

1986 July 16

[MALACHTGS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

EVGENIOS KOLARIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(Case No. 269/80).

*Executory act—Preparatory act—Educational officers—Appoint-
ments—The Educational Officers (Teaching Personnel)
(Appointments, Postings, Transfers, Promotions and Rele-
vant Matters) Regulations—Regulation 5—The list of
appointees prepared thereunder is not of an executory, but 5
of preparatory nature—Even if it is assumed to be exe-
cutory, it lost such character, when the final act of ap-
pointment was made.*

The applicant applied to the respondent Committee for
appointment as a school master in secondary education as 10
commercial teacher. The respondent Committee did not
include the applicant in the list, which was prepared under
Reg. 5 of the aforesaid Regulations and as a result the
applicant filed on the 6.8.80. the present recourse. It
should be noted that on the 8.10.80 the Committee ap- 15
pointed six persons, who were included in the list to the
post of commercial teacher.

Held, dismissing the recourse: (1) The making of the
list of appointees is a preparatory act. It prepared the
ground for the final act, which is the appointment to the 20
post for which the applicant applied. So it is not an act

of an executory nature and, therefore, cannot be attacked by a recourse under Article 146 of the Constitution.

(2) Even assuming that the decision complained of was of an executory character, it lost such character as from 8.10.80, because as from that day it merged in the said final act of appointment.

Recourse dismissed.

No order as to costs

Recourse.

10 Recourse against the refusal and/or omission of the respondent to include applicant in the list of appointees school masters (Commercial Teachers) in secondary education and for a declaration that the Educational Officers (Teaching Personnel) (Appointments, Postings, Transfers, 15 Promotions and Relevant Matters) Rules, 1972 are null and void.

Ch. Ierides, for the applicant.

M. Florentzos, Senior Counsel of the Republic, for the respondent.

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Cur. adv. vult.

MALACHTOS J. read the following judgment. The applicant in this recourse, which is made under Article 146 of the Constitution, claims, as stated therein, the following remedies:

25 1. A declaration of the Court that the refusal and/or omission of the respondent authority to include the applicant in the list of appointees school masters (Commercial Teachers) in secondary education, which was prepared and published, is null and void and of no legal effect whatsoever.

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2. A declaration of the Court that the decision and/or act of the respondent authority not to include the applicant in the list of appointees school masters (Commercial Teachers) in secondary education, is null and void and of 35 no legal effect whatsoever; and

3. A declaration of the Court that the Educational Officers (Teaching Personnel) (Appointments, Postings, Transfers, Promotions and Relevant Matters) Rules of 1972 to 1974 are null and void as being ultra vires the Public Educational Service Law of 1969 (Law 10/1969) and are of no legal effect whatsoever. 5

The relevant facts of this recourse shortly put are the following:

According to regulation 5 of the Rules of 1972 to 1974, the Committee of Educational Service during the period of April to May and not later than the 31st May, examines all the applications for appointment of educationalists and prepares a list of appointees for every post or specialization in a post, depending on the particular case. The vacant posts are filled up from candidates included in the said list in order of strict priority taking into account the provisions of the Regulations and the schemes of service. 10 15

In the present case the applicant, who is the holder of an International Accountant Diploma applied to the respondent authority for appointment as a school master in secondary education as commercial teacher but his name was not included in the list of appointees as the respondent authority decided that he did not possess the qualifications required by the scheme of service. 20 25

As against this decision the applicant filed on 6th August, 1980, the present recourse.

One of the grounds of law, on which the opposition of the respondent authority is based, is that the decision not to include the applicant in the list of appointees is not an executory one amenable within the competence of an administrative Court under Article 146 of the Constitution and so it cannot be attacked by a recourse. 30

When the recourse came on for hearing, on the application of counsel for the parties and the approval of the Court, the above ground of Law was heard first as a preliminary legal issue. 35

It has been submitted by counsel for the respondent authority that the act and/or decision complained of in the present recourse, amounts to a preparatory one of the final executory administrative decision i.e. the decision to
5 appoint to the post of commercial teacher in secondary education from the list of appointees prepared as afore-said. The inclusion or exclusion of the applicant in the list of appointees is necessary and precedes and prepares the ground for the final appointment in the relevant post. In
10 fact on the 8th October, 1980, the respondent Committee appointed on contract six persons who were included in the list of appointees to the post of commercial teacher in secondary education as from 9th October, 1980.

It is well settled that an administrative act or decision
15 is only amenable within the competence of an administrative Court under Article 146 of the Constitution if it is executory; in other words, it must be an act or decision by means of which the will of the administrative organ concerned has been made known in a given matter, an
20 act or decision which is aimed at producing a legal situation concerning the citizen affected and which entails its execution by administrative means. (See Conclusions from Case Law of the Greek Council of State 1929 to 1959 p. 236 to 237).

Acts of a preparatory nature are not executory acts but they merely prepare the ground for the making of executory acts and are part and parcel of the final composite administrative act or decision. (See Conclusions from Case
25 Law of the Greek Council of State 1929 to 1959 page 239).
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Only the final administrative act may be attacked by a recourse but together with it is also questioned and controlled the legality of the preparatory acts. If the composite administrative action has not been completed, i.e.
35 the final act has not been issued, the question arises as to whether the already issued preparatory acts may be attacked by a recourse. To this question no definite answer has been given by the Case Law of the Greek Council of State. (See Daktoglou, General Administrative Law, A,
40 1977 edition at page 153 and 154).

In the case in hand, the making of the list of appointees is a preparatory act and it prepared the ground for the final act, which is the appointment to the post for which the applicant applied. So, it is not an act of executory nature. But even if we assume that the decision complained of in this recourse, namely, not to include the applicant in the list of appointees, amounts to an executory administrative act, when the final decision was issued on 8th October, 1980, its executory nature was lost as it merged from that day onwards in the said final decision and so, the only remedy left for the applicant was to file a recourse against the appointments of commercial teachers in secondary education, effected by the respondent authority on 8th October, 1980.

For the reasons stated above, this recourse is dismissed.

There will be no order as to costs.

Recourse dismissed.

No order as to costs.