

1986 October 13

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

EGLI KAMMITSI,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF EDUCATION AND/OR
THE DIRECTOR OF SECONDARY EDUCATION,

Respondents.

(Case No. 695/85).

Executory act—Preparatory act—Educational Officers—Service reports, ratings in—The rating is an act of a preparatory nature.

5 The respondent Director dismissed the written objection, which the applicant had submitted in respect of her rating for item (c) (Organisation-Administration-Public Relations) of the relevant service report for the school-year 1982-1983, and as a result the applicant filed the present recourse.

10 *Held, dismissing the recourse:* (1) The rating in a service report is not an act of an executory nature, but a preparatory act and as such cannot be made the subject of a recourse under Article 146 of the Constitution.

15 (2) The existence in virtue of the relevant law and regulations* of a procedural machinery for objection and re-examination of such rating does not change the chara-

* Regulation 22 of the Educational Officers (Inspection and Rating) Regulations 1976 made under s 76 of the Public Educational Service Law 10/1969

cter of the rating that was made either before or after such machinery was invoked.

Recourse dismissed.

No order as to costs.

Cases referred to: 5

Papacharalambous v. The Republic (1986) 3 C.L.R. 1042;

Pavlidis v. The Republic (1977) 3 C.L.R. 421;

Tanis v. The Republic (1978) 3 C.L.R. 314;

Decisions of the Greek Council of State Nos: 588/60 and 835/62. 10

Recourse.

Recourse against the dismissal of applicant's objection against her rating and/or confidential report for the year 1982-1983.

A. S. Angelides, for the applicant. 15

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

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks:

(a) Declaration of the Court that the decision and/or act of the respondents by which he dismissed the objection of the applicant and retained her rating and/or confidential report for the year 1982-1983 at 36 ("Άίαν Ευδόκιμος") "Excellent", is null and void and with no legal effect whatsoever; 20 25

(b) Declaration of the Court that the refusal and/or omission of the respondents to rate the applicant with a total rate above 36 and/or 37, is null and void and with no effect whatsoever and what was omitted ought to be done. 30

The facts of the case are the following: The applicant a school-mistress of French in the Secondary Education, asked the respondent Director of Secondary Education to communicate to her her rating for the school years 1982-1983, 1983-1984, which the latter did by his letter of the 35

9th April 1984, (exhibit 2) in respect of the first year and which is as follows:

	(a) Professional training	8
	(b) Sufficiency in work	9
5	(c) Organization-Administration Public relations	9
	(d) General conduct and action	10
	(e) General assessment, Excellent	36

10 The applicant submitted a written objection for point (c) (exhibit 3) of the rating and stated therein in detail the grounds for which she believed that the rating given to her on this point was unjust. The Inspector-General of Secondary Education asked the team of inspectors which prepared the rating to submit their observations on the objection of the applicant. On the 25th May, 1985, they met and examined the objection and they disagreed with the objection. Two of its members Messrs M. Matsis and M. Michaelides agreed to upgrade point (c) from 9 to 10 and Mr. L. Kappas disagreed and considered the rating given as correct (exhibit 5).

20 The decision of this team was sent to the Inspector-General of Secondary Education who forwarded it to the Director of Secondary Education with the suggestion to upgrade point (c) of the applicant from 9 to 10, exhibit 6. On the 31st May, 1985, the respondent Director decided that the applicant was correctly rated (exhibit 7) and informed her accordingly by letter dated the 31st May, 1985, (exhibit 8).

30 As against this decision the applicant filed the present recourse. The respondents in their opposition raise the objection that the sub judice decision could not be the subject of a recourse under Article 146 of the Constitution as it is not an executory administrative act. I do not intend to refer to the relevant legislation and the Regulations made thereunder that govern the question of confidential reports, renamed by the amending Law No. 53/79, into "Service Reports," as the matter has been dealt with recently by Stylianides J., in his judgment delivered on 10th May, 1986 (as yet unreported) in *Petros Papacharalambous v. The Republic* Recourse No. 541/85*. It is sufficient to

* Reported in (1986) 3 C.L.R. 1042.

refer only to the provisions of Regulation 22 of the Educational Officers (Inspection and Rating) Regulations 1976 made under Section 76 of the Public Educational Service Law 1969, (Law No. 10 of 1969). Under the said Regulation a school teacher is entitled to apply in writing within fifteen days from the communication to him of the rating of the items and the general rating to the Inspector-General for the deletion or amendment of the part of the report communicated to him or the review of the rating so communicated. Provision is made in Regulation 22 about the procedure to be followed by the Inspector-General on receipt of such application and the applicant educational officer is informed in writing of the result of his such objection.

In the case of *Papacharalambous* (supra) after a review of the authorities on the question of the nature of a service or confidential report, Stylianides, J., held that the substance decision in that case, which was not in any way different from the decision challenged by the present recourse, was not an executory act but merely a preparatory or advisory one and could not be the subject of a recourse under Article 146 of the Constitution. He referred, inter alia, to the case of *Iacovos Pavlides v. The Republic* (1977) 3 C.L.R. 421 in which Malachtos J., held that the "grading and or the table of inspection and or general assessment" of the applicant in that case a school teacher of Philology in the secondary education for the school year 1972-1973, was not an executory act which produced direct legal consequences but a preparatory act and as such could not be made the subject of a recourse under Article 146 of the Constitution. Reference was also made to the case of *Tanis v. The Republic* (1978) 3 C.L.R. 314 in which I, likewise, held that the rating of a public officer and the general assessment of his work contained in a confidential report ordinary or special and the outcome of inspection or special inspection made by virtue of the Educational Officers (Inspection and Rating) Regulations 1976, and the Public Educational Service Law 1969 are preparatory acts to the compilation of the lists of those suitable for promotion and

to the actual acts or decisions of promotion and as such they produce no direct legal consequences and cannot be the subject of a recourse under Article 146 of the Constitution. *Pavlidis v. The Republic* (supra) was followed, and reference was also made to the decisions of the Greek Council of State Nos. 588/60 and 835/62.

It should be stressed here that the fact that a machinery for a procedure for objection to and re-examination of the ratings is prescribed by the relevant law and regulations does not change the character of the act or rating whether that was made originally or after the said procedure was invoked. It merely affords a machinery for re-examination of the merits of the rating, something which normally is outside the ambit of the annulling Court.

In the light of all the above and being in complete agreement with the reasoning in *Papacharalambous* case, I have come to the conclusion that the objection raised on behalf of the respondent succeeds and the present recourse is dismissed but in the circumstances there will be no order as to costs.

Recourse dismissed.
No order as to costs.