

[TRIANTAFYLIDIS, J.]

1967  
May 20

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

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CHRISTOS  
KYTHREOTIS  
v.

CHRISTOS KYTHREOTIS,

*Applicant.*

*and*

REPUBLIC  
(PUBLIC SERVICE  
COMMISSION)

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case 250/65).

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*Public Officers—Safeguard of rights existing prior to Independence—  
Terms and conditions of service—Constitution of Cyprus,  
Article 192—Colonial Regulations, Reg. 37—Increments on  
promotion—Manner of regulating the granting of increments  
on promotion not a term or condition safeguarded by Article 192—  
Frangides and The Republic (1966) 3 C.L.R. 181, distinguish-  
able—Reasonably and properly open to the Respondent to  
decide to adopt a formula regarding the granting of increments  
on promotion of public officers.*

*Constitutional Law—Constitution of Cyprus, Article 192—Safeguard  
of public officers' terms and conditions of service—Colonial  
Regulations, Reg. 37—Increments on promotion—Not a term  
or condition safeguarded by Article 192.*

*"Terms and conditions of service" in Article 192.1 and 7 of the  
Constitution—See above.*

*Increment on promotion—Not a "term or condition of service" as  
safeguarded by Article 192 of the Constitution—See, also, above.*

*Promotion—Increment on promotion—See above.*

This is a recourse against a decision of the Respondent Commission, communicated to Applicant by letter of the 19th December, 1965, whereby on being promoted to the post of Bailiff and Process-Server 1st Grade from the post of Bailiff and Process-Server 2nd Grade he was informed that he should enter the relevant salary scale of £426.- per annum, being eligible to receive £450, on his next incremental date, a year

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later. The aforesaid two posts are on a combined establishment as follows: Bailiff and Process Server, 2nd Grade: £264x18-426. Bailiff and Process Server 1st Grade: £354x18— 426x24-£522.—

In the aforementioned letter of the Commission it was stated, *inter alia*, that it decided that Applicant's salary on promotion be fixed in accordance with a formula, which was set out in full in the said letter (it appears at pp. 323-324 of the judgment *post*).

The formula adopted by the Commission is a replica of regulation 37 of the Colonial Regulations, which were applicable to civil servants before 1960, when Cyprus was a British Colony. But, whereas regulation 37, on the basis of its working, was not Applicable to promotions from non-pensionable posts, the said formula does not contain any exception clause to that effect and it is Applicable to all promotions in general.

It was in evidence that the said reg. 37 was always being applied in practice to cases of promotion from non-pensionable to pensionable posts there being in existence no other regulation governing the granting of increments in cases of such promotions; and it was further in evidence that the said regulation was being applied, in the past, and particularly between 1956 and 1960 to cases of promotion from non-pensionable to pensionable posts within combined establishments.

The *sub judice* decision was attacked on the following grounds:

(a) That the formula set out in the letter of the 19th October, 1965 (*exhibit 2*) could not have been applied to the case of the Applicant because it was adopted while such case was pending before the Commission.

(b) That the Applicant had a right to be granted, on promotion, an immediate increment in the relevant salary scale, by virtue of the fact that the two posts concerned were in a combined establishment; and that, in any case, the proper course in the circumstances was to grant him such an increment on promotion.

(c) That under the terms and conditions of service applicable to the Applicant—as they were safeguarded under Article 192 of the Constitution—the Applicant was entitled to be granted an increment on promotion, and that by adopting the formula in question the Commission acted in a manner inconsistent with such terms and conditions because, in effect,

the Commission has applied to the case of the Applicant, through the adoption of the said formula, the provisions of regulation 37, of the Colonial Regulations, which, as it stood at all material times, was not applicable to a promotion, such as the one of the Applicant, from a non-pensionable to a pensionable post.

(d) That the Applicant has received unequal treatment because another Bailiff and Process Server, 2nd Grade,—a certain Enver Djemal—on promotion to Bailiff and Process Server, 1st grade, in circumstances the same as those relating to the promotion of the Applicant, was given at once an increment, instead of remaining for one year at the top of the salary scale of the post from which he had been promoted—as it has been decided in the case of the Applicant.

(e) That even if it were to be accepted that the formula adopted by the Commission was properly applicable to the case of the promotion of the Applicant, on such formula being correctly applied the Applicant was entitled to receive an increment, on promotion, at once.

Article 192, paragraphs 1 and 7, of the Constitution provide:

“192. 1. Save where other provision is made in this Constitution any person who, immediately before the date of the coming into operation of this Constitution, holds an office in the public service shall, after that date, be entitled to the same terms and conditions of service as were applicable to him before that date and those terms and conditions shall not be altered to his disadvantage during his continuance in the public service of the Republic on or after that date.

7. For the purposes of this Article:

- (a) .....
- (b) ‘terms and conditions of service’ means, subject to the necessary adaptations under the provisions of this Constitution, remuneration, leave, removal from service, retirement pensions, gratuities or other like benefits”.

In dismissing the recourse the Court:

*Held, (I). On ground “c”:*

(1) It is clear, therefore, that regulation 37 formed, since

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before 1960, by virtue of established practice, part of the terms and conditions of service applicable to promotions from non-pensionable posts to pensionable posts, whether within a combined establishment or otherwise; and under it the Applicant could not be said to be automatically entitled to an immediate salary increment on being promoted to Bailiff and Process Server, 1st grade. Such established practice was a quite lawful one, because the words "Except in a case of promotion from a non-pensionable to a pensionable office" to be found in the opening part of regulation 37 could not be taken as *prohibiting* its application to promotions from non-pensionable to pensionable posts, but only as *limiting* its application to promotions within the pensionable establishment, leaving, thus, the field open for other arrangements in relation to the granting of increments on promotion from a non-pensionable to a pensionable post; and as no other rule existed to regulate the granting of increments in case of such a promotion regulation 37 was adopted, in practice, for the purpose.

(2) So, *even if it were to be assumed* that the manner of regulating the granting of increments on promotion from a non-pensionable post to a pensionable post, as in force immediately before the 16th August, 1960, was a term or condition of the service of the Applicant which had been safeguarded by Article 192 of the Constitution, I would still not be prepared—in the light of all the foregoing—to hold either that there existed thereby a right of the Applicant to an immediate increment on promotion or that the formula which was adopted by the Commission, in denying the claim of the Applicant for such an increment—amounted to any change from what had been in force immediately before the 16th August, 1960, so as to give rise to the contention that Article 192 has been contravened.

It follows, therefore, that Applicant cannot succeed on ground (c).

(3) Moreover, I should make it clear that, in my opinion, the assumption, just made, hereinbefore, regarding the ambit of Article 192, is not a correct one and that the manner of regulating the granting of increments on promotion cannot be held to be a term or condition safeguarded by Article 192, because such Article does not safeguard terms and conditions solely relevant to the future prospects of the public officers concerned, but only those applicable, at the material time, to their substantive posts (see *Shener and The Republic* 3 R.S.C.C., p. 138). In

this respect the case of *Frangides and The Republic* (1966) 3 C.L.R. p. 181, which has been referred to by counsel for the Applicant, is clearly distinguishable because there the right to an acting allowance, on an acting appointment, was held to be protected by Article 192 as being part of the terms and conditions of service of the substantive post held by the Applicant in that case.

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*Held, (II).* On grounds (a) and (b):

(1) It is quite clear—also from the circumstances of this Case—that promotion to the higher from the lower post in a combined establishment is not automatic, as of right. It is a matter of discretion and, thus, in the present Case a decision of the Respondent Commission had to be taken in order to promote the Applicant from Bailiff and Process Server, 2nd grade, to Bailiff and Process Server, 1st grade. This being so—and in the absence of any express provision to the contrary—I am of the view that the terms on which a promotion within a combined establishment is to be made (including the question of increments) are a matter of discretion, too.

(2) The exercise of such discretion in the past had been governed by regulation 37 of the Colonial Regulations—which by way of established practice had come to be applicable also to a promotion such as the Applicant's; and regulation 37 did not entitle the Applicant, in the particular circumstances in which he was promoted, to an immediate increment.

(3) Of course, the Commission—as pointed out in the Judgment in the earlier recourse of this Applicant, Case 87/64—was not bound by regulation 37; it had to reach a decision of its own as to the proper course to be followed; and it ended up by deciding to adopt a formula incorporating the provisions of the said regulation 37 and, apparently, in recognition of the established practice in relation to the Application of regulation 37, such formula was made applicable to all promotions, in general.

(4) In my view, it was reasonably and properly open to the Commission to decide to adopt the said formula, especially as such formula ensured continuity and uniformity of treatment regarding the granting of increments on promotion.

(5) Nor can it be said that the Commission was laying down new rules which could not properly be applied to the already

pending matter of the Applicant; as found earlier in this Judgment, the adoption by the Commission of the formula in question not only did not constitute a departure from the course which had been followed in the past but it reproduced an established practice which was in force at all material times in relation to the promotion of the Applicant.

*Held, (III). On ground (e):*

Coming now to ground (e), above, I cannot accept the submission that, on the basis of the formula in question, the Applicant was entitled to an increment immediately on being promoted. Bearing in mind that he had been receiving only for a year, *and not more*, the maximum salary in the salary scale of the post from which he had been promoted, he could not have been granted, on the basis of paragraph (ii) of the said formula, an immediate increment on promotion.

*Held, (IV). On ground (d):*

There remains now to examine ground (d), above, *i.e.* the contention that the Applicant has received unequal treatment, in that another Bailiff and Process Server, 2nd grade, received an increment at once on promotion to 1st grade in circumstances similar to those of the case of Applicant. The public officer concerned is one Enver Djemal. On the basis of the facts which are set out in paragraph 3 of the letter of the Commission dated the 19th October, 1965, (*exhibit 2*), and which have not been disputed by the Applicant, namely, that the decision fixing the salary to be paid to the said Djemal, on promotion, was based on erroneous information—which was supplied to the Commission at the time—regarding the date on which he had reached the maximum of the salary scale of the post of Bailiff and Process Server, 2nd grade, I find that the Commission was perfectly entitled not to treat its said decision as a precedent. Nobody is entitled to a repetition by an organ of a past error, by way of equal treatment.

*Held, (V). With regard to costs:*

For all the above reasons, I find that this recourse cannot succeed and should be dismissed. But I have decided to make no order as to costs because this is the second time that the Applicant—through no fault of his own—has had to come to

Court in an effort to clear up the matter of his salary on promotion.

*Application dismissed.*  
*No order as to costs.*

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Cases referred to:

*Shener and The Republic*, 3 R.S.C.C. 138;

*Frangides and The Republic*, (1966) 3 C.L.R. p. 181;

### Recourse.

Recourse against a decision of the Respondent by virtue of which it was laid down that the Applicant on promotion, as from the 1st May, 1964, to the post of Bailiff and Process Server, 1st grade, should enter the relevant salary scale at £426 per annum, being eligible to receive £450, only on his next incremental date, a year later.

*L. Clerides*, for the Applicant.

*M. Spanos*, Counsel of the Republic, for the Respondent.

*Cur. adv. vult.*

The following Judgment was delivered by:

TRIANTAFYLIDIS, J.: By this recourse the Applicant complains against a decision of the Respondent Commission laying down that the Applicant on promotion, as from the 1st May, 1964, to the post of Bailiff and Process Server, 1st grade, should enter the relevant salary scale at £426 per annum, being eligible to receive £450, only on his next incremental date, a year later. Such decision was communicated to the Applicant by letter dated the 19th October, 1965 (see *exhibit 2*).

The *sub judice* decision of the Commission was reached in the following circumstances:

The Commission having promoted the Applicant—who was holding the non-pensionable post of Bailiff and Process Server, 2nd grade—to the pensionable post of Bailiff and Process Server, 1st grade, as from the 1st May, 1964, it decided that he should enter the relevant salary scale at £426 per annum, which was actually the salary which he was receiving already as Bailiff and Process Server, 2nd grade. The Applicant

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protested and sought a reconsideration of the matter claiming an immediate increment but his claim was turned down.

The aforesaid two posts are on a combined establishment as follows: Bailiff and Process Server, 2nd grade: £264x18-£426. Bailiff and Process Server, 1st grade: £354x18-£426x24-£522.

The Applicant filed a recourse, 87/64 (see *exhibit 1*), against the decision to offer him, on promotion, only a salary of £426, instead of £450, per annum.

The said recourse was determined on the 31st August 1965; it was held (see (1965) 3 C.L.R. 437) that as the final decision, on the application of the Applicant for a reconsideration of the matter, had been taken not by the Commission but only by its Chairman alone, it was in excess of powers and had to be annulled.

After the determination of Case 87/64, as above, the Commission reverted to the matter on the 11th October, 1965, and the *sub judice* decision was reached; as already stated, it was communicated to the Applicant by a letter dated the 19th October, 1965, (see *exhibit 2*) which reads as follows:

"I am directed to refer to your letters of the 14th April and 11th May, 1964, on the subject of your emplacement on the salary scale of the post of Bailiff and Process Server, 1st Grade, on your promotion thereto as from the 1st May, 1964, and to inform you that after considering your request made in the aforesaid letters and having regard to what is stated in paragraph 2 below, the Commission has decided that you should, as from the 1st May, 1964, enter the salary scale of the post of Bailiff and Process Server, 1st Grade, at £426. — per annum and be eligible to draw £450 on the 1st May, 1965, and that your future incremental date should be the 1st May.

2. The Commission in reconsidering the question of the salary which should be granted to you on promotion to the post of Bailiff and Process Server, 1st Grade, as from the 1st May, 1964, decided that your salary on promotion be fixed in accordance with the following formula which will be followed in all cases of promotion in future.



*Formula*

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(i) If immediately prior to his promotion the salary of the officer was less than the minimum of the office, he shall receive the minimum; but if he was qualifying for increment in his former office and had already earned such an amount of increment as would bring his salary up to the minimum of the scale of his new office, then any balance of the increment in his former scale shall, subject to rule (iv), be taken into account in fixing the date of his first increment in his new scale.

(ii) If his salary was not less than the minimum of the new office he shall, subject to rules (ii) and (iv), continue to receive his existing salary until by length of service at his new incremental rate he has earned such an amount of increment as will bring him to the next higher incremental step in his new scale. But, if he was qualifying for increment in his former office the date of increment in his new scale shall, subject to rule (iv), be advanced proportionately even though it may mean the immediate grant of one increment and the advancement of the normal date for a further increment.

(iii) If the maximum (or fixed) salary of his former office was not less than the minimum of his new office and he has at the date of his promotion served at that salary for a period exceeding one year, then one-half of such excess period shall, subject to rule (iv), count towards an increment in his new scale, but in no case shall he be given more than one increment on this account.

(iv) If his former office was one to which no duty, seniority or similar non-pensionable allowance was attached, and he is promoted to an office carrying such allowance, he shall serve for a full incremental period in the new office before becoming eligible for an increment.

3. With regard to the fixing of the salary of Mr. Enver Djemal at £450. — per annum on his promotion to the post of Bailiff and Process Server, 1st Grade, as from the 1st November, 1960, I am to inform you that this salary was granted to him by error owing to incorrect information supplied to the Commission at the time with regard to the date on which he had actually reached the maximum of his former office of Bailiff and Process Server, 2nd Grade.

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His case did not, therefore, constitute a departure from the formula applied in fixing the salaries of officers on promotion”.

Counsel for the Applicant has attacked the *sub judice* decision on a number of grounds which may be summarized as follows:

(a) That the formula set out in the letter of the 19th October, 1965 (*exhibit 2*) could not have been applied to the case of the Applicant because it was adopted while such case was pending before the Commission.

(b) That the Applicant had a right to be granted, on promotion, an immediate increment in the relevant salary scale, by virtue of the fact that the two posts concerned were in a combined establishment; and that, in any case, the proper course in the circumstances was to grant him such an increment on promotion.

(c) That under the terms and conditions of service applicable to the Applicant — as they were safeguarded under Article 192 of the Constitution — the Applicant was entitled to be granted an increment on promotion, and that by adopting the formula in question the Commission acted in a manner inconsistent with such terms and conditions because, in effect, the Commission has applied to the case of the Applicant, through the adoption of the said formula, the provisions of regulation 37, of the Colonial Regulations, which, as it stood at all material times, was not applicable to a promotion, such as the one of the Applicant, from a non-pensionable to a pensionable post.

(d) That the Applicant has received unequal treatment because another Bailiff and Process Server, 2nd Grade, — a certain Enver Djemal — on promotion to Bailiff and Process Server, 1st grade, in circumstances the same as those relating to the promotion of the Applicant, was given at once an increment, instead of remaining for one year at the top of the salary scale of the post from which he had been promoted — as it has been decided in the case of the Applicant.

(e) That even if it were to be accepted that the formula adopted by the Commission was properly

applicable to the case of the promotion of the Applicant, on such formula being correctly applied the Applicant was entitled to receive an increment, on promotion, at once.

It is convenient to deal first with ground (c), above:

There can be really no doubt that the formula adopted by the Commission, and set out in its letter of the 19th October, 1965 (*exhibit 2*), is in fact a replica of regulation 37 of the Colonial Regulations, which were applicable to civil servants before 1960, when Cyprus was a British Colony. But, whereas regulation 37, *on the basis of its working, was not applicable to promotions from non-pensionable to pensionable posts*, the said formula does not contain any exception clause to that effect and it is applicable to all promotions in general.

From the evidence of Mr. Artemis, the Director of the Personnel Department, it appears that regulation 37 was *always* being applied in practice to cases of promotion from non-pensionable to pensionable posts, there being in existence no other regulation governing the granting of increments in cases of such promotions.

As it appears, further, from the evidence of Mr. Protestos, a member of the Respondent Commission, regulation 37 was being applied, in the past, and particularly between 1956 and 1960, to cases of promotion from non-pensionable to pensionable posts within combined establishments.

It is clear, therefore, that regulation 37 formed, since before 1960, by virtue of established practice, part of the terms and conditions of service applicable to promotions from non-pensionable posts to pensionable posts, whether within a combined establishment or otherwise; and under it the Applicant could not be said to be automatically entitled to an immediate salary increment on being promoted to Bailiff and Process Server, 1st grade. Such established practice was a quite lawful one, because the words "Except in a case of promotion from a non-pensionable to a pensionable office" to be found in the opening part of regulation 37 could not be taken as *prohibiting* its application to promotions from non-pensionable to pensionable posts, but only as *limiting* its application to promotions within the pensionable establishment, leaving, thus, the field open for other arrangements in relation to the granting of increments on promotion from a non-

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pensionable to a pensionable post, and as no other rule existed to regulate the granting of increments in case of such a promotion regulation 37 was adopted, in practice, for the purpose

So, even if it were to be assumed that the manner of regulating the granting of increments on promotion from a non-pensionable post to a pensionable post, as in force immediately before the 16th August, 1960, was a term or condition of the service of the Applicant which had been safeguarded by Article 192 of the Constitution, I would still not be prepared — in the light of all the foregoing — to hold either that there existed thereby a right of the Applicant to an immediate increment on promotion or that the formula which was adopted by the Commission — in denying the claim of the Applicant for such an increment (see *exhibit 2*) — amounted to any change from what had been in force immediately before the 16th August, 1960, so as to give rise to the contention that Article 192 has been contravened

It follows, therefore, that Applicant cannot succeed on ground (c), above

Moreover, I should make it clear that, in my opinion, the assumption, just made, hereinbefore, regarding the ambit of Article 192, is not a correct one and that the manner of regulating the granting of increments on promotion cannot be held to be a term or condition safeguarded by Article 192, because such Article does not safeguard terms and conditions solely relevant to the future prospects of the public officers concerned, but only those applicable, at the material time, to their substantive posts (see *Shener and The Republic* 3 R S C.C., p 138). In this respect the case of *Frangides and The Republic* (1966) 3 C L R p 181, which has been referred to by counsel for the Applicant, is clearly distinguishable because there the right to an acting allowance, on an acting appointment, was held to be protected by Article 192 as being part of the terms and conditions of service of the substantive post held by the Applicant in that case.

We pass on next to deal together with grounds (a) and (b), above.

It is quite clear — also from the circumstances of this Case — that promotion to the higher from the lower post in a combined

establishment is not automatic, as of right. It is a matter of discretion and, thus, in the present Case a decision of the Respondent Commission had to be taken in order to promote the Applicant from Bailiff and Process Server, 2nd grade, to Bailiff and Process Server, 1st grade. This being so — and in the absence of any express provision to the contrary — I am of the view that the terms on which a promotion within a combined establishment is to be made (including the question of increments) are a matter of discretion, too.

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The exercise of such discretion in the past had been governed by regulation 37 of the Colonial Regulations — which by way of established practice had come to be applicable also to a promotion such as the Applicant's; and regulation 37 did not entitle the Applicant, in the particular circumstances in which he was promoted, to an immediate increment.

Of course, the Commission — as pointed out in the Judgment in the earlier recourse of this Applicant, Case 87/64 — was not bound by regulation 37; it had to reach a decision of its own as to the proper course to be followed; and it ended up by deciding to adopt a formula incorporating the provisions of the said regulation 37 and, apparently, in recognition of the established practice in relation to the application of regulation 37, such formula was made applicable to all promotions, in general.

In my view, it was reasonably and properly open to the Commission to decide to adopt the said formula, especially as such formula ensured continuity and uniformity of treatment regarding the granting of increments on promotion.

Nor can it be said that the Commission was laying down new rules which could not properly be applied to the already pending matter of the Applicant; as found earlier in this Judgment, the adoption by the Commission of the formula in question not only did not constitute a departure from the course which had been followed in the past but it reproduced an established practice which was in force at all material times in relation to the promotion of the Applicant.

Coming now to ground (e), above, I cannot accept the submission that, on the basis of the formula in question, the Applicant was entitled to an increment immediately on being promoted. Bearing in mind that he had been receiving only for a year, *and not more*, the maximum salary in the salary

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scale of the post from which he had been promoted, he could not have been granted, on the basis of paragraph (ii) of the said formula, an immediate increment on promotion.

There remains now to examine ground (d), above, *i.e.* the contention that the Applicant has received unequal treatment, in that another Bailiff and Process Server, 2nd grade, received an increment at once on promotion to 1st grade in circumstances similar to those of the case of Applicant. The public officer concerned is one Enver Djemal. On the basis of the facts which are set out in paragraph 3 of the letter of the Commission dated the 19th October, 1965, (*exhibit 2*), and which have not been disputed by the Applicant, namely, that the decision fixing the salary to be paid to the said Djemal, on promotion, was based on erroneous information — which was supplied to the Commission at the time — regarding the date on which he had reached the maximum of the salary scale of the post of Bailiff and Process Server, 2nd grade, I find that the Commission was perfectly entitled not to treat its said decision as a precedent. Nobody is entitled to a repetition by an organ of a past error, by way of equal treatment.

For all the above reasons, I find that this recourse cannot succeed and should be dismissed. But I have decided to make no order as to costs because this is the second time that the Applicant — through no fault of his own — has had to come to Court in an effort to clear up the matter of his salary on promotion.

*Application dismissed.  
No order as to costs.*