

1985 July 9

[A. LOIZOU, J.]
IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

YIANNAKIS CHR. THEODOROU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE COUNCIL OF MINISTERS,
2. THE MINISTER OF INTERIOR,

Respondents.

(Case No. 492/81).

Administrative Law—Police Force—Appointments to all ranks up to and including the rank of Chief Inspector—Competent Organs for such appointments—The Police Law, Cap. 285 section 13 as amended by Laws 19/1960, 21/1964 and 29/1966—The Police (General) Regulations 1958, regulations 5 and 7—Decision No. 768 of the Council of Ministers delegating the competency of the Council under the said regulation 5 to the Minister of Interior. 5

Constitutional Law—Articles 54(a) and (c) and 50.1(c)(i) of the Constitution—The provisions of these Articles have no relevance in the matter of appointment to any of the above mentioned ranks of the Police Force or to say the least do not give any exclusive competence in the matter to the Council of Ministers which could not be delegated to any other organ. 15

Constitutional Law—Article 28 of the Constitution—Principle of equality—Applies where all things are equal.

On the 1.10.1976, the applicant, who was at that time a Police Constable upon his own plea was found guilty on three counts for possession of, fire-arms, ammunition and explosives and he was sentenced by the Nicosia Assize Court to twelve months' imprisonment on each count, the sentences to run concurrently. 20

There followed his said conviction and sentence disciplinary proceedings against him and the appropriate Disciplinary Board imposed on him the disciplinary punishment of discharge from the ranks of the Police as from
5 11.11.1976.

The applicant by letter dated 6.12.1980 asked the Council of Ministers to re-appoint him to the force on the ground that the arms for which he was convicted, sentenced to imprisonment and as a result he was discharged
10 from the Force had been collected by him from persons unlawfully possessing the same upon instructions of the appropriate authorities.

By letter dated 16.12.1980 the applicant was informed that his application had been transmitted to the Ministry of Interior and that any further correspondence on the
15 subject should be addressed to that Ministry.

On the 27.12.1980 the Director-General of the said Ministry asked the Chief of Police to give his views on the subject. The latter replied by letter dated 14.1.1981, whereby he informed the Director, inter alia, that applicants' above allegation as to the circumstances in which
20 he found the arms had also been made before the Assize Court, but it had not been accepted. The letter concludes as follows: "Given the above there is no question of setting
25 aside his conviction and of re-enlisting him in the force".

On 6.2.1981 the Director-General of the said Ministry wrote to the Chief of the Police that he had been instructed to refer to the above letter by the Chief of Police and to inform him that "the reappointment of the applicant to
30 the ranks of the Police Force was not recommended".

On 9.10.1981 the applicant was informed by the said Director-General as follows:

"I have been instructed to refer to your letter dated
35 6th December, 1980, addressed to the Council of Ministers and transmitted to me on the ground of competence by which you applied for your re-appointment to the ranks of the Police Force and inform you that your application cannot be favourably answered."

The applicant by the present recourse impugns the validity of the decision communicated to him by the above letter dated 9.10.1981.

It was the case for the applicant that the sub judge decision was taken by an administrative organ having no competence in the matter inasmuch as the applicant addressed his application to the Council of Ministers in view of the provisions of Articles 54(a) and (c) and 50.1(c)(i) of the Constitution. The applicant also relied on section 7 of the Police Law, Cap. 285.

The applicant also complained that the sub judge decision infringed the principle of equality safeguarded by Article 28 of the Constitution inasmuch as he was not appointed as it was done in the past in respect of other members of the Force who had been discharged therefrom on account of their conviction for a criminal offence. In this respect affidavit evidence was filed. In one instance such a person was first re-engaged in the Fire Service and later transferred to the Police Force on account of exceptional patriotic services and support of the State. The other instance was one where the person concerned had been convicted of conspiracy and attempt to murder the late President Makarios and he was re-appointed to the Police as part of the measures of leniency which the late President announced.

Held, dismissing the recourse (1) That it is clear that the Director-General acted on instructions obviously from the Minister of Interior under whom he serves. The matter was referred by the Secretary to the Council of Ministers to the Director-General of the Ministry of Interior in accordance with Circular No. 18 dated 10.4.1983 containing a decision of the Council of Ministers (The relevant part of its text appears in the judgment).

(2) That under section 13 of the Police Law, Cap. 285 as amended by laws 19/60, 21/64 and 29/66 the competent organ for appointments to all ranks of the Police up to and including the rank of Chief Inspector is the Chief of Police with the approval of the Minister of Interior; and under paragraph (h) of regulation 5 of the Police (Ge-

5 neral) Regulations 1958 as amended the Chief of Police may with the approval of the Council of Ministers appoint any person, being a citizen of the Republic, as a Police Constable. This competence of the Council was delegated to the Minister of Interior by decision No. 768 of the 11.5.1961. In addition the Chief of Police was given power under regulation 7 to enlist as a Constable at his own discretion any person.

10 (3) That in view of the above provisions the competence in the matter is vested primarily in the Chief of Police and to a certain extent the Minister of Interior. In the instant case the matter was dealt with by the organs having competence in the matter.

15 (4) That the constitutional or statutory provisions invoked by the applicant have no relevance in the matter or to say the least do not give any exclusive competence in the matter to the Council of Ministers which could not be delegated to any other organ.

20 (5) That applicant's contention as to the infringement of the principle of equality fails; in matters of this nature there is no doubt that there are no two cases alike: no one can claim violation of the principle of equality in respect of his non-reappointment to the Police Force as equality applies where all things are equal, there being
25 room for reasonable differentiation.

(6) That the sub judice decision was taken after due inquiry; it is duly reasoned, its reasoning being supplemented from the material in the file; in the circumstances the relevant discretion was properly exercised.

30 *Recourse dismissed.*
No order as to costs.

Recourse.

35 Recourse against the decision of the respondents not to re-appoint applicant to the ranks of the Police Force after his discharge from the ranks of the Police Force as a result of disciplinary proceedings against the applicant after his conviction and sentence of imprisonment imposed on

him for possession of firearms, ammunition and explosives.

A. Eftychiou, for the applicant.

A. Vassiliades, for the respondents.

Cur. adv. vult. 5

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the decision and/or omission of the respondents as communicated to him by their letter dated 9th October, 1981 (exhibit A) is null and void and of no effect whatsoever and that what was omitted ought to have been done. 10

The applicant joined the Cyprus Police Force on the 2nd March, 1964, as a Police Constable, and served in Nicosia and at Police Head-Quarters as a vehicles' mechanic and driver. On the 11th June, 1976, he was interdicted on the commencement of a Police investigation regarding the possession of fire-arms, ammunition and explosives (see Appendix A). After the completion of the investigations he was committed for trial and appeared before the Nicosia Assize Court on the 1st October, 1976, and upon his own plea he was found guilty on three counts, for possession of, fire-arms, ammunition and explosives, and he was sentenced to twelve months' imprisonment on each count, the sentences to run concurrently. The record of this case has been produced as Appendix B. (See also exhibit X). 15 20 25

There followed his said conviction, disciplinary proceedings against him for breach of regulation 7(18) of the Police (Discipline) Regulations of 1958 - 1977 and of paragraph 18 of the Disciplinary Code and the appropriate Disciplinary Board imposed on him the disciplinary punishment of discharge from the ranks of the Police as from 11th November 1976, (see Appendix C, and exhibit X - blues 301 - 304). 30

The applicant by letter dated the 6th December 1980, (Appendix D), asked the Council of Ministers to reappoint him to the Force on the ground that the arms for which he was convicted, sentenced to imprisonment and as a result of such conviction discharged from the Force, had 35

been collected by him from persons unlawfully possessing same upon instructions, as he put it, of the appropriate authorities.

5 The application of the applicant was transmitted by the Secretary of the Council of Ministers to the Ministry of Interior and as it appears from the letter of the 16th December, 1980, (exhibit X, blue 333), he was informed that his application was so transmitted for examination and that any further correspondence of the subject should be
10 addressed to that Ministry.

On the 27th December 1980, the Director-General asked the Chief of Police to give his views (exhibit X, blue 334). There appears on the said document a note explaining briefly the circumstances of the applicant's sentence and discharge from the Force and as a result thereof the Chief
15 of Police, by letter dated the 14th January, 1981 (exhibit X - blue 335), informed the Director-General of the Ministry of Interior that the applicant had been found guilty and sentenced by the Nicosia Assize Court to twelve months' imprisonment for unlawful possession of arms and
20 ammunition and that his allegation that the arms found in his possession had been collected "on instructions" from the appropriate authorities, had been put forward in his defence before the Court but it had not been accepted,
25 hence his sentence to imprisonment and his subsequent discharge from the ranks of the Police. The letter concludes as follows:

30 "Given the above there is no question of setting aside his conviction and of re-enlisting him in the force."

This in effect is a duly reasoned decision by the Chief of the Police on the subject.

On the 6th February, 1981, the Director-General of the Ministry of Interior, wrote to the Chief of Police (exhibit
35 X - blue 336), that he had been instructed to refer to the Chief's aforementioned letter regarding the reappointment of the applicant and informed him that "the reappointment of Mr. Theodorou to the ranks of the Police Force was not recommended".

On the 9th October, 1981, the applicant was informed by the Director-General of the Ministry of Interior (Appendix A and exhibit X - blue 342) as follows:

"I have been instructed to refer to your letter dated 6th December, 1980, addressed to the Council of Ministers and transmitted to me on the ground of competence by which you applied for your re-appointment to the ranks of the Police Force and inform you that your application cannot be favourably answered."

It is clear that the Director-General was acting on instructions, obviously from the Minister of Interior, under whom he serves.

The applicant by letter dated the 28th November, 1981, asked the Chief of Police (exhibit X - blue 337) to give him copy of the proceedings, together with the grounds of his discharge from the Police Force and also copy of his plea before the Disciplinary Body which tried his case on the 11th November, 1976. His request was acceded to by letter of the same date. (See exhibit X - blues 338 - 339).

In the said letter the known facts of the applicant's conviction and sentence by the Assize Court and his dismissal from the service for a disciplinary offence, contrary to paragraph 18 of the Code and regulation 7 of the Police Regulations, are given and further it is stated that the applicant contrary to his allegation that he had not been given the reasons for his discharge from the service he had been served with disciplinary Form P. 305 on the 4th November 1976.

It is the case for the applicant that the sub judice decision is null as having been taken by an administrative organ having no competence in the matter inasmuch as he had addressed his application to the Council of Ministers for his reappointment to the Cyprus Police Force and which Council of Ministers was asked to consider the said application in view of the provisions of Article 54, paragraphs (a) and (c) of the Constitution.

Article 54(a) of the Constitution gives competence to the Council of Ministers to exercise executive power re-

garding the general direction and control of the Government of the Republic and the direction of general policy and under paragraph (c) thereof as regards defence and security including questions as in Article 50 are set out. The relevant part in Article 50 invoked on behalf of the applicant is paragraphs 50.1(c)(i) as regards questions of security, nominations of officials and their promotions.

He also relied on section 7 of the Police Law, Cap. 285 as amended which provides that "the Chief of Police subject to any order or direction from the Council of Ministers shall have the command and superintendence of the Force and shall be responsible to the Council of Ministers for good order throughout the Republic, for the efficient administration and government of the Force and for the proper expenditure of all public moneys appropriated for the service thereof".

It was argued that in spite of the aforesaid provisions the matter was examined by the Director-General of the Ministry of Interior without competence and in excess and abuse of power.

As seen in the facts set out earlier in this judgment the matter was referred by the Secretary to the Council of Ministers to the Director-General of the Ministry of Interior, who was asked to examine the application in accordance with Circular No. 18, dated 10th April, 1963. The said Circular contains a decision of the Council of Ministers that "whenever a petition is addressed to the Council of Ministers direct, the Secretaries of the Council should forward it to the Ministry concerned and inform the petitioner that his petition has been transmitted to the said Ministry for consideration and that any further communication on the subject should be addressed to such Ministry."

It goes then on to give instructions as to how the Ministry concerned should deal with it.

The matter was then referred by the said Director to the Chief of Police, who examined the application on its merits and concluded that there was no question of setting aside the conviction of the applicant and of re-enlisting him in the force. This approach was also adopted by the Minister

of Interior and the applicant was informed accordingly.

Under section 13 of the Police Law, Cap. 285, as amended by Laws 19/60, 21/64 and 29/66, the competent organ for appointments, promotions and discharge from the Police Force is in the case of Gazetted Officers the Minister and there is a definition that a Gazetted Officer is one above the rank of Superintendent "B" and as regards the appointment, enlistment, promotion and discharge of all other ranks, up to and including the rank of Chief Inspector by the Chief of Police with the approval of the Minister.

The question of appointments to the Police Force is further regulated by the Police (General) Regulations 1958, as amended. Regulation 5 thereof lays down the necessary qualifications for appointment to the Police Force. Significant is the provision to be found in the proviso to paragraph (h) of this Regulation, which provides that independently of any conditions referred to in the preceding paragraphs of the said Regulation, except paragraph (a)—the requirement of being a citizen of the Republic—the Chief of Police may with the approval of the Council of Ministers appoint as a Constable any person. It should be noted, however, that this competence of the Council of Ministers was delegated to the Minister of Interior by Decision No. 768 of the 11th May, 1961. In addition to the above there is power given to the Chief of Police under regulation 7 to enlist as a Constable at his own discretion any person and independently of the provisions of regulation 5.

It is clear from the brief reference made above to the relevant Laws and Regulations that the competence in the matter is vested primarily in the Chief of Police and to a certain extent the Minister of Interior. In the instant case the matter was dealt with by the organs having competence in the matter by virtue of the provisions of the relevant Law and Regulations and this ground fails as none of the aforementioned constitutional or statutory provisions relied upon on behalf of the applicant have any relevance in the matter or to say the least give any exclusive competence to the Council of Ministers which could not be delegated to any other organ.

The final ground relied upon by the applicant is that the sub judice decision was taken in violation of Article 28, paragraphs 1 and 2, of the Constitution and the principle of equality inasmuch as he was not reappointed as it was done in the past in respect of other members of the Force who had been discharged therefrom on account of their conviction in criminal offences. As regards this last ground affidavit evidence was filed. In that filed on behalf of the applicant there are enumerated four instances. In one of them there had not been any conviction for a criminal offence and in the other the ex-constable mentioned was not reappointed. Of the two other instances the one was first re-engaged in the Fire Service and later transferred to the Police Force because, as it was put, of exceptional patriotic services and support to the State, and from the point of view of timing that apparently related to the 1975 period. The other instance was one where the person concerned had been found guilty of conspiracy and attempt to murder the late President Makarios and he was reappointed to the Police Force as part of the measures of leniency which the late President announced. There is no doubt that in matters of this nature there are no two cases alike and no-one can claim violation of the principle of equality or discrimination against him in respect of his non-reappointment to the Police Force as equality applies where all things are equal, there being room for reasonable differentiations.

In the case in hand there should be added also that there is a very wide discretion in the matter.

In conclusion I would like to say that the sub judice decision was lawfully taken after a due inquiry, it is duly reasoned, its reasoning being supplemented from the material in the file, and in the circumstances the relevant discretion was properly exercised and was not reached either in abuse or excess of power.

For all the above reasons the recourse is dismissed with no order as to costs.

*Recourse dismissed.
No order as to costs.*