

1986 October 31

[A. LOIZOU, SAVVIDES, LORIS, STYLIANIDES, PIKIS, JJ.]

THEODOSIS IOANNIDES AND OTHERS,

*Appellants-Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF INTERIOR AND/OR

2. THE CHIEF OF POLICE,

*Respondents.**(Revisional Jurisdiction Appeals Nos. 335, 338).*

*Police Force—Promotions from rank of Sergeant to rank of Inspector—Re-organisation of Police Force after the abortive coup d'etat of July 1974—Principle that where the administrative process requires action by two distinct organs, each such organ should reach an independent decision—Meeting between President of the Republic, the Minister of Interior and the Chief of Police—The said meeting did not constitute a violation of the said principle — It was nothing more than the discharge of the duty of the Chief of Police to carry out a due inquiry at all levels and obtained all relevant information.* 5 10

*Police Force—Promotions—The Police (Promotion) Regulations, Reg. 6(3)(b)—“Marked ability”—Meaning.*

*Words and Phrases: “Marked ability” in Reg. 6(3)(b) of the Police (Promotion) Regulations.* 15

The appellants challenged the promotions of the interested parties to the rank of Police Inspector made by the Chief of Police, with the approval of the Minister of Interior.

The basic reasoning of the sub judice decision is to be found in the letter, dated 29.4.77, which the Chief of Police addressed to the Minister. In the said letter and after referring to the need of completing the effort of the 20

re-organisation of the force by filling the remaining posts of Inspectors, the Chief of Police stated that the force had become during the years that preceded the Coup d'Etat the target of antigovernment activities, that it continues to suffer on account of the protracted presence within its ranks of elements acting negatively, incompetent and of doubtful disloyalty, that the extent of the corrosion is shown by the fact that after the enactment of the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Law 3/77 there were submitted for investigation cases against 300 members of the force for anti-government activities, that it is urgent to promote loyal officers who will embark on the creation of conditions of trust, love and labouriousness among the members on the one hand, and feeling of security among the people on the other, and that having made an evaluation of the internal situation and examined carefully the service factors of men eligible for promotion and having taken in addition into consideration informative factors relating to the professional sufficiency, seniority, devotion, loyalty and the individual contribution of services—factors which had been stated at the meeting held on 27.4.77 between his Beatitude the President of the Republic, the Minister of Interior and the Chief of Police—he decided to effect the “following” promotions for which he prayed for the approval of the Ministers\*.

There followed the list of those promoted which contains a note of those promoted under the exception of paragraph (b) of section 3 of Reg. 6 of the Police (Promotion) Regulations, which reads as follows: “Notwithstanding anything in this Regulation contained the Chief of Police :... (b) may promote any police officer who shows marked ability or exceptional aptitude for special work, irrespective of his length of service, and whether qualified by examination or not”.

The promotions of the interested parties in this appeal were made on the ground of their “marked ability” on the basis of the said Regulations. The recourses of the

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\* The whole text of the letter of 29.4.77 appears at pp. 1949-1951 post.

appellants were dismissed by the President of this Court (*Michael and Others v. The Republic* (1984) 3 C.L.R. 1358). Hence the present appeals.

The appellants complained, inter alia, that the President misdirected himself when he decided that “the doctrine of necessity” was applicable in order to save the sub 5  
judice promotions.

*Held, dismissing the appeals:* (1) The meeting of the President of the Republic with the Minister of Interior and the Chief of Police did not constitute a violation of the 10  
principle that where the administrative process requires action on the part of two distinct organs, each such organ should reach its own independent conclusion. The meeting was nothing more than the discharge of the duty of the Chief of Police to carry out inquiries at all levels and 15  
obtain all relevant information and at the same time, at a crucial time in the history of the country, informing the two dignitaries responsible in law and under the Constitution for internal security and defence. There can be no 20  
doubt that the decision was that of the Chief of Police.

(2) On consideration of the totality of the circumstances before this Court and the prevailing in Cyprus situation at the time the sub judice decisions were taken—of which this Court takes judicial notice—this Court has come to the conclusion that the sub judice promotions are 25  
justified on the basis of the aforesaid Regulation and in particular the meaning, which, in the circumstances could be given to the term “marked ability”. (*Heracleous and Others v. The Republic* (1985) 3 C.L.R. 740 adopted as to the meaning of the said term). 30

(3) In the light of the above there is no need to express an opinion on whether the sub judice promotions were supportable by reference to the law of necessity or indeed decide whether the law of necessity is relevant to the 35  
matter at hand.

*Appeals dismissed.*

Cases referred to:

*Savoulla v. The Republic* (1973) 3 C.L.R. 706;

*Eracleous and Others v. The Republic* (1985) 3 C.L.R. 740.

**Appeals.**

5 Appeals against judgment of the President of the Supreme Court of Cyprus (Triantafyllides, P.) given on the 30th September, 1983 (Revisional Jurisdiction Cases Nos. 191/77 and 184/77)\* whereby appellants' recourses against the decision of the respondents to promote the interested parties to rank of Police Inspector were dismissed.

10 A. *Markides*, for the appellants.

N. *Charalambous*, Senior Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

15 A. LOIZOU J. read the following judgment of the Court. The appellants challenged the promotions to the rank of Police Inspector which were made by the Chief of Police with the approval of the Minister of Interior on the basis of the provisions of section 13(2) of the Police Law, Cap. 285, as amended in this respect by section 2 of the Police (Amendment) Law of 1966 (Law No. 29 of 1966) and the 20 Police (Promotions) Regulations 1958 (58 Vol. 11 307) and in particular paragraphs 2 and 3 of Regulation 6.

The learned President of this Court who heard their 25 recourses in the first instance dismissed them by his judgment reported as *Christakis Michael and Others v. The Republic* (1984) 3 C.L.R. 1358. As against that judgment a number of appeals were filed but ultimately only the present two appeals remained for determination. The basic 30 reasoning of the sub judice decisions is found in the letter of the Chief of Police of the 29th April, 1977, which was addressed by him to the Minister of Interior and which reads as follows:

35 "After the recent promotions in the higher hierarchy of the Police, it is essential that we proceed to the filling of the remaining lower posts of Inspectors in order to complete the undertaken effort of the re-

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\* Reported as *Michael and Others v. Republic* (1984) 3 C.L.R. 1358.

organization of the Force for the purpose that its organization and functioning be perfect, orderly and productive.

2. It is known that during the years that preceded the Coup d'etat the Force became par excellence the target of antigovernment activities and has suffered such serious internal damage that its function as an organised State service was placed in the utmost jeopardy. Even to-day, the Force continues to suffer on account of the protracted presence within its ranks of elements acting negatively, incompetent and of doubtful loyalty, which have not come to their senses in spite of the misery which they have already brought. continue unrepentantly their disastrous tactics of corrosion causing in that way feelings of suspicion among the remaining devoted members and damaging the smooth functioning of the Service.

3. In order to show the extent of this corrosion that comes from inside, it is enough to mention indicatively that after the enactment of the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Law 1977 (Law No. 3 of 1977) we submitted for investigation by the Minister of Justice the cases of three hundred members of the Force against whom there exist complaints for antigovernment antistate activities. The examination, however, and the final conclusion of the said cases is anticipated to take long. whereas it is urged to make promotions of qualified rightfully thinking and loyal officers who will embark on the creation of conditions of trust, love and laboriousness among the members, on the one hand and feelings of security among the people on the other hand.

4. Given as seen from the above the present need of restoration and re-organization and the critical importance which they have to this direction, the promotions, I have made an evaluation of our prevailing internal situation and examined carefully all the service factors of men eligible for promotion as they are contained in their personal files. the recommenda-

5 tions of the Divisional Commanders as well as the  
conclusions of the Promotion Boards, convened from  
time to time, and having taken in addition into con-  
sideration relevant informative factors relating to the  
10 professional sufficiency, seniority, devotion, loyalty  
and the individual contribution of services by each one—  
factors and elements which were stated at the meeting  
held on the 27th April 1977, in the presence of his  
Beatitude the President of the Republic and you—I  
15 have decided to make the following promotions of  
Sergeants to the rank of Inspector as from 1st May,  
1977. For that purpose I pray for your approval.

5. It must be noted that for the supplementary  
15 financial expenditure in order to carry the super-  
numerary promotions approval was on principle se-  
cured by His Beatitude the President of the Republic.”

There followed the list of those promoted which contains  
a note as to those who are promoted under the exception  
20 of paragraph (b) of section 3 of Regulation 6, of the Police  
(Promotion) Regulations on account of the remarkable  
service action, ability and contribution in fields of their  
competence or in other special assignments entrusted to  
them. and as to those who are also promoted under the  
exception of the aforesaid provisions, given that though  
25 qualified, it did not become possible for them to appear  
before the Promotion Boards for the purpose of their eva-  
luation by it.

The Minister of Interior by his letter dated the 29th  
30 April, 1977 approved the promotions in question as re-  
quested by the Chief of Police.

In approaching the issues raised the learned President  
found that as regards the involvement of the President of  
the Republic and of the Minister of Interior in the con-  
sultations which preceded the selection by the Chief of  
35 Police of those to be promoted, useful reference might be  
made to *Savoulla v. The Republic* (1973) 3 C.L.R. 706,  
at pp. 714, 715. It was, he said, in the context that this  
involvement occurred “at a time when the Police had to be  
re-organised in such a manner and to such an extent as

to become as effective as possible in discharging its paramount duty of being the guardian of law and order when our country was recovering from internal subversion and was raged by foreign aggression”.

We endorse fully this approach of the learned President. 5  
We see in that meeting, referred to in the letter of the Chief of Police of the 29th April 1977, no violation of the principle of Administrative law that where the administrative process concerned requires action on the part of two distinct organs, such organ should reach its own independent conclusion. In our view that meeting was nothing more than the discharge of duty on the part of the Chief of Police to carry out a due inquiry at all levels and obtain all relevant information from any source and at the same time, at a crucial moment in the history of this unfortunate Island facing at the time an imminent danger of extinction and striving hard to survive, informing the Head of the State and the appropriate Minister, the two dignitaries of State most concerned and, indeed, in law and under the Constitution, responsible for internal security and defence. 10  
We have no doubt that the decision was that of the Chief of Police and as such, alongside with the learned trial Judge, we uphold. 15 20

In those extraordinary circumstances apprising the President of the Republic of the proposed course of action, while maintaining full discretion in the matter, was not improper for the Chief of Police. 25

The next point for determination is whether the learned President misdirected himself on the law and or the facts when he decided that “the doctrine of necessity” was applicable in order to save the validity of the sub judice decisions. 30

It was submitted on behalf of the appellants that in the circumstances of the case the application of the “doctrine of necessity” was not justified either in law or in fact which doctrine must be reserved in any event for really exceptional circumstances and only then in justification of an unconstitutional law whose enactment was justified on account of the real situation existing in Cyprus. 35

As we have, already, seen the promotions in question were taken on the basis of Regulation 6(3)(b) on the ground in particular of "the marked ability" shown by the interested parties irrespective of whether they had passed  
5 the prescribed examinations or not.

The said Regulation provides as follows:

"(3) Notwithstanding anything in this Regulation contained the Chief of Police:-

(a)

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(b) may promote any police officer who shows marked ability or exceptional aptitude for special work, irrespective of his length of service, and whether qualified by examination or not."

15 Once it is found that the actions of those promoted qualified as acts of "marked ability" no need arises to decide or express any opinion on whether the promotions were supportable by reference to the law of necessity; or indeed  
20 decide whether the law of necessity is at all relevant to the problem before us. Nothing said in this judgment should be construed as having any bearing on the doctrine of necessity.

On consideration of the totality of the circumstances before us and the prevailing in Cyprus situation at the time  
25 the sub-judice decisions were taken, of which we take judicial notice,—in fact such judicial notice has been repeatedly taken in numerous decisions of this Court,—we have come to the conclusion that the sub-judice decisions are justified on the basis of the aforesaid Regulation and  
30 in particular the meaning of, which in the circumstances, could be given to the term "marked ability" which permits the Chief of Police to promote any Police Officer who shows such marked ability irrespective of his length of service and whether qualified by examination or not.

35 The term "marked ability" has been judicially interpreted in the case of *Heracleous and Others v. The Repu-*



blic (1985) 3 C.L.R. p. 740 and the relevant passage at page 753 reads as follows:-

“The ‘marked ability’ relied upon by the Chief of the Police, as justifying these promotions under this Regulation, is to be found in paragraph 4 of Appendix ‘A’, where it is stated that with the exception of technical and specialist services it has become possible to include in those to be promoted many persons who have proved by deed their loyalty and devotion to the lawful State and have put up resistance against the Coup D’Etat and the illegality in general.’

The illegality and subversion that appeared in the the Republic in an intensive ugly shape in the form of bombing attacks on Government premises, Police Stations, and other establishments as well as of attacks against the person and the life of Law abiding citizens, Ministers—one of them was abducted, the house of another was bombed—Government officials and members of the Police Force in particular who showed devotion to duty, by supporting the lawful state and opposed all these acts of violence and indeed did not succumb to them and the their culmination, the Coup D’Etat have been judicially noticed. Reference may be made in that respect to a selection of cases that reached the Supreme Court, such as the case of *Liasi and others v. The Attorney-General of the Republic and Another* (1975) 3 C.L.R. 558; and the case of *Aristodemou v. General Insurance Company Ltd., of Cyprus* (1981) 1 C.L.R. 582.

As against those that subverted through intimidation and violence the lawful and democratic institutions of the country and undermined the constitutional order and Law and order itself, there had been citizens and officials including members of the Police Force that by deeds demonstrated their loyalty and devotion to the lawful State, combated illegality and put up resistance against the Coup D’Etat. In relation to the present case and the relevant legal issue raised, I have no difficulty in holding that as regards members of the Police Force, such a conduct in that

5        turbulent situation could not but be considered as a manifestation of 'marked ability' within the ambit of section 6(3)(b) of the Police Law. I accept as in Law correct the approach on the subject of the Chief of the Police and I indorse it for the reasons I have just expounded. This ground of the recourse therefore fails.

10        No doubt the Chief of Police was fully aware and duly informed of the conduct of each one of them during those difficult years. The conduct which legitimately could be taken into consideration as going to the credit of the persons concerned. Loyalty, devotion to duty, resistance to intimidation, and threats and exposure of life to risk by Police Officers are  
15        qualities that must be rewarded by one form or other, including promotion as it evidences 'marked ability'. There are moments in the history of nations that the successful passing of exams may be outweighed by 'marked ability' which at times obliterates  
20        their nonpassing."

25        We are in full agreement with the aforesaid approach which we find in all respects applicable to the facts of the present case and we consider it unnecessary to add anything to it. The survival of the State was in issue and it had to be given a dominating consideration. It is obvious that in the Law enforcement Forces, loyalty, devotion to duty and a true appreciation of the objectives of the Police are significant factors in the career of their members.

30        In the circumstances, therefore, we dismiss both appeals with no order as to costs.

*Appeals dismissed with no order as to costs.*