

1988 November 18

[A. LOIZOU, P., MALACHTOS, DEMETRIADES, SAVVIDES, STYLIANIDES,
PIKIS & KOURRIS, JJ.]

ANDREAS SEKKIDES,

Appellant-Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Revisional Jurisdiction Appeal No. 728).

Public Officers—Promotions—Confidential reports—Circular 491/79, Reg. 9—Breach of (Alterations by counter-signing officer without prior consultation with the reporting officer)—Illegality in the broad sense, as it is a violation of the rules of procedure—Its impact on the validity of the final act of promotion—Depends on whether it has materially affected such promotion—(Republic v. Argyrides (1987) 3 C.L.R. 1092 explained).

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Constitutional Law—Equality—Constitution, Art. 28—Promotions of public officers—Confidential reports—Circular 491/79, Reg. 9—Breach of—The decision in Republic v. Argyrides (1987) 3 C.L.R. 1092 cannot be extricated from the facts of that case.

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The confidential reports for the appellant for the years 1979, 1980, 1982, and 1983 were compiled by the Head of the Fisheries Department himself, Mr. Demetropoulos. The applicant's ratings were:

Year	Ratings
1979	"Very Good" (1 - 7 - 3)
1980	"Very Good" (5 - 5 - 0)
1982	"Very Good" (5 - 7 - 0)
1983	"Very Good" (4 - 8 - 0)

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The reporting officer for 1981 and 1984 rated the applicant as "Very Good" and "Excellent" respectively (6 - 6 - 0 for 1981 and 8 - 4 - 0 for 1984), but in both cases, Mr. Demetropoulos, who acted as countersigning Officer downgraded the appellant as follows:

- 5 Year 1981 from 6 - 6 - 0 to 5 - 7 - 0.
 Year 1984 from "Excellent" (8 - 4 - 0) to "Very Good" (5 - 7 - 0).

On the other hand Mr. Demetropoulos, in his capacity as countersigning officer, reduced the reports on the interested party as well, in the following manner.

- 10 1979 from "Excellent" (9-0-0) to "Very Good" (6-5-0)
 1980 from "Excellent" (9-0-0) to "Very Good" (5-5-0)
 1981 from "Excellent" (10-0-0) to "Very Good" (6-6-0)
 1982 from "Excellent" (10-0-0) to "Very Good" (6-6-0)
 1983 from "Excellent" (11-0-0) to "Very Good" (6-6-0)
 15 1984 from "Excellent" (10-0-0) to "Very Good" (6-6-0)

The issue that arose for determination in this appeal is the impact on the sub judice decision of the fact that the report for 1984 was altered in a manner constituting a breach of Reg. 9 of Circular 491/1979 concerning the preparation of the confidential reports.

- 20 Held, allowing the appeal and annulling the sub judice decision:

(1) Circular 491/79 lays down rules of procedure that must be followed. Failure to follow them render a confidential report irregular. Such irregularity amounts to an illegality in the broad sense of the term, because it is a violation of a procedural legal provision.*

- 25 (2) However, being a violation of procedure, the impact on the validity of the final decision of promotion, depends on whether such decision was materially affected thereby.

(3) The question of equality referred to in Argyrides' case supra, cannot be extricated from the facts of that case.

- 30 (4) Without doubt one must treat very cautiously when considering such reports in order to avoid even the slightest possibility of abuse by those entrusted with the duty of compiling confidential reports. One must always

* This is how Argyrides' case supra should be understood.

look first at the circumstances of the case in hand in order to ascertain the extent of the irregularity and the effect such report had on the sub judice decision.

(5) In this case the likelihood that the alterations may have materially affected the promotion cannot be excluded. 5

Appeal allowed.

Sub judice decision annulled.

No order as to costs.

Cases referred to:

- Republic v. Argyrides* (1987) 3 C.L.R. 1092; 10
- Christou v. The Republic* (1980) 3 C.L.R. 437;
- Livadas v. The Republic* (1985) 3 C.L.R. 506;
- Themistocleous v. The Republic* (1985) 3 C.L.R. 2652;
- Lofitis v. The Republic* (1986) 3 C.L.R. 1318;
- Christoforou v. The Republic* (1986) 3 C.L.R. 2413; 15
- Georgiades v. The Republic* (1982) 3 C.L.R. 26;
- Ghristofides v. The Republic* (1985) 3 C. L. R. 1127;
- Alvanis v. CYTA* (1985) 3 C.L.R. 2695;
- Hjilossif v. CYTA* (1986) 3 C.L.R. 1353;
- Karpassitis v. The Republic* (1986) 3 C.L.R. 1617; 20
- Stylianides v. The Republic* (1987) 3 C.L.R. 1123;
- Papatryfonos v. The Republic* (1987) 3 C.L.R. 1882;
- Zyngas v. The Republic* (1988) 3 C.L.R. 838;
- Ierides v. The Republic* (1976) 3 C.L.R. 9 and on appeal (1980)
3 C.L.R. 165. 25

Appeal.

5 Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Loris J.) given on the 15th May, 1987 (Revisional Jurisdiction Case No. 862/85)* whereby appellant's recourse against the promotion of the interested party to the post of Senior Fisheries Assistant was dismissed.

M. Christofides, for the appellant.

L. Loucaides, Deputy Attorney-General of the Republic, for the respondent.

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Cur. adv. vult.

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A. LOIZOU P. read the following judgment of the Court. This is an appeal from the judgment of a judge of this Court in the exercise of the original jurisdiction of the Court dismissing the recourse filed against the promotion of the interested party to the post of Senior Fisheries Assistant in the Department of Fisheries, Ministry of Agriculture and Natural Resources.

The grounds upon which this appeal is filed are that:

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1. The trial court wrongly decided that the interested party was rightly and legally preferred to the applicant and that it was reasonably open to the respondent Commission to decide so.
2. (A) The trial Court wrongly
 - (a) accepted that the applicant failed to establish any superiority and/or striking superiority over the interested party;
 - (b) accepted that the interested party is "better merited"
 - (c) evaluated the recommendations of the Director, Fisheries Department.

* (Reported in (1987) 3 C.L.R. 744).

(B) The appellant alleges that the material of the files especially as to qualifications and merit on the basis of the confidential reports and his qualifications establish the superiority and/or striking superiority of the applicant over the interested party.

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3. The trial Court wrongly considered that the sub judice decision was duly reasoned.

In the course of the present proceedings leave was given to the appellant to file an additional ground of appeal this being as to whether there was in fact compliance with the requirements of paragraph 9 of Circular No. 491 of the 26th March 1979 by the officer who countersigned the confidential report of the appellant-applicant and of the interested party and in particular the report for the year 1984. In relation to this ground it was contended by the appellant that the confidential report for the year 1984 which was taken into consideration by the respondent Commission when reaching the sub judice decision had been altered by the countersigning officer to the detriment of the appellant, contrary to the provisions of paragraph 9 of the Circular i.e. without having discussed the matter prior to such alterations with the reporting officer and without giving any reasons for such alterations and his own evaluation in the appropriate column of observations.

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It was contended that on the authority of the decision of the Full Bench of this Court in the case of *Republic v. Argyrides* (1987) 3 C.L.R. 1092 this was a material irregularity, any deviation by the countersigning officer from the express provisions of the Circular being tantamount to an illegality.

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Counsel for the respondent on the other hand admitted that the aforesaid confidential report had been altered without the provisions of paragraph 9 of the Circular having been followed but submitted that failure to observe such provisions does not automatically lead to annulment of the sub-judice decision as there first has to be a material irregularity and whether there is such, it primarily depends on the particular circumstances of the case. It

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5 was submitted that any deviation from the provisions of para. 9 of the Circular is not by itself a reason for annulment but such must be a material irregularity; it is material if in the circumstances of the case the Court finds that the respondent Commission was wrongly influenced. It was contended that one must always look at the circumstances to decide whether the irregularity is material or not, otherwise if a too absolute interpretation is given to the case of *Argyrides* (supra) one would be lead to unfair results.

10 Looking at the case law on the matter prior to *Argyrides* it was held by the Full Bench in *Christou v. Republic* (1980) 3 C.L.R. 437 at p. 438:

15 "It is not disputed that the 1969 annual confidential report, in relation to the appellant was signed by Chief Inspector Makris, instead of by the Director of the Department, as Reporting officer, in contravention of the aforementioned circular dated January 5, 1970; and this amounts undoubtedly to an irregularity. But, in the circumstances it cannot be treated as a material irregularity the occurrence of which can be regarded as vitiating the relevant administrative process leading up to the promotion of the interested party and it is, indeed, well established that a complained of irregularity has to be of a material nature in relation to the particular matter concerned before it can be relied on as ground for annulment of the relevant administrative action (see, inter alia, in this respect, *HadjiLouca v. The Republic* (1969) 3 C.L.R. 570, 576, and, on Appeal (1971) 3 C.L.R. 96, 103 and *Savoulla and others v. The Republic*, (1973) 3 C.L.R. 706, 713)."

25 Similarly in *Livadas v. Republic* (1985) 3 C.L.R. 506 it was held at p. 510:

30 "The legislative provisions applicable to confidential reports for public officers are section 45 of the Public Service Law, 1967 (Law 33/67) and, in relation, particularly, to seconded officers, section 3 of the State Officers (Temporary Regulating Provisions) Law, 1975 (Law 54/75).

In the light of the said legislative provisions I do not think that Mr. Constantinou was excluded from making the confidential reports in relation to the two interested parties for 1976. Even, if, however, I had found that the making of such reports by Mr. Constantinou was an irregularity I would have held that it was not of material nature vitiating the promotions of the interested parties. Useful reference, in this respect, may be made to the case of *Christou v. The Republic* (1980) 3 C.L.R. 437, 448." 5

Livadas was cited with support in *Themistocleous v. Republic* (1985) 3 C.L.R. 2652 where the following was stated at p. 2666: 10

"Under Order 9 of the Regulatory Orders on Confidential Reports if the Countersigning Officer disagrees as to any of the gradings of the Reporting Officer he discusses the subject with him and if the disagreement continues to exist, he gives his own evaluation in red ink and initials same giving reasons for his own evaluation in the column of observations. There appears to have been a difference of opinion between the Reporting Officer and the Countersigning Officer which does not seem to have been resolved and as a result changes in red ink were effected in the Confidential Report of the applicant. The omissions complained of are that the Countersigning Officer did not discuss with the Reporting Officer his difference of opinion. On the other hand there is nothing to suggest that the Director of Pharmaceutical Services and the Director of Medical Services were not aware of the correct situation in the circumstances. I shall treat this omission as an irregularity which in the circumstances of this case is not material and could not have affected adversely the outcome of the act in respect of which it has occurred, not its legality. There is ample authority to the effect that an irregularity which is not of a material nature does not vitiate the administrative act or decision in which it occurs." 15
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The case of *Lofitis v. Republic* (1986) 3 C.L.R. 1318 was decided on the same lines where the following was said at p. 1330: 35

5 "There is to my mind, no material irregularity whatsoever regarding these reports nor does the fact that any correction was made in blue and not in red ink vitiate the report. Failure to comply with the requirement of Regulation 9 to make corrections in red ink does not vitiate in any way the report. I must, however, say that in any event it is not clear that there has been any change in the ratings of this applicant by the Countersigning Officer. In any event there has been no material irregularity and on the authorities only an irregularity of a material nature could affect the validity of an administrative act."

15 And also in the case of *Christoforou v. Republic* (1986) 3 C.L.R. 2413 in dealing with changes brought about by the countersigning officer without prior exchange of views the Court had to say the following at p.2423:

20 "The Commission observed further that these changes were made by the countersigning officer without previous consultation with the reporting officer contrary to the Regulatory Orders. For that reason 'it decided to take into consideration only the assessment of the reporting officer'. Anything that might be wrong was clearly put right both by the Director, the departmental Board and the respondent Commission."

A similar view also appears in *Odent Contentieux Administratif* (1976-1981) p. 1831.

25 "An administrative act is thus not regular if it was not issued in due form and in compliance with the legal procedure. But from this statement of the principle it does not necessarily follow that all the acts which were not issued in accordance with these conditions must have, as a result of this fact alone, such an irregularity which would lead to annulment for excess of power. The case law, in its endeavour to resist, for the benefit of the good functioning of the public service, the easy temptations of a restricted formalism, has always considered that a person under the administration is not justified to call for

support for a conclusion of excess of power, directed against an administrative decision, irregularities in form or procedure which in the particular circumstances of the case could not have had any influence on the decision of the administration; for instance there is no irregularity in rejecting without consultation which is normally obligatory a demand manifestly unacceptable (24 June 1964, Genouille, p. 457 et a contrario S. 19 March 1971, Jacquemin, p. 234) or to prohibit a commercial project subject to authorisation, without prior consultation when no application for a licence has been made (14 February 1968, Ministre de l' Economie et des Finances c/ste 'C.H.A.R.M.' p. 111)."

and also at p. 1832

"Administrative case law is in effect more related to the consequences of a formality and to the reasons which justify its existence, rather than to the formality itself; it investigates whether the lack of formality or the errors committed in its observance have or not by nature decisively influenced the decision taken. Lack of formality liable to have influenced the outcome of such a decision taints such a decision with excess of power (9 April 1948, *Leroux*, p. 153). To the contrary a lack of formality which is certain not to have had any influence on the outcome of a decision taken does not by nature lead to the annulment of such decision for excess of power (4 July 1952, *Decharme*, p. 362; 29 Mars 1957, Federation nationale des syndicats d' utilisateurs et transformateurs de lait, p. 222)."

On the other hand a different view was held in *Georghiadis v. Republic* (1982) 3 C.L.R. 26 on the effect of failure by the countersigning officer to make his observations and of the use of very strict grading criteria upon the directions of the Ministry concerned in grading the applicant. It was concluded at p. 28 that:

"Section 45 of the law and the relevant general orders regulate the matter of confidential reports and an unfettered discretion is given thereby to both the reporting and countersigning

5 officers. It is a discretionary power vested by legislation in those two administrative organs and its exercise cannot be assumed or regulated except with regard to legality by any hierarchically superior organ unless there exists express provision to that effect (See *Araouzos & Others v. The Republic* (1968) 3 C.L.R. p. 287). Consequently, directives and instructions as to assessments of the performance of officers being more strict are extraneous matters which could not and ought not to have been taken into consideration by the officers entrusted with the task of their preparation under section 45 of the Law and the relevant general orders. By taking them, therefore, into consideration and allowing themselves to be influenced thereby, the reporting officer has exercised his discretion in a defective manner and in my view he has acted contrary to Law and in abuse of his powers which renders the confidential report for the year 1978 invalid".

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20 Similarly in *Christofides v. The Republic* (1985) 3 C.L.R. 1127 where the countersigning officer failed to give his own reasons for reducing the grading of the applicant, the following was stated at p. 1135:

25 "The act of the countersigning officer was contrary to paragraph 9 of the Regulations governing confidential reports. (See Appendix 21). Countersigning officers have to conform strictly with the provisions of the regulations concerning confidential reports especially when any act of theirs might affect adversely the officer concerned.

30 The aforesaid, i.e. failure to conform with the provisions of paragraph 9 of the Regulations and the lack of due reasoning, invalidate the intended change in the confidential report for the applicant for 1980. The respondent Commission in the present case in assessing the merit of the applicant took into consideration that the applicant was 'Very Good' in 1980 whereas the interested parties were marked 'Excellent', and this appears what weighed against the applicant and influenced the Commission in taking the sub judice decision. The Commission in

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the circumstances laboured under a material misconception of fact, the effect of which is to nullify its decision - (See *Public Service Commission v. Myrianthi Papaonissiforou* (1984) 3 C.L.R. 370)."

In *Alvanis v. CYTA* (1985) 3 C.L.R. 2695 it was held at p. 5
2701-2702:

"The inescapable conclusion is that the reports were prepared outside the framework of the Regulations and the question arises whether any significance can be attached to them. It is settled that formalities prescribed by the law must be observed as a condition of the validity of an administrative act. Unless the formality ignored is of an inessential character and, as such, inconsequential for the decision taken, breach of a formality laid down by law taints the decision with invalidity. A similar result must follow where action is taken outside the framework of a regulatory decision of the rule-making body. The preparation and content of confidential reports was an essential formality for the promotion of personnel of the Authority. As such it had to conform to the conditions laid down in the law; in this case the exercise of the rule-making power of the Authority as to its content and persons who would be entrusted with the task of reporting upon their colleagues or subordinates. The preparation of reports outside the context of such a decision was arbitrary and of no effect."

Also in *Hjilossif v. CYTA* (1986) 3 C.L.R. 1353 it was stated at pp. 1358-1359. 25

"Service reports not prepared in conformity with Regulation 23(4) cannot validly be used in the process of selecting a candidate for promotion. Departure from the provisions of Regulation 23(4) is not an immaterial irregularity; it is of material nature and does effect the validity of the service reports. Any decision taken on the basis of an invalid service report is in law defective and cannot survive the judicial control of the administrative Court. 30

5 Regulation 23(4) lays down that the contents and the manner of the preparation of the service reports and the nomination of the reporting officers are decided by the Board. The Board did not take any decision on the matter. The service reports for the applicant and the interested party were probably prepared by their superior in the service who, however, were not nominated either by name or by post or otherwise by the Board, as provided in Regulation 23(4)."

10 In *Karpsitis v. Republic* (1986) 3 C.L.R. 1617, Pikiis J! had this to say on the failure of the Countersigning Officer to have a prior consultation with the reporting officer before effecting changes in the reports of the parties and without giving any reasons for his assessment, at pp. 1623 - 1624:

15 "Formalities prescribed by statute or administrative regulation must as a rule be observed as a condition for the validity of the act. If the genesis of the act is regulated by law or binding administrative regulations, observance of the formalities prescribed therein is a condition for their emergence in the realm of valid administrative acts. Unless the formality is by its nature of an inconsequential character, ordinarily the case with mere technicalities, it must be treated as an essential requisite for the validation of the act. Any effort on the part of the Court to ignore the directives of the law, formalities prescribed by law or administrative regulations pertinent to the genesis of administrative action, would constitute a usurpation of the administrative process. It is presumed that every formality prescribed by law is essential for the validation of the act. Only in the clearest of cases could the Court conclude otherwise. Counsel for the Republic submitted that the omission of the Auditor-General to consult the reporting officer before making changes to the confidential reports of the applicant amounted to no more than breach of an inessential formality that left unaffected the assessment of the countersigning officer. The decision of A. Loizou, J. In *Themistocleous v. Republic* (1985) 3 C.L.R. 2652, lends support to this submission, though it must be stressed that the learned Judge did not

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purport to lay down a general proposition with regard to the effects of breach of the provisions of r. 9 confining his decision to the circumstances of that case."

The Full Bench of this Court in *Republic v. Argyrides* (supra) where the Countersigning Officer, instead of complying with the procedure set out in regulation 9, proceeded to make his own assessments on certain items, some in ordinary ink, and some in red, without previously having discussed the matter with the reporting officer and without giving reasons for his own assessment in the appropriate column, held that:

"As already explained earlier in this judgment, the regulations concerning the preparation of confidential reports which have been embodied in Circular 491/79 and which replaced the General Orders which were in force prior to 1979 in this respect, were made by the Council of Ministers in the exercise of the powers vested in it under the Constitution and Law 33/67. Such regulations are not subsidiary legislation in the strict sense but have to be strictly complied with. The deviation by the countersigning officer from the express provisions of such regulations is tantamount to an illegality. Moreover, the sub-judice decision should be annulled as violating Article 28 of the Constitution. Every public officer is entitled to expect that the procedure in the preparation of confidential reports contemplated by the Regulations approved by the Council of Ministers should be strictly adhered to in all cases without any differentiation. Any application of the Regulations in a different manner in each particular case violates the principle that a person is entitled to equal treatment which is safeguarded under Article 28 of the Constitution. We have, therefore, reached the conclusion that the sub-judice decision should be annulled on this ground as well."

In the light of the decision in *Argyrides* it was held in *Styliades v. Republic* (1987) 3 C.L.R. 1123 where the changes affected were initialled in blue ink and did not appear to have been discussed or brought to the knowledge of the reporting officer, that:

5 "I feel bound to conclude that the sub judge decision should be annulled on the ground that there has been a deviation by the countersigning officer from the express provisions of such regulations which is tantamount to an illegality and that moreover the sub judge decision should be annulled as violating Article 28 of the Constitution."

10 On the other hand in the case of *Papatryfonos v. Republic* (1987) 3 C.L.R. 1882 where the countersigning officer, namely Mr. Eliades, the then Director-General of the Ministry of Commerce and Industry, omitted to fill the column reserved for the countersigning officer which remained blank and instead made certain comments and signed part VI of the report reserved for the Head of the Department, it was considered that this

15 "Inevitably resulted in breach of Regulation 9 of the circular laying down an inflexible procedure to be followed in every case where the countersigning officer disagrees with the assessment made by the reporting officer concerning the value of the services of the person reported upon."

Furthermore it was felt therein that

20 "In the light of our caselaw the report had been improperly prepared and on that account ought to have been ignored, at least that part of it that disclosed the views of the countersigning officer. In the absence of any indication to that end in the minutes of the Departmental Committee and later in those of the Public Service Commission, I cannot presume that they ignored the comments of Mr. Eliades, therefore, the report was
25 tainted with illegality and as such ought to have been ignored."

30 But in resolving the implications stemming from taking into account the confidential report of the applicant for the year 1979, it was found that:

"On a consideration of the material before me the inevitable answer is that it was immaterial in view of the overall effect of

the record of the applicant and that of the interested party. The Public Service Commission founded its decision on a consideration of the service record of the candidates for the post. Assuming that the report for the year 1979 was not fraught with illegality and the rating of the applicant was not diminished by the remarks of the Director-General, the picture with regard to the applicant as compared to the interested party would remain unaffected. The applicant was overwhelmingly better in terms of merit and enjoyed seniority over her in the service as well. A comparison of the assessment of the services of the applicant for the years following her appointment to the position immediately preceding that to which she was seeking promotion with the corresponding reports of the interested party, leaves no doubt that the interested party performed considerably better than her at work. It is clear from the decision of the respondents that they attached, as they were entitled to, particular importance to recent reports on the parties, a fact that made their decision to promote the interested party inevitable.

The decision in *Argyrides* (supra) does not compel the Court to set aside every decision of the Public Service Commission where a confidential report was improperly prepared independently of the impact of that impropriety on the final decision. So to hold would lead the Court to *annulling every decision of the appointing body irrespective of the remoteness in point of time, of an irregularity that occurred in the preparation of a confidential report. That is not the spirit or the effect of the decision in Argyrides. The misconception of the facts relevant to the performance of the applicant in the year 1979 was in the event an inconsequential factor for the decision of the respondents and on that account the misconception of the relevant facts on the part of the P.S.C. was immaterial.*"

Relevant is also the case of Zyngas v. Republic (1988) 3 C.L.R. 838 where it was held at p.843 that:-

"There is no requirement for such reasons to be given except only in the event of there being a disagreement to that ef-

fect between the countersigning and the reporting officers, but in any case in this instance the countersigning and reporting officer are one and the same person."

5 Reference must also be made to the case of *Charalambos Ie-*
rides v. The Republic (1976) 3 C.L.R. 9 affirmed on appeal by
the Full Bench, the judgment reported under the same title in
(1980) 3 C.L.R. 165, where the question of irregularities of form
and their effect was considered and held that only a material irre-
10 gularity can lead to the annulment of the relevant administrative
process. (See also Stassinopoulos, *On the Law of Administrative*
Acts - 1951 p.p. 229 - 230).

In the light of the above authorities it must be concluded that
the 1979 Circular lays down rules of procedure which must gener-
ally be followed when preparing confidential reports. Failure to
15 observe such rules inevitably renders any report thus compiled ir-
regular, but at the same time we feel that to hold that such irregu-
larity should at all times be considered as leading to the annulment
of any decision taken, irrespective of whether it did materially af-
fect such decision, would be going too far. No doubt such irregu-
20 larity amounts to an illegality in the broad sense of the term, that
is of being a violation of a procedural legal provision and this is
how we understand *Argyrides case* (supra). But being a violation
of procedure it has to be shown that it materially affected the deci-
sion reached. As regards the conclusion reached in *Argyrides*
25 *case* (supra) respecting Article 28(1) we are of the view that it
cannot be extricated from the facts of that case.

Without doubt one must tread very cautiously when consider-
ing such reports in order to avoid even the slightest possibility of
abuse by those entrusted with the duty of compiling confidential
30 reports. We believe that one must always look first at the circum-
stances of the case in hand in order to ascertain the extent of the
irregularity and the effect such report had on the sub judice deci-
sion.

In the present instance the following picture is presented by the confidential reports of the appellant.

As it appears from the confidential report for the year 1984 the appellant had been rated by the reporting officer as "Excellent" (8-4-0) whereas after the alterations he became "Very Good" (5-7-0), items "dedication to duty", "ability of written expression", "ability of oral expression" and "administrative ability/leadership" were reduced by the countersigning officer Mr. Demetropoulos, the Head of Fisheries Department, from "Excellent" to "Very Good", whereas his rating for "intelligence" was increased from "Very Good" to "Excellent".

As far as years 1983 and 1982 are concerned, in which he is rated as "Very Good" (4-8-0) and "Very Good" (5-7-0), respectively, no alterations appear, such reports having been compiled by Mr. Demetropoulos himself.

In 1981 his report was altered by the countersigning officer (Mr. Demetropoulos) from "Very Good" (6-6-0) to again "Very Good" (5-7-0), item "character" being reduced from "Excellent" to "Very Good".

No alterations appear for years 1980 and 1979, when he was rated as "Very Good" (5-5-0) and "Very Good" (1-7-3), by Mr. Demetropoulos alone.

It appears therefore that the said alterations were not made at random, but were consistent with the ratings of this officer of other years of which the reports were compiled by Mr. Demetropoulos alone, the overall picture of the appellant thus necessarily remaining the same.

As far as the reports of the interested party are concerned - which were compiled by a Mr. Economou - they all appear to have been extensively altered by the countersigning officer, Mr. Demetropoulos, over successive years, as follows:

The reports of 1984 were reduced from "Excellent" (10-0-0) to "Very Good" (6-6-0); those of 1983 were reduced from "Excellent" (11-0-0) to "Very Good" (6-6-0), of 1981 from "Excellent"

5 (10-0-0) to "Very Good" (6-6-0), of 1981 from "Excellent" (10-0-0) to "Very Good" (6-6-0), of 1980 from "Excellent" (9-0-0) to "Very Good" (5-5-0), of 1979 from "Excellent" (9-0-0) to again "Very Good" (6-5-0), items "co-operation", "intelligence" "ability to solve problems" "administrative ability" "leadership" and "character" having been reduced from "Excellent" to "Very Good".

10 As already stated above we are not compelled by the decision of *Argyrides* (supra) to set aside every decision of the Public Service Commission where a confidential report was improperly prepared, nevertheless, an Administrative Court must always examine whether a failure to comply with any such formality is of such importance as to have affected the outcome of the decision. Having done so in the present case, since we cannot exclude the likelihood that such alterations may have materially affected the sub-
15 judice decision, we feel that in the circumstances it must be annulled. The test in such cases is for the Administrative Court to consider whether the omission or wrong compliance was of such importance that could affect the contents of the administrative act or decision.
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Needless to say that material are considered all the forms and the procedures which are laid down in a law which expressly provides that in case of non compliance with them, same will lead to annulment.

25 For all the above reasons the appeal succeeds and the sub-judice decision is annulled.

In the circumstances, however, there will be no order as to costs.

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