

1978 August 31

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MICHAEL ECONOMIDES AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(Cases Nos. 224/77, 225/77, 227/77 and 228/77).

Administrative Law—Executory act or decision—Act or decision against which there has been lodged an objection, under the provisions of a law—Ceases to be of an executory nature, because it becomes incorporated in the subsequent decision determining the objection—And it can no longer be made by itself the subject matter of an administrative recourse.

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The respondent Committee, acting in the exercise of powers under the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and related matters), Regulations of 1972 to (No. 2) of 1974, prepared and published a list of those eligible for promotion to the post of Assistant Headmaster in Secondary Education.

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The applicants objected in writing to the respondent as regards their position on the list; and their objections, which were lodged under regulation 28(6)* of the above Regulations, were rejected by the respondent.

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By means of these recourses applicants sought:

(A) A declaration that the preparation and publication of the said list was invalid and

(B) a declaration that their placing at the position in such list at which they were placed was erroneous.

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* Quoted at p. 233 *post*.

At the commencement of the hearing of the recourses counsel for the respondent raised the preliminary objection that the recourses ought to be dismissed inasmuch as they have not been made against the final decisions of the respondent concerning their subject matter, but only against earlier decisions, in this respect, of the respondent, which have ceased to be in force, in the sense that they are no longer of an executory nature.

Held, (1) that, though the decisions rejecting the objections of the applicants, are executory and can be made the subject of a recourse under Article 146 of the Constitution, it is a well established principle of administrative law that an act or decision against which there has been lodged an objection, under the provisions of a Law, ceases to be of an executory nature, because it becomes incorporated in the subsequent decision determining the said objection and, therefore, it can no longer be made by itself the subject matter of an administrative recourse. (See decisions of the Council of State in Greece in, *inter alia*, Cases 628/1963, 2550/1965); that, accordingly, it was not open in law to the applicants in the present recourses to challenge solely the initial decisions of the respondent Committee placing them at their respective positions in the lists of those eligible for promotion to the post of Assistant Headmaster in Secondary Education; and that, consequently, the applicants are not entitled to the relief claimed by paragraph B above in each one of the four recourses now before this Court. (Question whether or not the decisions rejecting the objections may be treated as being challenged, also, by means of the present recourses, even though this is not stated to be so in such recourses (see *inter alia*, Case No. 444/69 of the Greek Council of State) left open as the Court heard no argument on the point).

(2) That the right of the applicants to seek the relief in paragraph A above is not affected by the lodgment by them of their aforementioned objections and their determination by the respondent Committee, because what appears to be involved in relation to the said paragraph A is the validity of the process of preparing lists of those eligible for promotion under the relevant aforesaid Regulations and this is a matter which was not raised at all by the objections lodged by the applicants as regards their respective positions on such lists.

Order accordingly.

Cases referred to:

- Pelides v The Republic and Another*, 3 R.S.C.C. 13 at p. 17,
Petrolina Ltd., v. The Municipal Committee of Famagusta (1971)
 3 C.L.R. 420 at p. 424,
- Pankyprios Syntechnia Dimosion Ypallilon and Others v The* 5
Municipality of Nicosia (1978) 3 C.L.R. 117 at p. 133,
Ktenas and Another (No. 1) v. The Republic (1966) 3 C.L.R. 64
 at p. 73,
- Varnava v. The Republic* (1968) 3 C.L.R. 566 at p. 574;
- Kelpis v. The Republic* (1970) 3 C.L.R. 196 at p. 202, 10
- Decisions of the Greek Council of State* Nos. 628/1963, 2550/
 1965, 564/1968, 145/1966, 889/1969, 2872/1969, 883/1970
 and 444/1969

Preliminary objection.

Preliminary objection, raised by Counsel for the respondent, 15
 that the recourses ought to be dismissed as they are not made
 against the final decisions of the respondent but only against
 earlier decisions which have ceased to be in force.

E Lemonaris, for the applicants.

A S. Angelides, for the respondent. 20

Cur. adv. vult

The following decision was read by:

TRIANTAFYLIDIS P.: At the commencement of the hearing of
 these four recourses, which are being heard together in view of
 their nature, counsel for the respondent raised the preliminary 25
 objection, in accordance with ground of law 1 in the Opposi-
 tions, that the recourses ought to be dismissed inasmuch as
 they are not made against the final decisions of the respondent
 concerning their subject matter, but only against earlier deci-
 sions, in this respect, of the respondent, which have ceased to 30
 be in force, in the sense that they are no longer of an executory
 nature.

By means of the motion for relief in each one of these re-
 courses the applicant concerned seeks, in effect, first (see para-
 graph A), a declaration that the preparation and publication 35
 by the respondent of a list of those eligible for promotion to
 the post of Assistant Headmaster in Secondary Education is
 invalid, and, secondly (see paragraph B), that the placing of

the applicant at the position in such list at which he was placed is erroneous.

In these proceedings we are concerned with three such lists, one in relation to schoolmasters teaching Mathematics, in which there is to be found as number 5 the applicant in Case 228/77, another in relation to schoolmasters teaching Physics, in which there are to be found as numbers 8 and 14, respectively, the applicants in Cases 224/77 and 225/77, and another in relation to schoolmasters teaching English, in which there is to be found as number 18 the applicant in Case 227/77.

The said lists were prepared by the respondent Committee at its meeting of June 29, 1977 (see its minutes *exhibit 1*), in the exercise of its powers under the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and related matters) Regulations of 1972 to (No. 2) of 1974.

Each one of the applicants has objected in writing to the respondent early in July 1977 (see *exhibits 2a-2d*) as regards his position on the list concerned, and the respondent examined such objections at its meeting of July 12, 1977 (see its minutes *exhibit 4*).

The objections of the applicants were lodged under regulation 28(6) of the aforesaid Regulations, which reads as follows:—

“ (6) Πᾶς εκπαιδευτικός λειτουργός δύναται, ἐντὸς δέκα ἡμερῶν ἀπὸ τῆς ἡμερομηνίας τῆς ἀναρτήσεως τῶν πινάκων, νὰ ὑποβάλῃ πρὸς τὴν Ἐπιτροπὴν ἔγγραφον καὶ δεόντως ἠτιολογημένην ἔνστασιν, ἣτις ἐξετάζεται ὑπὸ τῆς Ἐπιτροπῆς τὸ ταχύτερον δυνατόν, ἐν περιπτώσει δὲ ἀποδοχῆς αὐτῆς τὸ ὄνομα τοῦ ἐνδιαφερομένου εκπαιδευτικοῦ λειτουργοῦ κατατάσσεται εἰς τὸν οἰκεῖον πίνακα εἰς οἶαν σειρὰν ἡ Ἐπιτροπὴ ἤθελεν ἀποφασίσαι βᾶσει τῶν ἐν τῇ παραγράφῳ (2) ὀριζομένων στοιχείων”.

(“(6) Every educational officer may, within ten days from the date of the hanging up of the lists, submit to the Committee a written and duly reasoned objection, which is examined by the Committee as soon as possible, and in case it is accepted, the name of the affected educational officer is placed on the list concerned at such position as the Committee might decide on the basis of the factors specified in paragraph (2)”).

The objections of all the applicants were rejected by the respondent, together with twenty-two other similar objections by other schoolmasters, whereas three other such objections were accepted as being well-founded and the necessary corrections were effected to the lists in question. 5

The decisions of the respondent concerning the objections of the applicants were communicated to them by means of letters dated July 13, 1977 (see *exhibits 3a - 3d*).

The present recourses were all filed subsequently on August 17, 1977. 10

I am of the opinion that though the procedure prescribed by means of regulation 28(6), above, provides for a review by a body of administrative nature, such review is not, however, made "by way of confirmation or completion" of the lists of those eligible for promotion, in which case no recourse under Article 146 of the Constitution would be possible until such confirmation or completion had taken place (see, *inter alia*, *Pelides v. The Republic and Another*, 3 R.S.C.C. 13, 17, *Petrolina Ltd. v. The Municipal Committee of Famagusta*, (1971) 3 C.L.R. 420, 424, and *Pankyprios Syntechnia Dimosion Ypallilon and Others v. The Municipality of Nicosia*, (1978) 3 C.L.R. 117, 133). 15 20

Moreover, having perused the relevant minutes of the respondent Committee, I have reached the conclusion that the decisions rejecting the objections of the applicants are not of merely confirmatory nature, but that they were taken as a result of a new inquiry, and that they are, therefore, executory (see, *inter alia*, *Ktenas and Another (No. 1) v. The Republic*, (1966) 3 C.L.R. 64, 73, *Varnava v. The Republic*, (1968) 3 C.L.R. 566, 574 and *Kelpis v. The Republic*, (1970) 3 C.L.R. 196, 202), with the result that recourses under Article 146 of the Constitution could be made against them. 25 30

As a matter of fact, however, in the recourses now before me the aforementioned decisions of the respondent, on the objections lodged by the applicants, are neither challenged nor mentioned, and what are challenged are only the initial decisions of the respondent by virtue of which the applicants were placed at their respective positions on the lists of those eligible for promotion; and the question that has to be answered, in 35

view of the preliminary objection raised by counsel for the respondent, is whether such initial decisions are still of an executory nature, so as to be possible to attack them by means of the present recourses notwithstanding the fact that there
5 have supervened the subsequent decisions of the respondent rejecting the objections of the applicants.

It appears to be a well established principle of administrative law that an act or decision against which there has been lodged an objection, under the provisions of a Law, ceases to be of
10 an executory nature, because it becomes incorporated in the subsequent decision determining the said objection and, therefore, it can no longer be made by itself the subject matter of an administrative recourse. Useful reference may be made, in this respect, to the decisions of the Council of State in Greece
15 in Cases 628/1963, 2550/1965, 1564/1968, 145/1966, 889/1969, 2872/1969 and 883/1970; it is to be noted that in each of the last four of the above referred to cases the objection was determined, as in the present instance, by the same organ which had reached the initial decision against which the objection was
20 lodged.

I am, therefore, of the opinion that it was not open in law to the applicants in the present recourses to challenge solely the initial decisions of the respondent Committee placing them at their respective positions in the lists of those eligible for promotion to the post of Assistant Headmaster in Secondary Education and that, consequently, the applicants are not entitled to the relief claimed by paragraph B in the motion for relief in
25 each one of the four recourses now before me. I leave, however, entirely open, because I have heard no argument on this point at all, the question of whether or not the later decisions rejecting the objections of the applicants may be treated as being challenged, also, by means of the present recourses, even though this is not stated to be so in such recourses (*see, inter alia*, in this respect, the Digest of the Case-Law of the Council of
30 State in Greece (Εύρετήριο Νομολογίας Συμβουλίου τῆς Ἐπικρατείας) 1961-1970, pp. 308, 309, as well as the decision of the said Council in Case 444/1969); and I may have to give a Ruling on this point after I have heard counsel for the parties in this connection.

40 As regards, on the other hand, paragraph A of the motion

for relief in each one of these four recourses, I am of the opinion that the right of the applicants to seek that relief is not affected by the lodgement by them of their aforementioned objections and their determination by the respondent Committee, because what appears to be involved in relation to the said paragraph A is the validity of the process of preparing lists of those eligible for promotion under the relevant aforesaid Regulations and this is a matter which was not raised at all by the objections lodged by the applicants as regards their respective positions on such lists.

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These recourses are to proceed to further hearing in the light of my above Decision on the preliminary objection raised by counsel for the respondent.

Order accordingly.