

1988 July 30.

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOS DEMETRIADES AND OTHERS,

*Applicants,*

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

*Respondents.*

(Cases Nos. 491/87, 569/87, 612/87 and 629/87).

*Recourse for annulment—Court entitled to annul the sub judice act on any ground of law, even if not raised by the parties.*

*Public Corporations—Promotions—The Cyprus Telecommunications Authority—The General Staff Regulations, 1982 (Notification 220), Regs. 10(5) (b), 7(a) and 24.A—These regulations, were made under section 43 of the Telecommunications Service Law, Cap. 302, as amended by Laws 20/60, 34/62, 25/63 and 54/77—Reg. 10(5) vests the power to effect promotions in the sub judice posts in the "Personnel Board"—Ultra vires enabling law as it constitutes unauthorized sub-delegation of power—Section 10A of Law 25/63 does not cover this case—The Statutory Functions (Conferment of Exercise) Law, 1962, does not save the regulation—Therefore, sub judice promotions must be annulled.*

The issue in these cases were:

(a) Whether the Court could annul the sub judice decision on a point of law, which the applicant had failed to raise, and

(b) Whether Reg. 10(5) (b) of the aforesaid Regulations is void for substantial ultra vires the enabling law.

Held, annulling the sub judice decision: (1) In the exercise of its revisional jurisdiction the Court may annul a decision on any ground of law,

even if not raised by the applicant.

(2) (a) The respondent Authority was divested of the power to promote its personnel, when the Constitution came into force in 1960 (Constitution, Articles 122 and 124). However, Cap. 302 continued in force, but with such modifications as were necessary to bring it into conformity with the Constitution. Section 10 was repealed and substituted by a new section 10 enacted by Law 25/63. 5

Due to the events of 1963-64 the Public Service Commission ceased to function. The matter of promotions in Public Corporations was regulated by the Public Corporations (Regulation of Personnel Matters) Law, 1970 (61/70). The power was conferred on the Corporation concerned. 10

(b) Reg. 10(b) of the aforesaid regulations vested the power to promote to the sub judice posts in the "Personnel Board", which effected the sub judice appointments. This constitutes a sub-delegation of power.

(c) The legislative power on all subjects vests under Article 61 of the Constitution in the House of Representatives. It is only when clearly the House of Representatives enables by Law another Authority to make subordinate legislation, that the latter may validly exercise such power. Subordinate legislation has to comply both in formality and in substance—extent and contents of it—with the power given to the Authority by the legislature. 15 20

The question whether or not a particular provision is ultra vires depends in every case on the true construction of the enabling power concerned.

(d) Law 61/70 does not expressly authorize sub-delegation of the power to promote personnel. Section 10(A) of Cap. 302 (added by Law 25/63) cannot be invoked to justify the sub-delegation, because: 25

(a) It enables sub-delegation only to members of the Board of the authority, and

(b) It concerns powers vested in the Authority under Cap. 302, as amended. It is not applicable to powers vested in it under Law 61/70.

(e) Law 23/62 does not save the said regulation. Indeed, neither the formalities prescribed by this Law were followed nor the Authority could thereunder divest itself completely of the exercise of the power conferred on it by Law 61/70. 30

*Sub judice decisions annulled.  
No order as to costs.* 35

Cases referred to:

*Pikis v. The Republic* (1965) 3 C.L.R. 131;

*Georgiades v. The Republic* (1966) 3 C.L.R. 252;

*Hajistephanou v. The Republic* (1966) 3 C.L.R. 289;

5 *Christodoulou v. The Republic* (1967) 3 C.L.R. 691;

*Iosif v. The Cyprus Telecommunications Authority* (1970) 3 C.L.R. 225;

*Poutros v. The Cyprus Telecommunications Authority* (1970) 3 C.L.R. 281;

*Arsalides and Another v. CY.T.A.* (1983) 3 C.L.R. 510;

10 *Christodoulou v. The Republic*, 1 R.S.C.C.1;

*Spyrou and Others v. The Republic* (1973) 3 C.L.R. 627;

20 *Rapaxenophontos and Others v. The Republic* (1982) 3 C.L.R. 1037;

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

*Lefkatis and Others v. The Republic* (1985) 3 C.L.R. 1372;

15 *Commissioners of Customs and Excise v. Cure and Deeley Ltd.* [1962] 1 Q.B.D. 340;

*Cleanthous v. CY.T.A.* (1974) 3 C.L.R. 461.

Recourses.

20 Recourses against the decision of the respondent to promote the interested parties to the posts of Head B and Section Leader in preference and instead of the applicants.

A.S. Angelides, for applicants in Cases Nos. 491/87 and 612/87.

I. *Typographos*, for applicant in Case No. 569/87.

M. Tsangarides for E. Efstathiou, for applicant in Case No. 629/87. 5

A.C. Hadjioannou, for respondents.

*Cur. adv. vult.*

STYLIANIDES J. read the following judgment. The applicants are employees of the Respondents - The Cyprus Telecommunications Authority (the "Authority"). 10

Recourses Nos 491/87, 612/87 and 629/87 are directed at the validity of the promotion of interested party Andreas Philotas to the post of Προϊστάμενος Υπηρεσίας Β' (Proistamenos Ipiresias B').

The applicant in Case No. 569/87 challenges the validity of the promotion of interested party Kyriacos Korinos to the post of Τομέαρχης (Section Leader). 15

Both posts, under Regulation 4 of the Personnel of The Cyprus Telecommunications Authority General Regulations, 1982 ("The Regulations"), are classified as posts of Senior Personnel. 20

In all four cases a common point of law arises and I considered pertinent to deliver one judgment for all these cases.

The point that poses for determination is:

"The Body that made the sub judice promotions had no competence, as the Regulations which vested it with such power are invalid in that they are ultra vires the enabling Law." 25

In Case No. 629/87 this point of law was not raised and in Cases Nos 491/87 and 612/87 it was raised in the address of counsel for the applicants. Objection was taken by learned counsel for the respondents that this point of law cannot be pursued, as it was not set out in the grounds of law on which the recourses were based.

Triantafyllides, J. as he then was, in *Costas M. Pikiis and the Republic of Cyprus* (1965) 3 C.L.R. 131, when objection was raised that applicant in those proceedings had not actually sought to annul the administrative action taken in the ground that it contravened Article 29(1), had this to say at p.148:-

"This, however, cannot prevent an administrative court, such as this Court, from administering justice in the matter as it deems proper. Applicant has challenged the validity of the said action under Article 146 and it is open to this Court to annul such action on any ground of law, even if not raised by the parties, if in the opinion of the Court such course is properly called for. This is a necessary corollary of the nature of the competence of an administrative court on a recourse for annulment (see Tsatsos on the Recourse for Annulment to the Council of State 2nd edition pp. 225-226)"

Article 146 is the vehicle whereby the Court inquires into the validity of an executory administrative act and it is upon this Court to annul the sub judice act on any ground of law, even if not raised by the parties. The Court, however, before doing so, has to invite the parties to address it on such a ground of law.

An administrative court is entitled to examine ex proprio motu the competence of the particular organ, the decision of which is being challenged before it in view of the nature of its revisional jurisdiction - (*Cleanthis Georghiades and The Republic of Cyprus* (1966) 3 C.L.R. 252, at p. 276; *Yiangos P. Hjistephanou and The Republic of Cyprus* (1966) 3 C.L.R. 289, at p. 300; *Annika Christodoulou v. Republic (Public Service Commission)* (1967) 3 C.L.R. 691, at p. 701).

The aforesaid is a complete answer to the objection of counsel for the Respondents.

In the cases under consideration, counsel for the Respondents had ample opportunity, both in his written address and at the clarifications' stage, to expound his views.

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The basic Law governing the establishment, functions, etc, of the Authority is Cap. 302, enacted prior to Independence.

Section 10(1) provided that the "Authority shall appoint" a General Manager, a Secretary, and such other officers and servants as may be necessary for the purposes of this Law.

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On the establishment of the Republic and the coming into force of the Constitution, the Authority was divested from this power by Constitutional Provisions.

Under Article 122 of the Constitution "public service" includes service under the Authority.

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A Public Service Commission was established by Article 124, which was entrusted under Article 125 exclusive power regarding, inter alia, appointments, promotions, emplacements, transfers of the officers and servants of the Respondent Authority as well.

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Cap. 302 continued in force after the establishment of the Republic under Article 188 of the Constitution, but with such modifications as were necessary to bring it into conformity with the Constitution.

Section 10 was repealed and substituted by a new section 10 by section 4 of Law 25/63.

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The new section 10(1) provided that "there shall be appointed" a General Manager, a Secretary and such other officers and servants as may be necessary for the purposes of this Law. This was

done in order to bring this section in conformity with the legal order created by the Constitution as aforesaid.

5 Due to the events of 1963-1964 that Commission ceased to function properly and in 1967 a substitute Public Service Commission was set up by the Public Service Law, 1967 (Law No. 33/67).

10 The power of this substitute Commission was limited to the civil servants only and, thus, as from July, 1967, there was a vacuum of power, which was judicially proclaimed in *Ioannis Iosif v. The Cyprus Telecommunications Authority* (1970) 3 C.L.R. 225; *Vincent Poutros v. The Cyprus Telecommunications Authority* (1970) 3 C.L.R. 281. The same problem was created for other Public Corporations, such as E.A.C. and C.B.C.

15 To remedy this situation, and until the people of Cyprus expressed their opinion on the matters, The Public Corporations (Regulation of Personnel Matters) Law, 1970 (Law No. 61/70) was enacted. Section 3(1) conferred on the respective Corporations, which includes the Authority, the power of appointment, confirmation of appointment, emplacement in the permanent staff, 20 promotion, transfer, secondment, retirement and the exercise of disciplinary control on the members of their personnel.

25 "Personnel" is defined in section 2 to include the General Manager, except in the case where by the relevant Law his appointment is within the competence of the Council of Ministers, the Secretary and all other officers and servants of the Corporations.

Sub-sections (1), (2) and (3) of section 3 read as follows:-

30 "3.- (1) Τηρουμένων των διατάξεων του οικείου νόμου υπάγεται εις την αρμοδιότητα εκάστου Οργανισμού ο διορισμός, η επικύρωσις διορισμού, η ένταξις εις το μόνιμον προσωπικόν, η προαγωγή, η μετάθεσις, η απόσπασις και η αφυπηρέτησις του προσωπικού του Οργανισμού ως και η επ' αυτού άσκησις πειθαρχικού ελέγχου, περιλαμβανομέ-

νων της απολύσεως ή της απαλλαγής από των καθηκόντων μελών του προσωπικού.

(2) Τηρουμένων των διατάξεων του εδαφίου (3) οιαδήποτε των εν τω εδαφίω (1) αναφερομένων αρμοδιοτήτων ασκείται υφ' εκάστου Οργανισμού συμφώνως προς τας 5 διατάξεις του οικείου νόμου ή οιονδήποτε δυνάμει αυτού εκδοθέντων ή εκδοθησομένων κανονισμών ή κανόνων, τας ρυθμιζούσας το θέμα εν σχέσει προς το οποίο ασκείται η αρμοδιότης.

(3) Οσάκις ο οικείος νόμος δεν περιλαμβάνη διάταξιν 10 ρυθμιζούσαν ή χορηγούσαν εις τον Οργανισμόν εξουσίαν προς έκδοσιν κανονισμών ή κανόνων ρυθμιζόντων οιονδήποτε των θεμάτων εν σχέσει προς τα οποία δύναται να ασκηθή υπό του Οργανισμού αρμοδιότης δυνάμει του εδαφίου (1), ο οικείος νόμος θα ερμηνεύηται και εφαρμόζηται 15 ως εάν περιλαμβάνετο εν αυτώ διάταξις χορηγούσα εις τον Οργανισμόν εξουσίαν προς έκδοσιν κανονισμών ή κανόνων ρυθμιζόντων το θέμα τούτο."

"3. - (1) Subject to the provisions of the relevant specific Law there shall be within the competence of each Authority the 20 appointment, confirmation of appointment, emplacement in the permanent establishment, promotion, transfer, secondment and retirement of the personnel of such Authority, as well as the exercise of disciplinary control, including dismissal or termination of the duties of members of the personnel. 25

(2) Subject to the provisions of sub-section (3), any of the competences mentioned in sub-section (1) is exercised by each Authority in accordance with the provisions of the relevant specific Law or in accordance with any regulations or rules 30 made or to be made under such Law, regulating the matter in connection with which competence is exercised.

(3) Whenever the relevant specific Law does not contain a provision ordaining or granting to an Authority the competence



5 to make regulations or rules regulating and of the matters in respect of which competence may be exercised by such Authority in accordance with sub-section (1), the said Law will be interpreted and applied as if there was included therein a provision granting to the Authority competence for the making of regulations or rules regulating the matter."

10 The Authority was empowered by section 43 of the basic Law, Cap. 302, with the approval of the Governor (after Independence Council of Ministers) to make regulations, not inconsistent with the provisions of the Law; or any other Law in force for the time being, to be published in the Gazette, "for the better carrying of this Law into effect".

15 The Authority made the General Staff Regulations on 27th July, 1977, which provided, inter alia, for the classification of the personnel, the terms and conditions of appointment, permanent emplacements, promotion, transfer, disciplinary proceedings and dismissals. They were not placed before the Council of Ministers for approval and they were not published in the Official Gazette of the Republic, though they were persistently applied until 26th July, 1982.

25 In the meantime in *Arsalides and Another v. CYTA* (1983) 3 C.L.R. 510 their validity was contested on the ground that they were *ultra vires* as to the mode in which they had been made - no approval by the Council of Ministers and no publication in the Gazette. As a result they were approved by the Council of Ministers and were, ultimately, published in the Official Gazette on 26th July, 1982, under Notification No. 220.

30 These are the Regulations under which the sub judge promotions were effected and their substantive validity is now challenged..

The Regulations were made under section 43 of the Telecommunications Service Law, Cap. 302, as amended by Laws 20/60, 34/62, 25/63, 54/77.

The relevant Regulations for these cases are 10(5) (b), (7) (a) and 24.A.

A Personnel Board (Συμβούλιον Προσωπικού), consisting of three officers of the highest or senior personnel, nominated by the General Manager, and three employees, nominated by the Trade Union and appointed by the General Manager, chaired by one of the officers nominated by the General Manager, is set up under Regulation 24.A.1. The decision of this Board is subject to confirmation by the General Manager, who, before the confirmation may refer back to the Board for re-examination any decision. Decisions not confirmed by the General Manager are referred for determination by the Board of the Authority.

Promotions are governed by Regulation 10 The promotions of the highest personnel are made by the Board of the Authority.

By Regulation 10(5) promotions of all the personnel of the Authority, except the highest personnel which includes only the Head of a Department and the Deputy Head of Department (Διευθυντής και Υποδιευθυντής), are made by the Personnel Board.

The sub judice promotions were made by this Personnel Board and were confirmed by the General Manager. The Authority did not take any part in the decision making process.

It is well settled that when any decision is taken on Regulations which are ultra vires the enabling Law, such decision has to be annulled and to be declared null and void and of no effect whatsoever - (*Miltiades Christodoulou and The Republic (Collector of Customs Nicosia)* 1 R.S.C.C. 1).

This principle was repeatedly enunciated and applied by this Court in a number of cases ever since - (*Savvas Chr. Spyrou and Others v. Republic (Licensing Authority)* (1973) 3 C.L.R. 627; *Papaxenophontos and Others v. Republic* (1982) 3 C.L.R. 1037; *Ethnikos v. K.O.A.* (1984) 3 C.L.R. 1150; *Lefkatis and Others*

v. Republic (1985) 3 C.L.R. 1372).

5 Delegate or subordinate legislation may be challenged for substantive ultra vires, that is, on the ground that it goes beyond the powers granted by the legislature - (*Commissioners of Customs and Excise v. Cure and Deeley Ltd.*, [1962] 1 Q.B.D. 340).

10 The legislative power on all subjects vests under Article 61 of the Constitution in the House of Representatives. It is only when clearly the House of Representatives enables by Law another Authority to make subordinate legislation, that the latter may validly exercise such power. Subordinate legislation has to comply both in formality and in substance - extent and contents of it - with the power given to the Authority by the legislature.

15 The question whether or not a particular provision is ultra vires depends in every case on the true construction of the enabling power concerned.

20 The power to promote employees on the Authority vested from the establishment of the Republic in the Public Service Commission. It is only by Law 61/70 that such power was conferred on the Authority. This Law provided that the power shall be exercised by the Authority in conformity and under Regulations to be made either under that Law or under the relevant Law, in the present case Cap. 302.

25 The statutory power must be exercised only by a Body in which it has been confided, unless sub-delegation of the power is authorized by express words or necessary implication - (Halsbury's Laws of England, 4th Edition, Volume 1, paragraph 32).

30 Even then, the Body, in which power is vested, cannot divest itself by sub-delegation of all the power, unless the Law so provides. In general a delegation of power does not imply parting with authority.

Under Cap. 302 the Authority had no power to appoint, pro-

mote, etc. , after Independence.

Section 10A. , which was added by section 4 of Law 25/63, enabled the Authority to transfer to any of its members (of the Board of the Authority) the exercise of any of its functions or administrative powers, by virtue of the Law.

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Learned counsel for the Respondents submitted that in *Cleopatra Cleanthous v. The Cyprus Telecommunications Authority* (1974) 3 C.L.R., 461, it was held that the disciplinary matters were not within the competence of the Board of the Respondent, but the General Manager, under the Internal Rules of the Authority.

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I have gone through the Decision in that case. Neither the formal, nor the substantive validity of those Internal Rules were contested, argued, or decided by the Court. Thereafter, in *Arsalides* case (supra), the so called Internal Rules were declared invalid because the exercise of the Rule making power was formally defective.

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Section 10.A , authorizing the delegation of the exercise of the functions and administrative power of the Authority, imposes two limitations:-

20

(a) The delegation is permissible only to members of the Authority, that is members of the Board of the Authority, and not to officers or subordinates; and

(b) Only power and functions vested in the Authority, in virtue of Law Cap.302 as amended, may be delegated.

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Law 61/70, which conferred on the Authority the power to appoint, promote, etc., does not authorize it to delegate this power and, further, the delegation of such power is not within the ambit of section 10.A of Law 25/63.

It has to be noted that Laws governing other public corpora-

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5 tions empower such corporations with the discretion to delegate power to sub-committee - (see section 5(6) of The Cyprus Tourism Organization Law, 1969 (Law No. 54/69) as amended by section 2 of Law 48/78 and section 2 of the Law 16/85, which repealed and substituted the previous provisions. See, also, section 8 of The Cyprus Ports Authority Law, 1973 (Law No. 38/73)).

10 It was, further, submitted by counsel for the Respondents that the Regulations could be considered valid in view of the provisions of the Statutory Functions (Conferment of Exercise) Law, 1962 (Law No. 23/62).

15 There are two flaws in this submission: The formalities prescribed by this Law were not followed and the Authority could not divest itself completely of the exercise of the power conferred on it by Law 61/70. The provisions of section (3) and (4) of the Law militate against the submission of counsel.

20 In view of the foregoing, Regulations 10(5) (b), (7) (a) and 24.A are beyond the scope of the enabling Law. They are ultra vires. The Personnel Board, which was set up under these Regulations, was a Body not intended in Law and at any rate it had no competence to make the sub judice promotions.

As these recourses succeed on the question resolved above, I need not embark on any of the particular grounds advanced by the applicants in support of their respective case.

The recourses succeed.

25 The sub judice promotions are declared null and void and of no effect whatsoever under Article 146.4 (b) of the Constitution.

Let there be no order as to costs.

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