

1984 March 29

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRYSSO ARISTIDOU,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE PUBLIC SERVICE COMMISSION,
2. THE DIRECTOR OF LANDS AND SURVEYS DEPARTMENT,

*Respondents.*

(Case No. 460/83).

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*Practice—Recourse for annulment—Amendment of the prayer for relief—Principles applicable.*

*Time within which to file a recourse—Article 146.3 of the Constitution—Provisions thereof peremptory—Court may raise ex proprio motu issue as to whether particular recourse is or is not out of time.*

*Public Officers—Promotions—Combined establishment.*

By means of a recourse which was filed on 4.11.1983 the applicant a 2nd Grade Draftswoman sought “the annulment of the decision of the respondent Commission published in the Official Gazette on 14.10.1983 under Not. No. 1896, that is to say, to promote the interested parties to the permanent post of Draftsman, 1st Grade, instead of and in preference to the applicant”; and by a summons taken on 27.1.1984 she sought

- (a) The amendment of the relief prayed so as to read: “To annul the decision of the respondents published in the Official Gazette No. 1896 of 14.10.1983 whereby the applicant was not promoted or the omission not to promote the applicant to the post of 1st Grade Draftswoman”; and,

- (b) Leave to withdraw the case against the interested parties.

Promotion from the lower to the higher grade of the above office is made irrespective of whether there is a vacancy and one of the requirements for such promotion is service for five years at the post of the lower grade. Applicant was not promoted because allegedly she had not completed five years' service at the lower grade. During the hearing of the above application it transpired that the decision not to promote her was communicated to her on 20.7.1983; and therefore the recourse against the decision not to promote her would have been out of time on the date of the filing of the recourse. 5 10

*On the application for amendment:*

*Held*, that the applicant has no relation whatsoever with the promotion of the other officers, as promotion in respect of combined establishments is not made after comparison of the merits, qualifications, etc., of the various candidates in respect of an existing vacancy but only on the basis whether the officer concerned satisfies the requirements of the general directions made by the Council of Ministers in that respect; that an application for amendment should not be granted if thereby the recourse becomes a new one against another distinct administrative act which, if filed at the time of the amendment, would be out of time and contrary to Article 146.3 of the Constitution; that the provision of Article 146.3 providing for the period of 75 days within which a recourse is to be filed is peremptory; that the Court may ex proprio motu raise the issue as to whether or not a particular recourse is or is not out of time; and that, therefore, the application for amendment is refused. 15 20 25 30

*Held*, further, that the recourse being out of time cannot be entertained by this Court and it is hereby dismissed.

*Application dismissed.*

Cases referred to:

- Koufettas v. Republic* (1978) 3 C.L.R. 225; 35  
*Georghiades v. Republic* (1982) 3 C.L.R. 16;  
*Markoullides v. Republic*, 4 R.S.C.C. 7;  
*Moran v. Republic*, 1 R.S.C.C. 10 at p. 13;

*Neophytou v. Republic*, 1964 C.L.R. 280;

*Kyprianides v. Republic* (1982) 3 C.L.R. 611;

*Holy See of Kitium v. Municipal Council of Limassol*, 1 R.S.C.C. 15 at p. 18;

5 *Protopapas v. Republic* (1967) 3 C.L.R. 411 at pp. 415-416;

*Mahdesian v. Republic* (1966) 3 C.L.R. 630 at p. 633;

*Decisions of the Greek Council of State* Nos.: 73/55, 1959/66, 1999/68 and 2321/68.

### Application.

10 Application by applicant for leave to amend the relief prayed for in her recourse and for leave to withdraw the case against the interested parties.

*A. Eftychiou*, for the applicant.

*A. Vladimirov*, for the respondent.

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*Cur. adv. vult.*

STYLIANIDES J. read the following decision. The applicant is a 2nd Grade Draftswoman at the Land & Surveys Department. The 2nd Grade and the 1st Grade are a combined establishment. Promotion from the lower to the higher grade of that office  
20 is made irrespective of whether there is a vacancy and in accordance with the General Directions given by the Council of Ministers in this respect. (See s.44(1)(a) of the Public Service Law, No. 33/67).

25 The Council of Ministers approved the necessary directions at its meeting of 21.1.1982—Decision No. 21.311. One of the requirements for such promotion of the applicant was the service for five years at the post of the lower grade.

30 The Director of Land & Surveys Department sent a letter on 23rd May, 1983, whereby he recommended for promotion to the post of Draftsman, 1st Grade, 17 civil servants, including the applicant.

35 The Public Service Commission considered the matter and decided to promote 16 of them to the permanent post of draftsman, 1st Grade, with effect 15.6.1983. It further decided not to promote the applicant as she had not completed 5 years' service at the post she was holding as from 1.4.1978 since she was on leave without pay from 1.10.1979—31.7.1982.

The decision of the Commission to promote the aforesaid 16 persons was published in the Official Gazette No. 1896 dated 14th October, 1983.

The applicant by this recourse filed on 4.11.1983 seeks "the annulment of the decision of the respondent Commission published in the Official Gazette on 14.10.1983 under Not. No. 1896, that is to say, to promote the interested parties to the permanent post of Draftsman, 1st Grade, instead of and in preference to the applicant". 5

The recourse was served on the 16 promotees who were listed in the recourse as interested parties. The respondents filed their opposition on 22.12.1982 wherein the true facts are set out. 10

The applicant by a summons taken out on 27.1.1984 seeks:-

- (a) The amendment of the relief prayed so as to read: "To annul the decision of the respondents published in the Official Gazette No. 1896 of 14.10.1983 whereby the applicant was not promoted or the omission not to promote the applicant to the post of 1st Grade Draftswoman"; and, 15
- (b) Leave to withdraw the case against the interested parties. 20

The matter is governed by the Rules of the Supreme Constitutional Court 19 and 18.

The basic question is how to construe a recourse in order to ascertain at what it is aimed. In the recourse the act, decision or omission sought to be annulled must be described with certainty as the whole procedure and jurisdiction of this Court is with reference to a specific act attacked. If from the contents of the recourse it may emerge clearly that another decision was intended to be the subject-matter of the recourse and that by oversight the recourse refers to another decision, this Court may construe the recourse so as to treat it as attacking the decision intended to be attacked, that is to say, other than the one which appears to have been challenged by it. (Greek Council of State No. 702/1954). 25  
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In order to ascertain exactly the subject-matter, the recourse

has to be considered as a whole. The aforesaid was well settled by the jurisprudence of the Greek Council of State. (See Case Law of Greek Council of State, 1929–1959, p. 271—Cases 73/55, 1959/66, 1999/68 and 2321/68; Cases set out in the “Εύρετήριο Νομολογίας” of the Greek Council of State, 1961–1970, Volume 1, p. 305, and “Εύρετήριο Νομολογίας” of the Greek Council of State, 1971–1975. Volume 1, p. 181).

The aforesaid principles were adopted in *Koufettas v. The Republic*, (1978) 3 C.L.R. 225.

10 In the present case the applicant has no relation whatsoever with the promotion of the other officers, as promotion in respect of combined establishments is not made after comparison of the merits, qualifications, etc., of the various candidates in respect of an existing vacancy but only on the basis whether the  
15 officer concerned satisfies the requirements of the general directions made by the Council of Ministers in that respect. (*Georgiades v. The Republic*, (1982) 3 C.L.R. 16).

Application for amendment should not be granted if thereby the recourse becomes a new one against another distinct administrative act which, if filed at the time of the amendment, would be out of time and contrary to Article 146.3 of the Constitution.

During the hearing of this application it transpired that the decision of the respondent Commission not to promote the  
25 applicant was communicated to her on 20.7.1983 and that on 27.7.1983 she protested in writing to the Director of Public Administration and Personnel. (See copy of her letter dated 27.7.1983—exhibit No. 2).

When these facts were brought to the knowledge of the Court  
30 in the course of the hearing of the application, counsel for the respondents submitted that a recourse against the decision not to promote the applicant would today be out of time and indeed it would have been out of time on the date of the filing of this recourse, and invited the Court to dismiss the recourse. Counsel  
35 for the applicant, when asked of his view, he confined himself to state that he had nothing to say and he attributed the delay in filing the recourse to his client.

The provision of Article 146.3 providing for the period of 75 days within which a recourse is to be filed is peremptory. (*Moran v. The Republic*, 1 R.S.C.C. 10; *Markoullides v. The Republic*, 4 R.S.C.C. 7; *Neophytou v. The Republic*, 1964 C.L.R. 280; *Vassos Kyprianides v. The Republic*, (1982) 3 C.L.R. 611). The Court may ex proprio motu raise the issue as to whether or not a particular recourse is or is not out of time. (*John Moran and The Republic*, (supra), at p. 13; *The Holy See of Kitium and The Municipal Council of Limassol*, 1 R.S.C.C. 15, at p. 18; *Protopapas and The Republic*, (1967) 3 C.L.R. 411, at pp. 415–416; *Mahdesian and The Republic*, (1966) 3 C.L.R. 630, at p. 633; *Vassos Kyprianides v. The Republic*, (supra) ).

In view of the above the application for amendment is refused.

The recourse furthermore, being out of time, cannot be entertained by this Court and it is hereby dismissed.

As the ground on which the recourse is dismissed was taken up by the Court on its own motion, I make no order as to costs.

*Application refused and the recourse is dismissed with no order as to costs.*