

1985 October 22

[TRIANTAFYLLIDES, P., MALACHTOS, SAVVIDES, LORIS,  
STYLIANIDES, JJ.]

GEORGHIOS PAPALEONTIOU,

*Appellant.*

v.

1. ANDREAS KARAGEORGHIS,
2. REPUBLIC OF CYPRUS,, THROUGH THE  
EDUCATIONAL SERVICE COMMISSION.

*Respondents.*

(*Revisional Jurisdiction Appeal No. 350*).

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5 *Administrative act—Executory—Promotion of appellant annulled  
in a recourse filed by respondent 1 in this appeal—Re-  
consideration of case and promotion of two persons  
other than the appellant and respondent 1 to the post in  
question before the filing of the present appeal—If  
appeal successful, decision promoting appellant will pre-  
serve its executory nature.*

10 The promotion of the appellant to the post of General  
Inspector of Elementary Education was annulled in re-  
course 258/82, filed by respondent 1 in this appeal, by  
a first instance judgment of a Judge of this Court, i.e.  
the judgment appealed from. After the delivery of the said  
15 judgment the respondent Commission, which did not file  
an appeal, reconsidered the matter and promoted to the  
post in question two persons other than the appellant  
and respondent 1.

20 In view of the above development counsel for the res-  
pondent Commission raised the preliminary objection  
that this appeal cannot proceed as the sub judge decision  
has ceased to be of an executory nature.

*Held*, dismissing the preliminary objection, that it is  
obvious that the Commission would not have made two

promotions to the post in question, if the earlier promotion of the appellant had not been annulled by the judgment appealed from. Thus if the appeal is successful, the sub judge promotion of the appellant will preserve its executory nature and there will have then to be examined the validity of the aforementioned subsequent decision of the Commission. (*Papadopoulos v. The Republic* (1970) 3 C.L.R. 169 distinguished). 5

*Preliminary objection dismissed.*

**Cases referred to:**

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*Karageorghis v. The Republic* (1983) 3 C.L.R. 1211;

*Bagdades v. Ploussiou* (1984) 3 C.L.R. 1556;

*Papaleontiou v. The Republic* (1985) 3 C.L.R. 1929;

*Papadopoulos v. The Republic* (1970) 3 C.L.R. 169.

**Appeal.**

15

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Demetriades, J.) (Revisional Jurisdiction Case No. 258/82)\* given on the 26th November, 1983 whereby the promotion of the interested party to the post of General Inspector of Elementary Education was annulled. 20

*A. S. Angelides*, for the appellant.

*G. Triantafyllides*, for respondent 1.

*R. Vrahimi (Mrs.)*, for respondent 2.

*Cur. adv. vult.* 25

TRIANTAFYLLIDES P. read the following judgment of the Court. At the commencement of the hearing of this appeal counsel appearing for respondent 1 raised the preliminary objection that this appeal could not be proceeded with further by the appellant since, according to counsel's contention, the decision of respondent 2 which is the subject- 30

\* Reported as *Karageorghis v. Republic* (1983) 3 C.L.R. 1211.

matter of the present proceedings has ceased to be of an executory nature.

The circumstances in which the aforementioned preliminary objection was raised are as follows:

5 Respondent 1, as the applicant, filed, on the 15th June 1982, a recourse under Article 146 of the Constitution (258/82) against the decision, on 11th May 1982, of respondent 2 to promote the appellant—who became “an interested party” in the recourse—to the post of General  
10 Inspector of Elementary Education, retrospectively as from the 1st November 1980.

By a first instance judgment of a Judge of this Court, given on the 26th November 1983, the aforesaid decision of respondent 2 was annulled (see *Karageorghis v. The*  
15 *Republic*, (1983) 3 C.L.R. 1211).

The Educational Service Commission—which is respondent 2 in this appeal and was the respondent to the said recourse—did not appeal against the annulment of the promotion of the appellant, but the appellant, as the in-  
20 terested party whose promotion has been annulled, lodged the present appeal on the 27th December 1983.

As the appellant had taken part in the proceedings before the trial Judge on his own and he was represented by counsel he was entitled to file the present appeal (see  
25 *Bagdades v. Ploussiou*, (1984) 3 C.L.R. 1556).

It seems that after the delivery of the first instance judgment against which the present appeal has been made, and actually even before the filing of such appeal, the  
30 respondent Commission, on the 22nd December 1983, reached a new decision regarding promotions to the post of General Inspector of Elementary Education and by means of it there were promoted to such post two persons other than the appellant and respondent 1.

Against the said new decision the appellant has filed  
35 on the 27th December 1983, that is on the same date when the present appeal was filed, a new recourse (565/83), which was dismissed by a first instance judgment given on the 1st August 1984 (see *Papaleontiou v. The Republic*,

(1985) 3 C.L.R. 1929) and against which a revisional jurisdiction appeal (No. 415) is pending.

In arguing that the sub judice in the present proceedings decision of the respondent Commission has lost its executory nature as a result of the subsequent decision of the Commission which was taken, as aforesaid, on the 22nd December 1983, counsel for respondent 1 relied mainly on the case of *Papadopoulos v. The Republic*, (1970) 3 C.L.R. 169.

The applicant in the said case had filed a recourse against the refusal of the Council of Ministers to approve the payment to him of expenses which he incurred in relation to a surgical operation in the United States of America. His recourse was dismissed and the applicant appealed against its dismissal and during the hearing of the appeal the matter of the claim of the applicant was placed, once again, before the Council of Ministers, with the consent of both sides and with the approval of the Court, and a new decision was reached by the Council of Ministers. It was held that once there has been taken a new executory decision regarding the claim of the applicant the earlier one had been deprived of its executory nature and could no longer be the subject-matter of a recourse, and of the appeal which had been made against the judgment dismissing such recourse, and, therefore, the appeal had to be treated as having been deprived of its object and should, accordingly, be struck out.

We find that the *Papadopoulos* case, supra, is clearly distinguishable from the present case for the following, among others, reasons:

In the *Papadopoulos* case the sub judice decision of the Council of Ministers was treated as having lost its executory nature prior to the determination of the appeal because though it had not been annulled judicially by the first instance judgment—as has happened in the present case—it was replaced by a new decision of the Council of Ministers while the appeal was pending.

In the present case, however, it is plainly obvious that the respondent Educational Service Commission would

not have made *two* promotions to the post of General Inspector of Elementary Education if the earlier promotion to such post of the appellant had not been annulled, on the 26th November 1983, by the first instance judgment which is challenged by this appeal.

Thus, if the appeal of the appellant is successful the annulment of his promotion by the first instance judgment will be set aside and the decision to promote him, which was taken by the respondent Commission, as aforesaid, on the 11th May 1982, will preserve its executory nature and there will have then to be examined the validity of the aforementioned subsequent decision of the Commission, on the 22nd December 1983, which was taken on the assumption that the earlier promotion of the appellant had been annulled judicially.

For all the foregoing reasons we find that the preliminary objection of respondent 1 cannot be sustained and that this appeal should proceed to be heard and determined on its merits.

*Preliminary objection  
dismissed.*