

1984 November 17

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

P.S. 1558 ANDREAS MICHAEL AND 16 OTHERS,
Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF INTERIOR AND/OR
2. THE COMMANDER OF POLICE,

Respondents.

(Cases Nos. 55/80, 106/80, 115/80,
129/80, 131/80, 133/80, 134/80,
137/80, 138/80, 140/80, 141/80,
143/80, 147/80, 149/80, 158/80,
163/80).

Natural Justice—Rules of—Police Force—Promotions—Information contained in reports of the Central Information Service taken into consideration—Officers adversely affected by such information unaware of the existence or contents of such reports and not given the opportunity to be heard in regard thereof—Rules of natural justice violated—Sub judice promotions annulled. 5

Police Force—Promotions to the rank of Inspector—By taking into consideration, inter alia, the evaluation of Advisory Selection Committees—Which departed from the provisions of the Police (Promotion) Regulations, 1958, to 1976, in so far as their functions were concerned—Evaluation and selection of the candidates defective and invalid and the decision based thereon void—Annulled. 10

Police Force—Acting appointments—Whether they can be attacked by a recourse.

Administrative Law—Administrative acts or reasons—Reasoning—Non-existent and vague reasoning. 15

Administrative Law—Administrative acts or decisions—Presumption of regularity—Recourse against acting appointments to rank of Inspector of the Police—No argument advanced either with regard to merit or that such appointments were defective—Validly
5 *made by virtue of application of presumption of regularity.*

The applicants in the above recourses challenged the validity of the promotions of a total of thirty interested parties to the rank of Inspector and the appointment of ten to the rank of Acting Inspector. The promotions from Sergeant to Inspector
10 were made by the Chief of Police with the approval of the Minister of the Interior; and the acting promotions by the Divisional Commanders with the approval of the Chief of Police. In making the promotions to the rank of Inspector the Chief of Police took into consideration, inter alia, the views of Advisory Selection Committees and information and material supplied
15 by the Director of the Central Information Service. Regarding the latter information there has not been disclosed, and could only be a matter of conjecture, what information and material were placed before the Chief of Police either with regard to the applicants or with regard to the interested parties or on what
20 facts and criteria the Central Information Service based their assessment.

Regarding the Advisory Selection Committees, which took part in the evaluation of the candidates for promotion no provision is made for their setting up either in the relevant Regulations or in the Law; and though it was stated that their function was to examine candidates with a view to ascertaining whether they possess the qualifications required for promotion by regulation 6 of the Police (Promotion) Regulations, 1958 to 1976,
25 the functions of the above Committees were by no means restricted to the provisions of regulation 6 but they extended to regulation 3 under which the recommendation has to be made by the Divisional and Unit Commander. Also the weight which was attached to the evaluation of such Committees was the same
30 as that attached to the organs for which provision is made in regulations 3 and 4 and that their function was by no means of an advisory character.

Held, (1) that the jurisdiction of this Court, under Article
40 146 of the Constitution, is limited to scrutiny of the validity of the act or decision challenged and it is aimed to ensure that

the administration functions within the sphere of its authority and subject to the principles of good administration; that for the Court to be able to exercise its control in any particular case it is necessary that it must have before it the reasons for such decision and hence the requirement of administrative law for due reasoning and the well established principle that lack of it is a ground for annulment; that in the present cases it is clear from the facts as stated above that the reasoning that has led to the sub judice decision in so far as it relates to the promotions is, in some instances non-existent and where an attempt has been made to give reasons it is vague; that what is, however, most important is the fact that there has been a flagrant violation of the rules of natural justice by taking into consideration information contained in reports of the Central Information Service, which, quite obviously, in some cases were adverse without the officers adversely affected being aware of the existence or contents of such reports and without having the opportunity to be heard in regard thereof; and that, therefore, the sub judice promotions must be annulled.

Held, further, that the departure from the provisions of the regulations in so far as the functions of the Advisory Committees were concerned, renders the evaluation and selection of the candidates promoted defective and invalid and the decision based thereon void and, therefore, a ground for annulment.

(2) That even on the assumption that the appointments to the acting rank can be challenged by a recourse no argument at all has been advanced either with regard to merit or that such appointments were in any way defective as not satisfying the provisions or prerequisites of the relevant regulation; that in the circumstances the Court feels bound to apply the presumption of regularity and hold that their acting appointments were validly made (what has been held hereinabove regarding the appointments to the rank of Inspector does not apply to the acting appointments because the intermeddling of the Central Information Service has not affected these appointments and because the function of the Advisory Selection Committees related to the promotions to the rank of Inspector and not to the acting appointments).

Sub judice promotions annulled.

Sub judice acting promotions affirmed.

Cases referred to:

Regina v. Secretary of State for Home Affairs Ex Parte Hosenball
[1977] 1 W.L.R. 766 at p. 778;

5 *Agee v. The U.K.* (Appl. No. 7729/76 of the European Commission of Human Rights);

Decision of the Greek Council of State No. 14/47;

Tsangarides and Others v. Republic (1981) 3 C.L.R. 117;

Icrides and Another v. Republic (1983) 3 C.L.R. 1028;

Haviaras v. Republic (1981) 3 C.L.R. 415;

10 *HjiGeorghiou v. Republic* (1981) 3 C.L.R. 587;

Iacovides v. Republic (1981) 3 C.L.R. 305;

Koudounas v. Republic (1981) 3 C.L.R. 46.

Recourses.

15 Recourses against the decision of the respondents to promote the interested parties to the rank of Inspector and/or Acting Inspector in the Police Force in preference and instead of the applicants.

N. Clerides for applicants in Cases Nos. 55/80, 115/80, 140/80, 149/80 and 158/80.

20 *C. Erotokritou* with *St. Drymiotis* for applicants in Cases Nos. 143/80, 106/80 and 137/80.

I. Typographos for applicant in Case No. 129/80.

E. Efstathiou for applicants in Cases Nos. 131/80, 133/80, 134/80, 138/80.

25 *A.S. Angelides* for *G. Tornaritis* for applicant in Case No. 141/80.

N. Clerides for *Chr. Choraitis* for applicant in Case No. 147/80.

30 *M. Marangou (Miss)* for *T. Papadopoulos* for applicant in Case No. 163/80.

Cl. Theodoulou (Mrs.), Counsel of the Republic, for respondents in all cases.

Cur. adv. vult.

L. LOIZOU J. read the following judgment. The applicants in these sixteen recourses, which, on the application of the parties, were heard together as, in their view, they are part of the same administrative act and the legal issues involved are the same, challenge the validity of the promotions of a total of thirty interested parties to the rank of Inspector and the appointment of ten to the rank of Acting Inspector. (Lists of the names of the interested parties promoted and those appointed to the acting rank are attached to this judgment as Appendices A and B respectively).

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Before going into the substance of the cases I consider it pertinent to deal briefly with certain other aspects in relation to these proceedings.

At the preliminary stages of the hearing counsel appearing for the applicants jointly applied for an adjournment for, at least, two months on the ground that there were going to be new promotions and that the applicants stood a good chance of being promoted in which case they would withdraw the recourses and would not insist on the question of seniority and also because, in any case, most of the counsel appearing for the applicants were not ready to proceed with their cases. Counsel appearing for the respondents confirmed the fact that there were going to be new promotions and joined in the application for an adjournment and all cases were adjourned for mention as applied for.

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On the adjourned date counsel applied for a further adjournment on the ground that the new promotions had not yet taken place and the cases were adjourned to the 14th and 15th January, 1982 for hearing.

On the 14th January counsel appearing for the respondents informed the Court that the Attorney-General of the Republic had gone through the cases and had instructed her to state that all cases would be re-examined. All counsel appearing for the applicants with the exception of one who appeared in one of the cases and who had certain reservations, welcomed the statement on behalf of the Attorney-General and applied for a further adjournment. In view of the fact that all cases were, on the application of all counsel, being heard together, they were adjourned for mention to the 24th March, 1982. On that date

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counsel appearing for the respondents made a statement to the Court that as a result of the statement made on behalf of the Attorney-General that all cases would be re-examined a letter (exhibit 7) was forwarded by him (the Attorney-General) on the 18th January, 1982, to the Minister of the Interior and that the matter was discussed at a meeting between them. As a result the Minister forwarded to the Attorney-General a letter dated 23rd March, 1982, (exhibit 8) copies of which had been delivered to all counsel for the applicants. By the said letter the Minister was informing the Attorney-General that his advice that all cases should be re-examined had been adopted and that the re-examination of all cases had already commenced but that due to the volume of the work involved it was not expected that it would be completed before the lapse of, at least, two months. In the light of the above and on the application of all counsel concerned the cases were adjourned for hearing to the 2nd, 3rd and 4th June, 1982.

On the 2nd June counsel appearing for the respondents was not in a position to inform the Court of the outcome of the re-examination of the cases and the hearing commenced. On the third day of the hearing, however, counsel for the respondents was handed a letter in Court (exhibit 9) addressed to the Attorney-General of the Republic by the Director-General of the Ministry of the Interior informing him that all cases had been re-examined but that the original decision, the subject-matter of all recourses, remained unchanged. The question then arose whether this last decision amounted to a new administrative act which could be challenged by recourse or whether it was merely confirmatory of the original decision challenged by these recourses. Learned counsel for the respondents submitted that this was a new decision that could be challenged by a new recourse but, at the same time, she conceded that she was not aware what was taken into consideration by the respondents when they came to re-examine these cases i.e. whether they took into consideration any new fact or facts of which they were not aware and which they did not take into consideration when taking the original decision and that her submission that it was a new decision was a mere presumption of her part and at the same time she applied for an adjournment so that the Minister of the Interior, who was not available on that day due to a meeting of the Council of

Ministers, could attend the Court and give evidence. Her application was granted but on the adjourned date she said that she was not calling any evidence as she had inquired for information from the Ministry whether the new decision was based on new facts or not but she had received no reply and that she was inclined to agree that the new decision was merely confirmatory of the decision the subject-matter of the recourses.

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These recourses were based on various grounds of law including grounds that went to the merits of the cases. At the hearing of the recourses, however, all counsel for the applicants and counsel for the respondents saw fit not to touch on the merits of the cases and chose to limit their arguments on the legal grounds as, in their view, these were sufficient to dispose of the cases. In fact the arguments advanced were limited mainly to two grounds i.e. intervention by the Central Information Service (KYP) without the knowledge of the applicants, on matters on which it had no competence contrary to the Police (Promotion) Regulations, 1958 to 1976, and the rules of natural justice, and the setting up of Advisory Selection Committees for which no provision is made either in the regulations or the law, which took part in the selection and evaluation of the merits of the candidates. Having said this I now come to the substance of these cases.

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The promotions from Sergeant to Inspector are, under the provisions of s.13 of the Police Law, Cap. 285 as amended by Laws 19/60, 21/64 and 29/66, made by the Chief of Police with the approval of the Minister of the Interior. Sub-section (3) of this section makes provision for the making of regulations regarding the terms of appointment, promotions, etc. of members of the force. Such regulations are made by the Council of Ministers and are subject to the approval of the House of Representatives. However, as no regulations have so far been made under this section the Police (Promotion) Regulations, 1958 to 1976 continue in force by virtue of the proviso to this sub-section.

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The initial stages of the procedure relating to the promotions of Sergeants to Inspectors prior to the decision of the Chief of Police are set out in the above regulations and more particularly in regulations 3 and 4. Divisional and Unit Commanders when called upon submit to the Chief of Police a list of

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names of qualified members of the force recommended for promotion, together with a report of each man's characteristics and capabilities on the appropriate form including observations regarding health, energy, domestic state, conduct, knowledge
 5 of police duties, personal reputation, etc. and whether he is recommended for accelerated promotion. Selection for promotion is made by a Selection Board appointed by the Chief of Police from time to time as provided in regulation 4.

In so far as the promotions in the present cases are concerned
 10 an innovation was introduced in the form of a Force Order issued by the Chief of Police on instructions from the Minister of the Interior. This innovation consisted in the appointment, in addition to the organs specified in the regulations, of a number of Advisory Selection Committees with the object of assisting
 15 the Divisional and Unit Commanders in making their recommendations and, ultimately, the Chief of Police in his decision. The Force Order in question is exhibit 4; it is number 11 and is dated 12th March, 1979. The letter of the Minister giving such directions is incorporated therein. The new procedure
 20 is summarized in the schedule to this exhibit.

The Chief of Police by his letter dated 16th January, 1980, addressed to the Minister of the Interior (exhibit 3) submitted the names of all officers whom he proposed to promote and sought his approval. In paragraph 2 of this letter he sets
 25 out the procedure followed and the criteria upon which he based his decision. This paragraph reads as follows:

“Οί λοχίαι οὔτοι, ὁμοῦ μὲ ἄλλους, ἐξητάσθησαν ὑπὸ τοῦ τελευταίως συγκληθέντος Συμβουλίου Ἐπιλογῆς τὸ ὁποῖον
 30 τοὺς κατέταξεν εἰς τὴν Α κατηγορίαν (σθεναρῶς συνιστώμενοι). Διὰ ὅλους τοὺς ὁμοίως παρουσιασθέντας ἐνώπιον τοῦ Συμβουλίου τούτου ἀφοῦ ἐμελέτησα ἐξ ὑπαρχῆς τὰς ἀξιολογήσεις τῶν ἐπὶ τούτῳ διορισθεῖσάν Ἐπιτροπῶν Ἐπιλογῆς, τὰ περιεχόμενα τῶν ἀτομικῶν των φακέλων, τὰς γνώμας καὶ συστάσεις τῶν Ἀστυνομικῶν Διευθυντῶν/Διρικητῶν Μονάδων
 35 ὡς καὶ τὰς πληροφορίας καὶ στοιχεῖα τεθέντα ὑπ’ ὄψιν μου ὑπὸ τοῦ Διευθυντοῦ ΚΥΠ ἔχοντα σχέσιν μὲ τὸ ἦθος, τὸν χαρακτήρα, τὴν προσωπικὴν ὑπόληψιν, νομιμοφροσύνην καὶ καταλληλότητα τῶν ὑποψηφίων καὶ ἀπὸ προσωπικὰς ἐκτιμήσεις, ἔκρινα τοὺς κατωτέρω λοχίας ἐξ ὄλων τῶν ὁμο-

βαθμίων των ώς τούς καταλληλότερους από πάσης απόψεως διά προαγωγήν.

Διά ταῦτα προτίθεται νά προαγάγω τούτους εἰς τόν βαθμόν τοῦ Ὑπαστυνόμου καί παρακαλῶ ὅπως ἔχω τήν ὑμετέραν πρός τόν σκοπὸν αὐτὸν ἔγκρισιν".

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("These sergeants, together with others, were examined by the lately convened selection committee which placed them in the A category (strongly recommended). For all those similarly presented before the Board, after examining afresh the evaluations of the selection committees appointed for this purpose, the contents of their personal files, the opinion and recommendations of the Police Commanders/Unit Commanders as well as the information and particulars put before me by the Director of KYP, as regards the ethos, the character, the personal reputation, loyalty and suitability of the candidates and from personal evaluations, I found the following sergeants from all those of equal rank as the most suitable in every respect for promotion.

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Therefore I intend to promote them to the rank of Inspector and your approval for this purpose is requested").

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The approval of the Minister is contained in a letter dated 6th March, 1980 addressed by the Director-General of the Ministry to the Chief of Police (exhibit 1). Going through the list of names in this exhibit one observes that at least two of the persons named therein P.S. 224 A. Ioannou and P.S. 1197 A. Pitsillides, whose promotion the Minister "approved" and they were in actual fact promoted are not among those whom the Chief of Police proposed for promotion in his letter to the Minister (exhibit 3).

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It also appears from the material in the files that candidates recommended for promotion by the other organs and proposed for promotion by the Chief of Police, as for instance the applicant in Case No. 106/80, P.S. 601 Michael Chrysanthou, was not approved by the Minister.

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Pausing here for a moment I must observe that the surprising thing about the applicant in this case is that he is posted with KYP and has been so posted since 1974 and his Commanding

Officer is full of praise for him in his report. He describes him as honest, hard working and conscientious and his conduct and character as irreproachable and he strongly recommends him for promotion. One may reasonably assume that both
5 the promotion board and the Chief of Police were in agreement with the above and hence their strong recommendation for his promotion. And yet his promotion was not approved for reasons ostensibly relating to his loyalty, devotion to duty and personal reputation; but no information at all is disclosed on
10 what grounds such conclusion was based. The reasonable inference is that any adverse information could not have emanated from KYP and that those who made the strong recommendation for his promotion including the Chief of Police, to whom KYP admittedly reported in relation to such
15 matters, were not aware of such information. And one is left wondering not only as to the grounds on which such information was based but also as to the source from which it emanated.

In other instances as for example in the case of the applicants in Cases 143/80, 149/80, 158/80 officers strongly recommended
20 for promotion by the other organs were not included in the list of the Chief of Police to the Minister because of doubts as to their loyalty, devotion to duty and personal reputation the relevant information having been supplied by the Central Information Service.

25 Counsel for the respondents expressed regret that she could not make available to the Court such information because she was not herself aware either of the contents or nature of the information. Counsel added that she found it very difficult to justify respondents' behaviour in not either disregarding
30 the information obtained from the Central Information Service or, at least, in giving the opportunity to those adversely affected to be heard and that she was not, herself, convinced that such behaviour was fully justified. Nevertheless she cited two cases to the Court which she thought might have led the respondents in doing what they did. She stated that the cases
35 cited were supplied to her by the respondents on the previous evening in order to support their position, I assume their position in not disclosing either the nature of the information or on what it was based.

The first of these cases is the case of *Regina v. The Secretary of State for Home Affairs ex parte Hosenball* [1977] 1 W.L.R. 766. This was a case in which the applicant applied for an order of certiorari to quash a deportation order made against him on the ground that there was a breach of the rules of natural justice in refusing to supply him with particulars of the allegations made against him. The Divisional Court dismissed the application and Hosenball appealed to the Court of Appeal. In dismissing the appeal it was held that where national security was involved the ordinary principles of natural justice were modified for the protection of the realm. Lord Justice Denning M.R., in the course of his judgment said (at p. 778):

“But this is no ordinary case. It is a case in which national security is involved: and our history shows that, when the State itself is endangered, our cherished freedoms may have to take second place. Even natural justice itself may suffer a setback. Time after time Parliament has so enacted and the Courts have loyally followed”.

Further down in his judgment the learned Judge cites the case of *Agee v. The U.K.* which was a petition to the European Commission of Human Rights (Application No. 7729/76) based on Article 6.1 of the Convention for the protection of Human Rights. The European Commission held that:

“Where the public authorities of a State decide to deport an alien on grounds of security this constitutes an act of State falling within the public sphere and that it does not constitute a determination of civil rights or obligations within the meaning of Article 6. Accordingly, the State is not required in such cases to grant a hearing”.

And the learned Judge continues: “So it seems to me that when the national security is at stake even the rules of natural justice may have to be modified to meet the position”.

The other case cited is Case No. 14 (1947) of the Greek Council of State. The report of the case was not made available as it is out of print and the case was cited from the textbook “The Right of Defence before Administrative Authorities” by M. Stassinopoulos. As far as I can see from the textbook this was a case in which a citizen was deprived of the Greek citizenship and the Council of State held the view that there was no

need for the subject to be given an opportunity to be heard as such deprivation was not a punishment but an "administrative measure". But, nevertheless, the learned author bitterly criticizes the decision and goes as far as to suggest that the reason
5 for such decision was subconscious as the applicant in that case was accused of co-operating with the enemy and the case was heard at a time when events were recent and detestable. But, be that as it may, certainly neither of the cases cited can be of much assistance to the Court as they bear no comparison
10 with the cases in hand in view of their very nature. In the present cases all that is involved is the non-promotion of a number of police Sergeants and neither national security nor the protection of the realm were at stake.

A crucial document in these proceedings is the letter dated
15 16th January, 1980 (exhibit 3) addressed by the Chief of Police to the Minister. It leaves no room for doubt that the Chief of Police in selecting the candidates for promotion out of the list submitted to him (exhibit 5) which contains the names of all officers selected by the Board took into consideration, apart
20 from the rating of the Board and the opinions expressed and the recommendations of the Commanding Officers, information and material supplied by the Director of the Central Information Service. What information and material were placed before the Chief of Police either with regard to the applicants or with
25 regard to the interested parties or on what facts and criteria the Central Information Service based their assessment has not been disclosed and can only be a matter of conjecture. Certainly the Court is absolutely in the dark and counsel for the Republic, as stated earlier on, frankly admitted that she, herself, was not
30 aware of the nature of such information. One thing is clear that in a number of cases applicants were not recommended for promotion by the Chief of Police because of the report of KYP but the Court is not in a position to know if and how many of the interested parties were promoted because of such report
35 nor how many or who of the applicants may have been victimized as a result thereof.

The jurisdiction of this Court under Article 146 is limited to scrutiny of the validity of the act or decision challenged and it is aimed to ensure that the administration functions within
40 the sphere of its authority and subject to the principles of good

administration. But for the Court to be able to exercise its control in any particular case it is necessary that it must have before it the reasons for such decision and hence the requirement of administrative law for due reasoning and the well established principle that lack of it is a ground for annulment. 5

In the present cases it is clear from the facts as stated above that the reasoning that has led to the sub judice decision in so far as it relates to the promotions is, in some instances non-existent and where an attempt has been made to give reasons it is vague. What is, however, most important is the fact that there has been a flagrant violation of the rules of natural justice by taking into consideration information contained in reports of the Central Information Service, which, quite obviously, in some cases were adverse without the officers adversely affected being aware of the existence or contents of such reports and without having the opportunity to be heard in regard thereof. 10 15

This, in my view, is a sufficient enough reason that these recourses, in so far as they relate to the promotion to the rank of Inspector of the thirty interested parties whose names appear in exhibit 1 (and in Appendix A) should succeed and the decision relating to them be annulled. 20

Useful reference may be made to the following cases relevant to this issue:

Tsangarides and Others v. The Republic (1981) 3 C.L.R. 117; *Ierides and Another v. The Republic* (1983) 3 C.L.R. 1028; *Haviaras v. The Republic* (1981) 3 C.L.R. 415; *HadjiGeorghiou v. The Republic* (1981) 3 C.L.R. 587; *Iacovides v. The Republic* (1981) 3 C.L.R. 305 and *Koudounas v. The Republic* (1981) 3 C.L.R. 46. 25

Although this disposes of these cases in so far as the promotion of the 30 interested parties to the rank of Inspector is concerned I propose to deal very briefly with the other ground raised i.e. the setting up of the Advisory Selection Committees for which no provision is made either in the regulations or in the Law which took part in the evaluation of the candidates for promotion. 30 35

At paragraph 3 of the Schedule to Order No. 11 of the Chief of Police (exhibit 4) it is stated that their function is to examine

candidates with a view to ascertaining whether they possess the qualifications required for promotion by regulation 6 of the Police (Promotion) Regulations, 1958 to 1976. Such qualifications are set out in regulation 6(2) and they are the following:

- 5 “(a) Not to have had any greater punishment than a severe reprimand imposed on him for an offence against discipline during the two years immediately prior to his promotion;
- (b) To have passed the qualifying examinations;
- 10 (c) Save for special reasons to be stated in each individual case to have completed one year’s service in the rank of Sergeant in the performance of outside police duties;
- (d) To have completed two years’ service in the rank of Sergeant unless the Chief of Police is satisfied that he possesses special qualifications for the performance of the particular duties on which he is to be employed;
- 15 (e) To have been recommended by the Board”.

But the evaluation sheets which have been filled up by these
20 **Advisory Selection Committees** in respect of each candidate contain the following fourteen items on each of which candidates are rated: General education; professional standard; seniority; conduct; appearance; intelligence; foreign languages; leadership abilities; initiative and energy; public relations; performance
25 of outside duties; health; domestic state; and personal reputation.

It will be seen from the above that the functions of these
Advisory Selection Committees are by no means restricted to the provisions of regulation 6 but they, in fact, extend to regu-
30 lation 3 under which the recommendation has to be made by the Divisional and Unit Commanders.

But it has been argued on the part of the respondents that the recommendation of the Advisory Selection Committees is of an advisory character. Indeed, it is so expressly stated
35 in the Minister’s letter embodied in Order No. 11 of the Chief of Police (exhibit 4) and in the Schedule to such Order. A mere glance, however, at the evaluation sheet of the promotion

Board reveals that this is not quite so because the total of the points awarded to each candidate for promotion is the aggregate of the points awarded by (1) the Advisory Selection Committees, (2) the Divisional Commanders and (3) the promotion Board; and this total is the one which is shown by the Selection Board in the final list of the candidates selected by it for promotion and forwarded to the Chief of Police (exhibit 5) from which he selected those he proposed for promotion subject to the approval of the Minister. 5

It is clear from the above that the weight attached to the evaluation of the advisory selection committees is the same as that attached to the organs for which provision is made in regulations 3 and 4 and that their function is by no means of an advisory character as submitted. The departure from the provisions of the above regulations, in my view, renders the evaluation and selection of the candidates promoted defective and invalid and the decision based thereon void and, therefore; a ground for annulment. 10 15

But in the present cases a distinction has to be made between the thirty interested parties promoted to the rank of Inspector on the basis of the procedure prescribed by regulations 3 and 4 of the Police (Promotion) Regulations, 1958 to 1976 and the acting appointments. In the case of the latter neither the provisions of regulation 3 and 4 apply nor can it be assumed that the intermeddling by KYP has affected their appointment to the acting rank because the letter of the Chief of Police to the Minister in which it is stated that the former took into consideration also the information supplied by KYP relates exclusively to the interested parties actually promoted to the rank of Inspector and not to the appointments to the acting rank because in the latter case the approval of the Minister is not required. Furthermore the function of the Advisory Selection Committees related to the promotions to the rank of Inspector and not to the appointments to the acting rank. 20 25 30

Acting appointments are made under the provisions of regulation 11 of the Police (General) Regulations which read as follows: 35

“11. Acting rank

(1) A member of the Force who is required to perform the duties of a higher rank due to the temporary absence of the holder of that rank, may be appointed to act in the rank by the Divisional or Unit Commander; Provided that—

(a) All such appointments are made with the approval of the Chief of Police;

(b) notification is sent to Force Headquarters for the purposes of pay and maintaining records.

(2) Any service in the acting rank shall not—

(a) be deemed as approved service in the higher rank;

(b) be subject to allowances applicable to the higher rank.

(3) Members of the Force appointed to acting rank shall receive in addition to their pay an allowance at a rate equal to the difference between their pay and the lowest rate for the higher rank:

Provided that in the case of Gazetted Officers the provisions of General Orders shall apply.

(4) No member of the Force shall be appointed to acting rank if the period of absence of the holder is less than fourteen days.

(5) Constables nominated as acting sergeants may wear two chevrons at all times, but will receive the acting allowance only when required to perform the duties of a sergeant. Members of the Force shall wear the uniform and insignia of the acting rank only when instructed by the Chief of Police to do so”.

Out of these sixteen recourses in only three are appointments to the acting rank challenged i.e. cases Nos. 143/80, 147/80 and 163/80. In the first of these cases (143/80) the applicant challenges the promotion of 27 interested parties to the rank of Inspector and the appointment of five to the acting rank. In the second case (147/80) the applicant only challenges the appointment to the acting rank of three interested parties and in the last case (163/80) the applicant challenges the promotion to the rank of Inspector of four interested parties and the appointment to the acting rank of all ten interested parties.

For the purposes of this judgment I do not have to decide whether the appointments to the acting rank can be challenged by a recourse because, even on the assumption that they could be so challenged, no argument at all has been advanced either with regard to merit or that such appointments were in any way defective as not satisfying the provisions or prerequisites of the relevant regulation. In the circumstances I feel bound to apply the presumption of regularity and hold that these acting appointments were validly made. With regard to case 143/80 one more reason why the appointment of the five interested parties to the acting rank cannot be disturbed is the fact that it only challenges the decision of the Minister who, under the relevant regulations has nothing to do with such appointments and took no part in them.

In the result recourse No. 147/80 has to be dismissed altogether and recourses Nos. 143/80 and 163/80 have to be dismissed only in so far as they relate to the interested parties appointed to the acting rank. Subject to the above all recourses relating to the promotion of the thirty interested parties to the rank of Inspector succeed and such promotions are annulled. No order as to costs.

*Sub judice promotions annulled.
Sub judice acting appointments confirmed. No order as to costs.*

A P P E N D I X A

- | | | | | |
|-----|------|------|------------------|----|
| 1. | Sgt. | 1188 | G.S. Karlettides | |
| 2. | " | 448 | I. Antoni | |
| 3. | " | 1175 | A. Tsiopanis | |
| 4. | " | 1250 | A. Tryfonos | |
| 5. | " | 1245 | T. Kyprianou | 30 |
| 6. | " | 432 | Chr. Neophytou | |
| 7. | " | 224 | A. Ioannou | |
| 8. | " | 775 | I. Kokkinoftas | |
| 9. | " | 946 | P. Hadji Vasili | |
| 10. | " | 1197 | A. Pitsillides | 35 |
| 11. | " | 1231 | A. Violaris | |
| 12. | " | 2045 | N. Nicolaidis | |

	13.	"	24	G. Hadji Michalakis
	14.	"	567	D. Christodoulou
	15.	"	1228	S. Lardis
	16.	"	1263	A. Spyrou
5	17.	"	1455	G. Georghiou
	18.	"	576	T. Petrou
	19.	"	1677	A. Tofaris
	20.	"	1735	I. Petrou
	21.	"	1467	K. Miller
10	22.	"	153	K. Michaelides
	23.	"	256	K. Markoullis
	24.	"	467	S. Pafitis
	25.	"	634	K. Loizides
	26.	"	1721	G. Georghiades
15	27.	"	1962	S. Hadji Sofocleous
	28.	"	2247	A. Ierotheos
	29.	"	266	A. Neophytou
	30.	"	56	G. Saparillas

A P P E N D I X B

20	a)	Sgt.	962	N. Michael
	b)	"	1289	N. Constantinou
	c)	"	1703	Chr. Ioannou
	d)	"	2049	P. Ermogenides
	e)	"	2193	D. Iasonos
25	f)	"	933	K. Charalambous
	g)	"	1937	E. Papaevriviadous
	h)	"	1308	G. Papaneocleous
	i)	"	1049	K. Varnava
	j)	"	3027	P. Hadji Panayiotou