the irregularity of the proceedings before the Departmental Committee.

From what appears in the comments about the candidates recommended and those not recommended, it is evident that the Departmental Committee took into consideration the confidential reports of the candidates. In its comments about the two applicants, already mentioned, reference is made to their confidential reports. Therefore, the allegation that the confidential reports were not taken into consideration, is entirely unfounded.

As to the allegation about written or oral examinations, there is no legal duty imposed upon a Departmental Committee to carry out written or oral examinations for the purpose of selecting the best candidates. The fact that at its meeting of 7.3.1980 the Departmental Committee decided to meet again to decide whether oral or written examinations were to take place, did not cast upon it a duty to take such course and the fact that they finally carried an oral interview of the candidates, is a clear indication that they abandoned the idea of written examination. In *Marathevtou & others v. Republic* (1982) 3 C.L.R. 1088, the Court in dealing with the discretion of inter-departmental committees as to the procedure to be adopted when interviewing candidates, had this to say (per Pikis J. at p. 1091):

“An inter-departmental committee was set up under s.36 of the Public Service Law—33/67—and the Regulations made thereunder in 1979, to examine the eligibility of the

applicants and make a preliminary assessment of their suitability and comparative merits. The committee invited the applicants to an interview designed to elicit their ability, knowledge and experience. The committee has a discretion
5 about the choice of the means appropriate to ascertain the capabilities of the applicants. Regulation 5 of the 1979 Rules regulating the setting up and functioning of such committees expressly empowers them to test the contestants by means of a written or oral examination.
10 Their discretion is not subject to any limitations. It is indeed probable that the personal qualities required of the candidates in this case influenced the committee to opt for an oral examination. The duties assigned to the post entail, inter alia, supervision of subordinates and
15 administrative abilities that cannot surface except in the course of an interview".

The Departmental Committee was not bound to record the questions and answers given by the candidates but their duty was to record their findings as to the performance of each candidate at the interview and make their comments on the basis
20 of such findings as they did in the present case.

I therefore find no substance in the contention of counsel for applicants about irregularities at the proceedings before the Departmental Committee.

25 For all the above reasons, both the recourses fail and are hereby dismissed, but in the circumstances I make no order for costs.

Recourses dismissed with no order as to costs.