1988 December 28

[A. LOIZOU, P., MALACHTOS, DEMETRIADES, SAVVIDES, STYLIANIDES, KOURRIS, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH

THE PUBLIC SERVICE COMMISSION,

Appellants-Respondents,

v.

MARIA CHRISTOUDIA,

Respondent-Applicant.

(Revisional Jurisdiction Appeal No. 794).

SKEVI PETROU,

Appellant-Interested Party.

v.

MARIA CHRISTOUDIA,

Respondent-Applicant.

(Reviosional Jurisdiction Appeal No. 795).

THE REPUBLIC OF CYPRUS, THROUGH

THE PUBLIC SERVICE COMMISSION,

Appellants-Respondents,

v.

CHRISTOS CHRISTOUDIAS,

Respondent - Applicant.

(Revisional Jurisdiction Appeal No. 808).

Constitutional Law—Separation of State Powers—Qualifications for appointment to posts in the public service—Whether can be regulated or prescribed by law—Question determined in the affirmative.

Constitutional Law—The Casual Public Officers (Appointment to Public Offices) Law, 1985 (Law 160/85)—Not unconstitutional.

Constitutional Law—Public Service Commission—The Commission set up by the Constitution became defunct by reason of the known events—The powers of the new Commission under section 5 of Law 33/67 are "subject to the provision of this or any other law in force for the time being"—Legislator can regulate the exercise of its competence and limit the class of persons to be appointed.

Constitutional Law—Equality—Constitution, Art. 28—Does not prohibit reasonable differentiations—Treating in the same manner different situations—May lead to inequality—The Casual Public Officers (Appointment to Public Offices) Law, 1985 (Law 160/85)—Neither repugnant to nor inconsistent with Art. 28.

Legitimate interest—The Casual Public Officers (Appointments to Public Offices) Law, 1985 (Law 160/85)—Appointments thereunder—Persons outside the class, which the legislator intended to benefit—Do not have legitimate interest to challenge such appointments.

A large number of persons were employed through the years as Casual Public Officers. Following an agreement between PA.SY.DY (The Public Officers Trade Union) and the Government, the House of Representatives enacted Law 160/85, providing for the appointment of those of such persons, who possessed the required qualifications for the post of which they were performing the duties, to such posts.

As a result the three interested parties were appointed (on probation) to the permanent post of Clerk, 2nd Grade, and four to the permanent post of Administrative Officer.

Christos Christoudias, a public officer, holding the post of Clerk 1st Grade, challenged the validity of the appointment of the aforesaid Administrative Officers and Maria Christoudia, a person who was employed on an hourly basis as Clerk, challenged the legality of the appointment of the aforesaid Clerks, 2nd Grade.

The Judge of this Court, who tried recourse 668/86 annulled the sub judice appointments on the following grounds, namely: (a) That the prescrip-

tion of the qualifications of appointment to the Public Service is in the exclusive competence of the Executive, and (b) That the legislature assumed to a great extent the appointing and selection functions of the Public Service Commission and encroached upon the competence of this Organ.

The same Judge annulled the sub judice appointments in recourse 590/86. In that case, he, also, found that the applicant, who possessed all qualifications for the sub judice post, had a legitimate interest to challenge the sub judice appointments because his expectations for ascent in the hierarchical ladder were prejudicially affected.

Hence these appeals.

Held, allowing the appeals: A. Loizou, P. dissenting:

(1) The posts in question have not been advertised, as the law in question dispensed with such a requirement.This is not a ground to invalidate the law. No applications from candidates at large were invited. The respondents (applicants in the Recourses) were not candidates. There were no persons entitled to the post in question. Nobody acquired a right to be candidate but only the group of casual public officers, who were eligible under the Law. The respondents do not have a legitimate interest to challenge the sub judice appointments.

(2) The trend of this Court was to consider the schemes of service made by the Council of Ministers pursuant to section 29 of Law 33/67 as delegated legislation for the carrying into effect of the law, and the delegated power was, therefore, exercised under Article 54(g) of the Constitution. Certainly there were judgments and dicta to the opposite. Having given to the matter due consideration, this Court is of the opinion that the power to create posts and to determine the qualifications of the officers is within the ambit of the legislative power of the Republic.

(3) The Public Service Commission, set up by Law 33/67, is a substitute of the defunct Public Service Commission established under Article 124 of the Constitution, which became defunct by reason of the well known events.

The powers of the Public Service Commission under section 5 of Law 33/67 are subject to the provisions of this or any other law in force for the time being.

No competence of the Commission is taken away by Law No. 160/85, which only regulates the exercise by the Commission, of its competence.

The legislature is not precluded, by regulating the exercise of the competence of the Commission, to limit the class of candidates or persons to be appointed, provided that it does not infringe any provision of the Constitution.

In the special circumstances of this particular case, we find that there was no interference by the legislature with the competence of the Commission.

(4) Article 28 is violated only when the differentiation is not based on objective and reasonable justification. The existence of such justification must be assessed in relation to the aim and effects of the measure under consideration, regard being had to the principles which normally prevail in democratic societies. Article 28 is likewise violated when it is clearly established that there is no reasonable relationship on proportionality between the means employed and the aim sought to be realized.

Bare equality of treatment regardless of the inequality of realities is neither justice nor homage to the constitutional principle. Where objects, persons or transactions essentially dissimilar are treated uniformly, discrimination may result.

In this case the situation and circumstances of the class, which the law intended to benefit, was inherently different from that of an individual outside such class.

Appeals allowed. Cross-appeals dismissed. No order as to costs.

Cases referred to:

Papapetrou v. The Republic , 2 R.S.C.C. 61;

Ishin v. The Republic, 2 R.S.C.C. 16;

Police v. Hondrou and Another, 3 R.S.C.C. 82;

Geodelekian and Another v. The Republic (1969) 3 C.L.R. 428;

PA.SY.D.Y. v. The Republic (1978) 3 C.L.R. 27;

President of the Republic v. The House of Representatives (1986) 3 C.L.R. 1159;

President of the Republic v. The House of Representatives (1985) 3 C.L.R. 2127;

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

Republic v. Kyriacou (1987) 3 C.L.R. 1189;

The Board for Registration of Architects and Civil Engineers v. Kyriakides (1966) 3 C.L.R. 640;

Belgian Linguistic Case, European Court on Human Rights, Series A, Volume 6, p.34;

Johnston v. Chief Constable of the Royal Vester Constabulary (Case 222/84) C.M.L.R. , Vol. 47 (1986:3) p. 240, paras. (18) and (38);

Mikrocommatis v. The Republic, 2 R.S.C.C. 125;

State of Kerala v. Haji K. Haji Kutty Naha AIR, 1969 SC 378;

Decisions of Greek Council of State Nos. 3160/76 and 1852/77;

City of Cleburne, v. Cleburne Living Center Inc., 473 U.S. 432.

Appeals and cross-appeals.

Appeals and cross-appeals against the judgment of a Judge of the Supreme Court of Cyprus (Pikis, J.) given on the 15th March, 1988 (Revisional Jurisdiction Case No. 668/86)* whereby the decision of the Public Service Commission to appoint the interested parties who were temporary employees to the post of Clerk 2nd Grade under the provisions of the Temporary Public Employees (Appointment to Public Positions) Law, 1985 (Law No. 160/85) was annulled.

M. Triantafyllides, Attorney-General of the Republic with *L. Loucaides*, Deputy Attorney-General, *L. Koursoumba* (Mrs.) and *A. Vassiliades*, for the appellants-in R.A. 794 and R.A. 808.

* *(Reported in (1988) 3 C.L.R. 515).*

E. Efstathiou, for appellant in R.A. 795.

A.S. Angelides, with N. Loizou and Chr. Christoforou, for respondents.

Appearances in cross-appeals accordingly.

Cur. adv. vult.

A.LOIZOU. P.: The Judgment of the Court (Malachtos, Demetriades, Savvides, Stylianides, and Kourris, JJ.) will be deliverd by Mr. Justice Stylianides.

STYLIANIDES. J.: Appeals 794 and 795 were taken by the Respondents and Skevi Petrou (the interested party) respectively and Appeal 808 by the Respondents against the Judgment of a Judge of this Court, whereby he annulled the appointment of three casual public officers to the post of Clerk, 2nd Grade and four others to the post of Administrative Officer.

The respondents - applicants in the appeals - by cross-appeals raised before this Court the issues which were left unresolved by the trial Judge.

A very large number of persons (1902) were through the years employed as casual public officers.

PA.SY.DY. (The Public Officers Trade Union) and the Executive Branch of the Government reached an agreement for, subject to certain conditions, normalization of the situation, by absorbing those who possessed the qualifications required by the scheme of service of the post of which they were performing the duties and appointing them to permanent post in the Public Service.

A Bill to that effect was prepared and approved by the Council of Ministers. It was placed before the House of Representatives and enacted as"The Casual Public Officers (Appointment to Public Offices) Law, 1985 (Law No. 160/85).

Pursuant and in accordance with that Law, the three interested parties, were appointed (on probation) to the permanent post of Clerk, 2nd Grade, and four to the permanent post of Administrative Officer.

Christos Christoudhias, a public officer, holding the post of Clerk, 1st Grade, challenged the validity of the appointment of the aforesaid Administrative Officers and Maria Christoudhia, a person who was employed on an hourly basis as Clerk, challenged the legality of the appointment of the aforesaid Clerks, 2nd Grade.

They complained that:-

> The Law on the basis of which the appointments were made by the Public Service Commission was contrary to basic principles permeating our Constitution, in the sense that the principle of separation of powers was infringed by the assertion of executive power by the House, as it partly prepared the scheme of service and it interfered with the function of the Public Service Commission to appoint by selection the best suitable candidates; and it was unconstitutional for violation of the provisions of Article 28.1 of the Constitution by differentiation between casual officers and others.

The Respondents and one of the interested parties, the appellant in Appeal 795, who took part into the proceedings, supported the legality of the impeached acts and contended that applicants lacked legitimate interest; the Law on which the sub judice appointments were made was not unconstitutional, as there was no infringement of the principle of the separation of powers and as the scheme of service is subsidiary legislation made by the Council of Ministers; the competence and functions of the present Public Service Commission, which is the substitute of the Public Service Commission, envisaged by Article 124 of the Constitution, the independence of which is safeguarded, are governed by section 5 of the Public Service Law, 1967, (Law No. 33/67) and Law 160/85 does not interfere with their administrative compe-

tence and functions; the differential treatment of the casual public officers accorded by Law 160/85 is not a differential treatment for an individual, but of a large class of persons which was reasonably justifiable.

The first instance Judge in Recourse No. 668/86, filed by Maria Christoudhia, held that the prescription of the qualifications for appointment in the Public Service is the exclusive province of the Executive and the modification by legislative action of the scheme of service in force was a transgression of the limits of the power of the legislature overriding the will of the Executive, which exclusively possessed that competence. Furthermore, by the conditions of appointment, by setting out in the Law that eligible for these appointments were the casual employees, the legislature assumed to a great extent the appointing and selection functions of the Public Service Commission and encroached upon the competence of this Organ.

In Recourse No. 590/86 the sub judice decision was annulled. The trial Judge held that the applicant possessed the legitimate interest as a decision adverse to the legitimate expectations of a public officer for ascent in the hierarchical ladder of the service entitled him to seek review of the action prejudicing that expectation. The applicant did have a legitimate expectation to submit a candidature for appointment to the post of Administrative Officer, as he was possessing the formal qualifications and was interested in filling on a permanent basis of the post of Administrative Officer.

He repeated that Law 160/85 is unconstitutional for the same reasons given in his Decision in Recourse No. 668/86.

He, further, said that this Law is unconstitutional, also, for breach of the principle of equality safeguarded by Article 28.1 of the Constitution, as the limitation of appointment to the class of casuals and the consequential exclusion of the applicant was, in his Judgment, arbitrary.

The appeals and cross-appeals were extensively argued and the

following points fall for determination by this Court:-

1. Do the respondents-applicants possess legitimate interest;

2. Is the Law unconstitutional in that:-

(a) It violates the principle of separation of powers:-

(i) As the scheme of service is within the competence of the Council of Ministers, and cannot be modified by the legislature it not being within the competence of the legislature.

(ii) As the Law transgressed the apppointing power of the Public Service Commission in such a way as to render it unconstitutional.

(b) The principle of equality is violated. Law 160/85 is attached to this Judgment.

1. LEGITIMATE INTEREST:

The posts in question have not been advertised. No applications from candidates at large were invited. The respondents were not candidates. There were no persons entitled to the post in question. Nobody acquired a right to be candidate but only the group of casual public officers, who were eligible under the Law.

In substance the Law in question dispenses in the first place with the advertisement of the post as provided by section 31 of the Public Service Law and confines the eligibility for candidature to a category of casual officers who have the qualifications and the service prescribed in section 3 thereof.

The applicants, therefore, in view of this statutory provision did not and could not have applied to be considered as candidates and the question arose whether they have a legitimate interest to challenge the appointment of persons made by virtue of the said Law. There is nothing in the situation to prevent the enactment of

legislation that does not provide for the advertisement of vacant posts and to that extent cannot be considered as being invalid on any ground. That being so, the applicants have no legitimate interest to challenge the appointments of the respondents who were appointed by virtue of the Law and in due compliance therewith.

The point is that a person acquires a legitimate interest to challenge a first entry appointment, in the Public Service only when he applies within the period prescribed by the advertisement published for that purpose inviting applications and he has the relevant qualifications. Even where he has relevant qualifications he has no legitimate interest, if he does not apply.

In the present case the Law merely dispenses with the advertisement of a number of posts and in fact they were not promotion posts, where the applicant would have been entitled as a matter of course to be treated as a candidate without advertisement.

Therefore, it has to be examined whether this dispensation of the opening to the public and the limitation of the right to apply violates any of the principles safeguarded by the Constitution or by the principles to be found in the Constitution.

2. (a) (i) SCHEMES OF SERVICE:

In the early days of the Republic it was said by the Supreme Constitutional Court that in the absence of any organic law on the subject, as far as the executive power is concerned, the schemes of service could only be made or approved by the Council of Ministers, either specifically or generally, and the Public Service Commission could not deviate from such approved schemes of service and ought to observe their provisions in discharging its duties under the Constitution - *(Theodoros G. Papapetrou and The Republic (Public Service Commission)*, 2 R.S.C.C. 61, at pp. 66-67; *Ilter Ishin and The Republic (Public Service Commission)*, 2 R.S.C.C. 16, at p. 18).

Article 54 of the Constitution provides that the Council of Min-

isters shall exercise executive power in all matters, subject to the executive power expressly reserved, under Articles 47, 48 and 49, to the President and the Vice-President of the Republic, including the following:-

"(a) The general direction and control of the government of the Republic and the direction of general policy;

.....

(d) the co-ordination and supervision of all public services;

.....

(g) making of any order or regulation for the carrying into effect of any Laws as provided by such law;"

Article 61 of the Constitution provides that:-

"The legislative power of the Republic shall be exercised by the House of Representatives in all matters ....."

In *Police and Theodhoros Nicola Hondrou and Another*, 3 R.S.C.C. 82 at p. 85 it was said:-

"There is nothing in our Constitution to prevent the House of Representatives from delegating its power to legislate to other organs in the Republic in accordance with the accepted principles of Constitutional Law and the doctrine of 'delegated legislation' and, in fact, express provision is made in paragraph (g) of Article 54 of the Constitution empowering the Council of Ministers to make 'any order or regulation for the carrying into effect of any law as provided by such law'. It should be observed that the inclusion of the making of delegated legislation by the Council of Ministers under the terminology of 'executive power' in the said Article 54 cannot be taken as having intended to change the essential nature of such function because the aforesaid expression in Article 54 has merely

been used as a comprehensive description of the powers exercised by the Council of Ministers which is an executive organ."

The Public Service Commission, set up under Article 124 of the Constitution, became defunct due to the known events and the Public Service Law, 1967 (Law No. 33/67) was enacted. Thereby, the present Public Service Commission was set up as substitute to the Public Service Commission envisaged by the Constitution.

Section 29, thereof, provides that:-

"29.- (1) The general duties and responsibilities of an office and the qualifications required for the holding thereof shall be prescribed in schemes of service made by decision of the Council of Ministers."

In *Vahak Geodelekian and Another v. Republic (Public Service Commission)* (1969) 3 C.L.R. 428, and particularly more precisely in *Pankyprios Syntechnia Dimosion Ypallilon v. Republic* (1978) 3 C.L.R. 27, it was held that a scheme of service made by the Council of Ministers, under section 29 of the Public Service Law, 1967 (Law No. 33/67), is delegated legislation in the sense of the *Hondrou* case, made under Article 54 of the Constitution for the purpose of carrying into effect the provisions of Law 33/67, and, in particular, provisions such as section 33 thereof. It follows that it is an act of legislative nature.

After *PA.SY.DY.* case (supra), the trend of this Court was to consider the schemes of service made by the Council of Ministers pursuant to section 29 of Law 33/67 as delegated legislation for the carrying into effect of the law, and the delegated power was, therefore, exercised under Article 54(g) of the Constitution. Certainly there were judgments and dicta to the opposite.

In *President of Republic v. House of Representatives* (1986) 3 C.L.R. 1159, the Supreme Court in its opinion said at p. 1172:-

"1.The exercise by the Council of Ministers of its power to make Regulations, under Article 54(g) of the Constitution, does not amount to the exercise of autonomous legislative power but it is the exercise of subsidiary legislative power pursuant to the legislative authorization given to it on each particular occasion by a Law of the House of Representatives."

(See, also, *President of Republic v. House of Representatives* (1985) 3 C.L.R. 2127, at p. 2129.)

Having given to the matter due consideration we are of the opinion that the power to creare posts and to determine the qualifications of the officers is within the ambit of the legislative power of the Republic.

Section 33 of the Public Service Law 33/67 makes provisions for certain qualifications for appointment:-

"No one shall be appointed to the public service unless - he is a citizen of the Republic, he has attained the age of seventeen years, he possesses the qualifications laid down in the scheme of service for the particular office to which appointment is proposed to be made, he is of good character, he has not been convicted of an offence of dishonesty or involving moral turpitude, etc"

The function of subordinate legislation is to supplement the general Law, to make detailed provisions for the carrying into effect and applying the particular provisions within the framework laid down by such Law. The legislation is usually a skeleton piece of legislation and leaves to be filled up in substantial and material parts by the action of rules or regulations. It has been a common practice for the legislator to leave the particulars for the implementation and carrying out of the Law to be supplemented by subordinate legislation. The duties and responsibilities of an office vary considerably, having regard to the great number of offices in the Public Service.

Therefore, we find that the challenged Law 160/85 does not transgress into the executive power, within the domain of the Council of Ministers and is not repugnant to, or inconsistent with any of the provisions of Article 54 of the Constitution.

1. (a) (ii) PUBLIC SERVICE COMMISSION:

It was held by the trail Judge, and supported by counsel for the respondents in these appeals, that the sub judice appointments and the Law on which they were based (Law No. 160/85) constitute an interference within the powers of the Public Service Commission by the legislative authority and that it is the duty of the Commission to select the person to be appointed to a particular post.

At the expense of repetition, we say that the Public Service Commission, set up by Law 33/67, is a substitute of the defunct Public Service Commission established under Article 124 of the Constitution - (See *Republic v. Kyriacou* (1987) 3 C.L.R. 1189).

Section 5 of Law 33/67 reads as follows:-

"5. Πλην των περιπτώσεων περί των οποίων γίνεται ειδική πρόνοια εν τω παρόντι η εν οιωδήποτε ετέρω νόμω ως προς οιονδήποτε θέμα εκτιθέμενον εν τω παρόντι άρθρω και τηρουμένων των διατάξεων του παρόντος ή οιουδήποτε ετέρου εκάστοτε εν ισχύι νόμου, αποτελεί καθήκον της Επιτροπής ο διορισμός, η επικύρωσις διορισμού, η ένταξις εις το μόνιμον προσωπικόν, η προαγωγή, η μετάθεσις, η απόσπασις και η αφυπηρέτησις δημοσίων υπαλλήλων και η επ' αυτών άσκησις πειθαρχικού ελέγχου περιλαμβανομένων της απολύσεως ή της απαλλαγής από των καθηκόντων αυτών."

("5. Save where other express provision is made in this or any other law with respect to any matter set out in this section and subject to the provisions of this or any other law in force for the time being, it shall be the duty of the Commission to

appoint, confirm, emplace on the permanent establishment, promote, transfer, second, retire and exercise disciplinary control over, including dismissal or removal from office of, public officers.")

The expression "subject to" ("τηρουμένων των") was judicially considered in *D. Theodorides and Others v. S. Ploussiou* (1976) 3 C.L.R. 319, and it was held that it is subject to the provisions of this Law, to the provisions of any other Law in force for the time being.

No competence of the Commission is taken away by Law No. 160/85. It only regulates the exercise, by the Commission, of its competence. The Commission exercises its competence of appointment. It has to consider how to proceed, under the provisions of section 3, to interpret the scheme of service, to inquire whether a candidate has the required qualifications, etc.

The power to appoint is not necessarily exercised by selection amongst the candidates who apply after an advertisement of the post. That is one way of appointment. It may be that, in general, it is to be preferred, but the legislature is not precluded, by regulating the exercise of the competence of the Commission, to limit the class of candidates or persons to be appointed, provided that it does not infringe any provision of the Constitution.

In the special circumstances of this particular case, we find that there was no interference by the legislature with the competence of the Commission.

The principles of separation of powers was not violated in this respect.

2. (b) THE PRINCIPLE OF EQUALITY:

The law is presumed to be constitutional unless declared by this Court as repugnant or inconsistent with any of the provisions of the Constitution. It is upon a person challenging the constitu-

tionality of a law to establish it beyond reasonable doubt - *(The Board for Registration of Architects & Civil Engineers v. Christodoulos Kyriakides* (1966) 3 C.L.R. 640).

Article 28 of the Constitution safeguards the right of equality and embodies the principle of non-discrimination, which is a fundamental principle in democratic societies. It does not, however, forbid distinctions in treatment which are founded on an objective assessment of essentially different factual circumstances which, being based on the public interest, strike a fair balance between the protection of the interest of the community. Article 28 is violated only when the differentiation is not based on objective and reasonable justification. The existence of such justification must be assessed in relation to the aim and effects of the measure under consideration, regard being had to principles which normally prevail in democratic societies. Article 28 is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realized. (See European Court of Human Rights Belgian Linguistic Case, Series A, Volume 6, p. 34, paragraph 10, with regard to Article 14 of the European Convention. See, also, *Johnston v. Chief Constable of the Royal Ulster Constabulary* (Case 222/84) C.M.L.R. , Volume 47 (1986:3) p. 240, paragraphs (18) and (38)).

Article 28 of the Constitution was judicially considered in numerous cases, starting from *Argiris Mikrommatis and The Republic (Minister of Finance and Another),* 2 R.S.C.C. 125, in which it was said at p. 131:-

> "In the opinion of the Court the term 'equal before the law' in paragraph 1 of the Article 28 does not convey the notion of exact arithmetical equality but it safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things. Likewise, the term 'discrimination' in paragraph 2 of Article 28 does not exclude reasonable distinctions as aforesaid."

Bare equality of treatment regardless of the inequality of realities is neither justice nor homage to the constitutional principle. Classification is for governmental or legislative judgment. It ordinarily becomes a judicial question only when it has been drawn and is then subjected to the relevant constitutional tests. Where objects, persons or transactions essentially dissimilar are treated uniformly, discrimination may result, for, in our view, refusal to make a rational classification may itself in some cases operate as denial of equality - *(State of Kerala v. Haji K. Haji Kutty Naha* AIR 1969 SC 378, as per Shah, J.).

The same principles are enunciated in a number of judgments of the European Court of Human Rights and by the Greek Council of State- (see, iter alia, *Decision 3160/76,* were it was said:-

"Ουχ ήττον δεν αποκλείει η αρχή αυτή την ευρείαν ευχέρειαν του νομοθέτου όπως, αναλόγως προς την φύσιν του υπό ρύθμισιν θέματος και εν όψει των εκάστοτε ειδικών συνθηκών, προβαίνει εις την θέσπισιν διακρίσεων δικαιολογουμένων εκ της συνδρομής ειδικών περιπτώσεων ή εκ λόγων εξυπηρετούντων το γενικόν συμφέρον."

In *Decision 1852/77* we read:-

" Επειδή εν τω πλαισίω της διά του άρθρου 4 παρ. 1 του Συντάγματος καθιερουμένης αρχής της ισότητος παρέχεται εις τον νομοθέτην ευρεία ευχέρεια όπως, συντρέχουσων ειδικών εις δεδομένην περίπτωσιν συνθηκών, θεσπίζει, κατά παρέκκλισιν από των γενικώς ισχυόντων, κανόνας ειδικούς βάσει αντικειμενικών κριτηρίων δικαιολογουμένους εκ γενικωτέρου κοινωνικού ή δημοσίου συμφέροντος, τούτο δε πάντως εντός των ακραίων ορίων, πέραν των οποίων η ρύθμισης αντίκειται εις το κοινον περί δικαίου συναίσθημα."

In the case of *City of Cleburne, Texas, et al. , Petitioners v. Cleburne Living Center, Inc. , et al.* 473 US 432, 87 L. Ed. 2d 313, it was said at p. 440:-

"..... the Courts have themselves devised standards for determining the validity of state legislation or other official action that is challenged as denying equal protection. The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest .....When social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude."

In the present case the complaint is that the posts were not advertised and equal opportunity was not given to everyone who happened to possess the qualification provided in the scheme of service. The appointment was limited to the casual public officers.

This legislation did not serve personal interest of one individual, but solved the problems of a whole class of not less than 1700 persons. The aim of the Law was to solve a major problem of a separate class of persons and it offered to them a different treatment as laid down in section 3 of the Law. The situation and the circumstances of that class were inherently different from that of an individual outside that class. Even assuming that the applicants would have had a right to eligibility for candidature to the post envisaged in section 3 of the Law, the derogation remains within the limits of what was appropriate and necessary for achieving the aim in view, and the measure taken by the legislature - the dispensation of the advertisement and the confinement of the eligibility for appointment to the category of casual officers who have the qualifications and the service prescribed in section 3 thereof - had a reasonable relationship of proportionality to the aim sought to be realized.

The differentiation was reasonably justified and the legislator did not transgress the wide permissible limit.

Lastly, counsel for the respondents - applicants contended that the provisions of the Law were not satisfied by the candidates with regard to qualifications and examinations.

No material was placed before us to substantiate this allegation. On the contrary, we are persuaded that the requirements laid down in the Law were adhered to and satisfied as provided therein.

We feel that we should place on record that the interest of the service and of the public is better served by permanent public officers than by casuals. We trust that the problem of casuals, that was solved by Law No. 160/85, will not be allowed to recur again.

Before concluding, we feel that we have to express our appreciation to H.H. the Attorney-General, the Deputy Attorney-General and all counsel, who appeared in these proceedings before us, for the valuable assistance they have rendered to the Court.

For the foregoing reasons, the appeals succeed.

The cross-appeals are dismissed.

The sub judice decisions are confirmed under Article 146.4 (a) of the Constitution.

Let there be no orders as to costs.

Αριθμός 160 των 1985

ΝΟΜΟΣ ΠΕΡΙ ΔΙΟΡΙΣΜΟΥ ΣΕ ΔΗΜΟΣΙΕΣ ΘΕΣΕΙΣ ΥΠΑΛΛΗΛΩΝ ΠΟΥ ΥΠΗΡΕΤΟΥΣΑΝ ΣΤΗ ΔΗΜΟΣΙΑ ΥΠΗΡΕΣΙΑ ΠΑΝΩ ΣΕ ΕΚΤΑΚΤΗ ΒΑΣΗ ΤΗΝ 31Η ΔΕΚΕΜΒΡΙΟΥ 1984

Επειδή εξακολουθεί να υπάρχει ακόμη μεγάλος αριθμός υπαλλήλων που υπηρετούν πάνω σε έκτακτη βάση για την κάλυψη μόνιμων αναγκών της δημόσιας υπηρεσίας και που δεν έγινε κατορθωτό να διοριστούν σε δημόσιες θέσεις σύμφωνα με την υφιστάμενη νομοθεσία.

Και επειδή από τα πράγματα κρίνεται απαραίτητη για την κανονική και απρόσκοπτη λειτουργία της δημόσιας υπηρεσίας ο συλλογικός διορισμός, κατά παρέκκλιση της υφιστάμενη νομοθεσίας, των έκτακτων υπαλλήλων που υπηρετούσαν την 31η Δεκεμβρίου, 1984.

Γι' αυτό η Βουλή των αντιπροσώπων ψηφίζει τα ακόλουθα:

1. Ο παρών Νόμος θα αναφέρεται ως ο περί Εκτάκτων Δημοσίων Υπαλλήλων (Διορισμός σε Δημόσιες Θέσεις) Νόμος του 1985.

2. - (1) Στον παρόντα Νόμο, εκτός αν προκύπτει διαφορετικά από το κείμενο -

"έκτακτος υπάλληλος" σημαίνει κάθε αδιόριστο υπάλληλο που υπηρετεί στη δημόσια υπηρεσία πάνω σε έκτακτη βάση, αλλά δεν περιλαμβάνει ωρομίσθιο υπάλληλο ή δεσμοφύλακα του Τμήματος Φυλακών.

"μόνιμες ανάγκες" σημαίνει ανάγκες απρόβλεπτης διάρκειας.

(2) Όροι που δεν ορίζονται διαφορετικά στο Νόμο αυτό, έχουν την έννοια που τους αποδίδεται με τους περί Δημοσίας Υπηρεσίας Νόμους του 1967 μέχρι 1983.

3. -(1) Κατά παρέκκλιση από τις διατάξεις των περί Δημοσίας Υπηρεσίας Νόμων του 1967 μέχρι 1983 ή οποιουδήποτε άλλου νόμου που αφορά στη δημόσια υπηρεσία τις σχετικές με τις μεθόδους και διαδικασίες πλήρωσης δημοσίων θέσεων, κάθε έκτακτος υπάλληλος ο οποίος

(α) βρισκόταν στην υπηρεσία την 31η Δεκεμβρίου 1984, και

(β) εξακολουθεί, με ή χωρίς διακοπή, να βρίσκεται στην υπηρεσία αυτή την ημερομηνία θέσπισης του παρόντος

Νόμου, τηρουμένων των διατάξεων του εδαφίου 2, διορίζεται από την Επιτροπή Δημόσιας Υπηρεσίας αναδρομικά από την ημερομηνία δημοσίευσης του παρόντος Νόμου σε κατάλληλη δημόσια θέση σύμφωνα με τις διατάξεις των περί Δημοσίας Υπηρεσίας Νόμων του 1967 μέχρι 1983 και με βάση τους πίνακες διοριστέων που θα ετοιμαστούν από τον Διευθυντή της Υπηρεσίας Διοίκησης και Προσωπικού και θα διαβιβαστούν στην Επιτροπή Δημόσιας Υπηρεσίας.

(2) Ο προβλέπομενος στο εδάφιο (1) διορισμός γίνεται νοουμένου ότι ο έκτακτος υπάλληλος κατά το χρόνο του διορισμού του-

(α) υπηρετεί πάνω σε πλήρη βάση για την κάλυψη μόνιμων αναγκών της δημοσίας υπηρεσίας, και

(β) κατέχει τα προσόντα που προνοούνται από τα σχέδια υπηρεσίας της θέσης που απονέμεται σ' αυτόν καθώς και τα άλλα προσόντα που απαιτούνται από τους περί Δημοσίας Υπηρεσίας Νόμους του 1967 μέχρι 1983 για διορισμό στη δημόσια υπηρεσία.

4. Οι δυνάμει του παρόντος Νόμου διοριζόμενοι σε δημόσια θέση δυνατόν να υπαχθούν στο θεσμό της εναλλαξιμότητας αν και όταν ο νόμος ήθελε προνοήσει τούτο.

A. LOIZOU P.: I regret that I cannot agree with the approach of my learned Brethren in these appeals in which a matter of constitutional importance is the main issue, that is whether the Casual Public Officers (Appointment to Public Offices) Law, 1985 (Law No. 160 of 1985) (hereinafter to be referred to as the Law), is unconstitutional or not.

The relevant facts and circumstances as well as the arguments advanced on all sides are summarized aptly in the judgment just delivered, by Stylianides J., and this makes my task easier as this enables me to go directly into the legal aspect of the appeals before us.

Before proceeding, however, any further I would like to indorse the observation just made by my Brethren evincing their anxiety at the danger of this method of appointment recurring, by stating in concluding their judgment that they would like "to place on record that the interest of the service and the public is better served by permanent public officers than by casuals" and they then go on to stress "that the problem of casuals that was solved by Law 160/85, will not be allowed to recur again."

The Law, the text of which is appended to the majority judgment consists of a Preamble and four sections, that is the Short Title, Section 1, the Definition section, Section 2, the basic provisions contained in Section 3 and Section 4, in which provision is made that in case a Law will provide for the interchangeability of offices, those appointed by virtue of the Law may be brought under it.

Section 3 of the Law provides that, "In deviation from the provisions of the Public Service Laws, 1967 to 1983, or any other Law as regards the methods and procedures of appointment in the public service, every casual officer in the public service who (a) was in the service on the 31st December 1984, and (b) who continues to hold office with or without interruption on the date of the enactment of the Law, should be appointed by the Public Service Commission retrospectively from the date of the publication of the Law to a suitable office in accordance with the provisions of the Public Service Laws, 1967 to 1983, and on the basis of the lists of candidates which will be prepared by the Director of Public Administration and Personnel and be transmitted to the Public Service Commission". Such appointment was to be made" provided the casual officer was at the time of his appointment (a) serving on a full basis for the discharge of permanent needs of the public service and (b) had the qualifications which were provided by the Schemes of Service for the post given to him as well as the other qualifications required by the Public Service Laws."

Under Articles 122 to 125, of our Constitution there has been set up the Public Service Commission entrusted with the duty to

appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer, retire and exercise disciplinary control over, including dismissal or removal from office of public officers as the term is defined in Article122 of the Constitution.

As regards the Educational Officers, the competence was given to the Communal Chambers which were responsible for matters of Education which included the Educational Officers for members of the respective Communities. As a result of the situation created by subsequent needs which rendered impossible the functioning of the Organs established by the Constitution for the appoitment and generally the exercise of competence regarding Public Officers, Educational Officers, Officers and Public Bodies, three Laws were enacted, the Public Service Law 1967, (Law No. 33 of 1967), the Public Educational Service 1969 (Law No. 10 of 1969) and the Public Corporations (Regulation of Personnel Matters) Law 1970, (Law No. 61 of 1970).

The Law under examination is one of the few laws that have a Preamble which aims at justifying its enactment and which reads as follows:

"Whereas there continues still to exist a great number of employees who serve on casual basis in order to meet permanent needs of the public service and who have not been possible to be appointed to Public Offices in accordance with the existing legislation;

And whereas in the circumstances it is considered to be essential for the smooth and unhindered functioning of the public service the collective appointment in deviation from the existing legislation of casual employees who were serving on the 31st December 1984."

It speaks of a deviation from the existing legislation and justified on the ground that there was too great a number of casual employees, that there were permanent needs in the service to be met, that it did not become possible to appoint them in public of-

fices in accordance with the existing legislation, and that "their collective appointment in deviation of the existing legislation" was as of the circumstances considered indispensable.

To my mind, no satisfactory reason justifying a departure from the Constitution is given. By this Law the deviation, if judicially approved will continue to be adopted as a correct method as it was done in the past when a similar procedure was followed, though such legislation never came up for judicial review. The power to appoint as provided by the Constitution is taken by such legislation away from the Public Service Commission, and when I say power to appoint I mean the selection for appointment as well, and it is entrusted to Heads of Departments and other Public Officers who by virtue of Circulars and other Administrative Decisions are authorised to employ over the years casual employees and then by learving their numbers increase, create a so called necessity for an en-mass permanent appointment through legislation like the one under consideration.

The Legislature by Section 3 of the Law took upon itself in substance the selection functions of the Public Service Commission and so it transgressed on the competence of the Organ assigned by the Constitution, to make appointments in the Public Service to the exclusion of every other, Organ or Authority. This amounts to a direct interference of the Legislature in the method and procedure of appointment by choosing specified persons known in advance without their selection and comparision with other candidates.

Indeed this method followed by the Legislature denies to others the right to be candidates that is, it denies to persons possessing the qualifications, the right to equal opportunity, although they may possess the required qualifications, a right of every such interested person to seek appointment in vacant posts. In this way the principle of equality before the Law safeguarded by Article 28 of the Constitution is violated and moreover the Public Service Commission is denied the power to choose among the several possible candidates, the best, by exercising its discretion

in accordance with the General Principles of Administrative Law.

In Greece the matter was approached in the same way and reference may be made, inter alia, to the Decision of the Greek Council of State No. 772/1953, in which it was held that Article 3 of the Greek Constitution which introduces the principle of equality of citizens before the Law, imposes a duty that the permanent officers who have the formal and substantive qualifications for promotion be considered at least on equal terms with the casual employees, without excluding the preference of the casuals, if the choice was found to be justified by the comparison of their qualifications; so the relevant Law which made it possible to have promoted those who held the post for a certain period to the exclusion from the section of the permanent officers who had the required qualifications for promotion was found to be unconstitutional.

For all the above reasons I would affirm the judgment of the learned trial Judge and dismiss the appeals.

Appeals allowed by majority. Cross-appeals dismissed. No order as to costs.