

1986 July 4

[TRIANAFYLLIDES, P., MALACHTOS, DEMETRIADES,
LORIS, STYLIANIDES, JJ.]

IOANNIS PREZAS AND ANOTHER,

Appellants (Applicants),

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMISSION,

Respondent.

(Revisional Jurisdiction Appeal No. 491).

*Executory act—Composite administrative action —Promotions—
Decision not to interview candidates—It is in the circum-
stances of this case of an executory nature—It ceased to
be of such a nature upon the final outcome of the com-
posite administrative action, that is the decision to promo-
te other candidates.*

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On 7.6.84 the respondent Commission decided to inter-
view only about half the candidates for promotion to the
post of Assistant Headmaster secondary education and,
as a result, the applicants were excluded from further con-
sideration as candidates.

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The applicant's challenged the said decision not to inter-
view them by a recourse, which was eventually dismissed
by a Judge of this Court on the ground that the decision
lost its executory nature when the relevant promotions
were made.

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Hence the present appeal. The respondent cross-appealed
claiming that the sub judice decision was never of an exe-
cutory, but of a preparatory nature.

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Held, dismissing both the appeal and cross-appeal.

(1) In the light of the case law of this Court and the

special circumstances of this case the sub judge decision was at the time it was taken of an executory nature.

(2) The sub judge decision, which formed part of the relevant composite administrative action ceased to be of an executory nature upon the final outcome of such action that is the decision to promote other candidates. The fact that the appellants did not challenge the final act of promotions makes no difference. 5

Appeal and Cross-appeal dismissed.
No order as to costs. 10

cases referred to:

PapaNicolau (No. 1) v The Republic (1968) 3 C.L.R. 225;

Papadopoulos v. The Republic (1983) 3 C.L.R. 1423;

Papadopoulou v The Republic (1984) 3 C.L.R. 332; 15

Savva v. The Republic (1985) 3 C.L.R. 2288;

Vassiliou v. The Republic (1969) 3 C.L.R. 417;

Economides v. The Republic (1978) 3 C.L.R. 230;

Ioannou v. Electricity Authority of Cyprus (1981) 3 C.L.R.280. 20

Appeal and cross - appeal.

Appeal and cross-appeal against the judgment of a judge of the Supreme Court of Cyprus (Savvides J.) given on the 9th May, 1985 (Revisional Jurisdiction Case No. 15/84) dismissing appellants' recourse against the decision of the respondents not to interview the appellants as candidates for the post of Assistant Headmaster in secondary education. 25

A. S. Angelides, for the appellants.

E. Papadopoullou (Mrs.), for the respondent. 30

Cur. adv. vult.

5 TRIANTAFYLLIDES P. read the following judgment of the Court. The appellants have appealed from the first instance judgment of a Judge of this Court by means of which there was dismissed their recourse (No. 335/84) against the decision of the respondent Educational Service Commission not to interview them as candidates for the post of Assistant Headmaster in secondary education.

10 As was found by the learned trial Judge the respondent Commission decided, on the 7th June 1984, on the basis of certain criteria, to interview only about half the candidates for promotion to the post of Assistant Headmaster in secondary education; and, as a result, the applicants were not interviewed and were, thus, excluded from further consideration as candidates.

15 The trial Judge held that the aforesaid decision of the respondent Commission on the 7th June 1984 was at the time when it was taken an executory decision but, as it was part of the composite administrative action leading up to the promotions which were eventually made to the post of Assistant Headmaster such decision had become divested
20 of its executory nature when the said promotions were made and, consequently, the present recourse of the appellants against it had to be dismissed.

25 On the other hand counsel for the respondent has cross-appealed claiming that the decision of the Commission on the 7th June 1984 was never of an executory, but only of a preparatory, nature and could not, therefore, be attacked by a recourse for annulment.

30 In the light of case-law of this Court such as *Papa Nicolaou (No. 1) v. The Republic*, (1968) 3 C.L.R. 225, 232, *Papadopoulos v. The Republic*, (1983) 3 C.L.R. 1423, 1426, *Papadopoulou v. The Republic*, (1984) 3 C.L.R. 332, 337 and *Savva v. The Republic*, (1985) 3 C.L.R. 2288, 2290, and on the basis of the particular circumstances of this case, we are not prepared to disagree with the trial Judge
35 that the decision of the respondent Commission, on the 7 June, 1984, not to interview some of the candidates, among whom were the two appellants, was at the time an executory decision, but we would like to point out that

it is conceivable that in a different set of circumstances the preliminary consideration of candidates might be found to be of only preparatory nature and, thus, not executory.

In any event, once the process of making the promotions in question culminated into a decision of the respondent Commission to promote candidates other than the appellants, we are of the opinion that the trial Judge rightly held that the only decision of the respondent Commission which could have been challenged as being executory was the final outcome of the composite administrative action, that is the decision to promote other candidates, and that the earlier decision of the Commission, on the 7th June 1984, which formed part of such composite administrative action had ceased to be of an executory nature. Useful reference, in this respect, may be made to case-law of this Court such as *Papa Nicolaou (No. 1)*, supra, *Vassiliou v. The Republic*, (1969) 3 C.L.R. 417, 425, *Economides v. The Republic*, (1978) 3 C.L.R. 230, 235 and *Ioannou v. The Electricity Authority of Cyprus*, (1981) 3 C.L.R. 280, 299.

In concluding we would like to observe that the aforesaid decision of the 7th June 1984 has ceased to be executory notwithstanding the fact that the appellants for reasons of their own chose not to challenge the final decision of the respondent Commission to promote other candidates.

In the light of all the foregoing this appeal fails and has to be dismissed; but with no order as to its costs.

Appeal and cross-appeal dismissed with no order as to costs.