1986 November 6

[TRIANTAFYLLIDES P MALACHTOS SAVVIDES LORIS STYLIANIDES KOURRIS JJ ]

THE CYPRUS TOURISM ORGANIZATION,

*Applicant,*

v

AGNI HADJIDEMETRIOU,

*Respondent*

*(Revisional Jurisdiction Appeal No 665)*

*Constitutional Law — Public Service Commission — Constitution Articles 124 5 and 125 1 — Law of necessity — Cyprus Tourism Organization — Law of necessity justifies the vesting of the Board of the Organization with power to appoint and promote the personnel of the Organization — Sections 5(3) and 8(1)(b) of the Cyprus Tourism Organization Law 54/69 — Not inconsistent with Art 124 5 and 125 1 of the Constitution — The delegation of the powers of the Board in virtue of section 5(6) of the said Law to the Selection Committee — The inclusion of the Director-General in such Committee — Neither the delegation nor such inclusion unconstitutional*

This is an appeal from a judgment of a Judge of this Court, whereby the promotion of Maria Georghiadou to the post of Senior Assistant Tourist Officer (Grade A) instead of the applicant (respondent in this appeal) was annulled on the ground that sections 5(3) and 8(1)(b) of the Cyprus Tourism Organization Law 54/69 are unconstitutional, as being inconsistent with Art 124 5 and 125 1 of the Constitution

In accordance with the reasoning of the judgment appealed from, though the case law establishes that the tumultuous events which struck Cyprus justified in the name of necessity created thereby the setting up in particular areas of the public service of substitute bodies to perform the duties of the Public Service Commission, there was no necessity to invest the substitute bodies with attributes other than those envisaged by the Constitution for the members of the Public Service Commission, since Art 124 5 of the Constitution provides that such members cannot be removed except «on like grounds and the like manner as Judges of the High Court», whereas the said section 5(3) provides that the members of the Board of the respondent (appellant in this appeal) may be dismissed at any time by the Council of Ministers and since the said section 8(1)(b) provides that the Minister may issue binding directives respecting appointments and promotions, whereas Art

125 makes such matters the sole province of the independent Authority charged with competence in respect of them, section 5(3) and 8(1)(b) are repugnant to art 124 5 and 125 1 of the Constitution

Held, *allowing the appeal* (1) This Court subscribes to the view that organs entrusted with matters such as appointments and promotions of public officers should enjoy the greatest possible, in the circumstances, independence from political organs of Government, but there are instances in the Constitution (e g Art 47(f) in conjunction with Art 131) in which the tenure of office of such organs may be terminated by the political organ, which has appointed them

(2) The Public Service Commission envisaged by Art 124 of the Constitution ceased to exist as a result of intercommunal strife in 1963 and 1964 The Commission that was set up in virtue of the Public Service Law 33/67 cannot exercise any powers in relation to personnel of public corporations, such as the appellants in this case In order to fill the vacuum there was enacted the Public Corporations (Regulation of Personnel Matters) Law 61/70

(3) The appellant organization was created by a law enacted after the Public Service Comission ceased to exist and after the creation of the Public Service Commission by Law 33/67, which was not vested with powers relating to the personnel of Public Corporations Consequently, it was quite justifiable, both by the law of necessity and by common sense, to follow in Law 54/69 the *same pattern as that followed in Law 61/70, which was found to be* constitutional by the case law of this Court

(4) The Council of Ministers may, at any time, terminate the term of office of any member of appellant's Board (section 5(3)(a) of Law 54/69) Likewise, the members of the Public Service Commission, which was created by Law 33/67, can be removed from office by the President of the Republic, who appoints them It is not necessary in this case to pronounce on the constitutionality of the aforesaid power of the President, but even assuming that in view of Art 124 5 of the Constitution such power is unconstitutional, it must be pointed out that Art 124 5 of the Constitution cannot be treated as being applicable to the Board of the appellant in the sense that it should have been provided that the members of such Board can only be removed from office «on the like grounds and in the like manner as a Judge of the High Court» Such tenure of office would be entirely incompatible with the nature and functions of the Board of a Public Corporation Once the power of appointment and promotion was vested in the Board and once this was justifiable by the Law of Necessity, such powers have to be exercised by the Board of the appellant as constituted for the purpose of being the Board of a public corporation Art 124 5 of the Constitution, which is a special provision specifically applicable to the Public Service Commission envisaged by art

124, does not embody a constitutional principle of such overriding force, which is applicable, also, to any Board of public corporation vested, in virtue of the Law of necessity, with powers to appoint and promote.

(5) The members of appellant's Board enjoy the requisite degree of independence, because the power of the council of Ministers to dismiss them cannot be exercised arbitrarily or capriciously.

(6) The provisions of section 8(1)(b) of Law 54/69 do not interfere with the independence of the Board of the appellant, because the directions of a general nature therein referred to are not to be understood as directions relating in any way to appointments or promotions of particular members of the personnel of the appellant.

(7) There was nothing unconstitutional in the delegation, in virtue of section 5(6), of the powers of the Board to the Selection Committee, which took the sub judice decision or in the inclusion in such Committee of the Director-General of the appellant.

*Appeal allowed.*

*Cases referred to:*

*Frangoulides (No. 2) v. The Republic* (1966) 3 C.L.R. 676;

*Bagdassarian v. E.A.C.* (1968) 3 C.L.R. 736;

*Messaritou v. C.B.C.* (1972) 3 C.L.R 100;

*Theodorides v. Ploussiou* (1976) 3 C.L.R. 319;

*President of the Republic v. Loucas* (1984) 3 C.L.R. 241;

*Josephin v. The Republic* (1986) 3 C.L.R. 111;

*Charalambous v. The Republic* (1986) 3 C.L.R. 557.

**Appeal.**

Appeal against the judgment of Judge of the Supreme Court of Cyprus (Pikis, J.) given on the 24th September, 1986 (Revisional Jurisdiction Case No. 295/84)* whereby the decision of the appellant to promote the interested party to the post of Senior Assistant Tourist Officer Grade A was annulled.

*A. Dikigoropoulos*, for the appellant.

* *Reported in (1986) 3 C.L.R. 1956.*

*A. S Angelides*, for the respondent.

*N. Charalambous, Senior Counsel of the Republic, on behalf of the Attorney-General as amicus curiae*

*Cur adv. vult*

*TRIANTAFYLLIDES P.* read the following judgment of the Court The appellant Cyprus Tourism Organization, which was the respondent in recourse No 295/84 under Article 146 of the Constitution, has appealed against the first instance judgment of a Judge of this Court by means of which there was annulled the promotion to the post of Senior Assistant Tourist Officer (Grade A) of Maria Georghiadou The recourse was made by Agni HadjiDemetriou, as applicant, and she is now the respondent in this appeal

In annulling the said promotion the learned trial Judge stated the following

«I shall not in this case advert to the merits of the submission that nobody other than the Public Service Commission could assume powers to make appointments in the public service as defined in Art 122 of the Constitution Because our caselaw clearly establishes that the necessity created by the tumultuous events that struck Cyprus soon after its independence justified in the name of the necessity created thereby the setting up in particular areas of the public service of substitute bodies to perform the duties of the Public Service Commission* The ground being thus covered by authority, I shall not debate certain reservations I have with regard to the inevitability of this approach under the principles evolved in the case of *Ibrahim v The Republic***

. ... . . .. ... . ..

. . . . . .

In *Markides and Another v The Republic* (first instance judgment***, I was equally specific pointing out that no decided case supports the contrary view The caselaw as it appears to me, to the extent it illuminates the question, suggests that bodies charged with the competence formerly

---

* *See, inter alia, Ioannis Iosif v CYTA (1970) 3 C L R 225 Messaritou v C B C (1972) 3 C L R 100, Theodondes v Ploussiou (1976) 3 C L R 319, Krinos HadjiGeorghiou v C T O , Recourse No 217/85 delivered on 6 6 86 (not yet published)*

** *1964 C L R 195*

*** *(1984) 3 C L R 677*

vested in the Public Service Commission under the Constitution should have, notwithstanding changes in their composition, the same attributes as the body they replaced; particularly they should enjoy the same independence vis-a-vis the Executive. That this should be so, is reinforced by the separation envisaged in the Constitution between political and civil authority*.

As often stressed the doctrine of necessity is intended to underpin constitutional order in areas where it is threatened with collapse**. Whereas provision for replacement of the Public Service Commission became necessary with the departure of Turkish members of the body, there was no necessity and none has arisen to invest the substitute bodies with attributes other than those that the constitutional legislator intended for members of the body charged with the duty of manning the public service and no suggestion has been made to that end.

The vital element of independence provided for by the Constitution with regard to members of the Public Service Commission was their security of tenure. Once appointed they should not be liable to be removed except «.... on the like grounds and the like manner as Judges of the High Court»***.

.....

.....

The Board of the Cyprus Tourism Organization was entrusted with power to make appointments and promotions of personnel in the organization, a branch of the public service, in accordance with the definition of 'public service' in Art. 122 of the Constitution. Its members should enjoy security of tenure in the manner ordained by the Constitution. And they did not. In reality they held office at the pleasure of the Council of Ministers. The same lack of independence affected the Selection Committee, assuming it was constitutionally possible for a body set up to replace the Public Service Commission to delegate its competence with regard to personnel wholly or in part to another body.

---

* *Charilaos Frangoulides v. The Republic (1969) 3 C.L.R 676.*

** *Aloupas v. National Bank of Greece (1983) 1 C.L.R. 55.*

*** *Art. 124 5.*

The independence of the body was equally undermined by the power of the Minister of Commerce and Industry to issue binding directives respecting, inter alia, appointments and promotions in the organization in direct opposition to the provisions of Art. 125 making appointments and promotions the sole province of the independent authority charged with competence to make appointments in the public service.

Consequently the provisions of s. 5(3) and s. 8(1)(b) of the law are unconstitutional. They are in conflict with Art. 124.5 of the Constitution and are inconsistent with the provisions of Art. 125.1 that vests in the body responsible for appointments in the public service sole responsibility for the exercise of the competence to the exclusion of everybody else.

In the result the sub judice decision is, pursuant to the provisions of Art. 146.4(a), declared in the whole to be null and void.»

We should state from the outset that we do subscribe to the view that organs entrusted with matters such as appointments and promotions of public officers should enjoy the greatest possible, in the circumstances, independence from political organs of Government, in accordance with the principle expounded in *Frangoulides (No.2) v. The Republic,* (1966) 3 C.L.R. 676.

There are, however, instances in the Constitution where provision is made, apparently exceptionally, that the tenure of office of such organs may be terminated by the Political organ which has appointed them (see, for example, Article 47(f) of the Constitution which is to be read together with Article 131 of the Constitution).

The personnel of the appellant Cyprus Tourism Organization would normally have come within the ambit of the definitions of «public officer» and «public service» in Article 122 of the Constitution and, consequently, the powers to appoint and promote in relation to the personnel of the appellant would have been exercised by the Public Service Commission envisaged by Article 124 of the Constitution.

As was explained, however, in, inter alia, *Bagdassarian v. The Electricity Authority of Cyprus,* (1968) 3 C.L.R. 736, the Public Service Commission envisaged by Article 124 of the Constitution ceased to exist as a result of intercommunal strife in 1963 and

1964 and there was set up, eventually, by means of the Public Service Law, 1967 (Law 33/67), a new Public Service Commission which is not the Commission envisaged under Article 124 of the Constitution, but a differently composed Commission with less extensive powers.

The Commission which was set up under Law 33/67 cannot exercise any powers in relation to personnel of public corporations, such as the appellant in this case, and, therefore, there resulted a vacuum, in the sense that the organ which would have exercised the powers of appointment and promotion in relation to the personnel of public corporations, namely the Public Service Commission envisaged by Article 124 of the Constitution, had ceased to exist and the new Public Service Commission, which was created by Law 33/67 and in which were vested some of the powers of the aforesaid Public Service Commission in relation to public officers, was not entrusted with the task to exercise any powers in relation to the personnel of public corporations.

In order to fill the said vacuum there was enacted the Public Corporations (Regulation of Personnel Matters) Law, 1970 (Law 61/70) by means of which there were vested in the Boards of public corporations the powers of appointment and promotion in relation to their personnel and such Law was upheld as being constitutional by virtue of the law of necessity (see, inter alia, *Massaritou v. The Cyprus Broadcasting Corporation*, (1972) 3 C.L.R. 100).

The *Bagdassarian* and the *Messaritou* cases were approved by the Full Bench of our Supreme Court in *Theodorides v. Ploussiou*, (1976) 3 C.L.R. 319, 336, 340.

The appellant Cyprus Tourism Organization was set up for the first time by the Cyprus Tourism Organization Law, 1969 (Law 54/69), after the Public Service Commission envisaged by Article 124 of the Constitution had ceased to exist and after there had been created by Law 33/67 a Public Service Commission which was not vested with any powers over personnel of public corporations, such as the appellant.

Consequently, it was quite justifiable, both by the law of necessity and by common sense, to follow in Law 54/69 the

pattern of the provisions of Law 61/70 which had been found to be constitutional in the *Messaritou* case, supra; and, as a result, there was enacted section 5(2)(e) of Law 54/69 empowering the Board of the appellant to «appoint» its employees; and as has been held in the *Theodorides* case, supra, the notion of «appointment» in provisions of this nature includes the notion of «promotion».

Furthermore, by means of section 5(6) of Law 54/69 (as amended by Laws 48/78 and 16/85) the Board of the appellant was empowered to delegate some of its powers to Committees consisting of its members and of the Director-General or other officers of the appellant.

There was, thus, set up a Committee of Selection, by a decision of the Board of the appellant of the 8th July 1983, which was enlarged by the addition to it of one further member, by a decision of the Board of the 29th July 1983, and such Committee, on the 5th April 1984, promoted Maria Georghiades, as from the 1st April 1984, to the post of Senior Assistant Tourist Officer (Grade A), after having selected her out of a number of candidates one of whom was the respondent in these proceedings Agni HadjiDemetriou.

The board of the appellant is, by virtue of section 5(3)(a) of Law 54/69, appointed by the Council of Ministers for a period not exceeding three years and the Council of Ministers may, at any time, terminate the term of office of any member of such Board. Likewise, the members of the Public Service Commission which was created by Law 33/67 are appointed by the President of the Republic and can be removed from office by him.

In view of certain dicta in *The President of the Republic v. Louca*, (1984) 3 C.L.R. 241, *Josephin v. The Republic*, (1986) 3 C.L.R. 111 and *Charalambous v. The Republic*, (case 434/83 decided on the 3rd April 1986 and not reported yet)* we do not propose to pronounce finally in this judgment - and this is not really necessary in the present case - on the issue of the constitutionality of the power of the President of the Republic, under section 4 of Law 33/67, to remove from office members of the Public Service Commission.

But even assuming, without so deciding, that there was not sufficient justification, by virtue of the law of necessity, to depart

* *Reported in (1986) 3 C.L.R. 557*

from the provisions of Article 124(5) of the Constitution as regards the Public Service Commission which was created by Law 33/67 and that, therefore, it was unconstitutional to provide, by means of section 4 of such Law, that the President of the Republic can remove from office a member of such Commission, whereas it is provided in Article 124(5) of the Constitution that such a member «shall not be removed from office except on the like grounds and in the like manner as a Judge of the High Court» - now «of the Supreme Court» - it must be pointed out that Article 124(5), which is a constitutional provision arguably applicable as regards also the Public Service Commission created by Law 33/67, cannot, in our opinion, be treated as being applicable to the Board of the appellant.

Because once the powers of appointing and promoting members of the personnel of the appellant were not vested in the Public Service Commission created by Law 33/67, we cannot accept that Article 124(5) of the Constitution can be treated as being applicable, too, to the Board of the appellant in the sense that it should have been provided that its members can only be removed from office on the like grounds and in the like manner as a Judge of the High Court. Such a kind of tenure of office would be entirely incompatible with the nature and functions of a Board of a public corporation such as the Board of the appellant; and, in our opinion, once there were vested in the Board of the appellant the powers to appoint and promote members of the personnel of the appellant and once this was justifiable by virtue of the law of necessity, such powers have to be exercised by the Board of the appellant as constituted for the purpose of being the Board of a public corporation; indeed, it would not be correct to hold that all the Boards of public corporations, which by virtue of legislation enacted on the strength of the law of necessity came to be vested with the powers to appoint and promote members of the personnel of such corporations, would have to consist of members who could only be removed from office on the like grounds and in the like manner as a Judge of the High Court, as laid down in Article 124(5) of the Constitution.

In our view it cannot be said that Article 124(5) of the Constitution, which is a special provision specifically applicable to the Public Service Commission envisaged by Article 124 of the Constitution, embodies a constitutional principle of such overriding force which is applicable, also, to any Board of a public

corporation to which there is vested, by virtue of the law of necessity, the power to appoint and promote members of the personnel of such corporation.

We cannot, therefore, agree with the learned trial Judge that the sub judice decision is unconstitutional because the members of the Board of the appellant can be removed from office on grounds and in a manner other than those applicable in relation to a Judge of the High Court We are, furthermore, of the opinion that the members of the Board of the appellant enjoy the requisite for the discharge of their duties independence because though the tenure of office of any one of them may be terminated by the Council of Ministers at any time, it is quite obvious that such termination is not to be effected arbitrarily or capriciously and the decisions of the Council of Ministers are under continuous scrutiny by the House of Representatives and public opinion at large.

Moreover, we cannot agree that the provisions of section 8(1)(b) of Law 54/69 interfere with the independence of the Board of the appellant because, in my opinion, the directions of a general nature referred to in such section 8(1)(b) are not to be understood as directions relating in any way to appointments or promotions of particular members of the personnel of the appellant.

Lastly, in the light of all the foregoing, we find nothing unconstitutional in the delegation of the relevant powers of the Board of the appellant to the Selection Committee which effected the sub judice promotion or in the inclusion in such Committee of the Director-General of the appellant. On the contrary, the participation in such Committee of the Director-General of the appellant, in our view, results in the democratization of the process of the exercise of the relevant powers regarding appointments and promotions, in the sense that there participate in such process not only members of the Board of the appellant but also its highest executive officer.

In the result, for the reasons set out in this judgment, we have held that the sub judice decision is not unconstitutional.

*Appeal allowed.*