

1985 June 8

[TRIANAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

MARIA ODYSSEOS,

*Applicant,*

v.

- THE REPUBLIC OF CYPRUS, THROUGH
- 1. THE EDUCATIONAL SERVICE COMMISSION,
- 2. THE MINISTRY OF EDUCATION,
- 3. THE COUNCIL OF MINISTERS,

*Respondents.*

(Case No. 482/83).

*Legitimate interest — Appointments of educationalists to the post of schoolmaster on contract, but not instead of applicant, who could and would have been appointed to one of the remaining vacant posts, if she had not been excluded from appointment on other grounds—No existing legitimate interest of applicant was directly and adversely affected in the sense of Article 146.2 by such appointments.* 5

*Recourse of annulment — Power of Court to examine the issue of legitimate interest ex proprio motu.*

*Administrative Law — Abuse or excess of power—Refusal to appoint applicant on contract to post of schoolmaster notwithstanding applicant's eligibility, the existence of vacant posts and a request by the Ministry of Education to fill them—Refusal based on ground that applicant had not been appointed on contract for a previous school year—Exclusion of applicant unjustified.* 10  
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*Administrative Law—Administrative act inextricably connected*

*with another administrative act found to be null and void  
—Ground of annulment.*

5 By this recourse the applicant challenges, in effect, the  
decision of respondent 1 to appoint on contract to the  
post of schoolmaster thirteen educationalists and to se-  
cond to such post another educationalist, I. Mylona. The  
13 interested parties were among the 36 educationalists  
appointed to the post in question for teaching commer-  
cial subjects. When the 36 educationalists were appointed  
10 as aforesaid, there remained vacant another seven posts.  
The applicant was excluded from appointment on the  
ground that she had not been appointed on contract for  
the school-year 1981 - 1982.

15 *Held, (1)* This Court can examine *ex proprio motu*  
whether or not the applicant possessed a legitimate inter-  
est to file this recourse.

20 (2) As it is clear that the thirteen interested parties  
were not appointed instead of the applicant, because she  
could and would have been appointed to one of the seven  
posts which remained unfilled. If she had not been ex-  
cluded from consideration, no existing legitimate interest  
of the applicant has been directly and adversely affected  
by the appointment of the thirteen interested parties

25 (3) Once there had remained seven vacant posts and the  
Ministry of Education had requested their filling, the de-  
cision to exclude the applicant, who was eligible for ap-  
pointment, in 1983, on the ground that she had not been  
appointed on contract for the school year 1981 - 1982  
has been taken in excess or abuse of power.

30 (4) The secondment of interested party Mylona was  
made, because the applicant and others like her were  
excluded from appointment. It has, therefore, to be an-

nulled as inextricably connected with the unjustified refusal to appoint the applicant.

*Recourse succeeds in part.  
No order as to costs.*

**Cases referred to:**

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*Constantinou v. The Republic* (1974) 3 C.L.R. 416;

*Papapetrou v. The Republic*, 2 R.S.C.C. 61;

*Ierodiasconos v. The Republic*, 3 R.S.C.C. 55;

*Frangou v. Greek Communal Chamber and Others* (1966)  
3 C.L.R. 201;

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*HjiSavva v. The Republic* (1967) 3 C.L.R. 155;

*Tseriotis v. The Municipality of Nicosia* (1968) 3 C.L.R.  
215;

*The Minister of Finance v. The Public Service Commission*  
(1968) 3 C.L.R. 691;

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*The Republic v. Pericleous* (1972) 3 C.L.R. 63;

*Veis v. The Republic* (1979) 3 C.L.R. 390;

*Zachariades v. The Republic* (1984) 3 C.L.R. 1193.

**Recourse.**

Recourse against the decision of the respondents to ap-  
point on contract to the post of schoolmaster thirteen in-  
terested parties and to second to the above post interested  
party I. Mylona in preference and instead of the applicant.

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

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

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*Cur. adv. vult.*

5 TRIANTAFYLIDIS P. read the following judgment. By the present recourse the applicant challenges, in effect, the decision of the respondent Educational Service Commission to appoint on contract to the post of schoolmaster thirteen educationalists (to be referred to hereinafter as the “interested parties”) and to second to such post another educationalist, I. Mylona (to be referred to hereinafter as “interested party Mylona”).

10 In the course of the hearing of the case counsel for the applicant withdrew this recourse in so far as the Council of Ministers was concerned and it was dismissed accordingly to that extent.

15 Before proceeding to examine the issues raised by counsel for the applicant I shall examine ex proprio motu (see inter alia, *Constantinidou v. The Republic*, (1974) 3 C.L.R. 416, 418) whether or not the applicant possessed a legitimate interest, in the sense of Article 146.2 of the Constitution, entitling her to file the present recourse (and see in this respect, inter alia, *Papapetrou v. The Republic*, 2 R.S.C.C. 61. 64, *Efthymios Ierodiaconos v. The Republic*, 20 3 R.S.C.C. 55. 56. 57, *Frangou v. The Greek Communal Chamber and others*, (1966) 3 C.L.R. 201. 207, *HjiSavva v. The Republic* (1967) 3 C.L.R. 155. 175, *Tseriotis v. The Municipality of Nicosia*, (1968) 3 C.L.R. 215. 221, 25 *The Minister of Finance v. The Public Service Commission*, (1968) 3 C.L.R. 691. 697, *The Republic v. Pericleous*, (1972) 3 C.L.R. 63. 69, *Veis v. The Republic*, (1979) 3 C.L.R. 390. 406, *Zachariades v. The Republic*, (1984) 3 C.L.R. 1193. 1237):

30 The sub judge decision to appoint on contract thirty-six schoolmasters, who were going to teach commercial subjects, was reached by the respondent Educational Service Commission on the 12th September 1983 and in the said 35 thirty-six schoolmasters were included the thirteen interested parties.

As it appears from the material before me when the Commission appointed, on the 12th September 1983, the

aforesaid thirty-six schoolmasters there remained vacant another seven posts of schoolmasters for the teaching of commercial subjects, even though the Ministry of Education had requested the filling of such posts, too, in order to meet educational needs. 5

I have reached the conclusion that from the text of the sub judice decision there emerges clearly that the interested parties were not appointed instead of the applicant, because she could, and would, have been appointed on contract to one of the seven posts which were left unfilled had she not been excluded from consideration on the ground that she had not been appointed on contract for the school-year 1981 - 1982. 10

I am, therefore, of the opinion that no existing legitimate interest of the applicant has been adversely and directly affected, in the sense of Article 146.2 of the Constitution, by the appointments on contract of the interested parties, and, consequently, the present recourse in so far as it is aimed at such appointments has to be dismissed for this reasons. 15 20

On the other hand, once there had remained unfilled seven posts and since the filling of such posts had been requested by the Ministry of Education in order to meet educational needs, I find that the decision of the respondent Commission to exclude the applicant from appointment on contract in 1983 mainly because she had not been appointed on contract for the school-year 1981 - 1982, even though she was in 1983 eligible and suitable for appointment on contract to one of the said seven vacant posts, is a decision that was reached in excess and abuse of the powers of the Commission and contrary to the principles of proper administration and has, therefore, to be annulled. 25 30

There remains to be considered next the validity of the secondment, on the 15th October 1983, of interested party Mylona to one of the aforementioned seven vacant posts: 35

It is clear, in my opinion, that this secondment was made because the applicant and others like her, had been wrongly excluded from appointment on the 12th September 1983

and, consequently, it has to be annulled as being inextricably connected with the unjustifiable refusal to appoint the applicant on contract on the 12th September 1983.

5 In the result this recourse succeeds in part, but without any order as to costs.

*Recourse succeeds in part.  
No order as to costs.*