

1986 February 25

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

IOULIOS LAMBIS AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Cases, Nos. 122/84, 123/84, 240/84).

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- Public Officers—Appointments—First Entry and Promotion
“Specialized” post—Interviews—Performance of candidates
—Weight to be given to such performance—Undue weight
given—Sub judice act tainted with irregularity and lack of
due inquiry—Substantial superiority of applicants in cases
122/84 and 240/84 over the interested party as regards
seniority and qualifications—Assuming equality in merit,
the respondent Commission ought to have given reasons
why it ignored the factors of seniority and qualifications.* 5
 - Administrative Law—Reasoning of an administrative act (ap-
pointment to the post of District Officer, which is a first
entry and promotion specialized post)—Defective reasoning.* 10
 - Administrative Law—Administrative act—Appointment to a
specialized post—Advisory Committee—Recommendation
by such Committee—Statement in such recommendations
that applicants, in Cases 123/84 and 240/84 lacked in the
performance during the interviews compared with other
candidates—No record supporting such statement—Irregu-
larity—In the circumstances and as the final evaluation was
not made by the respondent Commission the irregularity
was not material.* 15 20
 - The Public Service Law 33/67 s. 44(3)—Evaluation of perfor-*

mance of candidates at the interview by the Head of the Department—Such evaluation does not amount to a recommendation by the Head of Department.

5 The applicants and the interested party in the above three recourses are all Public Officers and were amongst the candidates for appointment to four vacant posts of District Officer, which is a “specialized” first entry and promotion post.

10 As the post is a “specialized” post an Advisory Committee was set up under s. 34 of Law 33/67. This Committee recommended to the respondent Commission seven candidates for the post. Applicant in Case 122/84 was amongst those recommended, whilst applicants in Cases 123/84 and 240/84 were not. Applicants in Cases 123
15 and 240 challenged the said decision of the Advisory Committee by recourse. The recourse was successful* and as a result the matter was referred back to the Committee, which finally recommended to the respondent Commission 11 candidates.

20 The applicants and the interested party were amongst those recommended. In its recommendation the Committee remarked that applicants in Cases 123 and 240 lacked in the performance during the interviews compared with the other candidates recommended. This statement, however,
25 is not supported by any record in the relevant minutes.

Following the said recommendation the respondent Commission interviewed all candidates, except one, who had in the meantime retired from the service, in the presence of the Director-General of the Ministry of Interior (hereinafter called the Director) and then heard the said Director as to his evaluation of the performance of the candidates at the interview. The three applicants were evaluated by the Director as good and the interested party as excellent. The Commission, however, made its own evaluation of the
30 said performance and evaluated the applicants in Cases 122/84 and 240/84 as good and applicant in Case 123/84 and the interested party as almost very good.
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* See Papadopoulos v The Republic (1983) 3 C.L.R. 1423

On the 10.2.84 the Commission selected four of the candidates for appointment. Neither the applicants nor the interested party were amongst those selected. As, however, one of those selected did not accept the offer, the respondent Commission met on 25.2.84 to consider the filling of the one remaining vacant post. The Commission decided to appoint the interested party to the said post. This is the sub judice decision in the above recourses. In taking this decision the Commission restricted its selection between the interested party and applicant in case 123/84. "Both of whom have been evaluated by the Commission as almost very good at the interview."

It should be noted that applicants in Cases 122/84 and 240/84 are senior to the interested party and held a post higher in the hierarchical ladder, whilst the interested party was senior to applicant in Case 123/84. Both the interested party and the applicant in case 123/84 held a post on Scale A.11.

All applicants have University Qualifications. The interested party has no University Degree.

Concerning merit and discharge of their duties in the service both the applicants and the interested parties are described in their confidential reports as excellent Officers.

The respondent Commission preferred the interested party to applicant in Case 123/84, on the ground that the former is generally superior to the latter. This conclusion was reached on the following considerations, namely that the applicant is superior to the interested party, that the interested party was rated by the Director as excellent, whilst the applicant was rated as good, that the interested party was senior to the applicant, that he had been considered as better than the applicant when a decision was taken for his promotion as from 15.1.82 to the post of Administrative Officer A and that during the interview the interested party was better than the applicant respecting the practical approach of topics related to the duties of the post, notwithstanding the fact that both of them were evaluated as almost very good.

5 *Held.* annulling the sub judice decision (1) In the circumstances of this case and bearing in mind the fact that the final evaluation was made by the respondent Commission in the light of all material before it and after having interviewed the candidates and made its own evaluation, the comments of the Advisory Committee, that applicants in Cases 123/84 and 240/84 lacked in the performance at the interviews compared with the other candidates, do not constitute a material irregularity.

10 (2) The evaluation by the Director of the performance of the candidates at the interview is not a recommendation by the Head of the Department which may be taken into account in favour of a candidate as contemplated by s 44(3) of Law 33/67.

15 (3) Bearing in mind the striking superiority of applicants in Cases 122/84 and 240/84 over the interested party as regards seniority and qualifications, the performance of the candidates at the interview before the Commission played a decisive part in excluding the said applicants from the final selection for the fourth vacant post and the restriction of such selection as between the interested party and applicant in case 123/84. The Commission attached undue weight to such performance and, therefore, the exercise of its discretionary power was tainted with irregularity and lack of due inquiry.

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Furthermore in the light of the substantial superiority of the said applicants as regards seniority and qualification, assuming that they were equal in merit to the interested party, the Commission ought to have given reasons for ignoring the factors of seniority and qualification.

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(4) As regards Case 123/84 the evaluation of the Director of the performance of the applicant and the interested party at the interview was not accepted by the Commission and yet it was invoked as one of the reasons why the interested party was considered as superior to the applicant. Further, notwithstanding that the performance of each one of them was rated by the Commission as "almost very good", the Commission proceeded to particularise a single matter and described the interested party as better in the practical approach to various matter. This particula-

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rization is a poor excuse for preferring the interested party. Finally the fact that the interested party in 1982 was considered a better candidate for promotion to the post of Administrative Officer A was wrongly taken into consideration. The opinion by the Commission about a candidate on a previous occasion, some years earlier, for the filling of another post, is an extraneous matter and should not have been allowed to influence the mind of the Commission in forming its final opinion of the candidates.

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Sub judice decision annulled.
No order as to costs.

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Cases referred to:

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

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

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Papadopoulos v. The Republic (1983) 3 C.L.R. 1423;

Mitides v. The Republic (1983) 3 C.L.R. 1096;

Livadas v. The Republic (1985) 3 C.L.R. 506.

Recourse.

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Recourse against the decision of the respondent to appoint the interested party to the post of District Officer in preference and instead of the applicants.

A. S. Angelides, for the applicants.

N. Charalambous, Senior Counsel of the Republic, for the respondent.

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F. Lemonaris, for the interested party.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The three applicants in the above recourses which were heard together as directed against the same administrative act and/or decision and as presenting common question of law and fact

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are challenging the appointment of the interested party Mikis Zapitis to the post of District Officer.

5 The post of District Officer is a first entry and promotion post and on the 23rd October, 1981, four vacancies to such post were published in the official Gazette of the Republic by the respondent Public Service Commission (P.S.C.) after it had been requested to proceed with the filling of such vacancies.

10 In response to such publication, 23 applications were submitted. Due to the fact that the post of District Officer had been declared as a "specialized" post, the respondent Commission in compliance with the provisions of section 35 of the Public Service Laws 1967 - 1980 (Law 33/67 and its subsequent amendments) submitted the applications to 15 the Advisory Committee set up under section 34 of Law 33/67 which was composed of the Director-General of the Ministry of Interior, Mr. Christophi, the Director-General of the Ministry of Commerce and Industry Mr. Erotocritos and the Director-General of the Ministry of Defence, Mr. 20 Phylachtou.

The Advisory Committee after several abortive attempts to make its recommendations, having interviewed the applicants, came to its decision on the 13th September, 1983, by which it recommended seven candidates as suitable for the 25 post amongst whom the applicant in Case No. 122/84. The applicants in the other two cases, namely Papadopoulos and Mantovanis who were not recommended, challenged as a result, the decision of the Advisory Committee and were successful in having such decision annulled, on the grounds 30 that the Advisory Committee gave undue weight to the interviews and thus excluded eligible candidates, that the inquiry carried out was inadequate and the reasoning defective. (see, *Papadopoulos v. The Republic* (1983) 3 C.L.R. 1423).

35 As a result, the Public Service Commission which, in the meantime met and interviewed a number of the candidates, referred the matter back to the Advisory Committee which was differently composed due to the retirement from service, in the meantime, of one of its members. The Advisory

Committee met on four occasions, to consider the applications. The Advisory Committee having interviewed the candidates decided on 19.12.1983 to recommend 11 of them and submitted the list of the persons so recommended to the Public Service Commission. In its recommendation it remarked that Papadopoulos and Mantovanis lacked in the performance during the interviews compared with the other candidates recommended.

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The respondent Commission met on the 4th January, 1984 and 7th January, 1984 and interviewed all candidates recommended by the Advisory Committee except one who had, in the meantime, retired, in the presence of the Director-General of the Ministry of Interior.

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The respondent Commission subsequently met on the 21st January, 1984 and heard the Director-General of the Ministry of Interior as to his evaluation of the performance of the candidates at the interviews and met again on the 10th February, 1984, to make its own evaluation of the candidates. On the basis of all the material before it, the P.S.C. proceeded to the selection of four candidates as the most suitable for appointment to the post, namely Andreas Yiannakou, Nicos Zavros, Toumazos Kondozi and Andreas Papagavriel. One of the persons so selected, namely, Zavros, did not accept the offer of his appointment to the post and, as a result, the respondent Commission met on 25.2.84 to consider the filling of such vacant post and decided to appoint the interested party M. Zapitis.

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It is the above decision of the Public Service Commission that is being challenged by all applicants and not the appointment of the first three candidates which was effected on the 10th February, 1984.

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The legal grounds advanced in support of the prayer for relief are directed both against the procedure followed by the Advisory Committee in reaching its decision and making its recommendations to the P.S.C., as well as the mode by which the respondent took its final decision. It is also the contention of counsel for applicants that the respondent failed in the discharge of its duty to select the best candidate for appointment in view of the striking superiority of

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the applicants compared to the interested party. Such grounds may be summarised as follows:

(1) Undue and insufficient enquiry by the Advisory Committee.

5 (2) Lack of due reasoning of the decision of the Advisory Committee.

(3) Undue weight was given by the P.S.C. at the interviews.

10 (4) The procedure for the preparation of the confidential reports of the candidates was wrong.

I shall proceed now to deal with the first ground of law.

In the present case all three applicants had been recommended by the Advisory Committee and their names were included in the list submitted to the P.S.C. for final selection.

15 The question which arises relates to the sufficiency of the enquiry of the Advisory Committee concerning applicants Papadopoulos and Mantovani especially in view of the comments of the Advisory Committee concerning these two applicants according to which they had lacked at the oral interview before it. More particularly, it is the contention of the applicants that the opinion and comments of the Advisory Committee are not explained by any record showing the degree to which the two applicants had been inferior compared to the other candidates.

25 It is an undisputed fact, as earlier mentioned in this judgment, that the decision of the Advisory Committee on a previous occasion concerning the same candidates was annulled by this Court on the ground of insufficient enquiry concerning the merit of the candidates and also for lack of due reasoning. It is also a fact as it emanates from the material before me that in the course of the re-examination of the matter by the Advisory Committee the personal files of applicants Mantovanis and Papadopoulos were not before the Advisory Committee (see Appendix 13(b) and that it proceeded to make its evaluation on the basis of the rest of the material before it.

I accept the statement of counsel for the applicants that the comments of the Advisory Committee concerning the

performance of the two applicants are not supported by any record in the minutes on the basis of which the opinion of the Advisory Committee for each candidate could be checked

It is common ground however, that all the applicants were recommended and included in the list of suitable candidates which was submitted to the P.S.C. and that the unfavourable comments about the two candidates were only in respect of their performance at the interview before the Advisory Committee. In the circumstances of the case and bearing in mind the fact that the final evaluation of the candidates was made by the P.S.C. in the light of all the material before it including the personal files of the candidates and after having interviewed all the candidates and having made its own evaluation as to the performance at such interview, I do not consider the comments of the Advisory Committee as a material irregularity which has adversely affected the applicants so as to render the sub judice decision a nullity

I am coming next to consider the procedure for the evaluation of the candidates by the P.S.C.

The respondent Commission after the list of candidates recommended by the Advisory Committee was submitted to it held several meetings for the purpose of selecting the most suitable candidates for appointment, which ended up in the decision of 10.2.84, for the appointment of four of the candidates to the post of District Officer. It was after the rejection of the offer for appointment by one of the above four candidates that the decision of 25.2.1984 for the appointment of the interested party was taken. Since, however, in the last meeting the P.S.C. restricted its selection between the interested party and one of the applicants only the decision of 10.2.1984 is also in issue as far as the other two applicants are concerned

The first question which poses for consideration in this respect is whether the P.S.C. acted properly in restricting its selection between Mantovanis and Zapitis to the exclusion of all other candidates

The minutes of the meeting of 25.2.1984 read, in this respect, as follows:

5 "The Commission having taken into consideration all the material facts before it, from the file for the filling of the post, the applications of the candidates, all of them being public officers and any material in support thereof, their personal files and confidential reports, the findings of the Advisory Committee, as well as their performance at the interviews in the light
10 of the relevant views and comments of the Director of the Ministry of Interior, came to the conclusion that the selection should be made between Mikis Zapitis and Andreas Mantovanis both of whom have been evaluated by the Commission as almost very good at
15 the interview."

Under the scheme of service, the required qualifications for appointment are:

20 (a) (i) University Degree or title in an appropriate subject, i.e. law, (including Barrister-at-Law), Economics, Political Sciences etc. or an equivalent qualification and long administrative experience in the Government service:

or

25 (ii) Good general education not below the standard of a graduation certificate of a secondary education school of six classes, long and satisfactory government service and wide administrative experience in the General Administrative Branch. Experience in the District Administration will be considered as
30 an advantage.

(b) Excellent knowledge of the Greek and very good knowledge of the English language. Ability to draft documents in both languages with clarity and speed and ability in the application of the Cyprus legislation, the General Orders and Financial Instructions and Store Regulations. Initiative, tactfulness, patience,
35 sound judgment, common sense and willingness in undertaking responsibilities."

From the material before me, which was before the P.S.C. as well, it emanates that all three applicants have University qualifications. Applicant in Case No. 122/84, Lambis, is the holder of a La Salle degree in American Law Procedure and a La Salle L.L.B. Degree and he has successfully passed the examinations held by the Legal Board of Cyprus for the acquisition of a licence to practise as an advocate. He further holds an M.A. Degree of the American University of Beirut in Development Administration.

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Applicant in Case 240/84, Papadopoulos, is the holder of a diploma of the Pantios School of Political Science of Athens and also of a diploma in Public Administration and a Master's Degree in Public Administration.

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Applicant in Case 123/84, Mantovanis, holds a degree in law of the University of Salonica and a Master's Degree in Public Administration of the University of Albany.

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The interested party has no University degree and his qualifications consist of a graduation certificate of a school of secondary education and a course in Public Administration at the University of Manchester, from September, 1975 till May, 1976.

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From the seniority point of view, applicants Lambis and Papadopoulos are senior to the interested party and they were both holding a post higher in the hierarchical ladder of the service, both of them holding a post on Scale A. 13, whereas the interested party was on Scale A.11. The interested party is senior to applicant Mantovanis, who was also holding a post on Scale A.11.

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Concerning merit and discharge of their duties in the service both the applicants and the interested party are described in their confidential reports as excellent officers.

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At the interview, the three applicants were evaluated by the Director-General as good and the interested party as excellent, whereas the respondent Commission evaluated applicants Lambis and Papadopoulos as good and Mantovanis and the interested party as almost very good.

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It is on the basis of the above material that the P.S.C. proceeded to make its final selection.

It is apparent from the minutes of the 25th February, 1984, that the selection was restricted to the two candidates to the exclusion of all others, including applicants Lambis and Papadopoulos, as a result of the impression that the respondent Commission formed during the interview of the candidates. In the circumstances of the case, it appears that the performance of the candidates at the interview played a decisive part in the formation of the opinion by the respondent bearing in mind the striking superiority of Lambis and Papadopoulos over the interested party concerning qualifications and seniority.

It has been held time and again by this Court that interviews do not constitute a criterion by itself separate from the merit, qualifications and experience of the candidates but is merely a means of forming an opinion and evaluating the merits, notwithstanding the fact that it is not the safest one. See *Triantafyllides and others v. The Republic* (1970) 3 C.L.R. 235; *Makrides and another v. The Republic* (1983) 3 C.L.R. 622 and *Papadopoulos v. The Republic* (1983) 3 C.L.R. 1423, where it was held that although the impressions gained at the interview as to the personality of a candidate are relevant to the choice of a candidate for promotion, especially if the post carries, as the post of a District Officer does, serious administrative responsibilities, they cannot be decisive.

It is obvious in the present case that the views of the Director-General of the Ministry of Interior concern only the performance of the candidates at the interview and do not amount to a recommendation by the Head of the Department which may be taken into account in favour of a candidate as contemplated by s. 44(3) of the Public Service Law. (*Makrides v. The Republic* (1983) 3 C.L.R. 622, 633; *Mitides v. The Republic* (1983) 3 C.L.R. 1096).

As to the performance of the candidates at the interview the P.S.C. made its own evaluation by grading applicants Lambis and Papadopoulos as "good" and the interested party as "almost very good".

The fact that the interviews played an outweighing factor in the assessment of the candidates is evidenced by the ex-

clusion of the two applicants Lambis and Papadopoulos, from consideration for the sub judge post notwithstanding the fact that both of them had higher qualifications and longer experience in the District Administration. The undue weight attached by the respondent to the interviews, taints the exercise of its discretionary power with irregularity and lack of due inquiry. Furthermore, in the light of the substantial superiority of applicants Lambis and Papadopoulos over the interested party concerning qualifications, seniority and longer experience, assuming that they were equal in merit, the Commission should have stated the reasons for ignoring such factors which operated in favour of the two applicants (*Livadas v. The Republic* (1985) 3 C.L.R. 506). I, therefore, find, on the basis of the above, that the sub judge decision has to be annulled as far as applicants Lambis and Papadopoulos are concerned.

I come next to consider the position of Mantovanis vis-a-vis the interested party. Mantovanis was the only candidate who was considered together and compared with the interested party for the purpose of filling the post.

The minutes of the meeting of the P.S.C. dated 25.2.1984 read, in this respect, as follows:

“The Commission noted that -

(a) Mantovanis is superior compared to Zapitis from the point of view of academic qualifications. Mantovanis is the holder of a diploma in law of the University of Salonica and a Master's Degree in Public Administration of the University of Albany, whereas Zapitis attended a course in Public Administration at the University of Manchester from September, 1975, to May, 1976, which is described as of post-graduate status,

(b) Zapitis has been evaluated by the Director as excellent at the interview and Mantovanis as good,

(c) during the interview Zapitis was better than Mantovanis respecting the practical approach of topics

related to the duties of the post of District Officer, notwithstanding the fact that both of them were evaluated as almost very good,

5 (d) Zapitis is senior to Mantovanis. whereas from the point of view of confidential reports, they both have excellent reports, and

(e) Zapitis has been considered as better than Mantovanis when a decision was taken for his promotion as from 15.1.1982 to the post of Administrative Officer, A.
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Bearing in mind the above, the Commission decided that Zapitis is generally superior to Mantovanis, as well as to all other candidates and decided to promote him as the most suitable to the permanent post of District Officer in the District Administration as from 1.3.1984.”
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As it appears from the minutes of the meeting of the respondent Commission on 10.2.1984 both applicant Mantovanis and the interested party were assessed by the P.S.C. at the interview before it, as “almost very good.” Notwithstanding the fact that they were so considered the respondent proceeded to particularize a single matter and describe Zapitis as better in the practical approach on various matters. I find such particularization rather as a poor excuse for supporting its preference to Zapitis instead of the applicant than a real evaluation, bearing in mind the fact that both these parties had been equally graded at the interview which means that if the one had made a better impression on one matter the other must have made a better one on other matters.
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Furthermore, according to the minutes cited above the P.S.C. took into consideration the fact that the interested party was assessed at the interview, by the Director-General, as “excellent”, whereas Mantovanis was assessed as “good”.
35 The evaluation of the candidates by the Director-General was not accepted by the respondent which made a different evaluation of the two candidates and instead of classifying the interested party as “excellent” and Mantovanis as “good”, it assessed both of them as “almost very good”.

Therefore, once the evaluation by the Director-General of the Ministry was not accepted by the P.S.C. as the correct one, this matter should not have been treated by it as one of the matters weighing in favour of the interested party. As I said earlier, the evaluation of a candidate by the Head of the Department as to his performance at the interview, does not amount to a recommendation by the Head of the Department which may be taken into consideration by the P.S.C. in its final evaluation of the candidates. 5

Another matter which was wrongly taken into consideration by the respondent in assessing the merits of the candidates was, as stated in the minutes, that the interested party in 1982 was considered a better candidate for promotion to the post of Administrative Officer A. The opinion by the P.S.C. about a candidate on a previous occasion, some years earlier, for the filling of another post, is an extraneous matter and should not have been allowed to influence the mind of the P.S.C. in forming its final opinion of the candidates. 10 15

I, therefore, find that the sub judice decision should also be annulled as far as applicant Mantovanis is concerned for the reasons stated above. 20

In the result, all three recourses succeed and the sub judice decision is annulled with no order for costs.

Sub judice decision annulled. 25
No order as to costs.