

1985 April 10

[L. Loizou, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

- 1. ANDREAS KOTSONIS,
- 2. NICOS ROUSOS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases Nos. 270/71 and 272/71).

Public Officers—Schemes of service—Making of—Section 29(1) of the Public Service Law, 1967 (Law 33/67)—Does not imply that every preparatory act in preparing them should have been made by the Council of Ministers—Sufficient compliance with the section if they are approved by the Council of Ministers. 5

Public Officers—Terms and conditions of service—Safeguarding of—Article 192 of the Constitution—What it safeguards is not the prospects of advancement of public officers, which is a mere expectation, but only the terms and conditions of service of the post held by them on the 16th August, 1960, when the Constitution came into operation—Further the said Article does not provide against re-organization of a particular department or the change of the qualifications required for any particular promotion post. 10 15

Public Officers—Promotions—Head of Department—Setting up a Board, for the purpose of assisting him in making a fair comparison between the candidates, which was not a Board envisaged by section 36 of the Public Service Law, 1967 (Law 33/67)—Section 44(3) of the Law not contravened. 20

Public Officers—Promotions—Absence abroad for educational purposes—Recognition of period of absence “as experience or service for the purpose of schemes of service”—Decision No. 8969 of the Council of Ministers.

5 The applicants were Land Clerks, 1st Grade, in the Department of Lands and Surveys. As a result of the Budget Law 1970 a new post of Assistant Land Officer was created which is a promotion post from the immediately lower post of Land Clerk, 1st Grade. The Public
10 Service Commission appointed the interested parties to the new post and hence this recourse.

Counsel for the applicants mainly contended:

- 15 (a) That the scheme of service was contrary to the provisions of section 29(1)* of the Public Service Law, 1967 because it was merely approved by the Council of Ministers whereas section 29(1) envisages schemes of service “made” by the Council of Ministers.
- 20 (b) That the scheme of service contravened Article 192 of the Constitution because the acquired rights of the applicants were adversely affected in that, whereas previously they would have been in a position to be promoted to the immediately higher post of the post of Land Clerk, 1st Grade, which they held, which was the post of Land Officer, now by the creation of the new
25 post of Assistant Land Officer, which was placed between the two posts, they had to be considered for promotion to this new post in the light of the requirements of the various sections which were provided for by the new scheme of service.
- 30 (c) That the Departmental Board set up by the Director was unwarranted, unauthorized and it was not legally open to him to set up this Board** because such a course was contrary to section 44(3) of the Public Service Law, 1967.

* Section 29(1) is quoted at p. 717 post.

** As the candidates for promotion to the post in question were serving in different branches of the department and in order to ensure a uniformity in the rating of the suitability of each candidate for promotion the Director set up a board consisting of five senior Land Officers and himself with a view to making a fair comparison between the candidates of each grade.

- (d) That, with regard to interested party Georghiou, the respondent Commission acted contrary to the decision of the Council of Ministers No. 8969*.

Held, (1) upon a fair construction of the provisions of section 29(1) of the Public Service Law, 1967, it cannot be reasonably argued that it implies that every preparatory act in preparing the scheme of service should have been made by the Council of Ministers and that it is not sufficient compliance with the section if they approve it (see *Panayides and the Republic* (1972) 3 C.L.R. 467 at p. 479). 5 10

(2) That what Article 192 of the Constitution safeguards is not the prospects of advancement of public officers, which is a mere expectation, but only the terms and conditions of service of the post held by them substantively on the 16th August, 1960, when the Constitution came into operation; and that further the said Article does not provide against re-organization of a particular department or the change of the qualifications required for any particular promotion post (see, in this respect, *Piperis v. The Republic* (1967) 3 C.L.R. 295 at p. 299 and *Economides v. The Republic* (1972) 3 C.L.R. 506 at p. 520). 15 20

(3) That bearing in mind that this was not a Board under s. 36 of the Public Service Law, 1967, which only the Council of Ministers could establish, but a Board set up by the Head of Department for the sole purpose of assisting him in making a fair comparison between the candidates regarding their suitability for promotion and that he was, at the request of the Commission, personally present at the meeting and that he made his recommendations before the decision was taken, the Head of the Department was fully entitled to consult his subordinates, especially those of higher rank, so that he could decide about the recommendation he was going to make to the Commission. 25 30 35

- (4) That decision No. 8969 of the Council of Ministers

* This decision is quoted at p. 719 post and it related to recognition as «experience or service for the purpose of schemes of service» of education abroad.

5 applies to cases where a fixed period of experience or service is provided by the scheme of service as a prerequisite to a promotion; that in the present case no such provision is contained in the relevant scheme nor is there any indication anywhere that the period that this interested party spent studying abroad was taken into consideration as practical experience in valuation; and that, therefore, it is not at all relevant in the present case.

Applications dismissed.

10 Cases referred to:

Panayides v. Republic (1972) 3 C.L.R. 467 at p. 479;

Piperis v. Republic (1967) 3 C.L.R. 295 at p. 299;

Economides v. Republic (1972) 3 C.L.R. 506 at p. 520;

Thalassinos v. Republic (1974) 3 C.L.R. 290.

15 **Recourses.**

Recourses against the decision of the respondent to promote the interested parties to the post of Assistant Land Officer in the Department of Lands and Surveys in preference and instead of the applicants.

20 *L. Papaphilippou*, for the applicants.

Cl. Antoniadis, Senior Counsel of the Republic, for the respondent.

K. Talarides, for interested parties *A. Georghiou* and *N. Karoullas*.

25 *Cur. adv. vult.*

L. LOIZOU J. read the following judgment. These two recourses were heard together in view of their nature as they both challenge the validity of the same administrative act. The salient facts are as follows:

30 The applicants were Land Clerks, 1st Grade, in the Department of Lands and Surveys. As a result of the Budget Law 1970 a new post of Assistant Land Officer was created which is a promotion post from the immediately lower post of Land Clerk, 1st Grade.

The Minister of Finance, had, by September, 1970, approved the filling of 28 vacancies in the post of Assistant Land Officer in the Department of Lands and Surveys (24 permanent and four temporary Dev.). However, due to the fact that no scheme of service existed yet the vacancies were not filled in 1970 (exhibit 4). 5

The relevant scheme of service was approved by the Council of Ministers by its decision No. 10355 of the 27th March, 1971, (exhibit 5). Under the provisions of the scheme the post in question is divided in eight departmental sections and the duties and responsibilities of the officers of each section are different but the holders of the posts in each section are interchangeable with the holders of the posts of the other sections provided that they have the necessary qualifications and experience for the performance of the duties of such other section. 10 15

The Director-General of the Ministry of the Interior informed the Chairman of the Public Service Commission by letter dated the 5th April, 1971 (exhibit 6) that the scheme was ready and requested him to fill the vacant posts. 20

The Commission at its meeting of the 21st April, 1971, decided to consider the filling of the relevant posts on the 3rd May, 1971, and requested the attendance of the Director of the Department of Lands and Surveys. The Director then, on the 1st May, 1971, addressed a letter, (exhibit 11) to the Chairman of the Public Service Commission paragraph 2 of which reads as follows: 25

“The candidates for promotion to the post in question are serving in different branches of the department and in order to ensure a uniformity in the rating of the suitability of each candidate for promotion I set up a board consisting of five Senior Land Officers and myself with a view to making a fair comparison between the candidates of each grade.... In doing so I wish to make it clear that this should not be taken as an attempt of the department to interfere in any way with the duties of the Commission.” 30 35

At its meeting of the 3rd May, 1971, the Commission, leaving one post vacant at the request of the Director-General of the Ministry of the Interior after considering (a) 40

- the merits, qualifications, seniority and experience of all candidates as reflected in their personal files and annual confidential reports; (b) the recommendations of the board mentioned in exhibit 11 and (c) the views of the Director of the Department of Lands and Surveys who was present at the meeting decided to promote, amongst others, the interested parties to the post of Assistant Land Officer with effect from the 15th May, 1971, as being the best and most suitable.
- 10 The applicants, by these recourses, apply for a declaration that the promotion and/or secondment of the interested parties to the post of Assistant Land Officer instead of themselves in null and void and of no legal effect whatsoever.
- 15 Applicant in Case No. 270/71, Andreas Kotsonis (hereinafter to be referred to as applicant No. 1) has entered the Public Service in January, 1955, as a Clerical Assistant. He became a Land Clerk, 1st Grade, Department of Lands and Surveys, on the 1st July, 1969. He has been
- 20 graded as "suitable plus" in what is referred to as the Valuers List (exhibit 8) which contains the names of candidates for promotion to the post of Assistant Land Officer (Valuation Branch) in order of seniority. He is 11th on this list and 35th on the list exhibit 9 which contains the
- 25 names of all candidates for promotion to the new post in order of seniority. His recourse is directed against the promotion of only two of the interested parties, namely, Andreas Georghiou and Nicos Karoullas. Mr. A. Georghiou had been on scholarship in the United Kingdom (Banking
- 30 College of Technology) in Land Valuation (Chartered Surveyor) since the 12th October, 1968. He has been graded as "most suitable" in the Valuers List. He is 13th on this list and 41st in order of seniority on the list exhibit 9. Mr.
- 35 N. Karoullas, the other interested party, has been graded as "very suitable" in the Valuers List. He is 12th on this list and 36th in order of seniority on the list exhibit 9.

- Applicant in Case No. 272/71, Nicos Roussos (hereinafter to be referred to as applicant No. 2) has entered the Public Service on the 15th February, 1943, as a Coast
- 40 Watcher and was promoted to the post of Land Clerk, 1st Grade, on the 1st October, 1965. He is 17th in order of

seniority on exhibit 9 and he has been graded as "not suitable" for promotion. He attacks the promotion of eleven interested parties the list of whose names is attached to the recourse.

These applications are based on the following grounds of law: 5

(1) The respondents acted upon schemes of service unlawfully and irregularly introduced and which infringed vested rights of the applicants.

(2) The respondents disregarded the seniority, experience and qualifications of the applicants which were superior to those of the interested parties. 10

(3) They acted in excess and/or abuse of powers during the procedure of selecting the interested parties.

(4) They also acted contrary to the decision of the Council of Ministers No. 8969 of the 7th August, 1969, and, in so far as applicant No. 1 is concerned. 15

(5) That the respondents acted in excess and/or in abuse of powers in that they disregarded the fact that they refused, in the past, the applicant study leave. 20

At the hearing of the recourses learned counsel for applicants argued the following points:

(a) That the scheme of service, exhibit 5, made by decision of the Council of Ministers No. 10355 was contrary to the provisions of s. 29(1) of the Public Service Law. 25

(b) That it also contravened Article 192 of the Constitution.

(c) That the Departmental Board set up by the Director was unwarranted, unauthorized and it was not legally open to him to set up this Board. 30

(d) That the Commission acted contrary to the decision of the Council of Ministers No. 8969 (exhibit 1).

With regard to points (a) and (b) it was contended by learned counsel that the scheme of service contravened the provisions of s. 29(1) of the Public Service Law because, 35

as it appears at the footnote which reads "Approved by the Council of Ministers—Decision No. 10355 dated 27.3.71" it was merely approved by the Council of Ministers whereas the section envisages schemes of service "katartizomena" (made) by the Council of Ministers and that in view of this the scheme of service is not valid.

Section 29(1) reads as follows:

«29 (1) Τὰ γενικά καθήκοντα καὶ εὐθῦναι θέσεώς τινος καὶ τὰ διὰ τὴν κατοχὴν αὐτῆς ἀπαιτούμενα προσόντα καθορίζονται εἰς σχέδια ὑπηρεσίας καταρτιζόμενα ὑπὸ τοῦ Ὑπουργικοῦ Συμβουλίου.»

(29 (1) The general duties and responsibilities of an office and the qualifications required for the holding thereof shall be prescribed in schemes of service made by the Council of Ministers.)

The other reason why, in counsel's submission, the scheme of service was not valid is because it contravenes the provisions of Article 192 of the Constitution which safeguards the terms and conditions of service of holders of office in the Public Service immediately before the date of the coming into operation of the Constitution. In elaborating on this point counsel submitted that by the scheme of service the acquired rights of the applicants were adversely affected in that, whereas previously they would have been in a position to be promoted to the immediately higher post of the post of Land Clerk, 1st Grade, which they held, which was the post of Land Officer, now by the creation of the new post of Assistant Land Officer, which was placed between the two posts, they had to be considered for promotion to this new post in the light of the requirements of the various sections which were provided for by the new scheme of service.

The answer to these points is that with regard to (a) upon a fair construction of the provisions of the section in question it cannot be reasonably argued that it implies that every preparatory act in preparing the scheme of service should have been made by the Council of Ministers and that it is not sufficient compliance with the section if they approve it. (See, *Panayides and the Republic* (1972) 3 C.L.R. 467 at p. 479).

With regard to (b) it is now settled that what Article 192 safeguards is not the prospects of advancement of public officers, which is a mere expectation, but only the terms and conditions of service of the post held by them substantively on the 16th August, 1960, when the Constitution came into operation; and further that the said Article does not provide against re-organization of a particular department or the change of the qualifications required for any particular promotion post. (See, in this respect, *Piperis v. The Republic* (1967) 3 C.L.R. 295 at p.299 and *Economides v. the Republic* (1972) 3 C.L.R. 506 at p. 520. Useful reference may also be made to Conclusions from the Jurisprudence of the Greek Council of State 1929-59 at p. 313).

As to point (c) it was contended that the setting up of the Board is contrary to the provisions of section 44(3) of the Public Service Law which provides that "in making a promotion, the Commission shall have due regard to the annual confidential reports on the candidates and to the recommendations made in this respect by the Head of Department in which the vacancy exists". And learned counsel submitted that, in view of this clear provision, it was not legally open to the Head of Department to delegate his duties to any other organ before the 3rd May, when the decision complained of was taken, because in this way what the Commission had in effect before it was the recommendation of the Board and not that of the Director.

Bearing in mind that this was not a Board under s. 36 of the Law, which only the Council of Ministers could establish, but a Board set up by the Head of Department for the sole purpose of assisting him in making a fair comparison between the candidates regarding their suitability for promotion and that he was, at the request of the Commission, personally present at the meeting and that he made his recommendations before the decision was taken, this case, in my view, falls within the purview of *Thalassinos v. The Republic* (1974) 3 C.L.R. 290 where, under similar circumstances, it was held by the Full Bench of this Court that the Director-General, who was representing the Head of the Department at the meeting of the Com-

mission, was fully entitled to consult his subordinates, especially those of higher rank, so that he could decide about the recommendation he was going to make to the Commission. At p. 293 the Court had this to say:

5 “We can find nothing wrong in Law with the above
 procedure; it was not only lawful, but, also desirable
 to ensure that the Director-General, who was going to
 appear before the Commission as Head of Depart-
10 ment, would be fully informed about the merits of
 the candidates.”

It may be noted that in the above case all the interested parties whose secondments to the higher post were challenged were among those who were so recommended whereas the appellant was not.

15 In the light of the above I must hold that this point also must fail.

 Lastly, with regard to point (d) which relates to the decision of the Council of Ministers No. 8969 (exhibit 1) learned counsel explained that this is relevant only in so far as interested party A. Georghiou, who was absent on scholarship at the relevant time, is concerned and contended that because of such absence the decision of the Commission was contrary to this decision. The decision of the Council of Ministers in question reads as follows:

25 “(a) Education abroad leading to the obtaining of
 a university diploma or title by a serving officer not
 possessing any diploma or title will not be recognized
 as experience or service for the purposes of schemes
 of service for promotion post or first appointment
30 and promotion.

 (b) Education abroad up to one year not leading
 to the obtaining of a university diploma or degree
 and not considered on the basis of the schemes of
 service as an advantage is recognized as experience or
35 service on condition that the said education will be
 connected with the duties of the officer.”

It is obvious from a mere reading of this decision that it applies to cases where a fixed period of experience or

service is provided by the scheme of service as a prerequisite to a promotion. In the present case no such provision is contained in the relevant scheme nor is there any indication anywhere that the period that this interested party spent studying abroad was taken into consideration as practical experience in valuation and I do not, therefore, consider that, in the circumstances, it is at all relevant in the present case. 5

In the light of the above these recourses must fail and they are hereby dismissed. 10

Recourses dismissed.