

1984 April 27

[Pikis, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS VORKAS,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 58/84).

*Legitimate interest—Article 146.2 of the Constitution—Only a citizen with a direct interest in the sub judice decision which is prejudicially affected can seek its review—Recourse against promotion to post of Registrar in the Ministry of Health—Applicant not a candidate for the said post and he could not have been a candidate because he held a higher position in the hierarchy of the Ministry—He had no direct interest in the sub judice decision and suffered no personal prejudice in consequence thereof—He lacks the necessary interest to pursue this recourse—Fivolous recourse—Article 134.2 of the Constitution.*

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The applicant in this recourse challenged the validity of the promotion of the interested party, a medical officer, to the post of Registrar. Applicant was not a candidate for appointment to the above post; and he could not have been a candidate for such post because he held a higher position in the hierarchy of the Ministry of Health.

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*On the question whether the recourse was manifestly unfounded and as such liable to be summarily dismissed under Article 134.2 of the Constitution:*

*Held*, that only a citizen with a direct interest in the sub judice decision who is prejudicially affected can seek its review (see Article 146.2 of the Constitution); that as in the present case the applicant had no direct interest in the sub judice decision

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and certainly suffered no personal prejudice in consequence thereof he lacks the necessary interest to pursue this recourse: accordingly the recourse must fail.

*Application dismissed.*

5 Cases referred to:

*Pitsillos v. C.B.C.* (1982) 3 C.L.R. 208 at pp. 214, 217;

*Vorkas v. Republic* (1984) 3 C.L.R. 87.

### Recourse.

10 Recourse against the decision of the respondent to promote the interested party, a Medical Officer, to Registrar.

*C. Loizou*, for the applicant.

*N. Charalambous*, Senior Counsel of the Republic, for the respondent.

*M. Papapetrou*, for the interested party.

15 *Cur. adv. vult.*

PIKIS J. read the following judgment. I am required to decide whether the recourse is manifestly unfounded and as such liable to be summarily dismissed under Article 134.2 of the Constitution. An application to that end was made by respondents under rule 10(2) of the Supreme Constitutional Court Rules regulating the conduct of litigation under Article 146.1 of the Constitution.

25 The power to dismiss a recourse without inquiring into the merits, an extreme measure, can only be invoked when the recourse on its face discloses no litigable cause under Article 146.1. Counsel for the Republic argued this is truly the case before us for, notwithstanding the absence of any conceivable interest on the part of the applicant in the sub judice decision whereby the interested party, a Medical Officer, was promoted to Registrar, he seeks its review. The interest of the applicant, of whatever nature it may be, is not disclosed in the statement of facts accompanying the application. Consequently, the application to dismiss the recourse as untenable for lack of legitimate interest, is prima facie well founded.

35 Whereas the applicant was not a candidate for appointment to the post to which the interested party was promoted, nevertheless he seeks its review in circumstances that make his interest in the matter remote in the extreme. He could not have been

a candidate for the post of Registrar for he held a higher position in the hierarchy of the Ministry of Health. As from the year 1978 he hold the position of Specialist in Ophthalmology, a post superior in rank, status and remuneration to that of Registrar.

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Counsel for the applicant informed us during argument on the motion to dismiss the recourse that the interest of his client in the sub judice decision springs from his rights under the Regulations for Specialist Doctors enacted under powers vested by the Medical Registration Law, Cap. 250. Broadly speaking, the Regulations lay down the qualifications necessary for qualifying as a "specialist" and prohibit use of the title of "specialist" by anyone not qualifying thereunder. (See Regulations made under section 23(2), Cap. 250, under Notification No. 429, and Regulations of 23rd March, 1979, published in Supplement III(1) of the Official Gazette of the above date under No. 54).

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At first sight the Regulations are irrelevant to the decision under consideration. The promotion of the interested party was dependent on satisfaction of the scheme of service laying down the qualifications necessary for appointment. The scheme is in no direct way related to the Regulations. However, according to counsel for the applicant, the Regulations are relevant by a circuitous route in that the qualifications needed for appointment to the post of Registrar are equivalent to those that must be possessed by a "specialist" doctor and inasmuch as interested party allegedly did not possess the qualifications of a specialist under the Regulations, the applicant being a specialist has a right to be heard in the matter. This is a far fetched argument that can carry the case for the applicant no further. The Regulations are designed to restrict the abuse of the use of the title of a "specialist" by members of the medical profession for the purpose of protecting the public and in the interest of the ethics of the medical profession. They are totally irrelevant to the sub judice decision. Moreover, they do not appear to confer any rights cognizable in law to members of the medical profession qualifying or ranking as "specialists". The Medical Council is entrusted with the enforcement of the Regulations.

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Article 146.2 of the Constitution defines the interest necessary

to seek judicial review of administrative action. By the plain provisions of Article 146.2 of the Constitution, only a citizen with a direct interest in the sub judice decision can seek its review. Moreover, a mere interest in the matter, even where  
5 direct, will not suffice. The interest must, in consequence of the decision, be prejudicially affected. In other words, there must be a direct interest coupled with detriment. Neither a general nor an indirect interest can legitimize recourse to the Court. A direct interest may be contrasted with an indirect  
10 and an indefinite interest in a given matter. Moreover, the relationship between interest and detriment must be direct. A recourse cannot be fastened to detriment, the occurrence of which is a matter of speculation. (See, inter alia, *Pitsillos v. C.B.C.* (1982) 3 C.L.R. 208, 214, 217; *Vorkas v. The Republic* decided on the 13th January, 1984, unreported as yet\* ; *Conclusions of the Greek Council of State (1929-1959)*, p. 259; *Tsatsos—Application for Annulment before the Council of State*, 3rd Ed., pp. 48, 49, 54, 55).

In the instant case applicant had no direct interest in the sub  
20 judice decision and certainly suffered no personal prejudice in consequence thereof. It is, therefore, unnecessary to debate the implications of a body of caselaw of the Greek Council of State acknowledging in the interest of the efficiency of the service to top ranking civil servants legitimate interest to  
25 challenge appointments of subordinates in their Department. Applicant does not seek review of the promotion of the interested party under that guise, consequently, examination of the principles emerging from the above cases becomes of academic interest only. However, one may notice the above cases are  
30 of doubtful authority because they conflict with earlier decisions of the Council of State and probably defy the principles pertinent to the definition of "interest" in administrative law (see *Tsatsos (supra)* pages 62/63). In the case of Cyprus it can be argued they can have no application in view of the express  
35 provisions of Article 146.2 envisaging both a personal interest and personal detriment as a precondition for the validation of judicial review of administrative action. It is unnecessary to explore the matter further for in the present case, as already

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\* Now reported in (1984) 3 C.L.R. 87.

indicated, applicant patently lacks the necessary interest to pursue the present recourse.

The recourse is dismissed. Let it be no order as to costs.

*Recourse dismissed. No order  
as to costs.*

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