

1983 September 19

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS IERIDES AND ANOTHER,

Applicants.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR,

Respondent.

(Case Nos. 126/80 and 127/80).

*Police Force—Promotions—Recommendations by Chief of Police
—Not open to him to use information emanating from the Central
Information Service (KYP) as an aid to the discharge of his duties
—Therefore process of promotion vitiated by irrelevant material
having been taken into consideration—Approval of the recommend- 5
ation by Minister of Interior, who did not exclude from consider-
ation the material taken into account by the Chief of Police,
equally vulnerable—Sub judice promotions annulled.*

*Administrative Law—Administrative decision—Annulled because it
was reached through taking into account irrelevant material. 10*

The applicants and the interested parties were candidates for promotion to the post of Inspector in the Police Force. They all held the post of Sub-Inspector. A Committee was set up to evaluate the suitability of the candidates for promotion and report upon them with a view of assisting the Commander of the Police to make a selection and ultimately to pave the way for the Minister of Interior to promote the most suitable candidates. 15

By the recommendations of the Committee the interested parties were strongly recommended for promotion and applicants were only recommended. 20

The Chief of the Police reviewed the recommendations of

the Committee but apparently he also examined the suitability of the various candidates for promotion. He did not however rest with that and sought information from the Central Intelligence Service of the Police (KYP) and ostensibly acted on the provisions of regulation 2(2) which makes the devotion to duty and subservience to the law one of the considerations relevant to the worth of a member of the Police Force. Finally the Minister of Interior approved the recommendations of the Chief of the Police, by means of which the interested parties were recommended for promotion, by writing thereon the word "approved" and hence these recourses.

Held, that elicitation of the quality of Police Officers may be discerned from his service record especially for devotion to duties and the presence of any of a disciplinary or other convictions; that it can never depend on the opinion of another member of the Police Force, or a member of KYP and the dossier may be supplied from information often secretly connected in making the promotion of members of the Police Force dependent on reports of the Intelligence Agency which would undermine in the longer run, not only discipline in the Police Force but devotion to duties as well as objectively identifiable from police records; that it was not, therefore, open to the Chief of the Police to use such information as an aid to the discharge of this task; that what were those recommendations it is not known, a factor that makes judicial review impossible, nor is it known what the impact of those recommendations was upon the decision of the Chief of the Police; that, consequently, the process of promotion was vitiated by irrelevant material being taken into consideration; that the Minister acted upon the recommendation of the Chief of the Police and judging from his laconical note, "approved", he does not appear to have carried out an inquiry on his own, nor was he bound to carry out such an inquiry; that since the Minister did not exclude from consideration the relevant material taken into account by the Chief of Police his decision is equally vulnerable to be set aside as that of the Chief of the Police and for precisely the same reason; accordingly the sub judice promotions must be annulled.

Sub judice promotions annulled.

Cases referred to:

- 40 *Partellides v. Republic* (1969) 3 C.L.R. 480;
Nicolaides v. Republic (1965) 3 C.L.R. 585;

Metcon Construction and Others v. Republic (1968) 3 C.L.R. 537;
Charalambous and Others v. Republic (1976) 3 C.L.R. 224;
Haviaras v. Republic (1983) 3 C.L.R. 159.

Recourses.

Recourses against the decision of the respondent to promote the interested parties to the post of Chief Inspector in the Police Force in preference and instead of the applicants. 5

S. Erotokritou (Mrs.), for the applicants.

S. Georghiades, Senior Counsel of the Republic, for the respondent. 10

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment. In these two cases which have been heard together the two police officers Andreas Ierides and Andreas Minas seek a declaration that the act and/or decision of the respondents to promote the following officers—G. Kasapi, A. Seymeni, S. Zavros, N. Solomonides, A. Christofides, M. Kazafanioti, A. Kokkinos, M. Pahiti, A.S. Demetriades, P. Fryda and A. Stefanou, to the post of Chief Inspector as from 1st March, 1980, and which decision was published in the weekly orders part II dated 10th March, 1980, is null and void. 15 20

The facts:

The present application is based on the following facts:— The applicant Andreas Ierides joined the Police Force on 15th March, 1950 when he graduated the secondary school of Evrychou. On 20th September, 1960, the applicant has been promoted to Sergeant having served earlier as an Assistant Sergeant as from 12.7.1956, and he came first in the examinations from all the candidates for the post of Sergeant of the areas Limassol and Paphos. Furthermore, the applicant has been promoted to an acting Sub-Inspector having passed the relevant examinations for the year 1965 for promotion to Sub-Inspector. On the 1st April, 1971, once again the applicant was promoted to Sub-Inspector. 25 30

On 17th March, 1957, the applicant was arrested by the British Troops because he fought in the EOKA struggle against the British and remained in prison at Pyla and Trimithia for a period of 2 years. In addition, the applicant has served in various 35

posts from 1950 till the year 1956. On 16.8.1960 he was posted in Nicosia to the traffic department and various other posts and has served in various posts during certain periods beginning from 1960. In addition, the applicant has succeeded in passing a series of lessons which appear at pp. 2 & 3 of the application. Finally, the applicant was promoted to sub-inspector.

It appears further that the interested parties A. Seimenis, A. Kokkinos, M. Pahitis, P. Frydas and A. Stephanou who were promoted on 15th November, 1969 by exception were promoted to the post of Sergeant but they have not passed the examinations for promotion to a Sergeant and also have failed to pass examinations for promotion to the post of Sub-Inspector.

The facts for the second applicant:

The second applicant has graduated the Commercial School of Samuel and joined the police force on 21.9.1960. He was promoted on 15.11.1969 to a Sergeant having served as Acting Sergeant from the year 1965 to 1969. On 1.9.1972 the applicant was promoted to Sub-Inspector and in the year 1974 became an Inspector because the post of Sub-Inspector and that of Inspector became one post.

In the year 1967, after attending a competition, he was declared to be the first policeman of the year. In addition, the applicant has attended a series of lessons and he was successful in his examinations. Furthermore, he served in various posts from the year 1960-1962 and from the year 1962-1964 to the post of Lykavitos and to other posts as it appears at p. 2 of the facts. There is no doubt that during this period the second applicant has done his very best to serve his country.

On the contrary, the interested parties have been promoted on the 1st May, 1977 from the post of Sergeant to the post of Sub-Inspector on 1.3.1980 and were further promoted to the post of Inspector and according to the applicant his seniority has been ignored entirely by his superiors.

There is no doubt as it appears from the facts in the present case, that the interested parties A. Seimenis, A. Kokkinos, M. Pahitis, P. Frydas and A. Stephanou who by exception were promoted to the post of Sergeant on 15th November, 1969,

have not passed the examinations for promotion to a Sergeant and the examinations for promotion to a Sub-Inspector. Both applicants claimed that the merits, qualifications and capabilities of the interested parties are clearly lower than those of the applicants.

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Legal Points:

The present applications are based on the following legal points:-

(1) The applicants have failed to exercise their paramount duties in selecting the best candidates and have acted in violation of the well-accepted principles of administrative law as have been expounded by the Supreme Court of Cyprus in the case of *Michael Theodossiou v. The Republic*, 2 R.S.C.C. at p. 44 and have acted in abuse of powers.

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(2) The respondents ignored the seniority of the applicants without putting forward a reason and have acted in violation of the well-established principles of administrative law as has been expounded by the Supreme Court in the case of *Partellides v. The Republic*, (1969) 3 C.L.R. at p. 480 and/or have acted in abuse of their powers.

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(3) The respondents have ignored the more superior qualifications and their merit in violation of the law and/or in abuse of their powers.

(4) The respondents have attached more weight to the views of the Chief of Police which views in any event were based on the views and opinions of the Committee of Selection and which appears in the Weekly Orders of 12th March, 1979, and which committee had no immediate and personal knowledge of the merit and qualifications of the candidates and/or the said committee has been influenced in an irregular and illegal way by the police inspector and/or he imposed his own views.

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(5) In the light of what was said, the decision attacked is not duly reasoned and/or its reasoning is wrong and contrary to the law and

(6) In violation of the well-accepted principles of administrative law which have been accepted by the Supreme Court in the case of *Nicos Nicolaidis v. The Republic*, (1965) 3 C.L.R.

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at p. 585, the respondents have not investigated the basic facts and have decided contrary to the law.

5 (7) Contrary to the well-accepted principles of administrative law expounded by the Supreme Court in the case of *Metcon Construction and Others v. The Republic*, (1968) 3 C.L.R. at p. 537, the respondents have not kept the minutes of the case which led to the final decision to promote the interested parties to the post of Sub-Inspector.

10 (8) The respondents have on this subject decided illegally and failed to exercise their discretionary powers legally and regularly.

(9) The decision attacked was taken contrary to the principles of the Police (Promotions) Regulations and/or the Weekly Orders dated 10.11.1969 and 12.3.1979.

15 On 24th October, 1980, counsel for the respondent opposed the applications of the applicants and his opposition was based on the following legal points:- The act attacked and/or
20 decision is duly reasoned and was taken correctly and legally in accordance with the provisions of the relevant laws and/or regulations, after a proper examination and/or the discretionary powers of the respondent and have been duly taken into consideration after a proper examination as well as the basic facts and circumstances of this case.

25 The opposition is based on the facts which appear at paragraph 3 Part A. The personal and professional achievements of the interested parties appear in Schedule A.

4. The Chief of Police in accordance with his powers under regulation 4 of the Police Promotion (Regulations) proceeded in April, 1979, to the appointment of a committee of selection
30 for taking and evaluating the candidates for promotion to the post of Sergeant, Sub-Inspector and Inspector and Inspector B.

5. The applicant was one of the candidates which were recommended by the Police Director for promotion to the post of Sub-Inspector and later on he appeared before the Committee.
35 It appears further that the applicant was "sinistomenos" (recommended).

6. The Committee of Selection having taken into consideration

the assessment of the applicant which was made by the Committee, recommended him, as it appears from the administrative order No. AR 11/79, dated 12.3.1979, and placed him 97th on the list in line of priority. Photo copy of the said order is attached as schedule "Γ".

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7. The result of the recommendation of the Selective Committee, which is of a consultative nature, was placed before the Chief of Police, who has taken that into consideration and acted in accordance with regulation 13(2) of the Police Law, Cap. 285, has selected and recommended to the Minister to approve the promotion of the interested parties instead of the applicants. (Photo copy of the letter of the Chief of Police to the Minister of the Interior is hereby attached as Schedule "D". The latter has not been recommended for promotion the reason being that he was placed in a lower line by the Committee. The seniority in accordance with regulation 2(2) of the Police (Promotion) Regulations would be taken into consideration but it would not be left to regulate the promotion.

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8. The Minister of Interior has approved the promotions dated 1.3.1980 by his letter under file No. 169/60/16. (Photo copy is attached to Schedule E). The Minister in taking his decision has taken into consideration the opinion of the Deputy Attorney-General of the Republic, Mr. Loucaides (Photo copy of which is attached and is made schedule St) with regard to his law abiding devotion to his duties and personal reputation.

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9. In accordance with the existing Police Orders the promotions are published in the Police Orders Part II No. 10/80 dated 10.3.1980 Schedule 2.

The personal and professional achievements of the interested parties, viz., G. Kasapis, A. Seimenis, St. Zavros, N. Solomonides, A. Christofides, N. Kazafaniotis, A. Kokkinos and M. Pahitis appear in Part A and I need not quote them once in this schedule appear everything which one needs for the purposes of this case.

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Turning now to Andreas Minas, I think I ought to reiterate once again that his case is taken together with that of Andreas Ierides and I do not think it is necessary to put forward the facts of his case which appear at pp. 2 & 3 of Case No. 127/80. On

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the contrary, counsel for the Republic Mr. S. Georghiades, opposed the application and was based on the following point of law, that the act attacked was legally made and in the light of the relevant facts and circumstances of the case.

5 The present opposition was based on the following facts:-
The applicant has been enlisted in the Police Force on 21.9.1960
and was promoted to an Acting Sergeant on 20.11.1965, and
on 15.11.1969 to a Sergeant. He was further promoted to Sub-
Inspector on 1.9.1972 and Inspector on 4.7.1974. He served
10 in the various stations and as from 6.8.1979 has served in the
traffic department of the Nicosia Police. The personal and
professional achievements appear in Schedule A.

3. The Chief of Police in accordance with his powers given
to him under regulation 4 of the Police Promotion (Regulations)
15 in April, 1979, appointed a council of selection for the better
assessment of the candidates for promotion to the post of Ser-
geant, Sub-Inspector, Inspector and Chief Inspector.

4. The applicant Andreas Minas was one of the recommended
candidates by the police Director for his promotion to Inspector
20 and was called before the Police Committee.

5. The Committee of Selection having taken into consideration
what has been said about the applicant by the committee on
12.3.1979, placed him No. 108 in line of priority.

6. The results of the Committee for selection which is of a
25 consultative nature were placed before the Chief of Police who
has taken into consideration everything and has acted in accord-
ance with regulation 13(2) of the Police Law, Cap. 25, selected
and recommended to the Minister to approve the promotion
of the interested parties instead of the applicant. The latter
30 who has been emplaced by the Committee of selection to cate-
gory B (recommended) it was not found possible to be recom-
mended for promotion because of the limited number of existing
vacant posts and that was the reason why he was not recom-
mended. The seniority in accordance with regulation 2(2) of
35 the Police Discipline Regulations would be needed to be taken
into consideration but is not to be left to regulate the promotion.

7. The Minister of the Interior has approved the promotions
by a letter under file No. 169/68/16 dated 1.3.1980.

Turning back to the case 126/80, counsel for the respondent Mr. Florentzos made this statement: "We have discussed the case with my learned colleague of the other side and in view of certain information which I require with a view to finding out further matters and which the Chief of Police would be supplying me, I ask with the leave of the Court for an adjournment once no reply has been given to my letter addressed to the Chief of Police from our office 20 days ago". 5

Indeed, counsel for the applicant agreed with the adjournment sought and the case was fixed for further directions on the 9th February, 1981. On 9th February, 1981, Mr. Florentzos filed the opposition and the case was fixed for hearing on 9.6.1981, but on that date regrettably counsel appearing for Mr. Florentzos informed the Court that he has been admitted into the hospital with a view of having an operation and inevitably the case has to be adjourned on the 2nd December, 1981, but for other reasons again the case was adjourned and was fixed for hearing on 10.4.1982. On that date counsel for both applicants having addressed the Court, the case had to be adjourned because Mr. Florentzos requested an adjournment to enable him to go abroad and to return on the 22.6.1982. In the light of that statement the case was adjourned to 26.6.1982 for further hearing. 10 15 20

On 2nd October, 1982, a statement on oath was made by the Chief of Police who had this to say:- 25

"I, the undersigned Savvas Antoniou of Nicosia, swear and state the following:

1. I am the Commander of the Police Force of Cyprus, I have personal knowledge of the facts of the present case and have the authority to make the present affidavit. 30

2. Both applicants were placed by their Divisional Police Commander, as well as the Selection Board at very low places (Ierides 97th and Mina 108th out of 202 candidates) and in the 2nd category, that is "recommended". For this reason they were not included in my recommendations, which, as it is shown from the promotions that took place, were confined to the candidates who were placed in the 1st category (strongly recommended). 35

3. The views of the Selection Board are as regards the Commander of Police, of an advisory and not of a binding character. The Commander of Police may, according to his opinion and after giving sufficient reasoning, select for promotion any candidate irrespective of the position in which the Board has placed him. Nonetheless the candidates did not show any special distinction, offer of services or act of valiance so that their selection for promotion would be justified vis a vis other candidates who had higher grades. Consequently, in the case of the applicants there was no reason for me to disregard the list and order of priority made by the Board.

4. I reached the present decision for the non-inclusion of the applicants in the list of those eligible for promotion without taking into consideration and without being influenced by the report of KYP which in any case did not concern the applicants.

5. The Selection Board during the evaluation of the candidates for promotion (including the applicants) did not have in mind nor was it put before it for purposes of evaluation a report of KYP, but confined itself to purely matters of service.

6. The above meaning has what is written in my letter to the Minister of Interior (Appendix D to the opposition), dated 16.1.1980, file No. E/16/7/11”.

In the light of the sworn statement of the Chief of Police of 25th September, 1982, counsel for the applicants gave notice to the Registrar of the Court that she intended to cross-examine the Chief of Police. Inevitably the case had to be adjourned once again and on the 19th November, 1982, Mr. Flourentzos, counsel for the respondents, called Mr. Savvas Antoniou, the Chief of Police to give evidence. Mr. Antoniou said: “I adopt my sworn statement dated 25th September, 1982”. In cross-examination by counsel for the applicants, Mrs. Erotokritou, he said that he had in mind the sworn statement which he had made on the 25th September, 1982 and the letter which he had addressed to the Minister of Interior dated 16th January, 1980, with regard to the recommendations for promotion of the interested parties and which letter has been recorded as.

Appendix D in the opposition. (See the letter dated 16th January, 1980, Appendix D in the opposition). Questioned further he said that he had asked from KYP information for all those who were strongly recommended and he added that he referred to that letter and having considered the cases of all the candidates he decided to limit the promotions to those who were strongly recommended only excluding the two applicants. Questioned further as to whether among the candidates were the applicants his reply was yes. He was further asked whether the Chief of Police had in mind information from KYP as regards the applicants and his reply was in the negative. Questioned further regarding the cases of those strongly recommended his reply was that he had asked KYP to supply him with reports. In the light of this statement counsel for the applicants invited the witness to look at paragraph 4 of his sworn statement dated 25th September, 1982, and he had this to say: "Paragraph 4 to which you refer for not including the applicants in the list of those to be promoted I reached the conclusion without taking into consideration and without being influenced from the reports of KYP which were not referring to the applicants because I did not ask any report for the applicants". Pressed further as to paragraph 4 of his sworn statement which contradicts the paragraph of his letter dated 16th January, 1980, his reply was that it is not contradictory because he talks about applicants here. Finally, the Chief of Police had this to say: "I have asked for a report from KYP only for those who I have decided to promote, to see if there were any difficulties, and once I received the report, I studied it and I find that it was justified not to be promoted because of that report and in view of the elements then I would act accordingly. In those reports the applicants were not included". Questioned further as to whether in the cases of promotion he asked for the reports of KYP only his answer was that KYP comes into place in the final stage.

The picture that emerges on a review of the totality of the material before the Court is the following: The applicants and the interested parties were candidates for promotion to the post of Inspector in the Police Force. They all held the post of Sub-Inspector. A Committee was set up to evaluate the suitability of the candidates to promotion and report upon them

with a view of assisting the Commander of the Police to make a selection and ultimately to pave the way for the Minister of Interior to promote the most suitable candidates.

Indeed the power for appointments rests by virtue of regulation 13 in the Minister. But he must bear in mind the Police Regulations paying due regard to the recommendations of the Commander of the Police entrusted in the first place by regulation 13(2) to make a proper selection. The applicants, as well as the interested parties were recommended for promotion by the Consultative Board yet the Committee by its recommendation and whereas the interested parties were strongly recommended the applicants were only recommended.

The Commander of the Police reviewed the recommendations of the Committee but apparently he examined the suitability of the various candidates for promotion. He did not however rest with that and sought information from the Central Intelligence Service of the Police and ostensibly acted on the provisions of regulation 2(2). This regulation makes the devotion to duty and subservience to the law one of the considerations relevant to the worth of a member of the Police Force.

Elicitation of the quality of a Police Officer may be discerned from his service record especially for devotion to duties and the presence of any of a disciplinary or other convictions.

It can never depend on the opinion of another member of the Police Force, or a member of KYP and the dossier may be supplied from information often secretly connected in making the promotion of members of the Police Force dependent on reports of the Intelligence Agency which would undermine in the longer run, not only discipline in the Police Force but devotion to duties as well as objectively identifiable from police records. In my view, it was not, therefore, open to the Commander of the Police to use such information as an aid to the discharge of this task. What were those recommendations it is not known, a factor that makes judicial review impossible, nor do we know what the impact of those recommendations was upon the decision of the Commander of the Police.

Consequently the process of promotion was vitiated by irrelevant material being taken into consideration. The

Minister acted upon the recommendation of the Commander of the Police and judging from his laconical note, "approved", he does not appear to have carried out an inquiry on his own, nor was he bound to carry out such an inquiry. See *Georghios Charalambous and Others v. The Republic*, (1976) 3 C.L.R. p. 224. Certainly the Minister did not exclude from consideration the relevant material taken into account by the Commander of Police and his decision is equally vulnerable to be set aside as that of the Commander of the Police and for precisely the same reason. (See further the case of *Loucas Haviaras v. The Republic*, (1983) 3 C.L.R. 159). 5 10

For the reasons above given the decision must be annulled, but in the particular circumstances of the case I make no order as to costs.

Sub judice decision annulled. No order as to costs. 15