

1986 January 17

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANTONIS MELETIS AND OTHERS.

Applicants.

v.

1. THE CYPRUS PORTS AUTHORITY AND/OR
2. THE COUNCIL OF MINISTERS,

Respondents.

(Cases Nos. 103/83 and 104/83).

The Cyprus Ports Authority—Promotions—Scheme of Service—Acts of a legislative nature—Constitute delegated legislation—Ultra vires—Issue depends on true construction of enabling enactment—Vested rights—Meaning of—Protection of—Distinguished from a mere expectation—Promotions— 5
There is no such vested right as a right to promotion or a right that the required qualifications for a post will not be changed—Eligibility for promotion—An officer is not entitled to promotion simply because he acquired the required qualifications. 10

Constitutional Law—Constitution, Article 28.1.

Legitimate Interest—Existence of—May be examined by the Court ex proprio motu.

The Cyprus Ports Organisation Law 38/73, ss. 19(2) and 35—The Cyprus Ports Authority (Increase of Salaries and Re-structure of Salary Scales of Officers) Regulations 1982 and the Cyprus Ports Authority (Schemes and Other Conditions of Service of Officers) Regulations 1982. 15

The interested parties, who entered Government service on various dates between 1.11.65 and 20.5.74, were on 1.10.77 transferred to and/or appointed by the Cyprus Ports Authority pursuant to the provisions of s. 35 of the 20

Cyprus Ports Organisation Law 38/73 in the post of Ports Officer, 2nd Grade.

5 The applicants in Case 103/83 were first appointed to Government Service as Customs Store Officers, 2nd Grade, between 11.10.76 - 13.12.76 and the applicants in Case 104/83 as Customs Store Guards on daily wages between 19.7.76 - 21.3.77. On 1.4.79 all applicants were transferred to the service of the said Authority. The applicants in Case 103/83 were employed in the post of Ports Officer, 2nd Grade and the applicants in Case 104/83, in the post of Ports Officer, 3rd Grade.

15 In 1982 after a long process of negotiations with the unions, two sets of regulations were made: The Cyprus Ports Authority (Increase of Salaries and Restructure of Salary Scales of Officers) Regulations 1982 (hereinafter to be referred to as Κ.Δ.Π. 316) and the Cyprus Ports Authority (Schemes and Other Conditions of Service of Officers) Regulations 1982 (hereinafter to be referred to as Κ.Δ.Π. 317).

20 The interested parties and the applicants in Case No. 103/83 were promoted to Ports Officers, 1st Grade, and immediately thereafter the interested parties were promoted with effect from 2.1.83 to Senior Ports Officers. The applicants in Case No. 104/83 were made Ports Officers, 2nd Grade, with effect from 1.1.83 in virtue of Regulation 5 of Κ.Δ.Π. 316/82.

30 The required qualifications for the post of Senior Ports Officer were set out in the Cyprus Ports Authority (Conditions of service of Officers) Regulation 1975-1976 (Κ.Δ.Π. 207/76). These qualifications were amended on 28.7.78 by Κ.Δ.Π. 136/78* Κ.Δ.Π. 317/82 introduced a new scheme of service**.

35 By means of the present recourse the applicants challenge the promotion of the interested parties to the post of Senior Ports Officer, the refusal or failure to promote the applicants to the said post and the validity of the

* See for the contents of such scheme of service as amended p. 427 post.

** See for the contents of such new scheme of service p. 428 post.

alteration of the scheme of service for the said post.

Counsel for the applicants contended that the regulations Κ.Δ.Π. 317/82 are ultra vires; they infringe their vested right for promotion; they are repugnant to the principle of equality as enshrined in Article 28 of the Constitution; they are the product of abuse of power and they violate the principles of proper administration.

Held, dismissing the recourses: (1) Schemes of service are acts of legislative nature, and not acts of executory or administrative nature. They constitute delegated legislation and, therefore, they must be intra vires the enabling statute. Delegated legislation may be challenged for substantive ultra vires, that is, on the ground that it goes beyond the powers granted by the legislature. The question depends in every case on the true construction of the enabling enactment. In this case the enabling enactment is s. 19(2)* of the Cyprus Ports Authority Law.

No one has a vested right in the existing schemes of service, unless an abuse of power in the sense of the Law is established. The enabling enactment does not limit the rule making power in the way counsel for the applicant's submitted namely that as the initial structure of the services of the Authority was not changed, there was no need to replace the scheme of service with new ones.

A collective agreement by itself does not create a right in public law, but in the present case we are concerned with a piece of delegated legislation, and not with a collective agreement.

Having regard to the wording of s. 19(2) the scheme in question is within the four corners of the enabling enactment.

(2) Every officer has a right of prospect of promotion. The vested right of an officer is protected by law. Such a right is one given by law and the protection afforded to it is that the recognised legal state cannot be changed to the detriment of the person having it, without his consent. But a vested right must not be confused with a mere ex-

* Quoted at p. 429 post.

pectation of a citizen. There is no such vested right as a right to promotion or that the required qualification for a post will not be changed.

5 (3) The applicants in Case 103/83 became eligible for promotion to the post of Ports Officer, 1st Grade, on 1.4.82. But it cannot be validly said that an officer is entitled to promotion, upon acquiring the required qualifications. The structure of the service, the needs of the service and other material considerations have to be weighed
10 before deciding whether promotion should be made or not. Therefore, the argument that if the applicants had been promoted to the said post on 1.4.82 their position would have been different does not help the applicants. Indeed it cannot be validly argued that the Authority deliberately did not promote the applicants on 1.4.82 for the purpose of bringing into operation the new scheme on
15 30.12.82.

(4) The principle of equality has not been infringed by the challenged scheme and the sub judice promotions. The interested parties had a longer service in the Public Service
20 and in the service of the Authority than the applicants. They were further safeguarded by the provisions of s. 35 of the Law. The difference between the two groups—the interested parties and the applicants—is more than obvious.
25 The applicants received a treatment which is not discriminatory at all. Neither the regulations nor the treatment of the applicants and the interested parties is or savours discrimination.

(5) The existence of the applicants' legitimate interest, even if not raised, may be examined by the Court ex-pro-
30 prio motu. As the applicants do not possess the required qualification for their promotion to the post of Senior Ports Officer, they do not have a legitimate interest to challenge the sub judice promotions.

35 *Recourses dismissed.*

No order as to costs.

Cases referred to:

Christodoulou v. The Republic, 1 R.S.C.C. 1;

- Spyrou and Others v. The Republic* (1973) 3 C.L.R. 627;
Apostolou and Others v. The Republic (1984) 3 C.L.R. 509;
Police v. Hondrou and Another, 3 R.S.C.C. 82;
Papapetrou v. The Republic, 2 R.S.C.C. 61; 5
P.A.SY.D.Y. v. The Republic (1978) 3 C.L.R. 34;
Ioannou v. Electricity Authority (1981) 3 C.L.R. 280;
Commissioners of Customs and Excise v. Cure and Deeley Ltd. [1962] 1 Q.B.D. 340;
Papaxenophontos and Others v. The Republic (1982) 3 C.L.R. 1037; 10
Piperis v. The Republic (1967) 3 C.L.R. 295;
Economides v. The Republic (1972) 3 C.L.R. 506;
Leontiou v. The Republic (1983) 3 C.L.R. 221;
Miamiliotis and Another v. The Republic (1983) 3 C.L.R. 322; 15
HadjiChristoforou v. The Republic (1983) 3 C.L.R. 280;
Papadopoulos and Others v. The Republic (1984) 3 C.L.R. 1126;
Alexandrou and Others v. The Republic (1984) 3 C.L.R. 15; 20
Philippou v. The Republic, 4 R.S.C.C. 139;
Panayides v. The Republic (1972) 3 C.L.R. 135;
Sofocleous (No. 2) v. The Republic (1972) 3 C.L.R. 637;
Papaskevopoulou v. The Republic (1980) 3 C.L.R. 647; 25
Constantinidou v. The Republic (1974) 3 C.L.R. 416.

Recourses.

Recourses against the decision of the respondents to promote the interested parties to the post of Senior Ports Of-

ficer in the Cyprus Ports Authority in preference and instead of the applicants, the refusal or failure to promote the applicants to the said post and the alteration of the scheme of service relating to such post.

5 A. S. Angelides, for the applicants.

P. Joannides, for the respondent No. 1.

A. Vassiliades, for the the respondent No. 2.

Cur. adv. vult.

10 STYLIANIDES J. read the following judgment. The prayer in these two recourses is identical. The applicants challenge the validity of the promotion of the interested parties to the post of Senior Ports Officer. They further pray for declaration that the failure and/or refusal of respondents No. 1 (hereinafter referred to as "the Authority") to promote the
15 applicants to the post of Senior Ports Officer is void and of no effect and that the alteration of the scheme of service made by the Authority and approved by respondents No. 2, the Council of Ministers, is contrary to law and void.

20 From the very first year of the British Administration the ports and harbours of the country, their functioning, management and exploitation were within the exclusive power of the State—(See, inter alia, the Port Regulation Law, 1879 (Law No. 19 of 1879) and the Customs & Excise Regulation Law, 1879 (Law No. 24 of 1879)).

25 The Department of Ports (Regulation and Transfer of Powers) Law, 1968 (Law No. 55 of 1968) provided that there would continue to exist in the Ministry of Transport and Public Works a Department of Ports for the purpose of the supervision, administration and regulation of the
30 operation of ports in the Republic and every subject relating to them as well as every matter referring to Merchant Shipping and Seamen in accordance with the provisions in force from time to time of any law or administrative act relating to ports or to such matters. This transfer of power
35 was retrospective as from 16.8.60, obviously to fill a legislative gap which existed by the separation of Customs and Port Services as from that time.

Following an agreement of the Republic with the International Bank of Reconstruction and Development, published in the Official Gazette of the Republic on 19.9.69 under Notification No. 748, the Cyprus Ports Organisation Law, 1973 (Law No. 38 of 1973) was enacted. By the said Law the "Cyprus Ports Organisation" was established. It was renamed to "Cyprus Ports Authority" by Law No. 59 of 1977. 5

The Authority is a corporation of public law, the object of which is to manage and exploit the ports in the Republic and to undertake and manage the existing ports with all their assets and liabilities—(Section 4). It is the body set up by the State to exercise its powers and perform its responsibilities respecting the ports and harbours of the country, though considerable control was retained by the State. 10 15

Law No. 38/73 was promulgated and published in the Official Gazette on 22.6.73. As a rather long process for the implementation of the Law was necessary, s. 39 thereof provided that the Law shall come into force on a date to be fixed by the Council of Ministers, and the Council may fix different dates for the coming into operation of different parts or provisions of this Law. The Authority took over the functions and duties of Government departments, mainly the Department of Ports and partly the Department of Customs; it was only natural that the public officers serving in the respective department would be transferred to the Authority. 20 25

Section 18 provided for the appointment of a General Manager. By s. 19(1) the Authority is empowered to employ such officers as may be necessary for the discharge of its functions. 30

Section 35 came into force on 1.10.77 by Notification No. 214/77. It reads:-

"35.-(1) Without prejudice to the provisions of section 18, any public officer who, immediately before the date of the coming into force of this Law, was serving in the Department of Ports of the Ministry of Communications and Works, shall be transferred, as from that date, to the service of the Authority and is 35

emplaced by it, in so far as this is practically possible, in a post the functions of which are analogous to the functions of the post held by him in the public service of the Republic:

5 Provided that any such public officer may, either
with:in one month from the date of such transfer, or
after such transfer, within one month from the com-
munication to him of the conditions of service of the
10 relevant post and the initial structure of the services
of the Authority, by notice in writing given by him
to the Authority, state that he does not wish such
employment with the Authority, whereupon he shall
cease to be in the service of the Authority after the
15 lapse of a period of six months from the date on
which the notice was given, and in such a case he shall
be entitled to such retirement benefits to which he
would have been entitled if he had retired from the
public service of the Republic by virtue of the provi-
sions of the Pensions Law then in force which are
20 applicable to him.

(2) The service of such public officer with the
Authority shall be deemed to be a continuation of his
service in the public service of the Republic without
any break and his remuneration and other conditions
25 of his service with the Authority cannot be altered to
his disadvantage during the continuation of his service
with the Authority.

For the purposes of this sub-section, "conditions of
service" include matters concerning leave, dismissal
30 or retirement, pension, additional grants or other si-
milar allowances:

Provided that the Republic shall remain responsible
in respect of pension or other retirement benefits, if
any, until the date of the transfer of the public officer
to the service of the Authority, and the Authority
35 shall be responsible in respect thereof after that date
and until the date of the retirement of such officer
from the service of the Authority.

(3) Subject to any internal regulations or instruc-

tions of the Authority, any public officer transferred to the service of the Authority by virtue of this section shall, during his service with the Authority be entitled to all rights and benefits and be subject to all responsibilities and duties of public officers in accordance with the provisions of the Public Service Law, 1967, or any other law amending or substituted for the same.

(4) Nothing in this section contained shall apply to any other officer of the Authority, except those referred to in sub-section (1)".

Paragraph 4 was repealed and substituted by s. 3 of Law No. 28/79 so as to make applicable the provisions of paragraphs 2 and 3 to all officers transferred to or appointed by the Authority on 1.10.77 who immediately before such transfer or appointment were serving on a temporary daily basis in the Department of Ports of the Ministry of Communications and Works or were holding an organic office or were serving on temporary daily basis in the Customs Stores.

The interested parties entered the Government service on various dates between 1.11.65 - 20.5.74—(See Schedule attached to the opposition). Thirteen of them were serving at the Customs Stores (Nos. 1-9 and 11-14) and two at the Department of Ports (Nos. 10 and 15). On 1.10.77 all the interested parties were transferred to and/or appointed by the Authority and emplaced in the post of Ports Officer, 2nd Grade, Post 22 in the Cyprus Ports Authority (Conditions of Service of Officers) Regulations, 1975 - 1976 (See K.Δ.Π. 207 published in the Official Gazette 1306 of 15.10.66, Supplement No. III) made in virtue of s. 19(2) of the Law.

The applicants in Case No. 103/83 were first appointed in the Government service as Customs Store Officers, 2nd Grade, between 11.10.76 - 13.12.76 and the applicants in Case No. 104/83 as Customs Store Guards on daily wages between 19.7.76 - 21.3.77. On 1.4.79 all the applicants were transferred to the service of the Authority. The applicants in Case No. 103/83 were emplaced in the post of Ports Officer, 2nd Grade, and the applicants in Case No. 104/83 in the post of Ports Officer, 3rd Grade.

In 1982, after serious study, a long process of negotiations with the unions and consultations as it appears from the material before the Court, two sets of regulations were made. The Cyprus Ports Authority (Increase of Salaries and
 5 Restructure of Salary Scales of Officers) Regulations, 1982 and the Cyprus Ports Authority (Schemes and Other Conditions of Service of Officers) Regulations, 1982. They were published in Supplement No III of the Official Gazette of the Republic No 1826 of 30.12.82 as Notifications No
 10 316 and 317 respectively (hereinafter to be referred to as "ΚΔΠ 316" and ΚΔΠ 317, respectively).

The interested parties and the applicants in Case No 103/83 were promoted to Ports Officers 1st Grade and immediately thereafter the interested parties were promoted
 15 with effect from 2.1.83 to Senior Ports Officers. The applicants in Case No 104/83 were made Ports Officers 2nd Grade with effect from 1.1.83 in virtue of Regulation 5 of ΚΔΠ 316/82.

The required qualifications for the post of Senior Ports
 20 Officer under the scheme of service in operation until 30.12.1982 are set out under No 20 in the Cyprus Ports Authority (Conditions of Service of Officers) Regulation 1975/1976, ΚΔΠ 207/76. They are as amended by ΚΔΠ 136/78 on 28.7.78:

- 25 (a) Leaving certificate of recognized Secondary Education school,
- (b) At least 5 years' satisfactory service in the post of Ports Officer 1st Grade,
- 30 (c) Successful completion of any course that may be fixed by the Authority and of success in any examination that may be held by the Authority etc.

It is provided further that public officers serving in the Department of Ports of the Ministry of Communications and Works or at the Customs Stores which shall be taken
 35 over by the Authority, in an office, the functions of which are analogous to the present post, will be deemed that they possess the required qualifications for the purpose of their transfer to the Authority. Certainly, this provision was inserted in compliance with and or implementation of the

safeguards to the civil servants provided by s. 35 of the Law hereinabove quoted.

The qualifications required for the post of Senior Ports Officer under the new scheme of service, as set out in Κ.Δ.Π. 317/82 (Post 24, page 1360), are at least 5 years' service in the office of Ports Officer, 1st Grade, etc. It is noted in the scheme of service that for the first 5 years after the approval of the new regulation, if there are no candidates with 5 years' service in the office of Ports Officer, 1st Grade, officers with the following service may be promoted:-

(a) Officers with three years' service in the office of Ports Officer, 1st Grade; and

(b) (i) Officers with 8 years' experience in the Authority/in the former Government Department of Ports/in the Department of Customs, out of which at least 5 years' total service in the office of Ports Officer, 1st Grade, and the former office of Ports Officer, 2nd Grade;

- or -

(ii) Officers with 6 years' total service in the offices of Ports Officers, 1st Grade, 2nd Grade and 3rd Grade.

It may be usefully said that the post of Ports Officer, 3rd Grade, was abolished by Κ.Δ.Π. 316 and special provision was made for the salary scale of those holding that post who were not school leavers of a secondary education school; the offices of Ports Officer, 2nd Grade, and 1st Grade were combined.

Counsel for the applicants contended that the regulations Κ.Δ.Π. 317/82 are ultra vires; they infringe their vested right for promotion; they are repugnant to the principle of equality as enshrined in Article 28 of the Constitution; they are the product of abuse of power and they violate the principles of proper administration.

Counsel for the Authority contested the right of the applicants to resort to the administrative Court under Article 146 of the Constitution as they lack legitimate interest, and he refuted all argumentation of counsel of the applicants.

Counsel for the Council of Ministers submitted that the challenged regulations, approved by the Council of Ministers, are a legislative act and not an executory administrative act that may be challenged under Article 146 of the
5 Constitution.

A sub judge decision is declared null and void and of no effect by the Court if it was based on an invalid enactment—(*Christodoulou v. The Republic*, 1 R.S.C.C. 1; *Spyrou and Others v. The Republic*, (1973) 3 C.L.R. 627;
10 *Costakis Apostolou and Others v. The Republic*, (1984) 3 C.L.R. 509).

The schemes of service are acts of legislative nature and not acts of executory or administrative nature. Schemes of service constitute delegated legislation in the sense of *Police v. Hondrou and Another*, 3 R.S.C.C. 82—*Papapetrou v. The Republic*, 2 R.S.C.C. 61; *PASYDY v. The Republic*, (1978) 3 C.L.R. 34; *Ioannou v. Electricity Authority*, (1981) 3 C.L.R. 280, 295).

Delegated legislation must be intra vires the enabling
20 statute. Delegated legislation may be challenged for substantive ultra vires, that is, on the ground that it goes beyond the powers granted by the legislature—(*Commissioners of Customs and Excise v. Cure and Deeley Ltd.*, [1962] 1 Q.B.D. 340; *Papaxenophontos and Others v. The Republic*,
25 (1982) 3 C.L.R. 1037). When subsidiary legislation is examined with a view to determining whether it is intra or ultra vires, the answer to the question depends in every case on the true construction of the enabling enactment.

The challenged regulations were made under s.19(2) of
30 the Cyprus Ports Authority Law that reads:-

“(2) The Authority shall, with the approval of the Council of Ministers, make regulations relating to the conditions of service of its officers and in particular relating to the appointment, promotion, dismissal,
35 leave, medical and social benefits, remuneration, superannuation and other benefits and gratuities, discipline and the right of recourse by way of administrative review in case of dismissal or the taking of other disciplinary measures.”

40 Subsection (3) provides that with regard to the initial

structure of the services of the Authority, the Authority shall, subject to the provisions of sub-section (2), draw up within four months from date of the coming into force of this Law a plan for the structure of its services together with the relevant schemes of service for the posts referred to in such plan. 5

Section 19 came into force on 18.9.75—(See K.Δ Π. 181/75).

It was argued by counsel for the applicants that as the initial structure of the services of the Authority was not changed, there was no need to replace the scheme of service with new ones and, therefore, the provisions of Sub-section (2) could not be validly used. With respect, I find no merit at all in this submission. The Authority, with the approval of the Council of Ministers, was empowered, without any such limitation alleged by counsel for the applicants, to make regulations relating to the conditions of service of its officers, including appointment and promotion. A scheme of service may be altered for the efficiency and proper functioning of the services of the Authority. The functions of the Authority are better carried out and the interests of the citizens are better served by qualified, experienced and efficient servants and it is upto the Authority to determine the required qualifications for the promotion of officers in order to achieve, inter alia, the aforesaid object. No one has a vested right in the existing schemes of service unless an abuse of power in the sense of the Law is established. 10
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It was further argued that the new scheme of service for the post of Senior Ports Officer was the result of negotiations and/or a collective agreement with the Trade Unions. It is correct that a collective agreement by itself does not create a right in public law but in the present case we are not concerned with a collective or any agreement but with a piece of delegated legislation. 30
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Having regard to the wording of s.19(2) and the contents of the attacked regulations, without hesitation I hold that they are within the four corners of the enabling enactment. The regulations are not ultra vires.

Every officer has a right of prospect of promotion. His 40

advancement is an incentive in the better carrying out of his duties. The vested right of an officer is protected by law. Such a right is one given by law and the protection afforded to it is that the recognised legal state cannot be changed to the detriment of the person having it, without his consent; but the vested right must not be confused with a mere expectation of the citizen—(*Kyriacopoulos, Greek Administrative Law*, Volume 1, 4th Edition, p. 95). It may be said here that there is no such vested right as a right to promotion or that the required qualification for a particular promotion post will not be changed before any promotion is effected. There is an expectation for it and nothing more—(*Piperis v. The Republic*, (1967) 3 C.L.R. 295; *Economides v. The Republic*, (1972) 3 C.L.R. 506, 520; *Leontiou v. The Republic*, (1983) 3 C.L.R. 221, 225; *Miamiliotis and Another v. The Republic*, (1983) 3 C.L.R. 322; *Hadji-Christoforou v. The Republic*, (1983) 3 C.L.R. 280; *Papadopoulos and Others v. The Republic*, (1984) 3 C.L.R. 1126; *Alexandrou and Others v. The Republic*, (1984) 3 C.L.R. 15).

The applicants in Case No. 103/83 became eligible for promotion to the post of Ports Officer, 1st Grade, on 1.4.82. It goes, however, without saying that the interested parties were so eligible a long time earlier. It cannot validly be said that any officer on acquiring the service requirements for promotion, irrespective of the existence of posts, he is entitled to promotion. The structure of the service, the needs of the service and other material considerations have to be weighed before deciding whether promotion should be made or not.

By the challenged regulations and the sub judice promotions of the interested parties the principle of equality was not at all infringed. The interested parties had a longer service in the Public Service and in the service of the Authority than the applicants. They were further safeguarded by the provisions of s.35 of the Law. The difference between the two groups—the interested parties and the applicants—is more than obvious. The applicants received a treatment which is not discriminatory at all. Neither the regulations nor the treatment of the applicants and the interested parties is or savours discrimination.

Counsel for the applicants strenuously and more than once

referred to a letter of the Authority addressed to him on behalf of the Authority on 23.11.82. He was thereby informed that the new schemes of service were being made after an agreement for restructure of the offices within the framework of the needs of the service and with full consultation with the Unions of the officers and that the rights of the officers of the Authority, including the rights of his clients, for elevation in the service, so long as they satisfied the requirements of general application, were not affected. 5

I am unable to see how the contents of this letter are in any way faulty. It does not carry the case of the applicants any further. If the applicants do not satisfy the requirements of general application set down in the regulations—scheme of service—in the circumstances of the present case neither the regulations nor the promoting Authority are to be blamed in any way. 10 15

The argument for abuse of power was based on the ground that if the applicants were promoted on 1.4.82—the very first day that they acquired the service qualification required under the old scheme of service—to the immediately higher post of Ports Officer, 1st Grade, their position would have been different. 20

I have earlier referred to the position of the applicants and the interested parties with regard to this matter. I need not repeat that no officer has a right of promotion for the simple reason that he acquires the qualifications for promotion. Many other factors have to be considered before a promotion is made. It cannot be validly argued that the Authority deliberately did not promote the applicants on 1.4.82 for the purpose of bringing into operation the new schemes of service on 30th December, 1982, and this is established from all the material before me. After all, the interested parties qualified for promotion long before the applicants. The new scheme of service does not create unequal treatment between the applicants and the interested parties. 25 30 35

For any officer to be eligible for promotion to a post, he must possess at the material time the qualifications required by the scheme of service.

A recourse under Article 146 may be made by a person 40

- whose any existing legitimate interest is adversely and directly affected by such decision or act or omission. The legitimate interest must exist at the time of filing of the recourse and upto the determination of the case. An officer,
- 5 who is not qualified under the scheme of service for promotion, has no "legitimate interest" in the sense of paragraph 2 of Article 146—(*Anastassios Philippou v. The Republic*, 4 R.S.C.C. 139, 140; *Panayides v. The Republic*, (1972) 3 C.L.R. 135, 141; *Sofocleous (No. 2) v. The Republic*,
- 10 *Republic*, (1972) 3 C.L.R. 637; *Paraskevopoulou v. The Republic*, (1980) 3 C.L.R. 647, 657, 659).

The existence of the legitimate interest, even if not raised, may be examined by the Court *ex proprio motu*—(*Constantinidou v. The Republic*, (1974) 3 C.L.R. 416, 418).

- 15 The present applicants do not possess the qualifications required under the scheme of service for the post of Senior Ports Officer and, therefore, they never had a legitimate interest to raise these recourses.

- 20 In view of all the aforesaid, these recourses fail and are hereby dismissed with no order as to costs.

Recourses dismissed.
No order as to costs.