

1986 March 8

[TRIANTAFYLIDIS, P.]

EFSTATHIOS SAVVA.

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF EDUCATION.
2. THE EDUCATIONAL SERVICE COMMISSION.

Respondents.

(Case No. 361/83).

5 *The Public Educational Service Law 10/69, ss. 26, 28 and 76—*
The Educational Officers (Teaching Staff) (Appointments,
Postings, Transfers, Promotions and Related Matters) Re-
gulations, 1972 (hereinafter referred to as Regulations
205/72) as amended, in particular, by the Educational
Officer (Teaching Staff) (Appointments, Postings, Trans-
fers, Promotions and Related Matters) (Amendment) (No.
2) Regulations, 1974 (hereinafter referred to as Regula-
10 *tions 250/74)—List of candidates for appointment made*
pursuant to reg. 5 and 10 and the Appendix thereto of
the said Regulations—Said provisions ultra vires Law 10/69
and in particular ss. 28 and 76 thereof—And ultra vires by
reason of their unreasonableness—The Public Educational
Service (Amendment) Law 53/79 s. 3 adding sub-section
15 *3 to s. 26 of Law 10/69—Effect of said amendment—It*
does not save the said provisions.

Revisional Jurisdiction—This Court is not bound by the con-
tentions of the parties.

Delegated legislation—Ultra Vires—Unreasonableness.

20 By means of this recourse the applicant challenges the validity of the list of candidates eligible to be appointed as schoolmasters of gymnastics. The list was made pursuant to regulations 205/72 (as amended by the regulations 250/74), regs. 5 and 10.

Held, annulling the sub judge lists: (1) Regulations 5 and 10 and the appendix thereto, especially when applied together, are ultra vires Law 10/69 and, particularly, sections 28 and 76, thereof. Section 28 enumerates exhaustively the prerequisites for appointment and section 76, under which the Regulations in question were made does not empower the addition of further prerequisites that the educationalists to be appointed should have priority in accordance with a list, prepared on the basis of the criteria set out in the said Appendix. 5 10

(2) Moreover, the Regulations in question are void for unreasonableness, and consequently, ultra vires. Indeed the criteria introduced by them are clearly incompatible with the paramount object of appointing the most suitable candidates. 15

(3) The amendment of s. 26 of Law 10/69 (s. 3 of Law 53/79) makes no difference. Even if such amendment had been enacted before the making of the said Regulations, they would have still been ultra vires because of their conflict with s. 28 of Law 10/69 which was not amended by Law 53/79—and because of their unreasonableness. Assuming, however, the contrary and as Law 53/79 was not given retrospective effect, the amendment in question cannot be treated as having rendered valid ex post facto the said Regulations, which being ultra vires, were a nullity when they were made. Furthermore, the enactment of Law 53/79 could not prevent such Regulations from being void for unreasonableness. 20 25

Sub judge list annulled.

No order as to costs. 30

Cases referred to:

Dafnides v. The Republic, 1964 C.L.R. 180;

HjiSavva v. The Republic (1967) 3 C.L.R. 155;

Liasi v. The Attorney-General (1975) 3 C.L.R. 558;

Antonioni v. The Republic (1978) 3 C.L.R. 308; 35

Platis v. The Republic (1978) 3 C.L.R. 384;

Angelidou v. The Republic (1982) 3 C.L.R. 62;

Stavros Makris Ltd. v. The Republic (1984) 3 C.L.R. 539;

Marangos v. The Municipal Committee of Famagusta
(1970) 3 C.L.R. 7;

5 *Spyrou (No. 2) v. The Republic* (1973) 3 C.L.R. 627;

Stavrou v. The Republic (1976) 3 C.L.R. 66;

Michaeloudes v. The Republic (1979) 3 C.L.R. 56;

Menikos v. The Republic (1983) 3 C.L.R. 1130;

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

10 *Avraam v. The Municipality of Morphou* (1970) 2
C.L.R. 165;

Angelides v. The Republic (1982) 3 C.L.R. 774.

Recourse.

15 Recourse against the validity of the list of candidates
eligible to be appointed as schoolmasters of gymnastics.

Chr. Triantafyllides, for the applicant,

N. Charalambous, Senior Counsel of the Republic
with *R. Vrahimi (Mrs.)*, for the respondents.

Cur. adv. vult.

20 TRIANTAFYLLIDES P. read the following judgment. By
means of this recourse the applicant has challenged the
validity of the list of the candidates eligible to be appointed
as schoolmasters of gymnastics, which was prepared by
respondent 2 in July 1983, pursuant to regulations 5 and 10
25 of the Educational Officers (Teaching Staff) (Appointments,
Postings, Transfers, Promotions and Related Matters) Re-
gulations, 1972 (see No. 205, Third Supplement, Part 1, to
the Official Gazette of 10th November 1972), as amended,
in particular, by the Educational Officers (Teaching Staff)
30 (Appointments, Postings, Transfers, Promotions and Re-
lated Matters) (Amendment) (No. 2) Regulations, 1974
(see No. 250, Third Supplement, Part 1, to the Official
Gazette of 20th September 1974).

35 On the 23rd November 1985 I gave in this case a de-
cision on preliminary issues and I adopt fully the contents

of such decision which should be treated as incorporated by reference, in the present judgment.

Counsel appearing both for the applicant and for the respondents are in agreement that the sub judge list is invalid inasmuch as the relevant provisions of the aforementioned Regulations are ultra vires the Public Educational Service Law, 1969 (Law 10/69). 5

It is well settled that, as an administrative Court, in a case of this nature I am not bound by the contentions of the parties regarding the outcome of the case or the determination of any particular issue arising in it (see, inter alia, in this respect, *Dafnides v. The Republic*, 1964 C.L.R. 180, *HjiSavva v. The Republic*, (1967) 3 C.L.R. 155, *Liasi v. The Attorney-General*, (1975) 3 C.L.R. 558, *Antoniou v. The Republic*, (1978) 3 C.L.R. 308, *Platis v. The Republic*, (1978) 3 C.L.R. 384, *Angelidou v. The Republic*, (1982) 3 C.L.R. 62, and *Stavros Makris Ltd v. The Republic*. (1984) 3 C.L.R. 539). 10 15

In the light of the submissions of the parties I have carefully considered the issue of ultra vires of the relevant provisions of the aforesaid Regulations and I have reached the conclusion that the said provisions and, in particular, regulations 5 and 10 and the Appendix thereto, especially when applied together, are ultra vires Law 10/69, and, particularly, sections 28 and 76, thereof, because the said section 28 of Law 10/69 enumerates exhaustively the prerequisites for appointment and section 76, under which the Regulations in question were made, does not empower the addition of the further prerequisite that the education-20
alists to be appointed should have priority for this purpose in accordance with a list of those eligible to be appointed, which is prepared on the basis of the criteria set out in the Appendix to such Regulations. 25 30

As regards the matter of delegated legislation being ultra vires the statute under which it has been made I would add that the relevant principles have already been expounded in case-law of this Court and need not be repeated in this judgment once again (see, in this respect, inter alia, *Marangos v. The Municipal Committee of Famagusta*, (1970) 35

3 C.L.R. 7, *Spyrou (No. 2) v. The Republic*, (1973) 3 C.L.R. 627, *Stavrou v. The Republic*, (1976) 3 C.L.R. 66, *Michaeloudes v. The Republic*, (1979) 3 C.L.R. 56, *Menikos v. The Republic*, (1983) 3 C.L.R. 1130, and *Ethnikos v. K.O.A.*, (1984) 3 C.L.R. 1150).

I am, furthermore, of the opinion that the aforementioned provisions of the Regulations in question, and, in particular, of the Appendix thereto, are void for unreasonableness, and, consequently, *ultra vires*, because they introduce some unreasonable criteria of priority for appointment which are clearly entirely incompatible with the paramount object of appointing the most suitable candidates (see, *inter alia*, in this respect, *Avraam v. The Municipality of Morphou*, (1970) 2 C.L.R. 165, and *Angelides v. The Republic*, (1982) 3 C.L.R. 774).

After the aforesaid Regulations 205/72 and 250/74 were enacted section 26 of Law 10/69 was amended by section 3 of the Public Educational Service (Amendment) Law, 1979 (Law 53/79), through the addition of subsection (3) which provides about prescribing the procedure for the filling of vacant posts, including provisions for the preparation, contents and publication of lists of those eligible to be appointed or promoted.

I am of the view that even if the new subsection (3) of section 26 of Law 10/69 had been introduced by Law 53/79 prior to the making of Regulations 205/72 and 250/74 their provisions in question would still be *ultra vires* the Law 10/69, especially because of their conflict with section 28 of Law 10/69, which was not amended by Law 53/79, and because, also, of their unreasonableness in view of certain of the criteria which are set out in the Appendix to such Regulations.

Even assuming, however, that if section 3 of Law 53/79 was in force when Regulations 205/72 and 250/74 were made they would not have been *ultra vires*, I am of the view that, as Law 53/79 was not given retrospective effect, its enactment cannot be treated as having rendered valid *ex post facto* the provisions in question of the said Regulations which, being *ultra vires*, were a nullity when they were

made (see, in this respect, inter alia, Wade on Administrative Law, 4th ed., pp. 41, 42).

Nor am I prepared to hold that there could be applied in this connection the doctrine of "eclipse" which was propounded by the Supreme Court of India (see, inter alia, in this respect, Basu's Commentary on the Constitution of India, 5th ed., vol. 1, p. 282), because, first, I am not, as at present advised, prepared to accept that the said doctrine can find its way into the Constitutional and Administrative Law of Cyprus and, in any event, it would be inapplicable in this instance as section 28 of Law 10/69, with which the provisions concerned of the aforementioned Regulations are incompatible, with the result that they are *ultra vires* the Law 10/69, was not amended or repealed by Law 53/79.

Another, and overriding, reason for which Law 53/79 could not validate *ex post facto* the provisions in question of Regulations 205/72 and 250/74 is that the enactment of Law 53/79 could not prevent them from being void for unreasonableness.

In the light of all the foregoing the sub *judice* list of those eligible to be appointed has to be declared to be null and void and of no effect whatsoever, since it was prepared on the strength of provisions of delegated legislation which have been found to be invalid, as stated in this judgment.

I will not, however, make any order as to the costs of this recourse, in view, particularly, of the very fair stand taken by counsel for the respondents.

*Sub judice list invalid.
No order as to costs.*