

[L. LOIZOU, J.]  
IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

ANDREAS ZENONOS AND OTHERS,

*Applicants,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE DIRECTOR OF PERSONNEL,

*Respondent.*

(Case No. 258/69).

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v.

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*Police, Fire Brigade Services and Prisons (Revision of Salaries) Law, 1969 (Law No. 2 of 1969, enacted on January 10, 1969)—Has no retrospective effect—It applies to officers who were in the service on the day of its promulgation (viz. January 16, 1969, supra) or appointed thereafter—But it does not apply to officers whose service was terminated, as is the case of the applicants, before such date—No matter whether this termination (in this case being June 30, 1968) took place long after the “appointed day” i.e. January 1, 1968—Such “appointed day” fixed under section 2 being the day as from which under section 3(2) of the said statute the revision of salaries provided therein would take effect—It follows that the sub judice decision of the respondent not to pay the applicants the difference between the old and the revised salary scales (about £8 monthly) for the period January 1, 1968 until June 30, 1968 (the day of their retirement from the service, supra), has been validly taken—See further infra.*

*Equality—Principle of equal treatment—Article 28.1 of the Constitution—It safeguards against arbitrary differentiations or discriminations and only persons in similar circumstances are entitled to equal treatment—Payment of difference between the old and the revised salary scales to special constables in the service on the date of the enactment of the aforesaid Law No. 2 of 1969 (January 10, 1969)—And non-payment to special constables such as the applicants whose services were law-*

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*fully terminated before the enactment of the statute, supra—Differentiation a reasonable one, in no way arbitrary and does not offend against the principle of equality safeguarded under Article 28.1 of the Constitution (see Mikrommatis and The Republic, 2 R.S.C.C. 125; The Republic of Cyprus v. Arakian and Others (1972) 3 C.L.R. 294, Full Bench case of the Supreme Court).*

*Constitutional law—Principle of equality—Article 28.1 of the Constitution—Meaning, scope and effect—See supra.*

*Statutes—Retrospective operation—Principles applicable—The Police Fire Brigade Services and Prisons (Revision of Salaries) Law, 1969 (Law 2/69)—Has no retrospective operation—See further supra.*

This is a recourse made under Article 146 of the Constitution by 21 ex special constables whereby they challenge the validity of the decision of the respondent not to pay to them the difference between the old and the revised by Law 2/69 salary scales.

The facts are briefly as follows :

The applicants were in the service of the Republic as special constables until June 30, 1968 when their service was duly terminated. On January 10, 1969, there was enacted the Police, Fire Brigade Services and Prisons (Revision of Salaries) Law, 1969 (Law No. 2 of 1969), whereby the salary of the post of special constable was increased from £30 to £38 monthly with effect as from January 1, 1968. By section 2 of that Law the words "appointed day" mean the 1st January, 1968; and section 3(2) provides :

"(2) As from the appointed day the salaries of the holders of the said posts (*note* : including the posts held by the present applicants) are being paid to them on the basis of the new scales or new salaries as the case may be."

It was argued on behalf of the applicants that in view of the definition in section 2 of the words "appointed day" the said Law 2/69 has retrospective effect and that, therefore, the applicants—whose service was terminated—were entitled to the difference between the salary they were getting whilst in the service and the revised salary, for the period January

1, 1968 (appointed day) to June 30, 1968 (when their service was terminated). It was further argued that, in any event, the decision complained of offends against the principle of equal treatment, safeguarded under Article 28.1 of the Constitution, in that during the period of 1968 when the applicants were serving as special constables other officers serving in similar posts have eventually received a higher salary by virtue of the aforesaid provisions of the statute in question (*i.e.* Law 2/69, *supra*).

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The learned Judge of the Supreme Court felt unable to agree with the said submissions made by counsel for the applicants; and dismissing the recourse :-

- Held, (1) The statute in question is clearly prospective. The fact that by virtue of its definition the "appointed day" is antecedent to the enactment of the statute does not make its operation retrospective in the strict sense of the word. (Cf. *Lauri v. Renad* [1892] 3 Ch. 402, at p. 421 per Lindley, L.J.; dictum approved by Romer L.J. in *Nautilus Steam Shipping Co. Ltd. Ex parte Gibbs and Co.* [1936] Ch. 17 and was also applied in the more recent case of *Re 14 Grafton Street* [1971] 2 All E.R. 1).
- (2) In view of the conclusion that I have reached I cannot hold that the statute was intended to apply to officers who were not in the service on the day of its enactment (January 10, 1969, *supra*). If the statute meant to have retrospective effect I think one would have expected to find appropriate words in the statute to this effect. But instead its very wording points to the contrary conclusion.
- (3) Regarding the proposition that the *sub judice* decision contravenes the provisions of Article 28.1 of the Constitution, safeguarding the principle of equality, I think that there is no substance in this ground either. The object of the provision of the Constitution relating to equality of treatment is to safeguard against arbitrary discrimination and that only persons in similar circumstances are entitled to equal treatment (*Mikrommatis and The Republic*, 2 R.S.C.C. 125; *The Republic of*

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*Cyprus v. Arakian and Others* (1972) 3 C.L.R. 294, a Full Bench of the Supreme Court case).

(4) In the present case it cannot, in my view, be said that there was no reasonable basis for the differentiation between the applicants, whose services were lawfully terminated on June 30, 1968, viz. long before the enactment on January 10, 1969, of the aforesaid statute (Law 2/69) and the other special constables who were in the service on the date of the enactment of the said Law. It follows that the decision complained of in the present case is in no way arbitrary nor does it offend against the principle of equality safeguarded by Article 28.1 of the Constitution.

*Recourse dismissed.*

Cases referred to :

*Lauri v. Renad* [1892] 3 Ch. 402, at p. 421, per Lindley, L.J.;

*Nautilus Steam Shipping Co. Ltd. Ex parte Gibbs and Co.* [1936] Ch. 17;

*Re 14 Grafton Street* [1971] 2 All E.R. 1;

*Mikrommatis and The Republic*, 2 R.S.C.C. 125;

*The Republic of Cyprus v. Arakian and Others* (1972) 3 C.L.R. 294, a Full Bench case of the Supreme Court.

**Recourse.**

Recourse against the refusal of the respondent to pay to applicants, ex special constables, the difference between the old and the revised salary scales.

*L. Georghiadou (Mrs.)*, for the applicants.

*K. Talarides*, while being Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

The following judgment was delivered by :-

L. LOIZOU, J. : By this recourse the applicants, 21 ex special constables, seek a declaration that the decision

of the respondent, the Director of the Department of Personnel, not to pay to them the difference between the old and the revised salary scales is null and void and of no effect.

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The decision in question was communicated to applicants' counsel by a letter dated 20th May, 1969, which is *exhibit* 1 in these proceedings. The reason for respondent's refusal, as stated in this letter, is that the applicants are not entitled to receive the difference because they were employed on a temporary basis and they were not in the service when the Police, Fire Brigade Services and Prisons (Revision of Salaries) Law, 1969 (No. 2 of 1969) was published.

The ground of law upon which the application is based is that the decision is contrary to Article 28 of the Constitution and the provisions of Law 2/69.

Law 2/69 was in fact promulgated by publication in the official Gazette of the Republic on the 10th January, 1969. It is common ground that none of the applicants was in the service on that date. It is also clear that the post of special constable was among those affected by Law 2/69 and the salary of the post was increased from £30 to £38. The services of applicants 2-21 were terminated on the 30th June, 1968 and those of applicant 1 on the 15th October, 1968.

By virtue of section 2 of the law the words "appointed day" mean the 1st January, 1968; and the revised salary scales or fixed salaries as the case may be are substituted for the old salary scales or fixed salaries respectively as from the "appointed day". Section 3(2) of the Law reads as follows :

«(2) Από της όρισθείσης ήμέρας οι μισθοί τών κατόχων τών ρηθεισών θέσεων καταβάλλονται εις αυτούς βάσει τών νέων κλιμάκων ή νέων μισθών, οναλόγως τής περιπτώσεως».

("2. As from the appointed day the salaries of the holders of the said posts are being paid to them on the basis of the new scales or new salaries, as the case may be").

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It was argued on behalf of the applicants that they were entitled to the difference between the salary they were getting whilst in the service and the revised salary in view of the retrospective effect of the law. It was further argued that the law has retrospective effect in view of the definition of the words "appointed day".

I find myself unable to agree with this proposition. The law is clearly prospective and the fact that by virtue of its definition the "appointed day" is antecedent to the enactment of the law does not make its operation retrospective in the strict sense of the word. In *Lauri v. Renad* [1892] 3 Ch. 402 Lindley, L.J., said this on the question of retrospective enactments (at p. 421).

"..... It is a fundamental rule of English law that no statute shall be construed so as to have a retrospective operation unless its language is such as plainly to require such a construction; and the same rule involves another and subordinate rule to the effect that a statute is not to be construed so as to have a greater retrospective operation than its language renders necessary."

The above dictum of Lindley, L.J., was cited with approval by Romer, L.J. in *Nautilus Steam Shipping Co. Ltd. Ex parte Gibbs & Co.* [1936] Ch. p. 17 and was also applied in the more recent case of *Re 14 Grafton Street* [1971] 2 All E.R. p. 1.

In view of the conclusion that I have reached I cannot hold that the law was intended to apply to officers who were not in the service on the day of its coming into operation. If the law was meant to have retrospective effect I think one would have expected to find appropriate words in the law to this effect. But instead its very wording points to the contrary conclusion.

Regarding the ground that the decision is contrary to the provisions of Article 28.1 of the Constitution it was argued that this is so because during the period of 1968 when the applicants were serving as special constables other officers serving in similar posts have eventually received a higher salary by virtue of the provisions of Law 2/69.

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I think that there is no substance in this ground either. The conclusion to be drawn from the decided cases on this point starting from the often cited case of *Mikrommatis* and *The Republic*, 2 R.S.C.C. p. 125 down to the more recent Full Bench case of *The Republic of Cyprus and Another v. Arakian and Others* (1972) 3 C.L.R. 294, and the cases therein cited, is that the object of the provision of the Constitution relating to equality of treatment is to safeguard against arbitrary discrimination and that only persons in similar circumstances are entitled to equal treatment.

In the present case it cannot, in my view, be said that there was no reasonable basis for the differentiation made between the applicants, whose services were lawfully terminated long before the enactment of the law (2/69) and the other special constables who were in the service on the date of the enactment of the said law. In my opinion, in the light of the above authorities, the decision complained of is in no way arbitrary nor does it offend against the principle of equality safeguarded by Article 28.1.

For all the above reasons this recourse cannot succeed and must be dismissed.

In all the circumstances I do not propose to make any order for costs.

*Recourse dismissed.*  
*No order as to costs.*