

1985 May 22

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

EFSTATHIOS LEFKATIS AND OTHERS,

Applicants.

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF INTERIOR AND DEFENCE,
2. THE COMMANDER OF POLICE,

Respondents.

(Cases Nos. 1/85, 28/85, 29/85,
49/85, 61/85, 63/85, 74/85,
77/85, 78/85, 83/85, 103/85,
117/85, 118/85, 119/85, 120/85,
121/85, 122/85, 123/85, 135/85,
147/85, 175/85, 179/85, 183/85,
186/85, 230/85, 233/85, 234/85,
238/85, 270/85, 277/85, 280/85,
286/85, 293/85, 294/85, 297/85,
300/85, 309/85, 311/85, 318/85,
323/85, 324/85, 325/85, 326/85,
333/85, 334/85, 335/85, 348/85,
357/85 and 360/85).

Statutes—Repeal by implication—Principles applicable—Section 10 of the Police Law, Cap. 285 (as amended by Law 21/64) pro tanto repealed by section 13(3) and (4) as substituted by Law 29/66.

Police Law, Cap. 285—Section 10 of the Law (as amended by Law 21/64) pro tanto repealed by section 13(3) and (4) as substituted by Law 29/66. 5

Subsidiary Legislation—Statutory obligation to lay before Parliament mandatory—Failure of executive to present such legislation before Parliament renders it invalid—Police 10

(Promotions) (Amendment) Regulations, 1983—Made under section 10 of the Police Law, Cap. 285—Not laid before the House of Representatives as provided by section 13(4) of the law (as substituted by Law 29/66)—They are void and non existent—Sub judice promotions, which were made under the said Regulations null and void—Annulled.

Police Force—Promotions to the rank of Chief Inspector—Made under the Police (Promotions) (Amendment) Regulations, 1983—Which are invalid because they were not laid before the House of Representatives, as provided by s. 13(4) of the Police Law, Cap. 285 (as substituted by Law 29/66)—Promotions invalid.

The Commander of the Police on 29.12.84 in virtue of the powers vested in him by s.13 of the Police Law, Cap. 285, as amended by Laws No. 21/64 and 29/66, and the Police (Promotion) Regulations, 1958-1983, promoted, with the approval of the Minister of the Interior, 36 Inspectors to the rank of Chief Inspector with effect from 15.12.84. The applicants, Inspectors of the Police eligible for promotion, being aggrieved, filed the above recourses seeking the annulment of the said promotions as being null and void and of no legal effect.

The applicants contended that the Police (Promotion) Regulations, 1958, were amended materially after the coming into operation of the Police Law No. 29/66; that the amending Regulations were ultra vires as they were made under s. 10 of the Police Law whereas they should have been made under s. 13; they were not laid before the House of Representatives as provided by Law No. 29/66 and this failure was fatal to their validity.

Under section 10 of the Police Law, Cap. 285 (as amended by Law 21/64) the Council of Ministers on the advice of the Commander of the Police, has power to make Regulations governing promotions. By virtue of section 13(3) of Cap. 285 as amended by the Police (Amendment) Law, 1966 (Law 29/66) "conditions of appointment, enlistment, promotion, service and discharge are provided in Regulations made by the Council of Ministers on the basis of this Section and published in the Official Gazette of the Republic"; and by virtue of section 13(4), as amend-

ed by Law 29/66) "regulations issued on the basis of this section are laid before the House of Representatives. If after the lapse of 15 days from such laying before the House of Representatives, the House by decision does not amend or revoke the so laid Regulations in toto or in part, then they are forthwith, after the lapse of the said period, published in the Official Gazette of the Republic and come into operation from such publication". 5

It was common ground that the amending Regulations were not laid before the House of Representatives. 10

On the preliminary issue whether the Regulations under which the promotions were made were void and therefore the promotions were invalid:

Held (1) that though as a general rule the Courts lean against the repeal of Laws by implication if provisions are enacted which cannot be reconciled with those of an existing statute, the only inference possible is that, unless it failed to address its mind to the question, Parliament intended that the provisions of the existing statute should cease to have effect, and an intention so evinced is as effective as one expressed in terms; that the provision of s. 13 (3) and (4) of Cap. 285 as amended by Law 29/66, relating to the delegation of power to the Council of Ministers for rule-making is contrary to the provisions of s. 10 as amended by Law 21/64; that the two provisions cannot be reconciled because the one is incompatible and inconsistent with the other and it would be absurd to construe the statute as providing two methods of making regulations for the same matter—promotion; that having regard to the history of the Law and the words used in the latter enactment, (Law 29/66) there is no room for any other construction than that the legislature intended to repeal the rule-making provision with regard to "promotions" given to the Council of Ministers under s. 10; and that, therefore, s. 10—both the general provision and the specific provision thereof—has to be read as pro tanto repealed by sub-sections (3) and (4) of s. 13 as substituted by Law No. 29/66. 15 20 25 30 35

(2) That the provisions of s. 13(4) (as amended by Law 29/66) regarding laying of the Regulations before the 40

House of Representatives are mandatory and should not be disregarded by the Courts; that 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; that the Police (Promotions) (Amendment) Regulations No. 184/83 which effected radical changes to the Police (Promotion) Regulations, 1958 were made by the Council of Ministers under s. 10 of Cap. 285 (as amended by Law 21/64); that 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; and that, therefore, the Regulations which did not conform to the enabling Law, in form and in substance and in the way they were made and issued in that they were not laid before the House of Representatives are void and non-existent; and that, accordingly, the sub judge promotions, which were made under the invalid Regulations are themselves null and void and of no legal effect.

Sub judge promotions annulled.

25 **Cases referred to:**

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

Institute of Patent Agents [1894] 63 L.J.P.C. 74;

Papaxenophontos v. Republic (1982) 3 C.L.R. 1037;

Ethnicos v. K.O.A (1984) 3 C.L.R. 1150;

30 *Kofteros v. E.A.C.* (1985) 3 C.L.R. 394;

Ross-Clunis v. Papadopoulos [1958] 2 All E.R. 23 P.C.,
23 C.L.R. 71.

Themistocles v. Christophi, 6 C.L.R. 121;

35 *The Electricity Authority of Cyprus v. Partasides and Others*, 20 (II) C.L.R. 34, 36-37;

Hinis v. The Police, (1963) 1 C.L.R. 14, at pp. 25-27;

- Petrides and Others v. The Republic* 1964 C.L.R. 413,
at pp. 424-428;
- Eraklides v. The Police* (1971) 2 C.L.R. 8, at pp. 13-14;
- Athanassi v. The Police* (1974) 2 C.L.R. 7, at pp. 13-14;
- Attorney-General v. Pouris and Others* (1979) 2 C.L.R. 15; 5
- Cyprus Co. Ltd. v. The Republic*, (1983) 3 C.L.R. 709;
- Vassiliko Cement Works Ltd. v. The Republic* (1983) 3
C.L.R. 709;
- Kutnar v. Phillips* [1891] 2 Q.B. 267 at pp. 271-272;
- Goodwin v. Phillips* [1908-9] 7 C.L.R. 1; 10
- Seward v. The Owner of the "Vera Cruz"* [1884-1885] 10
A.C. 59 at p. 69;
- Watson v. Winch* [1916] 1 K.B. 688 at p. 690;
- Shourris v. Republic and Kazatzis v. Police*, 1961 C.L.R.
11 at pp. 12-13; 15
- Louca and Another v. Republic* (1984) 2 C.L.R. 386;
- R. v. Sheer Metalcraft Ltd. and Another* [1954] 1 All
E. R. 542.

Recourses.

Recourses against the decision of the respondents to 20
promote the interested parties to the post of Chief Inspector
in preference and instead of the applicants.

M. Christofides with Ph. Valiantis for L. Papaphilip-
pou, for applicants in Cases Nos. 1/85, 28/85,
29/85, 63/85, 64/85, 78/85, 83/85, 103/85, 25
186/85, 309/85, 323/85, and 324/85.

N. Stylianidou for E. Efstathiou, for applicants in
Cases Nos. 49/85, 230/85 and 297/85.

G. Charalambides, for applicants in Cases Nos. 61/85,
238/85 and 343/85. 30

- A. Papacharalambous* for applicants in Cases Nos. 77/85, 311/85, 318/85, 348/85 and 357/85.
- L. Parparinos* for *Ph. Clerides*, for applicant in Case No. 122/85.
- 5 *N. L. Clerides*, for applicants in Cases Nos. 117/85, 118/85, 119/85, 120/85, 121/85, 123/85, 135/85, and 147/85.
- A. S. Angelides*, for applicants in Cases Nos. 175/85 and 280/85.
- 10 *A. Panayiotou*, for applicants in Cases Nos. 233/85 and 234/85.
- M. Christofides*, for applicant in Case No. 270/85.
- Chr. Triantafyllides*, for applicant in Case No. 277/85.
- 15 *St. Erotokritou* (Mrs.), for applicants in Cases Nos. 293/85 and 294/85.
- A. Djordjis*, for applicant in Case No. 286/85.
- A. Petoufas*, for applicant in Case No. 300/85.
- 20 *Chr. Kitromelides*, for applicants in Cases Nos. 325/85, 326/85, 334/85, and 335/85.
- Z. Katsouris*, for applicant in Case No. 333/85.
- N. Papamiltiadous*, for applicant in Case No. 360/85.
- A. Boyadjis*, for applicant in Case No. 179/85.
- 25 *St. Triantafyllides* for *A. Triantafyllides*, for applicant in Case No. 183/85.
- M. Flourentzos*, Senior Counsel of the Republic, for respondents in all Cases.
- Interested party *Sofoclis Athanassiades* present.
- 30 *Chr. Vassiliades*, for interested parties *Yiannakis Philippou* and *Nathanael Papageorghiou*.
- A. Onossiforou*, for interested party *Antonis Demetriou*.

R. Schizas, for interested parties Andreas Yiannaki and Georgios Savvides.

D. Papachrysostomou, for interested party Emilios Patsalides.

K. Koushios, for interested parties Charalambos Demetriou, Michalakis Elia and Christos Hji-Christodoulou. 5

M. Christodoulou, for interested party A. Stavrou.

Interested party Soteris Charalambous present.

All other interested parties absent. 10

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The Commander of the Police on 29.12.1984 in virtue of the powers vested in him by s. 13 of the Police Law, Cap. 285, as amended by Laws No. 21/64 and 29/66, and the Police (Promotion) Regulations, 1958-1983, promoted with the approval of the Minister of the Interior 36 Inspectors to the rank of Chief Inspector with effect from 15.12.1984. The applicants, Inspectors of the Police eligible for promotion, being aggrieved, filed the aforementioned recourses whereby they seek the annulment of the said promotion as being null and void and of no legal effect. 15 20

A common point of Law was raised in all recourses: That the regulations under which the promotions were made are void and, therefore, the promotions are invalid. This point on the directions of the Court was taken as a preliminary point of Law. 25

The applicants submitted in their written addresses that the Police (Promotion) Regulations, 1958, were amended materially after the coming into operation of the Police Law No. 29/66; that the amending Regulations are ultra vires as they were made under s. 10 of the Police Law whereas they should have been made under s. 13; they were not laid before the House of Representatives as provided by Law No. 29/66 and this failure is fatal to their validity. 30 35

Counsel for the Republic supported the validity of the

Regulations. Section 10 empowers the Council of Ministers on the advice of the Commander of the Police to make Regulations for promotion; this empowering section was neither expressly nor by implication amended nor affected
5 by Law No. 29/66 that repealed and substituted s. 13(2), (3) and (4); the Council of Ministers has power both under s. 10 and under s. 13 to make regulations for the promotion in the Police; furthermore, the relevant Regulations were only amended and not substituted completely by new
10 Regulations and, therefore, rightly they were issued under s. 10; they are valid and the act of the promotion of the interested parties to the rank of Chief Inspector is unimpeachable.

An administrative decision reached in virtue of a Law,
15 which includes public instrument, which was not validly made, has to be annulled and to be declared null and void and of no effect whatsoever as having been based on an invalid enactment—(*Christodoulou v. The Republic*, 1 R.S.C.C. 1).

20 In our country there is supremacy of the Constitution—(Article 179 of the Constitution). The legislative power of the Republic is exercised by the House of Representatives in all matters—(Article 61 of the Constitution).

25 The legislation is usually a skeleton piece of legislation and leaves to be filled up in substantial and material parts by the action of rules or regulations—(*Institute of Patent Agents* [1984] 63 L.J. P.C. 74).

30 The function of subordinate legislation is to supplement the general Law, to make detailed provisions for the carrying into effect and applying the particular provisions within the framework laid down by such Law. The society has perplexed needs and many problems. It is neither possible nor practicable for the legislature to enact
35 Laws with detailed particularity in order to meet such needs and cope with such problems. It has been a common practice for the legislature to leave the particulars for the implementation and carrying out of the Law to be supplemented by subordinate legislation. Such course is not repugnant to the constitutional provision about the legislative
40 power in the State.

Subordinate legislation is legislation made by a person or body other than the House of Representatives by virtue of powers conferred by statute enacted by the House. In volume subordinate legislation is today unequal to any other branch of the Law. Such legislation has the full force and effect of a statute if as respects form and substance it conforms with the enabling enactment.

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Subordinate legislation, in order to be valid, must be intra vires the statute which authorised the making of it. Subordinate legislation may be ultra vires. It may be ultra vires (a) as to the extent and contents of it, or (b) as to the mode in which it has been made. When it is examined with a view to deciding on a contention that it is ultra vires, the answer to this question depends, in every case, on the true construction of the relevant enabling power concerned —(*Nicos Papaxenophontos v. The Republic*, (1982) 3 C.L.R. 1037; *Ethnicos v. K.O.A.* (1984) 3 C.L.R. 1150; *Kofteros v. E.A.C.* Case No. 13/84, unreported).*

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During the autocratic days of the colonial administration the Governor, as representing the British Crown, was vested with all powers including legislative power. The Police Law No. 5/58 (Cap. 285 of the 1959 Edition of our Laws) by s.10(1) conferred power on the Chief Constable with the approval of the Governor to make Regulations for the good order, administration and government of the Force; subsection (2) of s.10, without prejudice to the generality of such powers, enabled the Chief Constable to make provision for all or any of the matters set out therein, including promotion—(Section 10(2)(f)).

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Law No. 21/64 amended s. 10 of the basic Law and delegated the power to make Regulations to the Council of Ministers on the advice of the Commander of the Police.

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Section 13 provided for appointment, enlistment, promotion and discharge of the members of the Police Force. Section 13(1) referred to the Gazetted Officers and 13(2) to non-Gazetted ranks, i.e. of all ranks upto and including Chief Inspector. The relevant part of this section for the purpose of the cases in hand are subsections (2) and (3) which ran as follows:-

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* Reported in (1985) 3 C.L.R. 394.

“(2) Appointments, enlistments, promotions and discharges of all ranks up to and including Chief Inspector shall be made by the Chief Constable.

5 (3) Conditions of appointment, enlistment, promotion, service and discharge of all police officers below the rank of Gazetted Officer shall be in accordance with provisions contained in Regulations made under this Law, and of Gazetted Officer shall be in accordance with the provisions of Colonial Regulations and the Cyprus General Orders”.

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These subsections were repealed and substituted by s. 2 of the Police (Amendment) Law, 1966 (Law No. 29/66) which reads as follows:-

15 «(2) Ο Αρχηγός, τη εγκρίσει του Υπουργού, διορίζει κατατάσσει, προάγει και απολύει πάντα τα μέλη της Δυνάμεως μέχρι και συμπεριλαμβανομένου του Αρχιεπιθεωρητού.

20 (3) Οι όροι διορισμού, κατατάξεως, προαγωγής, υπηρεσίας και απολύσεως μελών της Δυνάμεως προβλέπονται υπό Κανονισμών γενομένων υπό του Υπουργικού Συμβουλίου επί τη βάσει του παρόντος άρθρου και δημοσιευομένων εις την επίσημον εφημερίδα της Δημοκρατίας:

25 Νοείται ότι μέχρι της εκδόσεως των εν τω παρόντι εδαφίω προβλεπομένων Κανονισμών οι κατά την ημερομηνίαν ενάρξεως ισχύος του παρόντος Νόμου εν ισχύϊ Κανονισμοί και Γενικαί Διατάξεις θα εξακολουθήσωσιν εφαρμοζόμενοι.

30 (4) Κανονισμοί εκδιδόμενοι επί τη βάσει του παρόντος άρθρου κατατίθενται εις την Βουλήν των Αντιπροσώπων. Εάν μετά πάροdon δεκαπέντε ημερών από της τοιαύτης καταθέσεως, η Βουλή των Αντιπροσώπων δι' αποφάσεως αυτής δεν τροποποιήση ή ακυρώση τους ούτω κατατεθέντας Κανονισμούς εν όλω ή εν μέρει τότε ούτοι αμέσως μετά την πάροdon της άνω προθεσμίας δημοσιεύονται εν τη επισήμω εφημερίδι της Δημοκρατίας και τίθενται εν ισχύϊ από της τοιαύτης δημοσιεύσεως. Εν περιπτώσει τροποιώσεως τούτων εν όλω ή εν μέρει υπό της Βουλής των Αντιπροσώπων

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οὔτοι δημοσιεύονται ἐν τῇ ἐπισήμῳ ἐφημερίδι τῆς Δημοκρατίας ὡς ἤθελον οὕτω τροποποιηθῆ ὑπ' αὐτῆς καὶ τίθενται ἐν ἰαχύϊ ἀπὸ τῆς τοιαύτης δημοσιεύσεως».

“(2) The Commander, with the approval of the Minister, appoints, enlists, promotes and discharges all the members of the Force up to and including Chief Inspector.

(3) The conditions of appointment, enlistment, promotion, service and discharge of members of the Force shall be in accordance with the provisions of the Regulations to be made by the Council of Ministers under this Law and published in the official Gazette of the Republic:

Provided that until the making of the regulations provided for in this section, the regulations and general orders in force on the day of the coming into force of this Law will continue to be applicable.

(4) Regulations issued under this section are deposited with the House of Representatives. If after the lapse of fifteen days from such deposition, the House of Representatives by its decision does not amend or cancel the so deposited regulations in whole or in part then the regulations immediately after the lapse of the above time limit are published in the official Gazette of the Republic and take effect as from such publications. In the case of their amendment in whole or in part by the House of Representatives they are published in the official Gazette of the Republic as they might be amended by the House and they take effect from such publication”).

In most modern statutes, the practice is to confer rule-making power by one general provision empowering the rule-making authority to make rules “for carrying out the purposes of the Law”, followed by the enumeration of certain particular matters regarding which rules may be made “without prejudice to the generality of the foregoing power”. In such a case, it has been held that the specific enumeration does not circumscribe the general power conferred to make any rules provided they are required for carrying out the purposes of the Law and they are consistent with the

provisions of the Law. Any rule which comes within the scope of the general power would be valid—(*Ross-Clunis v. Papadopoulos*, [1958] 2 All E.R. 23 P.C.; 23 C.L.R. 71).

5 Counsel for the Republic submitted that the new s.13 (3) and (4) did not affect the powers of the Council of Ministers under s.10(1) and 10(2)(f), which was not either expressly or by implication repealed.

10 It has to be examined whether s.10(1) was affected and whether 10(2)(f) was repealed by implication due to the enactment of Law No. 29/66.

15 As a general rule the Courts lean against the repeal of Laws by implication. The principles of Law applicable to implied repeal or modification of an earlier statute by a subsequent one are set out in *Halsbury's Laws of England*, 4th Edition, paragraphs 966-969, *Maxwell on Interpretation of Statutes*, 12th Edition, pp. 191-196, and *Craies*, 7th Edition, pp. 366-382. It is pertinent to set out the Law as stated in para. 966 of Halsbury:-

20 "966. *General principles.* Repeal by implication is not favoured by the courts, for it is to be presumed that Parliament would not intend to effect so important a matter as the repeal of a Law without expressing its intention to do so. However, if provisions are
25 enacted which cannot be reconciled with those of an existing statute, the only inference possible is that, unless it failed to address its mind to the question, Parliament intended that the provisions of the existing statute should cease to have effect, and an intention
30 so evinced is as effective as one expressed in terms.

The rule is, therefore, that one provision repeals another by implication if, but only if, it is so inconsistent with or repugnant to that other that the two are incapable of standing together. If it is reasonably
35 possible so to construe the provisions as to give effect to both, that must be done, and their reconciliation must in particular be attempted if the later statute provides for its construction as one with the earlier, thereby indicating that Parliament regarded them as compatible, or if the repeals expressly effected by the
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later statute are so detailed that failure to include the earlier provision among them must be regarded as such an indication”.

The matter was dealt with by our Supreme Court in, inter alia, the following cases: *Themistocles v. Christophi*, 6 C.L.R. 121; *The Electricity Authority of Cyprus v. Partassides and Others*, 20 (II) C.L.R. 34, 36, 37; *Hinis v. The Police*, (1963) 1 C.L.R. 14, 25-27; *Petrides and Others v. The Republic*, 1964 C.L.R. 413, 424-428; *Eraklides v. The Police*, (1971) 2 C.L.R. 8, 13-14; *Athanassi v. The Police*, (1974) 2 C.L.R. 7, 13-14; *Attorney-General v. Pouris and Others*, (1979) 2 C.L.R. 15; *Cyprus Cement Co. Ltd. v. The Republic*, (1983) 3 C.L.R. 709; *Vassiliko Cement Works Ltd. v. The Republic*, (1983) 3 C.L.R. 719.

It is a cannon of construction, intended to avoid collision between statutory provisions, that the revocation or alteration of an existing statutory provision is not allowed through the construction of a later statutory provision when the provisions concerned are capable of proper operation without it. In *Kutner v. Phillips*, [1891] 2 Q.B. 267, at pp. 271-272 Smith J. said:-

“Now a repeal by implication is only effected when the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one, that the two cannot stand together, in which case the maxim. ‘Leges posteriores contrarias abrogant’ applies. Unless two Acts are so plainly repugnant to each other, that effect cannot be given to both at the same time, a repeal will not be implied, and special Acts are not repealed by general Acts unless there is some express reference to the previous legislation, or unless there is a necessary inconsistency in the two Acts standing together: *Thorpe v. Adams*, (Law Rep. 6 C.P. 125). Lord Coke, in *Gregory’s case* (6 Rep. 19b) lays it down, ‘that a later statute in the affirmative shall not take away a former Act, and eo potior if the former be particular and the later be general’; and Lord Hardwicke, in the case of *Middleton v. Crofts* (2 Atk. 675) is to the same effect.”

The latest expression of the will of Parliament must al-

ways prevail. An express repeal of or exemption from an earlier enactment is not more effectual than if it were created by implication. The only difference is in ascertaining the fact and extent of the implied exemption or repeal
 5 —(*Goodwin v. Phillips*, (1908-09) 7 C.L.R. 1). The rule is that *leges posteriores priores contrarias abrogant*.

To the extent that the continued application of a general enactment to a particular case is inconsistent with special provision subsequently made as respects that case, the
 10 general enactment is overridden by the particular, the effect of the special provision being to exempt the case in question from the operation of the general enactment or, in other words, to repeal the general enactment in relation to that case.

15 It is quite possible for a later enactment not to repeal completely, as a whole, an earlier one, but to alter it to a certain extent only. In *Seward v. The Owner of the "Vera Cruz"*, [1884-1885] 10 A.C. 59, at p. 69 it was said that alteration in any important particulars is *pro tanto* the same
 20 as a repeal.

In *Watson v. Winch*, [1916] 1 K.B. 688, Lord Reading, C. J., had this to say at p. 690:-

"In this particular case a further point arises. ...
 25 The repealing statute, i.e., the Local Government Act, 1888, has made other provisions for bicycles. It would be odd that a by-law should exist dealing with bicycles in streets under a local Act concurrently with another code possibly inconsistent with it. As by the Local Government Act, 1888, bicycles are to be dealt
 30 with as 'carriages' under the Highway Acts and provisions enabling local authorities to make by-laws regulating the use of bicycles are repealed, the clear intention of the Act is to substitute the provisions of the Highway Acts for previously existing by-laws and
 35 to repeal the by-laws, in accordance with the rule that when a later statute is passed inconsistent with an earlier the later prevails and the earlier is *pro tanto* repealed".

40 The notion of partial repeal or modification by implication has been accepted by our Supreme Court. (See *Petri-*

des case; Hinis case; Shourris v. The Republic and Kazantzis v. The Police, 1961 C.L.R. 11, at pp. 12-13; *Louca and Another v. The Republic*, (1984) 2 C.L.R. 386).

Section 10, as amended by Law No. 21/64, delegated to the Council of Ministers general power (subsection 1) to make regulations for the good order, administration and government of the Force. Subsection 2(f) gave specific power to the Council of Ministers to make regulations for promotion. There was no other section enabling the Council of Ministers to make regulations.

The House of Representatives, elected by general suffrage of the people of the country, to whom the Constitution gave the exclusive power to legislate on all matters, passed Law No. 29/66. This Law was enacted about two years after Law No. 21/64. The promotions under the old Law were made "in accordance with the provisions contained in Regulations made under this Law".

Section 13(3), as amended by Law No. 29/66, provided that conditions of appointment, enlistment, promotion, service and discharge are provided in Regulations made by the Council of Ministers on the basis of this section and published in the Official Gazette of the Republic. There is a proviso that until the issuing of such Regulations, the Regulations in force at the time of the coming into operation of the Law will continue to be applied.

It was submitted by counsel for the respondents that any amendment of the existing Regulations could not be made under this new power. With respect, s.28 of the Interpretation Law, Cap.1, provides that when power is given to make, issue or approve any public instrument, it shall include the power of amending, revoking or suspending such public instrument. The extent of the power to make Regulations included power to amend the existing Regulations.

Subsection (4) of the new section 13 provides that Regulations issued on the basis of this section, are laid before the House of Representatives. If after the lapse of 15 days from such laying before the House of Representatives, the House by decision does not amend or revoke the so laid Regulations in toto or in part, then they are forth-

with, after the lapse of the said period, published in the Official Gazette of the Republic and come into operation from such publication. In case they are amended in general or in part by the House of Representatives, they are published in the Official Gazette of the Republic as amended by the House and come into operation from the date of the publication.

There are two radical differences in the enabling ss. 10 and 13. Under s. 10 the power of the Council of Ministers is subject to the advice of the Commander of the Police. Such advice is not a prerequisite to Regulations made under s. 13 (4). Under s. 10 Regulations made by the Council of Ministers require only publication in the Official Gazette under the general Law—the Interpretation Law, Cap. 1—but it is not necessary to lay them before the House. The legislator in the later Law, though it delegated its power to legislate on the conditions of promotion of the non-Gazetted Officers, it reserved the power to amend in whole or in part or revoke such regulations after they are made by the Council of Ministers. The enabling power was not any more absolute, provided it was within the bounds of the Law. They required the ultimate sanction of the House.

Can it be said, by any reasonable interpretation, that the power under s. 10 with regard to “promotions” and the new power under s. 13 can co-exist? Is the one not incompatible and inconsistent with the other?

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. The two provisions cannot be reconciled. The one is incompatible and inconsistent with the other. It would be absurd to construe the statute as providing two methods of making regulations for the same matter—promotion: one with the advice of the Commander of the Police, without such regulations being laid before the House of Representatives, and the other without the necessity of the advice and with the requirement of laying them before the House, and left the option to the Council of Ministers to exercise either of those powers. The provision about laying before the House is almost regularly met in the later Laws passed by the House.

Having regard to the history of the Law and the words used in the later enactment, there is no room for any other construction than that the legislature intended to repeal the rule-making provision with regard to “promotions” given to the Council of Ministers under s. 10. Therefore, s. 10— 5 both the general provision and the specific provision thereof—has to be read as pro tanto repealed by subsections (3) and (4) of s. 13 as substituted by Law No. 29/66.

The Police (Promotion) Regulations were amended by Regulations No. 943/66 (Suppl. No. III-10.11.66), 111/72 10 Suppl. No. III-9.6.72), 347/80 (Suppl. No. III-12.12.80), 184/83 (Suppl. No. III-22.7.83) and 271/83 (Suppl. No. III-29.10.83). The substantial amendment was effected by the Police (Promotions) (Amendment) Regulations No. 184/83 published on 22.7.83. They repealed and substituted 15 the material regulations No. 3-9 and regulation No. 10(3) relating to promotions.

Is the non-laying before the House such a non-compliance as to render them invalid?

This provision is mandatory and should not be disregarded 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— 20 (*Basu-Commentary on the Constitution of India*, 5th Edition, Volume 1, pp. 266-267). 25

In order to make the statutory instrument valid, it is necessary that all the stages provided by the enabling enactment should be gone through, namely, the making, the laying before Parliament and the issue and publication. When these 30 have been done, the Regulations are valid but if there is in any way no conformity with these statutory requirements or any of them, they are totally void as made in excess of power and contrary to Law—(See, also, *R. v. Sheer Metalcraft, Ltd. and Another*, [1954] 1 All E.R. 542). 35

The legislature delegates its power to legislate to the Executive under certain conditions, and if these conditions are not complied with, then the power cannot validly be exercised. The power has to be exercised in the particular way provided by the enabling Law. 40

5 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.

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.

20 Promotions in the Police Force to the ranks of Sergeant, Inspector and Chief Inspector made under the invalid Regulations are themselves null and void and of no legal effect. By the sub judice decision Inspectors were promoted to Chief Inspectors. Such promotions will be annulled by this Court.

25 In view of the aforesaid the sub judice promotions are hereby declared null and void and of no legal effect.

Let there be no order as to costs.

*Sub judice decision annulled.
No order as to costs.*