

1985 November 23

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION.

EFSTATHIOS SAVVA,

Applicant,

v.

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

Respondent.

(Case No. 361/83).

Educational Officers—Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations, 1972 as amended in particular by the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) (Amendment) Regulations (No. 2) 1974—List prepared by virtue of regulation 5—Such list is an executory act. 5

Administrative act—Executory act—A list prepared under said reg. 5 is an executory act.

Legitimate interest—Constitution—Article 146.2. 10

The applicant in this recourse challenges the validity of a list of the candidates eligible to be appointed as schoolmasters of Gymnastics prepared in July 1983 under regulation 5 of the Regulations hereinabove referred to.

Counsel for the respondent raised two preliminary objections, namely that the list aforesaid was not an executory act, but a measure of internal administration and of a preparatory nature and that the applicant did not suffer any detriment and, therefore, he does not possess a legitimate interest to pursue this recourse. 15
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It has been shown that in the corresponding list for 81/82 applicant had priority over a certain Flouris who in the sub judge list was placed much higher than the applicant; the said Flouris was actually appointed as schoolmaster of Gymnastic three days after the filing of this recourse.

Held, (1) It is clear from regulation 6 of the said Regulations that the priority in the list has, as a rule, to be adhered to. A list prepared on the strength of legislative provisions and entailing consequences attributed to it by the legislation, which affect the entitlement and eligibility of appointment is an executory act.

(2) In the light of the circumstances relating to Flouris the list has directly and adversely affected an existing legitimate interest of the applicant.

Preliminary objections overruled.

Cases referred to:

Economides v. The Republic (1978) 3 C.L.R. 230;

Vassiliou v. The Republic (1969) 3 C.L.R. 417.

20 **Recourse.**

Recourse against the validity of the list of candidates eligible to be appointed as schoolmasters of gymnastics.

Chr. Triantafyllides, for the applicant.

R. Vrahimi (Mrs.), for the respondent.

25 *Cur. adv. vult.*

30 TRIANTAFYLLIDES P. read the following decision. By means of this recourse, which was made under Article 146 of the Constitution, the applicant challenges, in effect, the validity of the list of the candidates eligible to be appointed as schoolmasters of gymnastics, which was prepared in July 1983.

The applicant complains, inter alia, about his placement on that list in comparison with other candidates.

At the commencement of the hearing of this case counsel for the respondent argued, by way of preliminary objections, that the aforesaid list was not an executory act, but a measure of internal administration and of a preparatory nature, and, consequently, it could not be challenged by means of the present recourse under Article 146 of the Constitution. Also, that as a result of the list in question the applicant has not suffered any actual detriment and that, therefore, he does not possess a legitimate interest, in the sense of Article 146.2 of the Constitution, enabling him to file the present recourse in respect of such list.

The sub judice list was prepared under regulation 5 of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations, of 1972 (see No. 205, Third Supplement, Part 1, to the Official Gazette of 10th November 1972) as amended, in particular, by the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) (Amendment) Regulations (No. 2), 1974 (see No. 250, Third Supplement, Part 1, to the Official Gazette of 20th September 1974).

It is clear from regulation 6 of the aforesaid Regulations that the priority established by such list has, as a rule, to be adhered to in making appointments.

In my opinion a list such as that with which we are concerned in these proceedings, which has been prepared on the strength of legislative provisions and entails consequences attributed to it by legislation, which affect the entitlement to, and eligibility for, appointment, in order of priority, of the candidates whose names are set out in such list, is not merely a preparatory act or a measure of internal administration, but an executory act which can be the subject-matter of a recourse under Article 146 of the Constitution, such as the present one; and I would like to refer, too, in this respect, to the case of *Economides v. The Republic*, (1978) 3 C.L.R. 230, 235, 236.

There has been produced before me a copy of the corresponding list for 1981/1982. A comparison of that

list with the list for 1983 shows that whereas the applicant had been accorded by the former list greater priority than a certain S. Flouris, in the latter list the said Flouris is found to be much higher up than the applicant; and, actually, it appears from minutes of the respondent Educational Service Commission, dated 12th September 1983, that, only three days after the filing of the present recourse on the 9th September 1983, the aforementioned Flouris was appointed as schoolmaster of gymnastics on the strength of his priority on the list for 1983, whereas the applicant who was lower down that list was not appointed.

I have to conclude, therefore, in the light of these circumstances, that the sub judice list is an act which has directly and adversely affected an existing legitimate interest of the applicant in the sense of Article 146.2 of the Constitution.

In this connection I find that the case of *Vassiliou v. The Republic*, (1969) 3 C.L.R. 417, is distinguishable from the present one because that case related to a different administrative process for preparing a priority list, which was resorted to by the respondent Commission prior to the enactment of the aforementioned Regulations.

For all the foregoing reasons the preliminary objections raised by counsel for the respondent cannot be sustained and this recourse has to be heard on its merits.

Order accordingly.