

1985 May 3

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

NITSA EVANGELOU AND 12 OTHERS,

*Applicants,*

v.

THE CYPRUS BROADCASTING CORPORATION,  
THROUGH THE BOARD OF DIRECTORS,

*Respondents.*

(Cases Nos. 170/83 and 258/83).

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- Public Corporations—Cyprus Broadcasting Corporation—Restructuring of the services of—Has to be regulated by Regulations issued by the Corporation, approved by the Council of Ministers and published in the Official Gazette—And not by means of a collective agreement which lacks the force of Law and unless adopted as part of the Regulations of the Public Corporation has no application in the domain of Public Law and cannot by itself be a sufficient legal basis on which the re-structuring could be validly founded.—Section 3(1) (2) and (3) of the Public Corporations (Regulation of Personnel Matters) Law, 1970 (Law 61/70).* 5 10
  - Collective agreement—Provisions of, lack the force of Law—And unless adopted as part of the Regulations of a Public Body they have no application in the domain of Public Law.* 15
  - Public Officers—"Vested rights"—Meaning—Vested rights may be affected either in case of financial detriment, or dis-advantageous arrangements as regards the terms and conditions of service, whereby the status and authority of an officer may be diminished—Restructuring of posts in the Cyprus Broadcasting Corporation—Applicants employed in a post of inferior status—Their status and authority has,* 20

*irrespective of any financial detriment, been diminished—  
Sub judice emplacements annulled.*

5 The applicants held the post of Programme Officer with  
the respondent Corporation. With the object of re-structur-  
ing of the posts of the employees of the respondent, a col-  
lective agreement was reached between the respondent and  
the Union of the employees of the respondent (EVRIC) on  
or about September, 1982. Following such agreement, the  
10 establishment of employees of the respondent was re-  
structured and changes were brought about in the position  
of employees in the hierarchy of the Corporation. In so  
far as applicants were concerned, new posts were created,  
not really corresponding to those abolished. The post of  
15 Programme Officer was abolished and seven organic posts  
were created bearing the title of Programme Office A with  
corresponding salary scale A 10, whereas all the then  
holders of the post of Programme Officer were to con-  
tinue to hold the title of Programme Officer A with the  
20 addition in brackets, (personal title) and became eligible  
for promotion to the post of Programme Officer A on  
scale A 10 and they were emplaced on a combined Scale  
A 8/9 since the 1st January, 1981. When applicants were  
informed of their emplacement on the combined scale A  
25 8/9 they wrote to the respondent objecting to such emplace-  
ment and mentioned, also, that they expected to be em-  
placed on Scale A 10. No reply was given by the res-  
pondent; and the latter with the object of giving effect  
to the re-structuring scheme, advertised on the 9th April,  
1983 its intention of filling the vacancies in the new posts,  
30 and members of the staff were invited to submit applica-  
tions for a number of posts on Scales A 10, A 11 and  
A 12. Hence these recourses whereby applicants challenged  
the decision of the respondent emplacing them in the post  
of Programme Officer A (personal title) on Scale A 8/9  
35 and, also, the decision of the respondent to advertise the  
posts of Programme Officer A and invite applications for  
the filling of such posts.

40 *Held*, (1) that the provisions of a collective agreement  
lack the force of Law and unless adopted as part of the  
regulations of a public body they have no application in  
the domain of public Law; that a collective agreement by  
itself cannot create, modify or abolish any right, obligation

or any other legal relation in the domain of public Law, a fortiori in cases where there are statutory provisions which regulate the internal structure of the service and the relevant powers of a Corporation, as in the present case in which there exist sub sections (2) and (3) of section 3\* of the Public Corporation (Regulation of Personnel Matters) Law, 1970 (Law 61/70); that the powers referred in sub-section (1) of section 3 of Law 61/70, which have been vested in a Corporation are powers concerning appointments, confirmation of appointments, emplacement to the permanent staff, promotion, secondments, transfer, etc.; that the manner in which such powers are to be exercised in accordance with sub-sections (2) and (3) of section 3 has to be regulated by Regulations to be issued by the Corporation and approved by the Council of Ministers; that the publication of the said Regulations—which are considered as a public instrument made under the Law—in the official Gazette is a necessary prerequisite for their enforcement; that the re-structuring which in effect amounts to a reformation of the service and a re-evaluation of the position of the employees, in a much wider sense than a mere appointment or promotion or any other change in the service falls with the powers envisaged by section 3 of Law 61/70; that the only possible and legal way that this could be done was by means of Regulations which eventually and necessarily should be approved by the Council of Ministers and should be published in the official Gazette, which are prerequisite conditions for their promulgation; that the collective agreement is nothing more than the expression of the intention of the Corporation to proceed with the restructuring of the service and cannot by itself be a sufficient legal basis on which the restructuring could be validly founded.

(2) After dealing with the meaning of vested rights - vide p. 1425 post:

That the rights of the applicants may be affected either in case of financial detriment, or disadvantageous arrangements as regards the terms and conditions of their service, whereby their status and authority may be diminished; that since it is common ground that before the re-structur-

\* Section 3(2) and (3) is quoted at pp. 1423-1424 post.

ing the applicants held the post of Programme Officer Scale A 7 and after the re-structuring, they were emplaced on salary Scale A 8/9 it is clear that there has been no financial detriment to the applicants and therefore in this respect there has been no interference with their vested rights; that since the post of Programme Office B, Scale 8/9, which is the scale to which the applicants were emplaced is a post of inferior status compared to that of a Programme Officer A, the status and authority of the applicants has, irrespective of any financial detriment, been diminished; that as a result of the re-structuring of the establishment the applicants were entitled by virtue of their vested rights in the previous post, to be emplaced to an existent organic post under the new structure, with corresponding duties and responsibilities; and that, accordingly, the sub judice decision must be annulled.

*Sub judice decision annulled.*

Cases referred to:

- Kontemeniotis v. C.B.C.* (1982) 3 C.L.R. 1032;
- Paphitis and Others v. Republic* (1983) 3 C.L.R. 255;
- Mavrommatis and Others v. The Land Consolidation Authority etc.* (1984) 3 C.L.R. 1006 at p. 1022;
- Kofteros v. E.A.C* (1985) 3 C.L.R. 394;
- Ploussiou v. Central Bank* (1983) 3 C.L.R. 398;
- Republic v. Menelaou* (1982) 3 C.L.R. 419 at p. 428.

#### Recourses.

Recourses against the decision of the respondents to emplace applicants in the post of Programme Officer A on Scale A 8/9 and the decision of the respondents to advertise the posts of Programme Officer A and invite applications for filling the posts.

*K. Talarides*, for the applicants.

*P. Polyviou*, for the respondents.

*Cur adv. vult.*

SAVVIDES J. read the following judgment. The 13 applicants in these two recourses, which were heard together, challenge the decision of the respondent Corporation dated 20th January, 1983, communicated to the applicants on or about 6th April, 1983, whereby the applicants were em- 5  
placed in the post of Programme Officer A (personal title) on Scale A 8/9 and also the decision of the respondent to advertise the posts of Programme Officer A and invite ap-  
plications for the filling of such posts.

The first decision complained of is contained in a circular letter dated 20th January, 1983, addressed individually 10  
to each one of the applicants, the contents of which read as follows:

“You are hereby informed that in accordance with the agreement for the re-structuring/evaluation, you 15  
are emplaced as from 1st January, 1983, on Scale A 8/9 and your personal title of the post will be that of Programme Officer A with new schemes of service.

(Sgd) A. Zenios  
Personnel Manager for the General-Director.” 20

In the said letter a schedule of the new salary scales of the posts as re-structured is indorsed setting out the new salary scales for each post and in respect of posts on Scale A 8 and A 9, the salary scales are given as £2,272 x 111— 25  
£3,493 for Scale A8 and £2,821 x 136—£3,909 for Scale A9.

The facts of the case are briefly as follows:

The applicants held the post of Programme Officer with the respondent Corporation. With the object of re-structuring of the posts of the employees of the respondent, a collective agreement was reached between the respondent 30  
and the Union of the employees of the respondent (EVRIC) on or about September, 1982. According to the terms of the said agreement, the re-structuring of the posts was to be completed up to the end of March, 1983 and would have retrospective effect as from the 1st January, 1981. 35  
Following such agreement, the establishment of employees of the respondent was re-structured and changes were brought about in the position of employees in the hierarchy of the Corporation. In so far as respondents were con-

cerned, new posts were created, not really corresponding to those abolished. The post of Programme Officer was abolished and seven organic posts were created bearing the title of Programme Officer A with corresponding salary scale  
5 A 10, whereas all the then holders of the post of Programme Officer were to continue to hold the title of Programme Officer A with the addition in brackets, (personal title) and became eligible for promotion to the post of  
10 Programme Officer A on scale 10 and they were emplaced on a combined Scale A 8/9 since the 1st January, 1981.

On or about the 6th of April, 1983, all applicants were informed accordingly. The applicants objected to such em-  
placement and by letters dated 7th April, 1983, in similar  
15 terms, signed by each one of them, brought to the notice of the respondent their objection. The contents of such letters read as follows:

“I refer to your letter dated 20th January, 1983 in  
respect of my emplacement on Scale A 8/9, which  
20 was received after a delay of three months and I wish to observe the following:

I consider my emplacement on Scale A 8/9 irre-  
regular, and unjustified and I expect to be emplaced on  
Scale A 10 as from 1st January, 1981, as provided by  
25 the title of my post in the agreement and by the relative legislation.

You are requested to give me the reasoning of  
your decision as I intend to file a recourse to the  
Courts in case my claim is not satisfied.”

30 No reply was sent to the above letters of the applicants until the date of the filing of the present recourse.

The respondent Corporation with the object of giving  
effect to the re-structuring scheme, advertised on the 9th  
April, 1983 its intention of filling the vacancies in the new  
posts, and members of the staff were invited to submit ap-  
35 plications for a number of posts on Scales A 10, A 11 and A 12. In such advertisement a note was endorsed that the said posts were covered by the collective agreement between the Trade Unions and the respondent Corpora-

tion and therefore the relative provisions in the agreement would apply for the filling of such posts.

As a result of the refusal of the respondent to satisfy the claim of the applicants, applicants filed the present recourses whereby they pray for a declaration of the Court that -

(a) the act and/or decision of the respondent dated 20th January, 1983, communicated to each one of the applicants on or about the 6th April, 1983 whereby the applicants were emplaced to the post of Programme Officer A (personal title) on the Scale A 8/9 is null and void and of no legal effect whatsoever.

(b) That the decision of the respondent and/or its act to publish on or about 9th April, 1983, the post of Programme Officer A and to invite applications for the filling of such posts is null and void and of no legal effect.

The grounds of Law on which the recourses are based are the following:

1. The sub judice decisions amount to excess and/or abuse of power and deprive the applicants of their vested rights.

2. The sub judice decisions amount to misconception of fact and/or Law and/or the legal status of the applicants.

3. The sub judice decisions in substance abolish organic posts which the applicants are now holding.

4. They amount in fact to degrading of the posts, the duties and the existence of such posts.

5. They were taken without due inquiry as to the real facts and

6. The schemes of service on the basis of which the sub judice acts were taken did not secure the prior approval of the appropriate Ministers.

The application was opposed and the legal grounds set out in support of the opposition are the following:

1. The sub judge act and/or decision is lawful and fully reasoned.

2. There was no misconception of fact and the action taken by the respondent was in accordance with the agreement dated 9th September, 1982, between the respondent and the Union of employees of the Cyprus Broadcasting Corporation of which the applicants are members. The said agreement was approved at the general meeting of the members of the EVRIC on 14th December, 1982, and by the Board of the respondent on 21st December, 1982.

3. The contention that the posts of the applicants were degraded is rejected. In accordance with the collective agreement the Programme Officers of the radio and television

(a) were emplaced in the post of Programme Officer A (personal title) Scale A 8/9 and

(b) the holders of such posts were eligible for promotion to Scale A 10 by the Selection Committee after covering Scale A 8/9.

(c) For the accomplishment of such purpose the respondent undertook to create annually in the organic structure of each section the necessary posts of Programme Officers A.

(d) As a first step and in accordance with the collective agreement the respondent created for the musical section seven posts of Programme Officers A on Scale A 10 and invited applications for the filling of such post.

4. The allegation of the applicants that there was no due inquiry is rejected and the respondent acted in accordance with the collective agreement and after all material facts were taken into consideration and no vested right of the applicants was violated.

5. The schemes of service and the sub judge act had been approved by the appropriate organ which is the Board of the respondent.

Under the new schemes the salary of the post of Pro-



gramme Officer A which is a first entry and promotion post Scale A 10 is: £3,180 x 152—£4,396 and the duties and responsibilities defined as follows:

«Καθήκοντα και Ευθύνες

Δημιουργεί, καταρτίζει και επιμελείται προγράμματα. 5

Αναλαμβάνει τη παραγωγή και μετάδοση τους περιλαμβανομένης της συγγραφής κειμένων, της συμμετοχής σε προγράμματα και της παρουσιάσεώς τους.

Συμβάλλει στο σχεδιασμό προγραμμάτων με ιδέες και εισηγήσεις. 10

Αναλαμβάνει την επιλογή μουσικής για τη εχένδυση προγραμμάτων.

Εκτελεί οιαδήποτε άλλα καθήκοντα του ανατεθούν.»

(*"Duties and responsibilities.*

Creates, organises and supervises programmes. Undertakes their production and transmission including the writing of texts, taking part in programmes and their presentation. 15

Contributes in the planning of programmes with ideas and submission. 20

Undertakes the choice of music for programmes.

Perform any other duties assigned to him").

For the post of Programme Officer B, Scale A 8/9, promotion post, the salary scale is: £2,272 x 111—£3,493, £2,821 x 136—£3,909 and the duties and responsibilities are defined as follows: 25

«Καθήκοντα και Ευθύνες

Αναλαμβάνει την παραγωγή και μετάδοση προγραμμάτων περιλαμβανομένης της συγγραφής κειμένων, της συμμετοχής σε προγράμματα και της παρουσιάσεως τους. 30

Αναλαμβάνει την επιλογή μουσικής για την επένδυση προγραμμάτων.

Βοηθά στην παραγωγή και μετάδοση προγραμμάτων.  
Εκτελεί οιαδήποτε άλλα καθήκοντα του ανατεθούν.»

*("Duties and responsibilities*

5 Undertakes the production and transmission of programmes including the writing of texts, taking part in programmes and their presentation.

Undertakes the choice of music for accompanying of programmes.

10 Helps in the production and transmission of programmes.

Performs any other duties assigned to him").

15 As a result of the collective agreement concluded between the Trade Unions of the employees of the C.B.C. and the respondent which was embodied in the re-structuring scheme and reference to which was made in the advertisement for the filling of vacancies, the holders of posts of Programme Officer A (personal title) on Scale 8/9 were to be gradually elevated to Scale 10.

20 To complete the picture, reference should be made to the structure of the posts in question both prior and after the re-structuring.

Prior to the re-organisation, the structure of the Music Department was as follows:

	Head of Music Division	1 post
25	Assistant Head of Music Division	1 post
	Senior Programme Officer	1 post
	Programme Officers Scale 6/7	7 posts
	Assistant Programme Officers	5 posts.

30 The salary of the Programme Officer, prior to the re-structuring, which was the post held by the applicants and which was a combined scale 6/7 was till 31.12.80: £2,342 x 111—2,897 x 124—3,393 x 124—£3,765. The duties and responsibilities of the post were the following:

“To originate, prepare, produce and supervise major musical programmes. To write and adapt accompanying scripts to musical programmes or other independent scripts (musical talks). To provide and if required to present musical and all other effects for various types of programmes (plays, talks and features, etc.)”

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Following the re-structuring, the structure of the Music Department was changed by the establishment of the following posts:

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Head of Music Section (1 post) Scale A 14.

Principal Programme Officer (1 post) Scale A 12

Senior Programme Officer (2 posts) Scale A 11

Programme Officer A (7 posts) Scale A 10

Programme Officer B (5 posts) Scale A 8/9

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Programme Officer C (5 posts) Scale A 4/7

With the above in mind, the question to be answered is whether the respondent has proceeded to the re-structuring in the proper way and according to the provision of the Law, or whether as the applicants contend, the said re-structuring is illegal and interferes with the vested rights of the applicants, undermining their status in the service.

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The main issues to be considered are:

(1) *The competence for the re-structuring.*

*Legal frame.*

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Section 10 of the Cyprus Broadcasting Corporation Law, Cap. 300A provides:

“The Corporation shall appoint such servants as it may deem necessary for the discharge of its functions under the Law upon such terms and conditions of service as it may determine.”

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Furthermore, regulations 5, 6 and 31 of the Regulations issued under section 12 of the Law, read as follows:

“5. The Corporation establishes such posts in the

service which it may deem necessary and provides which of those are permanent and which are temporary.

5 6. The qualifications required for each post and its corresponding duties are those defined in the relevant schemes of service which are issued by the Corporation pursuant to section 10 of the Law.

10 31(1) The salary of every post in the service of the Corporation is the one defined in the relevant schemes of service issued by the Corporation pursuant to s. 10 of the Law."

15 («5. Τὸ Ἴδρυμα καθιδρύει τοιαύτας ἐν τῇ ὑπηρεσίᾳ αὐτοῦ θέσεις οἷας θεωρεῖ ἀναγκαίας καὶ καθορίζει τίνες ἐκ τῶν θέσεων τούτων εἶναι μόνιμοι καὶ τίνες προσωρινοί.

20 6. Τὰ ἀπαιτούμενα διὰ τина θέσιν προσόντα καὶ τὰ ὑπὸ ταύτης συνεπαγόμενα καθήκοντα εἶναι τὰ ἐν σχεδίῳ ὑπηρεσίας ἐκδιδομένῳ ὑπὸ τοῦ Ἰδρύματος δυνάμει τοῦ ἄρθρου 10 τοῦ Νόμου καθοριζόμενα προσόντα καὶ καθήκοντα.

31 (1) Ὁ μισθὸς πάσης θέσεως ἐν τῇ ὑπηρεσίᾳ τοῦ Ἰδρύματος εἶναι ὁ καθοριζόμενος ἐν σχεδίῳ ὑπηρεσίας ἐκδιδομένῳ ὑπὸ τοῦ Ἰδρύματος δυνάμει τοῦ ἄρθρου 10 τοῦ Νόμου.»)

25 Furthermore, under section 3(1) of the Public Corporations (Regulation of Personnel Matters) Law, (Law 61/70), certain powers are vested in certain corporations, including the C.B.C. on matters concerning appointment, promotion, transfer, disciplinary proceedings, etc. of employees similar  
30 to those of the Public Service Commission under Article 195.1 of the Constitution.

35 It is clear from the above provisions that the respondent Corporation had the power and it was within its competence to proceed with the restructuring of the service, including new assignment of duties and responsibilities and the re-evaluation of the posts of employees.

What is of importance is how the substantive changes

and alterations in the structure of the service can be carried out as to produce the intended results.

It is common ground that the restructuring was based on a collective agreement between the Corporation through its management, on the one hand and the Trade Unions of C.B.C., namely EYRIK and SYTYRIK, on the other. Such agreement has not been embodied in any regulations made by the respondent Corporation in the manner provided by Law and, therefore, it has not acquired the force of Law.

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It has been judicially pronounced by this Court in a series of cases that the provisions of a collective agreement lack the force of Law and unless adopted as part of the regulations of a public body they have no application in the domain of public Law (*Kontemeniotis v. C.B.C.* (1982) 3 C.L.R. 1032). In *Paphitis and others v. Republic* (1983) 3 C.L.R. 255, Pikiis, J. noted amongst others:-

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“On principle and authority, a collective labour agreement does not create rights of public Law. The Constitution, the Statute Laws and Regulations made thereunder, are the only source for the genesis of rights in the domain of public Law. Legislation is the province of the legislative assembly. At best, a collective agreement between Government and Unions of public officers, signifies, so far as Government is concerned, its intent to promote before the House of Representatives appropriate legislation to implement it. By itself, the agreement creates neither rights nor does it impose obligations in the field of public Law.”

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The above principle has been reiterated in *Georghios Mavrommatis and others v. The Land Consolidation Authority etc.* (1984) 3 C.L.R. 1006 in which *Stylianides, J.*, had this to say at p. 1022:

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“A collective labour agreement does not create rights of public Law. By itself, an agreement creates neither rights nor does it impose obligations in the field of public Law.

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.....

..... Therefore, any act or decision of the Authority

relating to the structure of the services and the posts of the Authority, the scheme of service, the general rules of service, etc., are subject to the approval of the Council of Ministers. Failing such approval they are not legally valid, not binding even on the Authority and not creating any legal results. The applicants derived no right from the alleged collective agreement.”

It is clear from the above that the collective agreement by itself cannot create, modify or abolish any right, obligation or any other legal relation in the domain of public Law, a fortiori in cases where there are statutory provisions which regulate the internal structure of the service and the relevant powers of a Corporation, as in the present case. Sub-sections (2) and (3) of section 3 of the Public Corporation, (Regulations of Personnel Matters) Law 61/70, provide as follows:

“3 (2) Notwithstanding the provisions of sub-section 3 any of the powers referred to in subsection 1 is exercised by each organisation in accordance with the provisions of the relevant Law or under any rules or regulations issued or to be issued by virtue of the Law, regulating the matter in respect of which the power is exercised.

3 (3) When the relevant Law does not include a provision regulating or granting power to the Organisation to make regulations on any matters in respect of which competence may be exercised by the Organisation by virtue of sub-section (1), the relevant Law will be construed and applied as if including in it provision granting the organisation power to issue rules and regulations regulating the matter.”

(=3 (2) Τηρουμένων τῶν διατάξεων τοῦ ἐδαφίου (3), οἰαδήποτε τῶν ἐν τῷ ἐδαφίῳ (1) ἀναφερομένων ἀρμοδιοτήτων ἀσκεῖται ὑφ' ἐκάστου Ὄργανισμοῦ συμφώνως πρὸς τὰς διατάξεις τοῦ οἰκείου νόμου ἢ οἰωνδήποτε δυνάμει αὐτοῦ ἐκδοθέντων ἢ ἐκδοθησομένων κανονισμῶν ἢ κανόνων, τὰς ρυθμιζούσας τὸ θέμα ἐν σχέσει πρὸς τὸ ὁποῖον ἀσκεῖται ἡ ἀρμοδιότης.

3 (3) Ὅσακις ὁ οἰκείος νόμος δὲν περιλαμβάνῃ δι-

άταξιν ρυθμίζουσιν ἢ χορηγοῦσιν εἰς τὸν Ὅργανισμὸν ἐξουσίαν πρὸς ἔκδοσιν κανονισμῶν ἢ κανόνων ρυθμιζόντων οἰονδήποτε τῶν θεμάτων ἐν σχέσει πρὸς τὰ ὁποῖα δύνатаι νὰ ἀσκηθῆ ὑπὸ τοῦ Ὅργανισμοῦ ἀρμοδιότης δυνάμει τοῦ ἐδαφίου (1), ὁ οἰκειὸς νόμος θὰ ἐρμηνεύηται καὶ ἐφαρμόζηται ὡς ἐάν περιλαμβάνετο ἐν αὐτῷ διάταξις χορηγοῦσα εἰς τὸν Ὅργανισμὸν ἐξουσίαν πρὸς ἔκδοσιν κανονισμῶν ἢ κανόνων ρυθμιζόντων τὸ θέμα τοῦτο.»)

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The powers referred in sub-section (1) of section 3, which have been vested in a Corporation are powers concerning appointments, confirmation of appointments, emplacement to the permanent staff, promotion, secondments, transfer, etc. The manner in which such powers are to be exercised in accordance with sub-sections (2) and (3) of section 3 has to be regulated by regulations to be issued by the corporation and approved by the Council of Ministers.

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The publication of the said regulations which are considered as a public instrument made under the Law—in the official Gazette is a necessary prerequisite for their enforcement.

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In *Kofteros v. E.A.C* delivered on 26.1.1985 not yet reported,\* Stylianides, J. had this to say in respect of the above:

“Article 61 of the Constitution provides that the legislative power of the Republic shall be exercised by the House of Representatives in all matters. The House of Representatives may delegate its powers to legislate to other organs or bodies in the Republic within the accepted principles of Constitutional Law. This was done in respect of the authorities provided by s.3 of Law 61/70. However, for the validity of rules or regulations made under the aforesaid enabling power the approval of the Council of Ministers and the publication in the official Gazette are necessary. Article 82 of the Constitution categorically provided that every Law shall be published. Publication is an indispensable prerequisite for the coming into operation of any Law. ‘Law’ includes delegated le-

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\* Reported in (1985) 3 C.L.R. 394, at pp 401-402.

gislation.” (See also *Ploussiou v. Central Bank* (1983) 3 C.L.R. 398).

5 In my opinion the re-structuring which in effect amounts to a reformation of the service and a re-evaluation of the position of the employees, in a much wider sense than a mere appointment or promotion or any other change in the service, falls within the powers envisaged by section 3 of Law 61/70. The only possible and legal way that this could be done was by means of regulations which eventually and necessarily should be approved by the Council of Ministers and should be published in the official Gazette, which are prerequisite conditions for their promulgation. The collective agreement is nothing more than the expression of the intention of the Corporation to proceed with the restructuring of the service and cannot by itself be a sufficient legal basis on which the re-structuring could be validly founded.

#### *Vested Rights.*

20 Coming now to the merits of the case it is the contention of the applicants that the re-structuring is enforced in a manner prejudicial to them since they have not been placed as they should, to the appropriate post so as their status in the service would be safeguarded and the analogy between duties and salaries would be preserved.

25 The term “vested right” has been interpreted by the Supreme Court in a number of cases. As observed in *Republic v. Menelaou* (1982) 3 C.L.R. 419, at p. 428:

30 “The expression ‘vested rights’ primarily connotes rights that accrued in Law. Rights may be accrued both in civil and public Law. A right may be deemed to vest if the process of the Law for its acquisition has been completed. The right crystallizes thereafter and vests in the subject who becomes its beneficiary in Law.

35 Certainty in the legal process and respect for the Law, require that rights acquired under the Law should remain undisturbed. Inevitably interference with such rights undermines certainty and reduces respect for the Laws.”



The rights of the applicants may be affected either in case of financial detriment, or, disadvantageous arrangements as regards the terms and conditions of their service, whereby their status and authority may be diminished. It is common ground that before the re-structuring the applicants held the post of Programme Officer Scale A7. After the re-structuring, they were emplaced on salary Scale A 8/9. The salary of the respective posts and their functions have already been mentioned. A comparison of their salary scales prior and after the re-structuring makes it abundantly clear that there has been no financial detriment to the applicants and therefore in this respect there has been no interference with their vested rights.

I come now to consider whether irrespective of any financial detriment their status and authority has been affected.

Under the new structure the post of Programme Officer, which the applicants held before the re-structuring, was abolished and the following posts were created:

- (a) Programme Officer A Scale A 10.
- (b) Programme Officer B Scale A 8/9.
- (c) Programme Officer C Scale A 4/7.

The post of Programme Officer A is a post of higher status with a vast field of duties and responsibilities attached to it. That of Programme Officer B. Scale 8/9, which is the scale to which the applicants were emplaced, is a post of inferior status compared to that of a Programme Officer A including, inter alia, the duty of assisting in the production and transmission of programmes, which in fact means assisting a Programme Officer A in this respect, as the main responsibility in respect of such duty rests with a Programme Officer A.

Applicants, though, concerning salary, they were emplaced on Scale A 8/9 which is the corresponding scale for a Programme Officer B, they were awarded the title of

Programme Officer A with the addition to it of the words, "Personal title". It has to be observed that in the re-structured establishment no post exists as the one to which the applicants have been appointed.

5 Before the re-structuring the duties of the applicants as Programme Officers were very wide and included the initiative of originating, preparing, producing and supervising programmes which after the re-structuring have vested in the post of Programme Officer A. After the re-structuring  
10 they have been emplaced on Scale A 8/9 which, as I have already mentioned, is the scale for an inferior post that of Programme Officer B and at the same time they were awarded a shadowy title of "Programme Officer A (Personal Title)", a title for a post obviously non-existent in  
15 the new structure of posts. By a letter addressed by the respondents to the applicants dated 12.6.1983 (exhibit 6) after the filing of the present recourses, respondent informed the applicants of its intention of gradually evolving them to the post of Programme Officer A on Scale 10 by creating  
20 a number of new posts on Scale A 10 every year, in compliance with the obligation they had undertaken under the collective agreement. (Particulars of such undertaking have been set out in the opposition, to which reference has already been made). I find that such undertaking of the  
25 respondents which is to take effect in the future is doubtful and uncertain, bearing also in mind the fact that the nature of the post is that of a first entry and promotion post and that other suitable candidates may raise a claim for appointment to such post in competition to the applicants.  
30

As a result of the re-structuring of the establishment the applicants were entitled by virtue of their vested rights in the previous post, to be emplaced to an existent organic post under the new structure, with corresponding duties  
35 and responsibilities. In the circumstances of the present case for the reasons I have explained, there has been a diminution of the status of the applicants as they have not been emplaced to an existent organic post corresponding to the one previously possessed by them.

For all the above reasons this recourse succeeds and the sub judice decision is annulled.

Respondents to pay to applicants £150.- against their costs.

*Sub judice decision annulled. 5*  
*Respondents to pay £150.-*  
*against costs.*