

1986 April 10

[SAVVIDIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION
POLYVIOS YIALLOUROS.

Applicant

v

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

Respondents.

(Case No. 189/85).

Police Force—The Police Law, Cap. 285—Section 10(2)—Section 13 (Law 29/66)—Promotions—The Police (Promotion) Regulations—Regulations made after the enactment of Law 29/66 under s. 10(2) invalid—Val'dity of the original (1958) regulations not affected (See the proviso to sub-section (3) of section 13 as amended by Law 29/66)—Regulations 2, 3 and 4—Circumstances making impossible the application of reg. 3 and 4.

Administrative act—Retrospective effect—Re-examination of matter after an annulling decision.

The promotions, made on 1.3.80 of the interested parties to the rank of Inspector in the Police Force were annulled by this Court.* In view of the fact that in the meantime the various Commanding Officers, who evaluated the candidates at the time when the promotions were effected had retired and also a number of candidates had been transferred to other districts, it was found impossible to follow at the stage of reconsideration the same procedure as before.

* See *Michaei and Others v The Republic* (1984) 3 C.L.R. 1364

The Deputy Attorney-General advised the Chief of Police that the only possible procedure is the evaluation of the candidates by the superior authority which is in a position to know the performance and merit of the candidates at the time of the annulled promotions; and that since the recommendations of the Commanding Officers are no longer possible the procedure before the Selection Board is also impossible as such recommendations are a prerequisite of the functioning of the said board.

5

In the light of such advice the Chief of Police proceeded to the evaluation of the candidates on the basis of his own personal knowledge of them. As a result he decided that the interested parties were the more suitable. Upon the approval of the Minister of the Interior, given by letter dated 21.12.84, the interested parties were promoted retrospectively as from 1.3.80 to the rank of Inspector.

10

15

Counsel for the applicants limited himself to two grounds, namely the invalidity of the Police (Promotion) Regulations and the retrospective effect of the sub judice promotions.

20

Held, dismissing the recourse: (1) The effect of the decision in *Lefkatis and Others v. The Republic* (1985) 3 C.L.R. 1372* is that section 13(3) of the Police Law as set out in Law 29/66, amended by necessary implication s. 10(2) as far as the vesting of the power to make regulations are concerned. That is after Law 29/66 the power vests in the Council of Ministers. The result is that regulations made after the enactment of Law 29/66 under s. 10(2) are invalid. Such are the regulations under Nos 943/66, 111/72 and 347/80, which, however, refer to regulations 7, 9, and 11 concerning matters that have nothing to do with the sub judice decision.

25

30

(2) The fact that such amending regulations were found to be invalid, does not affect the validity of the original regulations, which are saved by the proviso to section 13(3) as amended by Law 29/66.

35

(3) The Regulations of 1958 prescribing the procedure

* Affirmed on appeal in *Stavrou and Others v Republic* (1986) 3 C.L.R. 361.

for promotions are regulations 2, 3 and 4. Regulations 3 and 4 had to be bypassed for the reasons indicated in the advice of the Deputy-Attorney-General. The only possible course was the one adopted and followed.

- 5 (4) An administrative decision taken in the course of re-examination of a matter as a result of an annulling decision of this Court may be given retrospective effect.

Recourse dismissed.

No order as to costs.

10 Cases referred to:

Lefkatis and Others v. The Police (1985) 3 C.L.R. 1372
affirmed on appeal in *Stavrou and Others v. Republic*
(1986) 3 C.L.R. 361.

Recourse.

- 15 Recourse against the decision of the respondents to promote, after an annulling judgment of the Supreme Court, to the rank of Inspector in the Police Force the 30 interested parties instead of applicant.

I. Typographos, for the applicant.

- 20 M. Florentzos, Senior Counsel of the Republic, for the respondents.

Cur. adv. vale

- 25 SAVVIDES J. read the following judgment. The applicant challenges the decision of the respondents to promote, after an annulling judgment of this Court, to the rank of Inspector in the Police Force the 30 interested parties, whose names appear in a list attached to the application, instead of him (see attached appendix).

- 30 The applicant was enrolled in the Police Force in 1959 and holds, since 1.11.1969, the rank of a Sergeant.

- On 1.3.80, the respondents promoted the 30 interested parties who were also sergeants, to the rank of Inspector. Such promotions were decided by the Chief of Police on the recommendations of the Divisional and Unit Commanders who, in making their recommendations, were assisted
- 35

by and acted on the advice of a number of advisory selection committees which were appointed by the Chief of Police on instructions from the Minister of Interior.

By the judgment in the above recourses, *Michael and Others v. The Republic* (1984) 3 C.L.R. 1364, delivered on 17.11.84, the promotions of the interested parties were annulled on two grounds:

- (a) Violation of the rules of natural justice, by taking into consideration reports of the Central Information Service, without affording the opportunity to the officers adversely affected, to be heard.
- (b) The functions of the Advisory Selection Committee which took part in the evaluation of the candidates for promotion, were not provided by the Law or the Regulations.

The Chief of Police then sought the advice of the Attorney-General as to the procedure to be followed for the reconsideration of the annulled promotions, in view of the fact that in the meantime the various Commanding Officers who evaluated the candidates at the time when the promotions were effected had retired, and also a number of candidates had been transferred to other districts and thus it was found impossible in the circumstances, to follow at the stage of reconsideration the same procedure as before.

The Deputy Attorney-General in reply to such request gave a written advice on the matter (Appendix A to the opposition) which he concluded as follows:

"5. In the circumstances I believe that the only possible procedure is the evaluation of the candidate by the superior authority which is in a position to know the performance and merit of the candidates at the time of the annulled promotions and provides thus the relevant safeguard of a correct evaluation. I understand that the only superior authority satisfying the above prerequisite is the Chief of Police. The Chief of Police may therefore make an evaluation of the candidates for promotion at that time on the basis of

the position existing then, ignoring the procedure for evaluation by the Commanding Officers, (and obviously the evaluation by those officers at that time which is legally defective since it was prejudiced by the recommendations of the Evaluation Committee which was found by the Court to be incompetent).

6. I must also add that the procedure for classification of the candidates by the Selection Board has again become in fact impossible since the recommendations of the Commanding Officers which, as I said, are no longer possible, is a prerequisite for its functioning. This procedure may also, therefore, be disregarded on the basis of the above case law."

In the light of the above, the Chief of Police proceeded to the evaluation of the candidates on the basis of his own personal knowledge of them and decided that the 30 interested parties were the most suitable candidates for promotion.

The Chief of Police then wrote to the Minister of Interior a letter dated 20.12.1984 (Appendix "B" to the opposition) by which, after making a brief reference to the previous judgment of the Court and an exposition of the situation in the light of the advice of the Deputy Attorney-General he sought the approval of the Minister for the promotion of the interested parties. The relevant part of this letter reads as follows:

"3. I have considered carefully the contents of the judgment of the Court and relying also on the afore-said advice of the Attorney-General and since I know personally all the candidates at the time, including the applicants, in evaluating them (disregarding completely the reports of the C.I.S. and any other evaluation the validity of which has been affected by the judgment of the Court) I come to the conclusion that the 30 Sergeants whose particulars are attached, are the most suitable from every aspect, for promotion and I request your approval in order to promote them to the rank of Inspector with retrospective effect as from 1.3.80."

The approval of the Minister was given by letter dated 21.12.1984, addressed to the Chief of Police. After such approval, the interested parties were promoted to the rank of Inspector. As a result, applicant filed the present recourse challenging their promotion.

This recourse was based on various grounds of law, including grounds touching the merits of the case. Counsel for applicant, however, by his written address thought fit not to touch on the merits of the case and limited himself solely on the ground of the invalidity of the Police (Promotion) Regulations contending that their invalidity renders the promotion of the interested parties null and void.

Counsel argued, relying on the case of *Lefkatis and Others v. The Republic* (1985) 3 C.L.R. 1372, that section 10(1) and (2) of the basic Law, Cap. 285, gives power to make regulations, and the Police (Promotion) Regulations of 1958 were issued in the exercise of such power. It is counsel's contention that the above provisions cannot apply any longer since by the amending Law 29/66 a different provision is made with regard to the issue of regulations in relation to promotions. In accordance with section 13, as amended by the above Law, such regulations should be made by the Council of Ministers and laid before the House of Representatives which may amend them or not and thereafter they are published in the Official Gazette and become effective.

Counsel submitted that all amendments to the Regulations made after the enactment of Law 29/65 are invalid or ultra vires the Law, because they were made under section 10 and not section 13 of the Law. It is counsel's contention that respondents applied the Police (Promotion) Regulations as a whole, with the amending regulations embodied therein, and that such Regulations should have been laid before the House of Representatives as a whole and be published as a whole in accordance with the provisions of section 13, as amended. Counsel submitted that the Police (Promotion) Regulations of 1958 - 1983. are invalid and ultra vires as a whole.

Counsel for the respondents argued that the Chief of Police decided the promotions in the light of the legal position existing in 1980, which was the material time and had nothing to do with the Regulations, either before or after 5 1966, the application of which was in fact impossible for the reasons stated in the advice of the Attorney-General's office. Counsel further argued that the effect of *Lefkatis* case is that only those parts of the Regulations enacted after 1966, are ultra vires the Law, whilst the 1958 Regu- 10 lations continued to be in force on the basis of the proviso to section 13(3) of Cap. 285. Counsel finally submitted that it was reasonably open to the respondents to reach the sub judice decision.

Counsel for the applicant raised by his written reply, 15 another point, that of the retrospectivity of the promotions and alleged that the sub judice promotions could not have been effected retrospectively, in the absence of a specific legal provision to that effect.

In answer to the above ground, counsel for the res- 20 pondents maintained, at the stage of clarifications, that the retrospective effect of administrative acts taken as a result of a re-examination after an annulling decision of the Court is allowed and affords an exemption to the rule against retrospectivity of administrative acts.

25 The effect of the *Lefkatis* case (supra) which in the meantime has been affirmed on appeal (R.A. 490* in which judgment was delivered on 30.1.1986, not yet reported) is that section 13(3) as set out in Law 29/66, amended by necessary implication, section 10(2) as far as the vesting 30 of the power to make regulations is concerned. That is, after the enactment of Law 29/66, the power to make regulations regarding the promotions of Police Officers vests in the Council of Ministers. The result is that all amend- ments to the regulations made after the enactment of the 35 above law are ultra vires the Law, since they were made under section 10(2). The Regulations affected are, as far as the present case is concerned, the amending regulations under Nos. 943/66, 111/72 and 347/80, which, how- ever, refer to Regulations 7, 9 and 11 concerning matters

* Now reported as *Stavrou and Others v. Republic* (1986) 3 C.L.R. 361.

of examinations and pass percentages and had nothing to do with the sub judice decision.

5 It is the contention of counsel for applicant that the regulations made before 1966 are also invalid since they were applied in their totality. I cannot find support in this contention. Under the proviso to section 13(3) the Regulations existing at the time of the enactment of Law 29/66 will continue to be in force until the enactment of the new Regulations. No new Regulations were made under
10 section 13, but only certain amending regulations to the existing ones of 1958. The fact that such amending regulations were found to be invalid, does not affect the validity of the original Regulations which are saved by the proviso to section 13(3) of the Law, as amended by Law 29/66.

15 The Regulations of 1958 prescribing the procedure to be followed for promotions in the Police Force are Regulations 2, 3 and 4. Regulation 2 is a general one setting down the criteria for promotion.

20 Regulation 3 provides for the recommendations of the Commanding Officers and the matters to be mentioned therein.

25 Regulation 4 regulates the constitution and setting up of Selection Boards and provides that selection for promotion up to and including the rank of Assistant Superintendent shall be made by such Boards.

It is, however, a fact that such procedure was not followed in the case of the sub judice promotions because the recommendations of the commanding officers and the procedure before the selection boards could not be adopted,
30 for the reasons which appear in the advice of the Attorney-General of the Republic to which reference has already been made. Thus Regulations 3 and 4 had to be bypassed and the only possible course was to proceed to the sub judice promotions on the basis of a selection made by the
35 Chief of Police who, as stated in his letter of 20.12.1984 to the Minister (cited earlier), did so on the basis of his personal knowledge of the candidates and the evaluation made by him, also based on such knowledge, bearing in

mind the criteria set out in Regulation 2. I, therefore, find that the sub judge decision was not taken under any invalid regulations and that for the reasons mentioned, the procedure followed by the Chief of Police was, in the circumstances, the only one available to him.

Counsel for applicant did not advance any other ground for annulment of the sub judge decision except its retrospectivity with which I will deal very briefly.

An administrative decision taken in the course of re-examination of a matter as a result of an annulling decision of the Court, may be given retrospective effect, and this, as it was correctly put by counsel for the respondents, affords an exemption to the rule of non retrospectivity of administrative acts. Support may be found in several Greek authors, as for example, in Kyriacopoulos on Greek Administrative Law, 4th Edition, volume C. p. 400; Conclusions from the Case Law of the Greek Council of State 1929 - 1959, p. 281 and Dendias on Administrative Law, 2nd Edition, volume C. p. 359.

This ground is, therefore, also dismissed.

In the result, this recourse fails and is, hereby dismissed.

Recourse dismissed.

No order as to costs.

APPENDIX

15	1.	Sgt.	1188	G. S. Karlettides
	2.	"	448	I. Antoni
	3.	"	1175	A. Tsopanis
	4.	"	1250	A. Tryfonos
	5.	"	1245	T. Kyprianou
30	6.	"	432	Chr. Neophytou
	7.	"	224	A. Ioannou
	8.	"	775	I. Kokkinoftas

8.	"	946	P. Hadji Vasili	
10.	"	1197	A. Pitsillides	
11.	"	1231	A. Violaris	
12.	"	2045	N. Nicolaidis	
13.	"	24	G. Hadji Michalakis	5
14.	"	567	D. Christodoulou	
15.	"	1228	L. Lardis	
16.	"	1263	A. Spyrou	
17.	"	1455	G. Georghiou	
18.	"	576	T. Petrou	10
19.	"	1677	A. Tofaris	
20.	"	1735	I. Petrou	
21.	"	1467	K. Miller	
22.	"	153	K. Michaelides	
23.	"	256	K. Markoullis	15
24.	"	467	S. Pafitis	
25.	"	634	K. Loizides	
26.	"	1721	G. Georghiades	
27.	"	1962	S. Hadji Sofocleous	
28.	"	2247	A. Ierotheos	20
29.	"	266	A. Neophytou	
30.	"	56	G. Saparillas.	