

1983 January 20

{TRIANTAFYLIDIS, P.}

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHARALAMBOS KAPSOU,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE PUBLIC SERVICE COMMISSION,
2. THE MINISTRY OF FOREIGN AFFAIRS,

Respondents.

(Case No. 356/81).

Public Officers—Appointments—First entry post—Testing of candidates by means of examinations—Schemes of service providing only for written examinations—Conduct of an oral examination not a material irregularity which can be treated as a ground for annulling the sub judice appointments because oral examinations had no really detrimental effect on the applicant. 5

Public Officers—Appointments—First entry post—Candidates already in the service—Recommended by respective Heads of Department—Savva v. Republic (1980) 3 C.L.R. 675, 696, 697 distinguished.

Public Officers—Schemes of service—Providing for “excellent knowledge” of the Greek language—Candidate stating in his application for appointment that he does not possess such knowledge—Commission had to ascertain by means of a due inquiry whether this requirement was satisfied—Such inquiry could not be limited to what transpired at the interview—Nor was it lawfully possible to appoint such candidate merely because he had made a very good impression when interviewed. 10
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The applicant in this recourse challenged the decision of the respondent Public Service Commission to appoint, instead of him, to the post of Attaché in the Ministry of Foreign Affairs the interested parties. Prior to the sub judice decision applicant and interested parties had been tested by means of both written 20

and oral examinations the results of which were forwarded to a Departmental Board, set up in accordance with the administrative arrangements prescribed by virtue of section 36 of the Public Service Law, 1967 (Law 33/67). The Board recommended to the Commission 14 candidates among whom were included the applicant and the interested parties; but the Commission, after taking into consideration an advice given to it by the Attorney-General to the effect that regulations (4), (7) and the proviso to regulation (6) of the above administrative arrangements were ultra vires the relevant legislation, did interview seven other candidates. None of these candidates, however, was an interested party.

Counsel for the applicant mainly contended:

(a) That the Examination Committee had no power to conduct both a written and an oral examination, as under the relevant provision of the scheme of service for the post in question there was required only success at a special written examination to be conducted by the Ministry of Foreign Affairs.

(b) That the Director-General of the Ministry of Foreign Affairs should not have made recommendations in favour of interested parties E. Evriviades, A. Zenonos and L. Markidou, who were already in the service (see *Savva v. Republic* (1980) 3 C.L.R. 675, 696, 697).

(c) That interested party Evriviades was appointed even though on the basis of a statement by him in his application for appointment he did not seem to satisfy the requirement of the relevant scheme of service regarding possession of an "excellent knowledge" of the Greek language.

Regarding (c) above the respondent Commission decided initially to request to be furnished with the answers of this interested party at the written examination in order to ascertain whether in actual fact he did possess an "excellent knowledge" of the Greek language; but, eventually such a course was not further pursued by the Commission and it concluded from only the interview of this interested party that he possessed the aforesaid knowledge.

Held, (1) that though because of the contents of the scheme of service the candidates had to be tested by means of only a written examination, their having been tested by means, also, of an oral examination is not, in the present case, a sufficient reason for annulling the sub judice appointments of the interested parties, because the conduct of an oral examination, in addition to the written one, had no really detrimental effect on the applicant and that the testing of the candidates by means of an oral examination, too, which was not envisaged by the relevant scheme of service, is not a material irregularity; accordingly it cannot be treated as a ground for annulling the sub judice appointments. 5 10

(2) That as the respondent Commission had before it, as regards the applicant, who had been serving temporarily in the Department of Personnel, a recommendation by the Director of that Department it cannot be said that the recommendations by the Director-General of the Ministry of Foreign Affairs could be treated as having operated unfairly in favour of the interested parties concerned (the *Savva* case, *supra*, has to be regarded as being distinguishable). 15 20

(3) That an "excellent knowledge" of the Greek language presupposes such knowledge not only when one speaks, but also when he writes, in Greek, and once the interested party concerned had, by his own statement in this respect in his application for appointment, raised, to say the least, a real doubt as to whether he possessed an "excellent knowledge" of the Greek language, the Commission had to ascertain, by means of a due inquiry for this purpose, whether this requirement of the scheme of service was satisfied by him, and that the Commission could not limit such inquiry to what transpired at his interview, but had to look at his answers at the written examination, as it had initially decided to do; that it was not lawfully possible to appoint him, irrespective of the fact that he did not seem to satisfy the requirement in question of the scheme of service, merely because he had made a very good impression when interviewed; accordingly the appointment of this interested party must be annulled. 25 30 35

*Appointment of interested party
Evriviades annulled. Otherwise
recourse dismissed.* 40

5 *Observations:* I would like to observe that I am inclined to the view that the respondent Commission could not, even on advice from the Attorney-General, disregard as invalid the above referred to regulations (4), (7) and the proviso to regulation (6) which are, in effect, legislation of a delegated nature enacted under section 36 of Law 33/67.

Cases referred to:

- 10 *Christou v. Republic* (1980) 3 C.L.R. 437 at pp. 448, 449;
Savva v. Republic (1980) 3 C.L.R. 675 at pp. 691-695, 696, 697;
Petrides v. Republic (1981) 3 C.L.R. 57 at pp. 65, 67.

Recourse.

Recourse against the decision of the respondent to appoint the interested parties to the post of attaché in the Ministry of Foreign Affairs in preference and instead of the applicant.

- 15 A. S. Angelides, for the applicant.
 R. Gavrielides, Senior Counsel of the Republic, for the respondent.
 P. Anastassiades, for interested party A. Zenonos.

Cur. adv. vult.

- 20 TRIANTAFYLIDIS P. read the following judgment. By means of the present recourse the applicant challenges the decision of the respondent Public Service Commission to appoint, instead of him, to the post of Attaché in the Ministry of Foreign Affairs, as from 1st September 1981, A. Zenonos, L. Markidou.
 25 L. Markides, P. Avraam and E. Evriviades (to be referred to hereinafter as the "interested parties").

- 30 The vacancies in the post concerned were advertised in the Official Gazette of the Republic on the 3rd October 1980 and one hundred and four candidates applied for appointment, among whom were the applicant and the interested parties.

The post in question is a first entry post and paragraph 3(e) of the relevant scheme of service renders success in a special written examination, to be conducted by the Ministry of Foreign Affairs, a requisite qualification.

- 35 An Examination Committee, consisting of three officials of the Ministry, was set up in order to test the candidates by means of both written and oral examinations.

The written examinations took place on the 15th and 16th January 1981 and fifty-four candidates took part. Then, these candidates were called to an oral examination on 2nd February 1981 when only forty-seven out of them turned up.

The results of both the written and oral examinations were forwarded to a Departmental Board which was set up in accordance with the administrative arrangements prescribed by virtue of section 36 of the Public Service Law, 1967 (Law 33/67). 5

At its meeting of 7th February 1981 the said Board, after having considered the qualifications of the aforementioned forty-seven candidates, their performance at the examinations and the personal files and confidential reports files of those of them who were serving already in the public service, decided to recommend to the respondent Public Service Commission for appointment to the post concerned fourteen candidates, among whom were included the applicant and the interested parties. 10 15

The Commission interviewed the fourteen candidates recommended by the Departmental Board and postponed until later the taking of a final decision. In the meantime, however, the Director-General of the Ministry of Foreign Affairs, by a letter dated 7th March 1981, asked the Commission to interview another eight candidates. The Commission, having taken into consideration, inter alia, an advice given to it by the Attorney-General (dated 14th July 1979) to the effect that regulations (4), (7) and the proviso to regulation (6) of the administrative arrangements made in relation to Departmental Boards were ultra vires the relevant legislation, decided to, and did, interview seven other candidates, but none of them is an interested party in the present proceedings; and eventually the sub judice decision of the Commission was reached on 29th May 1981. 20 25 30

Before proceeding any further in this judgment I would like to observe that I am inclined to the view that the respondent Commission could not, even on advice from the Attorney-General, disregard as invalid the above referred to regulations (4), (7) and the proviso to regulation (6) which are, in effect, legislation of a delegated nature enacted under section 36 of 35

Law 33/67. Once such legislation was made by the competent organ, in this instance by the Council of Ministers, such legislation has to be complied with until it is repealed by the Council of Ministers (in view of the advice of the Attorney-
5 General or for any other reason) or until it is found to be ultra vires by a judicial decision (see, in this respect, inter alia, Tsoutsos on The Administration and the Law ("Τσούτσου, Διοίκησης και Δίκαιον"), (1979), pp. 41, 88, 89, 99, 116, Manual of Administrative Law by Spiliotopoulos ("Σπηλιω-
10 τοπούλου, Έγχειρίδιον Διοικητικού Δικαίου"), (1977), p. 79 et seq., and Delikostopoulos on Administrative Law ("Δελικωστοπούλου, Διοικητικόν Δίκαιον"), vol. A, (1972), p. 47 et. seq.).

15 I shall deal now with the main issues which have been raised in the present proceedings:

It has been argued by counsel for the applicant that the Examination Committee had no power to conduct both a written and an oral examination, as under the relevant provision of the scheme of service for the post in question there was required
20 only success at a special written examination to be conducted by the Ministry of Foreign Affairs.

The said scheme of service was published as part—(see regulation 7)—of the Foreign Service of the Republic (Qualifications Required for Appointment or Promotion, Duties and Functions
25 of Each Post) (Amendment) Regulations, 1980, by means of which the previously in force scheme of service was repealed (see No. 151 in the Third Supplement to the Official Gazette of the Republic, Part I, of 20th June 1980).

I am quite prepared to accept that because of the contents
30 of the scheme of service the candidates had to be tested by means of only a written examination, but I am of the view that their having been tested by means, also, of an oral examination is not, in the present case, a sufficient reason for annulling the sub judice appointments of the interested parties, and my reasons
35 for reaching such a view are the following: Though it appears from the material which was placed before the Court that the results of the oral examinations were taken into account by the respondent Commission in arriving at its sub judice decision

it seems that it cannot be said that any really substantial difference emerged as between the applicant and any one of the interested parties on the strength of either the written or the oral examinations, even if the results of these two examinations were not to be looked at only together, but separately also. Moreover, the applicant and the interested parties were, on the basis of, among other considerations, the results of both the written and oral examinations, selected as suitable candidates and were recommended as such to the respondent Commission by the Departmental Board. It can, therefore, be presumed that the conduct of an oral examination, in addition the written one, had no really detrimental effect on the applicant and that the testing of the candidates by means of an oral examination, too, which was not envisaged by the relevant scheme of service, is not a material irregularity and, so, it cannot be treated as a ground for annulling the sub judice appointments (see, in this respect, *inter alia*, *Christou v The Republic*, (1980) 3 C L R. 437, 448, 449)

Another contention of counsel for the applicant has been that the Director-General of the Ministry of Foreign Affairs should not have made recommendations in favour of interested parties E. Evriviades, A. Zenonos and L. Markidou, who were already in the service, and reference was made, in this respect, to the case of *Savva v The Republic*, (1980) 3 C L R 675, 696, 697

As there appears, however, from the facts set out in the Opposition in related case No. 248/81, which has been treated by consent of all parties to this case as part of the record of the present proceedings, too, the respondent Commission had before it, as regards the applicant, who had been serving temporarily in the Department of Personnel, a recommendation by the Director of that Department and it cannot, therefore, be said that the aforementioned recommendations by the Director-General of the Ministry of Foreign Affairs could be treated as having operated unfairly in favour of the interested parties concerned; and, in this connection, the *Savva* case, *supra*, has to be regarded as being distinguishable.

As regards, in particular, interested party Evriviades, counsel for the applicant has submitted that he was appointed even

though on the basis of a statement by him in his application for appointment he did not seem to satisfy the requirement of the relevant scheme of service regarding possession of an "excellent knowledge" of the Greek language. As it appears
5 from its relevant minutes the respondent Commission decided initially on 12th March 1981 to request to be furnished with the answers of this interested party at the written examination in order to ascertain whether in actual fact he did possess an "excellent knowledge" of the Greek language; but, eventually,
10 such a course was not further pursued by the Commission and it concluded from only the interview of this interested party that he possessed the aforesaid knowledge.

I am of the opinion that an "excellent knowledge" of the Greek language presupposes such knowledge not only when one speaks, but also when he writes, in Greek, and once the
15 interested party concerned had, by his own statement in this respect in his application for appointment, raised, to say the least, a real doubt as to whether he possessed an "excellent knowledge" of the Greek language, the Commission had to ascertain, by means of a due inquiry for this purpose, whether
20 this requirement of the scheme of service was satisfied by him, and that the Commission could not limit such inquiry to what transpired at his interview, but had to look at his answers at the written examination, as it had initially decided to do. Nor was it lawfully possible to appoint him, irrespective of the fact
25 that he did not seem to satisfy the requirement in question of the scheme of service, merely because he had made a very good impression when interviewed (see, inter alia, *Petrides v. The Republic*, (1981) 3 C.L.R. 57, 65, 67 and the *Savva* case, supra, pp. 691-695).

30 For the above reasons the appointment of interested party E. Evriviades has to be annulled.

I have dealt with the main issues which were raised in this case and any other issue which is not specifically referred to by me in this judgment should be treated as having been considered by me and having been found to be of no real merit.
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In the light of all the foregoing this recourse fails and is dismissed as against the appointments of all interested parties

except as against the appointment of interested party E. Evri-
viades which is hereby declared to be null and void and of no
effect whatsoever.

In the present case I do not propose to make any order as
to its costs.

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*Sub judice decision partly
annulled. No order as to costs.*