

1985 November 25

[KOURRIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

ERODOTOS PATSALIDES,

*Applicant,*

v.

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

*Respondents.*

*(Case No. 385/85).*

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5     *The Police Force—The Police (Discipline) Regulations 1958-1983—The Police Law, Cap. 285—Power to make regulations—S. 10 as amended by law 21/64—S. 13(3) and (4) as amended by Law 29/66—The provisions of s. 10 cannot be reconciled with the provisions of s. 13(3) and (4)—S. 10 pro tanto and by necessary implication repealed by Law 29/66—The power to make regulations in respect of dismissal from service under s. 10 repealed as aforesaid—As, therefore, the Police (Discipline) Regulations have been substantially amended after the enactment of Law 29/66, and as the procedure provided by the said Law for the enactment of regulations has not been followed, the applicant's disciplinary punishment of dismissal from the service has to be set aside.*

15     The applicant, a member of the Police Force, was charged with the disciplinary offence of discreditable conduct contrary to regulations 7(1) and 18(1) of the Police (Discipline) Regulations 1958-83. The applicant was found guilty and was dismissed from the service. He appealed to  
20     the Commander of the Force pursuant to Regulation 20 of the said Regulations. His appeal was eventually dis-

missed. As a result applicant filed the present recourse.

The question of the validity of the said regulation was heard as a preliminary point of law. Counsel for the applicant submitted that the regulations are void as they were not laid before the House of Representatives prior to their publication in the Official Gazette in accordance with s. 13(4) of the Police Law, Cap. 285 as amended by Law 29/66, whilst counsel for the respondents submitted that in the case in hand it is s. 10 of the Law and the regulations made thereunder that are applicable. It should be noted that s. 10 of Cap. 285 as amended by Law 21/64 delegates the power of making regulations to the Council of Ministers. Sub-section 2(e) of s. 10 gives specific power to the Council of Ministers to make regulations for disciplinary offences. On the other hand the dismissal from the Force is among the matters for which regulations may be made under s. 13.

*Held, annulling the sub judice decision:*

(1) The provisions of s. 10 cannot be reconciled with the provisions of s. 13(3) and (4). It would be absurd to construe the Statute as providing two methods of making regulations in the same matter, viz. dismissal; one with the advice of the Commander of the Police without such regulations being laid before the House of Representatives, and the other without the necessity of the advice of the Commander of the Police but with requirement of laying them before the House of Representatives and leaving the option to the Council of Ministers to exercise either of those powers.

Consequently there is no room for any construction other than that the Legislature intended to repeal the power to make regulations under s. 10 with regard to "dismissal". In so far as s. 10 related to disciplinary proceeding, it was repealed by implication by Law 29/66.

(2) As there has been a substantial amendment of the Police (Discipline) Regulations after the enactment of Law 29/66 and as the procedure laid down by s. 13 of Cap. 285 as amended by Law 29/66 has not been followed

the dismissal of the applicant from the Force has to be set aside.

*Dismissal of applicant annulled.  
No order as to costs.*

5 **Cases referred to:**

*Lefkatis and Others v. The Republic* (1985) 3 C.L.R. 1372.

**Recourse.**

10 Recourse against the decision of respondent 2 dismissing applicant's appeal from the decision of the Disciplinary Board by virtue of which applicant was found guilty of the offence of discreditable conduct and was dismissed from the Police Force.

*A. Papacharalambous*, for the applicant.

15 *A. Vladimirov*, for the respondent.

*Cur. adv. vult.*

20 KOURRIS J. read the following judgment. This is a recourse against the decision of the Deputy Police Commander dismissing applicant's appeal from the decision of the Disciplinary Board whereby he was found guilty of the offence of discreditable conduct and was dismissed from the Police Force.

25 The applicant enlisted in the Force in 1980 and at the material time was stationed at Lycavitos Police Station, Nicosia. On 14th April, 1984 he was tried by the Disciplinary Board on two counts for offences against discipline. He was acquitted on count (2) for insufficiency of evidence and was found guilty on count (1) and he was dismissed from the Force.

30 The charge on count (1) was one of discreditable conduct contrary to regulation 7(1) and regulation 18(1)(b) of the Police (Discipline) Regulations, 1958-1983. The particulars were that whilst he was married acted in a disorderly manner prejudicial to discipline which was reasonably likely to bring discredit on the reputation of the  
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Force, i.e. he had sexual relations with various women and on some occasions with the knowledge of his wife.

The decision of the Presiding Officer was confirmed by the Divisional Police Superintendent of Nicosia town and the applicant appealed to the Commander of Police pursuant to the provisions of regulation 20 of the said regulations. The Commander of Police referred the matter to the Deputy Commander of Police who heard the appeal on 4th September, 1984 and on 26th February, 1985, delivered his judgment by which the appeal was dismissed.

I do not propose to set out all the legal grounds on which the decision is attacked because counsel applied to the Court to hear and determine a preliminary point of law, i.e. whether the Police (Discipline) Regulations, 1958-1983 by virtue of which the applicant was tried, are void and of no legal effect. If they are void they dispose of the recourse altogether and it is not necessary to decide the other legal grounds.

Counsel for the applicant submitted that the regulations under which the applicant was tried disciplinarily are void because they were not laid before the House of Representatives prior to their publication in the Official Gazette of the Republic in accordance with the procedure laid down by s. 13(4) of the Police Law, Cap. 285, as amended by law No. 29/66. He further argued that any regulations concerning dismissal of any member of the Force are ultra vires as they were made under s. 10 of the law whereas they should have been made under s. 13.

Counsel for the respondents contended that it is s. 10 of the law and the regulations made thereunder that are applicable in the case in hand. He argued that s. 10 of the law deals specifically, inter alia, with offences against discipline and disciplinary procedure and consequently the regulations made under s. 10 are applicable. As such they need not be laid before the House of Representatives before publication in the Official Gazette of the Republic.

Further, he went on to say that the meaning of the word "discharge", referred to in s. 13 of the law, has nothing to do with the meaning of the word "dismissal" referred

to in s. 10 (3) (i) as a result of disciplinary proceedings.

It is pertinent, at this stage, to point out that s. 10, as amended by law 21/64, delegated to the Council of Ministers general power to make regulations for the good order, administration and government of the Force on the advice of the Commander of the Police. Subsection 2 (e) gave specific power to the Council of Ministers to make regulations for disciplinary offences.

Section 13 (3), as amended by law No. 29/66 provided that conditions of appointment, enlistment, promotion, service and discharge (απόλυσις), are to be provided for in regulations made by the Council of Ministers and laid before the House of Representatives. If, after the lapse of fifteen days the House by decision does not amend or revoke the regulations in toto or in part, then, they are published in the Official Gazette of the Republic and come into operation. In case they are amended they are published in the Official Gazette of the Republic as amended by the House.

I propose, at this stage, to set out the amendment of s. 13 of the Police Force by Law No. 29/66:-

«(2) Ο Αρχηγός, τη εγκρίσει του Υπουργού, διορίζει, κατατάσσει, προάγει και απολύει πάντα τα μέλη της Δυνάμεως μέχρι και συμπεριλαμβανομένου του Αρχιεπιθεωρητού.

(3) Οι όροι διορισμού, κατατάξεως, προαγωγής, υπηρεσίας και απολύσεως μελών της Δυνάμεως προβλέπονται υπό Κανονισμών γενομένων υπό του Υπουργικού Συμβουλίου επί τη βάσει του παρόντος άρθρου και δημοσιευομένων εις την επίσημον εφημερίδα της Δημοκρατίας:

Νοείται ότι μέχρι της εκδόσεως των εν τω παρόντι εδαφίω προβλεπομένων Κανονισμών οι κατά την ημερομηνίαν ενάρξεως ισχύος του παρόντος Νόμου εν ισχύϊ Κανονισμοί και Γενικά Διατάξεις θα εξακολουθησασιν εφαρμοζόμενοι.

(4) Κανονισμοί εκδιδόμενοι επί τη βάσει του παρόν-

τος άρθρου κατατίθενται εις την Βουλήν των Αντιπροσώπων. Εάν μετά πάροδον δεκαπέντε ημερών από της τοιαύτης καταθέσεως, η Βουλή των Αντιπροσώπων δι' αποφάσεως αυτής δεν τροποποίηση ή ακυρώση τους ούτω κατατεθέντας Κανονισμούς εν όλω ή εν μέρει τότε ούτοι αμέσως μετά την πάροδον της άνω προθεσμίας δημοσιεύονται εν τη επισήμω εφημερίδι της Δημοκρατίας και τίθενται εν ισχύι από της τοιαύτης δημοσιεύσεως. Εν περιπτώσει τροποποίησης τούτων εν όλω ή εν μέρει υπό της Βουλής των Αντιπροσώπων ούτοι δημοσιεύονται εν τη επισήμω εφημερίδι της Δημοκρατίας ως ήθελον ούτω τροποποιηθή υπ' αυτής και τίθενται εν ισχύι από της τοιαύτης δημοσιεύσεως».

The English translation is as follows:-

(“ (2) The Commander, with the approval of the Minister, appoints, enlists, promotes and discharges all the members of the Force up to and including Chief Inspector.

(3) The conditions of appointment, enlistment, promotion, service and discharge of members of the Force shall be in accordance with the provisions of the Regulations to be made by the Council of Ministers under this Law and published in the official Gazette of the Republic:

Provided that until the making of the regulations provided for in this section, the regulations and general orders in force on the day of the coming into force of this Law will continue to be applicable.

(4) Regulations issued under this section are deposited with the House of Representatives. If after the lapse of fifteen days from such deposition, the House of Representatives by its decision does not amend or cancel the so deposited regulations in whole or in part then the regulations immediately after the lapse of the above time limit are published in the official Gazette of the Republic and take effect as from such publications. In the case of their amendment in whole or in part by the House of Representatives they are published in the official Gazette of the Republic as

they might be amended by the House and they take effect from such publication”).

The validity of the Police regulations made under s. 10 was challenged in connection with the promotion of police officers to the rank of Chief Inspector made under the Police (Promotion) (Amendment) Regulations, 1983 in the case of *Efstathios Lefkatis and Others v. The Republic of Cyprus etc.*, (1985) 3 C.L.R. 1372 decided by Styliani-  
des, J., who held that s. 10 of the Police Law, Cap. 285 (as amended by Law 21/64) pro tanto was repealed by s. 13 (3) and (4) as substituted by Law 29/66 and the failure to lay the regulations before the House of Representatives rendered them void and non-existent and the sub judice promotions which were made under the said regulations were declared as null and void and as such were annulled.

The present case raises the same legal point but concerns disciplinary proceedings and not promotions and with due respect I adopt the conclusions and reasoning reached by my brother Judge Stylianides, in the above-mentioned case of Lefkatis.

I am of the view that the provisions of s. 13 (3) and (4) relating to the delegation of power to the Council of Ministers for making regulations are contrary to the provisions of s. 10. The two provisions cannot be reconciled as the one is incompatible and inconsistent with the other. To my mind it should be absurd to construe the statute as providing two methods of making regulations in the same matter, viz. (απόλυσις) (dismissal):- One with the advice of the Commander of the Police without such regulations being laid before the House of Representatives, and the other without the necessity of the advice of the Commander of the Police but with the requirement of laying them before the House of Representatives and leaving the option to the Council of Ministers to exercise either of those powers.

Bearing in mind the wording in the latter enactment, there is no room for any other construction than that the Legislature intended to repeal the regulations with regard to “απόλυσις” given to the Council of Ministers under s. 10. Consequently, s. 10, both in the general provision and

the specific provision thereof, has to be read as pro tanto repealed by subsections (3) and (4) of s. 13 as substituted by Law 29/66.

In my judgment s. 10 was repealed by implication in so far as it related to disciplinary proceedings by Law No. 29/66 which repealed and substituted s. 13 (2) and (3) and made specific provision for the issue of regulations, which shall be laid before the House of Representatives for the ultimate control by the Legislature before they are issued and published. Any regulations which do not conform to the enabling Law in form and in substance and in the way they were made and issued are void and non-existent.

In order to make a statutory instrument valid it is necessary that all the stages provided by the enabling enactment should be gone through, namely, the making, the laying before Parliament and their publication. In the present case the procedure laid down by s. 13 as amended by Law 29/66 has not been followed and the regulations on which the applicant was disciplinarily tried are void and non-existent. There has been substantial amendment of the Police (Discipline) Regulations after the enactment of Law 29/66.

For the above reasons the recourse succeeds and the dismissal of the applicant from the Force is set aside.

Let there be no order as to costs.

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