1984 May 30

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS MAKRIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS,

Respondent.

(*Case No.* 509/83).

CHRISTOS CHRISTOUDIAS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS,

Respondent.

(*Case No.* 510/83).

Public Service—Competence to make appointments in—Vests, under the Constitution, exclusively in the Public Service Commission—Assumption of competence and exercise of power by Council of Ministers in relation to appointments in the Public Service, in this case to the post of Registration Officer, unconstitutional—Sub judice appointment annulled.

Constitutional Law—Competence to make appointments in the Public Service—Vests in the Public Service Commission—Clear separation, under the Constitution, between the competence of holders of political office, such as the Council of Ministers, and Public Service Commission—Assumption of competence and the exercise of power by the Council of Ministers in relation to appointments in the Public Service patently unconstitutional.

Necessity—Law of Necessity—Resort to—Principles applicable—Public Service Law, 1967 (*Law* 33/67)—*Though enacted by virtue of the Law of Necessity no reason necessitoted departure from the provisions of the Constitution, with regard to the exclusive competence of the Public Service Commission, set up under the above Law, to make appointments in the Public Service—And no need arose to entrust such power to the Council of Ministers in defiance to constitutional order—Section* 5 *of Law.* 33/67 *to be read and applied subject to the Constitution.*

Registration of Residents Law, Cap. 85 (*as amended by Law* 59/71)—*Section* 3(1)—*Powers of "Governor"—now the Council of Ministers—thereunder—To make appointment to post of Registration Officer incompatible with Article* 125.1 *of the Constitution—But said section can be brought into conformity with the Constitution, as provided in Article* 188.1 *by reading "Public Service Commission" for "Governor".*

The respondent Council of Ministers at its meeting of 13th October, 1983 decided to appoint the interested party to the post of Registration Officer. The appointment in question was made in exercise of powers that allegedly vested in the Council of Ministers under section 3(1)* of the Registration of Residents Law, Cap. 85 (as amended by Law 59/71).

Upon a recourse by the applicants who were two of the unsuccessful candidates to the above post:

Held, (1) that under the Constitution, competence to make appointments and generally provide for the composition of the public service vests exclusively in a body separate and independent of the executive branch of government, styled the Public Service Commission; that public service is defined by Article 122 of the Constitution in the widest terms and it includes every office forming part of the Civil Service of the State; that a comparison of the powers vested, on the one hand, to political offices of the State, the Council of Ministers and Ministers of the State, defined in Part III of the Constitution, with those entrusted to the Public Service Commission, on the other, clearly suggests that the makers of

* Section 3(1) provides that "the Council of Ministers may, by notice in the Gazette, appoint a Registration Officer".

the Constitution intended to establish a clear separation between the competence of holders of political office and the Public Service Commission; that the assumption of competence by the political branch of government over the staffing of the civil service would inevitably compromise the impartiality of the service with corresponding loss of the faith of the public in its mission and efficacy; and that, therefore, the assumption of competence and the exercise of power by the Council of Ministers in relation to appointments in the public service is patently unconstitutional because it contravenes not only express provisions of the Constitution but defies the constitutional framework as to the position, status and composition of the civil service; accordingly the sub judice appointment must be annulled.

(2) That though the present Public Service Commission was set up under the Public Service Law, 1967 (Law 33/67), which was enacted by virtue of the Law of necessity, and in order to bridge the gap created by the departure of the Turkish members of the Public Service Commission, set up under the Constitution, legislation enacted in the name of necessity must not deviate beyond the extent strictly warranted by the necessity and that the invocation of the doctrine is only justified in the interest of sustaining constitutional order; that in this case no suggestion has been made that any reasons whatever necessitated departure from the provisions of the Constitution with regard to the exclusive competence of the Public Service Commission to make appointments in the public service and far less that any need arose to entrust such power to the Council of Ministers in defiance to constitutional order; and that, consequently, the action of the Council of Ministers, under question in the present case, was unconstitutional and it was taken in excess of the powers of the Council of Ministers and in abuse of those of the Public Service Commission.

Held, further, (1) that to the extent that section 5 of Law 33/67 envisages the entrustment of power to make appointments in the civil service to bodies other than the Public Service Commission, it must be read and applied subject to the Constitution; and that any such body other than the Public Service Commission must be a body analogous to the Public Service Commission functioning within the framework of the Constitution,

separate and independent from the executive branch of government.

(2) The power that vested in the "Governor"—now the Council of Ministers—under section 3(1) of Cap. 85 to make appointments to a post in the civil service was obnoxious to the constitutional framework and incompatible with the provisions of Article 125.1 of the Constitution; that as such it ceased to have any effect upon the introduction of the Constitution and lapsed into oblivion; that the said section 3(1) of Cap. 85 can be brought into conformity with the Constitution as provided in Article 188.1 so as we could read "Public Service Commission" for "Governor"; that it is in this form that Cap. 85 survived the Constitution and as such fell to be applied by the Authorities of the State; accordingly the misinterpretation of Cap. 85 and misconstruction of its provisions is yet another reason for annulling the decision.

Per Pikis, J.: I conclude by drawing attention to the constitutional imperative that holders of political office should not, under any guise, take part in the manning of the civil service. The separation of political government from the civil service is constitutionally entrenched. It is premised on the understanding that a civil service, immune from influence with regard to its composition from the holders of political office, can best discharge its mission. A mission trusting civil servants to administer in the name of the law and serve the public impersonally. The allegiance of civil servants must be to the State as an organic entity and its democratic institutions. By sustaining constitutional order in this area, the civil service is pledged to the rule of law. This order of things, constitutionally ordained, will be undermined by attempts to institutionalize, as was done in this case, participation of political government, in the selection of civil servants. It imports the risk of making the civil service subservient to the political government of the day and subject to political patronage. Such a departure from the Constitution cannot be countenanced except as unconstitutional, which is precisely how I have countenanced it in this case.

Sub judice decision annulled.

Cases referred to:

Makrides v. *Republic* (1983) 3 C.L.R. 622;

Theodorides and Others v. *Ploussiou* (1976) 3 C.L.R. 319;

Hadjianastassiou v. *Republic* (1982) 3 C.L.R. 1173;

Frangoulides v. *Republic* (1966) 3 C.L.R. 676;

Attorney-General of the Republic v. *Ibrahim*, 1964 C.L.R. 195

Aloupas v. *National Bank* (1983) 1 C.L.R. 55;

Messaritou v. *Cyprus Broadcasting Corporation* (1972) 3 C.L.R 100;

Kazamias v. *Republic* (1982) 3 C.L.R. 239;

Solomou v. *Republic* (1984) 3 C.L.R. 533;

President of Republic v. *Louca and Others* (1984) 3 C.L.R. 241;

Ekdotiki Eteria v. *Police* (1982) 2 C.L.R. 63.

Recourses.

Recourses against the decision of the respondent to appoint the interested party to the post of Registration Officer in preference and instead of the applicants.

C. Loizou, for the applicants.

N. Charalambous, Senior Counsel of the Republic, with *A. Vassiliades*, for the respondent.

Cur. adv. vult.

PIKIS J. read the following judgment. A question of supreme constitutional importance affecting the public service and its relationship to the executive branch of government, must necessarily be decided in order to determine the legality of an appointment made by the Council of Ministers in the permanent government establishment. Relevant to the case are also the provisions of the Registration of Residents Law, Cap. 85*, that vested, in the contention of counsel for the Attorney-General, power in the Council of Ministers to make appointments to the post of Registration Officer. Recitation of the facts of the case defining the question will serve illuminate all aspects of the problem not least appreciate the implications of the action of the Council of Ministers.

The Public Service Commission in exercise of its powers appointed Christodoulos Nicolaides to the post of Registration Officer, a permanent post in governmental service provided for in the budget of the Republic. One of the unsuccessful candidates, namely, Costas Makrides, challenged the validity

* As amended by Law 59 of 1971

of the appointment disputing the adequacy of the inquiry made into the qualifications of candidates as well as the soundness of its ultimate choice. The proceedings resulted in the annulment of the decision*, not for lack of competence on the part of the Commission, but because of doubts as to the qualifications and suitability for appointment of Nicolaides.

There were question marks about the knowledge of Nicolaides in English postulated as a necessary qualification for appointment. Surprising as it may seem, soon after the decision, the Ministry of the Interior asked the Public Service Commission to appoint Christodoulos Nicolaides to the same post on an acting basis. (See letter of 18th July, 1983—exhibit 2(a)). The request was refused on account of the doubts raised respecting the qualifications of the suggested appointee (see letter of 29th July, 1983– exhibit 2 (b)). In the letter it is pointed out that it is impermissible to make the suggested acting appointment before clarification of the position with regard to the qualifications of Nicolaides. An inquiry into his qualifications could be carried out in the process of filling the post. It was the only proper course open to the Public Service Commission.

By a subsequent letter the Chairman of the Public Service Commission sought the opinion of the Attorney-General on the competence of the Commission to make an appointment to the post of Registration Officer in view of the provisions of section 3(1) of the Registration of Residents Law—Cap. 85* that prima facie appeared to the Chairman to vest competence in the matter in the Council of Ministers. If this was the effect of section 3(1), the Chairman of the Commission observed it would be unconstitutional in view of the absence of any power on the part of the Council of Ministers, under the Constitution to make appointments to the public service (see letter of 9th August, 1983—exhibit 1(a)). The Attorney-General replied that competence in the matter vested in the Council of Ministers and advised accordingly. In the opinion of the Attorney-General the competence of the Public Service Commission to make appointments in the civil service was limited by the provisions of section 5 of the Public Service Law—33/67, to posts the filling of which was not regulated by any other law. So,

* *Makrides* v. *The Republic* (1983) 3 C.L.R. 622

the Public Service Commission was incompetent to fill the post of Registration Officer, because competence to fill the post was entrusted to another body by Cap. 85, that is, the Council of Ministers. The Attorney-General saw no constitutional obstacle to the Council of Ministers exercising a competence with regard to appointments in the public service. (See exhibit 1(b), opinion of the ex Attorney-General, Mr. Criton Tornaritis, dated 10th August, 1983).

At a subsequent stage the Attorney-General advised that the Council of Ministers in filling the post should adopt a procedure similar to that followed by the Public Service Commission in making appointments in the civil service and suggested that the material bearing on the candidates, in the hands of the Public Service Commission, should be transmitted to the Council of Ministers to enable them to make their decision. Also it was advised that the Minister of the Interior should abstain from taking part in the deliberations of the Council of Ministers regarding the choice of the person to be appointed because of his relationship to one of the candidates (see exhibit 1(c)).

Following the opinion of the Attorney-General, a submission was made to the Council of Ministers with a view to making an appointment to the post of Registration Officer. The Council of Ministers decided at its meeting of 13th October, 1983, to appoint Christodoulos Nicolaides, the interested party, to the post of Registration Officer.

The applicants were two of the unsuccessful candidates for appointment to the post of Registration Officer. One of them, namely, Makrides, was the litigant who successfully challenged the appointment of the interested party to the post made by the Public Service Commission. They assert, inter alia, in their applications, that the decision of the Council of Ministers is abortive for lack of competence to make the appointment. The action of the Council of Ministers is challenged as unconstitutional.

The foremost issue in these proceedings is the competence of the Council of Ministers to take the disputed action. The prominence of the issue of constitutionality led the Court, on the application of the parties, to set it down for preliminary determination. The first question that must be resolved con-

cerns the constitutionality of the action of the Council of Ministers in view of the express provisions of the Constitution on the subject and the constitutional structure of the powers of the State. A second question connected with the first, but ancillary thereto, is whether Cap. 85 does, in point of statute law, confer power upon the Council of Ministers to make appointments to the post of Registration Officer.

Counsel for the applicants argued that the decision of the Council of Ministers was taken in excess of their constitutional powers. Further he contested the submission that the Registration of Residents Law vested power in the Council of Ministers to make an appointment to the post of Registration Officer.

Counsel for the Attorney-General supported the legality of the action of the Council of Ministers warranted, in his contention, by the provisions of Cap. 85 validated by the necessity that led to the enactment of the Public Service Law—33/67.

The Public Service Commission, set up under Law 33/67, is a juridical entity different from the Public Service Commission envisaged by the Constitution; and as such, if I grasped the argument correctly, not subject to its provisions.

Counsel for the respondents espoused the opinion of Mr. Tornaritis that there was no constitutional impediment to a law such as Cap. 85, assigning authority to the Council of Ministers to make appointments in the public service. Further, it was submitted, some support for the proposition propounded by the respondents could be derived from decisions of the Supreme Court, especially from the cases of *Theodorides and Others* v. *S. Ploussiou* (1976) 3 C.L.R. 319, and *Hadjianastassiou* v. *The Republic* (1982) 3 C.L.R. 1173.

Contemplating the implications of the submission made on behalf of the Attorney-General, I inquired of counsel of the Republic whether the logic of the reasoning advanced in support of the decision does not inexorably lead to the proposition that competence may be entrusted by law to the Council of Ministers to make appointments, any number of them, to any branch of the civil service. If this proposition is sound in law, it must mean that the order envisaged by the Constitution with regard to the civil service has languished. To my question I received no clear answer, I was merely reminded

that in proceedings under Article 146.1 the task of the Court is confined to the examination of the sub judice decision. This, of course, should not stop a Court of law from debating the implications of a submission or drawing attention to repercussions likely to flow from the acceptance of a given proposition.

Counsel for the interested party adopted the position put forward by counsel for the respondents, but was more guarded in visualizing the implications of acceptance of the submission that it is in order to acknowledge competence to the Council of Ministers to make appointments in the public service.

The Council of Ministers and the Civil Service under the Constitution.

Under the Constitution, competence to make appointments and generally provide for the composition of the public service vests exclusively in a Body separate and independent of the executive branch of government, styled the Public Service Commission. A specific chapter of the Constitution under that part providing for the establishment of offices of the State defines comprehensively the competence and powers of the independent body to which competence vests over every matter relevant to the public service. Public service is defined by Article 122 of the Constitution in the widest terms. It includes every office forming part of the civil service of the State.

A comparison of the powers vested, on the one hand, to political offices of the State, the Council of Ministers and Ministers of the State, defined in Part III of the Constitution, with those entrusted to the Public Service Commission, on the other clearly suggests that the makers of the Constitution intended to establish a clear separation between the competence of holders of political office and the Public Service Commission. This separation was proclaimed by the Full Bench of the Supreme Court as a vital feature of constitutional order, intended to safeguard the public service from political influence—*Charilaos Frangoulides* v. *The Republic* (1966) 3 C.L.R. 676. An attempt made in that case by a Minister to assume the duties of a public officer was deplored and declared unconstitutional because it involved a constitutionally impermissible fusion of powers.

Clearly the Constitution intended to distance the civil service

from the political branch of government, judged necessary in the interest of the mission of the civil service, principally consisting of a duty to enforce the laws in a fair and impersonal manner. The supremacy of the Law is in that way ensured laying the foundations for the rule of law. A civil service impersonally dedicated to the service of the public is an invaluable asset for the well being of the country. The assumption of competence by the political branch of government over the staffing of the civil service would inevitably compromise the impartiality of the service with corresponding loss of the faith of the public in its mission and efficacy.

The assumption of competence and the exercise of power by the Council of Ministers in relation to appointments in the public service is patently unconstitutional. It contravenes not only express provisions of the Constitution but defies the constitutional framework as to the position, status and composition of the civil service.

The Law of Necessity—The Public Service Commission under Law 33/67.

For the Attorney-General a two-fold argument was raised in support of the decision founded on the law of necessity. First, the Public Service Commission set up under Law 33/67 is a body different from its counterpart under the Constitution. Second, the collapse of the Public Service Commission set up under the Constitution brought about by the departure of the Turkish members of the Commission, led to the eclipse of the constitutional body provided for by Article 124 of the Constitution. The only similarity between the eclipsed Public Service Commission and the synonymous body set up under Law 33/67 lies in their name. Both submissions rest on the premise that the events making inert the constitutional organ or institution of the Public Service Commission justified the invocation of the doctrine of necessity to the extent of legitimizing the enactment of section 5 of Law 33/67 making the competence of the Commission set up thereunder dependent on the vestiture of competence in relation to the public service to bodies other than the Public Service Commission. And that, in the submission of counsel for the Attorney-General. included the Council of Ministers.

The necessity to bridge the gap created by the departure of

Turkish members of the Public Service Commission was judicially recognized in *D. Theodorides & Others* v. *S. Ploussiou* (1976) 3 C.L.R. 319. Nothing said in the above case lends support to the sweeping statement that the competence of the Commission set up under Law 33/67 should be any different from that of the Commission envisaged by the Constitution. On the contrary, the whole approach of the Court suggests that departure from the Constitution is only justified so far as necessary by the events that neutralized the functioning of the Public Service Commission. The Court was concerned to examine the justification of mechanism evolved to make functional constitutional institutions that ceased to operate because of the withdrawal of Turkish members. What was decided is that substitute mechanisms need not correspond in composition to those envisaged by the Constitution fashioned to ensure participation of Greeks and Turks. There are powerful dicta that legislation enacted in the name of necessity must not deviate from the Constitution beyond the extent strictly warranted by the necessity. In this spirit, and subject to these limitations, Law 48/63 regulating, inter alia, appointments of personnel at the Central Bank, gained legitimacy in the necessitous circumstances created by the events of 1963–1964. On the other hand, nothing was said to blur the effect of the constitutional command that political authorities should have nothing to do with appointments in the public service.

Another case cited in support of the case for the Republic is that of *Hadjianastassiou* v. *The Republic* (1982) 3 C.L.R. 1173. Here again Triantafyllides, P. took pains to ascertain whether deviation from the provisions of Article 124.6(2)(c) of the Constitution as to qualifications of members sanctioned by section 4(5) of Law 33/67 was justified by the necessity leading to the enactment of Law 33/67. Thus suggesting that the legitimacy of the provisions of Law 33/67 must be tested by reference to the Constitution and the necessity invoked to justify departure therefrom.

In the leading case of the *Attorney-General of the Republic* v. *Mustafa Ibrahim*, 1964 C.L.R. 195, acknowledging the existence of circumstances justifying recourse to the exceptional juridical measure of necessity, it is made clear that invocation of the doctrine is only justified in the interest of sustaining

constitutional order That is, to improvise machinery in order to make possible the functioning of institutions provided for by the Constitution made inert by the withdrawal of Turkish members whose participation was postulated as necessary by the Constitution. And in that way prevent, in the interest of social order, the threatened collapse of vital constitutional organs of the State.

The principles underlying the decision in *Ibrahim* were reaffirmed by the Full Bench of the Supreme Court in *Aloupas* v. *National Bank* (1983) 1 C.L.R. 55. As I had occasion to explain, the doctrine of necessity is not a means of supplanting, but reinforcing the rule of law, in the interest of social order. The law of necessity is not, as indicated, antagonistic to the rule of law, but a means of underpinning. Then it was observed:

> ".....The Judiciary is charged to ensure that the measures taken are a genuine response to a necessity and, further, that they go no further than the necessity warrants. Judicial control is a hedge against arbitrary invocation of necessity as a justification for legal measures, as well as a hedge against abuse of necessity by taking measures uncalled for by the necessity.....(p. 78, *Aloupas* (supra))

Triantafyllides, P., who expressed the majority view on the subject, put the matter in this perspective (p. 64):

> "Of course, resort to any legislative measures, as aforesaid, is and should, always, be subject to judicial control so as to ensure that such measures are justified by the calamity in relation to which they have been enacted".

Hadjianastassiou, J. shared the view that the doctrine of necessity aims to serve and not defeat the rule of law and measures taken in that direction remain subject to judicial control in order to ward off the possibility of abuse.

In *Rita Messaritou* v. *The Cyprus Broadcasting Corporation* (1972) 3 C.L.R. 100, A. Loizou, J., emphasized that the doctrine of necessity is primarily concerned with the filling of the operational vacuum in the running of essential institutions of the State. Its invocation is justified if the aim is to fill the gap by setting up substitute mechanisms to make constitutional organs operational.

Judicial pronouncements in a number of recent cases strongly suggest the Public Service Commission provided for by Law 33/67 is a substitute for the Public Service Commission envisaged by the Constitution and consequently a body with identical competence. In *Kazamias* v. *The Republic* (1982) 3 C.L.R 239, Savvides, J., dismissed the suggestion that disciplinary power over civil servants could be exercised except by the Public Service Commission and then subject to its competence as defined in the Constitution. Hence he struck down as illegal the assumption of power by the Council of Ministers to exercise, be it indirectly, disciplinary control over public officers under the provisions of sections 6(f) and 7 of the Pension Law, Cap. 331 (as amended). Guided by similar considerations, I pointed out in *Ioannis Solomou* v. *The Republic** that there can be no departure from the Constitution with regard to the competence or powers of the Public Service Commission except to the extent strictly necessary to enable constitutional organs to carry out the functions entrusted to them by the Constitution (Decision given on 29th March, 1983, not yet published). More consequent still are observations made in the case *The President of the Republic* v. *Yiannakis Louca & Others* (delivered on 21st March, 1984, not yet published)**. There are powerful dicta that the authorities of the State must re-examine the provisions of section 4(3) of Law 33/67 in view of, as one may surmise, their apparent conflict with constitutional provisions on security of tenure of members of the Public Service Commission (see the concluding observations in the judgment of A. Loizou, Savvides and Stylianides, JJ.). In my dissenting judgment, not on the above points, I was more explicit on the need to fashion the provisions of section 4(3) of Law 33/67 to conform with the provisions of Article 124.5 of the Constitution.

No suggestion has been made in this case that any reason whatever necessitated departure from the provisions of the Constitution with regard to the exclusive competence of the Public Service Commission to make appointments in the public service and far less that any need arose to entrust such power to the Council of Ministers in defiance to constitutional order Consequently, the action of the Council of Ministers, under

* Now reported in (1984) 3 C.L.R. 533

** Now reported in (1984) 3 C.L.R. 241

question in the present case, was unconstitutional. It was taken in excess of the powers of the Council of Ministers and in abuse of those of the Public Service Commission.

To the extent that section 5 of Law 33/67 envisages the entrustment of power to make appointments in the civil service to bodies other than the Public Service Commission, it must be read and applied subject to the Constitution. Any such body other than the Public Service Commission must be a body analogous to the Public Service Commission functioning within the framework of the Constitution, separate and independent from the executive branch of government. As indicated in *Ekdotiki Eteria* v. *Police* (1982) 2 C.L.R. 63, the legislature must be presumed to legislate within the constitutional framework and not outside it. Only when this fundamental rule of construction cannot be reconciled with the wording of statute, should the Court conclude there is a violation of the Constitution and make an appropriate declaration of unconstitutionality.

In the absence of facts founding necessity to legislate in deviation of the provisions of the Constitution respecting the competence of the Public Service Commission as well as the constitutional framework instancing holders of political office from the manning of the civil service, the purported exercise of competence by the Council of Ministers in relation to the appointment of Registration Officer was wholly abortive. It could not be countenanced except as a decision taken in excess of the powers of the Council of Ministers and in abuse of those of the Public Service Commission.

The Registration of Residents Law, Cap. 85—*Applicability after introduction of the Constitution.*

Irrespective of objections to the assignment of competence to the Council of Ministers, under any guise, to make appointments in the public service, there is yet one more objection to the validity of the appointment under consideration. It is this: The law under which power was claimed to make the disputed appointment did not entrust, as suggested, such authority to the Council of Ministers. Cap. 85 was enacted before independence. Its validity after independence depended on its compatibility with the provisions of the Constitution in the first place and in the event of incompatibility on the amenity

to streamline its provisions in order to bring it into conformity with the Constitution.

Therefore, the power that vested in the "Governor" to make appointments to a post in the civil service was obnoxious to the constitutional framework and incompatible with the provisions of Article 125.1 of the Constitution. As such it ceased to have any effect upon the introduction of the Constitution and lapsed into oblivion. Upon that a second question arises whether by necessary modification it could be brought into conformity with the Constitution, as provided in Article 188.1. The amenity to make such adjustment discernible on the examination of the provisions of the individual statute is a question for the Courts. The answer, here, is in the affirmative. Without thwarting its fabric, we could read "Public Service Commission" for "Governor". It is in this form that Cap. 85 survived the Constitution and as such fell to be applied by the authorities of the State.

The amendment of Cap. 85 by virtue of the provisions of section 2(a) of Law 59/71 could have no effect upon the provisions of section 3(1) in its modified form, unless, of course, we are to presume that the legislature intended to cast Cap. 85 afresh in a manner offending the Constitution. This is not at all a necessary corollary for the amendment was consequential in relation to the application of other aspects of Cap. 85, for example, section 5(2)(a) of the law; ensuring thereby that members of the Council of Ministers were exempted from the duty to register under the provisions of the law.

The misinterpretation of Cap. 85 and misconstruction of its provisions is yet another reason for annulling the decision.

I conclude by drawing attention to the constitutional imperative that holders of political office should not, under any guise, take part in the manning of the civil service. The separation of political government from the civil service is constitutionally entrenched. It is premised on the understanding that a civil service, immune from influence with regard to its composition from the holders of political office, can best discharge its mission. A mission trusting civil servants to administer in the name of the law and serve the public impersonally. The allegiance of civil servants must be to the State as an organic entity and its

democratic institutions. By sustaining constitutional order in this area, the civil service is pledged to the rule of law. This order of things, constitutionally ordained, will be undermined by attempts to institutionalize, as was done in this case, participation of political government, in the selection of civil servants. It imports the risk of making the civil service subservient to the political government of the day and subject to political patronage. Such a departue from the Constitution cannot be countenanced except as unconstitutional, which is precisely how I have countenanced it in this case.

The decision is annulled.

Let there be no order as to costs.

Sub judice decision annulled.
No order as to costs.