

1984 November 13

[TRIANTAFYLIDIS, P., HADJIANASTASSIOU, A. LOIZOU,
MALACHTOS, DEMETRIADES, JJ.]

ANDRESTINOS PAPADOPOULLOS,

Appellant,

v.

THE PUBLIC SERVICE COMMISSION,

Respondent.

(Revisional Jurisdiction Appeal No. 297).

Public Officers—Promotions—Qualifications—Additional to those
required by the Scheme of Service and which are not spe-
cified therein as an advantage—Do not indicate by them-
selves a striking superiority—Reasonably open to the
5 respondent Commission to promote the interested party
instead of the appellant, in spite of his superior academic
qualifications, in view of the contents of the confidential
reports, the recommendations of the Head of the Depart-
ment and the seniority of the former.

10 Constitutional Law—Constitutionality of legislation—Principles
applicable—Court not concerned with the motives, policy,
wisdom or expediency of legislation but only with its consti-
tutionality—Regulation 15 of the Foreign Service of the
15 Republic (Qualifications Required for Appointment or Pro-
motion, Duties and Functions of Each Post) Regulations,
1966 (as amended) not unconstitutional.

The appellant and the interested parties, all holding the
post of Secretary "A" in the Ministry of Foreign Affairs,
were candidates for promotion to the post of Counsellor
20 or General Consul "B", a promotion post. The Public
Service Commission having promoted the interested parties
in preference and instead of the appellant, the latter
challenged the validity of the promotions by means of a
recourse. The trial Judge dismissed the recourse and hence
25 this appeal. All the candidates possessed the qualifications

required by the relevant scheme of service but appellant had impressive academic qualifications. The interested parties were senior to the appellant and they were recommended for promotion by the Head of Department.

Regulation 15 of the Foreign Service of the Republic (Qualifications Required for Appointment or Promotion, Duties and Functions of Each Post) Regulations, 1966 as amended by the Foreign Service Regulations of 1980 provided as follows: 5

“Irrespective of any provision of these Regulations relating to the required academic qualifications for each post, a person serving in the Foreign Service of the Republic on the 11th August, 1966, may be promoted in deviation of this regulation if the post to which he will be promoted is not higher than the post of Counsellor or General Consul ‘A’ and his career and successful service would justify such deviation. Provided that an Officer may be promoted on the strength of this provision to the post of Minister Plenipotentiary if there exist 10 years, at least, successful service in the post of Counsellor”. 10 15 20

And section 8 of the Foreign Service of the Republic Law, 1960 (Law 10/1960) provided:

“Irrespective of the provisions of the present law and for facilitating the quick establishment and function of the Foreign Service, the first appointments in it may be made without a strict compliance to the provisions of the present law, especially to those about qualifications for appointment”. 25

Counsel for the appellant mainly contended: 30

- (a) That there has been established striking superiority of the appellant over all other interested parties and in particular Tefkros Loizou and Christos Ioannou who do not possess any academic qualifications, his striking superiority stemming from his superior academic qualifications, his extensive experience in various posts abroad, his authorship in numerous publications and generally his service in the Ministry. 35

(b) That the above regulation 15 is unconstitutional as offending the principles of equality and or creating discrimination between candidates competing for higher posts in the diplomatic service and or reducing the level of the standard of the officers in the service.

Held, per A. Loizou, J., Hadjianastassiou and Demetriadis J.J. concurring, Triantafyllides, P. and Malachos J. dissenting:

(1) That on the totality of the circumstances, the sub-judice decision was reasonably open to the respondent Commission in view of the contents of the confidential reports, the recommendations of the Head of the Department and the seniority of the candidates; that it is a duly reasoned decision and unlike the case where a qualification constitutes an advantage when cogent reasons must be given for ignoring same or at least the reasons for doing so can clearly be discerned from the record and are borne out from the material before the Commission (*Tourpekki v. Republic* (1973) 3 C.L.R. 593 distinguishable).

(2) *Held, further*, that possession of academic qualifications additional to those required by the scheme of service, which are not specified in the scheme of service as an advantage, should not weigh greatly in the mind of the Commission who should decide in selecting the best candidate on the totality of the circumstances before them; and that additional academic qualifications to those provided by the scheme of service do not indicate by themselves a striking superiority.

(3) That regulation 15 is not unconstitutional because it does not offend any known principle and does not, by any means, create discrimination; that regarding the allegation that the standard of the diplomatic service is thereby lowered, the principle of constitutional interpretation is that this Court is not concerned with the motives, policy, wisdom or expediency of the legislation, but only with its constitutionality (see *The Board for Registration of Architects and Civil Engineers v. Kyriakides* (1966) 3 C.L.R. p. 640); and that, on the contrary, a fair opportunity for advancement is afforded to those already in the service and who entered same at a time when as the law puts it, it

had to be facilitated for quick establishment and functioning.

Appeal dismissed.

Cases referred to:

- Papadopoulos v. Republic* (1982) 3 C.L.R. 1070; 5
- HadjiYianni and Others v. Republic* (1983) 3 C.L.R. 1445;
- Petrides and Another v. Republic* (1982) 3 C.L.R. 914
at pp. 921, 924;
- Tourpekki v. Republic* (1973) 3 C.L.R. 193;
- Hjiloannou v. Republic* (1983) 3 C.L.R. 1041 at p. 1046; 10
- Board for Registration of Architects and Civil Engineers
v. Kyriakides* (1966) 3 C.L.R. 640;
- HjiSavva v. Republic* (1982) 3 C.L.R. 76;
- Bagdades v. Central Bank of Cyprus* (1973) 3 C.L.R.
417 at p. 428; 15
- Republic v. Petrides* (1984) 3 C.L.R. 378 at p. 389;
- Smyrnios v. Republic* (1983) 3 C.L.R. 1202 at p. 1208;
- Tantas v. Public Service Commission* (1983) 3 C.L.R.
1430 at p. 1437;
- Vourkos v. Republic* (1984) 3 C.L.R. 1442 at p. 1449; 20
- Constantinides v. Republic* (1984) 3 C.L.R. 567
at pp. 572, 573;
- Kokkinos v. Republic* (1984) 3 C.L.R. 588 at p. 592;
- Georghiou v. Republic* (1976) 3 C.L.R. 74 at p. 81;
- Chimonas v. Republic* (1982) 3 C.L.R. 111 at p. 123; 25
- Marathevtou v. Republic* (1982) 3 C.L.R. 1088 at p. 1096;
- Makrides v. Republic* (1983) 3 C.L.R. 622 at p. 635.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Pikis, J.) given on the 29th October, 1982 (Revisional Jurisdiction Case No. 488/81)* where-
 5 by appellant's recourse against the promotion of the interested parties to the post of Counsellor or Consul "B" in preference and instead of the applicant was dismissed.

A. *Pandelides*, for the appellant.

A. *Vladimerou*, for the respondent.

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Cur. adv. vult.

TRANTAFYLLIDES P.: The first judgment will be delivered by Mr. Justice A. Loizou, J.:

A. LOIZOU J.: This is an appeal from the judgment of a Judge of this Court who in the first instance tried the
 15 recourse and dismissed same for the reasons given therein, after referring to the facts of the case and numerous authorities that cover the issues. The lucidity of his judgment which has already been reported as *Andrestinos Papadopoulos v. The Republic of Cyprus* (1982) 3 C.L.R. p.
 20 1070, renders unnecessary our answering the various points raised which were a mere repetition of what was argued before him and with the answers to which we are in agreement.

I shall refer briefly to the facts and deal with what we
 25 feel is in substance the main complaint of the appellant.

The appellant and the six interested parties were all holding the post of Secretary 'A' in the Ministry of Foreign Affairs where the filling of six vacant posts of Counsellor or General Consul 'B', a promotion post in its
 30 establishment, was authorized. A Departmental Board was set up under section 36 of the Public Service Law 1967 (hereinafter to be referred to as the Law) which in due course submitted its report to the respondent Commission and set out therein its choice of 11 candidates who were
 35 found to possess the required qualifications under the relevant scheme of service and recommended them for se-

* Reported in (1982) 3 C.L.R. 1070.

lection for promotion to the said post. Among them were the six interested parties and the appellant.

The then Director-General of the Ministry of Foreign Affairs, Mr. George Pelagias, was invited and was present at the meeting of the respondent Commission at which the sub judice decision was reached. In his capacity as the Head of Department in which the vacancies existed, he is recorded in the relevant minute of the Commission of the 24th July 1981 to have made the following observations and recommendations:

“Given that in the place of Secretary ‘A’ there serve Officers since 1976 of which two do not possess academic qualifications as the others, but they have successful service, he would not wish to refer to other facts except the seniority and the performance. The service of the said two Officers, namely, Messrs. Tefkros Loizou and Christos Ioannou, had been fully satisfactory, both at Headquarters as well as abroad, where they are serving since a long time, he himself being very satisfied with their performance. The other Officers have also academic qualifications. They are recommended for promotion Messrs. Tefkros Loizou, Christos Ioannou, Georghios Georghiadis, Paedon Paedonos—Vadet, Nicolaos Makris and Andreas Pirishis.”

The minute of the respondent Commission notes then the withdrawal from the meeting of the Director-General and that it itself proceeded to evaluate and compare among themselves the candidates and it reads:

“The Commission noted that Messrs. Loizou and Ioannou do not possess academic qualifications. Yet it adopted the recommendation of the Head of the Department that in view of their long and successful service in the Ministry of Foreign Affairs and their high rating in the Annual Confidential Reports, they deserve promotion.

The Commission having examined the material factors from the personal files of the candidates and the confidential reports about them, and having taken

into consideration the conclusions of the Departmental Board and the views and recommendations of the Director-General of the Ministry of Foreign Affairs, considered that the following candidates are superior to the rest on the basis of the totality of the established criteria (merit, qualifications, seniority), found them suitable and decided to promote them to the permanent (ordinary budget) post of Counsellor or Consul General 'B' as from 1st August 1981."

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10 The basic complaint of the appellant, both before the learned trial Judge and in this Court, as put by his counsel, is that there has been established striking superiority of the appellant over all other interested parties and in particular Tefkros Loizou and Christos Ioannou who do
15 not possess any academic qualifications, his striking superiority stemming from his superior academic qualifications, his extensive experience in various posts abroad, his authorship in numerous publications and generally his service in the Ministry. Connected with this ground, are
20 the other grounds raised in this appeal regarding the failure of the respondent Commission to make due and proper inquiry, that the subject decision was not duly reasoned and the complaints of the appellant that the learned trial Judge was wrong in finding that the possession of so many academic qualifications by the appellant
25 give only a marginal advantage, that the fact that the academic qualifications are only an advantage when they are so defined in the scheme of service, that he ignored the fact that the confidential reports of the interested parties and the applicants were prepared by different persons
30 and that the difference in the evaluation is insignificant and or that the ratings which have been made by different persons do not constitute an accurate measure and that the conclusion of the trial Judge that the small seniority
35 of the interested party Tefkros Loizou was not sufficient to outweigh the academic qualifications of the applicant and his great experience.

Furthermore, it has been complained that regulation
15 of the Foreign Service of the Republic (Qualifications Required for Appointment or Promotion, Duties and Functions of Each Post) Regulations, 1966 as amended by the
40 Foreign Service Regulations of 1980 published in

Supplement No. 3 to the Official Gazette of the Republic No. 1511 dated 20th June 1980, is unconstitutional as offending the principles of equality and or creates discrimination between candidates competing for higher posts in the diplomatic service and or reduce the level of the standard of the officers in the service.

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Regulation 15 provides:

“Irrespective of any provision of these Regulations relating to the required academic qualifications for each post, a person serving in the Foreign Service of the Republic on the 11th August, 1966, may be promoted in deviation of this regulation if the post to which he will be promoted is not higher than the post of Counsellor or General Consul ‘A’ and his career and successful service would justify such deviation. Provided that an Officer may be promoted on the strength of this provision to the post of Minister Plenipotentiary if there exist 10 years, at least, successful service in the post of Counsellor.”

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I consider it unnecessary to refer to the career and qualifications of the interested parties who possess academic qualifications and who like the two interested parties, Tefkros Loizou and Christos Ioannou, are senior to the appellant by virtue of their last promotion and who have longer overall service also than him. Tefkros Loizou entered the Foreign Service as Attache ‘A’ on the 18th May, 1961, by virtue of the provisions of the Foreign Service of the Republic Law, 1960 (Law No. 10 of 1960) section 8 of which provided that:

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“Irrespective of the provisions of the present law and for facilitating the quick establishment and function of the Foreign Service, the first appointments in it may be made without a strict compliance to the provisions of the present law, especially to those about qualifications for appointment.”

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It is obvious from this provision that because of the then Colonial status of the Island from which it emerged into Independence after the liberation struggle a Foreign Service did not exist and had to be set up urgently to

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meet the needs of the newly born Republic. For that purpose a relaxation was introduced by law regarding the possession of academic qualifications and other qualifications. This fact cannot be ignored and the non-possession
5 of academic qualifications could not be held against the people who then entered the service, nor could it be a cause for impeding their progress if otherwise their performance is a satisfactory one.

The appellant, whose academic qualifications are impressive and whose participation in international conferences formidable, first entered the Diplomatic Service on the 1st June, 1967, as an Attache 'A' unestablished and became established on 1st March 1969. He and the two interested parties were promoted to Secretary 'B' or
15 Vice Consul on 15th February 1971, along with other Attaches, and then they were promoted to the post of Secretary 'A' or Consul on the 1st January 1976, whereas the appellant was promoted to that post on the 1st April 1977, being junior to all other interested parties, both as
20 regards promotion to the last post and length of service.

Having considered the totality of the circumstances, I find that the sub judice decision was reasonably open to the respondent Commission in view of the contents of the confidential reports, the recommendations of the Head of
25 the Department and the seniority of the candidates. It is a duly reasoned decision and unlike the case where a qualification constitutes an advantage when cogent reasons must be given for ignoring same or at least the reasons for doing so can clearly be discerned from the record and are borne out from the material before the Commission. (See
30 *Hadjiyianni and other v. The Republic* (1983) 3 C.L.R. p. 1445; *Petrides and Another v. The Republic* (1982) 3 C.L.R. p. 914, where as regards the complaint that no special reasoning was given for ignoring the additional
35 qualifications of the applicants in those cases and where reliance was placed on *Vasso Tourpekki v. The Republic* (1973) 3 C.L.R. 593, it is stated at p. 921:-

"It is clear from the material before me that the respondent Commission interpreted and applied the
40 relevant Scheme of Service in a proper manner and

evaluated correctly the qualifications of the applicants and the interested party along with those of all other candidates, having duly inquired into the matter. This appears from the minutes in which its due and cogent reasoning can be found and which in any event is duly supplemented by the material in the relevant files. It is stated therein that it considered the qualifications and experience of the candidates interviewed, as well as their performance during the interview, which included their personality, alertness of mind, general intelligence and the correctness of answers to questions put to them etc. 5 10

It is correct that the respondent Commission does not make any particular reference to what under the relevant scheme is considered to be an additional qualification, but that applies to all the candidates as none has been credited with it and it does not appear and no mention is made anywhere that the position of such additional qualification has in any way weighed with them when preferring the interested party as against the other candidates." 15 20

And at page 924, where as regards the case of *Tourpekki* the following is said:

"The case therefore of *Tourpekki* (supra) is distinguishable as in that case the applicant appeared to possess a qualification which might be considered under the relevant scheme, an additional advantage, which was not possessed by the interested party chosen in her stead and no reasons were given for so ignoring such an advantage. No doubt in the present case, the Commission carried out a due inquiry and gave sufficient reasons on the subject." 25 30

Reference may also be made to the judgment of the Full Bench of this Court in *Myrianthi Hadjioannou v. The Republic* (1983) 3 C.L.R. 1041, where Stylianides, J., in delivering the judgment of the Court said at p. 1046: 35

"Possession of academic qualifications additional to those required by the scheme of service, which are not specified in the scheme of service as an advantage,

should not weigh greatly in the mind of the Commission who should decide in selecting the best candidate on the totality of the circumstances before them. Additional academic qualifications to those provided by the scheme of service do not indicate by themselves a striking superiority. (See *Elli Chr. Korai and Another v. The Cyprus Broadcasting Corporation*, (1973) 3 C.L.R. 546; *Andreas D. Georghakis v. The Republic*, (1977) 3 C.L.R. 1; *Evangelos HajiGeorghiou v. The Republic*, (1977) 3 C.L.R. 35; *Cleanthis Cleanthous v. The Republic*, (1978) 3 C.L.R. 320).

As was aptly observed by Hadjianastassiou, J., in *Bagdades v. The Central Bank of Cyprus*, (1973) 3 C.L.R. 417 at p. 428:-

“Had it been otherwise, I would be inclined to the view that there would be no reason in inviting other candidates for that particular post once they knew in advance that amongst the candidates there was a person with higher qualifications.”

Regarding the unconstitutionality of regulation 15, I am of the opinion that there is very little to be said, it merely reproduces or elaborates the original provisions of the law and extends it to cover also the cases of promotion to Minister Plenipotentiary. No known to me principle is offended and by no means discrimination is created. As regards the allegation that the standard of the diplomatic service is thereby lowered, the short answer that can be given by me is to repeat the principle of constitutional interpretation that this Court is not concerned with the motives, policy, wisdom or expediency of the legislation, but only with its constitutionality. (See, *The Board for Registration of Architects and Civil Engineers v. Kyriakides*, (1966) 3 C.L.R. p. 640).

On the contrary a fair opportunity for advancement is afforded to those already in the service and who entered same at a time when as the law puts it, it had to be facilitated for quick establishment and functioning. Needless to say that the appellant in this case has, since the sub judice decision was taken, been promoted as well, but yet it was

thought by him necessary to pursue this case to the end.

For all the above reasons this appeal should be dismissed, but in the circumstances I would make no order as to costs.

HADJIANASTASIOU J.: I agree with the judgment of Mr. Justice Loizou. 5

DEMETRIADES J.: I have had the opportunity to read the judgment of my brother Judge Mr. Justice A. Loizou and I agree fully with him that this appeal should be dismissed. 10

MALACHTOS J.: This is an appeal by the applicant in Recourse No. 159/81 against a first instance judgment of a Judge of this Court by which his claim for annulment of the decision of the Public Service Commission of the 24th July, 1981, to promote the interested parties namely, 15
1. Phaedon Phaedonos-Vante, 2. George Georghiades, 3. Christos Ioannou, 4. Tefkros Th. Loizou, 5. Nicolaos Makris, and 6. Andreas Pirishis, to the post of Counsellor or Consul-General B in the diplomatic service of the Ministry of Foreign Affairs of the Republic, was dismissed. 20

According to the Foreign Service of the Republic (Required Qualifications of Appointment or Promotion, Duties and Responsibilities of Each Post) Regulations of 1966 to 1980, which were issued by the Council of Ministers under section 8 of the Foreign Service of the Republic Laws of 1960 to 1980, the post of Counsellor or Consul-General B is a promotion post from the immediately lower post of Secretary A or Consul and is combined with the post of Counsellor or Consul-General A and its duties and responsibilities are: 25
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He is in charge of a directorate or one or more departments of the Ministry of Foreign Affairs or assists or replaces the officer in charge of such directorate.

He works for the promotion of the political, economic, cultural and other interests of the Republic as well as for the development and improvement of the relations of the Republic with other States and International Organiza- 35

tions. In case of his being posted in a diplomatic mission, helps and advises the head of the mission and replaces him in case of need.

5 If the exigencies of the service so require he undertakes as the head of a diplomatic mission abroad. In his capacity as a Consul, exercises all the duties which derive from the generally recognised rules of International Law and the International Practice of the Laws and Regulations of the Republic and the Consular Conventions.

10 Within the scope of his duties comes into contact with diplomatic employees and service personnel of other States as well as with officials of International Organizations and submits regularly reports, memoranda and other submissions and carries out current diplomatic work.

15 He performs any other duties which might be assigned to him.

The required qualifications are the following:

- (a) At least two years successful service in the post of Secretary A or Consul.
- 20 (b) administrative and organizing ability. Integrity of character, right judgment, initiative, zeal and ability of undertaking responsibility.

The post of Secretary A or Consul, which both the applicant and the interested parties were holding at the time before the promotions, with which we are concerned,
25 is also a promotion post from the immediately lower post of Secretary B or Vice Consul which is also a promotion post from the immediately lower post of attaché.

The required qualifications for promotion to the post of
30 Secretary B or Vice Consul are:

- (a) at least 4 years successful service in the post of attaché; and
- (b) administrative and organizing ability. Integrity of character, right judgment, initiative, zeal and ability
35 of undertaking responsibility.

The post of attaché is a first entry post and its duties and responsibilities are:

Assists the Ministry of Foreign Affairs in the promotion of political, economic, cultural and other interests of the Republic, as well as the development and improvement of the relations generally with other States and International Organizations. He submits reports, memoranda and sub-
missions and he prepares or assists in the preparations of studies on various subjects. He performs any other duties which might be assigned to him.

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The required qualifications are:

- (a) a university degree or title in the appropriate subject (e.g. in law (including that of Barrister-at-Law), the political, Economic, Classical Sciences, etc.); 10
- (b) excellent knowledge of the Greek or Turkish Language and very good knowledge of the English Language. Good knowledge of the French or other foreign languages will amount to an additional qualification; 15
- (c) wide knowledge of the political and economic matters of Cyprus and satisfactory degree of knowledge and information on the international political and economic matters; 30
- (d) integrity of character, right judgment, initiative, zeal and ability of undertaking responsibility; and
- (e) success in a particular examination in writing, carried out by the Ministry of Foreign Affairs.

Since the last amendment of the Law and the Regulations in 1980 no one is eligible for appointment to the post of attaché or for promotion to a higher post unless he has the required qualifications for appointment to the post of attaché. There is only one exception which is provided by regulation 15, which reads as follows:

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“Irrespective of any provision of the present Regulations regarding the required academic qualifications of each post, a person in the Foreign Service of the Republic on the 11th August, 1966, can be promoted contrary to this provision if the post to which he will be promoted is not higher than the post of Counsellor or Consul-General A and his career and successful service could justify such deviation,

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Provided that a person in the service may be promoted on the basis of this decision to the post of Minister Plenipotentiary if there exists a ten years successful service in the post of Counsellor”.

5 The facts of the case, shortly put, are the following:

By letter dated 3rd September, 1980, the then Director-General of the Ministry of Foreign Affairs, Mr. George Pelaghias, informed the Chairman of the Public Service Commission that the Minister of Finance, among other things, gave his approval for the filling of six posts of
10 Counsellor or Consul-General B. As the said post is a promotion post from the immediately lower post of Secretary A or Consul, a departmental Board with Mr. Pelaghias in the Chair, was set up under section 36 of the
15 Public Service Law of 1967, which Board in its turn, nominated for promotion 11 candidates, in alphabetical order, including the applicant and the interested parties, out of 19 employees of the Ministry, who were serving in the post of Secretary A, as possessing the required qualifications by the relevant schemes of service. The remaining
20 8 employees were not eligible for promotion as their service in the post of Secretary A was less than the period of two years.

A meeting of the Public Service Commission was held
25 on the 1st June, 1981, where it was decided to adjourn the matter to the 24th July, 1981, and invite the Director-General of the Ministry to be present.

The relevant Minutes of the meeting of the 24th July, 1981, read as follows:

30 “Filling of six permanent posts of Counsellor or Consul-General B in the Foreign Service of the Republic (promotion post).

At the meeting present was the Director-General of the Ministry of Foreign Affairs, Mr. George Pelaghias, who expressed the following views and re-
35 commendations:

Given that in the post of Secretary A are serving employees since 1976, out of whom two of them

have not so many academic qualifications as the others, but they have successful service, he would not like to enter into other factors except to seniority and performance (epidosis). The service of these two employees, namely, Messrs. Tefkros Loizou and Christos Ioannou, has been fully satisfactory, both at home and abroad, where they have been serving for a long time, and he, himself, is very much satisfied with their performance. The other employees have also academic qualifications. They are recommended for promotion Messrs. Tefkros Loizou, Christos Ioannou, Georghios Georghiadis, Phaedon Phaedonos—Vante, Nicolaos Makris and Andreas Pirishis”.

After the withdrawal of the Director-General the Commission proceeded to the evaluation of the candidates and comparison among themselves.

The Commission noted that Messrs. Loizou and Ioannou did not possess university qualifications. In spite of that it adopted the recommendations of the Director-General that, in view of their long successful service in the Ministry of Foreign Affairs, and their high grades in the Annual Confidential Reports, they are entitled to promotion.

The Commission after examining the essential elements from the personal files of the candidates and their confidential reports and taking into consideration the conclusions of the departmental board and the views and recommendations of the Director-General of the Ministry of Foreign Affairs, came to the conclusion that the following are superior to the rest of the candidates on the basis of the established criteria as a whole (merit, qualifications, seniority), found them suitable and decided to promote them to the permanent posts of Counsellors or Consul-General B as from 1st August, 1981:

1. Vante Phaedonos Phaedon, 2. George Georghiadis, 3. Ioannou Christos, 4. Loizou Tefkros, 5. Makris Nicolaos, and 6. Pirishis Andreas.

It was the case for the appellant, before the trial Court and in this Court, that the Public Service Commission in

promoting the interested parties, did not carry out a proper inquiry, did not evaluate properly the merits, qualifications and service experience of the appellant and the interested parties, and did not select the best candidates. Furthermore, in view of his qualifications and generally, his career in the service, both at home and abroad, in international organizations, the appellant is strikingly superior to all interested parties.

According to the personal files and the confidential reports of the appellant and the interested parties, which were before the Public Service Commission at the time of taking the decision complained of, and were also produced as exhibits before the trial Court, the appellant was first appointed in the Foreign Service of the Republic on 1.6.67 and was promoted to the post of Secretary A on 1.4.77 and his qualifications are the following:

Morphou Gymnasium 1949 to 1955, Diploma in Literature University of Athens, Diploma in Law, University of Geneva, Certificate of the International Studies, Geneva, Certificate of The Hague Academy of International Law, BA Degree in Literature University of Athens, L1. B. Faculty of Law, University of Geneva, Associate Member of the International Peace Academy, Doctorate in Law University of Geneva, and Master of Philosophy Degree, University of London. He has also excellent knowledge of the English and French Language and very good knowledge of the German and Italian Language. He is also the author of the following publications:

1. To the Temptation of Joseph Pangalos, Hymn of Romanos Melodos (Text, translation, comments), Athens, 1961.

2. Contemporary International Life—Aspects and Problems, Nicosia, 1968.

3. Peace-making and Peace-keeping by the United Nations—Cyprus a Case Study, Nicosia, 1969.

4. Aspects juridiques et politiques de l'action des Nations Unies a Chypre, Nicosia, 1970.

5. Procedures for the Settlement of Disputes concerning

International Organizations Arising out of Treaties to which they are Parties, *Revue hellénique de droit international*, (1971).

6. Postwar International Relations—Framework and Landmarks, Nicosia, 1972. 5

7. The Maintenance of International Peace and the United Nations—A Legal Analysis, *International Relations*, (May 1975).

8. La pratique chypriote en matière de succession d'Etats aux trait Nicosia, 1976. 10

9. Multilateral Diplomacy within the Commonwealth—A decade of Expansion, Nicosia, 1979.

His professional experience is the following:

1. Research Assistant to Professor Tomadakis, University of Athens (1958-1960). 15

2. Journalist accredited to the European Office of the United Nations (1961-1966).

3. Member of the Cyprus Diplomatic Service since 1967. In charge of the International Treaties Section, Political Division, Ministry of Foreign Affairs (1967-1972). 20

4. Contributor to the Cyprus Broadcasting Corporation radio and television programmes on international affairs (1968-1972, 1977-1979).

5. Assistant Director, International Affairs Division, Commonwealth Secretariat, London (May 1972—August 1977). 25

6. Deputy Head, Second Political Division, Ministry of Foreign Affairs (September 1977—September 1978).

7. Head, International Organizations and Legal Affairs Department, Ministry of Foreign Affairs (September 1978—September 1979). 30

8. Counsellor, Permanent Mission of the Republic of Cyprus to the European Office of the United Nations, Geneva, (September 1979).

Interested party No. 1 Phaedon Phaedonos—Vante was first appointed in the Foreign Service of the Republic on 1.7.66 and was promoted to the post of Secretary A on 1.1.76 and he has the following qualifications:

- 5 Pancyprian Commercial Lyceum 1947 to 1953, Diploma of Pantios Higher School of Political Science, Faculty of Law University of Paris, Doctorate in Law, University of Paris, G.C.E. English Higher, History, Geography, Mathematics A and B, Turkish lower, Greek Higher, Italian
10 'O' Level, French 'O' Level, Modern Greek 'A' Level and Certificate in Russian Language (3 years).

Interested party No. 2, George Georghiades, was first appointed on 18.5.61 and was promoted to the post of Secretary A on 1.1.76. His qualifications are:

- 15 Greek Gymnasium Morphou 1948 to 1954 and Diploma in Law, University of Salonika.

Interested party No. 3, Christos Ioannou, was first appointed on 18.5.61 and was promoted to Secretary A on 1.1.76. His qualifications are:

- 20 Pancyprian Gymnasium 1951 to 1958 and Certificate in German Language.

Interested party No. 4, Tefkros Loizou, was first appointed on 18.5.61 and was promoted to Secretary A on 1.1.76. His qualifications are:

- 25 Pancyprian Gymnasium 1943 to 1945, Kyrenia Gymnasium 1945 to 1948 and Samuel's Commercial School 1948 to 1950.

- 30 Interested party No. 5, Nicolaos Makris was first appointed on 1.6.67 and was promoted to Secretary A on 1.1.76. His qualifications are:

Greek Gymnasium of Athens 1955 to 1960, Diploma of the Faculty of Economics and Social Science of the University of Louvain, Belgium 1960, to 1965.

- 35 Interested party No. 6, Andreas Pirishis, was first appointed on 1.4.63 and was promoted to Secretary A on 1.8.76. His qualifications are:

Commercial Lyceum 1952-1956, Pancyprian Gymnasium 1956 to 1958, and Diploma of Pantios Higher School of Political Science.

It is clear from the above that all interested parties were senior to the appellant. Interested parties Nos. 1, 2, 3, 4 and 5 were senior to the appellant by 15 months and interested party No. 6 by 8 months. 5

As regards their performance during the last two years preceding the promotions under consideration, i.e. 1979 and 1980, as it appears from their confidential reports, all interested parties, with the exception of interested party No. 4, Tefkros Loizou, were reported as excellent. Interested party No. 4 for the year 1979 was reported as excellent and for the year 1980 as very good. Also the appellant was reported for 1979 as excellent and for 1980 as very good. It should be noted here that his reporting officer for 1979 was Mr. George Pelaghias but for 1980 was a different one. 10 15

On the above facts and the addresses of counsel for the parties, the trial Judge issued his judgment dismissing, as stated earlier on, the recourse of the appellant. In that judgment, which is reported in (1982) 3 C.L.R. 1070 at page 1074, the trial Judge summarised the submissions and arguments of counsel as follows: 20

“The decision of the Commission is challenged by the applicant as ill-founded and, therefore, liable to be set aside for abuse of power. The Commission is charged with failure to carry out a proper inquiry into the suitability of the candidates, particularly with regard to the qualifications of the candidates, a failure that led the Commission, in the end, to overlook the striking superiority of the applicant over other candidates. Applicant’s striking superiority arose from his superior academic qualifications, his extensive experience in various posts abroad, his authorship of numerous publications and, generally, his service in the Ministry. These contentions are articulated in the address made on behalf of the applicant, where it is made clear that the fault of the Commission lies in their failure to pay due heed and evaluate in the proper perspective his extensive academic qualifications, and the superiority 25 30 35 40

they conferred upon him over other candidates, so conspicuous as to be striking. There is, however, no suggestion that any of the interested parties lacked the qualifications envisaged by the pertinent scheme of service, or that such a scheme stipulated additional academic qualifications as an advantage. His case is simply that his superior qualifications, coupled with his extensive experience in the service, made him strikingly superior to the other contestants for the posts to be filled. And to complete the picture with regard to the academic qualifications of the applicant, it must be noted that applicant had extensive academic qualifications whereas, two of the interested parties, namely Tefkros Loizou and Christos Ioannou, had no university qualifications. The remaining interested parties had, like the applicant, university qualifications but, arguably, the qualifications of the applicant were more extensive than those of the remaining three interested parties and probably comparable to those of Mr. Phaedonos.

The answer of the respondents to the recourse of the applicant is that he did not enjoy striking superiority to any of the interested parties and that superior academic qualifications as such did not entitle him to the preferment he contends for. In their submission, there is nothing to fault the way the Commission went about in discharging its task to select the most suitable candidates or the decision itself."

Pausing here for a moment, I must remark that although there was no suggestion that any one of the interested parties lacked the qualifications envisaged by the scheme of service or that such a scheme stipulated additional qualifications, as stated by the trial Judge, nevertheless, the fact remains that interested parties No. 3 and 4, namely Christos Ioannou and Tefkros Loizou, did not possess the required qualifications by the scheme of service, and that such scheme stipulated a good knowledge of French or other foreign language as an additional qualification. The above two interested parties were eligible for promotion by virtue of regulation 15 of the Foreign Service of the Republic (Required Qualifications of Appointment or Promo-

tion, Duties and Responsibilities of Each Post) Regulations 1966 to 1980.

As to what is the true meaning and effect of regulation 15, as well as the effect of the additional qualification, which, admittedly, was possessed by the appellant and was not possessed by some of the interested parties, I shall revert back later in this judgment. 5

In dealing with the concept of "striking superiority" the trial Judge made reference to the case of *HjiSavva v. The Republic* (1982) 3 C.L.R. 76, and stated at p. 1074: 10
"such superiority must emerge on a consideration of the worth of the candidates by reference to the criteria laid down by the Law for the evaluation of the suitability of the candidates for promotion or appointment i.e. merits, qualifications and seniority, and that such superiority cannot be established exclusively by reference to any one of the three criteria earmarked by the Law. Striking superiority must arise as an inevitable result from the assessment of the overall merits of the candidates, and in order to be striking, superiority must be self evident and strike one at first sight, so compelling as ignoring it would lead inexorably to a case of manifest injustice to a candidate's suitability for promotion." 15 20

And, further down, at page 1076 of this judgment, the trial Judge said: 25

"To decide whether a candidate has established a case of striking superiority, one must examine his merits, qualifications and seniority, and contrast them to those of the interested parties. We must, in turn, examine, in the sequence prescribed by law, the merits of the candidates, the most significant pointer to the candidates' suitability for promotion, then their qualifications and, lastly, their seniority. The merits of the candidates are primarily ascertainable, in the case of promotion, from their service record in the department where they serve. The confidential reports, designed to rate one's performance in every sphere of activity that counts for the service, constitute the best material for judging one's merits. Special prominence 30 35 40

5 must be given to the confidential reports of the two years preceding selection (see s. 44(3)). This provision serves to stress the importance of one's recent performance in the service as an indicator of his suitability for promotion.

10 The performance of the parties for the two years preceding the promotions is revealed in their confidential reports for the years 1979-1980, respectively. The applicant and the interested parties were equally rated for 1979. Their overall rating was excellent. But there were differences with regard to 1980. The applicant and one interested party, namely, Tefkros Loizou, were rated as "Very Good", whereas the remaining interested parties were reported upon as "Excellent". So, far from possessing superior merits to the extent reflected in the confidential reports, the applicant was inferior to five of the interested parties and equal to the sixth, Tefkros Loizou."

20 In dealing with the qualifications of the applicant and the interested parties the trial Judge at page 1077 said:

25 "The concept of qualifications, in the context of s. 44(2)—Law 33/67—is not solely confined to academic qualifications, but it extends to experience, particularly of a kind that makes him specially suitable for the discharge of the duties envisaged by the scheme of service. In identifying one's qualifications, authorship of one or more publications is a relevant consideration. Here, the applicant possessed superior academic qualifications to two of the interested parties, namely Tefkros Loizou and Christos Ioannou. Also, his academic qualifications were apparently superior to those of the remaining interested parties, except for Mr. Vadet Phaedonos who possessed comparable qualifications to the applicant. To the extent that these qualifications gave an edge to the applicant so far as relevant in accordance with what is said earlier in this judgment, such advantage was neutralised in relation to each one of the interested parties, with the exception of Tefkros Loizou. The latter's seniority in the service, would, in his case as well, eliminate the advantage, if

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any, that applicant enjoyed over Tefkros Loizou with regard to academic qualifications. Not that this edge could, under any circumstances, put it beyond the power of the Commission to appoint anyone of the interested parties. More so, as the interested parties had the recommendation of the departmental head, the Director-General, a ponderous factor. In my judgment, the contention of the applicant, that he enjoyed striking superiority over any of the interested parties, is totally unfounded.”

As regards the recommendations of the Director-General of the Ministry and the reasoning of the Public Service Commission, the judgment of the trial Judge at page 1078 reads as follows:

“The views of the Director-General were expressed in a somewhat elliptical form, so much so that, at first sight, one is apt to gain the impression that he paid no heed to the academic qualifications of the candidates. On closer examination, this is not so. In fact, he specifically stated that two of the candidates possessed no higher academic qualifications, and, in that way, drew the attention of the Commission to that aspect of the case. It is desirable, nonetheless, that civil servants, invited to assist the Commission in its deliberations, should be as explicit as possible about the competing merits of the parties, particularly how their merits, qualifications and experience, equip them with knowledge and skill for the discharge of the duties of the post under consideration. The form in which the recommendations of the Director-General were expressed in this case, though couched in summary terms, is not such as it might either mislead the Commission or convey a wrong picture as to the suitability of each candidate for promotion. Similar criticisms can be levelled at the reasoning of the Commission as well. Although the decision reveals the considerations they took into account, to the extent necessary to enable the Court to control the legality of the decision, as well as enable a party affected thereby to advise himself as to his rights, it falls, in my opinion, short of what is desirable. What the Commission must do in

each case, is to articulate as thoroughly as it is possible, the reasons that led it to a particular decision and not content itself with an enumeration of the criteria taken into account which, almost invariably, take the form of listing the criteria set down by the law. The Greek Council of State, by a series of decisions, enjoins administrative bodies trusted with decision making, to reason their decision in a way disclosing the reasons behind their decision. The facts of the case must be explicitly evaluated. They must not limit their reasoning to listing the guide-lines upon which they relied for their decision. (See, Conclusions from the Case-law of the Greek Council of State 1929-59, pp. 183, 187; Decisions of the Greek Council of State 810/47, 1637/50). The adequacy of the reasoning of public bodies and the conviction it carries, cannot but strengthen faith in the administrative process, a factor of very great significance for the image and effectiveness of administrative bodies".

20 Then the trial Judge at page 1079 concluded his judgment as follows:

25 "The above having been said, the reasoning of the decision is not inadequate to the extent rendering it liable to be set aside. The Commission had regard to the proper considerations for the choice of the most suitable candidates, as well as the views of Mr. Pelagias. The facts relevant to the merits, seniority and qualifications of the candidates, also emerge clearly and unquestionably from the files that were before the Commission, a source from which the reasoning of the Commission may be supplemented."

The fifteen grounds of appeal, as argued by counsel for the appellant, may be summarised as follows:

35 1. The trial Judge wrongly decided that the appellant was not strikingly superior to all the interested parties and, in particular, interested parties No. 3 and 4, Ioannou and Loizou.

2. The trial Judge wrongly decided that the decision of the Public Service Commission was duly reasoned.

3. The trial Judge wrongly decided that in promoting the interested parties the Public Service Commission carried out a proper inquiry but it simply adopted the recommendations of the Director-General of the Ministry, which were unsatisfactory and not in accordance with all the criteria laid down by the Law, and 5

4. Regulation 15 of the Foreign Service of the Republic (Required Qualifications of Appointment or Promotion, Duties and Responsibilities of Each Post) Regulations of 1966 to 1980, is unconstitutional as offending the principles of equality safeguarded by Article 28.1 of the Constitution which provided that "all persons are equal before the Law, the administration and justice and are entitled to equal protection thereof and treatment thereby". 10

The main argument of counsel for the appellant before us, which was the same before the trial Judge, was that the appellant, in view of his academic qualifications, should be considered as strikingly superior to all interested parties, except interested party No. 1, Phaedonos, against whom, with the leave of the Court, he withdrew the appeal. In particular, as regards interested parties No. 3 and 4, whose only qualification is a leaving certificate in secondary education, and are senior to the appellant by fifteen months can in no way outweigh the experience and the six university diplomas and degrees held by the appellant. 20 25

Counsel for the appellant further argued that the Public Service Commission promoted the interested parties No. 3 and 4; without comparing them with the other candidates, including the appellant, but merely because they had long and successful service in the Ministry and high grades, qualifications which are also possessed by the appellant. He also argued that the recommendations of the Director-General of the Ministry before the Commission were most unsatisfactory and contrary to section 44 of the Public Service Law of 1967 (Law 33/67) since the Director as it appears from the minutes of the Commission did not take into account the factor of qualifications. Lastly, he submitted that regulation 15 is unconstitutional as offending Article 28.1 of our Constitution. 30 35

Having gone through the record of proceedings before 40

the trial Judge and the personal files and confidential reports of the appellant and the interested parties, I must say straight away that I entirely disagree with the findings of the trial Judge that the Public Service Commission in promoting the interested parties, particularly interested parties 3 and 4, Ioannou and Loizou carried out a proper inquiry. It simply rubber stamped the recommendations of the Director-General of the Ministry, which were most inadequate, inaccurate and in a way misleading. The statement of the Director-General before the Public Service Commission that "given that in the post of Secretary A are serving employees since 1976, out of whom two of them have not so many academic qualifications as the others...", tends on the one hand to create the impression of much longer service in the post of Secretary A of those six candidates whom he recommended and who were actually promoted, than the other five, including the applicant, and, on the other hand, is inaccurate and misleading in a way as regards interested parties 3 and 4 that they possessed academic qualifications but not so many as the others, whereas in substance and in fact they possessed no academic qualifications in the real meaning of the word.

Although the trial Judge as far as promotions in the Public Service are concerned, exposes the legal situation as regards the recommendations of Heads of Departments and as regards the reasoning of the Public Service Commission in an excellent way, nevertheless he failed to apply it correctly to the facts and circumstances of the present case. It is abundantly clear from the minutes of the meeting of the Public Service Commission of the 24th July, 1981 that the Director-General of the Ministry in recommending interested parties 3 and 4, Ioannou and Loizou for promotion, did not take at all into account the factor of qualifications. This fact alone renders his views invalid and worthless and not only of a somewhat elliptical form as found by the trial Judge. This being so the Public Service Commission had to reject his recommendations there and then as it is not clear whether his recommendations would be the same had he taken into account the factor of qualifications. Instead of doing so the Public Service Commission rubber stamped, as I have already said, the views of the Director-General without carrying out a proper inquiry to

select the six best candidates on the basis of the criteria provided by the law. This is clear from its decision where by a sweeping statement the Commission repeated the provisions of s. 44 of the Public Service Law of 1967 (Law 33/67) without giving any reasons as to why the so many academic qualifications of the appellant were disregarded and promoted the two interested parties, Ioannou and Loizou, who possessed no academic qualifications as required by the schemes of service. Since the promotion of interested parties Nos. 3 and 4 was effected in deviation from the schemes of service and under the provisions of rule 15, cogent reasons had to be given by the Public Service Commission as to why the qualifications of the appellant were disregarded.

This proposition finds support in the General Administrative Law by Dhaktoglou, 1977 ed. pp. 166-167 where the following is stated:

“The Council of State has already recognized the importance of reasoning from the first stages of its case law. It required it not only when it is provided specifically by law, but also when the need of reasoning arises from the nature of the act. When the law specifically provides for reasoning (reasoned act by law), the Council of State considers the reasoning as ‘essential formality’ whose contravention leads to the annulment of the act by the Council. This essential formality is satisfied only when the reasoning is contained, even summarily, but clearly and specifically, in the very same body of the administrative act, the elements of the file may supplement it, but not to replace it.

By their nature reasoning is required for all those acts of which their control is impossible or incomplete without reference of the grounds which supported it. The Council of State makes reference to its case law, various categories of administrative acts, which in view of their nature require reasoning:

(a)

(b)

(c)

(d)

(e) Acts which are issued on the basis of an order which is an exception to the rule.

5 In all these cases the lack of reasoning does not constitute according to the case law of the Council of State 'breach of essential formality required for the effectiveness of the act' because the 'form' of the reasoning is not provided specifically by the law and consequently is not 'essential'. Nevertheless the lack of reasoning of an act which, because of its nature, requires reasoning constitutes 'breach in substance of a provision of some law'."

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15 It is a fundamental principle of administrative law that due reasoning must be more strictly observed in the case of a decision having been taken by a collective organ as in the case in hand, and particularly when such decision is unfavourable to the subject. The whole object, of course, of such rule is to enable the person concerned as well as the Court on review, to ascertain in each particular case whether the decision is well founded in fact and in accordance with the law (*Bagdades v. The Central Bank*, (1973) 3 C.L.R. 417 at p. 428).

25 As it appears from the record of proceedings in the present case much more weight than it deserved was placed on the confidential reports where the applicant is reported for the year 1980 as "very good" whereas the interested parties with the exception of interested party No. 4, Loizou, were reported as "excellent". No doubt the confidential reports, as the trial Judge put it, are an irreplaceable pointer to one's performance in the service and his merits as they derive therefrom but where these confidential reports are prepared by different reporting officers, as in the present case, the correct position appears to be that such reports are a valuable guide to one's performance in the service, though not as weighty as when prepared by the same reporting officer. It is worth mentioning here that the reporting officer for 1980 as regards the appellant was the same one as that of interested party No. 5 N. Makris, who reported him as "very good" as well. However, the counter-

signing officer of Makris who was a different one to that of the appellant disagreed with the said reporting officer and amended the said report and so Makris was reported for 1980 as "excellent." This is an indication of the degree of generosity of this reporting officer in rating his subordinates.

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One of the facts that support the view that the Public Service Commission did not carry out a proper inquiry is the statement in its decision that "it took into consideration the conclusions (ta porismata) of the Departmental Board," whereas in fact the Departmental Board did not come to any conclusions. What the Departmental Board did was the preparation of a list in alphabetical order of all those persons in the service who were eligible for promotion.

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Now, in comparing the appellant with the two interested parties Nos. 3 and 4, without taking into account the recommendations of the Director-General of the Ministry which as stated earlier in this judgment, were most inadequate, inaccurate and misleading in a way, it becomes abundantly clear that the appellant was strikingly superior to both of them, in spite of the fact that both interested parties were senior to the appellant by fifteen months and one of them namely Ioannou was rated as slightly better in the confidential reports for the year 1980. This however cannot be said in the case of interested parties Nos. 2, 5 and 6, although on the whole the appellant must be considered superior to them. His superiority is not so striking so that on its own to cause the annulment of the sub judice decision complained of.

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Coming now to the factor of qualifications the superiority of the appellant over interested parties Nos. 3 and 4, his superiority becomes more striking if we consider the qualifications of the appellant and the above two interested parties in the light of the requirements of the schemes of service including the duties and responsibilities of Counsellor or Consul General B in the diplomatic service of the Republic.

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The schemes of service require excellent knowledge of the Greek language and very good knowledge of the English language. Also good knowledge of French or other

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foreign language will amount to an additional qualification. The appellant who has a BA degree in literature of the University of Athens and is a Master of Philosophy of the London University and also has a doctorate in law of the University of Geneva has certainly excellent knowledge of the Greek, English and French languages. This however cannot be said for interested parties Nos. 3 and 4 who are only the holders of a leaving certificate of a school of secondary education.

As regards the duties and responsibilities of a Counsellor or Consul General B besides being in charge of a directorate of one or more departments of the Ministry of Foreign Affairs and works for the promotion of the political, economic, cultural and other interests of the Republic he may be required to undertake as head of a diplomatic mission abroad. Furthermore as a Consul exercises all the duties which derive from the recognized rules of international law and the international practice of the laws and regulations of the Republic and the Consular conventions. Also within the scope of his duties comes into contact with diplomatic employees and service personnel of other States and with officials of the international organizations, and submits regular reports and memoranda. Certainly the appellant who is also the holder of a certificate of international studies in Geneva a certificate of the Hague Academy in international law and an LL.B. degree of the Geneva University in the faculty of laws and also a doctorate in law of the University of Geneva and has also a very good knowledge of the German and Italian languages can carry out the duties and responsibilities of the post in the highest degree. This however cannot be said as regards the above two interested parties.

As to the experience and abilities in the diplomatic service of the Republic of the appellant I consider it of importance to make reference to two letters which I traced in his personal file which were written by the Deputy Secretary-General of the Commonwealth Secretariat where he was serving as Assistant Director in the international affairs division. The one is dated 31st December, 1975, and is addressed to the High Commissioner of the Republic in London and reads as follows:

"In your letter COM. 61 of 4 February 1975 you conveyed the approval of your Government to the extension of the tenure of Dr. A. N. Papadopoulos to the end of June 1976. I am now writing to request the approval of your Government for a further extension for a period of one year from June 1976 to June 1977.

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Since there have been several changes in the International Affairs Division, in the interest of continuity Secretary-General hopes that your Government would have no objection to the proposed extension."

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The other one which is dated 1st July, 1977, and is addressed to the then Director-General of the Ministry of Foreign Affairs Mr. G. Pelayias reads as follows:

"Now that Dr. A.N. Papadopoulos, Assistant Director in the International Affairs Division of the Commonwealth Secretariat, has completed his tenure of over 5 years, I am writing to make a personal report on the discharge of his responsibilities in the Secretariat. Dr. Papadopoulos has worked hard and diligently and has been a valuable colleague in the International Affairs Division. He has done excellent work for the Heads of Government Meetings in Ottawa, Kingston and London where he functioned as Secretary to the Committee of the Whole. In political matters he has shown balance and sharp perception of various factors involved in International political developments. Because of his research background he has been able to prepare lengthy memoranda on involved and difficult subjects which has been a valuable asset to the International Affairs Division. His extensive knowledge of international organizations and his ability to speak and write in French has been most valuable to the Secretariat as a whole.

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His personal relations with his superiors, his colleagues and his subordinates have been cordial throughout. He has also had friendly and good relations with the Commonwealth diplomatic community in London. On his return to service in his own country, he will be greatly missed in the International Affairs Division,

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in the Secretariat and among his large circle of friends in London.”

5 Although, as I said earlier in this judgment, the mere superiority of the appellant cannot by itself cause the annulment of the decision of the Public Service Commission as against interested parties Nos. 2, 5 and 6, yet there is another factor which militates to the annulment of the said decision against interested parties Nos. 2 and 6 and this is the additional qualification possessed by the appellant as regards the French language. As it appears from the personal file of the above three interested parties only interested party No. 5 possesses this additional qualification. There is nothing in the minutes of the 24th July, 1981 or in the decision itself to indicate that the Public Service Commission made any reference to this qualification of the appellant. It was the duty of the Commission to give cogent reasons as to why it disregarded this additional qualification of the appellant when taking the decision complained of.

20 In the case of *Tourpeki v. The Republic* (1973) 3 C.L.R. 592 at pp. 602-603 A. Loizou J. in annulling the decision of the Public Service Commission said the following:

25 “In the present case the applicant appears to possess, a diploma from the Agronomic Mediterranean Institute in Bari and Montpellier, France and in the letter dated the 13th July, 1964 (exhibit B, Red 9), it is mentioned that a programme of the course is kept by the Ministry of Agriculture. As already mentioned, under the scheme of service, ‘a college diploma or certificate in agriculture or another subject related to Animal Husbandry will be an advantage’. What is sufficient inquiry is, to my mind, a question of degree depending upon the nature of the matter to be inquired into. Whether such an inquiry has been duly carried out or not, is a matter to be deduced from the relevant minute kept for the purpose.

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40 In relation to the position created by the aforesaid circumstances, one has to observe that nowhere in the minutes of the Commission or in the recommendation of the Head of the Department, relied upon by

the Commission, appears any reference whatsoever to this diploma. An inquiry had to be conducted regarding the issue whether or not the applicant possessed the qualifications which under the scheme of service would be an advantage to a candidate over the other candidates. The general reference to the qualifications of all the candidates serving in the post, does not, in my view, sufficiently disclose whether such material fact, as the possession or not, of qualification possibly constituting an additional advantage was duly inquired into, and in particular in view of the fact that the details of this course were not in the relevant file before the Commission, but in the possession of the Ministry. Consequently, I find that the Commission has not conducted the sufficiently necessary inquiry into such a most material factor and, therefore, it exercised its discretion in a defective manner; so the sub judice decision of the respondents having been arrived at contrary to the accepted principles of Administrative Law and in abuse or excess of powers, is null and void and of no effect whatsoever.

Moreover, the outcome of such inquiry should have appeared in the reasoning of the sub judice decision and in case it was found by the Commission that the diploma possessed by the applicant was constituting an advantage, then convincing reasons should have been given for ignoring it, inasmuch as the interested party was holding the lower post on secondment, as against the applicant who had been holding same substantively, such preferment, as already stated, constituting an exceptional course. I, therefore, annul the decision for lack of due reasoning which makes the sub judice decision contrary to law and in excess and abuse of power."

In a subsequent case that of *Savvas L. Petrides and Another v. The Republic* (1982) 3 C.L.R. 914 at p. 924 A. Loizou J. made the following clarification:

"In any event when the respondent Commission speaks of having considered the qualifications of all candidates, must be taken to have considered them

as against the totality of the requirements of the scheme of service in relation to each of them and his qualifications. Once therefore, this additional qualification was part of those required under the scheme of service, and the respondent Commission stated that it had inquired into them, it cannot be validly argued that the matter was not duly inquired into and considered by the respondent Commission. There is, on the contrary nothing to suggest that they omitted to examine same.

The case therefore of *Tourpeki* (supra) is distinguishable as in that case the applicant appeared to possess a qualification which might be considered under the relevant scheme, an additional advantage, which was not possessed by the interested party chosen in her stead and no reasons were given for so ignoring such an advantage. No doubt in the present case, the Commission carried out a due inquiry and gave sufficient reasons on the subject."

The above views of A. Loizou J. were adopted in a recent case delivered by the Full Bench of this Court namely *The Republic v. Savvas Petrides* (1984) 3 C.L.R. 378. At page 389 of this report the following is stated:

"It is clear from the judgment of the trial Judge that, in dealing with the second issue, i.e. the additional qualification of the applicant, took it for granted that the interested parties did not possess this additional qualification, in spite of the fact that as it is stated earlier on in this judgment, in dealing with the qualifications of the applicant and the interested parties he cited verbatim the contents of the comparative table. On the assumption that the interested parties did not possess the additional qualification, the trial Judge relied on the *Tourpeki* case, supra, in support of his view that no proper inquiry was carried out and no due reasoning was given by the Public Service Commission as to why they did not select the applicant instead of the interested parties.

In the case in hand, however, both the applicant and the interested parties possessed the additional qua-

fications and so no specific reference was required to be made by the Public Service Commission in its decision to the additional qualification of the applicant."

The last point that falls for consideration is the constitutionality of rule 15. I must say straight away that I find no merit in the argument of counsel for the appellant that this rule offends the principle of equality safeguarded by Article 28.1 of our Constitution. Obviously this rule was made in order to prevent injustice and give a chance to persons already in the service before the approval of the new scheme of service who did not possess the required qualifications to be eligible for promotion.

For the reasons stated above, I would allow this appeal and set aside the promotion of interested parties No. 2 George Georghiades, No. 3 Christos Ioannou. No. 4 Tefkros Loizou and No. 6 Andreas Pirishis.

TRIANAFYLLIDES P.: In so far as interested parties T. Loizou and Chr. Ioannou are concerned I am not in agreement with the judgment just delivered by my brother Judge Mr. Justice A. Loizou, with which I do agree in other respects.

The reasons for which I am of the opinion that this appeal should succeed in so far as the aforesaid two interested parties Loizou and Ioannou are concerned is that the appellant was, indeed, a candidate strikingly superior to both of them and no adequate reasons appear in the relevant minutes of the respondent Public Service Commission justifying the preference of the Commission for these two interested parties, instead of for the appellant, in selecting the most suitable candidates for promotion to posts of "Counsellor or Consul-General B" in the Foreign Service of the Republic.

The said two interested parties were promoted to the immediately lower post of "Secretary A or Consul" as from the 1st January 1976, whereas the appellant was promoted to such post as from the 1st April 1977 and, thus, they were slightly senior to the appellant.

But seniority, when all other things are not equal in respect of the candidates concerned, ought not to be treated as a decisive factor (see *Smyrnios v. The Republic*, (1983) 3 C.L.R. 1202, 1208, *Tantas v. The Public Service Commission*, (1983) 3 C.L.R. 1430, 1437, *Vourkos v. The Republic*, (1983) 3 C.L.R. 1442, 1449, *Constantinides v. The Republic*, (1984) 3 C.L.R. 567, 572, 573 and *Kokkinos v. The Republic*, (1984) 3 C.L.R. 588, 592).

As was found by the learned trial Judge the appellant and the two interested parties concerned were all rated as excellent in their confidential reports in respect of the year 1979. It is correct that in respect of the year 1980 the appellant and interested party Loizou were rated as "very good" whereas interested party Ioannou was rated as "excellent"; but taking into account that the respective confidential reports were prepared by different reporting officers it cannot be safely concluded that because of the report in respect of 1980 interested party Ioannou was superior in merit to the appellant and interested party Loizou; and, in this connection, useful reference may be made to *Georghiou v. The Republic*, (1976) 3 C.L.R. 74, where the following were stated in the judgment of the Full Bench of this Court (at p. 81):

"We do agree that it is open to the Commission—as well as to an administrative Court trying a recourse—to give due weight to the fact that different Reporting Officers cannot be treated as having made their assessments by using identical standards and that, therefore, some allowance may have to be made for possible differences in the evaluation of various candidates when they have not been reported on by the same Reporting or Countersining Officer (see, *inter alia*, *Kousoulides and Others v. The Republic*, (1967) 3 C.L.R. 438, 449 *Georghiades and Another v. The Republic* (1970) 3 C.L.R. 257, 267, *Aristocleous and Another v. The Republic*, (1974) 3 C.L.R. 321 at pp. 325-326)".

As regards their qualifications there existed a manifest difference between the appellant and the two interested parties in question, in the sense that the qualifications of the appellant were by far superior to those of interested parties Loizou and Ioannou and when such qualifications,

which appear to be very relevant to the duties to be performed by somebody holding the post of "Counsellor or Consul-General B", are weighed together with the more or less equal merit of the appellant and the said two interested parties, and without losing sight of the slight seniority of such interested parties, the conclusion is inevitable, in my opinion, that the appellant was strikingly superior to them.

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Once the striking superiority of the appellant, when compared to interested parties Loizou and Ioannou, was overlooked by the respondent Public Service Commission without giving adequate reasons for adopting such a course the promotions of the said interested parties have to be annulled (see, inter alia, in this respect, *Chimonas v. The Republic*, (1982) 3 C.L.R. 111, 123 *Marathevtou v. The Republic*, (1982) 3 C.L.R. 1088, 1096, *Makrides v. The Republic*, (1983) 3 C.L.R. 622, 635 and *Yourkos v. The Republic*, supra, 1450).

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TRIANTAFYLLIDES P.: In the result this appeal is dismissed by majority without any order as to its costs.

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Appeal dismissed by majority. No order as to costs.