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CLEANTHIS GEORGHIADES
and
THE REPUBLIC OF CYPRUS
THROUGH
1. THE PUBLIC SERVICE COMMISSION
2. THE COUNCIL OF MINISTERS

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CLEANTHIS GEORGHIADES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE PUBLIC SERVICE COMMISSION,
2. THE COUNCIL OF MINISTERS,

Respondents.

(Case No. 115/65)

Public Officers—Appointments—Emplacements in the posts of Director-General and Director of Education, Ministry of Education—Emplacement of Interested Party in the post of Director-General annulled as having been decided upon by the Public Service Commission in a defective manner as regards quorum procedure and the exercise of the relevant discretion—Emplacement of Applicant in the post of Director of Education annulled as well, as made at the same time—Transfer of the Exercise of the Competences of the Greek Communal Chamber and the Ministry of Education Law, 1965 (Law 12 of 1965), sections 3(3)(a), 5(1), 7,16(1)(2), the Public Service Commission (Temporary Provisions) Law, 1965 (Law 72 of 1965), section 5 and Constitution of Cyprus, Articles 54(a)(b), 124 and 125(1)

Public Officers—Schemes of service—Schemes of service for the posts of Director-General and Director of Education Ministry of Education—Schemes neither contrary to law nor made in excess or abuse of powers.

Public Service Commission—Competence—Decisions to emplace Interested Party and Applicant in the posts of Director-General and Director of Education, Ministry of Education—Competence to reach such decisions—"Competent Authority" and "emplacement" under section 16(1) of Law 12 of 1965 (supra)—Competent authority referred to in section 16(1) of the Law is the Public Service Commission and not the Council of Ministers.

Public Service Commission—Functioning, constitution and quorum —Decisions to emplace Interested Party and Applicant in the posts of Director-General and Director of Education,

Ministry of Education—Decision reached upon at a meeting of the Commission at which did not exist a proper quorum—Nothing in Law 12 of 1965 (supra) to the effect that the Commission had to act without a quorum under section 16 thereof—Law 72 of 1965 (supra) not applicable to the present case (infra).

Public Service Commission—Procedure—Necessity of having its procedure and other cognate subjects regulated by appropriate legislation.

Constitutional and Administrative Law—Constitution of Cyprus—Legitimate interest, Article 146.2—Applicant having been considered for the post of Director-General, Ministry of Education, and as long as he continues to be in service, has a legitimate interest to attack the validity of the decision of the Public Service Commission in relation to such post.

Legitimate Interest—Under Article 146.2 of the Constitution—See above.

Administrative Law—Competence of administrative organs—Powers in this respect of the Court on a recourse under Article 146 of the Constitution—The question of the competence of the organ concerned may be raised ex proprio motu by an Administrative Court.

Administrative Law—Discretionary powers—Administrative decisions—Decision annulled as taken in a defective manner, as regards both quorum, procedure and the exercise of the relevant discretion, as having been made under several misconceptions—And, thus, in the last analysis, as being contrary to Law, including basic principles of Administrative Law, and in excess and abuse of powers vested in the respondent Public Service Commission—See, also, under Public Officers; Public Service Commission.

Discretion—Discretionary powers—Defective exercise of—See above.

Basic principles of Administrative Law—See above under Administrative Law.

Abuse and excess of powers—See above.

Excess and abuse of powers—See above.

Constitutional Law—Necessity—Law of necessity—The existence of a situation bringing into play the law of necessity is a matter to be expressly alleged by the party relying thereon—Of

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course the aforesaid Law No. 12 of 1965 (supra) itself appears on the face of it to be an enactment of necessity—But there is nothing in such Law to the effect that because of the necessity which gave rise to the said Law the Public Service Commission had to act under section 16 thereof without the proper quorum.

Constitutional Law—Retrospective legislation—Legislation validating ex post facto administrative decisions—Effect of such legislation on decisions which at the time of the enactment of such law were sub judice and for which judgment of the Court had already been reserved—No effect whatsoever—And the issue of the validity of such decisions has to be decided by the Court without regard to any such ex post facto validating legislation—Even if it were to be established that such legislation was either expressly or impliedly intended to apply to such decisions sub judice as aforesaid—Then, again, such legislation would be without effect in this respect because it would be unconstitutional to that extent as contravening the principle of Separation of Powers under the Constitution—And as interfering with the independence of the Judicial Power, by seeking to render valid ex post facto a decision, the determination of the validity of which was already a matter within the province of the Judicial Power—The Public Service Commission (Temporary Provisions) Law, 1965, (Law No. 72 of 1965) enacted on the 16th December, 1965 viz. after judgment in the instant proceedings had been reserved—By section 5 thereof any decision of the Commission taken between the 21st December, 1963 and the 16th December, 1965, with a quorum of even less than five members (three if the Chairman is present and four otherwise) should be deemed to have been lawfully taken and to be valid from the point of view of constitution and quorum of the Commission—For the reasons set out hereabove such legislation does not apply to the present proceedings.

Public Service Commission—Proper quorum—Maratheftis case (infra)—Ex post facto validation of decisions taken with improper quorum etc. etc.—The Public Service Commission (Temporary Provisions) Law, 1965 (Law No. 72 of 1965)—See under Constitutional Law immediately above; also under Public Officers, Public Service Commission above.

Ex post facto legislation—See above under Constitutional Law.

Retrospective legislation—See above under Constitutional Law.

Practice—Costs—Costs against the respondent authority in favour of the unsuccessful Interested Party awarded for the first time.

Costs—In favour of Interested Party—See immediately above.

Separation of Powers—The constitutional principle of—Judicial Power—Unconstitutional interference therewith by ex post facto legislation in certain circumstances—See above under Constitutional Law—Retrospective legislation.

Judicial Power—Unconstitutional interference therewith by ex post facto legislation in certain circumstances—See above under Constitutional Law—Retrospective legislation.

The claim of the applicant in the instant recourse was for:

(1) A declaration that the decision of Respondent 1, the Public Service Commission, contained in the letter of the 22nd June, 1965, (*exhibit 29*), to emplace Applicant in the post of Director of Education, in the Ministry of Education, as from the 1st July, 1965, is null and void and of no effect whatsoever.

(2) A declaration that the omission of the Respondent Commission to emplace Applicant in the post of Director-General of the Ministry of Education should not have been made.

(3) A declaration that the decision of the Respondent Commission to emplace Mr. P. Adamides, the Interested Party, in the post of Director-General of the Ministry of Education as from the 1st July, 1965, in preference to, and instead of, the Applicant is null and void and of no effect whatsoever.

(4) A declaration that the decision of Respondent 2, the Council of Ministers, by which it adopted the schemes of service for the posts of Director-General and of Director of Education in the Ministry of Education (*Exhibits 4 and 5*) is null and void and no effect whatsoever.

Under section 3(3)(*a*) of the Transfer of the Exercise of the Competences of the Greek Communal Chamber and the Ministry of Education Law, 1965 (Law 12/65) which came into force on the 31st March, 1965, enacted because the exercise of the competence of the Greek Communal Chamber had been rendered impossible due to certain

circumstances, the administrative competences of such chamber in all educational cultural and teaching matters were transferred, as from the 31st March, 1965, to the Ministry of Education which was created by virtue of section 5(1) of the aforesaid law: Under section 7 of the said law provision was made for the setting up of the services of the Ministry of Education by decision of the Council of Ministers; and under section 16(1) any person being immediately before the date of the coming into force of the said law in the service of the Greek Communal Chamber as a member of the staff of its offices was transferred, as from such date, to the service of the Republic, and was then to be emplaced by the "Competent Authority" (the Public Service Commission) as far as practically possible, in a public service post entailing duties analogous to the duties of such person's post in the service of the chamber; and under section 16 sub-section (2) provision has been made safeguarding to a person affected by sub-section (1) his terms and conditions of service as they were in force concerning such person prior to the date of the coming into effect of Law 12/65.

At the time of the coming into operation of the aforesaid law applicant was the holder of the post of Director of the Greek Education Office, under the provisions of Greek Communal Chamber Law 7/60, and the interested Party was holding the post of Administrative Officer of the Greek Communal Chamber, under the provisions of Greek Communal Chamber Law 4/60. By a decision of the Council of Ministers taken on the 21st April, 1965, it was *inter alia* decided to include in the structure of the services of the Ministry of Education the posts of Director-General and Director of Education.

After the approval of the schemes of service by the Council of Ministers in respect of the aforesaid two posts the Minister of Education at the request of the Council of Ministers wrote to the Public Service Commission on the 1st June, 1965, asking for the filling, *inter alia*, of the two posts in question and giving by means of a memorandum details of the duties and responsibilities of the applicant and the Interested Party under the Communal Chamber.

In dealing with the various claims of applicant in the motion for relief the Court was of the opinion that claims

(1) and (3) therein should be examined together and that the first thing with which it had to deal with was whether or not applicant had a legitimate interest in the sense of Article 146.2 of the Constitution to attack the emplacement of the Interested Party to the post of Director-General of the Ministry of Education; further the Court in dealing with such claims addressed its mind first to the question of the competence of the Public Service Commission to reach such decisions. The question of such competence has not been raised by Applicant, as a ground for the invalidity of such decisions but it was mentioned by the Court during the address of Counsel for Respondent, who has argued that under section 16 of Law 12/65 a new task was given to the Public Service Commission which was already competent under Article 125 to deal with matters of "emplacement".

As to claims 1 and 3 counsel for applicant submitted that the Commission at the time was not properly constituted and that it has not met with the requisite quorum; and as to claim 4 it was submitted that the schemes of service for the two posts in question are void as being contrary to sections 7 and 16 of Law 12/65 and also as having been made in excess or abuse of powers.

The Court in dealing with the validity of the *sub judice* decisions, attacked by claims 1 and 3, considered whether the emplacement of the Interested Party in the said post has been made under a misconception as to the effect of section 16 of Law 12/65, because from the contents of the decisions themselves and in the light of the evidence of the Chairman of the Public Service Commission the Court has formed the opinion that although the Commission has come to the conclusion that the Interested Party, not possessing all the qualifications laid down by the scheme of service, was not fully qualified to advise the Minister of Education on policy regarding educational matters, still they (the Commission) felt bound by section 16 of Law 12/65 to emplace the Interested Party in the said post once an analogy existed to a very great extent between the duties of his old post under the Chamber and the duties of the said new post.

The Respondent Commission in the course of taking the *sub judice* decisions had certain doubts as to the exact

meaning of paragraph (*b*) of the schemes of service for the post of Director-General of the Ministry of Education and decided to authorise its chairman to contact the Minister of Education and to find out from him whether the Director-General of the Ministry of Education would be expected to advise and assist the Minister of Education in matters of Policy, relating also to purely educational matters. Whereupon the Chairman saw the Minister who expressed to him the view that the Director - General would not be expected to advise in relation to technical matters of education and the Chairman passed this on to the other members of the Commission and some of them did not appear to share the view of the Minister.

The Court in annulling the *sub judice* decision of the respondent Public Service Commission:-

Held, (1). On claim (2) in the motion for relief (supra):

It can be said here and now that claim (2), *supra*, cannot succeed, because, as it is clear from the proceedings before the Court, we are dealing with definite decisions of the Commission, regarding the emplacements in question and as the Commission did not have a duty in law to emplace Applicant in the post of Director-General of the Ministry of Education, but only a duty to exercise its discretion properly and decide as to whether so emplace him or not, no question of an omission could arise. Thus, in so far as claim (2) is concerned this recourse fails.

Held, (II). On claim (4) in the motion for relief (supra):

(1) I do not think that the decision of the Council of Ministers whereby the two schemes of service (Exhibits 4 and 5) *supra* have been adopted can be said to contravene sections 7 or 16 of the said Law No. 12 of 1965 *(supra)*, even if such schemes were to be found to allocate duties in a manner different from that in which such duties were distributed under the Greek Communal Chamber.

(2) Moreover, I have serious doubts as to whether applicant can be held entitled at all to proceed directly against the validity of those schemes of service because they are not acts directed at him as a subject of administration, and, therefore, they cannot be held to be executory vis-a-vis the applicant, so as to entitle him to have a recourse against

them under Article 146 of the Constitution.

Held, (III). With regard to claims (1) and (3) in the motion for relief (supra):

(A) *On the question of legitimate interest:*

That Applicant has the requisite legitimate interest for the purpose of challenging his own emplacement is clear. But the matter was not so clear, at the beginning, regarding his legitimate interest vis-a-vis the emplacement of the Interested Party. After, however, the evidence of the Chairman of the Public Service Commission—who has indeed stated everything he had to say in a very frank manner and in a greatly appreciated effort to place everything before the Court in order to assist it—and in view, also, of the contents of *exhibit* 13, it is quite clear that Applicant and the Interested Party were considered in relation to the filling of both new posts concerned; Applicant having, thus, been considered for the post, also, of Director-General he has a legitimate interest to attack the validity of the Commission's decision in relation to such post.

(B) *On the question of competence:*

(1) An administrative court is entitled to examine *ex proprio motu* the competence of the particular organ the decision of which is being challenged before it; (Stasinopoulos on the Law of Administrative Disputes, 1964, p. 251) therefore, I have thought fit to examine this issue.

(2) Under section 16, the duty to effect emplacements is entrusted to the "competent authority". The Commission is not mentioned expressly. So it is not really a case of a new competence being conferred on the Commission—a thing which, in my opinion, could have been done—but of a duty being entrusted to an organ competent to deal with matters of such nature.

(3) In the case of *Papapetrou and The Republic*, 2 R.S.C.C. p. 61, at p. 66, it was held that "...the Public Service Commission, which is established under Article 124, is vested under the Constitution with only those powers which it has expressly been given under Article 125. The residue of any executive power in respect of any matters concerning the public service of a State, which by its constitution has not been expressly given to an independent

body such as a Public Service Commission remains vested in the organ of the State which exercises executive power and within whose province the public service of the State normally otherwise comes and in the case of the Republic of Cyprus such organ, under Article 54 of the Constitution, and particularly paragraphs (*a*) and (*d*) thereof, is the Council of Ministers".

(4) The competence granted to the Public Service Commission, under Article 125(1) is to, *inter alia*, "appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer, retire and exercise disciplinary control over, including dismissal or removal from office of, public officers".

I had some difficulty in deciding whether the duty to emplace under section 16(1) falls within the above competence under Article 125(1) or whether, if it does not so fall, it is then a matter for the Council of Ministers.

Emplacement under section 16(1) is not an emplacement envisaged by Article 125(1) because what is envisaged thereby is "emplacement on the permanent or pensionable establishment", something totally different, in my view, than emplacement under section 16(1) of Law 12/65.

But, in the final result, I have reached the conclusion that an emplacement to be made under section 16(1) is in the nature of an appointment and/or transfer and, thus, comes within the provisions of paragraph 1 of Article 125.

(C) *On the question of quorum:*

(1) It is common ground that only five members of the Commission were available for the meeting which took the decisions in *exhibit 13;* there existed two vacancies on the Commission and the three Turkish members have not been attending since December, 1963.

(2) As held in *Maratheftis and The Republic* (1965) 3 C.L.R. 576 at p. 581) the said five members of the Commission could not constitute a proper quorum of the Commission. So, the emplacements of the Applicant and the Interested Party having been decided upon at a meeting of the Commission at which, admittedly, did not exist a proper quorum it follows that the relevant decisions have

to be declared to be null and void and of no effect whatsoever.

In the *Maratheftis case, supra,* the question of whether or not the Commission could, in the circumstances, have functioned without a quorum, on the basis of the law of necessity, was left open.

(3) No argument has been advanced in this Case that the functioning of the Commission—with regard to the emplacement of Applicant and the Interested Party—without a proper quorum took place, in circumstances rendering such functioning valid because of the law of necessity. Therefore, I do not have to deal with this aspect. The existence of a situation bringing into play the law of necessity is a matter to be expressly alleged by the party relying thereon.

(4) Of course, Law 12/65 itself appears on the face of it to be an enactment of necessity. But there is nothing in such Law to the effect that because of the necessity which gave rise to Law 12/65 the Commission had to act without a quorum under section 16. Counsel for Respondent has argued that since the Ligislature ought to have known that at the time of the enactment of Law 12/65 the five remaining available members of the Commission could not form a quorum it must, therefore, be presumed by implication that the Legislature intended to entrust the task under section 16(1) to the said five members of the Commission only.

(5) I really find it impossible to accept this proposition as correct. In the first place, at the time when Law 12/65 was enacted the judgment in the *Maratheftis* case, *supra,* had not yet been delivered and thus the legislature had not specific cause to address its mind to the question of quorum of the Commission. Secondly, the Legislature entrusted the task under section 16(1) to the "competent authority" and section 16(1) cannot be interpreted as meaning part only of such authority. When an organ is entrusted with a function by law it is the organ *as such* which is so entrusted, irrespective of its composition at any particular time.

(6) The object of section 16(1) is clear and it is entirely unconnected with the question of the proper functioning

or not of the Commission; so, no implied provision, unconnected with its object, can be read into section 16(1), so as to construe it as prescribing a different smaller quorum of the Commission for the purpose of decisions under section 16(1).

(7)(*a*) Actually after the *Maratheftis* case, *supra,* the Legislature dealt expressly with the question of the quorum *inter alia,* of the Commission, by the Public Service Commission (Temporary Provisions) Law, 1965 (Law 72/65).

Law 72/65 has been enacted after this judgment had been reserved. Section 5 thereof provides, in effect, that any decision of the Commission taken between the 21st December, 1963, and the date of the coming into operation of such Law, with a quorum of even less than five members (three if the Chairman is present and four otherwise) should be deemed to have been lawfully taken and to be valid from the point of view of constitution and quorum of the Commission.

(*b*) Leaving aside any other question relating to the validity or not of such a retrospective provision as section 5—and I leave such matters entirely open—I am of the opinion that its proper construction is that it could not have been intended, in the absence of express provision to that effect, to be applied to a decision of the Commission which was already sub judice and on which judgment had been reserved in relation, *inter alia,* to its validity from the point of view of the existence of the proper quorum.

(*c*) Moreover, once judgment has been reserved on the validity of a decision of the Commission, as above, there is no more room for such decision to be "deemed" to be valid, because its validity is to be pronounced upon definitely by way of a judicial decision.

(*d*) Also, if I were to hold the contrary, and find that section 5 was intended to apply even to a decision of the Commission, which was *sub judice,* as above, then section 5 would be, in my opinion unconstitutional to that extent as contravening the separation of Powers under the Constitution and as interfering with the independence of the Judicial Power, by seeking to render valid *ex post facto* a decision, the determination of the validity of which was already a matter within the province of the Judicial Power.

(See in this respect also Kyriakopoulos on Greek Administrative Law, 4th edition volume I, p. 159).

(*e*) I am, thus, of the opinion that Law 72/65, and particulary section 5 thereof, cannot save the validity of the sub judice decisions which were taken by the Commission meeting at the time without proper quorum.

(D) *On the question whether the Commission has been acting under a misconception as to the effect of section 16 of Law 12/65:*

(1) The Commission is duty-bound, first and foremost, to put in a vacant post in the public service a person who is suitable for the post in question. *(Theodossiou and The Republic,* 2 R.S.C.C. p. 44).

(2) There is nothing in section 16 to the effect that the Commission is to overlook its said paramount duty when acting under such section. I think, therefore, that the proper interpretation of section 16 is that an emplacement to be effected thereunder is to be effected only subject to the Commission being satisfied as to the suitability of the person to be emplaced in a particular post. This is to be derived, also, from the provision in section 16(1) about emplacements being made so long as they are practically possible.

(3) From the material part of *exhibit 13,* which reads:- "With reference to Mr. Adamides, the Commission considered carefully his duties under the Chamber and the duties of the Director-General in the Ministry as described in the schemes of service and has come to the conclusion that although he was doing the work of administration in the Chamber still he does not possess all the qualifications required in the new post of Director-General but the Commission from reading section 16(1) of Law 12/65 feels bound in compliance with that section, to appoint him to the post of Director-General of the Ministry of Education", I would have in any case drawn the conclusion that the Commission acted under the basic misconception that it was bound to emplace the Interested Party irrespective of the question of his suitability. The evidence of Mr. Theocharides not only did not lead me to think that my above conclusion could be erroneous, but on the contrary, having explained the position in detail,

it has strengthened me in holding as I did.

(4) So, being quite convinced that the Commission was labouring under a misconception of law, as above, in reaching its decision to emplace the Interested Party in the post of Director-General of the Ministry of Education, I have to annul such decision on this ground, too, and I hereby so declare. The Commission has to re-examine the matter afresh, with the proper legal position in mind.

(E) *On the question of the views expressed by the Minister of Education to the Chairman Public Service Commission with regard to the meaning of para. (b) of the Schemes of Service:*

(1) Allowing fully for the fact that no enactment regulating the proceedings of the Commission exists, it is my view that the way in which the Minister of Education was contacted in the matter is so inconsistent with the minimum of essential requirements of proper proceedings before a public collective organ, that it constitutes a basic defect of the proceedings leading up to the decision to emplace the Interested Party in the post of Director-General, with the consequence that such emplacement has to be annulled accordingly.

(2) It was, moreover, not correct for the Commission to consult the Minister as to the meaning of part of paragraph (b) *of exhibit 5;* he was consulted not as an expert explaining a technical matter, but in his capacity as a drafter of *exhibit 5.*

(3) In my opinion it was as incorrect as it would be incorrect for the President of this Court to consult the President or members of the House of Representatives as to the meaning of any enactment which the Court has to construe in a particular case. This renders the defect in the proceedings of the Commission even more fatal.

(4) In addition to the above, in my opinion, the aforesaid view of the Minister, which was conveyed to the Commission through its Chairman, is erroneous on the face of it, because when exhibit 5 is read together with sections 3(3)(*a*) and 6(2) of Law 12/65 there can be little doubt that also educational matters, even of technical nature, are within the ambit of paragraph (*b*) of *exhibit 5.*

(5) Thus, through the above view of the Minister of

Education, as conveyed to the Commission, the Commission has been made to act in the matter of the emplacement of Applicant under the influence of a misconceived view as to the correct effect of the relevant scheme of service. Thus, the emplacement of the Interested Party has to be annulled for this reason too.

(F) *On the question of the memorandum of the Minister of Education:*

The fact remains that the picture presented to it by the memorandum attached to *exhibit 12* was so incorrect as to lead to a grave misconception regarding the comparative service status of the Applicant and the Interested Party, in favour of the Interested Party and against Applicant. Thus, it is, again, necessary that the emplacement of the Interested Party should be annulled on this ground, too, as being the product of a discretion vitiated by misconception.

(G) *On the question of the decision of the Council of Ministers:*

(1) To a wrong view about the status of the Interested Party have contributed, unwittingly in my opinion, but, nevertheless, quite unfortunately, some of the contents of the relevant decisions of the Council of Ministers *(exhibits 7 and 8)*

(2) It is clear that a copy of the first such decision, *exhibit 7*, was with the Commission at the material time; the Chairman of the Commission does not recollect having before him a copy of *exhibit 8*, but this could not make any difference to this Case, because *exhibit 7* and *exhibit 8* are the same in so far as the matter we are dealing with at this stage is concerned.

In Appendix "A" to both *exhibit 7* and *exhibit 8* the old post of the Interested Party under the Communal Chamber is described as "Director-General" and the new post in the structure of the Ministry of Education, which is set out opposite the said old post of the Interested Party is the post of Director-General of the Ministry of Education. Moreover, the new post in question is not marked as being vacant—as some other posts are marked—and, thus, the impression is conveyed that it is not only analogous to the old post of the Interested Party,

but destined, too, to be occupied by him, as the person who was the "Director-General" under the Greek Communal Chamber.

(3) Thus, my view that the *sub judice* decision of the Commission to emplace the Interested Party in the post of Director-General of the Ministry of Education should be annulled on the ground that it was reached while the Commission was labouring under the influence of an incorrect picture of the true position, and it is thus vitiated by misconception, is strengthened even more.

(H) *On the question of the nature of the respective duties of Applicant and Interested Party:*

(1) Further to all the above, I have, also, reached the conclusion that the Commission itself, in approaching the matters of the emplacement of the Applicant and the Interested Party, has acted under a fundamental misconception regarding the nature of their respective duties.

(2) Of course, the question of the analogy of duties between an old post under the Chamber and a new post in the service of the Republic is a matter primarily for the discretion of the Commission, and so long as the Commission reaches a decision, which is reasonably open to it on the material before it, this Court will not be prepared to intervene. But this Court has to intervene if it is of the opinion that such decision has been reached under a misconception as to the true position.

(3) Such a misconception exists as follows:-

The Chairman of the Public Service Commission has stated, in effect, in his evidence that at the material time it was thought that the Interested Party had far greater administrative experience than the Applicant; that the Interested Party was dealing in relation to all the services under the Chamber—(i.e. including the educational services)—in the same way as a Director-General of a Ministry is acting, whereas Applicant in relation to the services under him—(i.e. the educational services)—was concerned with technical matters of education and was possessing to a far less extent, than the Interested Party, the ability to supervise personnel and co-ordinate work, as required under *exhibit 5,* the relevant scheme of service.

(4) On the totality of the material before me, including, *inter alia*, the relevant evidence of Applicant which I accept, and the provisions of Greek Communal Chamber Law 7/60, I am of the opinion, that the Commission's above approach was misconceived and that Applicant himself was very much in charge of administrative matters of the educational services and was supervising personnel and co-ordinating administrative work to a considerable extent, whereas the Interested Party, in relation to the educational services, did not have direct administrative responsibility.

(5) The Interested Party was involving himself in matters of the educational services in the process only of the discharge of his duties as Administrative Officer. The first instance responsibility, for the whole administration of the educational services, was that of the Applicant.

(6) The fact that the Interested Party, when educational matters reached the level of the President of the Chamber or of the Chamber and its Committees, was dealing with the substance of such matters himself, by making reports, studies and submissions, cannot alter the fact that the Commission has essentially misconceived, as above, the nature of the duties of Applicant and the Interested Party.

Held, (IV). In concluding:

(1) For all the above reasons I find that the only course open to me in these proceedings is to declare the emplacement of the Interested Party, in the post of the Director-General of the Ministry of Education, null and void and of no effect whatsoever as having been decided upon in a defective manner, as regards both quorum, procedure and the exercise of the relevant discretion, as having been made under several misconceptions and, thus, in the last analysis, as being contrary to law, including basic principles of administrative Law, and in excess and abuse of powers of the Commission.

(2) Having annulled the emplacement of the Interested Party I have also to annul the emplacement of the Applicant in the post of Director of Education, as made at the same time, because it is clear that Applicant was considered at the time also for the post of Director-General of the Ministry and had he been preferred to the Interested Party he would not have been appointed to the post of Director

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of Education.

Held (V). With regard to costs:

Regarding costs I have taken into account the fact that Applicant has failed in this recourse to a certain extent, and he has also failed in the effort to obtain a provisional order in this Case. Therefore, I think he is entitled only to part of his costs, for one advocate, which I assess at £70. The Interested Party has taken part in these proceedings, in view of their nature, and has thus been put into expense. It was not his fault that his emplacement was not made in the proper manner and I shall take the course of awarding costs in his favour and against the Republic, too. This is the first time that it is so done, as far as I know, in an administrative recourse in Cyprus, but it is not the fault of this public officer if due to reasons for which he bears no blame he was put to expense in court proceedings. I, therefore, award in his favour part of his costs, which I assess at £50.—

Sub judice emplacements declared null and void. Order for costs as aforesaid.

Cases referred to:

Papapetrou and *The Republic*, 2 R.S.C.C. 61, at pp. 65, 69 *followed;*

Maratheftis and *The Republic* (1965) 3 C.L.R. 576 at p. 581 applied;

Theodossiou and *The Republic*, 2 R.S.C.C. 44 *followed.*

Recourse.

Recourse against various decisions of the Respondent Public Service Commission whereby they *inter alia* decided to emplace Mr. P. Adamides, the Interested Party, in the post of Director-General of the Ministry of Education, as from the 1st July, 1965, in preference to, and instead of, the applicant.

L. Clerides with *A. Triantafyllides*, for the Applicant.

K. Talarides, Counsel of the Republic, for the Respondents.

G. Tornaritis, for the Interested Party.

Cur. adv. vult.

The following judgment was delivered by:—

TRIANTAFYLLIDES, J.: In this Case Applicant has, in effect, four claims; he seeks:—

(1) A declaration that the decision of Respondent 1, the Public Service Commission, contained in the letter of the 22nd June, 1965, *(exhibit 29)*, to emplace Applicant in the post of Director of Education, in the Ministry of Education, as from the 1st July, 1965, is *null* and *void* and of no effect whatsoever.

(2) A declaration that the omission of the Respondent Commission to emplace Applicant in the post of Director-General of the Ministry of Education should not have been made.

(3) A declaration that the decision of the Respondent Commission to emplace Mr. P. Adamides, the Interested Party, in the post of Director-General of the Ministry of Education, as from the 1st July, 1965, in preference to, and instead of, the Applicant is *null* and *void* and of no effect whatsoever.

(4) A declaration that the decision of Respondent 2, the Council of Ministers, by which it adopted the schemes of service for the posts of Director-General and of Director of Education in the Ministry of Education *(exhibits 5 and 4)* is *null* and *void* and of no effect whatsoever.

It can be said here and now that claim (2) cannot succeed, because, as it is clear from the proceedings before the Court, we are dealing with definite decisions of the Commission, regarding the emplacements in question, and as the Commission did not have a duty in law to emplace Applicant in the post of Director-General of the Ministry of Education, but only a duty to exercise its discretion properly and decide as to whether so emplace him or not, no question of an omission could arise. Thus, in so far as claim (2) is concerned this recourse fails.

The history of salient events in this Case is as follows:—

On the 30th March, 1965, Applicant was the holder of the post of Director of the Greek Education Office, under the provisions of Greek Communal Chamber Law 7/60, and the Interested Party was holding the post of Administrative

Officer of the Greek Communal Chamber, under the provisions of Greek Communal Chamber Law 4/60.

On the 31st March, 1965, the "Transfer of the Exercise of the Competences of the Greek Communal Chamber and the Ministry of Education Law", 1965 (Law 12/65) came into force by being published in the official Gazette.

As it appears from the preamble of such Law, it was enacted because the exercise of the competences of the Greek Communal Chamber had been rendered impossible due to certain circumstances.

Under section 3(3) *(a)* of such Law, the administrative competences of the Chamber in all educational, cultural and teaching matters were transferred, as from the 31st March, 1965, to the Ministry of Education—which was created by *virtue of section 5(1) of the Law.*

Under section 7 of the Law, provision was made for the setting up of the services of the Ministry of Education by decision of the Council of Ministers.

By section 16(1) of the Law any person being immediately before the date of the coming into force of Law 12/65, in the service of the Greek Communal Chamber, as a member of the staff of its offices, was transferred, as from such date, to the service of the Republic, and was then to be emplaced by the "competent authority", as far as practically possible, in a public service post entailing duties analogous to the duties of such person's post in the service of the Chamber.

By sub-section (2) of section 16, provision has been made safeguarding to a person affected by sub-section (1) his *terms and conditions of service as they were in force concerning* such person prior to the date of the coming into effect of Law 12/65.

It appears that, even before the coming into force of Law 12/65, a study had been made of the proposed structure of the services of the Ministry of Education which was to be created, (see the report *exhibit 20* dated 23rd March, 1965). It was recommended by *exhibit 20* that there should be included in such structure the posts of Director-General and of Director of Education.

On the 21st April, 1965, the Council of Ministers took

decision No 4628 in relation to the setting up, and the structure, of the services of the Ministry of Education, *(exhibit 7)*. This decision was amended on the 20th May, 1965, by decision No 4704, *(exhibit 8)* It was, *inter alia*, decided to include in the structure of the services of the Ministry of Education the posts of Director-General and Director of Education.

Also, on the 20th May, 1965, the Council of Ministers considered the draft schemes of service for, *inter alia*, the posts in question and by decision 4656 *(exhibit 9)* referred them to a Sub-Committee for final consideration, thus, *exhibits 4 and 5*, the schemes of service for the said two posts, came to be approved. The said schemes are also to be found set out in the relevant file of the Public Service Commission *(exhibit 11)*

On the 26th May, 1965, the Secretariat of the Council of Ministers wrote to the Minister of Education, forwarding all three aforesaid decisions of the Council of Ministers, as well as the schemes of service for the aforesaid posts, and requesting the Minister to take the necessary steps, in consultation with the Public Service Commission and other Departments, for the filling of the posts of the Ministry and the emplacement of the necessary personnel *(exhibit 10)*

On the 1st June, 1965, the Minister of Education wrote to the Public Service Commission asking for the filling, *inter alia*, of the two posts in question and giving, by means of a memorandum, details of the duties and responsibilities of the Applicant and the Interested Party under the Communal Chamber, *(exhibit 12)*.

On the 18th June, 1965, the Commission decided to emplace the Interested Party in the post of Director-General and the Applicant in the post of Director of Education *(exhibit 13)* and, thus, Applicant came to file this recourse on the 25th June, 1965.

On the same day an application was made for a provisional order directing the non-implementation of the emplacement of the Interested Party in the post of Director-General until the determination of this Case

This application was heard by the Court on the 26th June, 1965, and on the 30th June, 1965, it was dismissed by a de-

cision* the contents of which need not be repeated in this judgment.

In view of the nature of the Case it was given every priority and was fixed and heard on the 6th September, 7th September, 13th September, 17th September, 23rd September, 24th September, 25th September, 4th October, 5th October, 7th October, 6th November and 13th November, 1965, when judgment was reserved.

The Interested Party was given an opportunity to take part in these proceedings for the protection of his interests; he did so through his counsel.

On the 17th September, 1965, the Court gave a ruling regarding the admissibility of a statement adopted on the 13th September, 1965 by the Respondent Commission, in relation to the contents of its sub judice decisions of the 18th June, 1965 *(exhibit 13)*. This statement was held to be inadmissible for the reasons set out in that ruling, which need not be repeated.**

On the 23rd September, 1965, counsel for the Interested Party asked for an adjournment of the hearing because the Interested Party intended to appeal against the said ruling; the adjournment was refused on the grounds set out in a ruling given on the same date, for the purpose, which need not be repeated.

At the conclusion of the proceedings the Court reserved judgment subject to the possibility of calling for evidence on certain points, if this were to be deemed necessary, while considering this judgment. I have reached the conclusion that the calling of any further evidence is not needed for the purpose of enabling this Case to be determined.

I would like at this stage to make two observations:—

First, that in this Case it was not my task to evaluate in any way the comparative merits of the Applicant and the Interested Party. I did not have to decide and I could not be influenced by my own view as to whether or not it would be more to the interests of the public service and efficient administration if the Applicant or the Interested Party were

*Published in (1965) 3 C.L.R. 392

**Ruling published in (1965) 3 C.L.R. 473.

to occupy the post of Director-General. All I had to do was to examine the validity of the sub judice decisions of the Council of Ministers and the Public Service Commission in the light of Article 146 of the Constitution. So nothing stated in this judgment should be misunderstood as reflecting a view by me regarding the merits of either Applicant or the Interested Party, or the advisability of emplacing them in any of the posts in question.

Secondly, I think that the Public Service Commission has been called upon to act, in the relevant matters, under the great handicap of not having its procedure and other cognate subjects regulated by appropriate legislation, which one would normally have expected to have seen being enacted for the purpose. This is not an isolated Case. This Court would like to point out that through quite a number of recent cases before it it has become very clear that the members of the Public Service Commission cannot remain for ever without the assistance of legislation regulating their proceedings, their approach to the various matters within their competence and the basic principles governing such approach. It cannot be expected of the judiciary to fill this legal vacuum little by little through decisions in relevant cases.

I will deal now with claim (4) of Applicant. He claims that *exhibits 4 and 5* i.e. the schemes of service for the two posts in question, are void as being contrary to sections 7 and 16 of Law 12/65 and also as having been made in excess or abuse of powers.

It is correct, as indicated already in my decision on the application for a provisional order, that these schemes of service, *exhibits 4 and 5*, appear to be vague to a certain extent, especially where they seem to overlap.

But, this is not sufficient to lead me to the conclusion that the Council of Ministers, by approving *exhibits 4 and 5* in the form in which they are found to-day, has acted in excess or abuse of powers; any ambiguity that may exist in such schemes falls far short of establishing excess or abuse of powers in the sense understood under Article 146 of the Constitution.

Nor do I think that the said two schemes of service can be said to contravene sections 7 or 16 of Law 12/65, whether these two sections are read separately or together. In this

respect the main argument of Applicant has been that the powers under section 7 should not have been exercised without due regard to what had to be done under section 16.

In my opinion, the proper interpretation of section 7 is that the Council of Ministers was granted thereunder a discretion to set up the services of the Ministry of Education—which was created as a new Ministry—and, in doing so, the Council had to act having as its paramount object the interests of proper administration and the efficient functioning of the Ministry, and could not be considered as fettered, in doing so, by the previous structure of the services under the Greek Communal Chamber—which were set up in a different context altogether—or by a need to ensure the existence of posts under the Ministry analogous in all respects to the posts existing under the Communal Chamber.

It is clear, furthermore, from section 16 itself, that the new posts to be created under section 7 might not correspond always to the old posts, otherwise it would not have been provided in section 16 that the emplacement to posts with analogous duties was to be made to the extent to which it would be practically possible. Thus, I do not think that it can be said that an obligation was imposed, thereunder, on the Council of Ministers to create posts with duties analogous to those existing under the Chamber, in order to ensure the placement in such posts of officers of the Chamber, irrespective of the needs of the new Ministry of Education.

I, therefore, do not find that *exhibits 4 and 5*—even if they were to be found to allocate duties in a manner different from that in which such duties were distributed under the Chamber—could be said to contravene sections 7 or 16.

Moreover, I have serious doubts as to whether Applicant can be held entitled at all to proceed *directly* against the validity of *exhibits 4 and 5*, because these schemes of service are not acts directed at him as a subject of administration, and, therefore, they cannot be held to be executory *vis-a-vis* the Applicant, so as to entitle him to have a recourse against them under Article 146.

Be that as it may—and irrespective of whether Applicant could be held to be entitled to file a recourse *directly* against *exhibits 4 and 5* or whether he could only raise the validity thereof in proceedings against the emplacement of himself

or the Interested Party in the relevant posts—having held that such schemes are neither contrary to law nor made in excess or abuse of powers, claim (4) of Applicant fails and is dismissed.

We are left, thus, only with claims (1) and (3) of Applicant. In the particular circumstances of this Case it is proper that they should be examined together.

The first thing which I have to deal with is whether or not Applicant has a legitimate interest, in the sense of Article 146(2), to attack the emplacement of the Interested Party to the post of Director-General of the Ministry of Education.

That he has the requisite legitimate interest for the purpose of challenging his own emplacement, is clear.

But the matter was not so clear, at the beginning, regarding his legitimate interest *vis-a-vis* the emplacement of the Interested Party.

After, however, the evidence of the Chairman of the Public Service Commission—who has indeed stated everything he had to say in a very frank manner and in a greatly appreciated effort to place everything before the Court in order to assist it—and in view, also, of the contents of *exhibit 13*, it is quite clear that Applicant and the Interested Party were considered in relation to the filling of both new posts concerned; Applicant having, thus, been considered for the post, also, of Director-General, he has a legitimate interest to attack the validity of the Commission's decision in relation to such post.

It is for this reason, *inter alia*, that, as I said, claims (1) and (3) of Applicant have to be dealt with together.

Another doubt as to the existence of the legitimate interest of Applicant arose when it transpired that, pending these proceedings, on the 28th August, 1965, he had become fifty-five years old and he reached, therefore, *possibly* his retirement limit. I say "possibly" because I am leaving open the question of the exact date of the retirement of Applicant. It appears that under the Greek Communal Chamber no provision was made regarding the exact date of retirement of Applicant, and now it is considered by the appropriate authorities of the Republic that he became due to retire on the 28th August, 1965, because, having come under the

central Government of the Republic, in view of Law 12/65, he, too, is affected by the provisions governing the retirement of all other public officers.

By letter, however, of the 4th September, 1965 *(exhibit 32)*, Applicant has been informed that his service has been extended by the Council of Ministers until the 31st August, 1966, and, therefore, so long as Applicant continues to be in service, he is deemed, in my opinion, to have a legitimate interest in the sub judice matters.

We pass now to the validity of the decisions contained in *exhibit 13*.

I have addressed my mind first to the question of the competence of the Public Service Commission to reach such decisions.

The question of such competence has not been raised by Applicant, as a ground of invalidity of such decisions. It was mentioned by the Court during the address of counsel for Respondent, who has argued that under section 16 a new task was given to the Commission, the Commission being already competent under Article 125 to deal with matters of "emplacement".

An administrative court is entitled to examine *ex proprio motu* the competence of the particular organ the decision of which is being challenged before it; (Stasinopoulos on the Law of Administrative Disputes, 1964, p. 251) therefore, I have thought fit to examine this issue.

Under section 16, the duty to effect emplacements is entrusted to the "competent authority". The Commission is not mentioned expressly. So it is not really a case of a new competence being conferred on the Commission—a thing which, in my opinion, could have been done—but of a duty being entrusted to an organ competent to deal with matters of such nature.

In the case of *Papapetrou and The Republic*, 2 R.S.C.C. p.61, at p.66, it was held that ". . the Public Service Commission, which is established under Article 124, is vested under the Constitution with only those powers which it has expressly been given under Article 125. The residue of any executive power in respect of any matters concerning the public service of a State, which by its constitution has not been expressly

given to an independent body such as a Public Service Commission, remains vested in the organ of the State which exercises executive power and within whose province the public service of the State normally otherwise comes and in the case of the Republic of Cyprus such organ, under Article 54 of the Constitution, and particularly paragraphs *(a)* and *(d)* thereof, is the Council of Ministers".

The competence granted to the Public Service Commission, under Article 125(1) is to, *inter alia*, "appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer, retire and exercise disciplinary control over, including dismissal or removal from office of, public officers".

I had some difficulty in deciding whether the duty to emplace under section 16(1) falls within the above competence under Article 125(1) or whether, if it does not so fall, it is then a matter for the Council of Ministers.

Emplacement under section 16(1) is not an emplacement envisaged by Article 125(1) because what is envisaged thereby is "emplacement on the permanent or pensionable establishment", something totally different, in my view, than emplacement under section 16(1) of Law 12/65.

But, in the final result, I have reached the conclusion that an emplacement to be made under section 16(1) is in the nature of an appointment and/or transfer and, thus, comes within the provisions of paragraph 1 of Article 125.

Having reached the conclusion that the competent authority spoken of in section 16(1) is the Public Service Commission, and not the Council of Ministers, I come, then, to the submission of counsel for Applicant that the Commission, at the time, was not properly constituted and that it has not met with the requisite quorum.

It is common ground that only five members of the Commission were available for the meeting which took the decisions in *exhibit 13:* there existed two vacancies on the Commission and the three Turkish members have not been attending since December, 1963.

As held in *Maratheftis and The Republic* ((1965) 3 C.L.R. 576 at p. 581) the said five members of the Commission could not constitute a proper quorum of the Commission.

So, the emplacements of the Applicant and the Interested Party having been decided upon at a meeting of the Commission at which, admittedly, did not exist a proper quorum, it follows that the relevant decisions have to be declared to be *null* and *void* and of no effect whatsoever

In the *Maratheftis case, supra*, the question of whether or not the Commission could, in the circumstances, have functioned without a quorum, on the basis of the law of necessity, was left open.

No argument has been advanced in this Case that the functioning of the Commission—with regard to the emplacement of Applicant and the Interested Party—without a proper quorum, took place, in circumstances rendering such functioning valid because of the law of necessity. Therefore, I do not have to deal with this aspect. The existence of a situation bringing into play the law of necessity is a matter to be expressly alleged by the party relying thereon.

Of course, Law 12/65 itself appears on the face of it to be an enactment of necessity But there is nothing in such Law to the effect that because of the necessity which gave rise to Law 12/65 the Commission had to act without a quorum under section 16. Counsel for Respondent has argued that since the Legislature ought to have known that at the time of the enactment of Law 12/65 the five remaining available members of the Commission could not form a quorum it must, therefore, be presumed by implication that the Legislature intended to entrust the task under section 16(1) to the said five members of the Commission only

I really find it impossible to accept this proposition as correct In the first place, at the time when Law 12/65 was enacted the judgment in the *Maratheftis* case, *supra*, had not yet been delivered and thus the Legislature had not specific cause to address its mind to the question of quorum of the Commission Secondly, the Legislature entrusted the task under section 16(1) to the "competent authority" and section 16(1) cannot be interpreted as meaning part only of such authority When an organ is entrusted with a function by law it is the organ *as such* which is so entrusted, irrespective of its composition at any particular time.

The object of section 16(1) is clear and it is entirely unconnected with the question of the proper functioning or not of

the Commission; so, no implied provision, unconnected with its object, can be read into section 16(1), so as to construe it as prescribing a different smaller quorum of the Commission for the purpose of decisions under section 16(1).

Actually after the *Maratheftis* case, *supra*, the Legislature dealt expressly with the question of the quorum, *inter alia*, of the Commission, by the Public Service Commission (Temporary Provisions) Law, 1965 (72/65).

Law 72/65 has been enacted after this judgment had been reserved. Section 5 thereof provides, in effect, that any decision of the Commission taken between the 21st December, 1963, and the date of the coming into operation of such Law, with a quorum of even less than five members (three if the Chairman is present and four otherwise) should be *deemed* to have been lawfully taken and to be valid from the point of view of constitution and quorum of the Commission.

Leaving aside any other question relating to the validity or not of such a retrospective provision as section 5—and I leave such matters entirely open—I am of the opinion that its proper construction is that it could not have been intended, in the absence of express provision to that effect, to be applied to a decision of the Commission which was already sub judice and on which judgment had been reserved in relation, *inter alia*, to its validity from the point of view of the existence of the proper quorum.

Moreover, once judgment has been reserved on the validity of a decision of the Commission, as above, there is no more room for such decision to be "deemed" to be valid, because its validity is to be pronounced upon definitely by way of a judicial decision.

Also, if I were to hold the contrary, and find that section 5 was intended to apply even to a decision of the Commission, which was sub judice, as above, then section 5 would be, in my opinion, unconstitutional to that extent as contravening the separation of Powers under the Constitution and as interfering with the independence of the Judicial Power, by seeking to render valid *ex post facto* a decision, the determination of the validity of which was already a matter within the province of the Judicial Power. (See in this respect also Kyriakopoulos on Greek Administrative Law, 4th edition volume I, p. 159).

I am, thus, of the opinion that Law 72/65, and particularly section 5 thereof, cannot save the validity of the sub judice decisions which were taken by the Commission meeting at the time without proper quorum.

Once the absence of the necessary quorum has rendered the Commission improperly constituted for the purposes of *exhibit 13*, then there is not much point in my examining further the question of the otherwise proper or not constitution of the Commission, and I am leaving such matter open in this Case.

I shall next deal with the validity, in other respects, of the decisions in *exhibit 13*.

In this connection, I have reached, first, the conclusion that the emplacement of the Interested Party in the post of Director-General has been made under a misconception as to the effect of section 16 of Law 12/65.

From the contents of *exhibit 13*, and in the light of the evidence given by Mr. Theocharides, the Chairman of the Commission, I have formed the opinion that the Commission felt that the Interested Party, though he did possess the qualifications laid down by the scheme of service for the post of Director-General *(exhibit 5)*, was not fully qualified to advise the Minister of Education on policy regarding educational matters (see paragraph *(b)* of *exhibit 5)*: yet, nevertheless, the Commission felt bound by section 16 of Law 12/65 to emplace the Interested Party in the said post once an analogy existed to a very great extent between the duties of his old post under the Chamber and the duties of the said new post.

The Commission is duty-bound, first and foremost, to put in a vacant post in the public service a person who is suitable for the post in question. *(Theodossiou and The Republic*, 2 R.S.C.C. p. 44).

There is nothing in section 16 to the effect that the Commission is to overlook its said paramount duty when acting under such section. I think, therefore that the proper interpretation of section 16 is that an emplacement to be effected thereunder is to be effected only subject to the Commission being satisfied as to the suitability of the person to be emplaced in a particular post. This is to be derived, also, from the provision in section 16(1) about emplacements being

made so long as they are practically possible.

From the material part of *exhibit 13*, which reads:— "With reference to Mr. Adamides, the Commission considered carefully his duties under the Chamber and the duties of the Director-General in the Ministry as described in the schemes of service and has come to the conclusion that although he was doing the work of administration in the Chamber still he does not possess all the qualifications required in the new post of Director-General but the Commission from reading section 16(1) of Law 12/65 feels bound in compliance with that section, to appoint him to the post of Director-General of the Ministry of Education", I would have in any case drawn the conclusion that the Commission acted under the basic misconception that it was bound to emplace the Interested Party irrespective of the question of his suitability. The evidence of Mr. Theocharides not only did not lead me to think that my above conclusion could be erroneous, but on the contrary, having explained the position in detail, it has strengthened me in holding as I did.

So, being quite convinced that the Commission was labouring under a misconception of law, as above, in reaching its decision to emplace the Interested Party in the post of Director-General of the Ministry of Education, I have to annul such decision on this ground, too, and I hereby so declare.

The Commission has to re-examine the matter afresh, with the proper legal position in mind. It should not lose sight of the fact that the post of Director-General of the Ministry of Education is a first entry and promotion post (see *exhibit 5)*.

If the Commission is not convinced when it comes to deal with the matter afresh that the Interested Party is *the* suitable person for such post, it is free not to fill it by emplacement but to advertise it in the usual course. Then the Interested Party would be entitled to apply for appointment and he might still be appointed if nobody more suitable than him could be found.

Of course, I am not at this stage expressing myself any opinion as to what view the Commission should take on this point.

I come now to another ground by reason of which I am

of the view that the emplacement of the Interested Party ought, also, to be declared *null* and *void* and of no effect whatsoever.

As it appears from the evidence of Mr. Theocharides, certain doubts arose in the mind of some members of the Commission as to the exact meaning of paragraph *(b)* of the scheme of service for the post of Director-General of the Ministry of Education *(exhibit 5)*. It was then decided to authorize Mr. Theocharides, to contact the Minister of Education, because they knew that "he was involved in drafting" *exhibit 5*, and to find out from him whether the Director-General of the Ministry of Education would be expected to advise and assist the Minister of Education in matters of policy, relating also to purely educational matters.

The Chairman saw the Minister, the Minister expressed to the Chairman the view that the Director-General would not be expected to advise in relation to technical matters of education and the Chairman passed this on to the other members of the Commission, some of whom did not appear to share the view of the Minister.

There can be no doubt, anyhow, that the view of the Minister has most certainly influenced to a material extent the collective thinking of the members of the Commission and, therefore, the outcome of their deliberations.

No minutes exist recording the deliberations of the members of the Commission on the occasion when doubts arose regarding the meaning of paragraph *(b)* of *exhibit 5*.

Also, no decision exists, or other record, regarding the authorization of the Chairman of the Commission to see the Minister in the matter; I should add, however, that I do not doubt the word of the Chairman that he was duly authorized orally.

There is no record of the conversation between the Minister and the Chairman of the Commission; there is no record of what he conveyed to the other members of the Commission.

Thus, what took place was, in effect, that the Minister was consulted personally by the Chairman, with the knowledge of the other members of the Commission, *outside the formal proceedings* of the Commission.

What are, now, the consequences of this course?

To construe *exhibit 5* was a matter for the Commission *(Papapetrou and The Republic*, 2 R.S.C.C. p. 62 at p. 69).

If the Commission needed legal advice regarding anything arising out of *exhibit 5* it could apply to the Attorney-General of the Republic for the purpose; yet, he was not consulted at all.

If the Commission wanted to have the expert view of the Minister of Education as to any technical matter then the Minister could have been asked to attend before the Commission, in the presence of its members, at a meeting, with proper minutes being kept for the purpose.

Allowing fully for the fact that no enactment regulating the proceedings of the Commission exists, it is my view that the way in which the Minister of Education was contacted in the matter is so inconsistent with the minimum of essential requirements of proper proceedings before a public collective organ, that it constitutes a basic defect of the proceedings leading up to the decision to emplace the Interested Party in the post of Director-General, with the consequence that such emplacement has to be annulled accordingly.

It was, moreover, not correct for the Commission to consult the Minister as to the meaning of part of paragraph *(b)* of *exhibit 5:* he was consulted not as an expert explaining a technical matter, but in his capacity as a drafter of *exhibit 5.*

In my opinion it was as incorrect as it would be incorrect for the President of this Court to consult the President or members of the House of Representatives as to the meaning of any enactment which the Court has to construe in a particular case. This renders the defect in the proceedings of the Commission even more fatal.

In addition to the above, in my opinion, the aforesaid view of the Minister, which was conveyed to the Commission through its Chairman, is erroneous on the face of it, because when *exhibit 5* is read together with sections 3(3) *(a)* and 6(2) of Law 12/65 there can be little doubt that also educational matters, even of technical nature, are within the ambit of paragraph *(b)* of *exhibit 5.*

Thus, through the above view of the Minister of Educa-

tion, as conveyed to the Commission, the Commission has been made to act in the matter of the emplacement of Applicant under the influence of a misconceived view as to the correct effect of the relevant scheme of service. Thus, the emplacement of the Interested Party has to be annulled for this reason too.

I have no reason at all to believe that the Minister of Education has not acted all along with every good faith in the whole matter of the emplacement of Applicant and the Interested Party. But he has been instrumental in leading the Commission to act under the influence of a further misconception regarding the exact status of the Interested Party and Applicant, because the memorandum attached to his letter, *exhibit 12*, does not present a picture which is complete so as to be correct:—

In this memorandum the post of the Interested Party under the Greek Communal Chamber is described as "Director-General (Administrative Officer)". There is also a "note" stating that the title of the post was originally "Administrative Officer", as was then the title of the Directors-General of the Ministries, but that later in 1962, by a scheme of service, the Administration Committee of the Greek Communal Chamber altered such title to "Director-General" in view of the analogous arrangements in the Ministries. It was also stated that the new title of the Interested Party appeared also in the Budget of the Greek Communal Chamber for 1965.

Thus, a clear effort was being made to present to the Commission the post of the Interested Party as the equivalent of a post of a Director-General of a Ministry, and this in spite of the fact that all along the title of the post of the Interested Party remained in law that of "Administrative Officer" by virtue of Greek Communal Law 4/60, which was never amended in order to implement what the Minister of Education mentioned, as above, in his memorandum.

Yet, at the same time when the post of the Interested Party was presented as equivalent to that of a Director-General, nothing was mentioned of the fact—(which I accept as correct on the basis of the evidence before me, including *exhibit 17*, and which fact no doubt was within the knowledge of the Minister of Education)—that the salary of the post of Director of the Greek Education Office was to be

fixed at first at £1600X60—£1900, in order to be equal to that proposed for those Administrative Officers, who were Directors-General in the Ministries, and was finally fixed at £1460×50—1560×60—£1800, the same as the salary eventually approved for the said Administrative Officers.

And the importance of the above consideration becomes even more apparent when it is noted that the salary of the Interested Party under the Chamber, which was £1236X42—1404×48—£1548, was the same as that of other Administrative Officers who were *not* entrusted with duties of a Director General (see the 1960 Estimates p. 114).

I do not believe, of course, that the above were withheld deliberately from the Respondent Commission, but the fact remains that the picture presented to it by the memorandum attached to *exhibit 12* was so incorrect as to lead to a grave misconception regarding the comparative service status of the Applicant and the Interested Party,—in favour of the Interested Party and against Applicant. Thus, it is, again, necessary that the emplacement of the Interested Party should be annulled on this ground, too, as being the product of a discretion vitiated by misconception.

To a wrong view about the status of the Interested Party have contributed, unwittingly in my opinion, but, nevertheless, quite unfortunately, some of the contents of the relevant decisions of the Council of Ministers *(exhibits 7 and 8).*

It is clear that a copy of the first such decision, *exhibit 7*, was with the Commission at the material time; the Chairman of the Commission does not recollect having before him a copy of *exhibit 8*, but this could not make any difference to this Case, because *exhibit 7* and *exhibit 8* are the same in so far as the matter we are dealing with at this stage is concerned.

In Appendix "A" to both *exhibit 7* and *exhibit 8* the old post of the Interested Party under the Communal Chamber is described as "Director-General" and the new post in the structure of the Ministry of Education, which is set out opposite the said old post of the Interested Party, is the post of Director-General of the Ministry of Education. Moreover, the new post in question is not marked as being vacant —as some other posts are marked—and, thus, the impression is conveyed that it is not only analogous to the old post of the Interested Party, but destined, too, to be occupied by him,

as the person who was the "Director-General" under the Greek Communal Chamber.

Thus, my view that the sub judice decision of the Commission to emplace the Interested Party in the post of Director -General of the Ministry of Education should be annulled on the ground that it was reached while the Commission was labouring under the influence of an incorrect picture of the true position, and it is thus vitiated by misconception, is strengthened even more.

Further to all the above, I have, also, reached the conclusion that the Commission itself, in approaching the matters of the emplacement of the Applicant and the Interested Party, has acted under a fundamental misconception regarding the nature of their respective duties.

Of course, the question of the analogy of duties between an old post under the Chamber and a new post in the service of the Republic is a matter primarily for the discretion of the Commission, and so long as the Commission reaches a decision, which is reasonably open to it on the material before it, this Court will not be prepared to intervene. But this Court has to intervene if it is of the opinion that such decision has been reached under a misconception as to the true position.

Such a misconception exists as follows:—

The Chairman of the Public Service Commission has stated, in effect, in his evidence that at the material time it was thought that the Interested Party had far greater administrative experience than the Applicant; that the Interested Party was dealing in relation to *all* the services under the Chamber—(i.e. including the educational services)—in the same way as a Director-General of a Ministry is acting, whereas Applicant in relation to the services under him—(i.e. the educational services)—was concerned with technical matters of education and was possessing to a far less extent, than the Interested Party, the ability to supervise personnel and co-ordinate work, as required under *exhibit 5*, the relevant scheme of service.

On the totality of the material before me, including, *inter alia*, the relevant evidence of Applicant, which I accept, and the provisions of Greek Communal Chamber Law 7/60, I am of the opinion, that the Commission's above approach

was misconceived and that Applicant himself was very much in charge of administrative matters of the educational services and was supervising personnel and co-ordinating administrative work to a considerable extent, whereas the Interested Party, in relation to the educational services, did not have direct administrative responsibility.

The Interested Party was involving himself in matters of the educational services, in the process only of the discharge of his duties as Administrative Officer. The first instance responsibility, for the whole administration of the educational services, was that of the Applicant.

The fact that the Interested Party, when educational matters reached the level of the President of the Chamber or of the Chamber and its Committees, was dealing with the substance of such matters himself, by making reports, studies and submissions, cannot alter the fact that the Commission has essentially misconceived, as above, the nature of the duties of Applicant and the Interested Party.

For all the above reasons I find that the only course open to me in these proceedings is to declare the emplacement of the Interested Party, in the post of the Director-General of the Ministry of Education, *null* and *void* and of no effect whatsoever as having been decided upon in a defective manner, as regards both quorum, procedure and the exercise of the relevant discretion, as having been made under several misconceptions and, thus, in the last analysis, as being contrary to law, including basic principles of administrative law, and in excess and abuse of powers of the Commission.

Having annulled the emplacement of the Interested Party I have also to annul the emplacement of the Applicant in the post of Director of Education, as made at the same time, because it is clear that Applicant was considered at the time also for the post of Director-General of the Ministry and had he been preferred to the Interested Party he would not have been appointed to the post of Director of Education.

The converse, of course, is not also correct: It does not follow that had Applicant been emplaced in the post of Director-General of the Ministry then the Interested Party would have been or could have been emplaced in the post of Director of Education. In this respect it must not be lost sight of that the emplacement of the Interested Party need

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not have been made solely in the services of the Ministry of Education, but also in any other suitable post in the service of the Republic, as a whole.

I would like to conclude by stressing that by whatever I have stated in this judgment I should not be taken as conveying that either the Interested Party is not suitable for the post of Director-General of the Ministry of Education or that the Applicant is more suitable than the Interested Party for the purpose, or that if the Interested Party were to be emplaced in the post of Director-General of the Ministry of Education, on a proper exercise of the relevant discretion, then I would have been necessarily prepared to say that such a course was not reasonably open to the Commission.

It is up to the Commission to reconsider the matter of the emplacement of the Applicant and the Interested Party on the basis of the true picture of their past duties, as it has been set out above in this judgment and as it may appear before the Commission on the material to be placed before it for the purpose.

Regarding costs I have taken into account the fact that Applicant has failed in this recourse to a certain extent, and he has also failed in the effort to obtain a provisional order in this Case. Therefore, I think he is entitled only to part of his costs, for one advocate, which I assess at £70. The Interested Party has taken part in these proceedings, in view of their nature, and has thus been put into expense. It was not his fault that his emplacement was not made in the proper manner and I shall take the course of awarding costs in his favour and against the Republic, too. This is the first time that it is so done, as far as I know, in an administrative recourse in Cyprus, but it is not the fault of this public officer if due to reasons for which he bears no blame he was put to expense in court proceedings. I, therefore, award in his favour part of his costs, which I assess at £50.—

Sub judice emplacements declared null and void. Order for costs as aforesaid.