

1973  
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[TRIANTAFYLLOIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

GEORGE  
SAVOULLA  
AND OTHERS

GEORGE SAVOULLA AND OTHERS,

v.

REPUBLIC  
(MINISTER  
OF INTERIOR  
AND ANOTHER)

*Applicants,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF INTERIOR AND ANOTHER,

*Respondents.*

(Cases Nos. 354/69, 363/69, 387/69, 388/69).

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*Police Force—Promotions of constables to sergeants—Police (Promotion) Regulations 1958, regulations 6(1) and (3)—Deputy Commander of Police acting as Chairman of the Selection Board set up under regulation 4—Subsequently deciding on promotions to be made (and made with the approval of the Minister of Interior) in his capacity as Acting Commander (the Commander being then out of Cyprus on leave)—No material irregularity vitiating the administrative process which resulted in the promotions challenged by the present recourses—Cf. section 8 of the Police Law Cap. 285—Cf. further infra.*

*Administrative act or decision—Validity—Administrative process requiring action by two distinct organs—A collective organ empowered to express formal opinion and another organ empowered to take the final decision after examining the correctness of such opinion—The organ which is responsible for reaching the final decision should, unless a Law otherwise provides, be different from, and should not participate in the functioning of, the organ which expresses the formal opinion—So that the organ taking the final decision can reach its own independent conclusion (see Decisions of the Greek Council of State Nos. 2764/1964 and 2517/1967)—But this is distinguishable from the position in the present case (supra).*

*President of the Republic—Promotions in the Police Force—Allegation of unlawful interference by the President of the Republic—Not established that he has acted in such*

*a way as to substitute his own discretion in the place of the discretionary powers of the appropriate organs in the present case (viz. the Acting Commander of the Police and the Minister of Interior)—Or that he has acted in a manner amounting to intervening unlawfully in the relative administrative process which resulted in the promotions complained of in the present cases—Cf. supra.*

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By these recourses the applicants, who are police constables, seek a declaration that the decision of the respondents dated November 7, 1969, to promote to sergeants the one hundred and sixty interested parties instead of the applicants, is null and void and of no effect whatsoever.

It is common ground that the said promotions were effected by the Deputy Commander of the Police, Mr. S. Antoniou, who was at the time acting as Commander (in the absence of Mr. Hassabis, the Commander of the Police); and that the said promotions (which were duly approved by the Minister of Interior) were made on the recommendation of the relevant Selection Board under the Chairmanship of the said Mr. S. Antoniou, the Deputy Commander.

It has been contended on behalf of the applicants that it was not proper for the Deputy Commander to continue acting as a member of the Selection Board, in 1969, while he was acting as Commander, and furthermore, that the Deputy Commander having acted as Chairman of the Selection Board, could not, later, validly proceed, as acting Commander to exercise the powers of the Commander in effecting the promotions complained of. It was, in any event, contended on behalf of the applicants that the President of the Republic has unlawfully intervened in the matter of the promotions concerned, inasmuch as prior to the making of the said promotions he discussed the matter with the Minister of Interior and the Deputy Commander of the Police, who, as already stated, made the promotions in his capacity as Acting Commander of the Police.

Dismissing the preliminary objections set out hereabove, the learned President of the Supreme Court :-

Held, (1) It is correct that it is a principle of administrative law that where the administrative process concerned requires action on the part of two distinct

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organs—(one of them being a collective organ empowered to express a formal opinion and the other being the organ which takes the final decision after examining the correctness of such opinion)—the organ which is responsible for reaching the final decision should unless a Law otherwise provides, be different from, and should not participate in the functioning of, the organ which expresses the formal opinion, so that the organ taking the final decision can reach its own independent conclusion (see, *inter alia*, the decisions of the Greek Council of State in Cases Nos. 2764/1964 and 2517/1967). It is on this principle that the applicants' above contentions have been based (*supra*).

- (2) Looking at the administrative process for the promotion of constables to sergeants, as set out in regulations 3, 4 and 6 of the relevant Regulations (see the text thereof *post* in the judgment), and in section 13(2) of the Police Law, Cap. 285 (as amended by Law No. 29 of 1966), I am of the opinion that it is not a process involving distinct organs acting in the course of really separate competences, so as to make it proper to say that the afore-referred to principle of administrative law is applicable; it is, on the contrary, an integrated process aimed at spotting the best candidates from amongst whom the Commander of the Police will make his final selection for promotion; the function of the Board is merely preparatory to that of the Commander.
- (3) It follows that the participation of the Deputy Commander in the Selection Board, during the time when he was Acting Commander, and his conduct, later, in deciding, in his capacity as Acting Commander, on the promotions to be made, though perhaps undesirable, did not, nevertheless, amount to a material irregularity vitiating the Administrative process which resulted in the promotions challenged by these recourses.
- (4) In any event, there exists provision in a Law (see said decision of the Greek Council of State No.

2517/1967) which permits departure from the relevant administrative principle (*supra*). Such provision is section 8 of the Police Law, Cap. 285 (*N.B.* See the text of section 8 *post* in the Judgment).

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(5) (*Regarding the allegation of unlawful intervention in the matter of the President of the Republic*):

On the material before me, I have reached the conclusion that it has not been established that the President of the Republic has acted in such a way as to substitute the exercise of his own discretion in the place of exercise of the discretionary powers of either the Deputy Commander or the Minister of Interior or that he acted in a manner amounting to intervening unlawfully in the relevant administrative process. I am satisfied that the expression of any views on his part about any candidate for promotion was made in the course—which was a proper one—of passing on to the appropriate organs relevant information in his possession, so that they could exercise their powers with full knowledge of all relevant facts.

*Preliminary objections overruled.  
Order accordingly.*

Cases referred to :

*Decisions of the Greek Council of State Nos. 2769/1964  
and 2517/1967.*

**Recourses.**

Recourses against the decision of the respondents to promote to sergeants the interested parties in preference and instead of the applicants.

*L. Papaphilippou*, for the applicants.

*K. Talarides*, while being Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

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The following decision was delivered by:-

TRIANTAFYLIDIS, P.: These four cases have been consolidated and are being heard together in view of their nature.

All the applicants, who are police constables, are seeking the same relief, namely a declaration that the decision of the respondents, dated the 7th November, 1969, to promote to sergeants the one hundred and sixty interested parties (who are specified in list 'B' which is attached to the applications), instead of the applicants, is null and void and of no effect whatsoever.

All the interested parties have been duly notified about their right to take part in these proceedings for the protection of their own interests and all of them, except Nos. 16 and 52 in list 'B', have replied to the effect that they have elected to leave the matter in the hands of counsel for the respondents; the said two interested parties who have not so replied were abroad at the material time and counsel for the applicants, in order to facilitate the progress of the proceedings, withdrew the recourses in so far as these interested parties were concerned, without prejudice, however, to the contentions on the basis of which the promotions of the other interested parties are challenged.

As it appears from the material before me the promotions complained of were made under regulation 6 of the Police (Promotion) Regulations, 1958, the relevant paragraphs of which, (1) and (3), read as follows:-

"6. - (1) A constable to be qualified for promotion to the rank of Sergeant must:-

(a) Not have had any greater punishment than a severe reprimand imposed on him for an offence against discipline during the past two years;

(b) have passed the qualifying examinations;

(c) save for special reasons, to be stated in each individual case, have completed two years' service in the performance of ordinary outside police duty;

(d) have completed four years' service, unless the Chief Constable is satisfied that he possesses special

qualifications for the performance of the particular duties on which he is to be employed;

(e) have been recommended by the Board.

(2) .....

(3) Notwithstanding anything in this Regulation contained the Chief Constable :-

(a) May decide that members of the Force recommended by the Board for advancement should attend a short promotion course;

(b) may promote any police officer who shows marked ability or exceptional aptitude for special work, irrespective of his length of service, and whether qualified by examination or not."

The history of the relevant administrative process appears to be as follows :-

On the 26th June, 1969, a Selection Board was appointed, by the then Commander of the Police, Mr. Ch. Hassabis, under regulation 4(1) of the aforesaid Regulations (see *exhibit 7*). The Chairman of the Board was the then Deputy Commander of the Police, Mr. S. Antoniou. By an order of the Commander, dated 4th July, 1969, it was directed that the Board would meet, in order to interview candidates for promotion to the rank of sergeant, on the 10th, 11th and 12th July, 1969 (see *exhibit 9*).

On the 7th July, 1969, the Commander left Cyprus for abroad and he did not resume his duties until the 1st August, 1969. During the period when he was absent, the Deputy Commander was acting as Commander, under section 8 of the Police Law, Cap. 285.

While he was acting as Commander the Deputy Commander continued to be the Chairman of the Selection Board, which met on the aforementioned dates.

As under regulation 4(2) of the relevant Regulations a Selection Board has to meet "at least once each year to interview and report upon those recommended for promotion"—(the recommendations being made by "Divisional and Unit Commanders", under regulation 3)—a Selection Board was appointed by the Commander of

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the Police in 1968, too (see *exhibit 8*); it was not composed of the same police officers as the Selection Board appointed in 1969, but its Chairman was again the Deputy Commander, Mr. Antoniou.

On the 7th November, 1969 (see *exhibit 10*) the Deputy Commander, who was acting at the time as Commander—(the Commander having gone away on leave as from the 25th October, 1969)—communicated to the Minister of Interior the names of the constables who were to be promoted to sergeants and asked for the approval of the Minister in accordance with section 13(2) of Cap. 285, as amended by the Police (Amendment) Law, 1966 (Law 29/66). The Minister of Interior, by letter of the same date (see *exhibit 11*), communicated his approval for the promotions in question, which were to take effect as from the 15th November, 1969.

As certain preliminary issues were raised, by counsel for the applicants, as regards the regularity of the procedure followed in making the promotions challenged by these proceedings, I shall in this decision deal with such issues only; other issues, such as those relating to the merits of the candidates, have not been argued yet and will have to be determined later.

It has been contended on behalf of the applicants that it was not proper for the Deputy Commander to continue acting as a member of the Selection Board, in 1969, while he was acting as Commander, and, furthermore, that the Deputy Commander, having acted as Chairman of the Selection Board, could not, later, validly proceed, as acting Commander, to exercise the powers of the Commander in effecting the promotions complained of.

It is correct that it is a principle of administrative law that where the administrative process concerned requires action on the part of two distinct organs—(one of them being a collective organ empowered to express a formal opinion and the other of them being the organ which takes the final decision after examining the correctness of such opinion)—the organ which is responsible for reaching the final decision should, unless a Law otherwise provides, be different from, and should not participate in the functioning of, the organ which expresses

the formal opinion, so that the organ taking the final decision can reach its own independent conclusion (see, *inter alia*, the decisions of the Council of State in Greece in Cases 2764/1964 and 2517/1967). It is on this principle that the applicants' above contentions have been based.

Looking at the administrative process for the promotion of constables to sergeants, as set out in regulations 3, 4 and 6 of the relevant Regulations, and in section 13(2) of Cap. 285, as amended by Law 29/66, I am of the opinion that it is not a process involving distinct organs acting in the course of really separate competences, so as to make it proper to say that the afore-referred to principle of administrative law is applicable; it is, on the contrary, an integrated process aimed at spotting the best candidates from amongst whom the Commander of the Police will make his final selection for promotion; the function of the Board is merely preparatory to that of the Commander.

It follows that the participation of the Deputy Commander in the Selection Board, during the time when he was acting Commander, and his conduct, later, in deciding, in his capacity as acting Commander, on the promotions to be made, though perhaps undesirable, did not, nevertheless, amount to a material irregularity vitiating the administrative process which resulted in the promotions challenged by these recourses.

In any event, there exists provision in a Law (see decision 2517/1967 of the Greek Council of State) which permits departure from the relevant administrative law principle, if it were to be assumed, contrary to the foregoing, that such a departure has been established: Such provision is section 8 of Cap. 285 which reads as follows:

"8. The Deputy Chief Constable"—now the Deputy Commander of the Police—"shall act as the Deputy to the Chief Constable"—now the Commander of the Police—"in the performance of his duties, in respect of the Force, and shall have power to exercise any authority or perform any duty which may by law be exercised or performed by the Chief Constable".

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So, at all material times, the Deputy Commander, though he was, under regulation 4 of the relevant Regulations, the Chairman of the Selection Board, in his capacity as Deputy Commander, could exercise the duties of the Commander, in deciding who were the constables to be promoted to sergeants; and, also, though he was performing the duties of the Commander, while the Commander was absent, he did not cease to be the Deputy Commander and, as such, to be bound to act as Chairman of the Selection Board, under regulation 4. It is to be stressed, in this respect, that there is no evidence that at any material time any other police officer was appointed to act as Deputy Commander.

Before passing on to another issue I would like to observe that had I concluded—contrary to the above—that the involvement of the Deputy Commander in the administrative process in question resulted, as contended by the applicants, in vitiating the validity of the *sub judice* promotions, then this conclusion could only have affected those of the promotions which were made under paragraph (1) of regulation 6 and not, also, those made under paragraph (3) of the same regulation, because in the latter instance no recommendation of the Selection Board was required and, therefore, the fact that the Deputy Commander acted as Chairman of the Board becomes irrelevant.

Another preliminary issue which has been raised by counsel for the applicants is that the President of the Republic has unlawfully intervened in the matter of the promotions concerned, inasmuch as prior to the making of such promotions he discussed the matter with the Minister of Interior and the Deputy Commander of the Police, who, eventually, as already stated, made the promotions in his capacity as acting Commander of the Police.

On the basis of all the material before me, including the relevant oral and documentary evidence, I have reached the conclusion that it has not been established that the President of the Republic has acted in such a way as to substitute the exercise of his own discretion in the place of the exercise of the discretionary powers of either the Deputy Commander or the Minister of

Interior, or that he acted in a manner amounting to intervening unlawfully in the relevant administrative process; I am satisfied that the expression of any views on his part about any candidate for promotion was made in the course—which was a proper one—of passing on to the appropriate organs relevant information in his possession, so that they could exercise their powers with full knowledge of all relevant facts.

Regarding the involvement of the President of the Republic in the matter in question I accept in full as correct and reliable the evidence of the Deputy Commander, Mr. Antoniou, and I prefer it in connection with any aspect in relation to which there exists any evidence to the contrary, or of a different nature; as it appears from the evidence of the Deputy Commander the main object of the involvement of the President of the Republic was related to the availability of promotion posts and reference to particular candidates was made, really, consequentially or incidentally to such object.

It is true that there appeared news items in the press, such as *exhibits* 12, 13 and 14, which might have given rise to wrong impressions regarding the exact role of the President of the Republic in relation to the promotions in question, but the contents of such publications lose their significance when viewed in the light of the evidence given by the Deputy Commander regarding what actually happened.

In the light of the foregoing contents of this decision of mine the preliminary objections by applicants, which have been dealt with herein, are dismissed and these recourses should proceed to be heard on their merits.

*Order accordingly.*

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