

1985 December 31

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

CHARA YENAKRITOU AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE,

Respondents.

*(Consolidated Cases Nos. 481/83,
521/83, 526/83, 543/83, 25/84).*

5 *Educational Officers—Promotions—555 candidates for 48 vacancies in the post of Assistant Headmaster Elementary Education—Compilation of six separate lists of candidates eligible and suitable for promotion—Criteria used unknown to law—Therefore, respondents prepared the ground for their ultimate decision upon a basis liable to mislead them—Recommendations by the Department of Elementary Education—Wholly unreasoned—Therefore, should not have carried any weight—As respondents attached such weight*
10 *to such recommendation, the decision is liable to be set aside on the ground of material misconception of facts—Reasoning—In the circumstances inadequate—No administrative body should rely on a stereotype form of reasoning as adequate in all cases—Merits—Whole career of candidates should be taken into consideration—Interviews, performance at—Weight to be attached to such performance.*

20 *Administrative Law—Administrative act—Reasoning of—Not only a final but also every preliminary act should be reasoned in a way making judicial review possible—Educational Officers—Promotions—555 candidates for 48 vacancies—In the circumstances and considering magnitude*

*of task, the reasons given by respondent were inadequate—
In view of the impressive merits of some of the applicants
the respondents ought to have resorted to a more detailed
comparison between such applicants and the interested
parties.*

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On 29.4.83 applications were invited for the filling of 48 vacancies in the post of Assistant Headmaster Elementary Education. The publication attracted 555 applications screened, in the first place, at a meeting of the respondents of 26.5.83, who as a result drew up six lists of candidates eligible and suitable for promotion. List A included those with successful service during the preceding two years and at least thirty years service. List B those with a very successful service coupled with service for a period between 25 and 29 11/12 years. List C those with excellent performance during the last year coupled with service for a period between 19 and 24 11/12 years. List D those with excellent performance during the last two years coupled with service for a period between 13 and 18 11/12 years. List E those with a University Degree not included in anyone of the above lists provided their average mark during the last two years was not less than 35 out of 40 and List F which included one person with service in the occupied areas.

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Those included in the said lists amongst them the applicants and the interested parties were invited to an interview. The interviews were attended by one of the two General Inspectors of Education. At a later stage both inspectors attended a meeting of the respondent committee and submitted a list of candidates recommended by the Department of Elementary Education. The recommendations were not reasoned in the least. They merely record the names of those recommended for promotion.

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Eventually the respondent committee promoted the interested parties on a consideration of their confidential reports, their qualifications and seniority, the recommendations of the Department of Elementary Education and the performance of the candidates at the interviews.

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Certain observations of the respondents were recorded as follows, i.e.: (a) With three exceptions (not named)

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every interested party had high marks between 35 and 36 out of 40 (The years of evaluation are not specified, but from reading the decision one is apt to form the impression that the respondents meant the preceding two years), (b) 5 the interested parties with three exceptions performed excellently at the interview. The poor performance of the said three candidates was counterbalanced by their "striking superiority in seniority", and (c) Additional Qualifications of some of the candidates did not neutralise the 10 superiority of the interested parties in seniority, marks and recommendations.

As a result applicants filed the above recourses.

Held, annulling the sub judice decision:

(1) The six lists of suitability were compiled on the 15 basis of criteria unknown to the Law. Merit, qualifications and seniority of candidates must be evaluated in descending order of importance. There is no justification in law for the attachment of increased importance to seniority under one guise or another. It follows that in compiling 20 the said lists as aforesaid the respondents prepared the ground for the exercise of their ultimate decision upon a basis liable to mislead them in the exercise of such discretion.

(2) The recommendations of the Department of Elementary Education were wholly unreasoned, and as such cannot stand the test of Judicial review. Not only final but every preliminary administrative act, too, must be reasoned in a way making possible judicial review. The recommendations, therefore, should not have carried any 25 weight with the respondents. As they did carry such weight the sub judice decision should be annulled for misconception of material facts.

(3) Considering the magnitude of the respondents' task the reasoning of the sub judice decision was inadequate. 35 At least in the case of some candidates whose merits were impressive the respondents ought to have adverted to a more detailed comparison and indicate their reasons for the preference of some of the interested parties. Moreover, the respondents confined their inquiry as to merits to the

performance of the candidates during the preceding two years. Although greater weight may be given to recent performance, it is well settled that the entire career of an officer must be taken into consideration.

(4) The performance at an interview rarely, if ever, can be allowed to outweigh the objective picture emerging from the administrative records, especially if they stretch to many years. 5

Sub judice decision annulled.

No order as to costs. 10

Cases referred to:

Hadjisavva v. The Republic (1982) 3 C.L.R. 76;

Tantas v. The Republic (1983) 3 C.L.R. 1430;

Spanos v. The Republic (1985) 3 C.L.R. 1826;

Michaeloudes and Another v. The Republic (1979) 3 C.L.R. 56; 15

Ioannidou and Others v. The Republic (1984) 3 C.L.R. 1283;

Themistocleous and Others v. The Republic (1985) 3 C.L.R. 1070; 20

Georghiou v. The Republic (1975) 3 C.L.R. 153;

HadjiGeorghiou v. The Republic (1975) 3 C.L.R. 477;

Sosilos v. The Republic (1984) 3 C.L.R. 1133;

Triantafyllides and Others v. The Republic (1970) 3 C.L.R. 235; 25

Makrides v. The Republic (1983) 3 C.L.R. 622.

Recourses.

Recourses against the decision of the respondents to promote the interested parties to the post of Assistant Headmaster in the Elementary Education in preference and instead of the applicants. 30

A. S. Angelides, for applicants in Cases Nos. 481/83 and 543/83.

Ph. Valiantis, for applicant in Case No. 521/83.

5 A. Markides, for applicants in Cases Nos. 526/83 and 25/84.

R. Vrahipi (Mrs.), for the respondents.

R. Schizas, for interested party Fr. Economides in Cases Nos. 481/83, 521/83, 526/83 and 543/83.

10 A. Pandelides, for certain interested parties in each case.

Cur. adv. vult.

PIKIS J. read the following judgment. A number of teachers joined as parties in the five recourses here under consideration, separately challenging the validity of the decision of the Educational Service Commission of 20.9.83 to promote the interested parties, 48 of them, to the post of Assistant Headmaster Elementary Education. Two other recourses directed against the same decision were withdrawn in the course of the hearing¹. Because of the similarity of the factual and legal issues raised in the five recourses, they were appropriately consolidated for purposes of hearing and will be disposed of together. Subsequent to the commencement of the hearing the recourses were withdrawn against two of the interested parties, namely, Androula Soupashis and Tasoula Marcou, and the proceedings were dismissed in so far as they related to them. Also, the challenge to the appointment of Charalambos Charalambous² was confined to Recourses Nos. 521/83, 526/83 and 25/84.

30 *The background and process leading to the sub judice decision;*

On 29.4.83 applications were invited for the filling of the position of Assistant Headmaster Elementary Education,

¹ Recourses Nos. 497/83 and 522/83

² Personal File No 3791.

a first entry and promotion post. There were 48 vacancies to be filled. The publication attracted 555 applications screened, in the first place, at a meeting of the respondents of 26.5.83. As a result, they drew up six lists of candidates eligible and suitable for promotion. The lists were compiled by reference to a variety of criteria referable to length of service and performance at work, as evaluated in the confidential and service reports. In the case of one of these lists, qualifications were named as a distinct consideration of suitability. It is worth recounting the criteria adopted for each one of the lists in that they reveal the approach of the respondents to the evaluation of the suitability of the several candidates for promotion:

LIST A' :

- (i) Successful (ευδόκιμος) service during the preceding two years, coupled with 15
- (ii) at least thirty years service.

LIST B' :

- (i) Very (Αίαν) successful service, coupled with
- (ii) service for at least a period between 25 and 29 11/12 years. 20

LIST C' :

Excellent performance during the last year, described as such in the last service report, coupled with service between 19 and 24 11/12 years. 25

LIST D' :

- (i) Excellent performance during the last two years, characterised as such in the corresponding service reports, plus
- (ii) service between 13 and 18 11/12 years. 30

LIST E' :

Candidates in possession of a university degree not included in any one of the above four categories were

included in this list, provided their average mark over the last two years was no less than 35 out of 40.

LIST F' :

Service in an elementary school in the occupied areas.

5 This list included only one person.

Performance at work was assessed by reference to service and confidential reports and length of service from their personal files. The candidates included in the above lists were invited to interviews beginning in June, 1983 and
10 concluded at the end of August, 1983.

Applicants as well as the interested parties were invited to an interview. All of them were included in the above suitability lists. No question of eligibility of any one of the interested parties arises in the present proceedings. Never-
15 theless, it is worth recounting the qualifications envisaged by the scheme of service for promotion, relevant to examination of the manner in which the respondents exercised their discretion in this case:

20 "Thirteen years service, two of which must have been spent in three-teacher schools or schools situate in rural areas (preferably three-teacher schools)"

The above were the formal qualifications required by way of length of service. Another prerequisite referable to merit was that the service of candidates should have been
25 rated as "successful" (ευδόκιμος υπηρεσία) during the preceding two years. These were the minimum qualifications necessary for promotion. Postgraduate education abroad or a title in educational courses or a certificate of the Cyprus Educational Authorities certifying attendance at special
30 courses organised for the purpose by the Ministry of Education, were stipulated to be additional qualifications.

To complete the background to the impugned decisions, it is worthy of mention that the interviews were attended by one of the two General Inspectors of Education, Mr. G.
35 Papaleontiou. Whether Mr. Papaleontiou took part in the interviews is not stated in the minutes of the respondents. At a subsequent stage Mr. Papaleontiou, as well as the

other General Inspector of Education, Mr. A. Papadopoulos, attended a meeting of the respondents and submitted a list of candidates recommended by the Department of Elementary Education for promotion. Apparently, they communicated the views of the Department orally and the names of the recommendees were listed in the minutes of the respondents. In virtue of what powers this list was submitted, it is nowhere stated. Presumably, they were submitted under the provisions of s. 35(3) of the Educational Service Law—10/69 (as amended by s. 5(c) of Law 53/79). These recommendations are not reasoned in the least. They merely record the names of the candidates recommended by the Department.

Eventually, the Educational Service Commission evaluated the suitability of the candidates interviewed for appointment, and decided to promote the interested parties on a consideration of:-

- (a) Their confidential and service reports.
- (b) their qualifications and seniority,
- (c) the recommendations of the Department of Elementary Education, and
- (d) the performance of the candidates at the interviews.

Certain observations of the respondents are recorded, explanatory to the decision, as follows:-

- (i) With three exceptions, every interested party had high marks between 35 and 36 out of 40. The exceptions are not named. Moreover, the years in respect of which the performance of candidates was evaluated is not specified either. It is settled that an officer's entire career must be taken into consideration for purposes of promotion, though greater importance may be attached to performance in recent years. Reading the decision one is apt to form the impression that the respondents took into consideration for purposes of evaluation the performance of the candidates during the preceding two years.

- (ii) The interested parties again with three exceptions

performed excellently at the interview however, the poor performance at the interview of the three interested parties was, as stated in the minutes, counterbalanced by what they refer to as their
5 "striking superiority in seniority".

- (iii) Additional qualifications possessed by some of the candidates did not, in the respondents' view, neutralise the superiority of interested parties in seniority, marks and recommendations.

10 *The challenge to the decision:*

First, the decision is challenged on formal grounds, that is, the procedure leading to the sub judice decision allegedly defective. The reasons put forward are the following:-

- 15 (a) The lists of eligibility were prepared on arbitrary grounds and show a malappreciation on the part of the respondents of their duty to select the candidates best suitable on a consideration of the criteria set down by law, namely, merit, qualifications and seniority (section 35(2)—Law 10/69). Thus, they began
20 their evaluation upon a faulty premise.
- (b) The source of the recommendations of the Department of Elementary Education is uncertain and more important still the recommendations were wholly unreasoned. Therefore, they ought to have been disregarded.
25 Considering that specific importance was attached to them as a criterion for the promotion of the interested parties, they vitiated the decision of the respondents, liable to be set aside for misconception of material facts.
- 30 (c) The decision itself though reasoned in a general sense in that it records the factors by reference to which the promotions were made, the reasoning was inadequate in the circumstances of the case, considering the great number of candidates and their rival claims to
35 promotion.
- (d) Undue weight was attached to the performance of the candidates at the interview, a factor that should of

itself carry little weight considering the voluminous material before the respondents shedding light on the personality of the candidates and their educational talents.

Also, the decision is questioned on specific grounds arising from a comparison of the merits in the wider sense, of the applicants and interested parties, some or all of them. To enable the Court gain a comprehensive view of the career of candidates, directions were given for the preparation of tables, indicating -

- (a) their performance as rated by the educational authorities throughout their career and,
- (b) tables indicating specifically their performance during the preceding six years.

Had the respondents carried out the same exercise, I am sure they would have had before them a sounder as well as a more objective basis for evaluation of the suitability of the candidates for appointment. Counsel in their addresses, as well as in clarifications before me, referred to numerous examples of candidates having superior merits to a number of the interested parties, in addition to enjoying seniority over them, without these considerations alerting the respondents to the need for closer scrutiny of their claims to promotion compared to the interested parties or some of them.

Counsel for the respondents supported the decision as valid and asked for the dismissal of the recourses. She submitted the respondents paid due consideration to the material relevant to the determination of the merits, qualifications and seniority of the candidates and nothing in the decision suggests that they transgressed their powers or abused their discretion in any way. None of the applicants established a case of striking superiority. The material before the Court provides no basis for interference with the sub judice decision.

The validity of the decision -

(A) *Lists of Suitability:* The criteria by reference to which the lists were prepared are unknown to the law and as such

are arbitrary. Everyone eligible under the scheme of service was entitled to be considered by reference to his merits, qualifications and seniority, evaluated in that order. There is nothing in the law justifying the attachment of increased importance to seniority under one guise or another. The caselaw establishes¹, that merit, qualifications and seniority, as they emerge from administrative records and other material properly before the appointing body, must be duly evaluated in a descending order of importance. The classification of candidates according to criteria unknown to the law was deprecated by the Supreme Court in *Michaeloudes and Another v. Republic*² as improper and a practice apt to render a decision founded thereon invalid. The inevitable conclusion is that respondents prepared the ground for the exercise of their ultimate decision upon a basis liable to mislead them in the exercise of their ultimate discretion.

(B) *Recommendations of the Department of Elementary Education :*

The submission that the basis upon which these reports were compiled is nowhere revealed, is correct. In *Ioannidou and Others v. Republic*³ I explained in detail the implications of s. 35(3)—Law 10/69 (as amended by Law 53/79), and the impact of a departmental recommendation on the selection process. The law aimed to set up a collective and impersonal procedure for the assessment of the suitability of teachers serving in different parts of the country. The process followed for arriving at the departmental list is not stated nor is it made known whether it is to any extent founded on the impressions of Mr. Papaleontiou of the performance of the candidates at the interview. Even if we were to assume that this vacuum could be filled by the presumption of legality, the recommendations were wholly unreasoned. And as such cannot stand the test of judicial review. Not only final but every preliminary administrative act, too, must be reasoned in a way making possible judicial review. L. Loizou, J., dealt

¹ *Hadjisavva v. Republic* (1982) 3 C.L.R. 76; *Tantas v. Republic* (1983) 3 C.L.R. 1430; *Spanos v. Republic* (1985) 3 C.L.R. 1828.

² (1979) 3 C.L.R. 66, pp. 70, 71.

³ (1984) 3 C.L.R. 1283.

specifically with the duty to reason recommendations, under s.35(3), in *Themistocleous and Others v. Republic*¹. The following passage from his judgment is indicative of the need for reasoning and the form it should take to make possible its review by judicial action:-

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“In the present case the department concerned confined itself to merely listing the names of those candidates whom it recommended for promotion without stating why and on what criteria it chose to recommend them....”.

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The list of recommended candidates may be regarded as a bare recommendation that should carry no weight with the Educational Service Commission. It is evident from their decision that they attached specific weight to it as a guide to the suitability of candidates and to that extent their decision is liable to be set aside for misconception of material facts.

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(C) *Reasoning of the decision:* The decision, though reasoned in a general sense, its reasoning is inadequate considering the magnitude of their task. At least in the case of some candidates whose merits were impressive, the respondents ought to have adverted to a more detailed comparison and indicate their reasons for the preference of some of the interested parties. The following examples demonstrate the inadequacy of the reasoning of the respondents in so far as they failed to make a specific comparison between some of the applicants and a number of the interested parties. For example, applicants Elli Zinghi, Andreas Hadjipavlis, P. Kallis and S. Pastellas, had, compared to interested parties, A. Christodoulides, Ch. Charalambous, Ch. A. Charalambous, C. Ioannides and Eleni Mosphili -

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- (i) Better marks during the preceding two years.
- (ii) Better marks during the preceding six years; and
- (iii) longer service.

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Given this superiority of the applicants, one would have

¹ (1985) 3 C.L.R. 1070, 1081, 1082..

anticipated some specific reasoning why the interested parties were preferred to the applicants. Given this vacuum and the absence of reasons in justification of the departmental recommendations, the ultimate choice made by the respondents tends to be contradicted by the material they professed to rely on, notably, reports on the parties and their length of service.

Moreover, it appears to me, as earlier indicated, that respondents confined their inquiry as to merits to the performance of the candidates during the preceding two years. Although greater weight may be given for obvious reasons to recent performance of a candidate at work, it is well settled on authority that the entire career of an officer must be taken into consideration¹, not least because it is indicative of devotion to duty. Also, it is apt to convey a comprehensive picture of the services of a teacher and provide an objective basis for evaluation.

In view of the above, I regard the reasoning of the decision of the respondents as inadequate in the circumstances of the case. Perhaps I should add that no administrative body should rely on a stereotype form of reasoning as necessarily adequate in all cases. The reasoning of a decision must necessarily reflect the intrinsic nature of the decision, the magnitude of the inquiry undertaken to arrive at the decision (here the respondents were required to carry out a gigantic task given the number of candidates), and where the facts so require it must be specific.

(D) *Interview*: It is settled on authority that performance at an interview is a factor of varying importance² but rarely, if ever, can it be allowed to outweigh the objective picture emerging from consideration of administrative records, especially if they stretch, as in this case, to many years. If it were otherwise, an interview could well neutralise performance at work and devotion to duty over decades of service.

¹ *Odysseas Georghiou v. Republic* (1975) 3 C.L.R. 153; *Hadjigeorghiou v. Republic* (1975) 3 C.L.R. 477; *Sosilos v. Republic* (1984) 3 C.L.R. 1133.

² *Andreas Triantafyllides and Others v. Republic (P.S.C.)* (1970) 3 C.L.R. 235; *Makrides v. Republic* (1983) 3 C.L.R. 622.

CONCLUSION :

For all the above reasons I find that the decision cannot stand the test of judicial review and is vulnerable to be set aside. This being my decision, I consider it unnecessary to examine specific complaints of disregard of the superiority of some of the applicants in relation to the appointment of some of the interested parties, in order to leave the ground free for the respondents to give fresh consideration to the competing claims of the candidates for promotion. The sub judice decision is annulled in every case. No order as to costs.

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