

1980 December 6

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTOS KOUDOUNAS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF AGRICULTURE AND
NATURAL RESOURCES, THROUGH THE
ATTORNEY-GENERAL OF THE REPUBLIC

Respondent.

(Case No. 397/78).

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- Natural justice—Rules of—Public Officers—Promotions—Applicant not promoted though suitable for promotion, because of Central Information Service report that he is “not loyal and does not respect the law”—No reasons given in support of such allegations—And applicant not prosecuted criminally or disciplinarily and not given a chance to be heard—Rules of natural justice violated.* 5
 - Administrative Law—Administrative acts or decisions—Due reasoning—Public officers—Promotions—Sub judice decision giving no reasons at all why applicant was not promoted—Annulled for lack of due reasoning.* 10
 - Constitutional Law—Equality—Principle of equality—Article 28 of the Constitution—Public Officers—Promotions—Applicant and interested parties not afforded equal treatment—Interested party treated more favourably without sufficient grounds—Article 28 contravened—Promotions annulled.* 15
 - Public officers—Promotions—Inquiry, pending or completed disciplinary proceedings against candidate—Effect.*
 - Public Officers—Promotions—Central Information Service reports regarding loyalty of candidates—Taken into consideration in making promotions—Affected candidate not given a chance to repudiate allegations against him—Rules of natural justice violated—Promotions annulled.* 20
 - Administrative Law—Public officers—Promotions—Inquiry, pending or completed disciplinary proceedings against candidate—Effect.*

5 The applicant, an assistant Agricultural officer, was a candi-
date for secondment to the post of Agricultural Officer, 2nd
Grade. After coming to the conclusion that the applicant
and ten other officers were on the whole the best for promotion
or secondment to the above post the respondent Public Service
Commission*, in pursuance of section 58(1)(a)** of the Public
Service Law, 1967 (Law 33/67), decided to obtain a report from
10 the Central Information Service as to whether the said officers
“are loyal and respect the law” before taking a final decision.
After obtaining such report the Commission stated in its minutes
that “A report of the officers selected for promotion or second-
ment to the above post was obtained from the Central Informa-
tion Service, and was put before the Commission. From the
15 contents of that report, it transpired that the following officers
are not loyal and do not respect the law, viz., Andreas Iacovides
and Christos Koudounas”; and proceeded to promote or second
other officers excluding the applicant. Hence this recourse.

20 The report which has been sent by the Central Information
Service simply stated that the applicant “is not a loyal person
and does not respect the law” but no reasons were put forward
to support such a statement. Applicant was not prosecuted
criminally or disciplinarily regarding those accusations and
he was not given the chance by the Commission either orally
or in writing to repudiate such allegations by presenting his
25 own version also.

30 *Held*, (1) that it is a fundamental principle of administrative
law that when an inquiry against a public officer is carried out,
but on advice no disciplinary or other proceedings are taken
against him, or when such proceedings are taken, but the officer
is at the end acquitted, such facts should not, in case of his
being considered for promotion, be taken into account; that,
35 furthermore, the fact that disciplinary proceedings are
pending against the public officer without any substantial
criteria as regards the basis of the imputed accusations against
him, are also not taken into account in cases of promotions
(see *The Conclusions from Case Law of the Greek Council*

* See its minutes at pp. 50-51 *post*.

** Section 58(1)(a) provides as follows:

“Every public officer shall be loyal and respect the law”.

of State, 1929–1959, at p. 356; *Tzavelas v. The Republic* (1975) 3 C.L.R. 490).

(2) That the Commission, in not promoting or seconding the applicant to the post in question, was unduly influenced, acted contrary to the principles of natural justice, and did not give the applicant a chance to repudiate all those damning allegations against him; that it was the duty of the Commission, once they had in their hands the said report, to postpone their final decision and institute disciplinary proceedings under the Disciplinary Code (section 73(1)* of Law 33/67); that, therefore, as the principles of natural justice have been violated, once the applicant has not been given a chance to be heard and that as, also, Article 28 of the Constitution has been contravened because the applicant and the interested parties have not been afforded equal treatment and the interested parties have been treated more favourably without sufficient grounds, the *sub judice* decision of the Commission must be annulled.

Held, further, that absence of due reasoning is one of the substantial grounds for annulment of an administrative act because a collective organ is bound to give reasons to enable the applicant and/or the interested parties to decide whether in their case an injustice was done; that this is a classic case of lack of due reasoning because the Commission did not give a single reason why the applicant was not promoted or seconded to the post in question; accordingly the *sub judice* decision must be annulled for absence of due reasoning (see *Korai and Another v. C.B.C.* (1973) 3 C.L.R. 546 at pp. 555, 556).

Sub judice decision annulled.

Cases referred to:

Tzavelas v. The Republic (1975) 3 C.L.R. 490; 30
Menelaou v. Republic (1980) 3 C.L.R. 467;
Savva v. Republic (Revisional Jurisdiction Appeal 210 not yet reported);
Korai v. C.B.C. (1973) 3 C.L.R. 546 at pp. 555–556;
Eleftheriou and Others v. Central Bank of Cyprus (1980) 3 C.L.R. 35
 85.

Recourse.

Recourse against the decision of the respondent to second

* Quoted at pp. 53–54 *post*.

the interested parties to the post of Agricultural Officer 2nd Grade in preference and instead of the applicant.

A. *Markides*, for the applicant.

S. *Matsas*, for the respondent.

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Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment. In these proceedings, under Article 146 of the Constitution, the applicant, Christos Koudounas, seeks a declaration of the Court that the decision of the respondent Commission, published in the official Gazette of the Republic dated 14th July, 1976, to second the interested parties to the temporary post of Agricultural Officer, 2nd Grade instead of the applicant, is null and void and of no effect whatsoever.

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The facts:

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The applicant joined the service as Agricultural Assistant (daily wages) on January 1, 1965. From September, 1965 until February 1970, he served as Assistant Agricultural Officer (T) (D) in the Department of the Agricultural Service, and as from 16th February, 1970, he serves in the same post on a permanent basis. The applicant is more senior to all interested parties, and has alleged in his statement of facts that he has not been promoted or seconded to the post in question due to the intervention of the Central Information Service, known as KYP. He is also the holder of the qualification of Master of Science, and although he was preferred and put on the list for promotion and/or secondment by the Public Service Commission, finally, he was turned down and no reasons were given.

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On 2nd August, 1977, and 31st October, 1977, the Director-General of the Ministry of Agriculture and Natural Resources, by his letters, made a request to the Commission that a number of vacancies as well as any consequential vacancies in the Department of Agriculture and Natural Resources be filled.

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On 17th March, 1978, the Commission, having filled a number of other posts, proceeded to deal with the post regarding the applicant and the interested parties. According to the relevant scheme of service, an Assistant Agricultural Officer 2nd Grade must possess a very good knowledge of English and Greek. The Commission, always according to the minutes, having considered the matter, observed that all the officers referred

to, besides their university education, had graduated from a 6 year secondary school in which both the Greek and English languages were taught. Then the minutes go on:- "Having regard to their long and satisfactory service in the Government, the Commission was satisfied that the officers in question did possess a very good knowledge of English and Greek". 5

In spite of the fact that no reasons are given at all, the Commission turned to consider the recommendantions of the Director of the Department of Agriculture, who stated that "from the officers serving in the posts of Assistant Agricultural Officer and Agricultural Superintendent, 1st Grade, he considered Messrs. Georghios Charis, Andreas Iacovides, Charalambos Ipsarides, Georghios Xistouris, Iacovos Yiacoumettis, Christos Koudounas, Christos Motides, Cleanthis A. Pratsos, Phivos Lysandrides, Loizos Markides and Georghios Zacharia, who were serving in the post of Assistant Agricultural Officer, as the best, their services had been very satisfactory and recommended them for promotion or secondment to the permanent (Dev.) or temporary (Dev.) post of Agricultural Officer, Class III. With regard to Mr. Cleanthis A. Pratsos, one of the officers referred to above and who was fairly junior in his grade, the Director of the Department added that the officer in question had obtained higher qualifications (Ph.D. Degree) and that he was an excellent officer". 10 15 20

With that in mind, the Commission proceeded to take an interim decision, and had this to say: 25

"After considering the above and after taking into consideration all the facts appertaining to each one of the officers serving in the posts of Assistant Agricultural Officer and Agricultural Superintendent, 1st Grade, and having regard to the views expressed as well as to the recommendations made by the Director of the Department of Agriculture, the Commission came to the conclusion that the following officers, who were serving in the post of Assistant Agricultural Officer, were on the whole the best for promotion or secondment to the permanent (Dev.) or temporary (Dev.) post of Agricultural Officer, Class II: Georghios Charis, Andreas Iacovides, Haralambos Ipsarides, Georghios Xistouris, Iacovos Yiacoumettis, Christos Koudounas, Christos Motides, Cleanthis Pratsos, Phivos Lysandrides, Loizos Markides, Georghios Zacharia". 30 35 40

Finally, the Commission recorded in the minutes that: "According to Section 58(1)(a) of Law No. 33/67, 'every public officer shall be loyal and respect the law'.

5 In view of the provisions of the aforesaid section of the Law, the Commission decided that a report on the above officers should be obtained from the Central Information Service as to whether the officers in question are 'loyal and respect the Law', before a final decision is taken".

10 On 27th May, 1978, according to the minutes of the Commission, there were before it eight vacancies, viz., one permanent (Dev.) and seven Temporary (Dev.). Then the Commission, having referred once again to section 58(1)(a) of Law 33/67, stated the following:-

15 "A report of the officers selected for promotion or secondment to the above post was obtained from the Central Information Service, and was put before the Commission. From the contents of that report, it transpired that the following officers are not loyal and do not respect the law, viz., Andreas Iacovides and Christos Koudounas".

20 Finally, the Commission stated that:-

25 "After considering all the above and after taking into consideration all the facts appertaining to each one of the officers selected at the meeting of 17.3.78, the Commission came to the conclusion that the following officers were on the whole the best. The Commission accordingly decided that the officers in question be promoted or seconded to the permanent (Dev.) or temporary (Dev.) post of Agricultural Officer, Class II, w.e.f. 15.6.78, as shown opposite their names:

30	Haralambos Ipsarides	—	—	to be promoted to the permanent (Dev.) post.
	Georghios Charis	—	—	to be seconded to the temporary (Dev.) post.
	Georghios Xistouris	—	—	do—
35	Iacovos Yiakoumettis	—	—	do—
	Christos Motides	—	—	do—
	Phivos Lysandrides	—	—	do—
	Cleanthis A. Pratsos	—	—	do—
	Loizos Markides	—	—	do—"

The applicant, feeling aggrieved, filed the present recourse on 26th September, 1978, and counsel in support of the legal grounds stated that the act or decision of the Commission is null and void because it was taken in excess and/or in abuse of powers vested in such organ and in violation of the general principles of an administrative law, because there was a misconception of facts, once the information received by the Commission from KYP for the applicant was entirely wrong and that the Commission took into consideration facts which ought not to have been taken into account, and particularly the said information of KYP; and that the decision of the Commission was not duly reasoned or at all.

There were a number of adjournments for the filing of the opposition, and on 19th February, 1979, Mr. Hadjipetrou, counsel for the respondent, made this statement:-

“This is one of the many cases which will be reviewed because of the intervention of KYP and we both apply for a further date for directions”.

On 5th November, 1979, Mr. Matsas on behalf of the Republic, having been granted a number of other adjournments, applied once again for an adjournment to enable the Attorney-General to deal with the question which related to the interference of KYP in the appointments or promotions by the Public Service Commission. The case was adjourned on a number of other occasions, and finally, Mr. Matsas filed the opposition, and the facts in support are these:-

The Commission at a meeting of the 27th May, 1978, having studied the report with regard to the loyalty and respect to the laws of the applicant, and in the light of the said report, it was found that the applicant is not loyal and does not respect the law. With that in mind, the Commission decided, after taking into consideration all factors, that the interested parties were the best, and that they should be seconded to the temporary post of Agricultural Officer, 2nd Grade, as from 15th June, 1978.

I find it convenient, before dealing with the submission of both counsel, to refer to the duties and obligations of public officers under s.58(1) of the Public Service Law, 1967, (33/67). Section 58(1) reads:-

“Every public officer shall—

- (a) be loyal and respect the law;
- (b) faithfully and unfailingly perform his duties and generally use his utmost exertions to promote the interests of the Republic;
- (c) carry out and comply with any orders and directions;
- (d) not commit any act or omission or conduct himself in a way which may bring the public service in general or his office in particular into disrepute or which may tend to impair the confidence of the public in the public service;
- (e) properly conduct himself towards his superior officers and colleagues and towards the public”.

In view of the fact that the Commission included the applicant on the list, but finally decided not to promote or second him—the main reason being the report of KYP—the Commission was unduly prejudiced and it is the only reason for not promoting or seconding the applicant to the post in question. What is equally surprising, is that in that report which has been sent by KYP, it simply says that the applicant is not a loyal person and does not respect the law, but no reasons were put forward to support such a damning statement.

With this in mind, I have no doubt at all that the Commission, in not promoting or seconding the applicant to the post in question, was unduly influenced, acted contrary to the principles of natural justice, and did not give the applicant a chance to repudiate all those damning allegations against him. With respect, it was the duty of the Commission, once they had in their hands the said report, to postpone their final decision and institute disciplinary proceedings under the Disciplinary Code. Section 73(1) says that:—

“73.—(1) A public officer is liable to disciplinary proceedings if—

- (a) he commits an offence of dishonesty or involving moral turpitude;
- (b) he commits an act or omission amounting to a contra-

vention of any of the duties or obligations of a public officer.

(2) For the purposes of this section 'duties or obligations of a public officer' includes any duty or obligation imposed on a public officer under the law of the Republic or under this Law or any other law in force for the time being or under any public instrument made thereunder or under any order or direction issued". 5

As I said, in the present proceedings, the Commission has violated the rules of natural justice. Time and again it is said that it is a fundamental principle of administrative law that when an inquiry against a public officer is carried out, but on advice no disciplinary or other proceedings are taken against him, or when such proceedings are taken, but the officer is at the end acquitted, such facts should not, in case of his being considered for promotion, be taken into account. Furthermore, the fact that disciplinary proceedings are pending against the public officer without any substantial criteria as regards the basis of the imputed accusations against him, are also not taken into account in cases of promotions. (See The Conclusions from Case Law of the Greek Council of State, 1929-1959, at p. 356. See also *Tzavelas v. The Republic* (1975) 3 C.L.R. 490). 10 15 20

In any event, and in spite of the fact that the Commission had before it the report of KYP, viz., that the applicant was not a loyal person, and that he does not respect the law, he was not prosecuted criminally or disciplinarily regarding the alleged accusations, and he was not given the chance by the Commission either orally or in writing to repudiate such allegations by presenting his own versions also. 25 30

In the light of the judicial pronouncements I have quoted earlier, and because the principles of natural justice have been violated once the applicant has not been given the chance to be heard, I would accept the submission of counsel on this point (see *Savvas Menelaou v. The Republic*, (1980) 3 C.L.R. 467 and *Charalambos Savva v. The Republic*, Revisional Appeal No. 210 not yet reported, on this very issue). 35

Turning now to the question as to whether the Commission has reasoned its decision, regretfully, the Commission did not give a single reason why the applicant was not promoted or seconded to the post in question. Indeed, I am bound to repeat that this is one of the substantial grounds for annulment, because a collective body is bound to give reasons to enable the applicant and/or the interested parties to decide whether in their case, an injustice was done. With respect, I consider this case as being a classic case of lack of due reasoning, and in *Elli Chr. Korai and Another v. the C.B.C.*, (1973) 3 C.L.R. 546, I had this to say at pp. 555-556:-

“On this point there is a long line of cases supporting this proposition. The whole object of the rule requiring reasons to be given for administrative decisions is to enable the person concerned as well as this Court on review, to ascertain in each case whether the decision is well-founded in fact and in law. The reasons, therefore, must be stated clearly and unambiguously; must be expressed in the sense in which reasonable persons affected thereby would understand them, and must be stated in terms fulfilling the objects of the rule. The mere fact, of course, that some doubt, however little, so long as it is not merely fanciful, is possible as to the meaning of the reason behind an administrative decision, is sufficient to vitiate such decision. See *Zavros v. The Council for Registration of Architects and Civil Engineers* (1969) 3 C.L.R. 310 at pp. 315-317. See also *HadjiSavva v. The Republic*, (1972) 3 C.L.R. 174 and *Papazachariou v. The Republic*, (1972) 3 C.L.R. 486”.

(See also *Iordanis Eleftheriou and Others v. The Central Bank of Cyprus*, (1980) 3 C.L.R. 85).

For the reasons I have given at length, and because the Commission has not only contravened the rules of natural justice but also Article 28 of the Constitution by not affording equal treatment to the applicant and the interested parties, and by treating the interested parties more favourably without sufficient grounds justifying such a course, I would annul the decision of the Commission.

As I have been invited by counsel not to deal with the qualifications and/or with the comparison between the interested

parties and the applicant, and because of my decision, I find myself in agreement not to touch these matters.

Decision annulled. No order as to costs.

Sub judice decision annulled.

No order as to costs.

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