

1979 May 29

[TRIANTAFYLIDIS, P., STAVRINIDES, L. LOIZOU,
HADJIANASTASSIOU, MALACHTOS, JJ.]

CHARALAMBOS IERIDES,

Appellant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE
PUBLIC SERVICE COMMISSION,

Respondent.

(Revisional Jurisdiction Appeal No. 171).

5 *Public Officers—Appointments and promotions—Seniority—No reference to “seniority” in the minutes of the respondent Commission but reference to the factor of “experience” and to “all facts appertaining to each one of the candidates”—Seniority of all candidates taken into consideration in view of the presumption of regularity which is applicable to administrative actions—Moreover notion of “experience” must, reasonably, be taken to include that of “seniority”.*

10 *Administrative Law—Administrative acts or decisions—Presumption of regularity.*

15 *Public Officers—Appointments and promotions—Qualifications—Secretary Council of Ministers—Scheme of service—Requiring a University degree in a suitable subject—But “Note” thereto providing that on filling the said post for the first time there will not be required such a degree—Open to the respondent Commission to select the interested party, on strength of said “Note”, who was qualified for appointment by virtue of it though he did not possess a University degree, once Commission considered that he was more suitable for the said post.*

20 *Public Officers—Appointments and promotions—Selection of the best candidate—Public Service Commission can attribute more significance to one factor than to another in the course of a proper exercise of its relevant discretionary powers.*

Public Officers—Appointments and promotions—Selection of the most suitable candidate—Open to the members of the respondent Commission to make use of their own personal knowledge or information about the candidates—But reasoning given in relevant decision, for adopting such a course, must be such as to enable proper judicial control. 5

Public Officers—Appointments and promotions—Confidential reports—Rule that Ministers should not make confidential reports or recommendations but such reports or recommendations should be made by the superiors, in the public service, of the candidates—To be read and applied in conjunction with the provisions of section 45(3) of the Public Service Law, 1967 (Law 33/67) and the definition of “competent authority” in section 2 of the same Law—Making of confidential report by Minister apparently because superior officer normally competent for its making a brother of the candidate—In the circumstances of this case such a course not a material irregularity which could have influenced in any substantive way the outcome of the relevant administrative action—And not a ground for annulling such action. 10 15

Administrative Law—Administrative formalities—Irregularity—Only a material irregularity can lead to the annulment of the relevant administrative process. 20

Public Officers—Appointments and promotions—Secretary Council of Ministers—High office—Appointing Authority vested with wide discretion. 25

Public Officers—Appointments and promotions—Secretary Council of Ministers—Applicant senior to interested party, with more qualifications and better confidential reports—Though he might, in the abstract, have appeared to be a better public officer than the interested party, he has not satisfied the Court that the respondent Commission has, in the context of the very special circumstances of this case, exceeded the extreme outer limits of its relevant discretion in selecting the interested party for the said post which is of a unique nature—Moreover appointing organ has a very wide discretion when making a selection for a post so high in the Public Service. 30 35

The applicant, a Senior Administrative Officer, was a candidate for promotion to the post of Secretary Council of Ministers, a first entry and promotion post. Following the interview of the

5 candidates the respondent Commission, after taking into consideration all the facts appertaining to each one of the candidates and after giving proper weight to their merits, qualifications, abilities and experience as well as to their suitability for appointment to the above post as shown at the interview, decided* by majority of 3 votes to 1 that C. Cleanthous ("the interested party") was on the whole the best and it promoted him to the above post.

10 The qualifications, career and a picture of the confidential reports of the applicant and the interested party appear in the judgment at pp. 176-177 *post*.

The appellant challenged the above decision by means of a recourse which was dismissed and hence this appeal.

Counsel for the appellant mainly contended:

- 15 (a) That though the respondent Commission has referred in its minutes to the factor of "experience" it omitted to refer to the factor of "seniority" and because of such omission it should be concluded that no due weight was given to this factor though it is one of the three cardinal factors which, together with merits and
- 20 qualifications, has to be taken into account.
- (b) That, though the scheme of service for the post in question required, as a qualification, a University degree in a suitable subject, such as Law, Political Sciences, Economics etc., or an equivalent academic qualification, nevertheless the appellant who possessed such a degree was not selected for appointment and the interested party, who did not possess such an
- 25 academic qualification, was appointed instead of him, on the basis of the "Note" appearing at the end of the text of the said scheme of service, in which it was stated that on filling for the first time the said post after the approval of the scheme of service there will not be required a University degree, provided that the candidates will have very good education of a standard
- 30 not below that of a graduate of a school of secondary education, at least fifteen years' satisfactory service
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* See the reasons which led to the above decision in the minutes of the Commission at p. 172-174 *post*.

in the Public Service, including administrative experience, and thorough knowledge of the Government machinery.

- (c) That undue and improper weight was given, at least by one member of the Commission, its Chairman, to the personal knowledge or information from others which the Chairman of the Commission had about the candidates, including the appellant and the interested party. 5
- (d) That the appointment of the interested party was made in a defective manner in that a special confidential report about him, in respect of the period January 1, 1972, to August 20, 1972, was made by the then Minister of Interior* instead of by his immediate superior, namely the District Officer of Nicosia. 10 15
- (e) That the appointment of the interested party, instead of the appellant, to the post concerned ought to have been annulled because the appellant was senior to the interested party, better qualified than him and had better confidential reports. 20

Held, (1) that though there is no express reference to seniority in the relevant minutes of the Commission, it is stated therein that "all facts appertaining to each one of the candidates" were taken into consideration and, also, that "the Personal Files and the Annual Confidential Reports of the candidates already in the service were also taken into consideration;" that there can be no doubt, especially in view of the presumption of regularity which is applicable in relation to administrative actions that the seniority of all the candidates, including, of course, the appellant and the interested party, as appearing in their personal files, was taken into consideration in reaching the *sub judice* decision; that, moreover, the notion of "experience" 25 30

* Apparently, the reason for which the then Minister of Interior made the aforementioned special confidential report about the interested party, instead of such report being made by a public officer superior in the service to the interested party, is the fact that the immediately previous ordinary confidential report, for 1971, had been made by the Director-General of the Ministry of Interior, who was the immediate superior of the interested party, while he was acting as District Officer of Kyrenia; and the said Director-General happened to be the brother of the interested party and this fact was clearly stated in the said confidential report.

must, reasonably, be taken to include that of "seniority"; and that, accordingly, contention (a) must fail.

(2) That it was open to the respondent Commission to act on the strength of the said "Note" and to select a person, such as the interested party, who was qualified for appointment by virtue of it, though he did not possess a University degree, once the Commission considered that this candidate was more suitable for the post of Secretary to the Council of Ministers; that there is nothing in the text of the relevant scheme of service to lend support to the argument of counsel for the appellant that the exception, as he described it, created by the provision made by the aforesaid "Note" could only have been resorted to if there was not available an otherwise suitable candidate who possessed a University degree; that, on the contrary, it is expressly stated in the scheme of service concerned that, in relation to the first filling of the post in question after the approval of the scheme of service there would not be required ("δὲν θὰ ἀπαιτηθῆ") a University degree provided that the candidates would possess the qualifications specified in the aforementioned Note; that, moreover, it was reasonably open to the respondent Commission, in deciding whom to select as the most suitable candidate for the particular post in question, and not only as being the better candidate in the abstract, to attribute more significance to one factor than to another in the course of a proper exercise of its relevant discretionary powers (see *Georghiou v. The Republic* (1976) 3 C.L.R. 74 at p. 82); and that, accordingly, contention (b) must fail.

(3) That, in the process of selection by a collective organ of a person who is the most suitable for appointment to a post in the public service, it is open to the members of such collective organ to make use of their own personal knowledge or information about the candidates is a principle which is well settled in administrative law; that, of course, it must be borne in mind that when such a course is resorted to by an appointing authority, such as the respondent Commission, the reasoning given in its relevant decision must be such as to enable proper judicial control in this connection; that what is necessary to be recorded, on each particular occasion, depends very much on the circumstances of each individual case; that, in the present instance, the Chairman of the Commission explains his views about the candidates in a manner sufficient for the exercise appropriately

of judicial control; and that, accordingly, contention (c) must fail.

(4)(a) That though the District Administration comes under the Minister of Interior it is well settled that it is not the right course for Ministers to make confidential reports or recommendations, instead of such reports or recommendations being duly made by the superiors in the public service of the candidates; and that this proposition has now to be read and applied in conjunction with the express provisions of section 45(3) of Law 33/67 and the definition of "competent authority" ("ἀρμοδία ἀρχή") in section 2 of the same Law. 5 10

(b) That at the time when the *sub judice* decision was taken there had, already, been made, after the special confidential report which was made, as aforesaid, by the then Minister of Interior, a later confidential report, for the period August 1, 1972, to February 28, 1973, by the District Officer of Nicosia, under whom the interested party was serving as Assistant District Officer; that reading together the special confidential report made by the District Officer of Nicosia, which is the most recent, and the earlier special confidential report made by the then Minister of Interior, it cannot be said, in the least, that there is anything contained in the report made by the Minister of Interior which is not fully borne out by the report made subsequently by the District Officer of Nicosia; that, so, the fact that a special confidential report was made about the interested party by the at the time Minister of Interior does not constitute a material irregularity which could have influenced in any substantial way the outcome of the relevant administrative action; that, therefore, it cannot be treated as a ground for annulling such action because, as regards administrative formalities, it is not any irregularity which may lead to the annulment of the relevant administrative process, but only a material one; and that, accordingly, contention (d) must fail. 15 20 25 30

(5) That this Court has not been satisfied by the appellant that, even though he might, in the abstract, have appeared to be a better public officer than the interested party, the respondent Commission has, in the context of the very special circumstances of this case, exceeded the extreme outer limits of its relevant discretion in selecting the interested party as more suitable than the appellant for the of a unique nature post concerned; that, 35 40

moreover, it must not be lost sight of, in this connection, that, when selection is made for a post so very high up in the public service, such as in the present case, the appointing organ has a very wide discretion indeed (see *Frangos v. Republic* (1970) 3 C.L.R. 312 at p. 343 and the decisions of the Council of State in Greece in cases 1542/1967 and 1543/1967); and that, accordingly, the appeal must be dismissed.

Appeal dismissed.

Cases referred to:

- 10 *Republic v. Ekkeshis* (1975) 3 C.L.R. 548 at p. 556;
Georghiou v. The Republic (1976) 3 C.L.R. 74 at p. 82;
Frangos v. The Republic (1970) 3 C.L.R. 312 at pp. 333–338;
Frangoulides (No. 2) v. The Republic (1966) 3 C.L.R. 676;
HjiSavva and Another v. The Republic (1967) 3 C.L.R. 155;
15 *Frangides and Another v. The Republic* (1968) 3 C.L.R. 90;
Ellinas v. The Republic (1975) 3 C.L.R. 248;
Decisions of the Greek Council of State in Case Nos. 1341/1963, 923/1955, 459/1956, 460/1956, 538/1966, 1542/67 and 1543/67.

20 **Appeal.**

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (A. Loizou, J.) given on the 28th January, 1976 (Revisio-
 nal Jurisdiction Case No. 103/74) whereby appellant's recourse
 25 against the decision of the respondent to appoint the interested party, Costas Cleanthous, to the post of Secretary to the Council of Ministers was dismissed.

A. S. Angelides, for the appellant.

N. Charalambous, Counsel of the Republic, for the respondent.

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Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. The appellant has appealed against the first instance judgment* of a Judge of this Court who dismissed a recourse of the appellant against the decision of the respondent Public Service Commission to appoint to the post of Secretary to the Council of
 35 Ministers Costas Cleanthous, the "interested party" in this case.

* Reported in (1976) 3 C.L.R. 9.

The said decision was reached on December 11, 1973, and the relevant part of the minutes of the respondent Commission reads as follows:-

“The Commission considered the filling of the vacancy in the permanent post of Secretary, Council of Ministers. 5

The Commission considered the merits, qualifications and experience of the candidates interviewed on 2.11.73 and 5.11.73 as well as their performance during the interview (personality, alertness of mind, general intelligence and the correctness of answers to questions put to them, etc.). The Personal Files and the Annual Confidential Reports of the candidates already in the service were also taken into consideration. 10

The Commission observed that four of the candidates interviewed (namely Messrs. C.N. Nicolaides, E. Constantinides, K.G. Spatharis and N.E. Metaxas) were serving in the Government and were holding posts with higher salary scales than the remaining candidates. However, none of them appeared to the Commission during the interview to stand out as a strong candidate for appointment to the post of Secretary, Council of Ministers. Furthermore, the Commission observed that one of these candidates (namely Mr. N.E. Metaxas) was holding the post of Senior Land Officer and specialised in land matters; in addition, Mr. E. Constantinides was holding the post of Senior Industrial Relations Officer, in the Ministry of Labour and Social Insurance, and received special training in Labour Administration and Industrial Relations. 15 20 25

After considering the above and after taking into consideration all the facts appertaining to each one of the candidates and after giving proper weight to the merits, qualifications, abilities and experience of these candidates, as well as to their suitability for appointment to the above post as shown at the interview, the Chairman and the Members of the Commission came to the following conclusion: 30 35

Chairman: He considered Mr. C. Cleanthous as the most suitable Officer for the above post. In arriving at this conclusion, the Chairman took into consideration the fact that, according to the note appended at the end of the 40

relevant scheme of service, the possession of a University Diploma or Degree is not a requirement for the first filling of the above vacancy, after the approval of the scheme of service by the Council of Ministers. It is a fact that a number of other candidates have satisfactory service in the Public Service, including administrative experience and thorough knowledge of Government machinery, but they should be reliable, trustworthy, they must have integrity, they must possess a high degree of common sense and judgment and also be able to assume responsibility and supervise staff. The Chairman took also into consideration the fact that the vacant post to be filled was only one. Most of the candidates were more or less known to the Chairman (their character, abilities and suitability) either from personal contact as members of his office, or from oral information obtained from their Heads of Department when filling various vacancies or from previous interviews in connection with the filling of other vacancies, or from general personal knowledge. In addition to the above, the Chairman took into consideration the long and satisfactory service of Mr. Cleanthous in the Government, particularly his service as Acting District Officer Kyrenia and later as an Assistant District Officer, Nicosia. Having all the above in mind, the Chairman came to the above conclusion that Mr. C. Cleanthous was the best and most suitable officer for the post of Secretary, Council of Ministers.

M. Economopoulos and Y. Louca: They held the view that the long experience of Mr. C. Cleanthous in the Government service as well as his experience as an Assistant District Officer together with his experience as an Acting District Officer, render the officer in question as the most suitable officer for promotion to the post of Secretary, Council of Ministers.

D. Protestos: He considered Mr. Ch. Ierides as the most suitable officer for the post of Secretary, Council of Ministers.

Bearing in mind the above, the Commission decided by majority of 3 votes to 1 (Mr. D. Protestos dissenting) that Mr. C. Cleanthous was on the whole the best and that he be

promoted to the permanent post of Secretary, Council of Ministers, w.e.f. 1.1.74”.

The post in question is a “first entry and promotion” post and the relevant vacancy was, accordingly, advertised in the Official Gazette of the Republic. 5

There were eighteen candidates who applied for appointment to such post, including the appellant and the interested party; they were both interviewed by the respondent Commission, together with other candidates, on November 2, 1973.

The scheme of service which was in force at the material time in relation to the said post was adopted by the Council of Ministers on September 13, 1973, and it reads as follows:— 10

“Καθήκοντα και Εύθυνα:

‘Ο διορισθησόμενος νά αναλάβη τήν διεύθυνσιν τοῦ Γραφείου τοῦ Ὑπουργικοῦ Συμβουλίου. Θά παρακάθηται, 15
 συμφώνως πρὸς ὁδηγίας αἰτινες δυνατὸν νά δοθοῦν εἰς αὐτὸν ὑπὸ τοῦ Ὑπουργικοῦ Συμβουλίου, εἰς τὰς συνεδρίας αὐτοῦ, θά τηρῇ τὰ πρακτικὰ αὐτῶν καὶ θά διαβιβάζῃ τὰς ἀποφάσεις τοῦ Ὑπουργικοῦ Συμβουλίου εἰς τὸ κατάλληλον ὄργανον, ἀρχὴν ἢ πρόσωπον. Θά ἐκτελῇ οἰαδήποτε ἄλλα καθήκοντα 20
 τὰ ὅποια δυνατὸν νά ὀρίσῃ ὁ Πρόεδρος καὶ οἰαδήποτε ἄλλα καθήκοντα τὰ ὅποια δυνατὸν νά ἀνατεθοῦν εἰς αὐτὸν ὑπὸ τοῦ Ὑπουργικοῦ Συμβουλίου δυνάμει τοῦ Συντάγματος.

Ἀπαιτούμενα Προσόντα:

- (α) Πανεπιστημιακὸν δίπλωμα ἢ τίτλος εἰς κατάλληλον 25
 θέμα, ἥτοι Νομικὰ, Πολιτικὰς Ἐπιστήμας, Οἰκονομικὰ κτλ. ἢ ἰσοδύναμον προσὸν καὶ ἐπαρκὴς γνῶσις τοῦ Κυβερνητικοῦ μηχανισμοῦ.
- (β) Ἀπταιστος γνῶσις τῆς Ἑλληνικῆς καὶ πολὺ καλὴ 30
 γνῶσις τῆς Ἀγγλικῆς.
- (γ) Οἱ ὑποψήφιοι δέον νά εἶναι πρόσωπα ὑπεύθυνα, ἀξιόπιστα, ἀκεραίου χαρακτῆρος καὶ νά ἔχουν ἀνεπτυγμένον εἰς ὑψηλὸν βαθμὸν τὸν κοινὸν νοῦν καὶ κρίσιν.
- (δ) Ἰκανότης ἀναλήψεως εὐθύνης καὶ ἐπιτηρήσεως 35
 προσωπικοῦ.

Σημείωσις:

Διὰ τὴν πρώτην πλήρωσιν τῆς θέσεως μετὰ τὴν ἔγκρισιν

τοῦ παρόντος Σχεδίου Ὑπηρεσίας δὲν θὰ ἀπαιτηθῆ Πανεπιστημιακὸν Δίπλωμα ὡς ἀναφέρεται ὑπὸ τὸ στοιχεῖον (α) ἀνωτέρω, νοουμένου ὅτι οἱ ὑποψήφιοι θὰ ἔχουν πολὺ καλὴν μόρφωσιν ἐπιπέδου οὐχὶ κατωτέρου ἐκείνου ἀπολυτηρίου Σχολῆς Μέσης Ἐκπαιδεύσεως, δεκαπενταετῆ τοῦλάχιστον εὐδόκιμον ὑπηρεσίαν εἰς τὴν Δημοσίαν Ὑπηρεσίαν, περιλαμβανομένης διοικητικῆς πείρας καὶ ἐνδελεχῆ γνῶσιν τοῦ Κυβερνητικοῦ μηχανισμοῦ.”

(“Duties and Responsibilities:

10 The person to be appointed will have charge of the Council of Minister’ Office. He will attend, in accordance with any instructions as may be given to him by the Council of Ministers, its meetings, keep the minutes thereof and convey the decisions of the Council of Ministers to the
15 appropriate organ, authority or person. He will carry out any other duties which the President may direct and any other duties which may be assigned to him by the Council of Ministers under the Constitution.

Qualifications Required:

- 20 (a) A University degree or diploma in an appropriate subject, that is Law, Political Sciences, Economics etc. or an equivalent qualification and sufficient knowledge of Government machinery.
- 25 (b) Perfect knowledge of Greek and very good knowledge of English.
- (c) The candidates should be reliable persons, trustworthy, possessing integrity and a high degree of common sense and judgment.
- 30 (d) Ability to assume responsibility and supervise staff.

Note:

On filling the post for the first time after the approval of the present Scheme of Service a University degree as stated in (a) above shall not be required, provided that the
35 candidates have a very good education of a standard not below that of a leaving certificate of a Secondary School, fifteen years’ satisfactory service in the Public Service,

including administrative experience and thorough knowledge of Government machinery.”)

Counsel for the appellant, in arguing this appeal, has contended that the appointment of the interested party, instead of the appellant, to the post concerned ought to have been annulled because the appellant was senior to the interested party, better qualified than him and had better confidential reports. 5

It is correct that the appellant and the interested party had equal seniority in the post of Senior Administrative Officer in the General Administrative Staff, having been appointed to such post on the same date, namely on July 15, 1971; but the appellant was senior by five years to the interested party in the immediately lower post of Administrative Officer, 1st Grade, in the General Administrative Staff, having been appointed to such post on April 1, 1962, whereas the interested party was so appointed on October 1, 1967; and the seniority of the appellant in the said immediately lower post is a factor to be duly taken into account, under section 46 of the Public Service Law, 1967 (Law 33/67), in view of the equal seniority of the two candidates concerned in the post of Senior Administrative Officer. 10 15 20

As regards qualifications, both the appellant and the interested party were graduates of secondary education schools and had passed the usual for public officers governmental examinations, such as those for General Orders, Financial Instructions and Cyprus Statute Laws; the appellant was, also, at the material time, an Associate Member of the Chartered Institute of Secretaries of the United Kingdom, possessed an L.L.B. (Honours) Degree of London University and had passed the Cyprus Bar Examinations. 25

On the other hand, the interested party had passed only Part I of the Bar Examinations in England, for the purpose of becoming a Barrister-at-Law, and had attended a course in Public Administration at the University of Manchester from September 1967 to June 1968. 30

From the confidential reports files it appears that, at the time when the *sub judice* decision of the respondent was taken, the appellant was serving at the Ministry of Education where he had been posted in 1969, and had, previously, served at the Ministry of Health as from 1962. 35

The most recent confidential reports concerning the appellant were, at the material time, those in respect of the years 1972, 1971, 1970, 1968, 1966 and 1965, and they are all "special confidential reports" presenting the appellant as a public officer of great merit, indeed.

On the other hand, the interested party, when he was appointed to the post of Secretary to the Council of Ministers, was performing the duties of Assistant District Officer of Nicosia, having, previously, performed, from 1968 onwards, the duties of Assistant District Officer of Kyrenia. While in Kyrenia he had acted as District Officer for one year, from July 1971 to July 1972 and he was, then, transferred to Nicosia where, being an Assistant District Officer, had acted as District Officer for short periods in 1972 and 1973.

The most recent confidential reports concerning the interested party were, at the material time, those for the periods from August 1972 to February 1973, for 1972, 1971, 1970, 1969 and for the periods from August 1968 to December 1968 and from April 1966 to March 1967.

It is correct that out of all the said confidential reports concerning the interested party only those in respect of the period from August 1972 to February 1973 and for 1972 are "special confidential reports", but it must be mentioned that earlier confidential reports, though not being special confidential reports, do show the interested party to be, nevertheless, a public officer of very great merit; for example, in the report for 1970 the then District Officer of Nicosia and Kyrenia, Mr. Chr. Kythreotis, states that the interested party fully merited promotion to the post of Senior Administrative Officer.

It may, properly, be said, in the light of all the foregoing, that, prima facie, the appellant ought to be treated as a candidate superior to the interested party; but, in view of the special circumstances in which the decision of the Commission was reached, it cannot be held that the appellant has discharged the onus of satisfying us in this appeal that he was strikingly superior to the interested party as regards appointment to the particular post concerned, namely that of Secretary to the Council of Ministers, or that the respondent Commission acted contrary to law, or in excess or abuse of powers, in treating the interested party as more suitable than the appellant for such appointment.

As it appears from the aforequoted minutes of the respondent Commission, its members were influenced, to a very considerable extent, by the really unique nature of the post of Secretary to the Council of Ministers and were trying to select for appointment to such post the candidate who, in their view, was the most suitable for appointment to it. 5

It is stated in the minutes of the Commission that proper weight was given to the merits, qualifications, abilities and experience of the candidates "as well as to their suitability for appointment to the above post as shown at the interview"; and the Chairman of the Commission, Mr. Theocharides, as well as its members Mr. Economopoulos and Mr. Louca, who chose the interested party for appointment, stressed that he was the most suitable officer for the post of Secretary to the Council of Ministers. Also, the other member of the Commission, Mr. Protestos, who disagreed and voted in favour of appointing to such post the appellant, stressed that, in his view, it was the appellant who was the most suitable officer for appointment to the particular post. 10
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Another factor, which, obviously, influenced the majority of the members of the respondent in selecting the interested party for appointment to the post in question, was his experience in the District Administration which, in view of its nature, is of more universal and encompassing nature than the experience gained by the appellant while serving at certain Ministries or Government Departments. 20
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Also, it may be pointed out, in this connection, that, as already mentioned, the interested party had successfully completed a course in Public Administration at the University of Manchester, which is described as follows in a certificate dated June 20, 1968, issued by the Registrar of Manchester University:- 30

"The Course, conducted from September 1967 to June 1968, included studies in Principles of Administration, Decentralisation, Administration for Development, Comparative Government and Administration, Machinery of Government, Administrative Practice and Techniques, Economics for Development, Agricultural Economics, Social Administration, Community Development, Research Method, and Use of Statistics; practical study attachments 35

in England and Northern Ireland, in the fields of central government, local government, private and public enterprise; visits to study regional development in Scotland and the Republic of Ireland; and a written project on a subject in Public Administration.”

It is clear from the above description of the course in question that it was a qualification eminently relevant to the special and much diversified nature of the duties of the Secretary to the Council of Ministers and, therefore, a qualification which could have weighed very much in deciding that the interested party was more suitable than the appellant for appointment.

It is convenient to mention, at this stage, that counsel for the appellant has complained that, though the respondent Commission has referred in its minutes to the factor of “experience”, it makes no reference to the factor of “seniority”; and he has argued that because of the omission to refer, expressly, to seniority it should be concluded that no due weight was given to this factor though it is one of the three cardinal factors which, together with merits and qualifications, had to be taken into account.

There is, indeed, no express reference to seniority in the relevant minutes of the Commission, but it is stated, however, therein that “all facts appertaining to each one of the candidates” were taken into consideration and, also, that “the Personal Files and the Annual Confidential Reports of the candidates already in the service were also taken into consideration.”

There can be no doubt, especially in view of the presumption of regularity which is applicable in relation to administrative actions (see, *inter alia*, *The Republic v. Ekkeshis*, (1975) 3 C.L.R. 548, 556), that the seniority of all the candidates, including, of course, the appellant and the interested party, as appearing in their personal files, was taken into consideration in reaching the *sub judice* decision (and see, also, the decision of the Council of State in Greece in case 1341/1963, which is reported in *Ἐπιθεώρησις Δημοσίου Δικαίου καὶ Διοικητικοῦ Δικαίου*—Review of Public Law and Administrative Law—1963, vol. 7, pp. 403, 404). Moreover, the notion of “experience” must, reasonably, be taken to include that of “seniority”.

Another complaint of counsel for the appellant is that, though

the scheme of service for the post in question required, as a qualification, a University degree in a suitable subject, such as Law, Political Sciences, Economics etc., or an equivalent academic qualification, nevertheless the appellant who possessed such a degree was not selected for appointment and the interested party, who did not possess such an academic qualification, was appointed instead of him, on the basis of the "Note" appearing at the end of the text of the said scheme of service, in which it is stated that on filling for the first time the said post after the approval of the scheme of service there will not be required a University degree, provided that the candidates will have very good education of a standard not below that of a graduate of a school of secondary education, at least fifteen years' satisfactory service in the Public Service, including administrative experience, and thorough knowledge of the Government machinery.

It is clear that it was open to the respondent Commission to act on the strength of the said "Note" and to select a person, such as the interested party, who was qualified for appointment by virtue of it, though he did not possess a University degree, once the Commission considered that this candidate was more suitable for the post of Secretary to the Council of Ministers; and there is nothing in the text of the relevant scheme of service to lend support to the argument of counsel for the appellant that the exception, as he described it, created by the provision made by the aforesaid "Note" could only have been resorted to if there was not available an otherwise suitable candidate who possessed a University degree; on the contrary, it is expressly stated in the scheme of service concerned that, in relation to the first filling of the post in question after the approval of the scheme of service there would not be required ("δέν θα απαιτηθῆ") a University degree provided that the candidates would possess the qualifications specified in the aforementioned Note.

Moreover, it was reasonably open to the respondent Commission, in deciding whom to select as the most suitable candidate for the particular post in question, and not only as being the better candidate in the abstract, to attribute more significance to one factor than to another in the course of a proper exercise of its relevant discretionary powers (see *Georghiou v. The Republic*, (1976) 3 C.L.R. 74, 82).

Another matter, which has been raised by counsel for the

appellant, is that undue and improper weight was given, at least by one member of the respondent Commission, its Chairman, as it appears from its minutes, to the personal knowledge or information from others which the Chairman of the Commission
5 had about the candidates, including the appellant and the interested party.

That, in the process of selection by a collective organ of a person who is the most suitable for appointment to a post in the public service, it is open to the members of such collective organ
10 to make use of their own personal knowledge or information about the candidates is a principle which is well settled in administrative law (see, *inter alia*, *Frangos v. The Republic*, (1970) 3 C.L.R. 312, 333-338, and Στασινοπούλου Μαθήματα
Διοικητικού Δικαίου—Discourses on Administrative Law
15 by Stasinopoulos—1957, p. 347); of course, it must be borne in mind that when such a course is resorted to by an appointing authority, such as the respondent Commission, the reasoning given in its relevant decision must be such as to enable proper
judicial control in this connection (see, for example, the decisions
20 of the Greek Council of State in cases 923/1955, 459/1956, 460/1956 and 538/1966); but, what is necessary to be recorded, on each particular occasion, depends very much on the circumstances of each individual case and we are of the view that, in the present instance, the Chairman of the Commission explains
25 his views about the candidates in a manner sufficient for the exercise appropriately of judicial control.

Counsel for the appellant has invited us to hold that the appointment of the interested party was made in a defective manner in that a special confidential report about him, in respect
30 of the period January 1, 1972, to August 20, 1972, was made by the at the time Minister of Interior instead of by his immediate superior, namely the District Officer of Nicosia.

It is not in dispute that the District Administration does come under the Minister of Interior, but it is, on the other hand, well
35 settled that it is not the right course for Ministers to make confidential reports or recommendations, instead of such reports or recommendations being duly made by the superiors in the public service of the candidates (see, *inter alia*, *Frangoulides* (No. 2) v. *The Republic*, (1966) 3 C.L.R. 676, *HjiSavva and another v. The Republic*, (1967) 3 C.L.R. 155, *Frangides and*
40 *another v. The Republic*, (1967) 3 C.L.R. 155, *Frangides and*

another v. The Republic, (1968) 3 C.L.R. 90, and *Ellinas v. The Republic*, (1975) 3 C.L.R. 248); and, of course, the above proposition has now to be read and applied in conjunction with the express provisions of section 45(3) of Law 33/67 and the definition of "competent authority" ("άρμοδια αρχή") in section 2 of the same Law. 5

Apparently, the reason for which the then Minister of Interior made the aforementioned special confidential report about the interested party, instead of such report being made by a public officer superior in the service to the interested party, is the fact that the immediately previous ordinary confidential report, for 1971, had been made by the Director-General of the Ministry of Interior, who was the immediate superior of the interested party, while he was acting as District Officer of Kyrenia; and the said Director-General happened to be the brother of the interested party and this fact was clearly stated in the said confidential report. 10 15

At the time when the *sub judice* decision was taken there had, already, been made, after the special confidential report which was made, as aforesaid, by the then Minister of Interior, a later confidential report, for the period August 1, 1972, to February 28, 1973, by the District Officer of Nicosia, under whom the interested party was serving as Assistant District Officer; and reading together the special confidential report made by the District Officer of Nicosia, which is the most recent, and the earlier special confidential report made by the then Minister of Interior, it cannot be said, in the least, that there is anything contained in the report made by the Minister of Interior which is not fully borne out by the report made subsequently by the District Officer of Nicosia. 20 25 30

So, the fact that a special confidential report was made about the interested party by the at the time Minister of Interior does not constitute a material irregularity which could have influenced in any substantial way the outcome of the relevant administrative action and, therefore, it cannot be treated as a ground for annulling such action; because, as regards administrative formalities, it is not any irregularity which may lead to the annulment of the relevant administrative process, but only a material one (see, *inter alia*, Στασινοπούλου Δίκαιον τῶν Διοικητικῶν Πράξεων—Stasinopoulos on the Law of Administrative Acts—1951, pp. 229–230). 35 40

In the light of all the foregoing, as well as of the contents of the judgment of the learned trial Judge against which this appeal has been made, we have not been satisfied by the appellant that, even though he might, in the abstract, have appeared to be a
5 better public officer than the interested party, the respondent Commission has, in the context of the very special circumstances of this case, exceeded the extreme outer limits of its relevant discretion in selecting the interested party as more suitable than the appellant for the of a unique nature post concerned; and it
10 must not be lost sight of, in this connection, that, as fairly conceded by counsel for the appellant, when selection is made for a post so very high up in the public service, such as in the present case, the appointing organ has a very wide discretion indeed (see, *inter alia*, *Frangos, supra*, at p. 343 and the decisions of the
15 Council of State in Greece in cases 1542/1967 and 1543/1967).

In the result this appeal fails and is dismissed; as, however, the trial Judge has made no order as to the costs of the trial against the appellant, obviously because the recourse of the appellant could not have been treated as a frivolous one or as a
20 remedy to which he ought not to have resorted in trying to redress what he regarded as a justified grievance of his, we have decided to make no order against him concerning the costs of this appeal.

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Appeal dismissed. No order as to costs.