

1985 July 18

[LORIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANDREAS HERODOTOU AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR AND/OR
THE COMMANDER OF POLICE.

Respondents.

(Cases Nos. 6/85, 23/85, 24/85,
27/85, 30/85, 41/85, 50/85,
52/85, 53/85, 64/85, 67/85,
70/85, 80/85, 84/85, 86/85,
87/85, 90/85, 92/85, 93/85,
94/85, 95/85, 96/85, 97/85,
98/85, 99/85, 105/85, 110/85,
112/85, 113/85, 114/85, 130/85,
133/85, 134/85, 151/85, 152/85,
157/85, 161/85, 169/85, 170/85,
171/85, 192/85, 203/85, 205/85,
207/85, 208/85, 214/85, 215/85,
223/85, 231/85, 235/85, 245/85,
255/85, 256/85, 257/85, 258/85,
259/85, 260/85, 261/85, 266/85,
267/85, 272/85, 274/85, 285/85,
287/85, 296/85, 304/85, 322/85,
330/85, 331/85, 340/85, 341/85,
342/85, 347/85, 349/85, 355/85,
361/85 and 375/85).

*Administrative Law—Promotion of Police Constables to the
rank of Sergeant—Police Law, Cap. 285 as amended—
Section 10—Section 13 (1)(2)(3) and (4) enacted by sec-
tion 2 of Law 29/1966—Regulation making power under*

5 *section 10 concerning promotion of non Gazetted Officers repealed by necessary implication by the second above enactment—Consequently, The Police (Promotion) Regulations published on 22.7.1983 and made under section 10 without being placed before the House of Representatives as provided by Law 29/1966 are invalid—The sub judice promotions made under the said Regulations are null and void.*

Interpretation of statutes—Repeal by necessary implication of an enactment by a new enactment—Principles applicable.

10 All applicants in the above 77 recourses impugn the decision of the Commander of the Police approved by the Minister of the Interior, published in the Police Gazette on 31.12.1984 whereby the interested parties (Police Constables) were promoted to the rank of Sergeant as from
15 15.12.1984.

All above recourses were heard together as they present a common legal issue, namely the validity of the Police (Promotion) Regulations 1983, published on 22.7.1983 (No. 184/1983) on the strength of which the sub judice promotions were effected. These Regulations were made under section
20 10 of the Police Law, Cap. 285 as amended. These Regulations repeal regulations 3, 4 and 5 of the Police (Promotion) Regulations, 1958 (Notification 281 in Suppl. No. 3 of the Official Gazette dated 28.4.58) (which had also
25 been made under the said section as it then stood) by substituting same with new regulations (3)—(9) which substantially affected the status quo in connection with promotions at the time of their publication.

The legal point for determination was whether the regulation making power under the provisions of section 10
30 of the Police Law, Cap. 285 as amended was by necessary implication repealed by the provisions of section 2 (section 13(2)(3) and (4) of the Police Law, Cap. 285 as amended) of Law 29/1966.

35 *Held*, annulling the sub judice promotions (1) that as a general rule the Courts do not favour repeal of an enactment by implication, unless the original enactment is so inconsistent or repugnant to the latter, that the two enactments are incapable of standing together.

(2) That if the Council of Ministers continue to have power to make Regulations at least as regards promotions of non gazetted Officers under section 10 of Cap. 285 on the recommendation of the Police Commander and without an obligation of placing such regulations before the House of Representatives as envisaged by sub-section 4 of section 13 (Law 29/66) then the provisions of the latter enactment, making mandatory the ultimate sanction of the House of Representatives, before the publication of the Regulations, will be defeated. The regulation making power, at least so far as promotion of non gazetted officers is concerned, under the said section 10 is so repugnant and inconsistent with the regulation making power under section 13(4) that the relevant sections are incapable of standing together.

(3) That the original regulations of 1958 were retained in force by virtue of the proviso to sub-section 3 of section 13 (Vide Law 29/1966) pending the making of new regulations under Law 29/1966; and that no new regulations were made under Law 29/1966; and that the Regulations of 22.7.1983 were never placed before the House of Representatives as envisaged by sub-section 4 of section 13 (Vide Law 29/1966). These Regulations purported to effect a substantial change to the pre-existing status quo regarding promotions.

(4) That, therefore, section 10 of the Police Law, Cap. 285 was repealed by necessary implication by Law 29/1966; and that, consequently, the Regulations of 22.7.1983 are invalid. The validity of the original Police (Promotion) Regulations of 1958 has not been affected by the repeal of section 10 (Vide proviso to sub-section 13(3) of Cap. 285 as amended by Law 29/1966).

Sub judice decisions annulled.

No order as to costs.

Recourses.

Recourses against the decision of the respondents to promote the interested parties to the rank of Sergeant in the Police Force in preference and instead of the applicants.

- L. Papaphilippou*, for applicants in cases Nos. 52, 114, 151, 235, 260 and 361/85.
- A. Haviaras*, for applicants in cases Nos. 340/85 and 341/85.
- 5 *St. Kittis*, for applicants in cases Nos. 203, 205, 207 and 208/85.
- E. Vrahimi (Mrs.)*, for the applicants in cases Nos. 41/85 and 50/85.
- 10 *C. Emilianides*, for applicants in cases Nos. 130/85, 133/85, and 134/85.
- St. Drimiotis*, for applicants in cases Nos. 157, 274 and 347/85.
- A. S. Angelides*, for applicants in cases Nos. 272 and 375/85.
- 15 *E. Efstathiou*, for applicants in cases Nos. 27/85 and 231/85.
- N. Clerides*, for applicants in cases Nos. 67/85, 214/85 and 215/85.
- 20 *Chr. Triantafyllides*, for applicants in cases Nos. 92, 93, 94, 95, 96, 97, 98, 99 and 192/85.
- A. P. Erotocritou*, for applicants in cases Nos. 255, 256, 257, 258, 259 and 285/85.
- A. Magos*, for applicants in cases Nos. 304/85 and 342/85.
- 25 *A. Papacharalambous*, for applicants in cases Nos. 80, 87, 90, 105, 110, 112, 113, 223/85 and 349/85.
- N. Papamiltiadous*, for applicants in cases Nos. 23/85, 53/85, 64/85, 86/85, 169/85, 170/85, 30 171/85, and 322/85.
- E. Markidou (Mrs.)*, for applicants in cases Nos. 152, 161, 261 and 266/85.

- K. Talarides*, for applicant in case 24/85.
- A. Drakos*, for applicant in case 331/85.
- G. Triantafyllides*, for applicant in case No. 296/85.
- St. Charalambous*, for applicant in case 245/85.
- A. Ntorzis*, for applicant in case 287/85. 5
- E. Efthymiou*, for applicant in case 330/85.
- A. Eftychiou*, for applicant in case 30/85.
- Tr. Constantinides*, for applicant in case 84/85.
- J. Erotokritou*, for applicant in case 6/85.
- Chr. Mitsides*, for applicant in case 7/85. 10
- M. Christofides*, for applicant in case 267/85.
- G. Georghiou*, for applicant in case 355/85.
- M. Flourentzos*, Counsel of the Republic, for the respondents.
- All interested parties called absent—affidavit of service filed for all in Case No. 6/85. 15
- For the interested parties, as numbered on the list filed in case 24/85, appearances as follows:
- N. Papaefstathiou* for *T. Papadopoulos* for interested parties 1, 2, 3, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 33, 35, 36, 37, 38, 39, 40, 41, 42, 44, 47, 49, 50, 51, 53, 54, 55, 56, 57, 58, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 76, 77, 79, 80, 81, 82, 84, 85, 86, 88, 89, 90, 91, 92, 93. 25
- N. Papaefstathiou* also appears with *P. Papageorghiou* for interested parties 45 and 78.
- P. Papageorghiou* appears for the following interested parties: 18, 34, 52, 59, 75, and 87.
- P. Papageorghiou* appears for the interested parties 45 and 78 with *N. Papaefstathiou*. 30

G. Kokkinou, for interested party No. 43.

B. Vassiliades, for interested party No. 48 and 83.

N. Cleridou (Mrs.), for the interested party No. 74.

Cur. adv. vult.

5 LORIS J. read the following decision. All applicants in the above 77 intitled recourses impugn the decision of the Commander of the Police approved by the Minister of the Interior, published in the Police Gazette on 31.12.84, whereby the interested parties (Police constables) were promoted to the rank of Sergeant as from 15.12.84.

10 As all the above recourses present a common legal issue, notably the validity of the Regulations on the strength of which all the aforesaid promotions were effected, were heard together on the application of all concerned on this preliminary issue, pursuant to the directions of this Court.

In order to examine the legal issue arising, it is necessary to resort to the original legislation on the matter, the regulations made thereunder, as well as to the subsequent amendments of the law and the regulations.

20 Section 10 of the Police Law, Cap. 285 (which is included in Part II of the Police Law under the heading "Constitution and Administration") was amended by s. 4 of Law 21/64 (vide Schedule under s. 4) to read as follows:

25 "10 (1) The Council of Ministers may on the advice (τῆ γνώμοδότησει) of the Commander of the Police, from time to time, make Regulations for the good order, administration and government of the Force.

30 (2) Without prejudice to the generality of the powers conferred by subsection (1), the regulations may make provision for all or any of the following matters:-

(a) - (e)

(f) promotion and reduction in rank;

.....”

On 28.4.58 the Police (Promotion) Regulations 1958 were published in the Official Gazette of the then Colony of Cyprus (coming into force on 1.5.1958 vide Notification 281 in Suppl. No. 3 dated 28.4.58); the said regulations were made under s. 10 of Cap. 285 as it then stood. 5

It may as well be added here that the aforesaid Regulations were amended subsequently by the Council of Ministers of the Republic of Cyprus; in order to avoid confusion, owing to the repeated amendments, I shall confine myself in mentioning here that the first amendment of the regulations was effected on 10.11.66 (vide No. 943 in Suppl. No. 3 of Cyprus Gazette dated 10.11.66). 10

Section 13 of the Police Law, Cap. 285 (which is included in Part III of the Police Law, under the heading “Appointment, Enlistment, Service and Discharge”) was amended originally by Law 19/60 and subsequently by Law 21/64; it is significant to note that the aforesaid amendments were referring to subsection (1) of section 13, which dealt with appointments, promotions and discharge of GAZETTED officers only. 15 20

Subsections (2) and (3) of section 13 were abolished and substituted by s. 2 of Law 29/66 published on 30.6.1966. Section 2 of Law 29/66 reads as follows:

«2. Τα άρθρα (2) και (3) του άρθρου 13 του βασικού Νόμου καταργούνται και αντικαθίστανται διά τῶν κάτωθι: 25

(2) Ὁ Ἀρχηγός, τῆ ἐγκρίσει τοῦ Ὑπουργοῦ, διορίζει, κατατάσσει, προάγει καὶ ἀπολύει πάντα τὰ μέλη τῆς Δυνάμεως μέχρι καὶ συμπεριλαμβανομένου τοῦ Ἀρχιεπιθεωρητοῦ. 30

(3) Οἱ ὅροι διορισμοῦ, κατατάξεως, προαγωγῆς, ὑπηρεσίας καὶ ἀπολύσεως μελῶν τῆς Δυνάμεως προβλέπονται ὑπὸ Κανονισμῶν γενομένων ὑπὸ τοῦ Ὑπουργικοῦ Συμβουλίου ἐπὶ τῆ βάσει τοῦ παρόντος άρθρου καὶ δημοσιευομένων εἰς τὴν ἐπίσημον ἐφημερίδα τῆς Δημοκρατίας: 35

Νοεῖται ὅτι μέχρι τῆς ἐκδόσεως τῶν ἐν τῷ παρόντι

ἐδαφίῳ προβλεπομένων Κανονισμῶν οἱ κατὰ τὴν ἡμε-
 μηνίαν ἐνάρξεως ἰσχύος τοῦ παρόντος Νόμου ἐν ἰσχύϊ
 Κανονισμοὶ καὶ Γενικαὶ Διατάξεις θὰ ἐξακολουθήσω-
 σιν ἐφαρμοζόμενοι.

5 (4) Κανονισμοὶ ἐκδιδόμενοι ἐπὶ τῇ βάσει τοῦ παρόν-
 τος ἄρθρου κατατίθενται εἰς τὴν Βουλὴν τῶν Ἀντι-
 προσώπων. Ἐὰν μετὰ πάροδον δεκαπέντε ἡμερῶν ἀπὸ
 τῆς τοιαύτης καταθέσεως ἡ Βουλὴ τῶν Ἀντιπροσώ-
 10 πων δι' ἀποφάσεως αὐτῆς δὲν τροποποιήσῃ ἢ ἀκυρώ-
 σῃ τοὺς οὕτω κατατεθέντας Κανονισμοὺς ἐν ὅλῳ ἢ ἐν
 μέρει τότε οὗτοι ἀμέσως μετὰ τὴν πάροδον τῆς ἄνω
 προθεσμίας δημοσιεύονται ἐν τῇ ἐπισήμῳ ἐφημερίδι τῆς
 15 Δημοκρατίας καὶ τίθενται ἐν ἰσχύϊ ἀπὸ τῆς τοιαύτης δη-
 μοσιεύσεως. Ἐν περιπτώσει τροποποιήσεως τούτων ἐν
 15 ὅλῳ ἢ ἐν μέρει ὑπὸ τῆς Βουλῆς τῶν Ἀντιπροσώπων
 οὗτοι δημοσιεύονται ἐν τῇ ἐπισήμῳ ἐφημερίδι τῆς Δη-
 μοκρατίας ὡς ἤθελον οὕτω τροποποιηθῆ ὑπ' αὐτῆς καὶ
 τίθενται ἐν ἰσχύϊ ἀπὸ τῆς τοιαύτης δημοσιεύσεως.»

20 (“2. Paragraphs (2) and (3) of section 13 of the basic
 Law are hereby repealed and replaced by the following
 provisions:

25 (2) The Commander of the Police, with the approval
 of the Minister, shall have power to appoint, classify,
 promote and dismiss all members of the Force upto
 and including the rank of Chief Inspector.

30 (3) The terms of appointment, enlistment, promo-
 tion, service and dismissal of members of the Force
 shall be provided by Regulation made by virtue of
 this section by the Council of Ministers and published
 in the Official Gazette.

Provided that until the issue of the Regulations
 mentioned in this paragraph the Regulations and the
 General Orders in force on the day when this Law
 comes into force shall continue to be in force.

35 (4) Regulations issued by virtue of this section are
 placed before the House of Representatives. If after
 the expiration of a period of fifteen days from such
 placing as aforesaid the House does not by a decision
 amend or annul the Regulations so placed in toto or

in part, then such regulations shall immediately upon the expiration of such period be published in the Official Gazette and are put into force as from the date of such publication. In the event of an amendment of such regulations by the House in toto or in part, such regulations are published in the Official Gazette as amended by the House and are put into force as from the date of such publication”).

5

It is important to note that Law 29/66 provides *inter alia*

10

(a) For the making of new Regulations in connection with promotions,

(b) For the placing of such Regulations before the House of Representatives for approval before their publication,

15

(c) That the existing Regulations will continue in force on the date of the coming into operation of “this law” pending the publication of the new Regulations; in this connection we must always bear in mind (i) that Law 29/66 was published in the Official Gazette on 30.6.1966 and came into operation on the same day in the absence of any provision to the contrary.

20

(ii) Up to 30.6.1966 the Police (Promotion) Regulations 1958 were not amended, the first amendment thereof having been effected on 10.11.66, i.e. almost 4½ months after the enactment and the coming into operation of Law 29/66.

25

Reverting again to the Police (Promotion) Regulations 1958, in order to complete the picture as regards amendments of the said regulations up to 1983, when the regulations under consideration were published, (vide No. 184/83 of 22.7.83) it may be noted that certain minor amendments were effected, which were not directly connected with the promotions, as follows:

30
35

(1) On 10.11.66 (under No. 943/66) a proviso to regulation 11 was added.

(2) On 9.6.72 (vide No. 111/72) an amendment was effected to the then regulation 9 (now 13).

(3) On 12.12.80 (vide No. 347/80) an amendment was effected to regulation 10 (now 14).

5 On 22.7.83 (vide No. 184/83) the Police (Promotion) Regulations 1983 were published; they repealed regulations (3), (4) and (5) of the original regulations of 1958 substituting same with 9 new regulations (regulations (3) - (9)) which substantially affected the then existing status quo in
10 connection with promotions.

It was conceded by the respondents that the sub judge promotions in the present recourse were made pursuant to the new regulations (3) - (9) of 1983, amendments which were published under the provisions of s. 10 of Cap. 285.

15 It was submitted on behalf of the applicants that the sub judge promotions could not be made under these regulations which were allegedly ultra vires the enabling Law, as they ought to have been made under s. 13 of the Police Law as amended and not under section 10, the
20 latter section having been by necessary implication repealed at least as far as the promotions were concerned.

It was further submitted on behalf of the applicants that the regulations of 1983 were never placed before the House of Representatives and therefore they were repugnant to the provisions of Law 29/66.
25

Counsel for the Republic supported the validity of the amended regulations and submitted that section 10 of the Police Law, Cap. 285 enables the Council of Ministers on the advice of the Commander of the Police to make regulations independently of the provisions of s. 13 (2) (3) and
30 (4) of Law 29/66. The Council of Ministers, it was maintained, has power both under s. 10 and under s. 13 of the Police Law to make regulations for promotions in the Police Force.

35 Counsel appearing for the interested parties adopted the submissions of learned counsel appearing for the Republic.

Thus, the validity of the regulations on the strength of

which all the aforesaid promotions were effected turns mainly on the issue whether the regulation making power under the provisions of s. 10 of the Police Law was by necessary implication repealed by the provisions of s. 2 of Law 29/66.

5

It is a fact that Law 29/66 did not expressly repeal the regulation-making power under s.10 of the Police Law. As a general rule the Courts do not favour repeal of an enactment by implication unless the original enactment is so inconsistent or repugnant to the latter, so that the two enactments are incapable of standing together. (Vide Halsbury's Laws of England 4th ed. Vol. 44, paragraph 966).

10

Section 10(1) and (2) of the Police Law enables the Council of Ministers to make regulations on the advice of the Commander of the Police for certain matters including "promotion and reduction in rank". Sub-section 4 of section 13, as set out in s. 2 of Law 29/66 provides for the placing of Regulations to be made in connection with promotions before the House of Representatives for approval before their publication.

15

20

It is obvious that if the Council of Ministers continues to have power to make regulations at least as far as promotions of non gazetted officers are concerned on the recommendation of the Police Commander only, without an obligation of placing such regulations before the House of Representatives as envisaged by subsection 4 of section 13, then the provisions of the later enactment which is law 29/66 will be defeated, as the latter law makes mandatory the ultimate sanction of the House of Representatives before the publication of the Regulations.

25

30

Having given the matter my best consideration I have come to the conclusion that the regulation-making power at least so far as promotion of non gazetted officers is concerned, is so repugnant and inconsistent with the regulation making power under sub-section 4 of s. 13 that the relevant sections are incapable of standing together.

35

It is a fact that the original regulations of 1958 were retained in force by virtue of the proviso to sub-section (3) of s. 13 (vide Law 29/66), pending the making of new regulations under the law of 1966; and it is also correct

40

that no new regulations were made pursuant to the provisions of Law 29/66. It is clear though from the regulations published in 1983 (184/83 of 22.7.83 which have been published by virtue of the provisions of s. 10 of the Police Law, that the new regulations are not any more minor amendments of the original regulations, but they effected in substance sweeping changes to the pre-existing status quo in connection with promotions; they provide inter alia, for a committee for evaluating candidates for promotion (new regulation 4), a committee of selection (new regulation 7) and certain other matters apparent from mere perusal of the new regulation, which introduce an entirely new procedure in connection with promotions, unknown to the original Police (Promotion) Regulations; in this connection, we must not lose sight of the fact that all these regulations having been published under s. 10 of the Police Law were never placed before the House of Representatives for the required sanction by the House, as envisaged by sub-section 4 of s. 13 (vide Law 29/66).

For all the above reasons, I hold the view that s. 10 of the Police Law was repealed by necessary implication, by Law 29/66, in so far as it relates to promotions of non gazetted officers; of course this repeal does not affect the validity of the original Police (Promotion) Regulations of 1958 which were retained in force by the proviso already stated to sub-section 3 of section 13, pending the making of new regulations.

In the result the sub judice promotions to the rank of sergeant, made under the regulations of 1983 (184/83 on 22.7.83) cannot stand and they are hereby declared null and void as the regulations in question are invalid for the reasons stated above.

There will be no order as to costs.

*Sub judice promotions annulled.
No order as to costs.*