1986 June 30

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

PETROS KRAMVIS AND OTHERS,

Applicants,

v.

THE PUBLIC SERVICE COMMISSION,

Respondents.

(Consolidated Cases Nos. 198/84, 199/84, 200/84, 201/84, 247/84, 248/84, 249/84, 250/84, 251/84, 252/84, 253/84 and 254/84).

Precedent—Doctrine of stare decisis—Judgments of Courts of co-ordinate jurisdiction—Not binding, but a source of persuasive authority—When departure or deviation therefrom is permissible.

5 *Public Servants—Appointments/Promotions—First entry and promotion post—Departmental Committees—The Regulations made by the Council of Ministers under s. 36 of the Public Service Law, 33/67 relating to such Committees, and in particular Regulations 4, 6 and 7—*
10 *They are intra vires the said enabling section of the law.*

Public Servants—Appointments/Promotions—First entry and promotion post—Scheme of service—Interpretation of—A question of mixed law and fact—Testing the linguistic knowledge of candidates—Means of such testing very much
15 *a matter for the appointing body—There is no principle of general application requiring a written examination.*

The applicants and the interested parties in the above cases were among the 137 candidates for the post of Co-operative Officer, 2nd Grade, a first entry and promotion

post. A Departmental Committee was initially set up to screen the applications and make preliminary assessment of the qualifications and worth of candidates 54 candidates dropped out by failing to attend the interview before the Committee, while 36 candidates, including applicant in recourse 249/84, were found ineligible for lack of the requisite qualifications

The remaining candidates were interviewed by the Committee The interview took the form of an oral examination designed to test their knowledge, including knowledge of English at the level envisaged by the scheme of service, viz "good knowledge of English"

Finally the interested parties and the applicants in recourses 200/84, 248/84, 250/84 and 251/84 were short listed by the said Committee for a final consideration by the Public Service Commission

Applicant in recourse 249/84 complains of an erroneous interpretation of the scheme of service and of discrimination against him on the ground that another candidate, namely Eleni Constantinou, with similar qualifications was not excluded from being considered for appointment The four applicants, who were short listed as aforesaid, concentrated their attack against the proceedings before the P S C, while the remaining applicants complained that the inquiries made by the Departmental Committee were inadequate

The P S C confined, as a matter of discretion, their inquiry to those candidates, who had been short listed as aforesaid The said candidates were interviewed in the presence of the Commissioner of Co-operative Development The P S C made its own assessment of the performance of the candidates at the interview that did not altogether coincide with that of the Commissioner Special attention was given at the interview to testing the knowledge of the candidates in English with view to deciding whether they satisfied the requirements of the scheme of service.

The grounds common to all applicants that allegedly invalidate the decision to select the interested parties for

appointment to the said post are (a) The illegality of the Departmental Committee on the ground that the relevant Regulations, and in particular Regulations 4, 6 and 7 bestow on the Committee effective powers of selection
5 contrary to the enabling enactment, i.e. s. 36 of the Public Service Law 33/67, and (b) Disregard of the allegedly striking superiority of the applicants.

Held, dismissing the recourse (1) A series of decisions of the Supreme Court at first instance establish that the
10 Regulations relating to Departmental Committees are intra vires the law. A Court of first instance is not bound under the doctrine of stare decisis by decisions of Courts of co-ordinate jurisdiction. Such decisions, however, are a source of persuasive authority and should be adhered
15 to, unless the Court is clearly of opinion that the principle adopted is wrong or does not reflect the correct principle of the law because of an oversight or error in the reasoning. Moreover, when a principle finds expression in a series of such decisions, a Court of co-ordinate juris-
20 diction must have very compelling reasons to deviate or depart therefrom. Adherence to such decisions does not derive from comity among Judges, but from the need to sustain certainty in the law.

In the light of the above principles and having given
25 the matter fresh consideration the Court finds no reason to depart from the said first instance decisions of the Supreme Court.

(2) The construction of a scheme of service is a matter of mixed law and fact while competence to inter-
30 pret it is acknowledged in the first place to the body charged with its application. In this case the P.S.C. adopted the views of the Departmental Committee as regard the lack of qualifications of applicant in Recourse 249/84. The question is whether this course was reason-
35 ably open to them. The answer is in the affirmative. The scheme of service contemplated a University degree or equivalent title in Economics or Commerce or an equivalent qualification, while applicant had a degree of Pantios in Political Science. Applicant's complaint of discrimina-

tion is not justified. Eleni Constantinou was the holder of a degree of Pantios in Public Administration, a subject related to public finance and as such capable of being treated as satisfying the requirements of the scheme of service. 5

(3) The means of testing knowledge in a particular field is very much a matter of discretion for the appointing body. The decisions in *Kapsou* v. *The Republic* (1983) 3 C.L.R. 1336 and in *Makrides* v. *The Republic* (1983) 3 C.L.R. 622 did not aim to lay down a general principle 10 of administrative law that only a written examination can elicit a candida'e's linguistic knowledge. The contention that the P.S.C. failed to carry out an adequate inquiry into the knowledge of the applicants in English has no merit. 15

(4) There is nothing to suggest that the advice given to the P:S.C. by the Departmental Committee was founded on any misconception or abuse of power.

(5) The suggestion that the Commissioner of Co-operative Development, who had expressed his views to the P.S.C. 20 as regards the worth of services of those candidates who were serving in one capacity or another in the Department, was unacquainted with the value of such services, is not supported by evidence. The objection taken as regards his views is ill-founded. The P.S.C. did not rest their 25 decision on his views, but themselves made an evaluation of the performance of the candidates at the interview.

(6) There is nothing to substantiate the contention as to the applicants' striking superiority over the interested parties. 30

(7) The P.S.C. adverted to every consideration designed to elicit which of the candidates were best suitable for appointment.

Recourse dismissed.
No order as to costs. 35

Cases referred to

Hadjisavva v *The Republic* (1982) 3 C L R 76,

Hadjiioannou v *The Republic* (1983) 3 C L R. 1041,

Michael and Another v *P S C* (1982) 3 C L R 727,

5 *Frangoulides and Another* v *P S C* (1985) 3 C L R 680,

Komodromou v *The Republic* (1985) 3 C L R 2250,

Christoudias v *The Republic* (1984) 3 C L R 657,

Republic (Minister of Finance and Another) v *Demetriades* (1977) 3 C L R 213,

10 *Frangos and Others* v *The Republic* (1982) 3 C L R 53,

Der Parthogh v *C B C* (1984) 3 C L R 635,

Vryonides v *The Republic* (1984) 3 C L R 1567;

Maratheftou and Others v *The Republic* (1982) 3 C L R 1088;

15 *Kapsou* v *The Republic* (1983) 3 C L R. 1336,

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

Recourses.

Recourses against the decision of the respondents to appoint the interested parties to the post of Co-operative
20 Officer, 2nd Grade in preference and instead of the applicants

L. Clerides, for applicants in Cases Nos. 198/84—201/84.

M Spanou - Anastassiou (Mrs.), for applicants in
25 Cases Nos 194/84 and 247/84 - 254/84.

A Vladimirou, for the respondents.

Cur adv. vult.

PIKIS J read the following judgment. The 12 applicants and the 3 interested parties were among the 137 applicants
30 for the post of Cooperative Officer, 2nd Grade, a first entry and promotion post They challenge the validity of

the decision pertaining to the appointment of the interested parties for reasons common to all applicants, as well as for separate reasons relevant to individual applicants. As the decisions to appoint the interested parties are founded on the same reasoning and constitute the culminating point of the same administrative process, the consolidation of the 12 recourses, with the concurrence of all parties, was the most compendious course for their resolution. The points common in all recourses and their significance, as well as the similarity of the factual background, made consolidation inevitable. The fact that a joint address was submitted on behalf of all applicants and a joint address was made in reply to the address of respondents, reflects the similarities in the subject-matter of the recourses.

A Departmental Committee was initially set up to screen the applications and make a preliminary assessment of the qualifications and worth of the candidates. The list of candidates was considerably shortened at the preliminary stage. 54 candidates dropped out by failing to attend the interview designed to test knowledge and suitability of the contestants, while 36 candidates were found inelligible for lack of the requisite qualifications. Applicant Antonis Nicolaou (Recourse No. 249/84) was one of them. He complains the decision to exclude him was founded on an erroneous interpretation and rested on a misapplication of the scheme of service. Moreover, the decision to exclude him was discriminatory because another applicant, namely, Eleni Constantinou with similar qualifications was admitted to be eligible for appointment. The remaining applicants were invited to an interview that took the form, as may be gathered from the minutes of the Committee, of an oral examination intended to test their knowledge, including knowledge of English at the level envisaged by the scheme of service, viz. "good knowledge of English". At the end of the process the Committee recommended 12 of the applicants as best qualified (in the wider sense) for appointment and submitted their names to the P.S.C. in alphabetical order. In making their recommendation they paid, as stated in the minutes, due regard to the qualifications and performance of the candidates at the interview. The interested parties and four of the applicants (litigants

in Recourses 200/84, 248/84, 250/84 and 251/84) were short listed by the Departmental Committee for final consideration by the appointing body. The applicants who were not short-listed complain that the inquiries made by the Departmental Committee were inadequate, not truly designed to elicit actual knowledge either in the English language or any other subject.

The remaining four applicants concentrated their challenge on proceedings before the P.S.C. and their ultimate decision, vitiated by the inadequacy of their inquiry and misconception of material facts relevant to the abilities of the candidates.

Examination of the record of the proceedings before the respondents suggests the following: The P.S.C. adopted the conclusions of the Departmental Committee and confined their inquiry to the suitability of the candidates short-listed by the Departmental Committee. They did so, as may be surmised from their minutes, as a matter of discretion, not out of any obligation to confine their inquiry to those candidates only. The recommended candidates were interviewed in the presence of the Commissioner of Co-operative Development who took part in the process. His attendance seemingly aimed to help elicit through appropriate questions the knowledge of the candidates and their capability to perform the tasks of the posts the filling of which was under consideration; being no doubt in a unique position to appreciate the needs of the service in the particular area. As most of the candidates were serving in one capacity or another at the Department of Cooperative Development, he reported on the worth of their services as well.

The P.S.C. made its own assessment of the performance of the candidates at the interview that did not altogether coincide with that of Mr. Chlorakiotis. Special attention was given at the interviews to testing the knowledge of the candidates in English with a view to deciding whether they satisfied the requirements of the scheme of service. Then they addressed themselves to the sum total of the material before them and the criteria relevant to the exercise of

their discretion and decided to select the interested parties as the candidates best suitable for appointment Prima facie the respondents appear to have given consideration to every matter relevant to the exercise of their discretionary powers. This emerges from examination of the minutes of the proceedings before them and the decision itself And, no evidence has been adduced to contradict this inference

The grounds common to all applicants that allegedly invalidate the decision are.

(a) The illegality of the Departmental Committee for lack of lawful origin The suggestion is that the Regulations(1) confer on them powers beyond those contemplated by the enabling enactment, namely, s.36 of the Public Service Law—33/67 Regulations 4, 6 and 7 in particular bestow effective powers of selection to the Departmental Committee in breach of the provisions of s 36 that envisages departmental committees set up thereunder as purely advisory bodies. It has been submitted the aforementioned Regulations are unltra vires the law and any decision, like the decision of the Departmental Committee, founded thereon is invalid; so is the final decision being the product of a composite administrative act resting on a defective premise.

(b) Disregard of the allegedly striking superiority of the applicants. A general statement is made in the address of applicants that they were strikingly superior to the interested parties. The contention is in no way particularized and there is nothing before me to substantiate it either It is inherent in the notion of striking superiority as acknowledged by authority(2), that one's superiority over another must be so glaring as to be objectively noticeable; so much so that disregard of it would be solely consistent with abuse of power on the part of those ingnoring it. In the absence of

(1) Made by the Council of Ministers—Exhibit 1

(2) Hadjisavva v The Republic (1982) 3 C L R 76
Hadjioannou v. The Republic (1983) 3 C L R 1041

material substantiating this contention, I shall concern myself no further with it.

The Regulations Governing the Departmental Committees —Their Validity:

5 The exercise of legislative competence by a delegate is subject to two limitations: First, it must be confined within the framework of the law; second, it must heed the legislative directives and give effect to them. This is an essential safeguard for the sustenance of the effectiveness 10 of the House of Representatives as the law-making body.

The expedient of secondary legislation is often employed for the improvisation of the necessary mechanism for the application of the law.

Section 36 empowers the Council of Ministers to make 15 regulations for the establishment of Department Committees to advise the P.S.C. in the exercise of their functions. The body should have, according to the plain provisions of the law, advisory status, a view reinforced by the provisions of s.5 of the law that vests effective power 20 in the P.S.C. as constitutionally ordained. (See Part VII of the Constitution).

The submission made is that rules 4, 6 and 7 of the Regulations are ultra vires the law. It has been argued that the Council of Ministers exceeded its authority by 25 entrusting duties to Departmental Committees of a non-advisory character, making them participants in the process of selection, requiring them, inter alia, to recommend no fewer than two and no more than four candidates for each post. Rule 7, on the other hand, the second proviso, 30 puts it in the power of the P.S.C. to consider any applicant for appointment notwithstanding the recommendations of the Departmental Committee.

A series of decisions of the Supreme Court at first instance establish that the Regulations are intra vires 35 the law *(Michael and Another* v. *P.S.C.*[1]*; Komodromou* v. *The Republic*[2] *).* In *Christoudias* v. *The Republic*[3],

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(1) (1982) 3 C.L.R. 727—See also Frangoulides and Another v P S C (1985) 3 C.L R. 680 (F.B)
(2) (1985) 3 C.L.R. 2250.
(3) (1984) 3 C.L.R. 657.

I referred in detail to the powers of a Departmental Committee and noted they do not curtail the effective competence of the P.S.C. as the appointing body. The establishment of advisory bodies to assist in the selection process is, as indicated in the above judgment, an acceptable administrative practice. 5

A Court of first instance is not bound under the doctrine of stare decisis by decisions of Courts of Coordinate jurisdiction and in that sense the principles adopted in the aforesaid judgment respecting the legality of the Regulations are not binding on the Court. On the other hand, judgments of Courts of coordinate jurisdiction are a source of persuasive authority and should be adhered to unless the Court is clearly of opinion that the principle adopted is wrong or does not reflect the correct principle of the law because of oversight or error in the reasoning[1]. Moreover, when a principle finds expression in a series of judgments of first instance, a Court of coordinate jurisdiction must have very compelling reasons to deviate or depart thereform. Any other approach would throw the law into a state of uncertainty to the detriment of the rule of law. Adherence to decisions of Courts of coordinate jurisdiction does not derive from any sense of comity among judges but from the need to sustain certainty in the law. 10 15 20 25

Having given the matter fresh consideration as invited to, I find no reasons for departing from the aforesaid first instance decisions of the Supreme Court. The second proviso of Rule 7 safeguards effective power in the P.S.C. to select anyone applicant irrespective of the recommendations of a Departmental Committee. Hence I dismiss as unfounded the submission that the P.S.C. was divested of the powers given it by law to select the candidate best suitable for appointment. 30

The Disqualification of Antonis Nicolaou (R. 249/84): 35

Schemes of service are a species of secondary legislation subject to special rules of construction. Although the

(1) Republic v. Demetrios Demetriades (1977) 3 C.L.R. 213—Frangos and Others v. The Republic (1982) 3 C.L.R. 53, 60.

interpretation of an enactment is as a rule a matter of law. the construction of a scheme of service is a matter of mixed law and fact while competence to interpret it is acknowledged in the first place to the body charged
5 with its application. There are obvious reasons for the existence of a special rule of interpretation. The application of the scheme is dependent on a factual inquiry that embraces the nature of qualifications and the purpose for requiring them, bearing in mind the needs of public service. I had
10 occasion to debate the same subject in *Der Parthogh* v. *C.B.C.*[1] and feel content to adopt what was said in that case.

The P.S.C. adopted the views of the Departmental Committee respecting the disqualification of the applicant
15 and the pertinent question is whether this course was reasonably open to them. In my judgment the answer is in the affirmative. The scheme of service contemplated a University degree or equivalent title in Economics or Commerce or an equivalent qualification, while applicant
20 had none. He held a degree of Pantios in Political Science, that is in a subject other than those envisaged by the scheme of service. The fact that he was taught accounting as one of the subjects included in the cariculum of Pantios did not alter the character of his qualification nor did it make
25 unreasonable on the part of the respondents to hold him to be disqualified[2].

Nor is the complaint of discrimination justified on grounds of inequality of treatment. For, Eleni Constantinou was the holder of a degree of Pantios in Public Admini-
30 stration, a subject related to public finance and as such capable of being treated as satisfying the relevant requirements of the scheme.

The recourse of Antonis Nicolaou is dismissed.

Knowledge of English:

35 The appointing body have responsibility for devising appropriate means of testing the knowledge of candidates in

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(1) (1984) 3 C.L.R. 635.
(2) See, inter alia, Vryonides v. The Republic (1984) 3 C.L.R 1567.

particular subjects stipulated by the pertinent scheme of service[1]. The applicants complain that both the Departmental Committee and later the P.S.C. failed to carry out an adequate inquiry into the knowledge of the applicants in English. This faultiness vitiated, in their contention, the process in its entirety. From the minutes of the two bodies it appears that they both addressed themselves specifically to the knowledge of the candidates in English in order to ascertain whether they had knowledge of the language at the requisite level, "good". They submitted that knowledge could only be tested by a written examination, resting their arguments on the case of *Kapsou* v. *The Republic*[2] Triantafyllides, P., did not purport to lay dawn in *Kapsou* a general principle that only a written examination can elecit a candidate's linguistic knowledge. His judgment is interwoven with the facts of the case; need for written examination arising in that case in view of the very high knowledge of English required of candidates, "excellent", and the doubts raised by the applicant's own appreciation of his knowledge of English described to be below the level required. I am wholly in agreement with the judgment in *Kapsou*.

In *Makrides* v. *The Republic*[3] I too decided that in the particular circumstances of that case the P.S.C. failed to carry out an adequate inquiry to test the knowledge of the interested party in English, but as in the case of *Kapsou* the decision did not aim to lay down any general principle of administrative law. The means of testing knowledge in a particular field is very much a matter of discretion for the appointing body.

The respondents as well as the Departmental Committee addressed themselves specifically to the question of knowledge of English of the candidates and nothing before me suggests that they exceeded or abused their powers in that connection. Therefore, I find no merit in this contention of the applicants either.

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(1) Maratheftou and Others v The Republic (1982) 3 C.L.R 1088, 1093

(2) (1983) 3 C.L.R 1336

(3) (1983) 3 C.L.R 622

The Decision of the Departmental Committee:

The advice given to the respondents by the Departmental Committee rested, as the minutes of the proceedings suggest, on an evaluation of all factors relevant to the suitability of the candidates for appointment, including of their qualifications. There is nothing before me to suggest their advice was founded on any misconception or abuse of power. That their record might have been more detailed does not sap their advice of its efficacy. The advice was, as it appears from the minutes of the P.S.C. accepted as a sound evaluation of the suitability of candidates. That being so, what remains to be considered is the validity of the decision of the P.S.C. itself.

The Decision of the P.S.C.:

Objection is taken in the first place to the views of the Head of the Department who attended the interviews. Also the amenity of Mr. Chlorakiotis to opine on the worth of their services is questioned for lack of the necessary knowledge. Buth submissions are ill-founded. Not only the P.S.C. did not rest their decision on the views of Mr. Chlorakiotis but themselves made, as their minutes record, an assessment of the performance of the candidates at the interview that did not altogether coincide with that of Mr. Chlorakiotis. On the other hand, the suggestion that Mr. Chlorakiotis was unacquainted with the value of the services of the candidates is not supported by evidence. Certainly as the head of the department he had all the means available to acquaint himself with the value of the services of subordinates and the presumption of regularity compels me to hold that his views were the offspring of such inquiry.

The minutes pertaining to the decision of the respondents suggest they adverted to every consideration designed to elicit which of the candidates were best suitable for appointment. The outcome of their deliberations was, given the facts of the case, very much in their discretion and nothing before me persuades me they exceeded or abused their powers.

In the result the recourses are dismissed. *The decision to appoint the interested parties is confirmed in accordance with para. 4(a) of Article 146 of the Constitution.* No order as to costs.

Recourses dismissed. 5
No order as to costs.