

1982 February 20

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KLERI ANGELIDOU AND OTHERS,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE EDUCATIONAL SERVICE COMMISSION,

*Respondent.*

(Cases Nos. 332/80, 333/80, 343/80,  
344/80, 374/80, 396/80,  
397/80, 400/80, 414/80,  
423/80, 435/80, 463/80).

*Practice—Recourse for annulment—Administrative Court has to reach its own conclusion on the validity of any administrative decision, the subject matter of the recourse without being bound to accept what has been stated, even by way of a consensus, by the parties.*

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*Administrative Law—Administrative acts or decisions—Defect of lack of due reasoning—Whether it may be cured by giving reasons subsequently.*

*Practice—Recourse for annulment—Alleged lack of due reasoning of sub judice act one of the grounds of annulment—Existence of additional reasoning in support of sub judice decision given after the filing of the recourses—Directions for the reopening of the hearing in order to hear argument regarding the possible impact and effect of the said additional reasoning on the outcome of the recourses.*

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At the conclusion of the hearing of these recourses, which were directed against the validity of promotions and acting promotions to the post of Headmaster in Secondary Education, which were made by the respondent Commission in June and

5 August, 1980, Counsel for the respondent Commission placed before the Court the advice which she had given in writing to the Commission on October 31, 1981, which was to the effect that the sub judge decision of the Commission could not be supported as having been validly taken. One of the grounds on the basis of which the Court has been invited to annul the sub judge promotions was that the respondent Commission failed to give due reasoning for selecting for promotion some of the interested parties who had not been recommended for promotion by the Heads of Department concerned; and at the hearing there were placed before the Court minutes of the Commission dated December 9, 1981, in which the Commission appeared to be stating additional reasoning in support of its sub judge decisions.

15 At the stage of considering judgment the Court, in view mainly, but not solely, of the existence of the above additional reasoning and of the existence of a number of well established exceptions to the principle that it is not possible to cure the defect of the lack of due reasoning for an administrative decision, did not feel satisfied that it could annul as a whole all, or any one of the sub judge decisions; and having, also, in mind the principle that as an administrative Court, has, on the basis of the material before it, to reach its own conclusions on the legal, as well as on the factual, aspects of the validity of any administrative decision which is the subject matter of a recourse. without being bound to accept what has been stated, even by way of a consensus, by the parties it decided:

30 That the hearing of these cases be reopened in order that the Court will hear, first, full arguments from Counsel for the parties as regards the possible impact and effect on the outcome of these cases of the contents of the aforesaid minutes of the respondent Commission, dated December 9, 1981; and then, depending on what view the Court will take as regards such minutes, it will consider whether it can give judgment in respect of all, or some of these recourses or whether it is necessary for the Court to hear them further in respect of any other issues.

*Order accordingly.*

Cases referred to:

40 *Dafnides v. The Republic*, 1964 C.L.R. 180 at p. 185;  
*HjiSavva v. The Republic* (1967) 3 C.L.R. 155 at p. 176;

- Liasi v. Attorney-General of the Republic* (1975) 3 C.L.R. 558  
at p. 571;
- Platis v. The Republic* (1978) 3 C.L.R. 384 at p. 390;
- Protopapas and Others v Republic* (1981) 3 C.L.R. 456;
- Soundia v. The Town School Committee of Larnaca* (1965) 3 5  
C.L.R. 425 at p. 429.

### Recourses.

Recourses against the validity of promotions to the post of Headmaster in Secondary Education, which were made by the respondent Commission on June 7, 1980, and on August 30, 1980 and against the validity of acting promotions to the said post which were made on August 30, 1980. 10

- D. Michaelidou (Mrs.)*, for the applicant in 332/80.
- P. Pavlou*, for the applicant in 333/80.
- Ph. Valiantis*, for the applicants in 343/80 and 344/80. 15
- D. Demetriades*, for the applicant in 374/80.
- L. Georghiou with A. Kommaris*, for the applicant in 396/80.
- G. Christodoulou*, for the applicant in 397/80.
- M. Savva (Mrs.)*, for the applicant in 400/80.
- J. Erotocritou*, for the applicant in 414/80. 20
- N. Papaefstathiou*, for the applicant in 423/80.
- A.S. Angelides with Ch. Ierides*, for the applicant in 435/80  
and with *E. Evripidou* for the applicant in 463/80.
- G. Constantinou (Miss)*, Counsel of the Republic, for the respondent. 25
- M. Papapetrou*, for interested party Sr. Demetriou.
- Cur. adv. vult.*

TRIANTAFYLLIDES P. read the following interim decision. By means of the present recourses, which are being heard together in view of their nature, there are being challenged promotions to the post of Headmaster in Secondary Education which were made by the respondent Commission on June 7, 1980, and on August 30, 1980, as well as acting promotions to the said post, which were made, too, on August 30, 1980. 30

I have heard counsel for the applicants on common legal issues. After their addresses counsel for the respondent—in an obviously conscientious effort to present to the Court what 35

she considered to be the correct legal position—placed before me the advice which she had given in writing to the respondent Commission on October 31, 1981, to the effect that the sub  
5     judice decisions of the Commission could not be supported as having been validly taken.

Counsel appearing for interested party St. Demetriou has refused to share the views of counsel for the applicants and counsel for the respondent.

10     This Court, as an administrative court, has, on the basis of the material before it, to reach its own conclusions on the legal, as well as on the factual, aspects of the validity of any administrative decision which is the subject matter of a recourse, without being bound to accept what has been stated, even by way of a consensus, by the parties to the case (see, in this con-  
15     nection, inter alia, *Dafnides v. The Republic*, 1964 C.L.R. 180, 185, *Hji Savva v. The Republic*, (1967) 3 C.L.R. 155, 176, *Liasi v. Attorney-General of the Republic*, (1975) 3 C.L.R. 558, 571, and *Platis v. The Republic*, (1978) 3 C.L.R. 384, 390).

20     Having fully considered all the submissions of counsel for all the parties and having taken duly into account all the material which is, at present, before me, I do not feel satisfied, for the time being, that I can annul as a whole all, or any one of, the complained of decisions of the respondent Commission; and I have formed this view, mainly, but not solely, because at the  
25     closing stages of the hearing of these cases there were placed before me minutes of the Commission dated December 9, 1981, in which the Commission appears to be stating additional reasoning in support of its sub judice decisions.

30     It is correct that, as a rule, it is not possible to cure the defect of the lack of due reasoning for an administrative decision by giving reasons for it subsequently, especially after such decision has been challenged by a recourse—as it has happened on the present occasion—but to this principle there exist a number of well established exceptions (see, in this connection, the Con-  
35     clusions from the Case-Law of the Council of State in Greece—Πορίσματα Νομολογίας του Συμβουλίου της Ἐπικρατείας—1929–1959, pp. 189, 190); and if the reasoning which is set out in the aforementioned minutes of the Commission can be properly relied on, in whole or in part, in order to support the

validity of all, or any one of, its sub judice decisions then this is, obviously, a factor which may materially affect, to a considerable extent, the outcome of all, or at least of many of, the present recourses.

For example, one of the general legal grounds on the basis of which I have been invited to annul the promotions made by the respondent Commission is that it has, allegedly, failed to give due reasoning for selecting for promotion some of the interested parties who had not been recommended for promotion by the Heads of Department concerned, or who did not possess an additional academic qualification which is considered to be an advantage under the relevant scheme of service; if, however, the reasoning stated subsequently in the minutes of the Commission can legitimately be treated as complementary to the contents of the decisions of the Commission which are challenged by the present recourses it is possible that it may turn out that these recourses cannot succeed on the aforementioned grounds. 5 10 15

In relation to such grounds my attention has been, indeed, drawn by counsel for the applicants to the judgment given by my brother Judge Mr. Justice A. Loizou on December 19, 1981, in a similar case, No. 320/80—(which is not yet reported\*)—but, as at present advised, I am of the opinion that, at any rate at the present stage of these proceedings, it is not open to me to adopt the same course as that which was adopted by Mr. Justice A. Loizou in that case, since as it does not seem that there were placed before him the minutes of the respondent Commission, dated December 9, 1981, which have been produced before me. 20 25

I have, therefore, decided that it is my duty, as an administrative court (and see, in this respect, inter alia, *Soundia v. The Town School Committee, of Larnaca*, (1965) 3 C.L.R. 425, 429), to reopen the hearing of these cases in order to hear, first, full arguments from counsel for the parties as regards the possible impact and effect on the outcome of these cases of the contents of the aforesaid minutes of the respondent Commission, dated December 9, 1981; and then, depending on what view I take as regards such minutes, I shall consider 30 35

\* New reported in (1981) 3 C.L.R. 456.

whether I can give judgment in respect of all, or some of, these recourses or whether it is necessary for me to hear them further in respect of any other issues.

*Order accordingly.*