

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION  
IACOVOS PAVLIDES,

IACOVOS  
PAVLIDES

v.

REPUBLIC  
(MINISTRY OF  
EDUCATION  
AND/OR HEAD  
OF HIGH AND  
SECONDARY  
EDUCATION)

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTRY OF EDUCATION AND/OR THE  
HEAD OF THE HIGH AND SECONDARY EDUCATION,

*Respondent.*

(Case No. 16/74).

*Administrative Law—Executory Act—Preparatory act—Education-  
al Officer—Assessment and grading of work of—Under Regu-  
lation 26(1) (b) of the Educational Officers (Teaching Person-  
nel) (Appointments, Postings, Transfers, Promotion and Rele-  
vant Subjects) Regulations, 1972—Not an executory act which  
produces direct legal consequences but a preparatory act—It  
cannot be made the subject of a recourse under Article 146 of  
the Constitution.*

*Public Officers—Assessment of essential qualifications of candi-  
dates for promotion—Is not within the control of the Admi-  
nistrative Court.*

The only issue for consideration in this recourse was whether  
the assessment and grading of the work of the applicant, a  
Secondary Education Schoolmaster, as regards the five essen-  
tial qualifications under regulation 26(1) (b) of the Education-  
al Officers (Teaching Personnel) (Appointments, Postings,  
Transfers, Promotions and Relevant Subjects) Regulations,  
1972 was an executory act which could be made the subject  
of a recourse under Article 146 of the Constitution.

*Held*, that executory administrative acts are acts by means  
of which there is expressed the will of the administration in  
order to produce legal consequences regarding those governed  
and which entail immediate administrative enforcement; that  
acts preceding the executory act or preparatory acts do not  
produce by themselves direct legal consequences and cannot

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be attacked by a recourse (see Conclusions from the case-law of the Council of State in Greece 1929-1959 at pp. 237, 239); that the assessment of the essential qualifications of candidates for promotion is within the judgment of the collective organ of the administration and consequently is not within the control of the administrative Court, provided that there is no misconception of facts or other violation of the Law or abuse of discretionary powers; that, therefore, the grading of the applicant is not an executory act which produces direct legal consequences but a preparatory act and as such it cannot be made the subject of a recourse under Article 146 of the Constitution; and that, accordingly, the application must be dismissed.

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*Application dismissed.*

**Recourse.**

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Recourse against the grading and/or the table of inspection and/or general assessment of applicants' work for the school year 1972-1973.

*Ph. Valiandis*, for the applicant.

*A. S. Angelides*, for the respondent.

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*Cur. adv. vult.*

The following judgment was delivered by:-

MALACHTOS, J.: The applicant in this recourse claims a declaration of the court that his grading and/or the table of inspection and/or the general assessment of his work for the school year 1972-73, as well as every subsequent administrative act and/or decision, is *null* and *void* and of no legal effect whatsoever.

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The application is based, as stated therein, on the following legal grounds:

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1. The respondents acted under a misconception of law or contrary to the Educational Officers (Teaching Personnel) (Appointments, Postings, Transfers, Promotions and Relevant Subjects) Regulations of 1972.

2. The respondents did not base their administrative act or decision on objective criteria but acted under a misconception of fact if adverse influence or revenge as motive are not proved.

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3. The respondents at all material times included in the three-member organ of the higher inspection of the applicant, an inspector with whom the applicant was in litigation to the knowledge of the Ministry.

5 4. The respondents acted contrary to the existing practice, and

5. The procedure followed for the inspection of the applicant was neither the proper nor the lawful one.

10 The respondents in their opposition besides the allegation that they acted in a lawful manner, taking into consideration all the circumstances and facts of the case, they raised a preliminary legal issue claiming the dismissal of the present recourse on the ground that the grading and/or the table of inspection and/or the general assessment of the work of the applicant for the school year 1972-73, the subject matter of the present recourse, as well as every assessment of work and/or grading, is not an executory act and so cannot be attacked by a recourse.

20 When this case came on for hearing both advocates agreed that the preliminary legal issue raised in the opposition should be heard and determined first.

The relevant facts of this case are shortly as follows:

25 The applicant is a school teacher of Philology Secondary Education and is posted at the Lanition Gymnasium in Limassol.

30 By letter dated 31st October, 1973, addressed to him by the Head of the Higher and Secondary Education, the applicant was informed that the general assessment of his work for the school year 1972-73 as regards the five essential qualifications enumerated in regulation 26(1) (b) of the Educational Officers (Teaching Personnel) (Appointments, Postings, Transfers, Promotions and Relevant Subjects) Regulations of 1972, were:

- (i) very good
- 35 (ii) good
- (iii) good

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(iv) very good; and

(v) very good.

This assessment took place on the application of the applicant claiming higher inspection.

By letter dated 14th November, 1973, addressed to the Head of the Higher and Secondary Education, the applicant objected to his above grading.

The Head of the Higher and Secondary Education replied by letter dated 18th December, 1973, as follows:

“With reference to your letter dated 14th November, 1973, by which you object as regards the filing, as a result of higher inspection, of your grading for the year 1972-73, I hereby inform you that the appropriate authority having studied the whole subject is of the view that the procedure followed as above for your inspection is the appropriate one and the grading appearing in your service report was made with all possible objectiveness by the team of inspectors.

For these reasons your objection cannot be accepted”.

As a result the applicant filed the present recourse.

Counsel for the respondent argued that the assessment and the grading of the applicant as regards his service cannot be the subject of a recourse under Article 146 of the Constitution as they do not amount to an executory act but they are only acts of preparation and so the court cannot control a preparatory act and substitute the organ which made the assessment. No doubt the applicant has a legitimate interest to attack his grading but this grading cannot be attacked by a recourse as such, since it is a preparatory act and so the legitimate interest of the applicant is not an existing one.

On the other hand, counsel for the applicant argued that in the present case we have an administrative executory act because the act of grading of the applicant was made by an organ which has a decisive jurisdiction.

Finally he submitted that the grading of the Education-

al Officers leads to their promotion and the inspectors who perform the grading could be nothing else except an organ of decisive jurisdiction.

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5 As stated in the Conclusions from the Case-Law of the Council of State in Greece 1929 to 1959 at page 237, executory administrative acts are acts by means of which there is expressed the will of the administration in order to produce legal consequences regarding those governed and which entail immediate administrative enforcement;  
10 the main element of the notion of an administrative act is the production of a legal result through the creation, modification or termination of a legal situation.

15 Also at page 239 of the same book under the heading "Acts preceding the executory act or preparatory acts", it is stated that such acts do not produce by themselves direct legal consequences and, therefore, cannot be attacked by a recourse. Such acts are the reports containing the assessment of the service abilities and the essential qualifications of a civil servant.

20 In the Systima Ipallilikou Dhikeou by Fthenakis 1967 edition, vol. C, page 92, paragraph 7, it is stated that the judicial control of the administrative acts for promotions before the Council of State has always been a very serious subject due to the importance and significance which it exercises on the correctness of the promotions made by the Administration. However, the volume of these cases, which were brought at times before this court, not only imposed the securing of the non control of the judgment of the service factor from the point of view of essential  
25 assessment of the servant under consideration, but also their handling in such a way safeguarding the establishment of the right order in the course of the control of the administrative acts of promotions. So, under the established Case Law of the Council of State, which has been created under the law in force before the coming into operation of the service Code, it was accepted that the assessment of the essential qualifications of the servants under consideration for promotion is within the judgment of the collective organ of the administration and, consequently,  
30 is not within the control of the administrative court, provided that there is no misconception of facts or other violation of the law or abuse of discretionary powers.  
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It is clear from the above that in the present case the grading of the applicant is not an executory act which produces direct legal consequences but a preparatory act and as such it cannot be the subject of a recourse under Article 146 of the Constitution.

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For these reasons this recourse fails and is dismissed accordingly.

On the question of costs I make no order.

*Application dismissed.*

*No order as to costs.*

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