

1983 December 19

[TRIANTAFYLIDIS, P., HADJIANASTASSIOU, MALACHTOS, SAVVIDES, JJ.]

CHARILAOS KITROMILIDES,

Appellant.

v.

THE REPUBLIC OF CYPRUS. THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(*Revisional Jurisdiction Appeal No. 220*).

5 *Administrative Law—Administrative acts or decisions—Preparatory*
act—Consideration of the candidates for purposes of promotion
—A preparatory act which does not amount to an executory
act and cannot be challenged by means of a recourse under Article
10 *146 of the Constitution—Sub judice consideration of the candidates*
merged in, and became part of, the composite administrative
action culminating in the subsequent promotions, which were
not challenged by a recourse—And though such consideration
could not be challenged by a recourse on its own, its validity
could be attacked only if and when the final outcome of the relevant
administrative process had been challenged.

15 This appeal was directed against a first instance judgment of
a Judge of this Court dismissing a recourse for a declaration that
the consideration by the respondent Public Service Commission,
on the 22nd April 1977, of the merits, qualifications, seniority
and experience of all those public officers who were serving
in the post of Welfare Officer on the 20th November 1967 was
null and void in so far as the appellant was concerned.

20 *Held*, that the recourse could not be made under Article 146
of the Constitution inasmuch as the consideration of the candi-
dates complained of by appellant was nothing more than a
preparatory act and did not amount to an executory act which
could be challenged by means of a recourse under Article 146.

Held, further, that the consideration of the candidates on the 22nd April 1977, which was attacked by the appellant in these proceedings, merged in, and became part of, the composite administrative action culminating in the subsequent promotions to the post of Senior Welfare Officer against which the appellant did not file a recourse and, consequently, such consideration of the candidate could not, in any case, be challenged by a recourse on its own, but its validity could only be attacked if and when the final outcome of the relevant administrative process had been challenged by a recourse for the annulment of the aforesaid promotions. 5 10

Appeal dismissed.

Cases referred to:

- Kitromilides v. Republic* (1975) 3 C.L.R. 531;
- Tanis v. Republic* (1978) 3 C.L.R. 314 at pp. 318, 319, 15
- Cyprus Tannery Ltd. v. Republic* (1980) 3 C.L.R. 405 at pp. 412, 413;
- Kemek (Transport) Ltd. v. Republic* (1981) 3 C.L.R. 515 at pp. 520-523;
- Chryssafinis v. Republic* (1982) 3 C.L.R. 320 at pp. 326, 327; 20
- Holy Monastery of Kykkos v. Republic* (1982) 3 C.L.R. 1080 at pp. 1083, 1084;
- Vassiliou v. Republic* (1969) 3 C.L.R. 417.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (A. Loizou, J.) given on the 15th December, 1979 (Revisional Jurisdiction Case No. 235/77)* whereby appellant's course against the promotion of the interested parties to the post of Senior Welfare Officer was dismissed. 25

- L. Papaphilippou* with *H. Solomonides*, for the appellant. 30
- Cl. Antoniadis* with *N. Charalambous*, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

* Reported as *Ioannides and Another v. Republic* (1979) 3 C.L.R. 628.

5 TRIANTAFYLIDIS P. read the following judgment of the Court. By means of this appeal the appellant challenges a first instance judgment of a Judge of this Court dismissing his recourse for a declaration that the consideration by the respondent Public Service Commission, on the 22nd April 1977, of the merits, qualifications, seniority and experience of all those public officers who were serving in the post of Welfare Officer on the 20th November 1967 is null and void in so far as the appellant is concerned.

10 It is necessary to refer, first, to certain salient facts of this case:

15 In a previous recourse of the appellant (see *Kitromelides v. The Republic*, (1975) 3 C.L.R. 531) judgment was given annulling two promotions to the post of Senior Welfare Officer which were made on the 20th November 1967. The appellant and those who were promoted, as well as other Welfare Officers, were candidates for promotion to the said post.

20 The appellant retired from the public service before judgment was given in his aforesaid recourse but after such judgment he filed an action in the District Court of Nicosia claiming just and equitable damages under Article 146.6 of the Constitution.

25 He was informed by means of the statement of defence which was filed in that action that the respondent Commission, on the 22nd April 1977, had examined the merits, qualifications, seniority and experience of all those Welfare Officers who were in the service on the 20th November 1967, that is on the date when there were made the promotions which had been annulled by the judgment in the previous recourse of the appellant, and that the Commission, after such examination, decided to select 30 as the most suitable for appointment to the post of Senior Welfare Officer two other candidates and not the appellant.

35 Against such decision the appellant did not file a new recourse, but considering, apparently, that the fact that he was treated as a candidate belatedly on the 22nd April 1977, even after his retirement, on the basis of the situation which existed on the 20th November 1967, could affect the eventual outcome of his action for compensation, he filed the recourse which was dismissed by the challenged now by him first instance judgment of a Judge of this Court.

In our opinion the new recourse of the appellant could not be made under Article 146 of the Constitution inasmuch as the consideration of the candidates complained of by him was nothing more than a preparatory act and did not amount to an executory act which could be challenged by means of a recourse under Article 146 (see, inter alia, *Tanis v. The Republic*, (1978) 3 C.L.R. 314, 318, 319, *The Cyprus Tannery Ltd. v. The Republic*, (1980) 3 C.L.R. 405, 412, 413, *Kemek (Transport) Limited v. The Republic*, (1981) 3 C.L.R. 515, 520-523, *Chryssa-finis v. The Republic*, (1982) 3 C.L.R. 320, 326, 327 and *Holy Monastery of Kykko v. The Republic*, (1982) 3 C.L.R. 1080, 1083, 1084). 5 10

In any event, the consideration of the candidates on the 22nd April 1977, which is attacked by the appellant in these proceedings, merged in, and became part of, the composite administrative action culminating in the subsequent promotions to the post of Senior Welfare Officer against which the appellant did not file a recourse and, consequently, such consideration of the candidates could not, in any case, be challenged by a recourse on its own, but its validity could only be attacked if and when the final outcome of the relevant administrative process had been challenged by a recourse for the annulment of the aforesaid promotions (see, inter alia, in this respect, *Vassiliou v. The Republic*, (1969) 3 C.L.R. 417 and the case of the *Holy Monastery of Kykko, supra*). 15 20 25

For all the foregoing reasons we agree with the view of the trial Judge in the present case that the consideration of the candidates on the 22nd April 1977 could not be made the subject-matter of a recourse, which was therefore rightly dismissed; and, so, this appeal fails and has to be dismissed, too; but we have decided not to make any order as to its costs. 30

Appeal dismissed with no order as to costs.