

1985 May 17

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANDREAS XIROS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 466/82).

Evidence—Recourse against promotions—Affidavits in the file of a recourse of the interested party against his transfer—Which were sworn and filed long after the sub judice decision—One on behalf of the respondent and one, by the interested party—Admissibility—That of the respondent not
5 *admissible—Anything contained in the affidavit of the interested party which is against his interest and which relates to the present proceedings admissible provided that it touches matters in issue raised in this recourse.*

10 *Administrative Law—Administrative organ—Decision of—Can be attacked on basis of facts existing at time of the taking of the decision—And which were before it on the day it reached that decision.*

15 In the course of the hearing of the recourse of the applicant against the promotion of the interested party to the post of Senior Specialist in Surgery counsel for the applicant sought to produce in evidence two affidavits which were filed in a recourse by means of which the interested party challenged his transfer to Limassol. The
20 recourse against the transfer was filed sometime after the decision which was sub judice in this recourse.

One of the said affidavits was sworn by the interested

party in these proceedings and the other by the Director-General of the Ministry of Health.

On the application for the production of the two affidavits:

Held, that a decision of an administrative organ can only be attacked on the basis of the facts which were existing at the time of the taking of the decision and which were before it on the day when it reached that decision and the two affidavits sought to be made part of the evidence in these proceedings were sworn and filed long after the respondent had reached its decision to promote the interested party and after the filing of this recourse; that whatever the Director-General of the Ministry of Health stated in his affidavit, which apparently was in support of the opposition filed by the respondent in that case, by means of which the interested party had sought the annulment of the decision of the respondent in that case to transfer him to Limassol, 'cannot be made evidence in these proceedings because it only refers to the reasons why the appropriate authority had suggested to the respondent the transfer of the interested party to Limassol; that with regard to the affidavit of the interested party anything contained in this affidavit which is against his interest and which relates to the present proceedings is admissible provided that same touches matters in issue raised in this recourse.

Order accordingly.

Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Senior Specialist in Surgery in preference and instead of the applicant.

K. Talarides, for the applicant.

A. Papasavvas, Senior Counsel of the Republic, for the respondent.

A. S. Angelides, for the interested party.

Cur. adv. vult.

DEMETRIADES J. read the following ruling. The applicant in these proceedings is a general surgeon posted in Limassol hospital. By his recourse he complains that he was not promoted to the post of a Senior Specialist in Surgery and that instead of him the interested party Dr. N. S. Angelides was so promoted.

After directions given by the Court, written addresses were filed and the case was then fixed for evidence and oral arguments. On the day of the hearing counsel for the applicant summoned the Registrar of this Court to produce the file in Case 480/82 which is a recourse made by the interested party against the decision of the Public Service Commission to transfer him to Limassol. That recourse by the interested party was filed sometime after the decision of the Public Service Commission was reached to promote the interested party instead of the applicant to the post of senior specialist in surgery. Counsel for the applicant has summoned the Registrar of this Court to produce the aforesaid file in order that the contents of two affidavits filed in that recourse be accepted as evidence in the present proceedings.

Counsel for the respondent Public Service Commission, as well as counsel for the interested party, opposed the application of counsel for the applicant and submitted that these two affidavits cannot be made part of the record of these proceedings and that the Court cannot take into account their contents in reaching its decision on the matters in issue in the present recourse.

It is a well established principle both by judicial decisions and legal literature that a decision of an administrative organ can only be attacked on the basis of the facts which were existing at the time of the taking of the decision and which were before it on the day when it reached that decision.

The two affidavits sought to be made part of the evidence in these proceedings were sworn and filed long after the respondent had reached its decision to promote the interested party and after the filing of this recourse. One of these affidavits was sworn by the interested party in these

proceedings and the other one by Mr. Cleanthis Vakis, the Director-General of the Ministry of Health.

I must say from the outset that whatever the Director-General of the Ministry of Health stated in his affidavit, which apparently was in support of the opposition filed by the respondent in that case, by means of which the interested party had sought the annulment of the decision of the respondent in that case to transfer him to Limassol, cannot be made evidence in these proceedings because, in my view, it only refers to the reasons why the appropriate authority had suggested to the respondent the transfer of the interested party to Limassol.

With regard to the affidavit of the interested party I feel that anything contained in this affidavit which is against his interest and which relates to the present proceedings is admissible provided that same touches matters in issue raised in this recourse.

In the result, I dismiss the application of counsel for the applicant as regards the production of the affidavit of the Director-General of the Ministry of Health and although I shall admit the affidavit of the interested party in those proceedings, I will eventually consider and admit only those parts of its contents, if any, that appear to be material to the issues in hand.

There will be, therefore, an order accordingly.

No order as to costs.

The other objections with regard to a number of documents referred to in the address of counsel for the applicant raised by counsel for the respondent and for the interested party, I feel that they should be considered and dealt with when the Court decides the main issues raised by this recourse.

Order accordingly.