

1985 October 3

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION.

ANDREAS IERIDES AND ANOTHER,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR,

Respondents.

AND AS AMENDED BY ORDER OF THE COURT
DATED 4.10.1984

ANDREAS IERIDES AND ANOTHER,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF INTERIOR,
2. THE CHIEF OF POLICE,

Respondents.

(Cases Nos. 559/83 and 560/83).

Police Force—Police Officers—Promotion—The Police Promotion Regulations, regs. 3 and 4—Sub judice promotions vitiated by irrelevant considerations—As the Chief of Police attached the same weight to the evaluation of the Committee of Selection appointed under reg. 4 with the weight he attached to the evaluation of the organs for which provision is made in regs. 3 and 4.

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The applicants and the interested parties are members of the Police Force. The Chief of the Police in the exercise of the powers vested in him under regulation 4 of the Police (Promotion) Regulations appointed a Committee of Selection for evaluating the candidates for promotion

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to the vacant posts of Chief Inspector of Police. The Chief of Police, after having taken into consideration the relevant recommendation by the said Committee and other matters concerning the candidates selected the interested parties for promotion and submitted his decision to the Minister of Interior for approval. The Minister approved of the decision and as a result the promotions of the interested parties were effected as from 1.3.1980.

The applicants challenged the validity of the said promotions by means of a recourse to the Supreme Court. On the 19.12.1983 the Court annulled the said promotions (Vide *Andreas Ierides and another v. The Republic* (1983) 3 C.L.R. 1028) on the ground that the process of promotion was vitiated by irrelevant material being taken into consideration, namely information sought and obtained by the Chief of Police from the Central Intelligence Service concerning the devotion to duty and subservience to law of the candidates for promotion.

Immediately after such annulment the Chief of the Police reconsidered the promotions and came to the decision to promote the same officers to the said vacant posts. In arriving at this decision "he took into consideration all material which existed in the candidates personal files at the time of the annulled decision" and the evaluation of the candidates made by the said Committee regarding "their ability, performance devotion and faith in the service". The Minister of Interior approved of this decision and as a result the interested parties were promoted as from 1.3.1980 to rank of Chief Inspector of Police. Hence the present recourses.

Held, annulling the sub judice promotions (1) It is clear that in effecting the sub judice promotions the Chief of Police relied inter alia on the evaluation of the candidates by the Committee of Selection appointed by him concerning the efficiency, ability and performance of the candidates. In the light of the decision in *Michael and Others v. The Republic* (1984) 3 C.L.R. 1364 this amounts to a departure from the Police (Promotion) Regulations in that the weight attached to the evaluation of the said committee was the same as that attached to the evaluation

of the organs for which provision is made in regulations 3 and 4; therefore in reality the function of the Committee was not of an advisory character as submitted. The decision of the Board of Selection and the final decision of the Chief of Police were biased by irrelevant considerations. The sub judice decision has to be annulled as biased by such considerations. 5

(2) The Chief of Police stated that he took into consideration "all material which existed in the personal files of the candidates at the time of the annulled decisions". There is nothing indicating that he ignored the information supplied by the Central Intelligence Service which was a ground for annulling the promotions of the same interested parties in *Ierides and another v. The Republic* (supra). This is, therefore, an additional ground why the sub judice decision has to be annulled. 10 15

*Sub judice decision annulled.
Order for £100.- in favour of
applicants against their costs.*

Cases referred to: 20

Ierides and Another v. The Republic (1983) 3 C.L.R. 1028;

Michael and Others v. The Republic (1984) 3 C.L.R. 1364.

Recourses.

Recourses against the decision of the respondents to promote the interested parties to the post of Chief Inspector in the Police Force in preference and instead of the applicants. 25

A. Erotocritou, for the applicants.

M. Florentzos, Senior Counsel of the Republic, for the respondents. 30

Cur. adv. vult.

SAVVIDES J. read the following judgment. The promotion of eleven police officers, the interested parties, namely, G. Kasapi, A. Seimeni, St. Zavrou, N. Solomonides, A. Christophides, N. Kazafaniotis, A. Kokkinos, M. Pattichis, 35

A. Demetriades, P. Frydhas and A. Stefanou to the post of the Chief Inspector of Police as from 1st March, 1980 which was published in the Police Weekly Orders Part II dated 17th October, 1983, is challenged by the applicants in these
5 two recourses which were heard together as presenting common questions of law and fact.

In the course of the hearing both applicants withdrew their claim for the annulment of the promotion of the interested party Stefanos Zavros and as a result the recourses
10 concerning the promotion of the said officer have been dismissed.

The applicants and the interested parties are members of the Police Force. On 1st March, 1980, the interested parties were promoted to the rank of Chief Inspector and
15 their promotion was published in the Police Orders Part II No. 10/80 dated 10.3.1980. Such promotions were effected after the Chief of the Police adopted the procedure set out in the Police (Promotion) Regulations. The Chief of the Police in the exercise of the powers vested in him
20 under regulation 4 proceeded to the appointment of a committee of selection for evaluating the candidates for promotion to the vacant posts, the recommendation of which was submitted to him, who, after having taken into consideration such recommendation and all other matters
25 concerning the candidates selected the interested parties for promotion and submitted the decision for approval by the Minister of Interior. The Minister of Interior approved the recommendation of the Chief of the Police and by his letter dated 1.3.1980 communicated his approval for these
30 promotions which, as a result, were effected and published in the Police Orders Part II No. 10/80 of the 10th March, 1980.

The applicants having felt aggrieved by such promotions challenged same by recourses Nos. 126/80 and 127/80
35 which came up for hearing before H. H. Judge Hadjiana-stassiou who, by his judgment dated 19th September, 1983, (see *Andreas Ierides and another v. The Republic through the Minister of Interior*) 1983 3 C.L.R. 1028) annulled same. In annulling the promotion, the learned trial Judge
40 had this to say at pp. 1039, 1040:

“The Commander of the Police reviewed the recommendations of the Committee but apparently he examined the suitability of the various candidates for promotion. He did not however rest with that and sought information from the Central Intelligence Service of the Police and ostensibly acted on the provisions of regulation 2(2). This regulation makes the devotion to duty and subservience to the law one of the considerations relevant to the worth of a member of the Police Force.

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Elicitation of the quality of a Police Officer may be discerned from his service record especially for devotion to duties and the presence of any of a disciplinary or other convictions.

It can never depend on the opinion of another member of the Police Force, or a member of KYP and the dossier may be supplied from information often secretly connected in making the promotion of members of the Police Force dependent on reports of the Intelligence Agency which would undermine in the longer run, not only discipline in the Police Force but devotion to duties as well as objectively identifiable from police records. In my view, it was not, therefore, open to the Commander of the Police to use such information as an aid to the discharge of this task. What were those recommendations it is not known, a factor that makes judicial review impossible, nor do we know what the impact of those recommendations was upon the decision of the Commander of the Police.

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Consequently the process of promotion was vitiated by irrelevant material being taken into consideration. The Minister acted upon the recommendation of the Commander of the Police and judging from the laconic way, ‘approved’ he does not appear to have carried out an inquiry on his own, nor was he bound to carry out such an inquiry. See *Georghios Charalambous and Others v. The Republic* (1976) 3 C.L.R. p. 224. Certainly the Minister did not exclude from consideration the relevant material taken into ac-

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count by the Commander of Police and his decision is equally vulnerable to be set aside as that of the Commander of the Police and for precisely the same reason. (See further the case of *Loucas Haviaras v. The Republic*, (1983) 3 C.L.R. 159).”

Immediately after the annulment of the said promotions the Chief of the Police reconsidered the promotions and came to the decision to promote to the rank of Chief Inspector the same officers, the interested parties whose promotions had been previously annulled. His decision is contained in a letter dated 3rd October, 1983 addressed to the Minister of Interior for the latter’s approval under section 13(2) of the Police Law, Cap. 285, the material part of which reads as follows:

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In the light of the said judgment I have proceeded to the re-examination of the case of each one of the then (1980) candidates for promotion inspectors (including the two applicants and the interested parties) and after having considered all material which existed in the personal files at the time of the annulled decision, the recommendations of the Divisional Commander and the recommendations of the Committee for selection and the Board for Promotions, regarding their ability, performance, devotion and faith in the service, I have reached the decision that the aforesaid inspectors (whose promotion to the rank of Chief Inspector was annulled by the Supreme Court) be promoted to the rank of Chief Inspector as from 1st March, 1980 as more suitable than the rest of the candidates. To that effect, I request to have your approval in accordance with section 13(2) of the Police Law, Cap. 285.

Concerning the case of the two candidates who have not been promoted (A. Minas and A. Ierides) during the re-examination, I have reached the conclusion, in the exercise of my discretionary power, not to promote them, considering both of them as being inferior to those promoted.”

By letter dated 14th October, 1983 the Director-General

of the Ministry of Interior communicated to the Chief of the Police the approval of the Minister of Interior to the promotion of the interested parties, as recommended by the Chief of the Police. The promotion was published in the Weekly Orders issued on the 17th October, 1983, by the Deputy Chief of the Police who was replacing the Chief of the Police. The material part of such order reads as follows:

"Annulment of promotions by the Supreme Court.

1. The Supreme Court of the Republic by its judgment dated 19.9.1983 accepted recourse 126/80 and 127/80 and annulled certain promotions to the rank of Chief Inspector which were published in paragraph 121 of the Weekly Orders Part II (10/80) dated 10.3.1980.

2. As a result of the above judgment of the Supreme Court the Chief of the Police re-examined from the beginning the position of all the then candidates and having obtained the contemplated by section 13(2) of the Police Law (Cap. 285) approval of the Minister of Interior hereby proceeds to the re-promotion of the following Inspectors whose promotion had been annulled as a result of the above judgment, with retrospective effect as from 1.3.1980 to the rank of Chief Inspector (the list of the names of the interested parties then follows)".

As a result, the applicants filed the present recourses challenging the said promotions. The grounds of law on which these recourses are based are the following:

(1) The respondents have failed to exercise their paramount duty in selecting the best candidates and have acted in violation of the well-accepted principles of administrative law as they have been expounded by the Supreme Court of Cyprus in the case of *Michael Theodossiou v. The Republic*. 2 R.S.C.C. at p. 44 and have acted in abuse of powers.

(2) The respondents ignored the seniority of the applicants without due reasoning and have acted in violation of the well-established principles of administrative law as have been expounded by the Supreme Court in the case

of *Partellides v. The Republic* (1969) 3 C.L.R. at p. 480 and/or have acted in abuse of their powers.

5 (3) The respondents have ignored the superior qualifications and the merits of the applicants in violation of the law and/or in abuse of their powers.

(4) The respondents have ignored and/or failed to observe the regulations dated 22.7.1983 and/or acted in violation of the police regulations of 22.7.1983.

10 (5) In the light of the above, the decision attacked is not duly reasoned and/or its reasoning is wrong and contrary to the law.

15 (6) In violation of the well-accepted principles of administrative law which have been established by the Supreme Court in the case of *Nicos Nicolaides v. The Republic*, (1965) 3 C.L.R. at p. 585, the respondents have not carried out a due inquiry in ascertaining the basic facts and have decided arbitrarily.

20 (7) Contrary to the well-accepted principles of administrative law expounded by the Supreme Court in the case of *Medcon Construction and Others v. The Republic* (1968) 3 C.L.R. at p. 535 the respondents have not kept minutes of the process which led to the final decision to promote the interested parties to the rank of sub-inspectors.

25 (8) The respondents have on this subject decided arbitrarily and failed to exercise their discretionary powers legally and properly.

(9) The sub judice decision was taken contrary to the principles of the Police (Promotion) Regulations.

30 The applications were opposed and the opposition was based on the following grounds of law:

35 1. The recourses lack of subject matter as they are not directed against an act or omission of an administrative organ and/or are wrongly directed against an incompetent organ and/or authority, that is the Minister of Interior who under provisions of the law only approves the decision regarding promotions.

2. In any event the sub judice act and/or decision was taken correctly and legally in accordance with the relevant provisions of the Constitution, the relevant laws and/or regulations, after a proper exercise of their discretionary powers and after the respondents having duly taken into consideration all material facts and circumstances of the case.” 5

As to the way the Chief of the Police acted when he re-examined the promotions, it is described in the statement of facts set out in the opposition as follows: 10

“The Commander of Police, in the light of the judgment of the Supreme Court proceeded to the re-examination of the case of each one of the then (1980) candidates for promotion (including the two applicants and the interested parties) and after having considered all material which existed in their personal files at the time of the annulled decision, the recommendation of the Divisional Commander and the recommendations of the Committee for Selection concerning the efficiency, ability, performance, devotion and faith in the service, reached the decision that the interested parties (the inspectors whose promotion to the rank of Chief Inspector was annulled by the Supreme Court) be promoted to the rank of Chief Inspector as from 1st March, 1980, as the most suitable than the rest of the candidates.” 15 20 25

This is a verbatim repetition of the reasoning given by the Chief of the Police in his letter to the Minister of Interior dated 3rd October, 1983 by which he was requesting the approval by the Minister of the said promotions. 30

As a result of the preliminary objection raised in his opposition by counsel for respondents, counsel for applicants applied on 7.9.1984 for the amendment of the application by the addition of the Chief of the Police as respondent 2 in the proceedings. Counsel for respondents consented to such amendment which was as a result granted by consent. 35

Directions were made for written addresses to be filed. Counsel for applicants in compliance with such directions

filed his written address setting out therein his arguments in support of his contention that the promotions of the interested parties should be annulled and expounded on the legal grounds in support of his recourses. Counsel for
5 respondents did not comply with the directions of the Court for the filing of his written address in reply, but on the day when the case was fixed for clarifications made the following brief statement concerning the case for the respondents:

10 "I have been asked by the Chief of the Police to bring to the notice of the Court that they prefer that this case be heard and if the applicants have a ground, the decision to be annulled instead of him taking steps for the revocation of the action which may have
15 adverse consequences on the Republic. Therefore, instead of filing a written address, I would like to say only a few words. I shall answer orally today to the written address of counsel for applicants, to save further delay in these cases.

20 After the decision of the Supreme Court on the 17th November, 1984 in *Andreas Michael and Others v. The Republic* (1984) 3 C.L.R. 1364 in which no appeal has been filed, the Committee of Evaluation of the candidates was declared as irregular as not contemplated
25 by the Regulations which were in force at the material time and, therefore, in that case, the decision which was challenged was annulled by the Court.

30 In the present case the interested parties and the applicants were evaluated by the same Committee of Evaluation and on the basis of such evaluation, as it appears in the opposition which I adopt, the decision of the Board of Selection was biased as well as the subsequent final decision of the Chief of Police. Therefore, adopting all the facts which I have raised in my
35 opposition and in the light of what I have stated, I leave the matter of the validity of these promotions to the Court."

In the light of such statement and relying on the decision of *Michael and others v. The Republic* (supra) counsel

for applicants invited the Court to annul the sub judice promotions.

In the case of *Michael and others* to which reference was made by both counsel, the validity of the promotion of a number of police officers to the rank of Inspector was challenged. In making the promotions the Chief of the Police took into consideration, inter alia, the views of the Advisory Selection Committees and information and material supplied by the Director of the Central Information Service. The Court in annulling the promotions had this to say regarding the information supplied by the Central Information Service: 5 10

“What is, however, most important is the fact that there has been a violation of the Rules of Natural Justice by taking into consideration information contained in reports of the Central Information Service which, quite obviously, in some cases were adverse without the officers being adversely affected being aware of the existence of contents of such reports and without having the opportunity to be heard in regard thereof.” 15 20

The Court proceeded further and found that there was an additional ground rendering the decision for promotion null in that there was a departure from the provisions of the Regulations in so far as the evaluation made by the Advisory Selection Committees on which the Chief of the Police relied, was defective as this amounted to a departure from the provisions of the Regulations. The Court had this to say in this respect at pp. 1376, 1377, 1378: 25

“...I propose to deal very briefly with the other ground raised i.e. the setting up of the Advisory Selection Committees for which no provision is made either in the regulations or in the Law which took part in the evaluation of the candidates for promotion. 30

At paragraph 3 of the Schedule to Order No. 11 of the Chief of Police (exhibit 4) it is stated that their function is to examine candidates with a view to ascertaining whether they possess the qualifications required for promotion by regulation 6 of the Police 35

(Promotion) Regulations, 1958 to 1976. Such qualifications are set out in regulation 6(2) and they are the following:

- 5 (a) Not to 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) To have passed the qualifying examinations;
- 10 (c) Save for special reasons to be stated in each individual case to have completed one year's service in the rank of Sergeant in the performance of outside police duties;
- 15 (d) To have completed two years' service in the rank of Sergeant unless the Chief of Police is satisfied that he possesses special qualifications for the performance of the particular duties on which he is to be employed;
- (e) To have been recommended by the Board.'

20 But the evaluation sheets which have been filled up by these Advisory Selection Committees in respect of each candidate contain the following fourteen items on each of which candidates are rated: General education; professional standard; seniority; conduct; appearance; intelligence; foreign languages; leadership

25 abilities; initiative and energy; public relations; performance of outside duties; health; domestic state; and personal reputation.

30 It will be seen from the above that the functions of these Advisory Selection Committees are by no means restricted to the provisions of regulation 6 but they, in fact, extend to regulation 3 under which the recommendation has to be made by the Divisional and Unit Commanders.

35 But it has been argued on the part of the respondents that the recommendation of the Advisory Selection Committees is of an advisory character. Indeed, it is so expressly stated in the Minister's letter em-

bodied in Order No. 11 of the Chief of Police (exhibit 4) and in the Schedule to such Order. A mere glance, at the evaluation sheet of the promotion Board reveals that this is not quite so because the total of the points awarded to each candidate for promotion is the aggregate of the points awarded by (1) the Advisory Selection Committees, (2) the Divisional Commanders and (3) the promotion Board; and this total is the one which is shown by the Selection Board in the final list of the candidates selected by it for promotion and forwarded to the Chief of Police (exhibit 5) from which he selected those he proposed for promotion subject to the approval of the Minister.

It is clear from the above that the weight attached to the evaluation of the advisory selection committees is the same as that attached to the organs for which provision is made in regulations 3 and 4 and that their function is by no means of an advisory character as submitted. The departure from the provisions of the above regulations, in my view, renders the evaluation and selection of the candidates, promoted defective and invalid and the decision based thereon void and, therefore, a ground for annulment."

From what appears in the statement of facts as set out in the opposition in the present case, the reasoning of the Chief of the Police after reconsidering the case, was that he relied, inter alia, on the evaluation of the candidates by the Committee of Selection appointed by him concerning the efficiency, ability and performance of the candidates. In the light of the decision in *Michael and others* this amounts to a departure from the Regulations, in that the weight attached to the evaluation of the Advisory Selection Committee was the same as that attached to the organs for which provision is made in Regulations 3 and 4 to which reference is made in the *Michael case* and, therefore, the function of such Advisory Committee was not of an advisory character as submitted.

In this respect it has been admitted by counsel for the respondent that the candidates were evaluated in a similar way by a Committee of Evaluation and that the decision

of the Board of Selection was biased as well as the subsequent final decision of the Chief of the Police. In the light of such statements, I find no reason in this case to depart from the opinion of my learned brother Judge L. Loizou in the *Michael case*, in that the decision reached has to be annulled as biased by irrelevant considerations. It has been repeatedly stressed by this Court that a decision tainted with bias, should be annulled.

I wish to express my appreciation to counsel for the respondents who, in a straight forward and frank way, admitted that the procedure followed in reconsidering the promotions by the Chief of the Police, was tainted with bias.

There is one, further ground, however, why these promotions should be annulled. In the reasons given by the Chief of the Police for making the promotions, it is stated that he took into consideration "all material which existed in their personal files at the time of the annulled decisions". There is nothing indicating that he has ignored the information supplied by the Central Information Service (KYP) which was a ground for annulling the promotions of the same interested parties in the previous recourse. (*Ierides & Another v. The Republic* (1983) 3 C.L.R. 1028.

For all the above reasons these recourses succeed and the promotion of the interested parties with the exception of Stefos Zavros against who both recourses have already been dismissed, are hereby annulled. In the circumstances I award £100.- to the applicants against their costs.

Sub judice decision annulled. Order for costs as above.