

1988 November 18

[MALACHTOS, DEMETRIADES, STYLIANIDES, PIKIS, PAPADOPOULOS,
HADJITSANGARIS, CHRYSOSTOMIS, JJ.]

CYPRUS TOURISM ORGANIZATION,

Appellant-Respondent.

v.

STELIOS PITSILLIDES,

Respondent-Applicant.

(Revisional Jurisdiction Appeal No. 838).

Public Corporations—Promotions—The Cyprus Tourism Organization—The Cyprus Tourism Organization Law, 1969 (Law 54/69), as amended by Law 48/78, section 5(6)—Delegation of power to promote to sub-committee consisting of 5 members of the Board and the Director-General of the Organization—Whether the Director-General entitled to vote— 5
Question determined in the affirmative.

Collective organs—Quorum—Absence of express provision—There is a quorum, when the members present are more than those absent—Rule that quorum consists of half the members of an organ plus one disapproved.

Words and phrases: "Participates" (συμμετέχει) in-section 5(6) of the Cyprus Tourism Organization Law, 1969 (Law 54/69), as amended by Law 48/78. 10

Public Corporations—Promotions—Cyprus Tourism Organization—Schemes of service—Interpretation and application of—Judicial control—Principles applicable.

Reasoning of an administrative act—What is due reasoning—Depends upon the nature of the decision—Reasoning may be supplemented from the material in the file before the administration. 15

The Administrative Board of the respondent Organization delegated, in

virtue of section 5(6)* of Law 54/69, as amended by Law 48/78, its power to promote personnel to a sub-committee, consisting of 5 of its members and the Director-General of the Organization.

5 By means of the sub-judice decision the interested parties were promoted to the post of Senior Tourist Officer. This decision was annulled by the judgment appealed from on the following grounds, i.e.:

(a) The Director-General was not entitled to vote as he in fact had done.

10 (b) There was no quorum in the sub-committee when it took the decision, because only 3 out of its five voting members were present, whereas in accordance with the general principles of administrative law there is a quorum, when half the members of the organ plus one are present. Therefore, in this case the quorum consists of 4 out of the 5 voting members.

In the light of the above principles the trial Court did not proceed to adjudicate other grounds, which had been raised by the applicant.

15 The Cyprus Tourism Organization appealed. The respondent cross-appealed, inviting thus the Court to adjudicate the unresolved issues. The respondent was one of the candidates for promotion, but he was finally excluded because he lacked one of the required under the relevant scheme of service qualifications.

20 Held, allowing the appeal and dismissing the Cross-appeal:

25 (1) The wording of section 5(6) is clear. Section 5(5) expressly provides that the Director-General "takes part without a vote (Μετέχει ορευ ψήφου)" in the meetings of the Board, whereas section 5(6) provides that he "participates" (Συμμετέχει) in the sub-committee. This expression imports active full participation.

30 (2) The correct principle of administrative law is that, in the absence of an express provision, quorum consists of an absolute majority of the members of a collective organ, i.e. there is a quorum when those present are more than those absent. It follows that if the number of members is even, quorum is half the members plus one, but when the number of members is odd, quorum consists of the next higher number to half the members of the organ.

* Sub-section 5(6) reads as follows: "The Administrative Board may delegate part of its competencies to Committees of its members in which the Director-General... may participate".

(3) This Court does not interfere with the application and interpretation of a scheme of service by the appointing organ, if such application and interpretation were reasonably open to it. In this case the relevant provision of the scheme was plain. Respondent's qualifications were before the organ. The presumption of regularity has not been displaced. The decision to exclude the applicant for "lack of the required qualification" conveyed the reason why it was taken. The applicant, therefore, has no legitimate interest to challenge the sub judice decision. 5

Appeal allowed. Cross-appeal dismissed. No order as to costs. 10

Cases referred to:

- Maratheftis v. The Republic* (1965) 3 C.L.R. 576;
- Theodorides and Others v. Ploussiou* (1976) 3 C.L.R. 319;
- HjiGeorghiou v.C.T.O.* (1986) 3 C.L.R. 1110; 15
- HadjiDemetriou v. C.T.O.* (1986) 3 C.L.R. 1956;
- C.T.O. v. HadjiDemetriou* (1987) 3 C.L.R. 780;
- Christodoulides v. The Republic* (1985) 3 C.L.R. 1911;
- Dr. Hascard v. Dr. Somang*, E.R. 89, K.B. p. 380;
- The King v. Devonshire*, 1 B and C 609, E.R. 107, K.B. p. 224; 20
- Republic v. Maratheftis* (1986) 3 C.L.R. 1407;
- Mytides and Another v. Republic* (1983) 3 C.L.R. 1096;
- Tsountas and Another v. Republic* (1985) 3 C.L.R. 784;
- Decisions* 1813/1957 and 2365/1968 of Greek Council of State.

Appeal.

5 Appeal against the judgment of the President of the Supreme Court of Cyprus (A. Loizou, P.) given on the 14th July, 1988 (Revisional Jurisdiction Case No. 616/84)* whereby the promotion of the interested party to the post of Senior Tourist Officer was annulled.

A. *Dikigoropoulos*, for the appellant.

A. S. *Angelides*, for the respondent.

Cur. adv. vult.

10 MALACHTOS J.: The Judgment of the Court will be delivered by Mr. Justice Stylianides.

15 STYLIANIDES J.: The appellant - Cyprus Tourism Organization - which was the respondent in Recourse No. 616/84 under Article 146 of the Constitution, has appealed against the first instance Judgment by means of which there was annulled the promotion to the post of Senior Tourist Officer of Antonis Charalambides and Petros Vanezis. The recourse was made by Stelios Pitsillides, as applicant and he is now the respondent in this appeal.

20 In annulling the said promotions the learned trial Judge stated the following:

25 "It was argued on behalf of the applicant that the active participation of the Director-General of the respondent Organization in the Selection Committee was wrong and illegal in that in accordance with section 5(5) and (6) of the Law, as amended by section 2 of Law No. 48 of 1978, the Director-General has no voting powers when participating in the meetings of the Selection Committee but is only there to assist.

* Reported in (1988) 3 C.L.R. 1429.

Furthermore it was contended that the Selection Committee when considering the matter at hand and when reaching the sub judice decision was improperly constituted as no proper quorum could be formed by the participation of only three of its five members at its deliberations. According to the applicant the participation of four members was necessary in order to form a quorum and the presence of the Director-General as a fourth person, not being a voting member could not form the necessary quorum.

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I consider that the active participation of the Director-General by voting was contrary to the express provisions of the Law. From a perusal of the provisions of section 5 of the Law, it is clear that the Director-General is not a member of the Administrative Board but in accordance with sub-section (5) thereof, he participates at the meetings of the Board without a vote.

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Sub-section (6) thereof, as amended by Law No. 48 of 1978, provides inter alia as follows:

'The Administrative Board may delegate part of its competencies to Committees of its members in which the Director-General... may participate.'

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Had the intention of the legislator been for the Director-General to have voting power when participating in any sub-committee, there would have either been an express provision to that effect, or it would have provided for the setting up of such committees made up of members of the Board and including the Director-General. In this instance, however, the Law merely allows the participation of the Director-General who can certainly not assume any more powers than he is already given expressly by the Law itself and in particular sections 5(5) and 6, thereof.

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Consequently, not having any voting power, the Director-General was not entitled to join in forming the necessary quo-

rum, as the persons forming a quorum are sine qua non to the proceedings.

5 In the present instance therefore the sub judge decision was reached by only three out of the five members of the Selection Committee who did not constitute a quorum as in the absence of specific provision in the relevant Law, the general rule applies i.e. that such quorum is half the members of the collective organ, plus one and in this case such number must necessarily be four. (See Conclusions of the Case Law of the Greek Council of State 1929-1959, also *Maratheftis v. The Republic* (1965) 3 C.L.R. 576 at 581-582.)

10 I find therefore that the sub judge decision must be annulled as contrary to law and as having been reached by a wrongly constituted organ. In view of this, I need not proceed to examine the case on its merits so as not to prejudice the issue.

15 For the reasons stated above, this recourse succeeds and the sub judge decision is hereby annulled."

20 The appellant - Cyprus Tourism Organization - was set up for the first time by the Cyprus Tourism Organization Law, 1969 (Law No. 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. It was, consequently, justifiable, both by the law of necessity and by common sense, to empower the Board of the appellant to "appoint" its employees by section 5(2) (e) of Law 54/69. "Appointment" in provisions of this nature includes the notion of "promotion" - (see *D. Theodorides and Others v. S. Ploussiou* (1976) 3 C.L.R. 319; *HjiGeorghiou v. C.T.O.* (1986) 3 C.L.R. 1110).

30 By means of sub-section (6) of section 5 of Law 54/69, as amended by Law 48/78, the Board of the appellant was empow-

ered to delegate part of its powers to Committees composed of its members, in which the Director-General or any other officer of the Organization may participate.

Under this sub-section a Selection Committee was set up by the Board of the appellant on 8th July, 1983, which was enlarged by the addition of one member of the Board by Decision dated 29th July, 1983 - (see Appendices "Θ1" and "Θ2").

The power to decide finally for the appointment, promotion, transfer of the personnel of the Organization was delegated to this Selection Committee.

The Committee was composed of five members of the Board and of the Director-General.

The sub judge decision was unanimously taken by four members of the Committee, who were present through the whole process - three members of the Board and the Director-General.

The ground of appeal, as set out in the Notice, is that the Judgment as to the meaning and effect of sections 5(5) and 5(6) of Law 54/69 as amended is wrong.

Counsel for the appellant submitted that the composition of the Selection Committee was not defective, due to the participation as a full member of the Director-General, and that quorum for a Committee under sub-section (6) is the majority of the members of the Committee, i.e., more than half thereof and that sub-section (7) is not applicable in this case.

In *HjiGeorghiou v. C.T.O.* (1986) 3 C.L.R. 1110, the legality of a decision of the same sub-committee was challenged; the Court said that the sub-committee was duly constituted.

In *HadjiDemetriou v. C.T.O.* (1986) 3 C.L.R. 1956, H.H. Judge Pikis dealt more elaborately with the subject and at p. 1962 had this to say:

5 "The submission is founded on the provisions of s. 5(5) that confines the power of the Director-General to attendance before the Board without a right to vote. By analogy, the power of the Director to take part in the deliberations of any body to which powers of the Board are delegated should likewise be construed as limited to attendance and expression of views. The submission runs counter to the plain provisions of s. 5(6) of the law (as amended by Law 48/78) that expressly empowers the Board to delegate powers vested in it by the law to a sub committee composed of members of the Board as well as the Director-General. Hence we cannot read the limitation suggested by applicant as implicit in the law in view of clear provisions to the contrary. Consequently, the submission that the Selection Committee (to which power to make appointments and promotions was delegated by a decision of the Board dated 15 8th July, 1983) was ill-constituted cannot be upheld."

20 In *C.T.O. v. HadjiDemetriou* (1987) 3 C.L.R. 780 - the Revisional Appeal from the above Judgment - the Full Bench referred to section 5(6) of Law 54/69, which enabled the appellant to delegate some of its powers to Committees consisting of its members and of the Director-General or other officer of the appellant, and observed the following at p. 789:

25 "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 judge 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 30 the appellant but also its highest executive officer."

Sub-section (5) of section 5 reads:

"5.(5) Των συνεδριάσεων του Διοικητικού Συμβουλίου μετέχει, άνευ ψήφου, ο Γενικός Διευθυντής."

Sub-section (6), as substituted by section 2 of Law 48 of 1978, reads:

"(6) Το Διοικητικόν Συμβούλιον δύναται να μεταβιβά- 5
 ξη μέρος των αρμοδιοτήτων του εις Επιτροπάς εκ μελών
 αυτού εις τα οποίας δύναται να συμμετέχη και ο Γενικός
 Διευθυντής ή έτερος λειτουργός του Οργανισμού. Επίσης
 το Διοικητικόν Συμβούλιον δύναται να συνιστά γνωμοδο- 10
 τικάς Επιτροπάς εξ ατόμων εκπροσωπούντων οργανι-
 σμούς σχέσιν έχοντας με την τουριστικήν βιομηχανίαν ή
 εξ ειδικών προσώπων."

There is a great difference between the role attributed to the Di-
 rector-General by sub-section (5) from that given to him in sub- 15
 section (6). Sub-section (5) provides that he "μετέχει άνευ
 ψήφου" (takes part without vote). In sub-section (6) the legislator
 used the word "συμμετέχει" without, however, any limitation;
 the words "άνευ ψήφου", found in sub-section (5), were pur-
 posely not included in subsection (6). "Συμμετέχει" is a plain 20
 Greek word, which means taking active part, participating - (see
 Αντιλεξικόν ή Ονομαστικόν της Νεοελληνικής Γλώσσης,
 Θεολόγου Βοσταντζόγλου, 1986, σελ. 561). The same meaning
 of active full participation imports the English word "participate".

In view of the foregoing, the composition of the Selection
 Committee was not defective by the active participation, including 25
 voting of the Director-General of the Organization. The Director-
 General was a full member of the Selection Committee with vot-
 ing power.

It is well settled that a collective Body is duly composed and it
 takes valid decisions at a meeting only when there is a quorum. 30

"Quorum" is a number of members of an administrative body,
 whose presence is necessary for the acts of the body to be valid.

Section 35 of the Interpretation Law, Cap. 1, provides that save as is otherwise expressly provided by any Law, whenever any act or thing is required to be done by more than two persons, a majority of them may do it.

5 In the Jurisprudence of the Greek Council of State 1929-1959, at p. 109 it is stated that the general rule to the question of quorum of a collective organ, in the absence of specific provision, is the presence of the majority of the members:

10 "... υφίσταται απαρτία εν περιπτώσει παρουσίας της πλειοψηφίας του συνόλου των μελών, ..."

And after this statement it is written:

"... ήτοι: του ημίσεως πλέον ενός τούτων: ..."

("Half its members plus one.")

15 This statement was adopted in *Mikis Maratheftis and the Republic through the Public Service Commission* (1965) 3 C.L.R. 576. The members of the Commission were ten and it was held that the participation of five members did not constitute a quorum and that all decisions of the Commission should be taken by an absolute majority of its members, i.e. six.

20 In *Christodoulides v. Republic* (1985) 3 C.L.R. 1911 - case cited by counsel for the respondent - (see first instance Judgment (1984) 3 C.L.R. 1340) the legal principles pertaining to the question of quorum were not in issue, because by section 10(3) of Law 10/69 it is provided expressly that the validity of any decision of the Commission is not affected if there exists a vacancy on it - as it was the position at the material time due to the resignation of one of its members - provided that the total number of members of the Commission does not become less than three.

30 We looked up the cases cited in the foot-note of p. 109 in support of the last part of the statement that majority is half plus one,

and we regret to say that none of those Decisions of the Council of State supports such statement.

In Case No. 2365/1968, Decisions of the Greek Council of State, 1968 Γ', at p. 2815, the Greek Council of State, in interpreting and applying a provision in a Royal Decree that a quorum of the Service Council exists when the number of the members present is equal to half plus one, held that quorum exists when the members present are more than those absent according to the general principle, that, when the number of the members of a Council is under the Law even, to constitute quorum the presence of half plus one member is required, but when the Council is composed under the Law of odd number of members for quorum is sufficient if the members present are more than those absent - (see, also, Case No. 1813/1977).

In Spiliotopoulos "Εγχειρίδιον Διοικητικού Δικαίου" (Manual of Administrative Law), 2nd Edition, 1982, at p. 130 we read that when a Body is composed of more than three persons quorum is often fixed by relevant provision. In the absence of specific provision, there is a quorum when the members present are more than those absent, i.e., the majority of the members.

In Δαγτόγλου, "General Administrative Law" Α' 1977, at p. 216 it is stated that a collective organ has only competence to function when a fixed minimum number of its members is present. This principle is, in general, the higher number immediately after half of its members:

"Κατά την αρχή αυτή το συλλογικό όργανο τότε μόνο έχει ικανότητα λειτουργίας, όταν ένας ορισμένος ελάχιστος αριθμός των μελών του είναι παρών. Ο αριθμός αυτός είναι κατά κανόνα ο αμέσως μεγαλύτερος ακέραιος του ημίσεος των μελών (π.χ. 8 επί 14 ή 15)."

And at p. 217 we read:

"Η δεύτερη ομάδα ζητημάτων αναφέρεται στην αρχή

της πλειοψηφίας, κατά την οποία η απόφαση του συλλογικού οργάνου προϋποθέτει όχι ομοφωνία (που θα εσήμαινε την εξάρτησή του οργάνου από την συναίνεση έστω και ενός μέλους), αλλά την συμφωνία των περισσοτέρων
 5 μελών. Αυτό σημαίνει την συμφωνία του αμέσως μεγαλύτερου ακεραίου αριθμού του ημίσεος των παρόντων (κατά κανόνα) μελών (π.χ. 5 επί 8 ή 9 παρόντων). Και εδώ, εκτός από την απλή ή απόλυτη πλειοψηφία (οι όροι είναι συνώνυμοι), υπάρχει και η ηυξημένη πλειοψηφία, που όμως
 10 απαιτείται μόνον όταν προβλέπεται ρητώς από τον νόμο."

In Halsbury's Laws of England, 4th Edition, volume 9, paragraph 1297 reads:

"1297. Presence of quorum necessary. The acts of a corporation, other than a trading corporation, are those of the major
 15 part of the corporators, corporately assembled. In other words, in the absence of special custom or of special provision in the constitution, the major part must be present at the meeting, and of that major part there must be a majority in favour of the act or resolution contemplated. Where, therefore, a corporation consists of thirteen members, there ought to be at
 20 least seven present to form a valid meeting, and the act of the majority of these seven or of a greater number will bind the corporation."

(See, also, *Dr. Hascard v. Dr. Somany*, E.R. 89, K.B., p. 380; *The King v. Devonshire*, 1 B & C 609, E.R. 107, K.B., p. 224.)
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From all the afore quoted authorities quorum in the absence of express provision means simple or absolute majority. Simple or absolute majority exists when the major part of the members is present, i.e. half of the members plus one when the number of
 30 the members is even and more than half the members when a body is composed of odd number of members - (five constitutes a quorum when the members are either eight or nine).

Sub-section (7) of section 5 is not related and does not apply to the committees set up under sub-section (6) as the Law was at the material time, before its amendment by Law 16/85.

Four members of the Selection Committee were present. Therefore, there was a quorum. Even if the Committee were composed of five members, the presence of three of them would constitute a quorum. 5

The respondent, by cross-appeal, invited the Court to determine the questions which were not resolved by the trial Judge, on the basis of *Republic v. Maratheftis and Another* (1986) 3 C.L.R. 1407, and the nature of a revisional appeal, such as the present one, in which this Court has to deal with the case before it as a whole. 10

The facts so far as relevant to the unresolved issues are as follows: 15

There were two vacancies of Senior Tourist Officer. This is a first entry and promotion post. The scheme of service was duly approved by the Council of Ministers by Decision 20.278 on 16th April, 1981.

The post was advertised in the local press. Thirty-five candidates, including ten members of the staff of the appellant Organization applied. Eighteen candidates were invited for interview, including the candidates members of the staff, though some of them might not possess the prescribe qualifications. It was made clear to them that if anyone did not satisfy fully the scheme of service, he would not be appointed, notwithstanding his interview - (see Minutes of 29th August, 1983). 20 25

Qualification (b) under the scheme of service is: University degree or title or equivalent qualification in appropriate subject, e.g. Economics, Marketing, Tourism, Hotel and Catering Administration, etc. By the note - proviso - the Tourist Officers, 1st Class, in the service of the Organization on the date of the approval of 30

this scheme could be considered candidates even if they did not possess this qualification, provided that they possess all other qualifications.

5 The applicant-respondent was first appointed to the permanent post of Inspector on 2nd April, 1971. He was seconded as from the same date to the post of Senior Inspector; he was confirmed on 1st July, 1977. He was promoted to the permanent post of Tourist Officer, 1st Class, on 1st August, 1982. The post of "Tourist Officer, 1st Class", was renamed to "Tourist Officer".
10 On the date of the approval of the scheme of service - 16th April, 1981 - he was the holder of the post of Senior Inspector and not Tourist Officer, 1st Class. This is obvious from a mere glance in the personal file of the applicant, which was before the Committee and is Exhibit 1 before us.

15 After the interviews of 29th and 31st August, 1983, the Selection Committee invited for a second interview only five candidates who satisfied the approved scheme of service - (see Minutes of 30th September, 1983, Appendix "D"). The applicant was not included and was not considered any further.

20 It was submitted by counsel for the appellant that the applicant has no legitimate interest to pursue this recourse, as he lacked the required qualification.

25 It was contended by counsel for the applicant that the Selection Committee failed in its duty to interpret the scheme of service, to carry out a due inquiry as to the qualifications of the applicant and give reasons for excluding the applicant.

30 An appointing Authority has a duty to construe the scheme of service, ascertain the qualifications of each candidates as a factual situation and finally to apply the scheme of service in this factual situation and decide whether a candidate is under the scheme of service eligible for promotion. It has to carry out a due inquiry and the outcome of such inquiry should appear in the reasoning and be reflected in the Minutes of the meeting of the appointing

Body - (*Mytides and Another v. Republic* (1983) 3 C.L.R. 1096; *Tsountas and Another v. Republic* (1985) 3 C.L.R. 784).

It is outside the limits of the jurisdiction of this Court to construe the scheme of service and to state whether the qualification held sufficed. 5

The required qualifications under paragraph (b) of the scheme of service is clear. The personal file of the applicant was before the Selection Committee.

In virtue of the presumption of regularity, which was not displaced, the Committee carried out inquiry and reached the decision that the applicant lacked the required qualification. 10

The Minutes of the meetings of 29th August, 1983 and 30th September, 1983, convey, albeit shortly, the reasons. The question of what is due reasoning is a question of degree depending upon the nature of the decision concerned. Furthermore, the reasoning may be supplemented by the material before the Administrative Authority. 15

The decision to exclude the applicant for lack of this qualification, convey the reason why it was taken, which, furthermore, is supplemented by the material in the file. 20

We find no merit in the allegation that, once the applicant was invited to an interview, as a matter of proper administration, the appellant should have considered him for promotion up to the final stage of the process, irrespective of whether he possessed or not the qualifications prescribed by the scheme of service. 25

It is well settled that the lack of the required qualification deprives a candidate from legitimate interest under paragraph 2 of Article 146 of the Constitution, which is a condition precedent of the annulment jurisdiction of an Administrative Court.

In view of the foregoing, the appeal is allowed. The recourse is dismissed, the sub judice decision is confirmed under Article 146.4(a) of the Constitution, but in all the circumstances of the case, with some hesitation, we make no order as to costs.

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Appeal allowed.

No order as to costs.