

1987 December 11

[SAVIDES J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS TYLLIRIDES.

*Applicant.*

v

THE CYPRUS TELECOMMUNICATIONS AUTHORITY.

*Respondent.*

(Case No. 191/86)

5 *Public Corporations — Cyprus Telecommunications Authority — Promotions —  
The Cyprus Telecommunications Authority (Personnel) (General)  
Regulations 1982 — Confidential reports made in contravention of Reg.  
23(4) taken into consideration — Ground of annulment (Alvanis v. CYTA  
(1985) 3 C.L.R. 2695 adopted).*

10 *Public Corporations — Cyprus Telecommunications Authority — Promotions —  
The Cyprus Telecommunications Authority (Personnel) (General)  
Regulation, 1982 — Unqualified personnel — Whether promotion of such  
personnel should be made without comparison with other qualified  
candidates — Question determined in the negative — Regs. 36(7)(c), 54(3)  
and 10(9).*

15 *Public Corporations — Cyprus Telecommunications Authority — Promotions —  
The Cyprus Telecommunications Authority (Personnel) (General)  
Regulations 1982 — Regs. 10(7)(a) and 10(9) — Seniority — Not a factor  
that can be taken into consideration.*

*Public Corporations — Cyprus Telecommunications Authority — Promotions —  
The Cyprus Telecommunications Authority (Personnel) (General)  
Regulations 1982, Reg. 24A.3 — Personnel Committee composition of.*

20 *Public Corporations — Cyprus Telecommunications Authority — Section Head  
— Relevant regulations (The Cyprus Telecommunications Authority  
(Personnel) (General) Regulations, 1982) do not provide for any  
specialization within the post.*

In view of the forthcoming promotions to the post of Section Head  
(Engineer I) (Technical Staff) the Personnel Committee met on the 30th

November 1985 to consider the matter. The Committee selected three persons namely interested parties 4, 5 and 6 for the filling of three vacancies, under Regulation 54(2). The recommendation about the said interested parties was made on the basis of Regulation 56(7)(c). The same Committee met again on the 7th December 1985 when it selected the first three interested parties whom it recommended for the remaining three posts. 5

The General Manager of the respondent Authority, by two separate decisions dated 29.1.1986 Nos 8/86 and 20/86 confirmed the promotion of the interested parties to the post in question.

The applicants complained inter alia that 10

a) The confidential reports which were taken into consideration were not properly made in accordance with the provisions of Regulation 23(4) in that the Administrative Board of the respondent did not take any decision as to the form of the reports and the officers responsible for making them.

b) The promotion of interested parties 4, 5 and 6 was made in contravention of Regulation 54(2) and that the promotion of the non-qualified interested parties (Nos 4, 5 and 6) without comparison with the other qualified candidates contravenes the principles of equality safeguarded by Article 28 of the Constitution. 15

c) Three of the members of which the personnel committee was composed were holding lower posts to those held by the candidates contrary to Regulation 24 A 3. 20

d) The respondents wrongly and contrary to Regulation 4(3)(B) considered the vacancies as being vacancies in different branches and specializations. The applicant was thus deprived of the opportunity of being specially compared with the interested parties. 25

Held, annulling the sub-judice promotions: (1) All reports, concerning the candidates, except the reports of 1983, were made in contravention of Reg 23(4) as declared in *Alvanis v. CYTA* (1985) 3 C.L.R. 2695. Moreover the reports for 1985 were not before the Personnel Committee, when it decided to recommend interested parties 4, 5 and 6. Lastly nothing is mentioned in the minutes of the Committee as to which reports were taken into consideration or as to how the reports before 1985 were evaluated by it and how much they weighed in the minds of its members. The reports previous to 1985 ought to have been disregarded. It follows that the sub-judice decisions must be annulled on this ground. 30 35

(2) It does not emanate from the Regulations that promotions amongst the qualified and non-qualified personnel should be made separately with no comparison between them. The fact that non-qualified personnel is also exceptionally eligible for promotion (Reg 56(7)(c)) and the fact that separate 40

lists are kept for them (Reg. 54(3)) does not mean that they should not be compared for purposes of promotion with the other qualified candidates. Comparison between them should be made bearing in mind the provisions of Regulation 10(9) but the factor of qualifications should not be taken into consideration and the best candidate should be selected.

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Paragraph 7(a) of Regulation 10 provides that the personnel committee when considering promotions compiles lists of the candidates eligible for promotion according to grade. The criteria specified by para (9) (a) are performance and efficiency in the service and actual suitability. In this case special weight was attached to the seniority of the candidates, which is not a factor enumerated in para. 7. No comparison between candidates appears. The sub judge decisions should be annulled on this ground as well.

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(3) Since the officers considered for promotion in the present instance were already holding the post of Sub-Section Head, the Committee should have been composed of members holding posts of Section Head and upwards. It is not stated anywhere that it was impossible to find and appoint as members of Committee officers holding such higher posts. It follows that in this case Reg. 24.A.3 has been contravened. This is another ground of annulment.

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(4) There is no provision in the Regulations for any specialization within the post of Section Head (Technical Staff). Relevant in this respect is Regulation 4(3)(B). This Regulation should be read together with Regulation 8(1)(B)(a), which sets down the qualifications to be possessed by officers holding the post of Section Head (Technical Staff) where no specialization is mentioned.

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*Sub judge decisions annulled.  
Costs against respondents.*

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Cases referred to:

*Alvanis v. CYTA* (1985) 3 C.L.R. 2695;

*Hadjilosif v. CYTA* (1986) 3 C.L.R. 1353;

*Tyllirides v. CYTA* (1987) 3 C.L.R. 920.

### 30 Recourse.

Recourse against the decision of the respondent to appoint the interested parties to the post of Section Head, Engineer I (Technical Staff) in preference and instead of the applicant.

*A. S. Angelides*, for the applicant.

35 *A. Hadjiloannou*, for the respondent.

*Cur. adv. vult.*

SAVIDES J. read the following judgment. The applicant challenges, by this recourse, the validity of the decision of the respondent to promote the interested parties to the post of Section Head, Engineer I (Technical Staff) (Τομεάρχης) instead of and in preference to him. 5

The interested parties are:-

- (1) Michael Michaelides,
- (2) Michael Andreou,
- (3) Haris Kymitsis,
- (4) Nicolaos Economides, 10
- (5) Andreas Kyriakides and
- (6) Nicos Soutsos.

In fact the sub judice promotions were effected by two separate decisions both signed by the General Manager of the respondent on 29.1.1986. Interested parties 1, 2 and 3 were promoted by decision No. 20/86 whilst interested parties Nos 4, 5 and 6 by decision No. 8/86. 15

The applicant holds the post of Sub-Section Head (Engineer II) (Technical Staff), (Υποτομεάρχης), a post which was also held by the interested parties at the material time before the sub judice decision. 20

In view of the forthcoming promotions to the post of Section Head (Engineer I) (Technical Staff), the Personnel Committee met on the 30th November, 1985, to consider the matter. The Committee selected three persons, namely, interested parties 4, 5 and 6 for the filling of three vacancies, under Regulation 54(2). The recommendation about the said interested parties was made on the basis of Regulation 56(7)(c). The same Committee met again on the 7th December, 1985, when it selected the first three interested parties, whom it recommended for the remaining three posts. 25 30

The General Manager of the respondent Authority, by two separate decisions dated 29.1.1986, Nos 8/86 and 20/86 confirmed the promotion of the interested parties to the post in question. 35

The applicant filed the present recourse against the above decisions. Originally there was another applicant challenging the same decisions by the same recourse, who, however, withdrew his

recourse before the addresses of counsel were filed, in view of the fact that he had been promoted in the meantime

The arguments of counsel for the applicant may be summarised as follows -

5 (1) The confidential reports, which form part of the files of the candidates and were taken into consideration by the respondent, were not properly made in accordance with the provisions of Regulation 23(4) in that, the Administrative Board of the respondent did not take any decision as to the form of the reports  
10 and the officers responsible for making them. In the case of *Alvanis v CYTA* (1985) 3 C L R 2695, promotions were annulled on the same ground

(2) (a) The promotion of interested parties 4, 5 and 6 was made in contravention of Regulation 54(2) which provides that  
15 «exceptional» promotions, on the basis of that Regulation, to the sub judice post, can only be made in the proportion of 10 per cent, which, in the present case, would justify the promotion of only one person. Further, that no inquiry was made as to whether the said interested parties possessed the «maternal qualifications which  
20 would guarantee successful discharge of the duties of superior employees»

(b) That the promotion of the non-qualified interested parties (Nos 4, 5 and 6), without comparison with the other qualified candidates, contravenes the principle of equality safeguarded by  
25 Article 28 of the Constitution. Also, that the promotion of the qualified interested parties (Nos 1, 2 and 3) was made in contravention of the provisions of Regulation 10(7), (8) (9) and (10)

(3) Three of the members of which the personnel committee  
30 was composed, were holding lower posts to those held by the candidates, contrary to Regulation 24 A 3 and, also, five out of its six members had no personal or direct knowledge of the duties, responsibilities and performance of the candidates at work

(4) The respondents wrongly and contrary to Regulation 4(3)B  
35 considered the vacancies as being vacancies in different branches and specializations. The applicant was thus deprived of the opportunity of being specially compared with the interested parties

Starting with the first ground Regulation 23(4) of the Cyprus Telecommunications Authority (Personnel) (General) Regulations, 1982, provides that progress reports should be prepared every year in respect of each employee as well as promotion reports about those employees entitled to be considered for promotion. It is provided further, by the same Regulation, that the Administrative Board should decide about the said reports as well as about the organs appropriate for their preparation. No decision was taken until 1985, by the Administrative Board, regarding either the form and contents of the reports or as to who is the proper person to make them in any specific instance. Nevertheless, reports were made, until then, presumably on the basis of instructions given by superior officers of the Authority. As a result, Pikis J. in his judgment in the case of *Alvanis v. CYTA*. (supra) annulled the promotions challenged on the ground that the promotions were based on the said reports which were prepared outside the context of any decision of the Board, contrary to Regulation 23(4). An appeal was filed by the Authority against the above decision, which was, however, later withdrawn. The same view was also taken by Stylianides J. in the case of *Hadjilosif v. CYTA* (1986) 3 C.L.R. 1353, 1358.

It is stated in the minutes of the meeting of the Personnel Committee, which is a preparatory step to the final decision, that the personal files of all the candidates for promotion to the above post were put before it and considered by it. The progress reports of the candidates are part of the material in the said files. All reports, except the last one, for 1985, were made in contravention of the Regulations (Regulation 23(4)), as declared in the case of *Alvanis v. CYTA* (supra) which I adopt in this respect. The last report in the files of each one of the interested parties and the applicant, was made after the judgment in the *Alvanis* case, upon instructions given to the officers responsible for making same, on the 12th November, 1985, pursuant to a decision taken by the Board of the Authority to this effect, in accordance with the provisions of Regulation 23(4). One of these reports was stamped on the 27th November, four on the 2nd December and two on the 3rd December 1985. The meetings of the Personnel Committee

on which the sub judge promotions were considered and the recommendations were made, took place on the 30th November, and the 7th December, 1985. This shows that the last reports of the parties which were the ones made in accordance with the Regulations, were not before the Personnel Committee at its first meeting when it decided to recommend the last three interested parties. Moreover, nothing is mentioned in the minutes of the Committee as to which reports were taken into consideration or as to how the reports before 1985 were evaluated by it and how much they weighed in the minds of its members. The only argument advanced by counsel for the respondent on this point was that the *Alvanis* case is under appeal. As mentioned earlier, however, the appeal was later withdrawn. I wish also to make reference to the decision of Piki J. in the case of *Tyllirides v. The Cyprus Telecommunications Authority* delivered on the 5th May, 1987, (still unreported)\* in which he held that the reports previous to 1985 ought to have been disregarded, with which I agree. I therefore find that the sub judge decisions must be annulled on this ground.

Regarding ground 2(b), Regulation 56(7)(c) provides that personnel in the service of the Authority before 1955 and not possessing the minimum qualifications required by Regulation 8 and the schemes of service in force before 13.5.1972 is eligible for promotion, provided the Authority is satisfied that he is in a position to perform adequately the duties of the new post.

Regulation 54(3) provides that separate lists should be kept of the qualified and non-qualified higher and highest personnel.

Regulation 10 makes provision for the procedure to be followed in effecting promotions and the material to be considered for the purposes.

It does not emanate from the Regulations that promotions amongst the qualified and non-qualified personnel should be made separately with no comparison between them. The paramount consideration of an appointing organ should be the selection of the best candidates. The fact that nonqualified personnel is also exceptionally eligible for promotion and the fact that separate lists are kept for them does not mean that they should not be compared for purposes of promotion with the other

\* Reported in (1987) 3 C.L.R. 421

qualified candidates. Comparison between them should be made bearing in mind the provisions of Regulation 10(9) but the factor of qualifications should not be taken into consideration and the best candidate should be selected.

Paragraph (7)(a) of Regulation 10 provides that the personnel committee when considering promotions compiles lists of the candidates eligible for promotion according to grade. 5

Paragraph (9) specifies the criteria that should be taken into consideration in effecting promotions. These are performance and efficiency in the service and actual suitability. It is evident from the contents of the sub judge decisions that special weight was attached to the seniority of the candidates which is not a factor enumerated in paragraph 7 of Regulation 10. No comparison between candidates appears and no other reasoning is given in the minutes of the respondent showing how and why the interested parties were found to be the best candidates for promotion. I, therefore find that the sub judge decisions should be annulled on this ground as well. 10 15

The next ground I am going to consider is ground 3, that is, the one referring to the composition of the Personnel Committee. I have already referred to the arguments of counsel for applicant in this respect. Counsel for the respondent, adopting his address in Case No. 234/86, which was directed against the same promotions but was later withdrawn, stated that Regulation 24.A.3 was applied and continued as follows:- 20 25

«Είναι φανερόν ότι το Συμβούλιον συνεπληρώθη υπό τινος που δεν είχε βαθμόν ανωτέρου, δεν ήτο δε ανάγκη να αναφερθεί εις το πρακτικόν.»

(It is obvious that the Committee was supplemented by someone who did not hold a higher post and it was not necessary to mention this in the minutes). 30

I find it impossible to apprehend the meaning of this remark of counsel, but in any event I will proceed to determine the issue on the material before me disregarding this remark.

In accordance with the provisions of Regulation 10(5)(b) the selection for the sub judge promotions is made by the Personnel Committee. Regulation 24.A.1 provides that the Personnel Committee is constituted as follows: 35



«α) Εκ τριών υπαλλήλων του Ανωτατού η Ανωτέρου Προσωπικού οριζομένων μετά των αναπληρωτών των υπό του Γενικού Διευθυντού, εξ ων εις ορίζεται ως Πρόεδρος.

5 β) Εκ τριών υπαλλήλων μετα των αναπληρωτων των υποδεικνυομενων υπο της Ενιαίας Οργανώσεως του Προσωπικού της Αρχής και διοριζομένων υπό του Γενικού Διευθυντού.»

10 «(a) By three officers of the Higher Personnel appointed with their deputies by the General Manager, one of whom is appointed as Chairman

(b) By three officers with their deputies indicated by the General Union of the Personnel of the Authority and appointed by the General Manager »

15 Regulation 24 A 3 further provides -

«3. Κρινομένου υπαλλήλου φέροντος βαθμόν ισον η ανώτερον προς τα υπό στοιχεία 1. «α» και «β» μέλη, μέλη ορίζονται κατά το δυνατόν, έχοντα βαθμόν ανώτερον.»

20 (When an officer is considered (for promotion) holding a post equal or higher to those held by the members under 'a' and 'b', holders of higher posts as far as possible are appointed as members)

It is obvious from the minutes of the meetings of the Personnel  
25 Committee dated 30 11 85 and 7.12 85, in which the sub judge promotions were considered that this Committee was improperly constituted, in contravention to Regulation 24 A 3 Since the officers considered for promotion in the present instance were already holding the post of Sub-Section Head, the Committee  
30 should have been composed of members holding posts of Section Head and upwards As it is stated in the said minutes, two of the members of which the Committee was composed were holding the post of Sub-Section Head, and one of them the post of Inspector which is a lower post to the one held by the officers  
35 whose promotion was under consideration It is not stated anywhere that it was impossible to find and appoint as members of the Committee other officers holding higher posts. This clearly contravenes Regulation 24 A 3 As a result, I find that the sub judge decisions must be annulled on this ground as well.

Regarding ground 4, there is no provision in the Regulations for any specializations within the post of Section Head (Technical Staff). Relevant in this respect is Regulation 4(3)B. This Regulation should be read together with Regulation 8(1)B(a), which sets down the qualifications to be possessed by officers holding the post of Section Head (Technical Staff), where no specialization is mentioned. 5

No other material was produced, such as schemes of service, defining any specializations or indicating whether promotions to the sub judge posts should be made according to specialization. On the material before me I find that the respondent misconceived the Regulations in this respect. All candidates holding the post of Sub-Section Head should be equally eligible for promotion. In the circumstances the correct course would have been for the respondent to select first the best candidates for promotion applying Regulation 10(9) and then to post them in the various services after taking into consideration their qualifications, capabilities and experience. 10 15

In the light of my findings as above, I find it unnecessary to deal with the other issues raised. 20

In the result this recourse succeeds and the sub judge decisions are hereby annulled with costs against the respondent.

*Sub judge decision  
annulled. Costs against  
respondent.* 25