

1987 December 3

TRIANATAYLLIDES P MALACIOTOS SAVVIDES IORIS KOURRIS.JJ

ANTONIS MELETIS AND OTHERS

Appellants-Applicants

v.

- 1. THE CYPRUS PORTS AUTHORITY,
- 2. THE COUNCIL OF MINISTERS.

Respondents

(Revisional Jurisdiction Appeal No. 557)

Cyprus Ports Authority — The Cyprus Ports Authority (Officers' Schemes of Service and Other Conditions of Service) Regs. 1982 (317/82), Reg 24 — It is not ultra vires sections 19(2), 35(2) and 36 of Law 38/73 — It does not violate Art. 28 of the Constitution because it adopts reasonable classifications.

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The appellant did not possess the qualifications required by Reg 24 of Regs. 317/82 for promotion to the post of Senior Ports Officer. The question, which calls for a decision in this appeal, is whether Reg. 24 is ultra vires the enabling section of the law i.e section 19(2) of Law 38/73, or whether it is ultra vires sections 35(2) and 36 of the same law, or whether it violates the principles of equality.

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Held, *dismissing the appeal*: (1) The validity of the Regulation, which is an act of legislative nature, cannot be challenged directly by a recourse, nevertheless its validity can be questioned by challenging the said promotions which are the outcome of the application of such regulation

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(2) The aforesaid Regulation is not ultra vires section 19(2).

(3) Sections 35(2) and 36 of Law 38/73 protect the rights of public officers who have been transferred to the service of respondent 1, but it cannot be held that they protect in any way the right of further promotion of such officers. Reg 24 is not ultra vires the said sections

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(4) The relevant provisions of Reg. 24 protect the prospects to promotion of certain categories of persons, with service longer than, and different from,

that of the appellants in a manner that constitutes a reasonable classification which does not in any way offend against Article 28 of the Constitution

Appeal.

5 Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Stylianides, J) given on the 17th January 1986 (Revisional Jurisdiction Case 103/83)* whereby appellants' recourse against the decision to promote the interested parties to the post of Senior Ports Officer in the Cyprus Ports Authority was dismissed

- 10 A S Angelides, for the appellants
 P Ioannides, for respondent 1
 A Vassilades for respondent 2

Cur adv vult

15 TRIANTAFYLLIDES P read the following judgment of the Court The appellants have appealed against the first instance judgment of a Judge of this Court by means of which there was dismissed their recourse (No 103/83), under Article 146 of the Constitution, against the promotions to the post of Senior Ports Officer, in the service of respondent 1 of fifteen Ports Officers 1st
 20 Grade

The appellants were at the material time also holding the post of Ports Officer, 1st Grade having been promoted to such post at the same time as the other Ports Officers, 1st Grade, who were promoted subsequently to Senior Ports Officers

25 The appellants were excluded from consideration for promotion to the post of Senior Ports Officer because admittedly they did not possess the qualifications for such promotion

30 The said qualifications are to be found in regulation 24 of the Cyprus Ports Authority (Officers' Schemes of Service and Other Conditions of Service) Regulations, 1982 (see No 317, Third Supplement, Part I, to the Official Gazette of the Republic dated 30 December 1982)

35 The first instance judgment against which this appeal has been made deals extensively with the facts of this case and the relevant legislative provisions and it is not necessary to refer to them again

* Reported in (1986) 3 C.L.R. 418

in this judgment (see *Meletis v Cyprus Ports Authority* 1987) 3 C.L.R. 418).

By an Interim Decision which we gave on 12 February 1987* we decided to hear counsel for the appellants as regards the validity of the said regulation 24 (in which, in effect, it is set out the scheme of service for the post of Senior Ports Officer) in order to ascertain whether or not the appellants possessed a legitimate interest entitling them to challenge the promotions in question because, though the said regulation, being an act of legislative nature, cannot be challenged directly as the subject-matter of the present proceedings, nevertheless its validity can be questioned by challenging the said promotions which are the outcome of the application of such regulation

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Counsel for the appellants has contended that the aforementioned regulation 24 in so far as it relates to the qualifications required for promotion to the post of Senior Ports Officer is invalid as being ultra vires the legislation under which it was made and as violating the principle of equality which is enshrined in Article 28 of the Constitution.

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Regulations 317/82, of which regulation 24 forms part, were made by respondent 1, with the approval of respondent 2, under subsection (2) of section 19 of the Cyprus Ports Authority Law, 1973 (Law 38/73)

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The said subsection was subsequently repealed and replaced by a new subsection (2) by means of section 2 of the Cyprus Ports Authority (Amendment) (No.2) Law, 1987 (Law 62/87), but the new subsection (2), in view of the time at which it was enacted, is not relevant for the purposes of the determination of this case.

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We see no reason to hold that regulation 24 is in any way ultra vires subsection (2) of section 19 of Law 38/73 as it stood at the material time.

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Counsel for the appellants has argued, however, that the provisions regarding qualifications for promotion in regulation 24, and in particular Note (2) (b) (i) and (ii) to paragraph (4) of regulation 24, conflict with sections 35(2) and 36 of Law 38/73 and for this reason are ultra vires Law 38/73.

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We need not quote in full the said provisions of Law 38/73, which protect the rights of public officers who have been

* Reported (1987) 3 C.L.R. 1984.

transferred to the service of respondent 1, since we are satisfied that on a fair reading of such provisions it cannot be held that they protect in any way the right of further promotion of such officers

5 Therefore, even though the further promotion of the appellants from Paris Officers 1st Grade to Senior Ports Officers was impeded by the provisions concerned of regulation 24 we cannot hold that such provisions are in conflict with sections 35(2) and 36 of Law 38/73

10 As regards the alleged violation of the principle of equality to the detriment of the appellants and contrary to Article 28 of the Constitution we are of the opinion that what was done by the relevant provisions of regulation 24 was to protect the prospects to promotion of certain categories of persons, with service longer than, and different from, that of the appellants, in a manner that
15 was reasonably open to respondents and, therefore, this is an instance of reasonable classification which does not in any way offend against Article 28 of the Constitution.

For all the foregoing reasons we have to find that regulation 24 is a valid enactment and that the appellants were rightly excluded
20 from promotion by virtue of its application; and, consequently, they do not possess a legitimate interest, in the sense of Article 146(2) of the Constitution entitling them to challenge the promotions of other, Paris Officers, 1st Grade, to the post of Senior Ports Officer.

25 In the result this appeal fails and has to be dismissed; but in view of the particular circumstances of this case we shall make no order as to the costs of this appeal.

*Appeal dismissed.
No order as to costs.*