

1986 June 12

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

GEORGHIOS PAPALEONTIOU,

*Appellant.*

v.

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

*Respondents.*

*(Revisional Jurisdiction Appeal No. 350).*

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*Practice—Revisional Jurisdiction Appeal—Basic issue continues to be the validity of the administrative act, decision or omission—Approach of the Full Bench—Whether a successful applicant can file a cross-appeal against the first instance judgment given in his favour.*

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Respondent 1 in this appeal filed a cross-appeal challenging appellant's eligibility for promotion under the scheme of service for the post in question and the finding of the trial Judge that such matter is *res judicata*.

Counsel for the appellant raised the objection that respondent 1, who was the successful applicant in the recourse (258/82) against the outcome of which the present appeal was made, cannot cross-appeal against the judgment given in his favour in such recourse. He, further, submitted that if counsel for respondent 1 is allowed to argue the cross-appeal, he himself should be allowed to argue that respondent 1 was not qualified under the the scheme of service for promotion to the post in question.

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*Held*, dismissing the objection, that in dealing with a revisional jurisdiction appeal the Full Bench of this Court approaches it by way of complete re-examination of

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**3 C.L.R. Papaleontiou v. Republic**

the case, the basic issue continuing to be the validity of the administrative act, decision or omission in question. Counsel for the appellant may, in view of the nature of the present proceedings, raise, too, the issue of eligibility of respondent 1 for promotion to the post in question.

*Objection dismissed.*

**Cases referred to:**

- Marcou v. The Republic* (1968) 3 C.L.R. 166;
- Vassiliades v. The Republic* (1967) 3 C.L.R. 82;
- 10 *The Republic v. Georghiades* (1972) 3 C.L.R. 594;
- The President of the Republic v. Louca* (1984) 3 C.L.R. 241;
- Ayios Andronicos Development Co. Ltd. v. The Republic* (1985) 3 C.L.R. 2362;
- 15 *Pikis v. The Republic* (1968) 3 C.L.R. 303;
- Constantinides v. The Republic* (1969) 3 C.L.R. 523;
- The Republic v. Pericleous* (1972) 3 C.L.R. 63;
- Christou v. The Republic* (1982) 3 C.L.R. 634;
- Ethnikos v. K.O.A'* (1984) 3 C.L.R. 1150;
- 20 *Zachariades v. The Republic* (1984) 3 C.L.R. 1193.

**Appeal and cross - appeal.**

Appeal and cross-appeal against the judgment of a Judge of the Supreme Court of Cyprus (Demetriades, J.) (Revisional Jurisdiction Case No. 258/82)\* given on the 25 26th November, 1983 whereby the promotion of the in-

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

terested party to the post of General Inspector of Elementary Education was annulled.

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

*G. Triantafyllides*, for respondent 1.

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

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*Cur. adv. vult.*

TRIANTAFYLLIDES P. read the following decision of the Court. After having replied to the arguments advanced by counsel for the appellant in support of this appeal, counsel for respondent 1 proceeded to argue in support of a cross-appeal by means of which respondent 1 contends that the appellant was not qualified, under the relevant scheme of service, for promotion to the post of General Inspector of Elementary Education and, also, challenges the finding of the trial Judge that the matter of the eligibility of the appellant for promotion to such post is *res judicata* because it has been decided in favour of the appellant when judgment was given in respect of related cases Nos. 371/80 and 483/80 (see *Karageorghis v. The Republic*, (1982) 3 C.L.R. 435).

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Counsel for the appellant objected that respondent 1, who was the successful applicant in the recourse (No. 258/82) against the outcome of which the present appeal was made, cannot cross-appeal against the judgment which was given in his favour in such recourse (see *Karageorghis v. The Republic*, (1983) 3 C.L.R. 1211); and counsel for the appellant referred, in supporting his objection, to *Marcou v. The Republic*, (1968) 3 C.L.R. 166, where it was held that a successful applicant in a recourse is debarred from appealing against the judgment in his favour.

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Counsel for the appellant submitted, further, that if counsel for respondent 1 is to be heard in support of his cross-appeal then he himself should be allowed to argue that respondent 1 was not qualified, under the relevant scheme of service, for promotion to the post in question.

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It is well settled (see, *inter alia*, *Vassiliades v. The Republic*, (1967) 3 C.L.R. 82, 88) that a revisional juris-

diction appeal, such as the one with which we are now dealing, is intended to ensure to the parties to it the benefit of the opinion of the Full Bench of the Supreme Court in a case coming within the revisional jurisdiction  
5 which was vested in the Supreme Constitutional Court under Article 146 of the Constitution and which is now exercised in the first instance by a Judge of the Supreme Court under section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 1969 (Law 33/64).

10 In dealing with a revisional jurisdiction appeal the Full Bench of this Court approaches it by way of a complete re-examination of the case (see, inter alia, *The Republic v. Georghiades*, (1972) 3 C.L.R. 594, 690, *The President of the Republic v. Louca*, (1984) 3 C.L.R. 241, 249, and  
15 *Ayios Andronikos Development Co. Ltd. v. The Republic*, (1985) 3 C.L.R. 2362, 2373).

In such an appeal the basic issue continues to be the validity of the administrative act, decision or omission in respect of which a recourse under Article 146 of the  
20 Constitution was made and in relation to which there has decided, in the first instance, one of the Judges of this Court (see, inter alia, in this respect, *Pikis v. The Republic*, (1968) 3 C.L.R. 303, 305, *Constantinides v. The Republic*, (1969) 3 C.L.R. 523, 530, *The Republic v. Pericleous*,  
25 (1972) 3 C.L.R. 63, 68, *Christou v. The Republic*, (1982) 3 C.L.R. 634, 639, the *Louca* case, supra, 265, *Ethnikos v. KOA*, (1984) 3 C.L.R. 1150, 1154 and *Zachariades v. The Republic*, (1984) 3 C.L.R. 1193, 1218). Thus, in effect, the Full Bench of the Court is seized of the matter "ab  
30 initio."

It is to be noted that in the *Georghiades* case, supra, at pp. 643, 688) the *Marcou* case, supra, was referred to and it was, in effect, held that a successful  
35 applicant, who has become the respondent in a revisional jurisdiction appeal, is not precluded from pursuing a cross-appeal against the judgment given in determining in the first instance his recourse and in relation to which the revisional jurisdiction appeal was made.

In the light of all the foregoing we are of the view that,  
40 since on this occasion the appellant has challenged by

means of this appeal the first instance judgment which was given in favour of respondent 1, as the applicant in a recourse, respondent 1 is entitled to cross-appeal; and, of course, counsel for the appellant may, in view of the nature of the present proceedings raise, too, the issue of the eligibility of respondent 1 for promotion to the post of General Inspector of Elementary Education. 5

*Order accordingly.*