

1984 August 1

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

GEORGHIOS PAPALEONTIOU AND ANOTHER,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
1 THE EDUCATIONAL SERVICE COMMISSION,  
2. THE MINISTER OF EDUCATION,

*Respondents*

*(Cases Nos 565/83, 567/83)*

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5 *Time within which to file a recourse—Constitution—Article*  
*146.3—Applicant in Case 567/83 excluded from promo-*  
*tions to the posts of General Inspector of Elementary Edu-*  
*cation—On the ground that he did not possess the re-*  
*quired University Qualifications—Promotions effected on*  
*22.10.80—Applicant failed to challenge either these promo-*  
*tions or the decision communicated to him by letter*  
*dated 22.10.80 rejecting his application in respect of his*  
*qualifications—The said promotions were annulled by a*  
*10 decision on this Court—The Educational Service Commis-*  
*sion reconsidered the filling of the posts on 23.12.83—*  
*As a result it promoted the interested parties—On the*  
*basis of the factual and legal situation which existed on*  
*22.10.80—Applicant's recourse against new promotions out*  
*15 of time—If it were to be held otherwise and allowed him to*  
*challenge the basis of his exclusion from the initial pro-*  
*motion, the provisions of Article 146.3 would be nullified*

20 *Educational Officers—Promotions—Annulled—When reconsider-*  
*ing the filling of the posts the Educational Service Com-*  
*mission had a composition different from its composition*  
*at the time it took the decision annulled—In reconsidering*  
*the filling of the posts it rightly excluded the impressions*

*formed at the interview, held for the promotions, subsequently annulled.*

Applicant Papaleontiou in recourse 565/83 and applicant Loizides in recourse 567/83 challenge the promotion of interested parties in both recourses Papadopoulos and Tornaris to the post of General Inspector of Elementary Education. 5

On 5.5.82 the promotion of applicant Papaleontiou to the said post was annulled\* and on 21.10.82 the promotions of applicant Papaleontiou and interested party Papadopoulos to the said post were annulled.\*\*. 10

The aforementioned promotion had been decided by the respondent Commission on 22.10.1980.

On 11.5.82 applicant Papaleontiou was once again promoted and on 25.10.1982 interested party Papadopoulos was also promoted to the said post. Both promotions were once again annulled by a Judge of this Court\*\*\*. 15

On 23.12.1983 the respondent Commission met to reconsider the matter and as a result the sub judice promotions were effected. 20

Applicant Loizides was not amongst those called to be interviewed as candidates in relation to the promotions initially made as aforesaid on 22.10.80, as the Commission found that he was not qualified under the relevant scheme of service for promotion to the post. It was found that this applicant did not possess the required University qualification. As a matter of fact his application that certain qualifications of his should be evaluated as amounting to a post graduate qualification higher than a B.A. degree had been rejected by the Committee for evaluation of qualifications in the Ministry of Education and later, after his protest to the respondent Commission, by the Commission itself. The latter's decision was communicated to the applicant by letter dated 22.10.80. He neither challenged this 25  
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\* See Karageorghis v. The Republic (1982) 3 C.L.R. 435.

\*\* See Tornaris v. The Republic (1982) 3 C.L.R. 1165.

\*\*\* See Karageorghis v. The Republic (1983) 3 C.L.R. 1211 and Tornaris v. The Republic (1983) 3 C.L.R. 1292.

decision nor did he challenge the promotions made as aforesaid on 22.10.80 of applicant Papaleontiou and interested party Papadopoulos.

5 The composition of the Commission on 23.12.83 when the sub judge promotions were made, was different from its composition on 22.10.80. The Commission decided not to take into account the impressions formed when the candidates were interviewed for the first promotions of 22.10.80.

10 *Held, dismissing the recourses:*

(1) The Commission rightly took the view that in re-considering the filling of the posts it had to do so on the basis of the factual and legal situation which existed on 22.10.80.

15 (2) It is too late for applicant Loizides to challenge the decision not to treat him as a candidate for promotions which were decided on 22.10.80 and thus, in effect, to challenge the factual and legal situation on the basis of which such promotions and eventually the sub judge promotions were made. His recourse is, therefore, out of  
20 time. If by reason of the new sub judge decision taken on 23.12.83 the applicant could, by challenging such decision, challenge his exclusion from the initial promotions of 22.10.82, the effect would have been to nullify the  
25 proper application of Article 146.3 of the Constitution.

(3) In any event on the basis of all relevant facts it was reasonably open to the Commission to treat Loizides as not possessing the necessary qualifications.

30 (4) The Commission rightly in view of its different composition did not take into account the impressions formed at the interview held at the time for the initial promotions; and it was not bound to hold an interview before deciding whom to promote.

35 (5) Interested party Papadopoulos is senior to applicant Papaleontiou in that he was appointed to the post of Inspector of Elementary Education on 1.9.69 whereas applicant was so appointed on 1.2.77. The qualifications of this interested party were equivalent to or slightly better

than the applicant's qualifications and on the basis of the confidential reports it could not be said that the interested party was inferior in merit. It was, therefore, reasonably open to the Commission to promote the said interested party.

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(6) Interested party Tornaris was appointed Inspector of Elementary Education on 1.9.62, whereas applicant Papaleontiou on 1.2.77. A comparison of their qualifications does not reveal any superiority in favour of the applicant and on the basis of the confidential reports the applicant does not appear to be really superior to Tornaris. And in *Tornaris v. The Republic* (1982) 3 C.L.R. 1165 a Judge of this Court held that, all other things being more or less equal, Tornaris' seniority ought to have prevailed. The promotion of Tornaris was, therefore, reasonably open to the Commission.

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*Recourse dismissed with  
no order as to costs.*

**Cases referred to:**

- Phylaktou v. The Republic* (1973) 3 C.L.R. 444; 20
- Antoniou v. The Republic* (1974) 3 C.L.R. 237 and on appeal (1975) 3 C.L.R. 510;
- Michael (No. 1) v. The Republic* (1975) 3 C.L.R. 136 and on appeal (1975) 3 C.L.R. 432;
- Pierides v. The Republic* (1971) 3 C.L.R. 233; 25
- Constantinides v. The Republic* (1973) 3 C.L.R. 508.

**Recourses.**

Recourses against the decision of the respondents to promote the interested parties to the post of General Inspector of Elementary Education in preference and instead of the applicants.

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- A. S. Angelides*, for the applicants.
- E. Papadopoullou (Mrs.)*, for the respondents.
- E. Efstathiou* with *C. Anastasiades* and *N. Styliani-dou (Miss)*, for interested party I. Tornaris. 35
- A. Pandelides*, for interested party A. Papadopoullos.

*Cur. adv. vult.*

5 TRIANTAFYLIDIS P. read the following judgment. By means of recourse 565/83 applicant G. Papaleontiou is challenging the promotion to the post of General Inspector of Elementary Education, by the respondent Educational Service Commission, of interested parties A. Papadopoulos and I. Tornaris and by means of recourse 567/83 applicant L. Loizides is, also, challenging the said promotions of the interested parties.

10 These recourses were heard, and are being determined, together because their subject-matter is the same. Another related recourse, 151/84, which was being heard together with them, was withdrawn and dismissed on the 22nd May 1984 and we are no longer concerned with it.

15 The sub judice decision of the respondent Commission was reached on the 22nd December 1983.

20 As it appears from the material before me, a Judge of this Court, Hadjianastassiou J., annulled on the 5th May 1982 an earlier promotion of applicant Papaleontiou to the post in question (see *Karageorghis v. The Republic*, (1982) 3 C.L.R. 435). Also, the same Judge on the 21st October 1982 annulled promotions of applicant Papaleontiou and interested party Papadopoulos to the said post (see *Tornaris v. The Republic*, (1982) 3 C.L.R. 1165).

25 The aforementioned promotions of Papaleontiou and Papadopoulos had been decided by the respondent Commission on the 22nd October 1980.

30 Then on the 11th May 1982 applicant Papaleontiou was, once again, promoted to the post concerned and on the 25th October 1982 interested party Papadopoulos was, also, promoted to such post.

35 The new promotion of applicant Papaleontiou was then annulled on the 26th November 1983 by another Judge of this Court, Demetriades J. (see *Karageorghis v. The Republic*, (1983) 3 C.L.R. 1211) and the promotion of interested party Papadopoulos was annulled by another Judge of this Court, Pikiis J., on the 30th November 1983 (see *Tornaris v. The Republic*, (1983) 3 C.L.R. 1292).

After all the aforementioned proceedings the respondent

Commission met, on the 22nd December 1983, to recon-  
sider the matter of the filling of the two posts of General  
Inspector of Elementary Education and it rightly took the  
view that it had to do so on the basis of the factual and  
legal situation which existed on the 22nd October 1980. 5  
The Commission decided on this occasion to promote in-  
terested parties Papadopoulos and Tornaris.

I will deal, first, with the recourse (567/83) of applicant  
Loizides:

This applicant was not among those who were called to 10  
be interviewed as candidates in relation to the promotions  
which were, initially, made on the 22nd October 1980, be-  
cause the Commission had decided on the 9th September  
1980 to call for interview only those candidates who were 15  
qualified under the relevant scheme of service for promo-  
tion to the post concerned and it is common ground that  
this applicant was found by the Commission not to be so  
qualified.

The required academic qualifications were a Diploma  
of a Teachers' Training College or of a Paedagogical Aca- 20  
demy and a University Diploma or Degree in the field of  
education; and this applicant, Loizides, was found not to  
possess the required university qualification.

As it appears from his personal file he had applied to  
the Committee for Evaluation of Qualifications in the Mi- 25  
nistry of Education asking that certain academic quali-  
fications of his should be evaluated as amounting, when taken  
together, to a post graduate qualification higher than a  
B. A. Degree, but on the 3rd September 1980 he was in- 30  
formed that all these qualifications could not be treated  
as equivalent to a university qualification. He protested  
against this decision of the Evaluation Committee by letter  
dated 25th September 1980 and, then, on the 22nd October  
1980 he was informed that the respondent Educational 35  
Service Commission had examined his objection and there  
was nothing to be added to the decision of the Evaluation  
Committee which had been communicated to him by means  
of the aforementioned letter of the 3rd September 1980.  
He did not file a recourse against the non-acceptance of  
his qualifications as equivalent to a university qualification 40

nor did he challenge by a recourse, on the ground that he had been wrongly excluded from consideration as a candidate, the promotions to the post of General Inspector of Elementary Education of applicant Papaleontiou and interested party Papadopoulos, which were decided by the respondent Commission on the 22nd October 1980.

I am of the view that it is now too late for him to challenge the decision not to treat his as a candidate for the promotions which were decided on the 22nd October 1980 and, thus, in effect, to challenge the correctness of the factual and legal situation on the basis of which such promotions were made, and on the basis of which, eventually, the sub judice promotions were later made on the 22nd December 1983.

His recourse has, therefore, to be treated as being, in this respect, out of time in the sense of Article 146.3 of the Constitution.

I cannot accept as correct the submission of his counsel that because after the annulment of the promotions made on the 22nd October 1980 new promotions were made on the 22nd December 1983 on the basis of the factual and legal situation existing on the 22nd October 1980, this applicant, Loizides, can, by challenging the promotions which were decided on the 22nd December 1983, challenge the decision to exclude him from consideration, as a non-qualified candidate, in relation to the promotions which were effected initially on the 22nd October 1980. In my view acceptance of such an argument would nullify the proper application of Article 146.3 of the Constitution.

In any event, even if his recourse was not to be treated as being out of time I would be of the view that it was reasonably open, all along, to the respondent Commission, on the basis of all relevant facts and, particularly, of the decision of the Committee for Evaluation of Qualifications, to treat him as not possessing the required university qualification for promotion to the post of General Inspector of Elementary Education (see, inter alia, in this respect, *Phylaktou v. The Republic*, (1973) 3 C.L.R. 444, 452, 453, *Antonioniou v. The Republic*, (1974) 3 C.L.R. 237, 243 and on

appeal (1975) 3 C.L.R. 510, *Michael (No. 1) v. The Republic*, (1975) 3 C.L.R. 136, 141 and on appeal (1975) 3 C.L.R. 432).

For all the foregoing reasons I have no difficulty in dismissing the recourse (567/83) of applicant Loizides. 5

I come next to the recourse of applicant Papaleontiou against the promotions of interested parties Tornaris and Papadopoulos:

It appears from the relevant minutes of the respondent Commission that on the 22nd December 1983 the Commission was differently composed from the Commission which decided previous promotions to the post in question on the 22nd October 1980, 11th May 1982 and 25th October 1982, because three of its members, namely its chairman and two other members, were still the same but two of its other members were new members. 10 15

It is clear from the minutes of the Commission dated 22nd December 1983 that the Commission reconsidered ab initio the whole matter and examined in detail the merits, seniority and qualifications of all the candidates before it, including the two interested parties and applicant Papaleontiou. 20

The Commission decided not to take into account the impressions formed when the candidates were interviewed at the time when there were made the earlier promotions which were annulled and I am of the opinion that this was a correct course inasmuch as three of its members had participated in such interviews but two of its members, who were new members, had not; and the Commission was not bound to interview the candidates before deciding whom to promote (see, inter alia, in this respect, *Pierides v. The Republic*, (1971) 3 C.L.R. 233, 243 and *Constantinides v. The Republic*, (1973) 3 C.L.R. 508, 516). 25 30

As it appears from the material before me, which was reproduced in the relevant minutes of the Commission dated 22nd December 1983, interested party Papadopoulos was senior to applicant Papaleontiou in that he was appointed to the post of Inspector of Elementary Education on the 35



1st September 1969, whereas Papaleontiou was so appointed on the 1st February 1977.

5 The qualifications of interested party Papadopoulos were equivalent to, if not slightly better than, those of applicant Papaleontiou and on the basis of the confidential reports including reports in relation to applicant Papaleontiou which were taken into account in his favour by the respondent Commission even though they were not, strictly speaking, confidential reports, it could not be said that interested party Papadopoulos was inferior in merit to applicant Pa-  
10 paleontiou.

I, therefore, have reached the conclusion that it was reasonably open to the respondent Commission to promote interested party Papadopoulos to the post concerned.

15 As far as interested party Tornaris is concerned it has to be noted that he was appointed as Inspector of Elementary Education on the 1st September 1962, whereas applicant Papaleontiou was so appointed on the 1st February 1977. A comparison of the qualifications of this interested party and of applicant Papaleontiou does not show any striking or even mere superiority in favour of applicant Pa-  
20 paleontiou and, on the basis of the confidential reports, again applicant Papaleontiou does not appear to be really superior to interested party Tornaris.

25 It is correct that on two previous occasions, on the 22nd October 1980 and the 11th May 1982, when applicant Papaleontiou and interested party Papadopoulos were promoted to the post of General Inspector of Elementary Education, interested party Tornaris was also a candidate but  
30 he was not preferred for promotion to such post instead of applicant Papaleontiou or interested party Papadopoulos.

It was held, however, by a Judge of this Court, Hadjiastassiou J., on the 21st October 1982, in the *Tornaris* case, supra, that, all other things being more or less equal,  
35 the seniority of Tornaris ought to have prevailed and that, in the circumstances, he was a strikingly superior candidate.

It was, therefore, reasonably open to the respondent

Commission, with its different composition, to treat interested party Tornaris as being on the whole a candidate to be preferred instead of other candidates, including applicant Papaleontiou.

For all these reasons I find that the recourse of applicant Papaleontiou (565/83) has to be dismissed, too. 5

Before concluding I would like to observe that any contention put forward in the course of these proceedings which has not been dealt with specifically in this judgment must be treated as not having been found by me to have any real merit. 10

Bearing everything into consideration I have decided not to make any order as to the costs of these cases.

*Recourses dismissed with  
no order as to costs.* 15