

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. THEODOROS KOUALIS,
2. COSTAS ZAVROS,

*Applicants,*

*and*

THEODOROS  
KOUALIS  
AND ANOTHER  
v.  
REPUBLIC  
(COMMANDER  
OF POLICE  
AND ANOTHER)

THE REPUBLIC OF CYPRUS, THROUGH

1. THE COMMANDER OF THE POLICE,
2. THE MINISTER OF INTERIOR,

*Respondents.*

(Cases Nos. 267/68, 333/68).

*Police Force—Promotion to the rank of Inspector from that of Sub-Inspector—Annulled in respect of two Interested Parties, as made contrary to law in that such Interested Parties have not passed the qualifying examinations required therefor—Police (Promotion) Regulations, 1958, regulation 6 (2) (b)—And, also, as made in excess and abuse of powers, because it was not reasonably open to the Respondents to promote candidates who have not passed the said examinations, instead of and in preference to, a recommended candidate who has done so—Promotions held valid in respect of the three remaining Interested Parties—Court not satisfied, in the light of all relevant considerations, that the appropriate organs have acted contrary to the Constitution, the relevant legislation or any principle of Administrative Law or in excess or abuse of powers—Cf. The Police Law, Cap. 285, as amended by Law No. 29 of 1966, sections 2 and 4—Cf. Police (Promotion) Regulations, regulations 3 and 6 (2) (b) (3).*

*Promotions—See supra.*

*Administrative decisions—Contrary to law and in excess and abuse of powers—See supra.*

*Abuse and excess of powers—See supra.*

The facts sufficiently appear in the judgment of the Court annulling the promotions of two Interested Parties and leaving undisturbed those of the remaining three Interested Parties.

1970  
Dec. 31  
—  
THEODOROS  
KOUALIS  
AND ANOTHER  
v.  
REPUBLIC  
(COMMANDER  
OF POLICE  
AND ANOTHER)

### Recourses.

Recourses against the decision of the Respondents to promote the four Interested Parties to the rank of Inspector in the Police Force in preference and instead of the Applicants.

*L. Clerides*, for the Applicant in case No. 267/68.

*L. Papaphilippou*, for the Applicant in case No. 333/68.

*K. Talarides*, Senior Counsel of the Republic, for the Respondent,

*Cur. adv. vult.*

The following judgment\* was delivered by:

· TRIANTAFYLLIDES, J.: Both these two recourses, which have been heard together in view of their nature, were made against the promotions to the rank of Inspector in the Police Force of four Sub-Inspectors: Y. Costa, St. Christodoulou, M. Patsalides, and M. Tabakkis; furthermore, recourse 333/68 has been made, also, against the promotion to Inspector of another Sub-Inspector, K. Patatakkos.

The said promotions were effected by the Commander of the Police with the consent of the Minister of Interior, under the provisions of section 13(2) of the Police Law (Cap. 285) as amended, in this respect, by means of section 2 of the Police (Amendment) Law, 1966 (Law 29/66); in this connection it is useful to note the relevant letters exchanged between the Commander of the Police and the Ministry of Interior, dated the 24th May and the 18th July, 1968, respectively (see *exhibits 11 and 12*).

The Regulations applicable, at the material time, to promotions in the Police are the Police (Promotion) Regulations, 1958 (see 1958 Subsidiary Legislation Volume II—Part I, p. 307).

In the present proceedings we are particularly concerned with the application of paragraphs (2) and (3) of regulation 6, which read as follows:—

“6 – (1).....

(2) A Sergeant to be qualified for promotion to the rank of Inspector must –

\* For final decision on appeal see (1971) 6 J.S.C. 8      o be reported in due course in (1971) 3 C.L.R.

1970  
Dec. 31

—  
THEODOROS  
KOUALIS  
AND ANOTHER  
v.  
REPUBLIC  
(COMMANDER  
OF POLICE  
AND ANOTHER)

- (a) not have had any greater punishment than a severe reprimand imposed on him for an offence against discipline during the two years immediately prior to his promotion;
  - (b) have passed the qualifying examinations;
  - (c) save for special reasons to be stated in each individual case, have completed one year's service in the rank of Sergeant in the performance of outside police duty;
  - (d) have completed two years' service in the rank of Sergeant, unless the Chief Constable"—(now the Commander of the Police)—"is satisfied that he possesses special qualifications for the performance of the particular duties on which he is to be employed;
  - (e) have been recommended by the Board.
- (3) Notwithstanding anything in this Regulation contained the Chief Constable"—(now the Commander of the Police):—
- "(a) may decide that members of the Force recommended by the Board for advancement should attend a short promotion course;
  - (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 "Board" referred to in the above two paragraphs of regulation 6 is a Selection Board provided for under regulation 4 of the same Regulations; it is appointed by the Commander of the Police.

It is also useful to bear in mind regulation 2 of the Regulations in question, which reads as follows:—

- "2 - (1) Promotion from Constable to Sergeant and from Sergeant to Inspector shall be by selection from amongst those qualified to be promoted. No further examination shall be necessary for promotion above this rank.

1970  
Dec. 31

—  
THEODOROS  
KOUALIS  
AND ANOTHER  
v.  
REPUBLIC  
(COMMANDER  
OF POLICE  
AND ANOTHER)

(2) Seniority shall be taken into account, but shall not be allowed to govern promotion, and greater importance shall be attached to professional ability and personal qualities of leadership, loyalty, initiative, excellence of character, real and a true appreciation of the objects of the Police”.

It is convenient to deal, at this stage, with the point that both Applicants were, at the material time, senior in service to all the Interested Parties: That was, indeed, so. But it is clear from regulation 2(2), above, that their seniority could not be allowed to be the governing factor; and I am satisfied, on the basis of all the material placed before me, that there existed sufficient reasons, such as those enumerated in regulation 2(2), which rendered it reasonably open to the appropriate organs to promote the Interested Parties instead of the Applicants.

Reverting now to the requirements for promotion set out in the already quoted paragraphs (2) and (3) of regulation 6, it is common ground that Interested Parties Christodoulou and Tabakkis, when they were promoted to Inspectors, they had not yet passed the qualifying examinations required for such promotion; on the other hand the remaining Interested Parties and the Applicants had passed such examinations (see, in this connection, *exhibit 1*).

It appears, also, that at the time when Interested Party Christodoulou was recommended for promotion, by his Commanding Officer, it was erroneously stated in the relevant form (see *exhibit 6*) that this Interested Party had passed the said examinations. In this respect, however, it is quite clear that the erroneous statement in question did not result in Interested Party Christodoulou being promoted under the influence of a misconception, because as it appears from the evidence of the Commander of the Police, Mr. Hasapis, both he, himself, as well as the members of the Selection Board—or of the Promotion Board, as he described it in his evidence—who made relevant recommendations to him, could not have been misled by the aforementioned erroneous statement, in view of the fact that they all had before them, at all material times, the personal papers of each candidate which showed what examinations had each one passed; one of such personal papers was the personal card of Interested Party Christodoulou (see *exhibit 21*) which shows—as explained by Mr. Hasabis—that this candidate passed only the qualifying examinations for promotion to Sergeant.

It has not been the case for the Respondents that the two Interested Parties concerned—Tabakkis and Christodoulou—were promoted under paragraph (3) of regulation 6, notwithstanding the fact that they had not passed the qualifying examinations, expressly required for promotion to Inspector, under paragraph 2(b) of regulation 6.

It appears that, as at the time both of them were not mere Sergeants but Sub-Inspectors, it was not thought necessary that they should have passed the qualifying examinations for promotion to Inspector in order to be considered as eligible, or selected, for such promotion (see paragraph 2 of the Opposition in each of the present recourses).

It is correct that in the relevant Regulations there is not being made any mention at all of the rank of Sub-Inspector; there is made provision therein only for promotion from the rank of Sergeant to that of Inspector.

These Regulations were made under Cap. 285 and they were continued in force by means of section 2 of Law 29/66 which, as stated, amended Cap. 285 regarding promotions in the Police.

In section 4 of Cap. 285, wherein provision is made about the constitution of the Police Force, the rank of Sub-Inspector is expressly mentioned as an intermediate rank between the rank of Sergeant and the rank of Inspector. It is to be noted, however, that in section 2(1) of the same Law the term "Inspector" is defined as including both a Sub-Inspector as well as a Chief Inspector; a Chief Inspector being, according to section 4, the rank immediately higher than that of Inspector.

What, in effect, has happened in the present instance is that Interested Parties Tabakkis and Christodoulou, who had already, in the past, been promoted from Sergeants to Sub-Inspectors, without having passed the necessary for promotion to the rank of Inspector examinations, were further promoted and became Inspectors still without having passed such examinations.

In my view it was not legally possible to promote them to Inspectors: It involved disregarding the express provision, in paragraph 2 of regulation 6, that to be qualified for promotion to Inspector a Sergeant *must* have passed the qualifying examinations; and I cannot construe paragraph (2) of

1970  
Dec. 31  
—  
THEODOROS  
KOUALIS  
AND ANOTHER  
v.  
REPUBLIC  
(COMMANDER  
OF POLICE  
AND ANOTHER)

regulation 6 in a manner defeating its object, by holding that a Sergeant can become an Inspector, without possessing an essential qualification for such promotion, having become first a Sub-Inspector at a time when he did not possess such qualification. I would, indeed, be inclined to think that in view of the definition of “Inspector” in section 2(1) of Cap. 285—under which the relevant Regulations were made—a Sergeant cannot become even a Sub-Inspector if he has not passed the qualifying examinations for promotion to Inspector; but I do not have to pronounce on this point in the present proceedings.

My above view as to the correct construction and application of paragraph (2) of regulation 6 is strengthened by the fact that, in a proper case, a promotion to Inspector may be made under paragraph (3) of regulation 6, even if the candidate concerned is not “qualified by examination”.

As it has not been the case for the Respondents that Interested Parties Tabakkis and Christodoulou were promoted by virtue of regulation 6(3), and as, moreover, there is nothing on record before me to show that they were promoted thereunder, I have to declare their *sub judice* promotions null and void and of no effect whatsoever, in that they were made contrary to law, viz. contrary to regulation 6(2). In any case, I would, also, annul their promotions as having been made, in the circumstances of the present occasion, in excess and abuse of powers, because it cannot, as a rule, be said that it is reasonably open to the appropriate organs to promote (in the normal course and not exceptionally under regulation 6(3)) candidates who have not passed the qualifying examinations for a particular rank, instead of a recommended candidate—such as, for example, the Applicant in Case 267/68—who has done so.

In dealing, next, with the question of the validity of the promotions of the remaining Interested Parties it is useful to refer, from time to time, to certain parts of the evidence of the, at the time, Commander of the Police, Mr. Hasabis, whom I do regard as a very reliable witness:

He told the Court that reports recommending for promotion police officers, such as the Interested Parties and the Applicants, are prepared by their Commanding Officers (Divisional Commanders or Departmental Commanders, as the case may be) and are submitted to the Commander of the Police.

These are the reports envisaged under regulation 3 of the relevant Regulations (see, in these proceedings, *exhibits 5, 6 and 7*).

Mr. Hasabis described the composition of the Selection Board which considered, in the present instance, the candidates for promotion. It consisted of four senior police officers: Two of them were *ex officio* members, viz. the Deputy Commander of the Police and the Departmental Commander of Department A at Police Headquarters (which is responsible for administration) and the two others were appointed by the Commander of the Police. The composition of the Selection Board corresponded substantially to what is provided for by means of regulation 4 of the relevant Regulations; and, in any case, it has not been alleged that any irregularity in the composition of the Selection Board has materially affected, in any way, the making of the promotions which are challenged by the Applicants.

A Selection Board, according to paragraph 2 of regulation 4, "shall meet at least once each year to interview and report upon those recommended for promotion"; but though a Selection Board was set up in 1967, in relation to the *sub judice* promotions, no such Board functioned in 1966; the last occasion, before 1967, on which a Selection Board met was in 1965.

As explained by Mr. Hasabis, a Selection Board classifies the candidates before it into four categories: That of the "strongly recommended", that of the "recommended", that of the "possibles" and that of the "not recommended".

As it appears from the relevant lists prepared by the 1967 Selection Board (see *exhibit 10*) the Interested Parties were placed in the category of the "strongly recommended" and the Applicant in Case 267/68 was placed first in the immediately lower category of the "recommended"; all of them had been recommended for promotion by their Commanding Officers and they were interviewed by the 1967 Selection Board.

The Applicant in Case 333/68 was not interviewed by the 1967 Selection Board, but only by the 1965 Selection Board. As it appears from the relevant lists (see *exhibit 14*), which were prepared by such Board, the two Applicants and three of the Interested Parties (the other two having not been before the 1965 Selection Board) were all placed in the category of the "recommended".

1970  
Dec. 31

—  
THEODOROS  
KOUALIS  
AND ANOTHER  
v.  
REPUBLIC  
(COMMANDER  
OF POLICE  
AND ANOTHER)

1970  
Dec. 31  
—  
THEODOROS  
KOUALIS  
AND ANOTHER  
v.  
REPUBLIC  
(COMMANDER  
OF POLICE  
AND ANOTHER)

Mr. Hasabis has stated in his evidence that in his capacity as the Commander of the Police he used to send circulars to the Commanding Officers (Divisional Commanders and Departmental Commanders) requesting them to make recommendations for promotions; and on receiving the various recommendations he convened a Selection Board to examine them. He explained that the Commanding Officers, when asked to make recommendations, were informed if an officer serving under them had already been placed, in the past, by a Selection Board, in one of the aforementioned categories, and they were asked to express their views regarding up-grading or down-grading such officer.

In relation to the meeting of the 1967 Selection Board the Divisional Commander of Police in Famagusta made, on the 10th April, 1967, his recommendations for promotions from the rank of Sub-Inspector to that of Inspector (see *exhibit 9*). Out of the officers involved in these cases there were serving under him two of them: One of the Interested Parties, Christodoulou, whom he recommended for promotion without any hesitation, and the Applicant in Case 333/68, whom he placed last, in order of merit, out of the six Sub-Inspectors serving under him; and he proceeded to make remarks about this Applicant which led the Commander of the Police—quite rightly so in my view—to the conclusion that he was not being recommended for promotion; as a result, this Applicant was not called before the Selection Board of 1967, and he remained in the category of the “recommended”, on the basis of the lists prepared by the 1965 Selection Board.

Mr. Hasabis told the Court that the decision regarding whom of the candidates the Selection Board was going to interview was taken by him in consultation with the Chairman of the Board, on the basis of the recommendations made by Commanding Officers; and that it is in this way that it was decided not to interview again, in 1967, the Applicant in Case 333/68. Mr. Hasabis stressed, however, that the Selection Board was free to agree or disagree with his views regarding the candidates who were or were not to be called for interview and that such Board had before it all relevant records concerning each candidate.

So, even though the composition of the 1967 Selection Board differed, as regards one of the appointed members, from that of the 1965 Selection Board, the former Board, on the

basis of the material before it, could form a view about interviewing or not the Applicant in Case 333/68; though I cannot see how it could be lawfully decided to interview him once he had not been, in fact, recommended, in 1967, for promotion by his Commanding Officer; as under regulation 4(2) of the relevant Regulations only those recommended for promotion are interviewed and reported upon by a Selection Board.

In any case, the Commander of the Police made it absolutely clear in his evidence that when he considers promotions he has before him all relevant records, including not only the most recent lists prepared by the latest Selection Board, but also past lists showing how candidates were evaluated by earlier Selection Boards; and he stressed that when he prepared his proposals for promotions on the present occasion he took into account both the most recent lists as well as the past lists.

Thus, the Commander of the Police, at the crucial time, had, in any event, before him all relevant material regarding the Applicant in Case 333/68.

This Applicant attempted at first—during the hearing before me—to *allege* that he was not recommended for promotion by his Commanding Officer because the latter was biased against him; but, in the end, this allegation, which could not be substantiated at all on the basis of the material relied upon for the purpose, was quite rightly abandoned by counsel appearing for him.

It has, also, been contended on behalf of this Applicant that his Commanding Officer was wrong in not recommending him for promotion in 1967. Notwithstanding certain reports about the work of such Applicant which were produced (see, in particular, *exhibits* 17, 18 and 19) and were relied upon in an effort to show that his Commanding Officer ought to have recommended him for promotion in 1967, I am of the view that, on the basis of the assessment made about this officer by his Commanding Officer, when he was making in 1967 his recommendations for promotions (see the contents of *exhibit* 9), not recommending this Applicant for promotion, in 1967, was not in any way unwarranted.

In the light of all the material before me, as well as of all relevant considerations, I have not been satisfied by the

1970  
Dec. 31  
—  
THEODOROS  
KOUALIS  
AND ANOTHER  
v.  
REPUBLIC  
(COMMANDER  
OF POLICE  
AND ANOTHER)

1970

Dec. 31

—

THEODOROS  
KOUALIS  
AND ANOTHER  
v.  
REPUBLIC  
(COMMANDER  
OF POLICE  
AND ANOTHER)

Applicant in Case 333/68 that he was not preferred for promotion due to his Commanding Officer, or the 1967 Selection Board, or the Commander of the Police or the Minister of the Interior having done anything contrary to the Constitution, the relevant legislation or any principle of administrative law or through their having acted in excess or abuse of powers. Nor has the Applicant in Case 267/68 satisfied me that, even though he was recommended in 1967, by his Commanding Officer, for promotion, the Selection Board for that year, or the Commander of the Police or the Minister of Interior acted in any one of the invalid ways just enumerated, so as to justify my intervening in his favour.

The promotions, therefore, of Interested Parties Costa, Patsalides and Patatakkos are confirmed; the promotions of the other two Interested Parties, Christodoulou and Tabakkis, having been annulled as already stated earlier in this judgment.

Before concluding I would observe regarding Interested Party Patatakkos that he has, obviously, been promoted by virtue of the provisions of paragraph 3 of regulation 6; this can be clearly and inevitably inferred from the contents of the relevant letter of the Commander of the Police to the Minister of Interior, dated the 24th May, 1968 (see *exhibit 11*), when it is read together with the contents, regarding this candidate, of the confidential report made by the 1967 Selection Board to the Commander of the Police (see *exhibit 24*).

As these recourses have been only partly successful there should be no order as to costs.

*Promotions of Interested Parties Christodoulou and Tabakkis annulled; promotions of Interested Parties Costa, Patsalides and Patatakkos confirmed; no order as to costs.*