

1984 December 14

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS XIROS,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 466/82).

*Judge—Disqualification—Bias—Impartiality—Principles applicable—  
Recourse against promotions—Trial Judge the second cousin  
of the wife of one of the interested parties—Whether he should  
disqualify himself from trying the recourse—Article 30.2 of  
the Constitution.*

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In the course of the hearing of a recourse against the decision of the respondent Commission to promote instead of the applicant, the interested parties to the post of Senior Specialist in the Department of Medical Services the trial Judge disclosed to the parties that he was the second cousin of the wife of one of the interested parties. Thereupon counsel for the applicant, though not doubting the impartiality of the Judge submitted that the Judge must disqualify himself from trying the recourse and relied in this respect on Article 30.2 of the Constitution.

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*Held*, after setting out the principles governing the impartiality of the Courts vide pp. 1479–1480 post, that in the present case interested party Angelides is not directly related to me, though his wife is within the sixth degree of kindred with me; that I have never had social conduct with him or his wife and I have never sought his medical advice; that in fact I have not seen either the interested party or his wife for quite a number of years and, in the

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circumstances, I feel that I am unable to accede to the application to disqualify myself from trying the present recourse.

*Order accordingly.*

Cases referred to:

- 5        *Kritiotis v. Municipality of Paphos* (1983) 3 C.L.R. 1460 at pp. 1479-1481.

**Recourse.**

- 10        Recourse against the decision of the respondent to promote the interested parties to the post of Senior Specialist in the Department of Medical Services in preference and instead of the applicant.

*K. Talarides*, for the applicant.

*A. Papasavvas*, Senior Counsel of the Republic, for the respondent.

- 15        *A.S. Angelides*, for interested party Angelides.

*Cur. adv. vult.*

- 20        DEMETRIADES J. read the following judgment. By means of the present recourse the applicant challenges, in effect, the decision of the respondent Public Service Commission to promote, instead of him, the interested parties N. Angelides and A. Papanastassiou, to the post of Senior Specialist in the Department of Medical Services.

The facts that led to the present proceedings are briefly the following:

- 25        On the 30th November, 1983, this Court made an order for the submission by counsel for the parties of their written addresses. After the written addresses of counsel for the respondent and interested party Angelides were filed, counsel for the applicant filed a reply in which he alleged that the Chairman of the  
30        Public Service Commission was disqualified from participating in the selection of the candidates for promotion to the post concerned as his wife was the second cousin of the wife of interested party Angelides.

- 35        On the day the recourse was fixed for hearing and as this allegation was a new ground of law not included in the original

grounds of law on which the recourse of the applicant was based, counsel for the respondent and for interested party Angelides submitted that the applicant was not entitled to argue this point without first applying to the Court for leave to have his grounds of law amended. 5

After hearing the arguments of counsel, it occurred to me that I too was related to the wife of interested party Angelides in the same degree of relationship as that of the wife of the Chairman of the Public Service Commission and I accordingly informed counsel of this fact. My statement, which I made in open Court, and the response to it by counsel for the applicant, as these appear in the official transcript, read: 10

“ΔΙΚΑΣΤΗΡΙΟ: Θα ήθελα να παρατηρήσω ότι με την σύζυγο του ενδιαφερομένου προσώπου έχω την ίδια συγγένεια που έχει η σύζυγος του Προέδρου της Δημοσίας Υπηρεσίας. 15

κ. Ταλαρίδης: Δεν εγνώριζα αυτή την λεπτομέρεια. Πιστεύω ότι δεν έχω καμμία αμφιβολία διά την αμεροληψία του Δικαστηρίου και του προσώπου σας και το λέγω χωρίς κανένα ενδοιασμό ούτε επιφύλαξη είμαι σίγουρος διά την αμεροληψία αλλά πιστεύω ότι υπό τας περιστάσεις έχω καθήκον να θέσω εις το Δικαστήριο ότι το Δικαστήριό σας πρέπει να εξαιρέσει τον εαυτό του να εκδικάσει την προσφυγή αυτή και πρέπει να μας δοθεί ευκαιρία να επιχειρηματολογήσουμε επί του θέματος αυτού”. 20 25

(“COURT: I would like to point out that with the wife of the interested party I have the same relationship which the wife of the Chairman of the Public Service Commission has.

*Mr. Talarides:* I was not aware of this detail. I believe that I have no doubt about the impartiality of the Court and your person and I say this without any hesitation or reservation I am sure for the impartiality but I believe that under the circumstances I have a duty to submit to the Court that your Court must disqualify itself from trying this recourse and there must be given to us the opportunity to argue on this issue”). 30 35

Arguments on the submission of counsel for the applicant on my statement were then adjourned for another date.

Counsel for the applicant has referred, in this respect, to the provisions of Article 30.2 of the Constitution which read as follows:

30.2 "In the determination of his civil rights and obligations  
5 or of any criminal charge against him, every person is  
entitled to a fair and public hearing within a reasonable  
time by an independent, impartial and competent Court  
established by law. Judgment shall be reasoned and pro-  
nounced in public session, but the press and the public  
10 may be excluded from all or any part of the trial upon a  
decision of the Court where it is in the interest of the secu-  
rity of the Republic or the constitutional order or the  
public order or the public safety or the public morals or  
where the interests of juveniles or the protection of the  
15 private life of the parties so require or, in special circum-  
stances where, in the opinion of the Court, publicity would  
prejudice the interests of justice".

He stated that in the present case there is no actual bias or  
partiality either in favour or against anyone of the parties and  
20 referred to the principle that justice should not only be done  
but also appear to be done.

In deciding the issue raised by counsel for the applicant in  
the present case, useful guidance may be derived from the case  
of *Kritiotis v. The Municipality of Paphos*, (1983) 3 C.L.R.  
25 1460, where Stylianides J., after setting out the principles govern-  
ing the impartiality of the Courts, said the following (at pp.  
1479-1481):

"These principles apply not only to the Courts of Law,  
inferior and superior, but to all bodies, disciplinary boards,  
30 administrative authorities, etc., which take decisions that  
have legal results and affect the interests of the citizen.  
Objection to a Judge, where bias or reasonable suspicion  
of bias is alleged, has to be taken at the earliest stage in  
proceedings and has to be decided by the Judge concerned.  
35 His decision is always subject to judicial review.

The right of the citizen to have his civil disputes and  
criminal charges against him determined by impartial  
Courts was traditionally part of our Law. It has, however,  
been constitutionally enshrined and safeguarded by the

provisions of Art. 30.2 of the Constitution which is cast in identical words with the relevant part of Art. 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by Law No. 39 of 1962.

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Impartiality denotes absence of prejudice or bias. There can be no unfairness or impartiality without bias. We are not concerned with actual bias. There is the subjective approach and the objective approach. In the objective approach the Judge should offer the guarantees sufficient to exclude any legitimate doubt. The test is the opinion of the reasonable and fair-minded person who knows all the relevant facts. Surmise or conjecture is not enough. The suspicion is that of a reasonable fair-minded person and not a fanciful suspicion by a party.

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The right to a fair hearing requires a Court to appreciate impartially all the matters of fact and of law submitted to it by both parties, with reference to the particular issues it is called upon to decide. The judge must think dispassionately and submerge private feeling on every aspect of a case. On the whole, however, Judges do lay aside private views in discharging their judicial functions. This is achieved through training, professional habits, self-discipline and that fortunate alchemy by which men are loyal to the obligation with which they are entrusted. It is also true that reason cannot control the subconscious influence of feelings of which it is unaware.

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When there is ground for believing that such subconscious feelings may operate in the ultimate judgment, or may not unfairly lead others to believe they are operating, Judges recuse themselves. The guiding consideration is that the administration of justice should reasonably appear to be disinterested as well as be so in fact. When there is any cause incapacitating a member of this Bench, he is the first to exclude himself. On the other hand, to accede to applications for the exclusion of Judges in any given case in the absence of proper justification, would undermine the impersonal and proper administration of justice. As was said in *Hadjicosta v. Anastassiades*, (1982)

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1 C.L.R. 296, at p. 299, 'sensitive though we remain to the views of the parties on the delicate subject under consideration, it would be injudicial and wrong in principle to make the composition of the Court dependent on the whims of the parties'".

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10 In the present case interested party Angelides is not directly related to me, though his wife is within the sixth degree of kindred with me. I have never had social conduct with him or his wife and I have never sought his medical advice. In fact I have not seen either the interested party or his wife for quite a number of years and, in the circumstances, I feel that I am unable to accede to the application to disqualify myself from trying the present recourse.

*Order accordingly.*