

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THEODOROS VONDITSIANOS AND OTHERS,

*Applicants,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

THEODOROS  
VONDITSIANOS  
AND OTHERS  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

(Cases Nos. 55/68, 71/68, 72/68,  
74/68, 87/68).

*Public Officers—Promotions—Promotion to the post of Customs and Excise Officer, 1st Grade—Nineteen out of the twentyone appointees (Interested Parties), equal in seniority (except one) and in general superior in merit—Experience—Length of service—Promotion of Interested Party with less years of service than Applicant but superior in merit—Reasonably open to the Respondent Public Service Commission.*

*Public Officers—Promotions—Customs and Excise officer—Promotion of officers with experience only in "Excise" work in preference to Officers with experience in both "Excise" and "Valuation" work—Reasonably open to Respondent Commission in view of superiority in merit of the former.*

*Public Officers—Promotion—Promotion of officer who has not passed departmental qualifying examinations in preference to officer who had passed them—Reasonably open to the Respondent Commission in view of the requirement to pass them within two years from the said promotion and in view of superiority in merit.*

*Public Officers—Promotions—Applicant and interested party more or less equal in merit but Applicant by far the senior—Possession by interested party of qualifications other than those deemed to be an advantage under the relevant scheme of service—Not open in the circumstances to the Respondent Commission to prefer the Interested Party to the Applicant—Promotion annulled.*

*Public officers—Promotions—Recommendation by Head of Department—Disregard thereof by the Respondent Commission without*

1969  
Feb. 12

THEODOROS  
VONDITSIANOS  
AND OTHERS  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

*cogent reasons for doing so—Such disregard vitiates the decision complained of.*

*Collective Organ—Public Service Commission—Minutes of its meetings—Separate record should be kept for each meeting for sake of administrative certainty.*

*Administrative Law—Appointments and Promotions—Position created upon their annulment as a result of a recourse under Article 146 of the Constitution—They stand annulled for all intents and purposes—Article 148 of the Constitution—It follows that the Respondent Commission when it comes to deal afresh with the filling of vacancies created as a result of the said annulment will have to consider once again as candidates for such promotion even the Applicants whose recourse had failed.*

*Promotion—See above.*

*Seniority—Seniority all other factors being equal is the decisive factor—See above.*

*Recommendations by Head of Department—Not to be disregarded without cogent reasons—See above.*

*Minutes—Minutes of meetings of a collective organ—To be kept separately for each meeting—See also above.*

Cases referred to:

*Kousoulides v. The Republic* (1967) 3 C.L.R. 438 at pp. 449–50 distinguished.

The facts appear in the judgment of the Court.

**Recourse.**

Recourse against the validity of twenty-one appointments made by the Respondent Public Service Commission, to the post of Customs and Excise Officer, 1st Grade.

*A. Pouyouros*, for Applicant in 87/68.

*A. Triantafyllides*, for Applicants in 55/68, 71/68, 72/68.

*L. Papaphilippou*, for Applicant in 74/68.

*A. Frangos*, Senior Counsel of the Republic, for the Respondent.

*Cur.-adv. vult.*

The following judgment\* was delivered by:

TRIANTAFYLIDES, J.: By these five recourses (55/68, 71/68; 72/68, 74/68 and 87/68), which have been heard together, and in relation to which one judgment will be given as they all relate to the same decision of the Respondent, the several Applicants attack the validity of twenty-one appointments made by the Respondent Public Service Commission to the post of Customs and Excise Officer, 1st grade.

All such appointments have been challenged by recourse 55/68, whereas by the other recourses only some of the said appointments are being challenged; and this is a factor which I have duly borne in mind in deciding on the fate of each of these appointments as regards the different Applicants.

The said appointments were, in effect, decided upon by the Respondent at two of its meetings, on the 24th and 25th of October, 1967; the relevant minutes are *exhibit 2A* in these proceedings, and they have been kept as one continuous record in respect of both such meetings, of the 24th and 25th October; thus, it is not possible to know, for certain, whether a particular appointment was decided upon on the 24th or on the 25th; of course, in the context of these cases this is not, in any way, a fatal defect; but it might lead to real difficulty in other circumstances, and, thus, for the sake of administrative certainty, it is necessary that for each meeting of a collective organ, such as the Respondent, there should be kept a separate record, by way of minutes for that meeting only.

At the said two meetings of the Respondent only eleven of the appointments in question were made straightway, in view of the fact that the number of existing vacancies was a limited one; but a list was drawn up of persons selected as suitable for appointment as soon as there would exist—as anticipated—more vacancies; and, actually, such persons (the remaining ten Interested Parties) were appointed by decisions of the Commission taken on the 4th, 5th and 8th December, 1967 (see *exhibits 3, 4 and 5* respectively).

All Applicants and Interested Parties were, at the material time, Customs and Excise Officers, 2nd grade.

In substance, the appointments of the Interested Parties are challenged on the basis that, in making such appointments,

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\* For final judgment on appeal see p. 445<sup>i</sup> in this Part *post*.

1969  
Feb. 12  
—  
THEODOROS  
VONDITSIANOS  
AND OTHERS  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

1969  
Feb. 12

—  
THEODOROS  
VONDITSIANOS  
AND OTHERS  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

the Respondent has exercised in a defective manner its relevant discretionary powers.

I have approached these cases bearing constantly in mind that I cannot substitute my own discretion in the place of that of the Respondent, and that, therefore, so long as an appointment, as made, was reasonably open to Respondent in the circumstances, then I should, and could, not interfere therewith; moreover, that it was up to the Applicants to satisfy me that any one of the appointments challenged ought to be annulled.

In the light of the foregoing, and having taken into account everything which has been submitted on behalf of the Applicants, as well as all the material produced before the Court, I may say, at once, that I do not think that I should interfere with the appointments of Interested Parties J. HjiJoseph, Chr. Galatis, M. Tossounis, L. Papayiannis, A. Efstathiou, D. Panayides, C. HadjiStylianou, J. HjiYianni, A. Ayiomammitis, C. Chrysanthou, M. Koulermos, E. Chrysohou, G. Asprou, St. Vragas, L. Constantinou, C. Victoras, A. Petrou, A. Damianou and G. Kouloumas, and consequently these recourses, in so far as anyone of them attacks the appointment of any one of such Interested Parties, fail and are dismissed accordingly.

The aforementioned Interested Parties—except A. Petrou—have more or less equal seniority with the Applicants in the post of Customs and Excise Officer, 2nd grade; also, they, including A. Petrou, have, in general, been better placed than the Applicants in a comparative list (*exhibit 9*) prepared, for the purpose, in order of merit, by their superiors, except, only, that Applicant Constantinou (in 72/68) appears on such list higher up—actually in the immediately better category—than Interested Party C. Chrysanthou.

The recent Confidential Reports (see *exhibit 8*) on all these Interested Parties are very favourable and such as to entitle the Respondent to prefer any one of them to any one of the Applicants; and, as a matter of fact, a comparison, particularly, of the Confidential Reports on Interested Party C. Chrysanthou with those on Applicant Constantinou has led me to the conclusion that, taking into account their practically equal seniority, it was reasonably open to the Respondent to prefer the former to the latter, notwithstanding the fact that

the latter was higher placed than the former in the aforementioned list (*exhibit 9*); thus, in this respect, I cannot treat as invalid the view recorded by the Respondent in its minutes (*exhibit 2A*) regarding the comparison of Applicant Constantinou and Interested Party Chrysanthou.

Regarding Interested Party A. Petrou, it is correct that he was appointed as a Customs and Excise Officer, 2nd grade, only on the 1st October, 1963, and that he was, thus, much junior, as a Customs and Excise Officer, 2nd grade, than all the Applicants, who were so appointed in 1956 or 1957.

Nor have I lost sight of the fact that less length of service would, ordinarily, entail less experience, and that experience is, obviously, a material consideration, in the light especially of the context of the relevant scheme of service (see *exhibit 1*). Actually, under this scheme of service, as it is going to be applied in the future—in respect of persons not already serving in September 1967 when it was adopted—this Interested Party would not have been qualified at all for promotion to Customs and Excise Officer, 1st grade, because he passed the necessary departmental qualifying examination in 1967, with less than ten years' service in the post of Customs and Excise Officer, 2nd grade; but he was, exceptionally, considered as being so qualified in view of Notes (2) and (3) to the said scheme.

Notwithstanding the above I took the view that the appointment of this Interested Party was still reasonably open to the Respondent and should not be interfered with by this Court, for the following, *inter alia*, reasons:—

This officer was placed sixth in merit out of fifty Customs and Excise Officers, 2nd grade, whose names appear on the relevant list, *exhibit 9*; and the first six on this list—including him—are in the first category, in order of merit, and are described as “Excellent in all respects”; there follow then the names of seven officers, in the second category, who are described as “Officers of outstanding ability, efficiency and zeal”; and then the names of ten officers, in the third category, who are described as possessing “Above average ability, efficiency and devotion to duty”; the last one in this category (No. 23) is the Applicant in 71/68, Constantinou.

There follow next, in the list, the names of six officers, in the fourth category, who are described as “Officers with wide experience; reliable and efficient”, the last one of them (No:

1969  
Feb. 12

—  
THEODOROS  
VONDITSIANOS  
AND OTHERS

v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

1969  
Feb. 12

THEODOROS  
VONDITSIANOS  
AND OTHERS  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

29) being the Applicant in 87/68, Anastassiades; then there follow the names of seven officers, in the fifth category, who are described as "Officers with wide experience; reliable, but of average ability"; in such category are to be found (No. 31) the Applicant in 55/68, Vonditsianos, (No. 32) the Applicant in 72/68, Efthymiou, and (No. 35) the Applicant in 74/68, Demetriou; there follow next two further categories of officers which are not relevant at all to the outcome of these proceedings.

It is clear, therefore, that Interested Party Petrou was to be found by far higher up than any of the Applicants in the list in question; and his position therein appears to be fully borne out by the recent Confidential Reports on him. Moreover, it appears from the relevant minutes of the Respondent (*exhibit 2A*) that Mr. Philippides, the Director of the Department of Customs and Excise, recommended this Interested Party "as one of the ablest and most diligent officers".

In concluding my main reasons as to why I took the view that it was reasonably open to the Respondent to prefer this Interested Party to the Applicants, I might add that though, as indicated, experience is related to length of service, and this Interested Party had less length of service than the Applicants, it is, nevertheless, not to be lost sight of that such an able officer could have gained the necessary experience in much less time than ordinarily required.

While on this point of experience I might deal, also, with a submission that those of the Interested Parties who appear, from the relevant data in their Confidential Reports, to have been engaged in excise work, and not also in valuation work, had not adequate experience, and, thus, should not have been selected for promotion, instead of Applicants, who possessed experience in both fields.

I do agree that experience in both valuation work and excise work might properly be treated as an asset in favour of an officer; but I would not be prepared to accept that experience in excise work only would necessarily preclude an officer, who is, otherwise, superior to others, who possess experience in both valuation work and excise work, from being promoted instead of them; because, after all, the description of the post concerned is "Customs and Excise Officer" and some holders thereof are assigned to valuation work and others to

excise work. In the particular circumstances of these cases, and bearing in mind all relevant material before me, including the merits of the candidates in question, I am quite satisfied that it was reasonably open to the Respondent to select for promotion those Interested Parties who appear to have experience only in excise work, instead of Applicants who appear to have experience in both valuation work and excise work.

In upholding—as already stated—the appointments of Interested Parties Kouloumas and Damianou I have paid due regard to the fact that these two Interested Parties, at the material time, had not yet passed the departmental qualifying examination for promotion to Customs and Excise Officer, 1st grade, whereas all the Applicants, except the one in 87/68, had done so.

But, the Respondent could, nevertheless, promote the said Interested Parties, subject to their being required to pass such examination within two years from the date of their promotion (see Note (1) to the relevant scheme of service, *exhibit 1*); and in view of their superiority in merit over, and substantially equal seniority with, the Applicant, I would not be prepared to go to the length of holding that, in the circumstances, it was not reasonably open to the Respondent to prefer them to the Applicants, for promotion.

I come next to the two remaining Interested Parties, T. Vovides and D. Markides:

In so far as their promotions are concerned I find myself of the view—without any hesitation at all—that, in the light of the recourse made by Applicant Ch. Constantinou (in 71/68), such promotions cannot be treated as having been validly made.

This Applicant was placed in the third category in the aforementioned list (*exhibit 9*); he is No. 23 whereas Interested Party Vovides, who is to be found in the same category, is No. 21; Interested Party Markides is No. 24, but falls within the immediately lower category, the fourth category.

The Respondent, in deciding to appoint Interested Party Vovides, reached its decision by a majority of three votes to two (see its minutes *exhibit 2A*); the two dissenting members felt that he had “no exceptional qualities to outweigh the merits of either A. Constantinou”—who is neither an Applicant nor an Interested Party—“or C. Demetriou”, who is an Applicant

1969

Feb. 12<sup>1</sup>

—  
THEODOROS  
VONDITSIANOS  
AND OTHERS

v.

REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

1969

Feb. 12

—  
THEODOROS  
VONDITSIANOS  
AND OTHERS  
v.

REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

(in 72/68), and who has challenged, also, the appointment of this Interested Party; that the Respondent did not, in this respect, record, by mistake, "A. Constantinou" instead of "Ch. Constantinou" (the Applicant in 71/68) is clear from the fact that "Ch. Constantinou" is referred to immediately afterwards, in such minutes, in another connection.

Candidate A. Constantinou is in the fifth category as No. 34, and Applicant C. Demetriou is to be found in, again, the same category, as No. 35.

The Applicant in 71/68, Ch. Constantinou, was about six years senior to Interested Party Vovides in the post of Customs and Excise Officer, 2nd grade.

A perusal of the recent Confidential Reports on this Applicant would show at once that they are, to say the least, as good, if not better, than those on Interested Party Vovides.

Both these two candidates are in the third category in the list, *exhibit* 9—the one practically next to the other—and are described therein as possessing "Above average ability, efficiency and devotion to duty"; but, as both are equally able officers, Applicant Constantinou must be far more experienced than Interested Party Vovides, as he has served in the Customs Department much longer.

In this respect it should be pointed out that the relevant scheme of service (*exhibit* 1) seems to entail that one should have at least ten years' service in the rank of Customs and Excise Officer, 2nd grade, before he can be promoted to the post of Customs and Excise Officer, 1st grade; Applicant Constantinou had such service, whereas Interested Party Vovides did not; yet his promotion was still possible in the light of the Notes to the said scheme, for the benefit of those in service when such scheme was adopted.

But, in my opinion, in the absence of any weighty reason therefor—and none appears in the material before me—the Respondent was not entitled to prefer a candidate with less than the envisaged length of service, such as Interested Party Vovides, to a candidate, such as Applicant Constantinou, who was of equal merit, to say the least, and who, being by far senior, had served in the post of Customs and Excise Officer, 2nd grade, for over ten years.



. It is correct that Interested Party Vovides possesses the Elementary and Intermediate Certificates in Bookkeeping, and the Higher Certificate in Accounting of the London Chamber of Commerce, which, qualifications, Applicant Constantinou does not possess. But, I cannot regard the said qualifications of this Interested Party as being the, or a proper, reason for which he was preferred to the said Applicant, because, *inter alia*, they were not mentioned in the relevant minutes as having been treated as an advantage in favour of such Interested Party—even though, as already stated, it is recorded therein that he was preferred to other candidates, inferior to the Applicant, by a very narrow majority; and because, further, such qualifications could not be regarded as an advantage, under the terms of the scheme of service (*exhibit 1*), in as much as it is not alleged that they are “A University diploma or degree or other equivalent qualification in commerce, economics, law (including Barrister-at-Law) or accountancy”; and the said scheme quite rightly has set a very high standard for academic qualifications which can be treated as an advantage in favour of a candidate, because it requires itself that all candidates (except those to whom Note (1) to such scheme applies) should pass, before promotion to Customs and Excise Officer, 1st grade, the relevant departmental qualifying examination and, thus, be actually found to possess all the necessary knowledge and experience for promotion to the post concerned.

As both Applicant Constantinou and Interested Party Vovides had passed such departmental qualifying examination, the possession by the latter of qualifications, other than those which might be deemed to be an advantage in his favour under the relevant scheme of service, could not, properly, have tipped the scales in his favour; the specific circumstances in this case differ so materially from those in *Kousoulides and The Republic* ((1967) 3 C.L.R. 438) that I cannot take herein the view which I took therein at pp. 449–50.

On the whole of the material before the Court, and in the absence of any due reasons to the contrary—which I would expect to find duly recorded in the relevant minutes of the Respondent—I fail to see how it was open to the Respondent, in the proper exercise of its discretionary powers, to prefer Interested Party Vovides to Applicant Constantinou, in spite of the greater seniority and experience of the latter over the former, and there being no difference in merit in favour of the Interested Party.

1969

Feb. 12

—  
THEODOROS  
VONDITSIANOS  
AND OTHERS  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

1969

Feb. 12

—

THEODOROS  
VONDITSIANOS  
AND OTHERS

v.

REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

I am, indeed, inclined to think that, in the process of evaluating so many candidates, the Respondent may, not unnaturally, have missed making an accurate and comprehensive comparison between these two candidates; and this impression is strengthened by the fact that it, still, found itself narrowly divided when comparing Interested Party Vovides to two other candidates, both inferior to Applicant Constantinou.

Regarding the other Applicants, who have all challenged, too, by their recourses, the appointment of Interested Party Vovides, I have reached the conclusion that, notwithstanding any considerations in their favour, it was reasonably open to the Commission to prefer this Interested Party to them, in view of his superior merit, as reflected in the relevant Confidential Reports and in the relative positions of the officers concerned, in order of merit, in the list *exhibit 9*; Applicant Anastassiades (in 87/68) was in the fourth category in such list, one category below such Interested Party; and the other Applicants, Vonditsianos (in 55/68), Demetriou (in 72/68) and Efthymiou (in 74/68) were placed two categories below such Interested Party, in the fifth category; and, indeed, I cannot agree, in this connection, with the view of the minority of the members of the Respondent in favour of Applicant Demetriou.

Coming next to Interested Party D. Markides I have reached the conclusion that the recourse of Applicant Constantinou (in 71/68) should succeed as against his promotion:

In this respect the Respondent has recorded the following in its minutes (*exhibit 2A*):—

“The Commission did not follow the recommendations of the Ministry in so far as D. Markides & C. Chrysanthou are concerned in that on the basis of the Annual Confidential Reports they were considered to be on the whole better than P. Adamou and Ch. Constantinou”—the Applicant in 71/68—“Even the classification accorded to them by the Ministry and the reasons given do not in themselves differ much.”

Though I cannot agree with the Respondent that the relevant Confidential Reports were such as to lead one to prefer Interested Party Markides (who was placed in the fourth category in the list, *exhibit 9*, together with other “Officers with wide experience; reliable and efficient”) to Applicant

Constantinou (who was placed in the third category in such list together with the officers possessing "Above average ability; efficiency and devotion to duty), I might have not interfered with the promotion of Interested Party Markides (as I have not interfered with the promotion of Interested Party Chrysanthou, who is also in the fourth category in the list concerned) taking the view that in following the course stated in its minutes the Respondent did not exceed the proper limits of its relevant discretionary powers; after all it was up to the Respondent to make, on the basis of the Confidential Reports, the evaluation of the candidates.

But, in the case of Interested Party Markides, the Respondent appears to have lost sight of the fact that, though he was, exceptionally, eligible for promotion—under Note (1) to the scheme of service—even though he *had not* yet passed the departmental qualifying examination, Applicant Constantinou (like Interested Party Chrysanthou, too) *had* passed such examination.

In my opinion, in deciding to disregard the relevant recommendations and in preferring, contrary to such recommendations, Interested Party Markides to Applicant Constantinou, the Respondent had to give due weight to the fact that the former, unlike the latter, had not yet passed the required qualifying examination, for promotion, and had to give expressly cogent reasons for preferring, in the circumstances, a candidate *who had not* been found, by means of the appropriate examination, to possess the requisite knowledge and experience, to a candidate who *had* already so been found.

In the absence of anything on this point in the relevant minutes (*exhibit 2A*) I am forced to the conclusion that the Respondent has failed to give due weight to a material consideration, and has, in any case, failed to give due reasons for its *sub judice* decision.

As regards the other Applicants who have all challenged, also, by their recourses, the appointment of Interested Party Markides, I have reached the conclusion that it was reasonably open to the Commission to prefer him to those of them who had passed the departmental qualifying examination—though he, himself, had not done so yet—in view of the fact that such Applicants (Vonditsianos, Efthymiou and Demetriou) are in a lower category than Interested Party Markides, in the list *exhibit 9*, and appear from the relevant Confidential Reports to be, indeed, inferior to him in merit.

1969  
Feb. 12

—  
THEODOROS  
VONDITSIANOS  
AND OTHERS  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

1969

Feb. 12

—

THEODOROS  
VONDITSIANOS  
AND OTHERS  
v.  
REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

As regards Applicant Anastassiades, who is in the same category in *exhibit 9* as this Interested Party (but much below him), it was clearly open to the Commission not to select him instead of such Interested Party, as this Applicant does not appear to have passed, either, the required departmental qualifying examination and the Confidential Reports on him are less favourable than those on the said Interested Party.

For all the foregoing reasons, the recourse of Applicant Ch. Constantinou (71/68) succeeds only as against the appointments of Interested Parties Vovides and Markides and it fails in all other respects. All the other recourses fail in toto.

It is true that in the minutes of the Respondent it is stated that, eventually, Mr. Philippides, the Head of the Department concerned, and Mr. Afxentiou, the representative of the Ministry of Finance (under which comes such Department) "agreed with the conclusions arrived at by the Commission". But this *ex post facto* blessing of the *sub judice* appointments did not carry with me such weight as to prevent me from annulling, for the reasons already set out in this judgment, the appointments of Interested Parties Vovides and Markides, as having been made contrary to the relevant principles of Administrative Law and in excess and abuse of powers; and it is hereby declared that such appointments are *null and void* and of no effect whatsoever.

Even though the recourses of all Applicants, other than Constantinou, have failed as against the said appointments, once such appointments have been annulled as a result of the recourse of Applicant Constantinou, they stand annulled for all intents and purposes; because it is the legal situation that has been created by these appointments that has been annulled, and not the particular Applicant who has succeeded against them for his own benefit (see, also, Kyriakopoulos on Greek Administrative Law, 4th ed. vol. III p. 152 and Article 148 of our Constitution). It follows, that the other four Applicants, whose recourses have failed, have to be considered too; once again, as candidates for promotion, when the Respondent comes to deal afresh, in the light of this judgment, with the filling of the two vacancies created as a result thereof.

Regarding costs, in all the circumstances of these cases, I have decided that there should be no order as to costs.

*Appointments of Interested Parties Vovides and Markides annulled; otherwise recourses dismissed; no order as to costs.*