

1982 September 25

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SAVVAS TAMATTIRIS,

Applicant.

v.

MINISTER OF INTERIOR AND OTHERS,

Respondents.

(Case No. 113/79).

5 *Fire Service—Members of—Hours of duty—Same as those of the other members of the “Force” as defined by the Police Law, Cap. 285—And governed by regulation 15(a)(b) of the Police (General) Regulations, 1958—Police Force Order No. 30—Issued prior to the Police Law, Cap. 285 and exempting firemen as a whole from provisions of above regulations—Provisions thereof not preserved by Cap. 285 or the above Regulations—Therefore it is not applicable.*

10 *Constitutional Law—Equality—Principle of equality—Article 28.1 of the Constitution—Exemption of firemen from normal weekly hours of duty of members of the Police Force by virtue of regulation 15(2)(c) of the Police (General) Regulations, 1958—Entails an arbitrary differentiation between policemen and firemen as regards their weekly hours of duty.*

15 The applicant, a member of the Fire Service, applied to the Chief of Police to be paid for his overtime work from 1972 onwards because by virtue of regulation 15(2)(a)* of the Police (General) Regulations, 1958, the normal weekly period of duty was 48 hours whereas he worked for 56 hours weekly. In reply
20 the Chief of Police rejected applicant’s claim on the ground that although regulation 15(2)(a), on which his claim was based specified a 48 hours weekly service for the members of the Force,

* Regulation 15 is quoted at pp. 982–983 post.

nevertheless by virtue of regulation 15(2)(c) the members of the Fire Service have been exempted as employed in special duties. Hence this recourse in which the main question that fell for consideration was whether the Chief of Police was empowered by Police Force Order No. 30 to exempt specially the ordinary duties of the Fire Service as a whole from the provisions of regulation 15(2)(a) and bring them within the provisions of regulation 15(2)(c)(ii) as regards the normal weekly period of duty. Force order No. 30 was issued before the coming into force of the Police Law, 1958 and the Regulations made thereunder.

Held, (1) That after the enactment of the Police Law, 1958, (Law 5/1958), now Cap. 285, a fireman is considered as a member of the Police Force (see definition of "Force" in section 2 of the Law); that since the provisions of Force Order No. 30 were not preserved by the 1958 Regulations, made under Law 5/58, once this Law was enacted (which contained provisions regarding the Fire Service) not only any previously existing Orders but even any previous Laws regarding the matter, do not apply, unless specifically preserved by that Law and if the provisions of the said Order were intended to continue to apply, they should have been embodied in the Regulations; that since after the making of the Police (General) Regulations, 1958 no Force or other Order was made under regulation 15(2)(c)(ii) exempting the members of the Fire Service as a whole from the provisions of regulation 15(2)(a) and 15(3); that since no other Regulations were made specifically referring to the Police Fire Service the only Regulations applicable to them are the Police (General) Regulations, 1958 which apply to the "Force" in general, under which definition they are classified; that since the hours of duty of the members of the Force are defined under regulation 15 of the Police (General) Regulations 1958, the applicants are entitled to the benefits of regulation 15(2)(a) concerning hours of duty and regulation 15(3) concerning overtime allowance or time off, of the Police (General) Regulations 1958; accordingly the decision of the Chief of the Police rejecting applicant's claim is null and void as being contrary to the Police Law, 1958 and the Police (General) Regulations made thereunder (reasoning in *Superman and Others v. Republic* (1981) 3 C.L.R. 572 adopted).

Held, further, that, after the coming into force of the Constitution regulation 15(2)(c) cannot be interpreted as giving to

the Chief of Police the power to issue an order exempting the Fire Service as a whole from the provisions of regulations 15(2)(a) (see Article 188.1 of the Constitution); that if it is interpreted in a way giving to the Chief of Police such power then certainly will offend the principle of equality safeguarded by Article 28.1 of the Constitution which provides, that all persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby; that "equality before the law" in paragraph 1 of Article 28 does not convey the notion of exact arithmetical equality but it safeguards only against arbitrary differentiation and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things; that, moreover, the principle of "equality entails the equal or similar treatment of all those who are found to be in the same situation"; and that in the present case it cannot be said that after the enactment of Law 5/1958, now Cap. 285, there is no arbitrary differentiation between policemen and firemen as regards their weekly hours of duty or that policemen and firemen are not found to be in the same situation.

Sub judice decision annulled.

Cases referred to:

- Superman and Others v. Republic* (1981) 3 C.L.R. 572;
Republic v. Arakian and Others (1972) 3 C.L.R. 294;
 25 *Mikrommatis v. Republic*, 2 R.S.C.C. 125 at p. 131;
Decision of the Greek Council of State No. 1273 of 1965.

Recourse.

Recourse against the decision of the respondents whereby it was decided that the applicant was not entitled to the payment of his overtime work.

S. Spyridakis, for the applicant.

M. Kyprianou, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

35 MALACHTOS J., read the following judgment. The applicant in this recourse, which is made under Article 146.2 of the Constitution, claims, as stated therein, the following remedies:

1. A declaration of the court that the decision of the Chief of Police, respondent 3 in this recourse, contained in his letter dated 29th December, 1978, to the effect that the applicant is

not entitled to payment of his overtime work, is null and void and of no legal effect whatsoever.

2. A declaration of the court that the decision of the respondent 3 that the applicant is employed in special duties or the decision in the case of the applicant should be applied an older decision as regards the firemen and due to this he is not entitled to overtime allowance, is null and void and of no legal effect whatsoever. 5

3. A declaration of the court that regulation 15(2)(a) of the Police (General) Regulations 1958, is applicable in the case of the applicant; and 10

4. A declaration of the court that regulation 15(2)(c) of the said Regulations is unconstitutional.

The facts of the case are the following:

The applicant, who is a fireman under No. P.C.12, on the 11th December, 1978, through his advocate, addressed exhibit 1 to the Chief of Police, respondent 3, which reads: 15

“I have been instructed by my client Mr. Savvas Tamattiris to refer to his service as a fireman and to call upon you to make the necessary arrangements for payment to him for his overtime work as compensation or emoluments which he is entitled to as from 1972 till today since by virtue of Regulation 15(2)(a) of the Police (General) Regulations 1958, the normal weekly period of duty is 48 hours, whereas for the firemen, as my client, the period of duty is 56 hours, something which exceeds the basic hours of duty provided by law. 20 25

The application for payment to him of allowance equal to the hourly rate of his pay is provided by Regulation 15(3)(b) of the above Regulations. 30

The claim of my client is based on part 8 of the Police Law, Cap. 285, by virtue of which the firemen belong to the Police Force.”

By letter dated 29th December, 1978, exhibit 2, the Chief of Police gave the following reply: 35

“I received your letter dated 11th December, 1978, regard-

5 ing the claim of the fireman Savvas Tamattiris, P.C.12, for payment to him of overtime, and I inform you that Regulation 15(2)(a) of the Police (General) Regulations, on which you base the claim of your client, although specifying a 48 hours weekly service for the members of the Force, nevertheless, by virtue of sub-paragraph (c) of the same Regulations the members of the Fire Service have a long time ago been exempted as employed in special duties.

10 2. Therefore, the claim of your client is not possible to be satisfied since such exemption is still in force for all the firemen, who, due to the nature of their duties and according to the terms of their service, they were working for more hours compared with the policemen.

15 However, in any case, I inform you that the subject of the hours of duty of the firemen is under consideration by the Government."

The applicant obviously being dissatisfied by the above decision of the Chief of Police filed on the 9th March, 1979, the present recourse.

The grounds of law on which the recourse is based as they appear in the body of the recourse are these:

1. According to regulation 15(2)(a) of the Police (General) Regulations, 1958, the normal weekly period of duty is 48 hours.
- 25 2. Regulation 15(3)(b) of the above Regulations provides for overtime allowance equal to the hourly rate of pay.
3. The establishment of the Police Fire Service is provided by Part 8 of the Police Law, Cap. 285, and the firemen belong to the Police Force.
- 30 4. The inclusion of the applicant as a fireman to the provisions of the above regulation 15(2)(c) is void or illegal since the service of a fireman cannot be considered as special duties in view of the fact that in their case there is provision in a separate part of the Police Law, Part 8.
- 35 5. The Chief of Police cannot apply an older null and void or unconstitutional decision as regards the applicant.

6. Regulation 15(2)(c) offends Article 28 of the Constitution.

The case of the respondents on the other hand, as it appears in the opposition, is that the provisions of regulation 15(2)(c) of the Police (General) Regulations 1958 are rightly applied for the members of the Police Fire Service and so the provisions of regulations 15(2)(a) and 15(3)(a) are inapplicable in the present case. Consequently, regulation 15(2)(c) does not offend Article 28 of the Constitution. 5

Regulation 15 of the Police (General) Regulations 1958, with which we are concerned, reads as follows: 10

“15. Hours of Duty

(1) Every member of the Force shall carry out all lawful orders and shall at all times punctually and promptly perform all appointed duties and attend to all matters within the scope of his office as a police officer. 15

(2) Normal period of duty

(a) The normal daily period of duty (including the period for refreshment referred to in sub-paragraph (b) of this paragraph) of a member of the Force other than special constable shall be eight hours and the normal weekly period forty-eight hours, and in addition any time occupied in reporting at the appointed place for duty before the tour of duty begins. 20

(b) Where the normal period of duty is performed in one tour of duty, an interval of 45 minutes shall normally be allowed. 25

(c) This regulation shall not apply to a member of the Force who is -

(i) above the rank of Chief Inspector; or

(ii) employed in duties which have been specially exempted by the Chief of Police. 30

(d) Notwithstanding anything in this regulation contained every member of the Force shall, if properly called upon, or if he perceives it his duty to do so, be required to perform any duty appertaining to his office at any 35

time and, except when on leave, shall perform not less than forty-eight hours' duty in a week. Gazetted Officers shall have a twenty-four hour responsibility.

(3) Extra duty

5 (a) Subject to the provisions of this regulation, where a member of the Force to whom paragraph (2) above applies, other than a member who is paid a detective allowance, remains on duty after his tour of duty ends or is recalled to duty between two tours of duty, 10 he shall be granted as soon as exigencies of duty in the opinion of the Chief of Police permit, an equal period of time off. A strict record of time off granted must be kept.

15 (b) If, in respect of overtime, time off is not granted within a period not exceeding three months the member, if he is below the rank of sub-inspector shall be granted an allowance equal to the hourly rate of his pay.

(c) _____

(d) _____

(4) _____

(5) _____”

20 It should be noted here that since the enactment of the Police Law of 1958 (Law 5/1958), now Cap. 285, a fireman is considered as a member of the Police Force. This appears in the definition section of the Law, section 2, which provides that “‘Force’ means the Cyprus Police Force and includes the Fire Service, the Tactical Reserve, the Auxiliary Police Force, Special Constables and Women Police”.

25 The main question that falls for consideration in this recourse is whether the Chief of Police is empowered by a Police Order to exempt specially the ordinary duties of the Fire Service as a whole from the provisions of regulation 15(a)(b) and bring them within the provisions of regulation 15(2)(c)(ii) as regards the 30 normal weekly period of duty.

Counsel for applicant in arguing his case before the court submitted that since the enactment of Law 5 of 1958 which

placed the firemen on the same footing with the policemen, both the law and the regulations made thereunder should be applied without discrimination by the Chief of Police. Regulation 15(2)(c)(ii) does not give power to the Chief of Police to exempt the Fire Service. If the legislator intended to exempt the Fire Service would do so as in the case of Special Constables in regulation 15(2)(a). But even so, this could only be done by the Council of Ministers by amending regulation 15(2)(a). 5

On the other hand, counsel for the respondents submitted that the members of the Fire Service fall within the category of those who were employed in duties specially exempted by the Chief of Police under regulation 15(2)(c)(ii) and so regulation 15(2)(a), which provides that the normal weekly period of duty of a member of the Force should be 48 hours, does not apply in the case of members of the Fire Service. He further submitted that under regulation 47 of the Police (General) Regulations, 1958, it is provided that as part of the Force Orders the Chief of Police may from time to time issue standing Orders to the Force which shall be complied with and observed by all members of the Force. On the basis of Force Standing Order 30, the Fire Service was exempted having its own weekly period of duty of 84 hours when the members of the Police Force were having as weekly period of duty 56 hours. He also submitted that each member of the Fire Service upon his permanent establishment, automatically accepts as binding all the provisions of Order 30 including the hours of duty provided therein. According to this Order by which a Police Fire Brigade was first established in Nicosia, the provisions of which were in force before the establishment of the Republic, the weekly period of duty of the firemen was 84 hours. This situation existed up to 1968 when the Government decided to reduce the weekly period of duty of the Fire Service to 56 hours and is still in force up to the present day. 10
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Counsel for the respondent finally submitted that the decision of the Chief of Police complained of, is valid and that regulation 15(2)(c) does not offend Article 28 or any other Article of the Constitution. 35

There is no doubt, from the wording of the Force Order 30 that it was issued before the coming into force of the Police 40

Law 1958 and the Regulations made thereunder by virtue of section 10(1) of the said Law.

5 The question as to the validity of Force Order 30, as well as the application of regulation 15, have been decided by a Judge of this Court in the case of *Takis Superman and Others v. The Republic*, (1981) 3 C.L.R.572, where it was held that:

10 "Since the provisions of Force Order No. 30 were not preserved by the 1958 Regulations, made under Law 5/58, once this Law was enacted (which contained provisions regarding the Fire Service) not only any previously existing Orders but even any previous Laws regarding the matter, do not apply, unless specifically preserved by that Law and if the provisions of the said Order were intended to continue to apply, they should have been embodied in the Regulations; that, moreover, Force Order No. 30 is not valid as it cannot be more than a circular which was not embodied in the Regulations made under section 10(1) of the Law and any Circular or Order outside the provisions of the Regulations, cannot override the provisions of the Regulations (see *Arsalis v. The Republic*, (1976) 3 C.L.R. 255 at p. 268 where it was held that 'a circular is an inferior text to that of a regulation and on the basis of the principle of hierarchy of texts, the regulation prevails').

25 Since after the making of the Police (General) Regulations, 1958 no Force or other Order was made under regulation 15(2)(c)(ii) exempting the members of the Fire Service as a whole from the provisions of regulation 15 (2)(a) and 15(3); that since no other Regulations were made specifically referring to the Police Fire Service the only Regulations applicable to them are the Police (General) Regulations, 1958 which apply to the 'Force' in general, under which definition they are classified; that since the hours of duty of the members of the Force are defined under regulation 15 of the Police (General) Regulations 1958, the applicants are entitled to the benefits of regulation 15(2)(a) concerning hours of duty and regulation 15(3) concerning overtime allowance or time off, of the Police (General) Regulations 1958; accordingly the decisions of the Chief of the Police communicated to the applicants by letters of the Chief Fire Officer dated 27.10.

1979 and 5.11.1979 are null and void as being contrary to the Police Laws 5/58 (Cap.285)—16/79 and the Police (General) Regulations made thereunder.”

I must say that I fully adopt the reasons given and the conclusions reached by the trial Judge in the said case. 5

Before concluding my judgment I shall proceed further and say that after the coming into force of our Constitution regulation 15(2)(c) cannot be interpreted as giving to the Chief of Police the power to issue an order exempting the Fire Service as a whole from the provisions of regulation 15(2)(a). 10

Article 188.1 of the Constitution provides that “Subject to the provisions of this Constitution and to the following provisions of this Article, all laws in force on the date of the coming into operation of this Constitution shall, until amended, whether by way of variation, addition or repeal, by any law or communal law, as the case may be, made under this Constitution, continue in force on or after that date, and shall, as from that date be construed and applied with such modification as may be necessary to bring them into conformity with this Constitution”. 15

It follows that if we interpret regulation 15(2)(c) in the way counsel for the respondents submitted, then certainly will offend the principle of equality safeguarded by Article 28.1 of the Constitution which provides, that all persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby. In the case of *The Republic of Cyprus v. Nishan Arakian and Others* (1972) 3 C.L.R. 294 the Full Bench of this Court, adopted the following passage from the case of *Mikrommatis v. The Republic*, 2 R.S. C.C.125 at page 131: “Equality before the Law’ in paragraph 1 of Article 28 does not convey the notion of exact arithmetical equality but it safeguards only against arbitrary differentiation and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things.” 20
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The Full Bench also adopted what is stated in Case No.1273 /65 of the Greek Council of State, that “The principle of equality entails the equal or similar treatment of all those who are found to be in the same situation”. 35

In the present case it cannot be said that after the enactment of Law 5/1958, now Cap. 285, there is no arbitrary differentiation between policemen and firemen as regards their weekly hours of duty or that policemen and firemen are not found to be in the
5 same situation.

For the above reasons this recourse succeeds and, consequently, the decision of the Chief of Police complained of is declared null and void.

The respondents are adjudged to pay £25.- against the cost
10 of the applicant.

Sub judice decision annulled.

Order for costs as above.