

1976 March 26

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS SAVVA CHRISTODOULIDES,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF EDUCATION,

Respondent.

(Case No. 213/75).

Recourse for annulment—Abatement—Recourse against refusal to certify admission as a student of a University—Certificate issued after recourse had been served—Applicant suffering damage due to the initial refusal—Recourse not abated because an administrative act of limited duration, which before ceasing to be effective has produced results, can be annulled even though the legal situation created by it has subsequently ceased to exist.

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After the applicant had secured admission as a student of Lunds University in Sweden, on or about October 16, 1975, he applied to the respondent Minister, on October 22, 1975, to certify such admission; he required this certificate in order to be discharged from the National Guard. The respondent Minister refused to issue the certificate in question and the applicant was not discharged then from the National Guard so as to be enabled to reach Sweden in time for the commencement of the next academic year which was to commence in November, 1975. The required certificate was issued to the applicant on January 10, 1976, after this recourse, against the refusal to certify the admission, had been served.

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Applicant did not withdraw this recourse in view of the fact that he has suffered damage due to the initial refusal of the respondent.

Counsel for the respondent conceded that the initial refusal to certify the admission was erroneous due to a mistake made by an official in the Ministry of Education; and that such refusal could be declared invalid in the present proceedings.

On the questions whether (a) the initial refusal was erroneous and (b) whether, since the requested certificate was actually issued on January 10, 1976, the initial refusal of such certificate ceased to be operative and, consequently, the present recourse should be treated as having been abated: 5

Held, (1) that from the material placed before this Court in the present case, it is satisfied that it was, initially, erroneously refused to certify the admission of the applicant by the University in question. 10

(2) That this recourse cannot be treated as having been abated, because an administrative act of limited duration, which before ceasing to be effective has produced results, can be annulled even though the legal situation created by it has subsequently ceased to exist (*Malliotis v. The Municipality of Nicosia* (1965) 3 C.L.R. 75 at p. 94 followed; *Vafeades v. The Greek Communal Chamber* (1966) 3 C.L.R. 197 distinguished); and that, accordingly, the refusal of the respondent Minister, which is the subject-matter of this recourse, is hereby declared to be null and void and of no effect whatsoever. 15 20

Sub judice decision annulled.

Cases referred to: 25

Malliotis v. The Municipality of Nicosia (1965) 3 C.L.R. 75 at p. 94;

Vafeades v. The Greek Communal Chamber (1966) 3 C.L.R. 197;

Decisions of the Greek Council of State Nos. 215/1970 and 710/1970. 30

Recourse.

Recourse against the refusal of the respondent Minister to certify that the applicant has secured admission as a student of Lunds University in Sweden. 35

L. Papaphilippou, for the applicant.

A. S. Angelides, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:

5 TRIANTAFYLLIDES P.: This recourse has been made against the refusal of the respondent Minister to certify that the applicant has secured admission as a student of Lunds University in Sweden.

It is admitted in the respondent's Opposition that such refusal was communicated to the applicant orally on October 23, 1975.

10 The salient facts of the case, as they are set out in the application in this recourse and in an affidavit sworn by the applicant on December 31, 1975, are as follows:

15 While the applicant was serving in the National Guard he applied, on October 22, 1975, for the certificate in question, after he had secured admission, on or about October 16, 1975, by the aforesaid university; he required the certificate in order to be discharged from the National Guard pursuant to a decision of the Council of Ministers concerning servicemen who were to proceed abroad for university studies.

20 The next academic year was to commence in November 1975. As a result, however, of the refusal of the respondent to issue the requested certificate, the applicant was not discharged then from the National Guard so as to be enabled to reach Sweden in time for the commencement of the next academic year.

On January 10, 1976, and after this recourse had been served, the required certificate was issued to the applicant.

25 The applicant did not withdraw this recourse in view of the fact that, as has been pointed out by his counsel during these proceedings, the applicant has suffered damage due to the initial refusal of the respondent to issue to him the certificate concerned.

30 It has not been disputed by counsel for the respondent that the complained of initial refusal of the respondent to certify the admission of the applicant was erroneous, due to a mistake made by an official in the Ministry of Education; nor was it contended that such refusal, which did cause detriment to the applicant, could not be declared to be invalid in the present proceedings.

From the material placed before me in this case I am, indeed, satisfied that it was, initially, erroneously refused to certify the admission of the applicant by the university in question.

I have proceeded to examine, too, whether, since on January 10, 1976, the certificate requested by the applicant was actually issued, it could be said that the initial refusal of such certificate ceased to be operative and, consequently, the present recourse should be treated as having been abated: I am of the opinion that this is not so, because as has been pointed out in *Malliotis v. The Municipality of Nicosia*, (1965) 3 C.L.R. 75, 94, an administrative act of limited duration, which before ceasing to be effective has produced results, can be annulled even though the legal situation created by it has subsequently ceased to exist. 5 10

In this respect the present case is distinguishable from that of *Vafeades v. The Greek Communal Chamber*, (1966) 3 C.L.R. 197, where the recourse was treated as abated because a notice about the impending retirement of the applicant in that case was cancelled and, therefore, his recourse against such notice was deprived of its subject matter, in view of the fact that the applicant did not in fact retire on the date indicated by the notice in question, and, consequently, he was never detrimentally affected in any way. 15 20

The legal position appears to be the same in Greece, as it is to be derived from Θ. Τσάτσου “Η Αίτησις Ἀκυρώσεως Ἐνώπιον τοῦ Συμβουλίου τῆς Ἐπικρατείας” (Th. Tsatsos on the Recourse for Annulment before the Council of State), 3rd ed., p. 370, as well as from the decisions of the Council of State in Greece in cases 215/1970 and 701/1970. 25

For all the foregoing reasons the refusal of the respondent Minister, which is the subject matter of this recourse, is hereby declared to be *null* and *void* and of no effect whatsoever. 30

Taking into account all the circumstances in this case, and, especially, the promptness with which the respondent has acted in rectifying the matter, I award against the respondent and in favour of the applicant only C£15 towards his costs. 35

*Sub judice decision annulled.
Order for costs as above.*