

1986 June 26

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

ANDREAS SAVVIDES AND OTHERS,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF INTERIOR AND OR  
THE COMMANDER OF POLICE,

*Respondents.*

*(Cases Nos. 4, 22, 35, 47, 48, 62, 79, 81, 82, 85, 91, 104, 107, 108, 125, 129, 131, 132, 144, 149, 156, 162, 163, 164, 165, 166, 167, 168, 176, 181, 185, 187, 190, 191, 197, 198, 199, 200, 201, 202, 204, 206, 213, 217, 218, 224, 227, 229, 239, 242, 243, 252, 262, 263, 264, 265, 268, 271, 276, 279, 288, 298, 301, 303, 308, 313, 314, 321, 327, 345, 346, 350, 352, 353, 376, 377, of 1985).*

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*Police Force—The Police Law, Cap. 285, as amended by Laws 19/60, 21/64 and 29/66—Sections 10 and 13—The Police (Promotions) (Amendment) Regulations No. 184/83 made under s. 10—Said Regulations invalid for lack of legitimacy.*

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The sub judice promotions of the interested parties to the rank of Police Inspector were effected with the approval of the Minister of the Interior by the Chief of Police by virtue of the powers vested in him under s. 13 of Cap. 285, as amended by Laws 19/60, 21/64, and 29/66

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It should be noted that the Police (Promotion) Regulations were radically amended by the Police (Promotions)

(Amendment) Regulations No. 184/83, which were made by the Council of Ministers under s. 10 of Cap. 285 as amended.

5 *Held*, annulling the sub judice decisions: (1) It is an undisputed fact that the promotions were effected under s. 13(3) of the Police Law. Section 13(3), as amended by s. 2 of Law 29/66, expressly provides that conditions for the promotion of all members of the Police Force should be governed by Regulations made by the Council of Ministers  
10 "on the basis of s. 13 of the Law." Thereafter Regulations governing the conditions, inter alia, of promotions of members of the Force, could only be made under s. 13(3) and laid before the House of Representatives, as provided by s. 13(4) of the same law.

15 (2) It follows that the sub judice promotions should be annulled, as having been made under Regulations which are invalid (*Stavrou and Others v. The Republic* (1986) 3 C.L.R. 361 and the first instance case of *Lefkatis and Others v. The Republic* (1985) 3 C.L.R. 1372 followed).

20 *Sub judice decision annulled.*  
*No Order as to costs.*

**Cases referred to:**

*Yiallourous v. Republic* (1986) 3 C.L.R. 677;  
*Lefkatis and Others v. The Republic* (1985) 3 C.L.R. 1372;  
*Stavrou and Others v. The Republic* (1986) 3 C.L.R. 361.

25 **Recourses.**

Recourses against the decision of the respondents to promote the interested parties to the rank of Police Inspector.

*A. S. Angelides*, for applicants in Cases Nos. 4/85 and 213/85.

30 *I. Typographos*, for applicants in Cases Nos. 201/85, 202/85 and 217/85.

*L. Papaphilippou*, for applicants in Cases Nos. 35/85, 47/85, 48/85, 187/85, 279/85 and 345/85.

*Ch. Loizou*, for applicant in Case No. 252/85.

- St. Kittis*, for applicants in Cases Nos. 204/85, 206/85 and 243/85.
- S. Mamantopoulos*, for applicant in Case No. 376/85.
- A. Markides*, for applicants in Cases Nos. 262/85, 263/85, 264/85 and 265/85. 5
- C. Emilianides*, for applicants in Cases Nos. 131/85, 132/85 and 313/85.
- T. Papadopoulos*, for applicants in Cases Nos. 81/85 and 82/85.
- C. Erotocritou*, for applicants in Cases Nos. 218/85 and 242/85. 10
- Chr. Kitomilides*, for applicant in Case No. 327/85.
- A. Magos*, for applicants in Cases Nos. 129/85, 181/85, 301/85 and 314/85.
- A. Haviaris*, for applicants in Cases Nos. 185/85, 200/85, 229/85, 149/85, 125/85 176/85 and 377/85. 15
- M. Christophides*, for applicant in Case No. 268/85.
- A. Papacharalambous*, for applicants in Cases Nos. 79/85, 91/85, 104/85, 227/85, 350/85, 352/85 and 353/85. 20
- A. Pandelides*, for applicant in Case No. 224/85.
- N. Papamiltiades*, for applicants in Case Nos. 22/85 and 321/85.
- E. Efstathiou*, for applicants in Cases Nos. 144/85, 197/85, 198/85, 199/85, 298/85 and 308/85. 25
- G. Cacoyannis*, for applicants in Cases Nos. 162/85, 168/85, 190/85, 191/85 and 276/85.
- E. Lemonaris*, for applicant in Case No. 85/85.
- L. Clerides*, for applicants in Cases Nos. 107/85, 108/85 and 346/85. 30
- A. Ntorzis*, for applicant in Case No. 288/85.

*St. Drymiotis*, for applicant in Case No. 156/85.

*Th. Ioannides*, for applicant in Case No. 303/85.

*M. Vassiliou*, for applicant in Case No. 271/85.

5 *G. Charulambous*, for applicants in Cases Nos. 62/85  
and 239/85.

*M. Florentzos*, Senior Counsel of the Republic,  
for the respondents.

*Chr. Vakis*, for interested parties 1 and 15.

*P. Papageorgiou*, for interested parties 2 and 8.

10 *A. Koushios*, for interested party 6.

*Chr. Vassiliades*, for interested parties 4, 10, 14 and 16.

Interested parties 3 and 11 absent.

Interested parties 5, 7, 9, 12 and 13 present.

*Cur. adv. vult.*

15 SAVVIDES J. read the following judgment. The applicants  
in these recourses which were heard together as presenting  
common questions of law and as challenging the same ad-  
ministrative act, are directed against the decision of the  
Chief of Police to promote the interested parties whose  
20 names appear in the attached list, to the rank of Police  
Inspector.

The said promotions were effected by the Chief of Po-  
lice by virtue of the powers vested in him under section 13  
of the Police Law, Cap. 285, as amended by Laws 19/60,  
25 21/64 and 29/66 and the Police (Promotion) Regulations  
1958-1983, with the approval of the Minister of Interior,  
and were published in the Police Weekly Order dated 31.12.  
1984. The applicants, who were eligible for promotion, having  
been aggrieved by the said decision, filed the aforementioned  
30 recourses, whereby they seek the annulment of same.

A common point of law was raised in all recourses con-  
cerning the validity of the Regulations under which the  
promotions were made. At the request of the parties and

on the directions of the Court, such point was taken as a preliminary point of law.

By their written addresses counsel for applicants submitted that the Police (Promotion) Regulations, 1958, were amended materially after the enactment of Law No. 29/66 and that the amending Regulations are ultra vires, as they were made under section 10 of the Police Law, whereas they should have been made under section 13 and that they were not laid before the House of Representatives, as provided by Law No. 29/66, and this failure is fatal to their validity. Some of the recourses were originally directed against promotions effected by different administrative acts as well. Thus, the promotion of 85 interested parties was at stake.

In the course of the hearing, however, of these recourses, the prayer for the annulment of the promotion of two interested parties, namely, Charalambos Patsalides and Nicos Georghiou, were withdrawn. Also, the prayer for the annulment of the promotion of 37 other interested parties was abandoned, as their promotion was revoked by the Chief of Police by Order published in the Weekly Police Orders of the 25th November, 1985. Furthermore, the challenge of the promotions of a number of others was abandoned, as already this Court had decided in the case of *Polyvios Yiallouros v. The Republic* (Case No. 189) in which judgment was delivered on the 10th April, 1986 (not yet reported)\* that their promotions were properly effected.

Since the filing of these recourses the Supreme Court had the opportunity of dealing with the validity of the Police (Promotion) (Amendment) Regulations 1983, in the case of *Efstathios Lefkatis and others v. The Republic* (1985) 3 C.L.R. 1372. It was held in that case by Stylianides, J. at pp. 1387, 1388 and 1389 that:-

“The provision of s. 13(3) and (4) relating to the delegation of power to the Council of Ministers for rule-making is contrary to the provision of s. 10....

.....

This provision is mandatory and should not be dis-

\* Now reported in (1986) 3 C.L.R. 677.

regarded by the Courts. This statutory obligation to lay before Parliament is of the nature of a condition precedent and failure of the executive to present such legislation before Parliament makes such subsidiary legislation invalid—(Basu-Commentary on the Constitution of India, 5th Edition, Volume 1, pp. 266-267).

.....

The Police (Promotions) (Amendment) Regulations No. 184/83 effected radical changes to the Police (Promotion) Regulations. They created bodies for examination, selection, and recommendation for the purpose of promotion of the non-Gazetted Officers and provided the procedure, etc., leading to the act of the promotion. These Regulations were made by the Council of Ministers under s. 10.

Section 10 was repealed by implication in so far as it related to promotions by the posterior 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. The Regulations, which did 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. This, however, does not affect the validity of the basic Regulations pre-existing the invalid amendments.”

That case came on appeal before the Full Bench (see *Stavrou and others*, appellants-interested parties, v. *The Republic of Cyprus*, respondents and *Efstathios Lefkatis and others*, respondents-applicants) in Revisional Jurisdiction Appeal No. 490 in which judgment was delivered on the 30th January, 1986 (not yet reported),\* whereby the decision of the first instance court was affirmed. The Full Bench in dismissing the appeal of the interested parties, expressed the following opinion:-

“Section 13(3), as amended by s. 2 of Law 29/66, expressly provides that conditions for the promotion of

\* Reported in (1985) 3 C.L.R. 1372.

all members of the Force should be governed by Regulations made by the Council of Ministers, 'on the basis of s. 13 of the Law'. Thereafter, Regulations governing the conditions, inter alia, of promotion of members of the Force could only be made under s. 13(3) and laid before the House of Representatives, as provided in sub-section (4) of s. 13 of the Law. The power earlier vested under s. 10 of the Law to make Regulations in relation, inter alia, to the conditions of promotion of non gazetted officers in the manner envisaged therein, was expressly taken away and vested in the Council of Ministers subject to and in accordance with the provisions of s. 13(3) (as amended by Law 29/66). Reconciliation between the two provisions was no longer possible. However hard we may strive to reconcile the provisions of the two sections of the Law, s. 10(2) and s. 13(3), conflict is unavoidable. The only way to resolve it is by holding that the 1966 legislation amended by necessary implication, the rule-making power vested under s. 10(2) confining competence to regulate promotions to the Council of Ministers in accordance with and subject to the provisions of sub-section (3) and (4) of s. 13 of the Law. The specific reference made in sub-section (3) to rules made under that particular section of the Law confirms beyond doubt the intention of the legislature to confine rule-making power under s. 10 to matters other than those specified in s. 13(3)."

Counsel for respondents in these cases did not advance any argument in rebuttal to the contention of the applicants that the Regulations by virtue of which the promotions were made are void. In fact, on the date when the cases were fixed for hearing, counsel for respondents made the following statement:

"I have not filed a written address in these cases, as judgment has been issued in Revisional Appeal No. 490 according to which the Regulations under which the promotions were made, were found to be ultra vires. Therefore, once the Regulations of 1983 were found

to be ultra vires. I have filed no address in support of the validity of the Regulations and in the light of such decision, I leave the matter to the Court."

5 Counsel for interested parties made statements adopting what was said by counsel for the respondents and for the same reason they did not file written addresses to rebut the contentions of counsel for applicants, leaving the matter to the discretion of the Court.

10 I wish to stress, at this stage, that the attitude of counsel for respondents and interested parties is highly appreciated in these cases, as they did not embark on unnecessary argument, in view of the decision of the Full Bench in Revisional Appeal No. 490 concerning the validity of these Regulations.

15 The present cases are in all fours with the facts in Revisional Jurisdiction Appeal No. 490. It is an undisputed fact that the promotions were effected under section 13(3) of Law. Section 13(3) of Cap. 285, as amended by section 2 of Law 29/66 expressly provides that conditions for the promotion of all members of the Force should be governed by Regulations made by the Council of Ministers "on the basis of section 13 of the Law." Thereafter, Regulations governing the conditions, inter alia, of promotions of members of the Force, could only be made under section 13(3) and laid before the House of Representatives, as provided in sub-section (1) of section 13 of the Law.

20 Adopting what was said in Revisional Jurisdiction Appeal 490 and, also by Stylianides, J. in the first instance case of *Lokatis and others v. The Republic* (supra), I find that the sub-judice promotions of the interested parties whose names appear in the attached list, should be annulled, as having been made under Regulations which are invalid and, therefore they are null and void and of no legal effect whatsoever.

35 The recourses, therefore, succeed and the promotions of

the interested parties described in the attached list, are annulled.

In the circumstances, I make no order for costs.

*Recourse dismissed.*

*No order as to costs.*

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#### APPENDIX

1. S. Hj. Louca.
2. K. Constantinou.
3. S. Solomou.
4. A. Theodouolou. 10
5. M. Chrysanthou.
6. S. Kafas.
7. S. Christodoulides.
8. K. Chrystodoulou.
9. A. Christoforou. 15
10. Chr. Ioannou.
11. A. Aristidou.
12. P. Trakkoudes.
13. E. Papaevriviadous.
14. P. Ermoghenides. 20
15. C. Papaneocleous Karkas.
16. I. Papacostas.