

1985 June 7

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

THEODOULOS CHARALAMBIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE PUBLIC SERVICE COMMISSION,
2. THE DIRECTOR-GENERAL OF THE
PLANNING BUREAU,

Respondents.

(Case No. 527/83).

Public Officers—Promotions—Departmental Committees—Set up under section 36 of the Public Service Law, 1967 (Law 33/67)—Composition—Promotions in the Planning Bureau, an independent Office—Departmental Committee consisting of the Director-General of the Planning Bureau and four Director-Generals of Ministries—Properly set up—Paragraph 1(c) of the Regulations governing composition and functions of Departmental Committees. 5

Public Officers—Promotions—Confidential reports—Preparation—Reporting officer—Countersigning Officer—Whether it may be one and the same person—Reporting officer could not act as such because he left the Department—Countersigning Officer had direct knowledge of the work of the candidates—Fact that he did not consult the reporting officer not a material irregularity which can be regarded as vitiating the relevant administrative process which led to the final act, the promotions—Regulations 3(1) of Administrative Circular 491/79. 10 15

Bias—Impartiality—Have to be established to the satisfaction of the Court. 20

The applicant in this recourse challenged the validity of the promotion of the interested party to the post of Head of the Planning Bureau, an independent Office. Counsel for the applicant contended.

- 5 (a) That the composition of the Departmental Committee which was set up for the first selection of the candidates was not lawful, at it was not set up in accordance with the provisions of the Circular concerning the setting up of Departmental Committees.
- 10 (b) The confidential report for the year 1982 concerning the applicant was irregularly made as the evaluation of the officer was not made by his immediately superior officer, as provided by the Regulations, but by the Director-General of the Department who at the same time was the countersigning officer, who had no direct or personal knowledge of the performance by the applicant of his duties.
- 15 (c) That there was lack of impartiality on the part of the Director-General of the Planning Bureau and there was bias against the applicant.
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The Departmental Committee consisted of the Director-General of the Planning Bureau as Chairman and four Directors-General of Ministries as members.

25 Under regulation 3(1) of administrative circular 491/79, the confidential reports are prepared by reporting officers and are countersigned by countersigning officers with the exception of the cases in which the reporting officer and the countersigning officer is one and the same person. The Planning Bureau was a department with a limited number of officers and limited range of work. For a number of years the Director-General, Mr. Aristidou, had the general supervision of the Office and till 1978 he was both the reporting and countersigning officer for the applicant and the interested party as well as for all other officers of the department. Due to the promotion of the immediately superior officer of the applicant, Mr. Symeonides, the latter could not act as a reporting officer in respect of the report for 1982.

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Held, (1) that what is applicable in the present instance

is sub-paragraph (c)* of paragraph 1 of the Regulations governing the composition and functions of Departmental Committees under section 36 of the Public Service Law, 1967 (Law 33/67); and that in the light of the provisions of this sub-paragraph the Departmental Committee was properly set up. 5

(2) That in the circumstances of the present case this Court finds that in view of the provisions of paragraph 3(1) of the circular No. 491/79 once the post of the Head of the Department who was the immediately superior officer to the applicant and interested party was vacant due to the promotion of Mr. Symeonides to the post of Director-General of the Ministry of Justice and also the fact that Mr. Symeonides could not act as a reporting officer once he had left the Department, there was nothing wrong for Mr. Aristidou who was the Director-General of the Department to act both as reporting and counter-signing officer. 10 15

Held, further, that Mr. Aristidou had a direct knowledge of the work of the applicant and the interested party; that he had a general supervision over all officers of such Department and that he could act as a reporting and countersigning officer being in a position satisfying the circular to make a confidential report about them; that comparing the confidential report of 1982 of the applicant and of the interested party, to the reports of the previous years which were prepared by Mr. Symeonides and countersigned by Mr. Aristidou, there are no striking differences between them; that in the circumstances of the case the fact that Mr. Aristidou at the time of preparing the report, did not consult Mr. Symeonides, cannot be treated as amounting to a material irregularity which can be regarded as vitiating the relevant administrative process which led to the final act. 20 25 30

(3) That though persons who participate in a special administrative procedure, have to be impartial and un- 35

* Paragraph 1(c) reads:

«For the filling of vacant post in an independent office or service, a Departmental Committee is set up consisting of the Head of such office or Department who will act as Chairman and of four other officers elected by him for the particular cases.

biased vis a vis the candidates and proof of bias or impartiality are matters which may lead to the annulment of any act or decision taken under such procedure, it is not sufficient that bias, animosity or lack of impartiality should be alleged but it has to be established to the satisfaction of the Court that the decision taken by an organ was taken under the influence of such factors; that in the present case this Court has not been satisfied from the material before it and comparing the reports prepared by Mr. Aristidou to those of the previous years that there is any indication that Mr. Aristidou acted insinuated by adverse motives towards the applicant.

Application dismissed.

Cases referred to:

- 15 *Christou v. Republic* (1980) 3 C.L.R. 437 at p. 449;
Ierides v. Republic (1980) 3 C.L.R. 165;
Kontemeniotis v. C.B.C. (1982) 3 C.L.R. 1032;
Decision of the Greek Council of State No. 1041/69.

Recourse.

- 20 Recourse against the decision of the respondents to promote the interested party to the post of Head of the Planning Bureau in preference and instead of the applicant.
- A. S. Angelides*, for the applicant.
A. Vladimerou, for the respondents.
- 25 *A. Drakos*, for the interested party.

Cur. adv. vult.

SAVVIDES J. read the following judgment. Applicant by this recourse challenges the decision of the respondent Commission to promote Mr. Simeon Matsis, interested party in these proceedings, to the post of the Head of the Planning Bureau instead of the applicant.

The facts of the case are briefly as follows:

By letter dated 23rd February, 1983 the Director-General of the Planning Bureau informed the respondent Commission that the approval of the Minister of Finance had been obtained for the filling of the vacant post of the Head of the Planning Bureau and requested them to take the necessary steps for the filling of such post. On the 3rd March, 1983, respondent 1 Commission decided to advertise the vacancy in the said post which, according to the scheme of service, was a first entry and promotion post. A notice was accordingly published in the official Gazette of the Republic of the 11th March, 1983. The applicant was amongst the four persons who submitted an application for such post.

The secretary of respondent 1 acting in accordance with the regulations submitted on the 20th May, 1983, to respondent 2, the said applications, together with the confidential files of the candidates, copies of the publication in the Gazette and the scheme of service, requesting him to set up a Departmental Committee to consider the applications. As a result, a Departmental Committee was set up under the provisions of section 36 of the Public Service Law, 1967 (Law 33/67), which met, considered the applications and recommended three of the candidates as the most suitable for the filling of the post. Applicant and interested parties were included in such list. Respondent 1 met on 25.6.1983 to consider the recommendations of the Departmental Committee and decided to call for an interview the three candidates recommended by the Departmental Committee at which respondent 2 was to be invited.

At its meeting of 1.9.1983 respondent 1 interviewed separately the three candidates who were recommended by the Departmental Committee in the presence of respondent 2. The Public Service Commission then heard the opinion of respondent 2 as to the performance of the candidates at the interviews and proceeded to evaluate the performance of the candidates at the interviews. The record of the minutes of such meeting, reads as follows in this respect:

“At this stage the Director-General of the Planning Bureau left the meeting.

Then the Commission evaluated itself the performance of the candidates at the interviews, in the light of the relevant comments of the Director-General of the Planning Bureau. The evaluation of the Commission is as follows:

1. Matsis Symeon — Very good
2. Charalambides Theodoulos — Very good
3. Hadjiconstantinou Constantinos — Nearly very good.

Due to time limit, the Commission postponed for tomorrow the further consideration of the matter.”

On the following day the Commission met again and selected the interested party as the best candidate for the appointment and decided to appoint him in the post of the Head of the Planning Bureau as from 15.9.1983.

The record of the minutes of the said meeting read as follows:

“The Commission considered all material requirements for the filling of the post, the applications submitted together with all particulars given by the candidates in support of their applications, as well as their personal files and their confidential reports, and took into consideration the conclusions of the Departmental Committee, the performance of the candidates during the interviews with the Public Service Commission in the light of the comments and views of the Director-General of the Planning Bureau.

The Commission took into consideration the merit of the candidates, as emanating from their annual confidential reports. Indicatively their grading during the last three years, appears as follows:

Constantinos Hj. Constantinou.

1980: Generally ‘good’, (‘very good’ on 4 topics and ‘good’ on 8) (0-4-8).

1981: Generally ‘very good’ (1-10-1).

1982: Generally 'very good' (5-7-0).

2. *Theodoulos Charalambides.*

1980: Generally 'excellent' (8-4-0).

1981: Generally 'excellent' (9-3-0).

1982: Generally 'excellent' (8-4-0). 5

3. *Simeon Matsis:*

1980: Generally 'excellent' (9-3-0).

1981: Generally 'excellent' (10-2-0).

1982: Generally 'excellent' (12-0-0).

The Commission also noted the qualifications of the candidates as well as their seniority. 10

Concerning seniority Hj. Constantinou who holds the post of the permanent Senior Commercial Officer (Scale A 13) since 1.2.78, is the most senior.

Charalambides and Matsis hold the post of Senior Planning Officer, (Scale A 13) since 1.7.82 and previously they held the post of Planning Officer A since 1.4.1982. Charalambides is more senior in the immediately lower post of Planning Officer (which previously was called Planning Officer 1st Grade), having been promoted to such post on 1.6.1970 as against the interested party who was promoted to such post on 1.8.1974. 15 20

The Commission having taken into consideration all the material before it, came to the conclusion that Simeon Matsis was superior to all other candidates on the total of the established criteria and decided to appoint him as the most suitable candidate, in the permanent post of Head of Planning Bureau as from 15.9.1983." 25 30

As a result, applicant filed the present recourse, whereby he applies for the following relief:

- (a) A declaration of the Court that the act and/or deci-

sion of respondent 1 which was published in the official Gazette of the Republic on 30.9.1983 whereby it promoted Mr. Simeon Matsis Senior Planning Officer to the post of the Head of Planning Bureau as from 15.9.1983 is null and void and of no legal effect whatsoever.

(b) A declaration of the Court that the omission of respondent 1 to promote the applicant to the post of the Head of the Planning Bureau is null and void and of no legal effect and is the result, inter alia of the illegal and/or non objective and/or discriminatory act or acts of respondent 2 concerning the confidential reports of the applicant which also should be declared as null and void and of no legal effect, as what ought to have been done was omitted to be done.

A number of legal grounds had been set out in support of the application, but in the course of the hearing of the case, the grounds of Law relied upon culminated to the following:

(1) That the composition of the Departmental Committee which was set up for the first election of the candidates was not lawful, as it was not set up in accordance with the provisions of the Circular concerning the setting up of Departmental Committees (copy of such circular was annexed to the written address of counsel for applicant as Annex "A").

(2) The confidential report for the year 1982 concerning the applicant was irregularly made as the evaluation of the officer was not made by his immediately superior officer, as provided by the Regulations, but the Director-General of the Department who at the same time was the counter-signing officer, who had no direct or personal knowledge of the performance by the applicant of his duties.

It is the allegation of counsel for applicant that there was irregularity both in respect of the constitution of the Departmental Committee as well as the confidential reports and though the stages at which such steps were taken were preparatory stages in the process of a composite administrative act any irregularity in either of them will have the effect of nullifying the final act.

I shall deal first with the question raised as to the com-

position of the Departmental Committee.

The Departmental Committee which met at the Planning Bureau on 30.5.1983, and 8.5.1983, was composed of the following persons:

The Director-General of the Planning Bureau as Chairman and the Directors-General of the Ministries of Commerce and Industry, Mr. Erotokritos, Communications and Works, Mr. *HjiAnastassiou*, Interior, Mr. *Christophi* and Justice Mr. Symeonides, as members. 5

It was the contention of counsel for applicant that the above composition of the Committee violates paragraph 1 of the regulations as to the composition of a Departmental Committee in cases where it is considered necessary that the Directors-General of the Ministries should participate, as the Director-General of the Ministry of Finance and the Director-General of the Personnel Department did not participate. 10 15

It is apparent that the applicant had in mind the proviso in paragraph 1(d) of the Regulations for the composition and functions of Departmental Committees under section 36 of the Public Service Law. Sub-paragraph (d) of Regulation (1), provides as follows: 20

“(d) For the filling of vacant post of the interchangeable staff, that is, of the general administrative staff, the general clerical staff and messengers, a Committee is set up composed of the Head of the Personnel Department who will act as Chairman and of four other officers selected by the Director-General of the Ministry of Finance in the particular case.” 25

And then follow some provisos, one of which, the one on which counsel for applicant ought to rely in his argument, reads as follows: 30

“Provided that whenever the filling of the post in respect of which participation in the Departmental Committee of Directors-General is deemed necessary, as chairman of such Committee acts the Director-General of the Ministry of Finance, and the Head of 35

the Personnel Department participates as one of the other four members.”

It is clear, however, that the above proviso is part of sub-paragraph (d) of regulation 1 and does not refer to
5 the other sub-paragraphs (a), (b) and (c).

In the present case the provision which is applicable is the provision under para. 1 (c) which reads as follows:

“For the filling of vacant post in an independent
10 office or service, a Departmental Committee is set up consisting of the Head of such office or Department who will act as Chairman and of four other officers elected by him for the particular case.”

In the light of the provisions of the said regulations and in view of my findings that what is applicable in the pre-
15 sent case is sub-paragraph (c) of paragraph 1, I have come to the conclusion that the Departmental Committee was properly set up and was constituted by the Director-General of the Planning Bureau and four other senior officers appointed by him, in this case Directors-General of Mini-
20 stries. It should be noted, however, that in its report the Departmental Committee did not make any special recommendations about any of the candidates but concluded that on the basis of their merit, as emanating from their confidential reports, their qualifications and seniority, the
25 three candidates selected by it should be recommended in an alphabetical order. There is nothing prejudicial in the report of the Departmental Committee against the applicant and in favour of the interested party or the third candidate. The Committee annexed to its report a summary of the
30 merit, qualifications and seniority of each one of the candidates as appearing in their files without any favourite comments for anyone of them.

I come next to consider the second ground argued by
counsel for applicant concerning the confidential reports.
35 It has been contended by counsel for applicant that the confidential reports for the year 1982 were not prepared by his immediate superior in the Department as provided by the relevant regulations but by respondent 2, Mr. Aristidou, who evaluated him without full knowledge of his per-
40 formance, and without having previously asked the opinion

of Mr. Symeonides who was the immediate superior officer responsible for the applicant. Mr. Aristidou besides being the reporting officer, he was also the countersigning officer in the confidential reports of 1982. It has been further contended by counsel for applicant that there was on the part of Mr. Aristidou animosity, lack of impartiality and prejudice against the applicant which finally led to the selection of the interested party.

In support of his argument counsel for applicant sought to rely on administrative circular 491/79 (copy of which was annexed to his written address as Annex "B") which sets out the procedure to be followed concerning the preparation of confidential reports. Under the provisions of such circular, the confidential reports are prepared by a reporting officer who has to be an officer of a superior rank to that of the person concerned, in fact his supervising officer who has direct knowledge of the work of the officer to be reported and who is in a position to express a responsible opinion as to the work and the abilities of the officer. After the preparation of such report, the countersigning officer who has to be superior in rank to the reporting officer and normally is the head of the Department or the hierarchically superior officer or head of the particular branch and who must also have a direct knowledge of the work of the officer for whom the report is made, makes his comments and countersigns the report. The countersigning officer may make such alterations to the report as he thinks fit but he has to give his reasons for doing so. It is further provided that where the officer for whom the report is made has served under the reporting officer for a period of less than six months, the reporting officer in making his evaluation of the officer, he must consult the officer or officers under whom the officer concerned had served for the rest of the period and this matter has to be mentioned in the report.

In a letter which was sent by Mr. Aristidou to the Public Service Commission on 21.9.1983, concerning the preparation of the confidential reports in this particular case, for the year 1982, in reply to an inquiry by the Chairman of the respondent Commission concerning a complaint of the applicant about his confidential report for the year 1982, Mr. Aristidou mentions that he had consulted Mr.

Symeonides, who was the Head of the Planning Bureau till the beginning of December, 1982, when he was appointed to the post of the Director-General of the Ministry of Education and as a result ceased to have anything to do with the Planning Bureau, and he goes on to state the following:

“... in the categories of officers whose work was supervised by Mr. Symeonides, due to the fact that-

- 10 (a) the regulations did not allow the appointment of Mr. Symeonides as reporting officer,
- (b) there was no other officer having a direct knowledge of their work to be in a position to express a responsible and valid opinion for their work and abilities, and
- 15 (c) as the number of officers employed in this office is small, I have a personal knowledge of the work of all the officers not only directly (by following up their work as a result of the out-
20 going and incoming correspondence of this office, their notes, reports, minutes of meetings, studies, preparation of programmes for development etc.) as well as indirectly (discussing with supervising officers the performance, inefficiencies and omissions of the officers in question)
25 there was no other choice for me but to perform personally the duties of the reporting officer.

For the same reason which is mentioned in paragraph (c) above, I also performed the duties of countersigning officer on the confidential reports of all the officers in my office, something which I always used to do.”

As to the case where a reporting officer can also be the countersigning officer, there is provision in the circular
35 about confidential reports under para. 3(1) which reads as follows:

“The confidential reports are prepared by reporting officers and are countersigned by countersigning

officers with the exception of the cases in which the reporting officer and the countersigning officer is one and the same person."

It is clear from the above provision that there are cases in which the reporting officer and the countersigning officer may be one and the same person, especially in small departments where such person has direct knowledge of the work of the officer and can express a responsible and valid opinion about the work and abilities of the officer and there is no other supervising officer holding a rank immediately higher to that of the person concerned. What, therefore, poses for consideration is whether Mr. Aristidou in this particular case discharged his duty properly as reporting and countersigning officer or whether there was another officer of higher rank supervising the applicant who had direct knowledge of the work of the applicant and could express an opinion about his work.

It has been contended by counsel for applicant that Mr. Aristidou was not the immediately superior officer of the applicant and, therefore, he could not have a direct knowledge of the work of the applicant and that he failed to ask the opinion of Mr. Symeonides who, for the most part of 1982 was the superior officer of the applicant and, therefore, his confidential report about the applicant for 1982 was based on insufficient knowledge of all material aspects.

Mr. Symeonides who was called as a witness by counsel for the applicant, said in his evidence that although Mr. Aristidou did not consult him at the stage of the preparation of the report of 1982, on several occasions during 1982 he had discussed with Mr. Aristidou matters concerning the operation of the office and the performance of all the officers.

From what emanates from the letter of Mr. Aristidou to respondent 1 and also from the evidence of Mr. Symeonides the Planning Bureau is a Department with a limited number of officers and limited range of work. For a number of years Mr. Aristidou had the general supervision of the office and till 1978 he was both the reporting and countersigning officer for the applicant and the interested party, as well as for all other officers of the department.

In the circumstances of the present case I find that in view of the provisions of paragraph 3(1) of the circular No. 491/79 once the post of the Head of the Department who was the immediately superior officer to the applicant and interested party was vacant, due to the promotion of Mr. Symeonides to the post of Director-General of the Ministry of Justice and also the fact that Mr. Symeonides could not act as a reporting officer once he had left the Department, there was nothing wrong for Mr. Aristidou who was the Director-General of the Department to act both as reporting and countersigning officer.

I am also satisfied that Mr. Aristidou had a direct knowledge of the work of the applicant and the interested party, that he had a general supervision over all officers of such Department and that he could act as a reporting and countersigning officer being in a position satisfying the circular to make a confidential report about them. Though Mr. Aristidou did not consult Mr. Symeonides at the material time of preparing his report according to the evidence of Mr. Symeonides he had a number of consultations with him during the year about the performance of both the applicant and the interested party.

I wish further to add that comparing the confidential report of 1982 of the applicant and of the interested party to the reports of the previous years which were prepared by Mr. Symeonides and countersigned by Mr. Aristidou, I do not find that there are any striking differences between them. In the circumstances of the case I cannot treat the fact that Mr. Aristidou at the time of preparing the report he did not consult Mr. Symeonides, as amounting to a material irregularity which can be regarded as vitiating the relevant administrative process which lead to the final act. (See, in this respect, *Christou v. The Republic* (1980) 3 C.L.R. p. 437 and *Ierides v. The Republic* (1980) 3 C.L.R. p. 165).

It should also be noted that Mr. Symeonides was a member of the Departmental Committee which met under the chairmanship of respondent 2 and considered the reports of all four candidates concerned and at the meeting Mr. Symeonides had the opportunity, if in disagreement with the confidential report of the applicant for 1982, to express

his disagreement as to the evaluation of the work of the applicant and the interested party.

Counsel for applicant further contended that there was lack of impartiality on the part of the Director-General of the Planning Bureau and that there was bias against him. It is a well established principle that persons who participate in a special administrative procedure, have to be impartial and unbiased vis a vis the candidates and proof of bias or impartiality are matters which may lead to the annulment of any act or decision taken under such procedure.

It is not sufficient that bias, animosity or lack of impartiality should be alleged but it has to be established to the satisfaction of the Court that the decision taken by an organ was taken under the influence of such factors. As stated in the case of *Christou v. The Republic* (1980) 3 C.L.R. 437 at 449:

“The lack of impartiality by public officer A against public officer B must be established, with sufficient certainty either by facts emerging from relevant administrative recourse or by several inferences to be drawn from the existence of such facts; it is not, for example, sufficient, by itself, in order to prove lack of impartiality of A towards B, the fact that A has made, in the past, in the course of the proper exercise of his official duties, adverse confidential reports in respect of B.”

(See also *Kondemeniotis v. C.B.C.* (1982) 3 C.L.R. 1032 and the Decision of the Greek Council of State No. 1041/69).

In the present case I have not been satisfied from the material before me and comparing the reports prepared by Mr. Aristidou to those of the previous years that there is any indication that Mr. Aristidou acted insinuated by adverse motives towards the applicant. As a matter of fact, there is nothing adverse in the report of Mr. Aristidou against the applicant.

For the above reasons I reject the contentions of counsel for applicant that the confidential reports of 1982 suffer from uncertainty or irregularity.

Applicant has not advanced any argument in his address as to whether respondent 1 Commission failed to select the best candidate on the basis of the material before it and the recommendations of the Head of the Department
5 but relied solely on the two grounds with which I have already dealt. Therefore, I find it unnecessary to embark on such matter.

In the result this recourse fails and is hereby dismissed
but in the circumstances I make no order for costs.

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*Recourse dismissed with
no order as to costs.*