

1986 June 7

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

PANAYIOTIS TSINGI,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR,

Respondent.

(Case No. 344/82).

Police Force—Promotions—Combined posts—Refusal to promote applicant taken on basis of comparison between candidates—A material misconception.

This recourse is directed against the decision of the respondent Minister, whereby he decided not to promote the applicant to the post of Superintendent A in the Police Force from the combined with it post of Superintendent B on the ground that the applicant was inferior to the other candidates for promotion. 5

Held, annulling the sub judge decision: (1) It seems that the respondent proceeded on the basis of comparison between the applicant and other candidates, whereas all he had to decide was whether the applicant was eligible for the post. He has acted, thus, under a material misconception. 10 15

(2) Such misconception or even the probability of its existence leads to the invalidity of the decision in question.

Sub judge decision annulled.
No order as to costs. 20

Cases referred to:

Christodoulou v. C.Y.T.A. (1978) 3 C.L.R. 61;

Zenios v. The Republic (1983) 3 C.L.R. 1181.

Recourse.

- 5 Recourse against the refusal of the respondent to promote the applicant to the post of Superintendent A, in the Police Force, from the combined with it post of Superintendent B.

N. Papaefstathiou, for the applicant.

- 10 *G. Erotocritou (Mrs.)*, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

- 15 TRIANTAFYLLIDES P. read the following judgment. By means of the present recourse the applicant challenges the decision of the respondent Minister of Interior, dated the 25th May 1982, not to promote him to the post of Superintendent A in the Police Force, from the combined with it post of Superintendent B.

- 20 The sub judice decision was reached by the Minister of Interior after reconsideration of an earlier decision not to promote the applicant, which had been challenged by recourse No. 130/80. Such recourse was dismissed on the 31st December 1984 as abated, because there had intervened in the meantime the new decision in the matter of
25 the respondent which is the subject-matter of the present recourse.

- 30 From the contents of such decision it appears that the respondent Minister of Interior decided not to promote the applicant because, in his view, the applicant was inferior to other candidates for promotion to the post of Superintendent A.

- 35 It seems, therefore, that the respondent proceeded on the basis that he had to decide about the promotion of the applicant after comparing him with other candidates eligible for promotion to the post in question. He has acted,

thus, in my view under a material misconception because, irrespective of whether or not the applicant was superior or inferior to other candidates, all that the respondent had to decide was whether the applicant was suitable for promotion from the post of Superintendent B, which he was holding, to the combined with it post of Superintendent A. 5

It is to be noted in this respect that in instructions which were issued on the 8th November 1976, and were published in the Police Weekly Orders, it was clearly stated that because of the combined establishment of the posts of Superintendent B and Superintendent A promotions from the one to the other could be made notwithstanding the fact that there were no vacancies in the post of Superintendent A. 10

It is a principle of administrative law that a misconception, or even the probability of its existence leads to the invalidity of an administrative decision which was reached as a result of such misconception (see, inter alia, in this respect, *Christodoulou v. The Cyprus Telecommunications Authority*, (1978) 3 C.L.R. 61, 69 and, *Zenios v. The Republic*, (1983) 3 C.L.R. 1181, 1184.) 15 20

As, therefore, the respondent Minister of Interior has acted under a misconception as regards the right of the applicant to be promoted to the post of Superintendent A if he was found to be suitable, without having to be better than other candidates for promotion to such post, I have come to the conclusion that the sub judice decision of the respondent has to be annulled for this reason. 25

In the result the present recourse succeeds; but I shall not make any order as to its costs. 30

Sub judice decision annulled.
No order as to costs.