

1986 June 6

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

KRINOS I. HJIGEORGHIOU,

Applicant,

v.

THE CYPRUS TOURISM ORGANISATION,

Respondents.

(Case No. 217/83).

Cyprus Tourism Organisation—The Cyprus Tourism Organisation Law 54/69 as amended by Law 48/78—Sections 5(2) (e), 5(3)(a), 5(6), 7(1) and (3), 8, 13(1)(a), 14, 16 and 21 5
—The Cyprus Tourism Organisation (Structure and Conditions of Service) Regulations, 1970—Regulations 6(e) and 15(2)—Appointments/Promotions—“Appoint” in s. 5(2) (e) includes promotion—Powers of the Board under s. 5(6) to set up Committees and transfer part of its powers to them—Power to appoint validly transferred to the Permanent Committee of Hearings—Reg. 6(e)—A Senior Inspector of the Department of Provision of Touristic Services is an “Inspecting Officer” within the meaning of said Regulation—Reg. 15(2)—A provision identical to s. 44(2) of the Public Service Law 33/67—Seniority should prevail, if all other factors are more or less equal—Applicant senior by five years to interested party—No reasons given for disregarding said seniority—Ground of annulment 10
—Reg. 15(3)—Recommendation of Head of Department—No recommendations made in this case—Such failure is contrary to said Regulation—Committee therefore acted without due inquiry as to a material factor—Ground of annulment. 15
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Collective Organ—Appointing or Promoting Bodies—They need

not record the questions and answers of candidates, but only their findings as to their performance.

Schemes of Service—Delegated legislation in the sense of Police v. Hondrou and Another, 3 R.S.C.C., 82—They need not be published in the Official Gazette.

Constitutional Law—Articles 122 and 125 of the Constitution—Law of Necessity—The provisions in the Cyprus Tourism Organisation Law 54/69 empowering the Board of C.T.O. to appoint its officers—Service under C.T.O. falls squarely under definition of “Public Service” in Article 122 of the Constitution—But said provisions justified by the Law of Necessity.

Words and Phrases: “Appoint” in section 5(2)(e) of The Cyprus Tourism Organisation Law 54/69.

15 The applicant by means of this recourse seeks the annulment of the promotion of the interested party to the post of Senior Inspector, a first entry and promotion post in the respondent Organisation, on the following grounds, namely: (a) C.T.O. is empowered “to appoint” and not
20 “to promote”. (b) The decision was taken by the Permanent Committee of Hearings, a Committee non-existent and unknown to the Law. (c) The composition of such Committee was defective in that Mrs. Katsouri, a person not a member of the Board of C.T.O., participated. (d)
25 The post in question is not provided in the Regulations. (e) The scheme of service was not published in the Official Gazette. (f) The answers of the candidates at the interview were not recorded. (g) The seniority of applicant was disregarded, and finally (h) The sub-judice
30 decision was taken contrary to reg. 15(3) which provides that in case of promotion the recommendations of the Head of the Department should be duly taken into consideration.

35 Argument was heard on the invitation of the Court on the constitutionality of Law 54/69 empowering C.T.O. to “appoint” its officers. Counsel for applicant submitted that the relevant provisions are repugnant to Articles 122 and 125 of the Constitution, whereas counsel for the respondent and Mr. Charalambous, who represented the Attorney-

General, who was called by the Court as an amicus curiae, submitted that such provisions are justified by the Law of Necessity.

Held, annulling the sub judge decision:- (1) Section 5(2) (e) of Law 54/69 empowers the Board of C.T.O. to appoint the servants of the Organisation. The meaning of words of a statute is found not so much in a strictly grammatical or etymological propriety of language nor even in their popular use, as in the subject, or in the occasion on which they are used and the object to be attained. The term "appoint" in the context of the said section includes promotion.

(2) Section 5(6) of Law 54/69 is amended by Law 48/78 empowers the Board of the Organisation to transfer part of its powers to Committees of its members; and section 5(3) (a) provides that the Board is appointed by the Council of Ministers for a period not exceeding three years. One of the members of the Board holding office at the material time after such appointment was "the Director-General of the Ministry of Commerce and Industry or his representative". The Director-General did appoint as his representative Mrs. Katsouri. The Permanent Committee of Hearings was set up in virtue of the powers under section 5(6). The power to appoint under s. 5(2) (e) was transferred to the said Committee. It follows that the said Committee was properly set up and validly constituted.

(3) Regulation 6(e) of the Cyprus Tourism Organisation (Structure and Conditions of Service) Regulations 1970 made under s. 7(1) and (3) of Law 54/69 sets out the posts for the Department of Provision of Touristic Service. In this Department there are posts of "Inspecting Officer". The Senior Inspector is such an officer.

(4) A scheme of service need not be published in the Official Gazette.

(5) An appointing or promoting body is not required to record the questions and answers given by candidates, but only their findings as to the performance of the candidates at the interviews.

(6) The applicant was by five years senior to the interested party. Reg. 15(2) of the said regulations is an identical provision to that of s. 44(2) of Law 33/67. Seniority though one of the factors, is not the decisive one, but it ought to prevail if all other things are equal. In this case the Committee made a general reference to merit, qualifications and seniority, but they failed to give reasons why applicant's seniority was disregarded. It follows that the relevant discretionary powers were exercised in a defective manner.

(7) The recommendations of the Head of the Department were always considered a most vital consideration and though an appointing body is certainly not a rubber stamp, it has to give reasons, if it decides to disregard them, why it disregarded them. In the present case the Head of the Department made no recommendations as provided by reg. 15(3) of the said Regulations. It follows that the Committee failed to act in accordance with a specific statutory provision. It acted without due inquiry into the factor of recommendations. A material factor was not within their knowledge and, therefore, it was not and could not be taken into account. Consequently the exercise of their discretionary powers was defective.

(8) In view of the nature of C.T.O.*, service under it falls squarely under the definition of "Public Service" in Article 122 of the Constitution and, therefore, the exclusive powers of the Public Service Commission under Article 125 are applicable to the officers of the respondent Organisation.

In the present case, however, having regard to the non-existence of the Public Service Commission envisaged by the Constitution for so many years and the reasons for it the need of C.T.O. to function, the situation prevailing in the country, the application of the doctrine of necessity was necessary to fill the gap by setting up a substitute mechanism for the running of essential institutions.

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

* See sections 8, 13(1)(a), 14, 16 and 21 of the said Law.

Cases referred to:

- Theodorides and Others v. Ploussiou* (1976) 3 C.L.R. 319;
- Police v. Hondrou and Another*, 3 R.S.C.C. 82;
- PA.SY.D.Y. v. The Republic* (1978) 3 C.L.R. 27;
- Ishin v. The Republic*, 2 R.S.C.C. 16; 5
- Economides v. The Republic* (1973) 3 C.L.R. 410;
- HjiAntoni and Others v. The Republic* (1983) 3 C.L.R. 1145;
- Frangos v. The Republic* (1970) 3 C.L.R. 312;
- Vourkos and Another v. The Republic* (1983) 3 C.L.R. 10 1442;
- Loizidou-Papaphoti v. The Republic* (1984) 3 C.L.R. 933;
- Partellides v. The Republic* (1969) 3 C.L.R. 480;
- Vonditsianos v. The Republic* (1969) 3 C.L.R. 83;
- Antoniou v. The Republic* (1975) 3 C.L.R. 510; 15
- Lardis v. The Republic* (1967) 3 C.L.R. 64;
- Smyrnios v. The Republic* (1983) 3 C.L.R. 124;
- Soteriadou and Others v. The Republic* (1983) 3 C.L.R. 921, and on appeal (1985) 3 C.L.R. 300;
- Theodossiou v. The Republic*, 2 R.S.C.C. 44; 20
- Evangelou v. The Republic* (1965) 3 C.L.R. 292;
- HjiConstantinou and Others v. The Republic* (1973) 3 C.L.R. 65;
- Petrides v. Public Service Commission* (1975) 3 C.L.R. 284;
- Mytides and Another v. Republic* (1983) 3 C.L.R. 1096; 25
- Republic v. Haris* (1985) 3 C.L.R. 110;
- Karageorghis v. The Republic* (1982) 3 C.L.R. 435;

- Christides v. The Republic* (1966) 3 C.L.R. 732;
Attorney-General v. Ibrahim and Others, 1964 C.L.R. 195;
Chimonides v. Manglis (1967) 1 C.L.R. 125;
Aloupas v. National Bank (1983) 1 C.L.R. 55;
- 5 *Ambrosia Oils and Margarine Industry Ltd. and Others v. Bank of Cyprus Ltd.* (1983) 1 C.L.R. 55;
Kofteros v. Electricity Authority of Cyprus (1985) 1 C.L.R. 394;
Iosif v. C.Y.T.A. (1970) 3 C.L.R. 225;
- 10 *HjiGeorghiou v. The Republic* (1966) 3 C.L.R. 504;
Papapantelis v. The Republic (1966) 3 C.L.R. 515.

Recourse.

- 15 Recourse against the decision of the respondents to promote the interested party to the post of Senior Inspector, in the Cyprus Tourism Organisation, in preference and instead of the applicant.

A. S. Angelides, for the applicant.

A. Dikigoropoulos, for the respondents.

Cur. adv. vult.

- 20 SYLIANIDIS J. read the following judgment. The applicant by means of this recourse seeks the annulment of the promotion of the interested party Michael Louca to the post of Senior Inspector in preference to the applicant.

- 25 The respondents—the Cyprus Tourism Organisation—(hereinafter “K.O.T.”) is a corporation of public law, established by the Cyprus Tourism Organisation Law, 1969 (Law No. 54 of 1969). Its functions and powers are set out in the Law.

- 30 On 16.9.82 applications on the basis of a scheme of service, which had the prior approval of the Council of

Ministers for the filling of the vacant post of Senior Inspector, were invited by advertisement in the local press. This was a first entry and promotion post. Twenty-six persons applied, including the applicant and the interested party. Five of the candidates did not possess the required qualifications. The 21 qualified candidates were invited for interview by "the Permanent Committee of Hearings" but only 16 of them turned up.

During the interviews questions were put to the candidates and the said Committee, after consideration of all the material before it, including the answers of the candidates and their performance at the interview, concluded that the candidates serving already with K.O.T. were superior to the outsiders and then proceeded and issued the sub judice decision, exhibit No. 1, the material part of which is paragraph 6, that reads as follows:-

«Η Επιτροπή μετά ταύτα εμελέτησε επισταμένως τους προσωπικούς και εμπιστευτικούς φακέλλους όλων των υποψηφίων οι οποίοι υπηρετούν εις τον Οργανισμόν και υπέβαλαν αίτηση για τη θέση του Ανώτερου Επιθεωρητή και αφού έλαβε υπόψη της το περιεχόμενο των εμπιστευτικών εκθέσεων, τα προσόντα, την αξία, την ικανότητα, την πείρα, την προσωπικότητα, αρχαιότητα και τις απαντήσεις που δόθηκαν από τον καθένα κατά την εμφάνιση του ενώπιον της Επιτροπής. έκρινε σαν καταλληλότερο τον κ. Μιχάλη Λουκά».

(The Committee thereafter considered carefully the personal files and confidential reports of the candidates who serve with the Organisation and submitted application for the post of the Senior Inspector and, having taken into consideration the contents of the confidential reports, the qualifications, the merit, the capabilities, experience, personality, seniority and the answers given by each one of them during the interview before the Committee, considered as the most suitable Michalis Louca (the interested party)).

One of the members of such Committee disagreed as

he considered that a certain Phylaktides was the most suitable and should have been promoted to the post in question.

5 This decision was taken on 29th December, 1982, and the applicant was officially informed that he was not preferred on 24.3.83.

The sub judice decision is impugned on the following grounds expounded in the written addresses of his counsel:-

- 10 (a) That K.O.T. was empowered "to appoint" and not "to promote" and, therefore, it acted without competence;
- (b) The sub judice decision was taken by the Permanent Committee of Hearings, a Committee non-existent and unknown to the Law;
- 15 (c) Furthermore, if this Committee could be said that it was set up under Subsection (6) of Section 5 of the Law, as amended by Law No. 48/78, it could not have competence to promote and its composition was defective in that Mrs. Katsouri, a person
- 20 not member of the Board of K.O.T., participated;
- (d) The post of Senior Inspector is not provided for in the Regulations made under Section 7(2) of the Law;
- 25 (e) The scheme of service was not published in the Official Gazette and, therefore, is not valid;
- (f) The answers of the candidates at the interview were not recorded, contrary to the principles of administrative Law;
- 30 (g) The seniority of the applicant was disregarded; and lastly,
- (h) The sub judice decision was taken contrary to Regulation 15(3) which provides that in case of promotion the recommendations of the Head of the

Department in which the vacancy exists should be duly taken into consideration.

The Board of K.O.T. under Section 5(2) (e) is empowered to appoint the servants of the Organisation and exercise on them disciplinary control. The term "appoint" in the same context is used in s. 10 of the Cyprus Broadcasting Corporation Law, Cap. 300A, and the Central Bank Law, Law No. 48/63. The meaning of words of a statute is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject, or in the occasion on which they are used, and the object to be attained. The words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment—(Maxwell on Interpretation of Statutes, 12th ed., p. 76). The term "appoint" in the context of s. 5(2) (e) includes promotion— (*D. Theodorides and Others v. S. Ploussiou*, (1976) 3 C.L.R. 319, at p. 343, a Full Bench case). Consequently, the Board of K.O.T. is the appropriate body for the promotion of the employees of the Organisation.

Under s. 5(6), as amended by the Cyprus Tourism Organisation (Amendment) Law, 1978 (Law No. 48/78), the Board of Directors may transfer part of its powers to committees of its members in which the Director-General or any other officer of the Organisation may participate. These committees are different from the advisory committees for which provision is also made in the same subsection.

The Board of K.O.T. is appointed by the Council of Ministers and its term is for a period not exceeding three years—(Section 5(3) (a)). One of the members of the Board holding office after such appointment at the material time was "the Director-General of the Ministry of Commerce and Industry or his representative". The Director-General of the Ministry of Commerce and Industry did appoint as his representative to the Board of Directors of the Cyprus Tourism Organisation Mrs. Phivi Katsouri as from July, 1982. The Board set up in virtue of the powers vested in it by

s. 5(6) the Committee "Monimos Epitropi Akroasseon" (Permanent Committee of Hearings) consisting of the Chairman and the Director-General, Mr. Andronicou, and four members, including the representative of the Director-General of the Ministry of Commerce and Industry.

To this Sub-committee the power of the Board to appoint under s. 5(2) (e) was transferred. Therefore, both the establishment and functioning of the Committee and the exercise by the said Committee of the power to promote are not contrary to the Law. The Committee was validly set-up. It was properly constituted and it exercised competence on the matter in question.

Regulation 6 of the Cyprus Tourism Organisation (Structure and Conditions of Service) Regulations, 1970, made under s. 7(1) and (3) of the Law provides for the structure of the central service of K.O.T. Regulation 6(e) sets out the posts for the Department of Provision of Touristic Services. In this Department there are posts of "inspecting officers". The Senior Inspector is such an officer.

The scheme of service for the post was made by the Board and approved by the Council of Ministers in accordance with s. 7(2) of the Law but not published in the Official Gazette.

A scheme of service made by the Council of Ministers is delegated legislation in the sense of *Police v. Hondrou and Another*, 3 R.S.C.C. 82, made under Article 54 of the Constitution for carrying into effect the provisions of the Law—(*Pangyprios Syntechnia Dimossion Ypallilon v. Republic*, (1978) 3 C.L.R. 27); it is of legislative nature.

Article 82 of the Constitution provides that every Law comes into operation on its publication in the Official Gazette of the Republic. Publication is mandatory and is more necessary in view of the presumption that every citizen knows the Law—(See, also, s. 7 of the Interpretation Law, Cap. 1).

In *Ilter Ishin v. The Republic*, 2 R.S.C.C. 16, at p. 20, the Court observed that it would be quite useful if all sche-

mes of service, which are relied upon by the appropriate authorities of the Republic as being at present in force, are to be published for general information.

In *Economides v. The Republic*, (1973) 3 C.L.R. 410, the Full Bench held that a decision of the Council of Ministers under Article 57.4 that an act of the Council embodying the scheme of service should not be published, did not contravene Article 57.4 and, therefore, non-publication of the scheme of service was neither null nor void. 5

The submission of counsel that the scheme of service is invalid is in view of the aforesaid unfounded. 10

A collective body is bound to keep a full record so as to enable this Court to exercise judicial control over its acts. The jurisprudence of this Court, however, does not require an appointing or promoting body to record the questions and answers given by the candidates. Their duty is limited to record their findings as to performance of each of the candidates at the interviews and make their comments on the basis of such findings—(*Hji-Antoni and Others v. The Republic*, (1983) 3 C.L.R. 1145, 1153-1154; *Fran-gos v. Republic*, (1970) 3 C.L.R. 312, 335-339; *Vourkos and Another v. Republic*, (1983) 3 C.L.R. 1442, 1459; *Loizidou-Papaphori v. Republic*, (1984) 3 C.L.R. 933, 939-940). 15 20

From the files of the applicant and the interested party it emerges that the applicant was by five years senior to the interested party. The claims of officers to promotion are determined on the basis of merit, qualifications and seniority—(Regulation 15(2)). This is an identical provision to that of s. 44(2) of the Civil Service Law, 1967 (Law No. 33 of 1967), which was judicially considered in a plithora of cases by this Court. 25 30

It is well settled that seniority, though one of the factors, is not the decisive one but it ought to prevail if all other things are more or less equal. In *Partellides v. The Republic*, (1969) 3 C.L.R. 480, the applicant's seniority over the interested party was just under two years. It was said by the Full Bench:- 35

“In the circumstances we are of the opinion that it

was not reasonably open to the respondent Commission to promote the interested party instead of the appellant. All other things being more or less equal, the appellant's seniority ought to prevail. It follows
 5 that the relevant discretionary powers of the respondent were exercised in an erroneous manner".

In *Vonditsianos v. The Republic*, (1969) 3 C.L.R. 83, at 91, it was said:-

10 "On the whole of the material before the Court, and in the absence of any due reasons to the contrary—which I would expect to find duly recorded in the relevant minutes of the respondent—I fail to see how it was open to the respondent, in the exercise of its discretionary powers, to prefer the interested party to the applicant, in spite of the greater
 15 seniority and experience of the latter over the former, and there being no difference in merit in favour of the interested party".

In *Antonioniou v. The Republic*, (1975) 3 C.L.R. 510, a
 20 Full Bench case, at p. 515 it was said:-

"We should say that we have felt some anxiety because of the fact that the most senior candidate was not selected for appointment even though he was described as an 'average officer'; one does not
 25 have to be 'exceptional' in order to enjoy the benefit of the advantage of seniority".

(See, also, *Lardis v. The Republic*, (1967) 3 C.L.R. 64, 77; *Smyrnios v. Republic*, (1983) 3 C.L.R. 124; *Soteriadou and Others v. Republic*, (1983) 3 C.L.R.
 30 921).

In the sub judge decision there is a general reference to seniority but there is no reasoning why the 5 years' seniority of the applicant was overweighed and he was not selected. It may not be excluded that the parties were
 35 not more or less equal in merit and qualifications. Indeed the interested party, as depicted in the confidential reports, in 1981 is superior to the applicant; in 1981 he was rated with 7 "Excellent" and 5 "Very good" where-

as the applicant with 1 "Excellent" and 11 "Very Good".

The qualifications of the parties appear plainly in the material which was before the Committee. The Committee, however, made a general reference to the merit and the qualifications and seniority and they have not given reasons for disregarding the seniority of the applicant. 5

Counsel for the respondents contended that in making the promotion in question the Committee did take into consideration the recommendations "of the person in-charge of the Section before it reached its final conclusion. This is evident from a perusal of the minutes of the Committee in question". 10

I went carefully through the minutes placed before me but I could find nowhere therein any reference bearing out this contention. No reference is made at all to the recommendations of the Head of the Section or Head of the Department. The matter of the recommendations of the Head of a Department has been stressed in a number of cases by this Court. The recommendations of a Head of a Department were always considered a most vital consideration--(*Theodossiou v. The Republic*, 2 R.S.C.C. 44, at 48). 15 20

In *Evangelou v. The Republic*, (1965) 3 C.L.R. 292. at p. 297, Triantafyllides, J., as he then was, said:-

"Had there been made a recommendation by the Head of the Department concerned in relation to the filling in 1963 of the vacancies in question and had in such report a comparison been made between the Applicant and Interested Parties and had the applicant been described therein as more fit for promotion than those other two candidates, the Commission would normally have been expected to either follow it or give reasons for not doing so." 25 30

The Head of a Department is in a position to appreciate the demands of the post to be filled and the suitability of the candidates to discharge the duties of the post. 35

The promoting body, certainly, is not a rubber-stamp

of the recommendations of the Director but it should not lightly disregard them, and if they decide not to act in accordance with such recommendations, they have to give specific reasons for so disregarding them and such reasons are subject to scrutiny by the administrative Court—(See, inter alia, *Lardis v. The Republic* (supra); *Hji-Constantinou and Others v. Republic*, (1973) 3 C.L.R. 65; *Petrides v. Public Service Commission*, (1975) 3 C.L.R. 284; *Mytides and Another v. Republic*, (1983) 3 C.L.R. 1096; *Republic v. Haris*, (1985) 3 C.L.R. 110).

In *Karageorghis v. Republic*, (1982) 3 C.L.R. 435, at p. 459, it was said:-

“Under s. 35(3) of Law 10/69 in making a promotion the Commission shall have due regard to the confidential reports on the candidates and to the recommendations made in this respect by the Head of Department. I take this provision to mean recommendations of the Head of Department relating to the candidates and yet as it appears in the relevant minutes of the Commission, no definite recommendation was made in favour of any of the candidates by the Head of Department;... Thus, I am bound to arrive at the conclusion that the decision of the Commission was taken in a manner contrary to law, namely, the aforesaid s. 35(3) and also without sufficient knowledge of or inquiry into all relevant factors, a situation that renders the sub judice decision contrary to law in the sense of Article 146.1 of the Constitution”.

In *Christides v. Republic*, (1966) 3 C.L.R. 732, it was held that absence of knowledge of or inquiry into relevant factors leads to annulment of an administrative decision and that in exercising its discretionary powers the Administration must take into account all relevant factors.

In the present case the Head of the Department in which the vacancy existed made no recommendations. The Committee failed to act in accordance with a specific statutory provision. They acted without due inquiry into the relevant factor of recommendations. They acted without sufficient knowledge and contrary to Law. A material factor was not

within the knowledge of the respondent at the relevant time and, therefore, it was not and could not have been taken into consideration. Consequently, the exercise of their discretionary powers was for that reason rendered defective—(*Soteriadou and Others v. Republic*, the Full Bench case, (1985) 3 C.L.R. 300). 5

To sum up, the term “appoint” in the context of s. 5(2)(e) of the Law includes promotion. Consequently, the Board of K.O.T. is the competent body for the promotion of the employees of the Organisation. The Permanent Committee of Hearings that effected the sub judge promotion was duly set up under s. 5(6) and was duly constituted as Mrs. Katsouri was participating as representative of the Director-General of the Ministry of Commerce and Industry. The Board of K.O.T. transferred to this Committee the power to appoint and promote. The post of Senior Inspector is included in the post of Inspecting Officers expressly provided by reg. 7(6)(e). The scheme of service was lawfully made by the Board and approved by the Council of Ministers and its non-publication does not in any way invalidate it though it may be advisable that schemes of service should be published in the Official Gazette. The duty of the promoting body is limited to record their findings as to performance of each of the candidates at the interviews and make a comment on the basis of such findings. Non-recording of questions put to candidates and the answers thereto is not mandatory and failure to do so does not taint in any way the final act. 10
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The respondents failed to give and record in the relevant minutes any reasons for non-selecting the applicant whose seniority was overwhelming. Therefore, they exercised their discretionary powers in an erroneous manner. The respondents did not give due regard to recommendations of the Head of the Department in which the vacancy existed as provided in reg. 15(3). Thus they acted contrary to Law, without sufficient knowledge; they failed to take into consideration a relevant factor and consequently the exercise of their discretionary powers was for this reason as well rendered defective. 30
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Argument was heard on the invitation of the Court on the constitutionality of Law 54/69 empowering K.O.T. to "appoint" its officers. Counsel for the applicant submitted that the relevant provisions of the Cyprus Tourism Organisation Law, 1969 (Law No. 54 of 1969) are repugnant to the Constitution as they are contrary to the provisions of Articles 122 and 125 thereof.

Counsel for the respondents and Mr. Charalambous representing the Attorney-General, who was called by the Court as *amicus curiae*, submitted that the said statutory provisions are justified by the Law of necessity and consequently they cannot be declared unconstitutional.

"Public service," as defined in Article 122, means:-

"Any service under.... any other public corporate or unincorporate body created in the public interest by a law and either the funds of which are provided or guaranteed by the Republic or, if the enterprise is carried out exclusively by such body, its administration is carried out under the control of the Republic."

K.O.T. is such a body as its Board of Management is appointed by the Council of Ministers; it is supervised and controlled by the Minister of Commerce & Industry (Section 8); one of its main sources is subsidy and/or money provided by the Republic (Section 13(1)(a)); the Republic is guaranteeing any loans which this Corporation may contract and its loans have to be approved by the Council of Ministers (Section 14); its budget has to be approved by the Minister; its accounts and the balance-sheet and the financial administration of the Corporation are audited by auditors appointed by the Council of Ministers (Section 16); the Regulations for the better carrying into effect of the provisions of the present Law are issued by the Council of Ministers—(Section 21).

The service under K.O.T. falls squarely under the definition of "Public Service" in Article 122 of the Constitution and, therefore, the constitutional provisions for the establishment of a Public Service Commission and the exclusive power of such Commission under Article 125 to appoint,

confirm, emplace on the permanent or pensionable establishment, promote, transfer, retire and exercise disciplinary control, over, including dismissal or removal from office of all public officers, are applicable to the officers of K.O.T.

In *The Attorney-General of the Republic v. Mustafa Ibrahim and Others*, 1964 C.L.R. 195, this Court interpreted the Constitution (including the provisions of Articles 179, 182 and 183) to include the doctrine of necessity in exceptional circumstances, which is an implied exception to particular provisions of the Constitution. The prerequisites for the application of the doctrine of necessity are set out in the judgment delivered—(See, also, inter alia, *Chimonides v. Manglis*, (1967) 1 C.L.R. 125; *Theodorides v. Ploussiou*, (1976) 3 C.I.R. 319; *Aloupas v. National Bank*, (1983) 1 C.L.R. 55; *Ambrosia Oils & Margarine Industry Ltd. and Others v. Bank of Cyprus Ltd.*, (1983) 1 C.L.R. 55; *Kofteros v. Electricity Authority of Cyprus*, (1985) 1 C.L.R. 394).

The constitutionality of a law should not be examined in abstracto. The constitutionality of a law in a recourse challenging the validity of an administrative act has to be examined in order to decide the validity of such act or decision. An objection of unconstitutionality is considered only in relation to the issue of the validity of the subject-matter of the recourse and is decided solely for the purposes of the particular case—(Βλάχου—Η Έρευνα της Συνταγματικότητας των Νόμων, (1954) p. 106; Σγουρίτσας—Συνταγματικόν Δίκαιον, 3rd edition, (1965), Volume “A”, p. 66).

It is upon the party who seeks the assistance of the doctrine of necessity to satisfy the Court that the prerequisites laid down by judicial pronouncements exist and that the measures taken were necessary and they go no further than the necessity warrants.

In relation to appointments and promotions in a number of cases the application of the law of necessity was judicially considered. In *Iossif v. C.Y.T.A.*, (1970) 3 C.L.R. 225, it was held that the making of two promotions on a permanent basis and not only on a temporary basis was

not justifiable by virtue of the law of necessity. In *Hji-Georghiou v. The Republic*, (1966) 3 C.L.R. 504, and *Papapantelis v. The Republic*, (1966) 3 C.L.R. 515, the particular administrative action taken concerning public officers was said not to be justifiable, in the specific circumstances of the case on the strength of the law of necessity.

In the present case having regard to the non-existence of the Public Service Commission envisaged by the Constitution for so many years and the reasons for it, the need for K.O.T. to function, the situation prevailing in the country, including the concentration of the Turkish population of the country in the occupied area in the north, beyond the reach of the organs of the Republic, I am satisfied that the application of the doctrine of necessity in this case was necessary to fill the gap by setting up a substitute mechanism for the running of essential institutions.

In view of the above, without going into any further detail, I am satisfied that the contraventions of the chapter of the Constitution dealing with the public service are justified by the law of necessity and consequently the statutory provisions of the Cyprus Tourism Organisation Law, 1969 (Law No. 54 of 1969) were validly enacted. Of course, it must be understood that the opinion of the Court on the matter applies to the present case and to the facts and circumstances prevailing at the material time.

In view of the above the sub judice decision is annulled. Let there be no order as to costs.

Sub judice decision annulled.

No order as to costs.