

1985 November 23

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

ANDREAS G PETROUDES,

*Applicant,*

v.

THE ELECTRICITY AUTHORITY OF CYPRUS,

*Respondent.*

(Case No. 360/84)

---

*The Public Corporations (Regulation of Personnel Matters) Law 61/70—S.3—Electricity Authority of Cyprus—Promotions—In the absence of regulations the Authority cannot exercise competence over personnel matters.*

- 5 *Law of Necessity—The necessity that justified the enactment of said Law 61/70 not only has not diminished but it was magnified by reason of the Turkish invasion.*

10 The challenge of the sub judge promotions is confined to the following two grounds, namely exercise of power over the promotion of personnel in breach of s.3 of the Public Corporations (Regulation of Personnel Matters) Law 61/70 and the constitutionality of the said Law, specifically the justification, if any, for recourse to its provisions many years after the necessity that led to its  
15 enactment.

20 Law 61/70 passed in the aftermath of the events of 1963 and 1964, and in order to fill the gap left by the withdrawal of Turkish Officials from government machinery, conferred on public corporations, the competence vested by the Constitution in the Public Service Commission with regard to personnel.

Section 3 of Law 61/70 provides that such competence

could only be exercised in accordance with existing regulations of the Authority governing personnel matters or in the absence thereof in accordance with Regulations to be specifically made thereafter.

The E.A.C. lacked regulations governing personnel matters at the time of the enactment of Law 61/70 and made none thereafter. 5

*Held, annulling the sub judice decision:*

(1) In the absence of Regulations the E.A.C. could not assume competence with respect to the promotion of personnel. The vacuum cannot be gauged either by the practice of the Authority or the unpublished collective agreement between the authority and the staff unions. The requirement for the exercise of the competence over personnel in accordance and subject to regulations was a fundamental prerequisite postulated by law in the interest of sound administration. 10 15

(2) Not only the necessity that led to the enactment of Law 61/70 has not diminished, but if anything it has been magnified by the Turkish invasion of 1974. 20

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

**Cases referred to:**

- Sophocleous v. E.A.C.* (1984) 3 C.L.R. 1089;
- Plousiou v. The Central Bank* (1983) 3 C.L.R. 398; 25
- Kontemeniotis v. C.B.C* (1982) 3 C.L.R. 1027;
- Makrides and Another v. The Republic* (1984) 3 C.L.R. 677;
- Solomou v. The Republic* (1984) 3 C.L.R. 533;
- The Republic v. Louca and Others* (1984) 3 C.L.R. 241. 30

**Recourse.**

Recourse against the decision of the respondent to promote the interested parties to the post of Area Design and

Planning Engineer in preference and instead of the applicant.

*E. Efsthathiou*, for the applicant

*S. Pouyouros* for *G. Cacoyiannis*, for the respondent.

5

*Cur. adv. vult.*

PIKIS J. read the following judgment. The challenge to the decision of the respondents of 27th April, 1984, whereby they promoted the interested parties in preference to the applicant, is confined to two legal grounds affecting the legal framework within which the decision was taken. They are:

- 15 (a) Exercise of power over the promotion of personnel in breach of the provisions of the law, namely s. 3 of the Public Corporations (Regulation of Personnel Matters) Law 1970, vesting or transferring competence in public corporations for the appointment, promotion, transfer and discipline of personnel. And
- 20 (b) The constitutionality of the aforesaid law, specifically the justification, if any, for recourse to its provisions many years after the necessity that led to its enactment.

Not for the first time we are faced with the assumption of power by the Electricity Authority of Cyprus over personnel matters in the absence of any regulations governing the exercise of such competence. In *Sophocleous v. E.A.C.* 25 (1) we decided, on examination of the provisions of s. 3 of Law 61/70, that no disciplinary jurisdiction could be assumed over the personnel of the Authority in the absence of Rules regulating the exercise of the power. It was pointed out that only regulations duly promulgated in the 30 official Gazette could validate the assumption and exercise of competence in this area<sup>(2)</sup>. And the same holds true in relation to promotions of personnel.

Law 61/70, passed in the aftermath of the events of 1963 and 1964, in order to fill the gap left by the with-

<sup>(1)</sup> (1984) 3 C.L.R. 1089.

<sup>(2)</sup> *Plousiou v. The Central Bank* (1983) 3 C.L.R. 398.

drawal of Turkish officials from government machinery, conferred on public corporations the competence vested by the Constitution in the Public Service Commission with regard to personnel. The transfer or vesting of power was not unconditional. It was made expressly subject to observance of the provisions of s. 3 of the law that provided that such jurisdiction could only be exercised in accordance with existing regulations of the Authority governing personnel matters or in the absence thereof in accordance with regulations to be specifically made thereafter. Section 3(3) in particular laid down that competence over the appointment and status of personnel could be exercised in accordance with regulations promulgated under the basic law. The Electricity Authority of Cyprus lacked Regulations governing personnel matters at the time of the enactment of Law 61/70 and made none thereafter. In the absence of such Regulations no competence could be assumed with respect to the promotion of personnel. The vacuum could not be gauged either by the practice of the Authority or the unpublished collective agreement between the Authority and the staff unions<sup>(1)</sup>. The requirement for the exercise of competence over personnel in accordance and subject to regulations was not an inessential formality that could be ignored. It was a fundamental prerequisite postulated by the law for the exercise of the power in the interest of sound administration. Regulations make for certainty in public administration and aim to erect a barrier against the arbitrary exercise of authority. In their absence the Electricity Authority of Cyprus could not exercise any competence in relation to promotions of personnel. For that reason the decision here under consideration is wholly abortive.

It becomes unnecessary, in view of the above, to debate the second legal objection to the validity of the decision. The suggestion made by counsel for the applicant that the necessity that led to the enactment of Law 61/70 has disappeared, leaves me unpersuaded. Not only it has not diminished, but if anything, it has been magnified by the Turkish invasion of 1974. Of course, nothing said in this

<sup>(1)</sup> Kontamieniotis v. C.B.C. (1982) 3 C.L.R. 1027.

judgment is intended to reduce the significance of my observations in the cases of *Makrides and Another v. The Republic*(<sup>1</sup>). *Solomou v. The Republic*, (<sup>2</sup>) and *The Republic v. Louca and Others*(<sup>3</sup>), respecting the principles and  
5 framework within which competence vested in the Public Service Commission by the Constitution should, under any circumstances, be exercised whether by the Public Service  
10 Commission or any other body.

In the result the decision is annulled. Let there be no  
10 order as to costs.

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

---

(1) (1984) 3 C.L.R. 677.

(2) (1984) 3 C.L.R. 533.

(3) (1984) 3 C.L.R. 241.