

1985 January 26

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION.

ANASTASSIOS KOFTEROS,

*Applicant,*

v.

THE CYPRUS ELECTRICITY AUTHORITY,

*Respondents.**(Case No. 13/84).*


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*Delegated legislation—Publication of, an indispensable prerequisite for its coming into operation—Article 82 of the Constitution and sections 2 (definition of “public instrument”) and 7 of the Interpretation Law, Cap. 1—Promotions made by the Electricity Authority of Cyprus—Under rules made by virtue of enabling power given by s. 3 of the Public Bodies (Regulation of Personnel Matters) Law, 1970 (Law 61/70)—Which were not published—Annulled as taken under non-existent in law rules or regulations.* 5

*Administrative Law—Administrative act or decision—Taken under non-existent in law rules or regulations because they were not published in the official Gazette—Annulled.* 10

*Necessity—Law or doctrine of necessity—Prerequisites which must exist for the invocation of—Public Bodies (Regulation of Personnel Matters) Law, 1970 (Law 61/70)—Repugnant to Articles 122, 124, and 125 of the Constitution—It can survive only if doctrine of necessity applicable—Question whether such doctrine applicable left open.* 15

The applicant in this recourse sought the annulment of the decision of the respondent Authority whereby the interested party was promoted to the post of Officer-in-Charge of the Workshop at Dhekelia Station “B” in preference to the applicant. 20

Counsel for the applicant contended:

- 5 (a) That the Authority was not the competent organ to decide upon the promotion in the sense that in virtue of Articles 122 and 125 of the Constitution the competence in all matters falling under paragraph 1 of Article 125 lies in the Public Service Commission envisaged by the Constitution and that the prerequisites for the application of the doctrine of necessity were not satisfied as the only happening was the withdrawal of the three Turkish members of the Public Service Commission and no more and consequently the Public Bodies (Regulation of Personnel Matters) Law, 1970 (Law No. 61/70), enabling the respondent among other statutory corporations to decide on appointments and other relative matters affecting personnel, was unconstitutional being repugnant to the Constitution; and,
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- 20 (b) That the decision challenged was taken on the basis of rules and/or regulations which were void and of no effect as they were not issued in compliance with s.3(3) of Law 61/70 and they were not published in the Official Gazette.

25 *Held*, that for the validity of rules or regulations made under the enabling power given by s.3 of Law 61/70 approval of the Council of Ministers, and the publication in the Official Gazette were necessary (see Article 82 of the Constitution and sections 2 (definition of "public instrument") and 7 of the Interpretation Law, Cap. 1; that publication is an indispensable prerequisite for the coming into operation of any Law; that "Law" includes delegated legislation; that since the rules or regulations, whatever they may be, under which the sub judice decision was taken were not published in the Official Gazette, the sub judice decision for promotion of the interested party is null and void as taken under non-existent in law rules or regulations.

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(2) *After stating the prerequisites which must exist for the invocation of the doctrine of necessity—vide pp. 403-404 post:*

That Law No. 61/70 is definitely repugnant to Articles 122, 124 and 125 of the Constitution and can only survive if the principle of the doctrine of necessity is applicable; that in view, however, of the fact that the sub judice decision will be declared null and void as being issued in virtue of invalid regulations, no judgment need be passed on whether the circumstances justified the application of the doctrine of necessity; and that it is, however, upon the Authority and the appropriate organs of the State to consider the serious issue raised.

*Sub judice decision annulled.*

Cases referred to:

- Markoullides v. Republic*, 3 R.S.C.C. 30;
- Stamatiou v. Electricity Authority of Cyprus*,  
3 R.S.C.C. 44; 15
- Bagdassarian v. Electricity Authority of Cyprus*  
(1968) 3 C.L.R. 736;
- Police v. Hondrou*, 3 R.S.C.C. 82;
- Ploussiou v. Central Bank* (1983) 3 C.L.R. 398 at p. 408;
- Arsalides and Another v. C.Y.T.A.* (1983) 3 C.L.R. 510; 20
- Blackpool Corporation v. Locker* [1948] 1 All E.R. 85;
- Jackson Stanfield & Sons v. Butterworth* [1948]  
2 All E.R. 558 at p. 564;
- Constantinou v. C.Y.T.A.* (1980) 3 C.L.R. 243  
at pp. 252-253; 25
- Sofocleous v. Republic* (1984) 3 C.L.R. 1089;
- Attorney-General of the Republic v. Ibrahim*, 1964  
C.L.R. 195.

**Recourse.**

Recourse against the decision of the respondent to promote the interested party to the post of Officer-in-Charge of the Workshop at Dhekelia Station "B" in preference and instead of the applicant. 30

*N. Stylianidou (Miss)* for *E. Efsthathiou*, for the applicant.

*E. Michael (Miss)* for *G. Cacoyannis*, for the respondents.

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*Cur. adv. vult.*

STYLIANIDES J. read the following judgment. By the present recourse the applicant seeks the annulment of the decision of the respondent Authority (hereinafter referred to as "the Authority") whereby the interested party was promoted to the post of Officer-in-Charge of the Workshop at Dhekelia Station "B" in preference to the applicant.

Two very important legal issues were raised by counsel for the applicant in her written address.

15 Counsel for the applicant submitted that the sub judice decision is invalid as —

(a) The Authority was not the competent organ to decide upon the promotion in the sense that in virtue of Articles 122 and 125 of the Constitution the competence in all matters falling under paragraph 1 of Article 125 lies in the Public Service Commission envisaged by the Constitution and that the prerequisites for the application of the doctrine of necessity are not satisfied as the only happening was the withdrawal of the three Turkish members of the Public Service Commission and no more and consequently the Public Bodies (Regulation of Personnel Matters) Law, 1970 (Law No. 61/70), enabling the respondent among other statutory corporations to decide on appointments and other relative matters affecting personnel, is unconstitutional being repugnant to the Constitution; and,

(b) That the decision challenged was taken on the basis of rules and/or regulations which are void and of no effect as they were not issued in compliance with s. 3(3) of Law 61/70 and they were not published in the Official Gazette.

Counsel for the Authority submitted that Law 61/70 is not unconstitutional as it is completely defended on the doctrine of necessity, and that the declaration of Law 61/70 as unconstitutional and void would lead to cataclysmic results.

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With regard to the second issue raised by the applicant, it was admitted by counsel for the Authority that the sub-judice decision was taken on the basis of rules («κανόνες») and not regulations («κανονισμούς»); that they are internal and govern the power of the Authority to deal with the matters vested in the Authority by s.3 of Law 61/70; that these rules are not subject to the provisions of s.44 of the Electricity Development Law, Cap. 171, and neither approval of the Council of Ministers nor publication in the Official Gazette is necessary for their validity.

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The Authority was established by the Electricity Development Law, No. 23/52 (Cap. 171 of the 1959 Edition of the Laws of Cyprus). Under s.10(1) the Authority was vested with power to appoint General Manager and such other officers, agents and servants as the Authority might from time to time determine. Section 10 was amended by s.6 of Law No. 24/63.

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On 16th August, 1960, this country became independent and the Constitution of the Republic came into force. Cap. 171 is a Law which has continued in force under, and subject to, the provisions of Article 188 of the Constitution.

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The material part for this case of Article 188 is:—

“1. Subject to the provisions of this Constitution and the following provisions of this Article, all laws in force on the date of the coming into operation of this Constitution shall, until amended, whether by way of variation, addition or repeal, by any law or communal law, as the case may be, made under this Constitution, continue in force on or after that date, and shall, as from that date be construed and applied with such modification as may be necessary to bring them into conformity with this Constitution.

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2. ....

3. In any such law which continues in force under paragraph 1 of this Article, unless the context otherwise requires —

5 (e) any reference to any other person holding a public office or to any authority or body, shall, in relation to any such period, be construed as a reference to the corresponding public officer or corresponding authority, body or office of the Republic.”

10 Section 10(1), being inconsistent with Articles 122, 124 and 125 of the Constitution, was not saved by Article 188. Under paragraph 3 of Article 188 the corresponding body of the Republic, which had to be substituted in  
15 Cap. 171 for the Authority in all matters falling within the competence of the Public Service Commission under paragraph 1 of Article 125 is the Commission. The Public Service Commission established under the Constitution, and not the Authority, was competent to decide upon the appointment, confirmation, emplacement on the per-  
20 manent or pensionable establishment, promotion, transfer, retirement and exercise disciplinary control over, including dismissal or removal from office of, the officers and servants of the respondent Authority — (*Andreas A. Mar-*  
*koullides and The Republic*, 3 R.S.C.C. 30; *Stamatiou and*  
25 *The Electricity Authority of Cyprus*, 3 R.S.C.C. 44).

Due to the situation that prevailed in the island at the material time the Public Service Commission (Temporary Provisions) Law, 1965 (Law No. 72/65) was enacted on 16th December, 1965. This law intended to legislate  
30 in relation to the Public Service Commission provided for under the Constitution and it restricted the membership of the Commission to five members including the Chairman. By the enactment of this law the continuance of the functioning of the Public Service Commission necessary  
35 for the exercise of the powers set out in the Constitution was somehow ensured.

On 30.6.67 the Public Service Law, No. 33/67, was promulgated. This law repealed expressly Law No. 72/65. It set up a Public Service Commission which possesses  
40 competence over members of the Public Service defined

in such law as “any service under the Republic other than judicial service of the Republic or service in the Armed or Security Forces of the Republic or service in the office of Attorney-General of the Republic or Auditor-General or Accountant-General or their Deputies or service in any office in respect of which other provision is made by law or service by persons whose remuneration is calculated on a daily basis”, thus excluding the personnel of the Authority from its competence. 5

After the enactment of Law No. 33/67 there was no organ competent to make appointments or promotions in relation to the personnel of the respondent Authority— (*Bagdassarian v. The Electricity Authority of Cyprus and Another*, (1968) 3 C.L.R. 736). 10

The Public Corporations (Regulation of Personnel Matters) Law, 1970 (Law No. 61/70) was enacted. Section 3(1) conferred to certain corporations, including the respondent Authority, powers identical to those entrusted to the Public Service Commission by Article 125.1 of the Constitution. Subsections (2) and (3) of s.3 read as follows:- 15 20

“3.—(1) .....

(2) Τηρουμένων των διατάξεων του εδαφίου (3), οιαδήποτε των εν τω εδαφίω (1) αναφερομένων αρμοδιοτήτων ασκείται υφ' εκάστου Οργανισμού συμφώνως προς τας διατάξεις του οικείου νόμου ή οιονδήποτε δυνάμει αυτού εκδοθέντων ή εκδοθησομένων κανονισμών ή κανόνων, τας ρυθμιζούσας το θέμα εν σχέσει προς το οποίον ασκείται η αρμοδιότης. 25 30

(3) Οσάκις ο οικείος νόμος δεν περιλαμβάνη διάταξιν ρυθμιζουσαν ή χορηγούσαν εις τον Οργανισμόν εξουσίαν προς έκδοσιν κανονισμών ή κανόνων ρυθμιζόντων οιονδήποτε των θεμάτων εν σχέσει προς τα οποία δύναται να ασκηθή υπό του Οργανισμού αρμοδιότης δυνάμει του εδαφίου (1), ο οικείος νόμος θα ερμηνεύηται και εφαρμόζηται ως εαν περιελαμβάνετο εν αυτώ διάταξις χορηγούσα εις τον Οργανισμόν εξουσίαν προς 35

ἐκδοσιν κανονισμῶν ἢ κανόνων ρυθμιζόντων τὸ  
 θέμα τούτο».

(«3.— (1) .....

5 (2) Notwithstanding the provisions of sub-section 3,  
 any of the competences referred to in sub-section  
 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  
 10 virtue of this law, regulating the matter in respect  
 of which the competence is exercised.

15 (3) When the relative law does not include a pro-  
 vision regulating or granting to the Organisation  
 the power to issue rules or regulations regulating  
 any of the matters in respect of which competence  
 may be exercised by the Organisation by virtue  
 of sub-section (1), the relative law will be construed  
 and applied as if it included in it provisions grant-  
 ing the organisation power to issue rules and  
 regulations regulating this matter”).

20 The Authority under s.44 of Cap. 171 was empowered  
 to make regulations. This section however, was repealed  
 and submitted by s.2 of Law of the Republic No. 16/60  
 that limited the power of the delegated legislation entrusted  
 25 to the Authority within the bounds of its post-constitution  
 competence. Such delegated legislation was subject to  
 approval by the Council of Ministers and publication in  
 the Official Gazette. The Authority, therefore, did not  
 have the competence to legislate on matters relating to  
 30 appointments, promotions or transfers of its officers or  
 servants.

Article 61 of the Constitution provides that “the legis-  
 lative power of the Republic shall be exercised by the  
 House of Representatives in all matters...”. The House of  
 Representatives may delegate its power to legislate to  
 35 other organs or bodies in the Republic within the accepted  
 principles of constitutional law. This was done in respect  
 of the authorities 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  
 40 and the publication in the Official Gazette are necessary.



Art. 82 of the Constitution categorically provides that every law shall be published. Publication is an indispensable prerequisite for the coming into operation of any law. "Law" includes delegated legislation—(*Police v. Hondrou*, 3 R.S.C.C. 82).

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Section 7 of the Interpretation Law, Cap. 1, provides that "any public instrument made or issued under any Law or other lawful authority and having legislative effect shall be published in the Gazette". "Public instrument" is defined by s.2 of Cap. 1 and includes, inter alia, regulations, rules and bye-laws. Publication of laws is necessary in the interests of certainty of the law and the public who are affected by a Law are entitled to know what it is and the justification for the maxim "ignorance of law is no excuse" is this very right to know the law and the accessibility of the public to it. The irrebuttable presumption that every citizen knows the law, would gradually lose its force if the public were credited with knowledge of laws never communicated to them. The proposition that every species of legislation must be published in the Gazette, is fully consonant with the letter and spirit of the Constitution—(*Ploussiou v. Central Bank* (1983) 3 C.L.R. 398, at p.408; *Arsalides and Another v. C.Y.T.A.*, (1983) 3 C.L.R. 510; *Blackpool Corporation v. Locker*, [1948] 1 All E.R. 85).

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The English Court of Appeal in *Jackson Stansfield & Sons v. Butterworth* [1948] 2 All E.R. 558, at p.564, observed:-

"The truth is that, while in our modern constitutional practice delegated legislation is both necessary, convenient and desirable, safeguards are essential, especially that its content should always be within public knowledge. Compulsory publicity is the only preventive of many of those evils which most people have in mind when they speak of 'bureaucracy' with an accent of censure. And where... administration is mixed up with sub-delegated legislation and none of the mixture is made public, it is really unfair and, indeed, unjust to the public".

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It is common ground that the rules or regulations, whatever they may be, under which the sub judice decision was taken were not published in the Official Gazette.

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It was submitted by counsel for the respondents that their publication was not necessary as they were simply internal rules. Reliance was placed on *Constantinou v. C.Y.T.A.*, (1980) 3 C.L.R. 243, at pp. 252-253. *Constantinou* case is a judgment of a Judge of co-ordinate jurisdiction. It was not followed in *Arsalides and Another v. C.Y.T.A.* and in *Christos Sofocleous v. The Electricity Authority of Cyprus* Case No. 232/82—unreported). \* Appeal was taken against the decision in *Constantinou* case. The sub judice decision was revoked by agreement of the parties and sanction of the Court, and the respondent Authority undertook to reconsider the matter. The effect of *Constantinou* case was extinguished by the outcome of the appeal which was sanctioned by the Full Bench of the Supreme Court.

The sub judice decision for promotion of the interested party is null and void as taken under non-existent in Law rules or regulations.

Law No. 61/70 is definitely repugnant to Articles 122, 124 and 125 of the Constitution and can only survive if the principle of the doctrine of necessity is applicable.

In *The Attorney-General of the Republic v. Mustafa Ibrahim and Others*, 1964 C.L.R. 195, this Court interpreted the Constitution (including the provisions of Articles 179, 182 and 183) to include the doctrine of necessity in exceptional circumstances, which is an implied exception to particular provisions of the Constitution. The following prerequisites, however, must be satisfied, and this in order to ensure the very existence of the State. Josephides, J., at p.265 said:-

“The following prerequisites must be satisfied before this doctrine may become applicable:-

- (a) an imperative and inevitable necessity or exceptional circumstances;
- (b) no other remedy to apply;
- (c) the measure taken must be proportionate to the necessity; and

\* Reported in (1984) 3 C.L.R. 1089.

(d) it must be of a temporary character limited to the duration of the exceptional circumstances.

A law thus enacted is subject to the control of this Court to decide whether the aforesaid prerequisites are satisfied, i.e. whether there exists such a necessity and whether the measures taken were necessary to meet it".

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It is upon the party who seeks the assistance of the doctrine of necessity to satisfy the Court that the above prerequisites exist.

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In view, however, of the fact that the sub judice decision will be declared null and void as being issued in virtue of invalid regulations, I need not in this case pass judgment on whether the circumstances justified the application of the doctrine of necessity. It is, however, upon the Authority and the appropriate organs of the State to consider the serious issue raised.

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In the result the sub judice decision is declared null and void and of no effect.

Let there be no order as to costs.

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