

1984 December 31

[TRIANTAFYLLIDES. P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

PANAYIOTIS TSINGIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR,

Respondent.

(Case No. 130/80).

*Legitimate Interest —Promotions —Combined establishment—
No impediment to the simultaneous promotion of applicant,
if the respondent had decided to promote him, too—Ap-
plicant has no legitimate interest, which was directly and
adversely affected by the sub judice promotions.*

5

*Legitimate Interest—Combined establishment —Decision not to
promote applicant —Reconsideration of matter during
pendency of recourse and new decision not to promote
applicant—New decision challenged by new recourse—In
the very special circumstances of this case the applicant
has no legitimate interest to continue the present pro-
ceedings.*

10

The applicant, who at the material time, held the post
of Police Superintendent B challenges by means of this
recourse: (a) The decision not to promote him to the post
of Police Superintendent A, which is on a combined establish-
ment with the post of Superintendent B, and (b) The de-
cision to promote six other officers (hereinafter “inte-
rested parties”) to the said post of Superintendent “A”.

15

While this recourse was pending the decision not to
promote the applicant was replaced after re-examination

20

by a new decision, which the applicant challenged by recourse 344/82.

Held, dismissing the recourse: (1) As the aforesaid posts are on a combined establishment, the interested parties were not promoted instead of the applicant. There was no impediment to the latter's simultaneous promotion, if the respondent had decided to promote him, too. It follows that the applicant has no legitimate interest, which was directly and adversely affected by the promotions in question.

(2) The new decision, which is challenged in recourse 344/82, relates to the same opportunity of the applicant for promotion in respect of which the sub judice decision was taken, because such new decision was reached after re-examination of the matter. If recourse 344/82 succeeds the applicant will be in the same position, as if his present recourse is successful. If recourse 344/82 fails, it will be established that the applicant was in any event not entitled to promotion. It follows that in the very special circumstances of this case the applicant does not possess a legitimate interest to continue these proceedings.

Recourse.

Recourse against the refusal of the respondent to promote the applicant to the post of Police Superintendent A.

N. Papaefstathiou, for the applicant.

A. Papasavvas, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult

TRIANAFYLIDIS P. read the following judgment. In this case the applicant challenges the decision of the respondent Minister of Interior not to promote him to the post of Police Superintendent A.

Such post is on a combined establishment with the post of Police Superintendent B, at which the applicant was at the material time.

The applicant, also, challenges the decision of the respondent to promote six other officers to the said post (to be referred to hereinafter as "the interested parties"). But as the posts of Superintendent A and Superintendent B are on a combined establishment it cannot be said that the interested parties, whose promotions were published in the Weekly Orders of the Police, Part II, on the 10th March 1980, were promoted to the post of Superintendent A instead of the applicant. There was no impediment under the relevant budgetary appropriations to their promotions and to the simultaneous promotion of the applicant as well, if the respondent had decided to promote him, too. The applicant, therefore, has no legitimate interest which was directly and adversely affected by the promotions of the interested parties, in the sense of Article 146.2 of the Constitution, and, consequently, this recourse, in so far as it relates to the promotions of the interested parties, has to be dismissed.

As regards the decision not to promote the applicant to the post of Superintendent A, such decision was, while the present recourse was pending, replaced by a new decision of the respondent Minister of Interior, after a re-examination of the case of the applicant as a result of legal advice given by the Attorney-General of the Republic; and such new decision, which appears to have been taken on the 25th May 1982, has already been challenged by a new recourse of the applicant, No. 344/82, which is pending before this Court.

The applicant contends, nevertheless, that in spite of the new decision of the respondent this recourse has not been abated, as submitted by counsel for the respondent, and he bases this view on the argument that if the present recourse is successful, the applicant can pursue his claim for equitable damages under Article 146.6 of the Constitution for any injury which he has suffered as a result of the decision which is challenged by the present recourse.

In the circumstances of the present case it is clear that the second decision of the respondent, which is challenged in case No. 344/82, relates to the very same opportunity of the applicant for promotion in respect of which the de-

cision challenged by the present recourse was first taken, because the said second decision was reached after a re-examination of the matter of the promotion of the applicant.

5 If recourse No. 344/82 is successful then the applicant will be able to claim all the benefits to which he would have been entitled if he had been promoted to Superintendent A right from the time when the sub judice decision in the present recourse was taken and the applicant will,
10 thus, be in the same position as if his present recourse is successful. If, on the other hand, recourse No. 344/82 is unsuccessful it will be established that the applicant was not entitled to promotion, in any event, as from the time when the sub judice in the present recourse decision not
15 to promote him was taken.

It follows, therefore, that it has to be found, in the very special circumstances of this case, that the applicant does not possess a legitimate interest entitling him to continue the proceedings in the present recourse once the decision
20 which he challenges by it has been replaced by the aforementioned subsequent decision which is the subject-matter of his new recourse No. 344/82.

Consequently, the present recourse has to be treated as having been abated and it is dismissed accordingly; but
25 with no order as to its costs.

*Recourse dismissed.
No order as to costs.*