

1987 January 23

[SAVVIDES J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

STELIOS PHYLACTIDES AND OTHERS,

*Applicants,*

v

THE REPUBLIC OF CYPRUS, AND/OR  
1 THE EDUCATIONAL SERVICE COMMISSION,  
2 THE MINISTRY OF EDUCATION,

*Respondents.*

*(Cases Nos 67/83 and 147/83)*

*Recourse for annulment—Abatement—Revocation of sub judice act—Whether and in what circumstances the revocation results in the abatement of a recourse*

*Damages—Constitution, Article 146 6—The annulment of an act or decision is a prerequisite for a claim of damages under Article 146 6*

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The sub judice promotions of the interested parties in the above two recourses were revoked because some of the interested parties did not satisfy the requirements of the scheme of service. As a result the respondents reconsidered the matter and took a new decision.

The question that arose for determination is whether the above recourses have been abated as a result of the said revocations.

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Held, *dismissing the recourses* (1) When during the existence of the revoked act and before its revocation adverse consequences have resulted to an applicant in a recourse, such applicant is entitled to have his recourse determined so as to enable him to seek compensation under Article 146 6 of the Constitution.

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(2) In the present case no such adverse consequences have been proved to have resulted or were likely to result. The fact that in reconsidering the matter the respondents relied on the same recommendations of the Head of the Department is an argument that can be made in any subsequent recourse challenging the validity of the new decision.

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(3) Moreover, the annulment of the sub judice promotions, will not give any right to the applicants under Article 146 6 because there is no vested right to promotion as such and the annulment would not automatically have

entailed the promotion of the applicants

*Recourse dismissed*

*No order as to costs*

*Cases referred to*

- 5      *Agrotis and others v. The Republic* (1983) 3 C L R 1397.  
        *Chnstodoulides v The Republic* (1978) 3 C L R 189.  
        *Hapeshis v The Republic* (1979) 3 C L R. 550,  
        *Kittou v The Republic* (1983) 3 C L R 605,  
        *Irrigation Division «Katzilos» v The Republic* (1983) 3 C L R 1068.
- 10     *Payiatas v The Republic* (1984) 3 C L R 1239

**Recourses.**

Recourses against the decision of the respondents to promote the interested parties to the post of Instructor on Scale A.10 in the Technical Education in preference and instead of the applicants.

- 15     *A.S. Angelides, for the applicants in Case No. 67/83.*  
        *D. Zavallis, for the applicants in Case No. 147/83.*  
        *R. Vrahimi-Petridou (Mrs.), for the respondents.*

*Cur. adv. vult.*

- 20     SAVVIDES J. read the following judgment. These two recourses were heard together as they present common questions of law and fact.

- 25     Case No. 67/83 is directed against the decision of the respondent dated 11.12.82, to promote to the post of Instructor on Scale A 10 in the Technical Education, the interested parties in preference to the applicants.

- 30     The recourse was originally filed by six applicants, but later on, one of them, namely, V. Themistocleous, withdrew his recourse in view of the fact that he was, in the meantime, promoted. The five remaining applicants are: St. Phylactides, A. Komodromos, Ch. Maimaris, A. Vlachos and A. Georghiades. The interested parties as appearing in the recourse are: 1)-A. Marangos, 2) A. Pyliotis, 3) J. Paphitis, 4) An. Demosthenous, 5) G. Strouthos, 6) A.

Miltiadous and 7) V. Kourouzides.

After the filing of the recourse, it transpired that interested parties 4, 5, 6 and 7 did not satisfy the requirements of the scheme of service and their promotion was revoked.

The respondent met again on 26.2.1983 and promoted four other candidates (amongst whom applicant Themistocleous in Case No. 67/83, who withdrew his recourse). As a result, Recourse No. 147/83 was filed, by three of the applicants in Recourse No. 67/83, namely, 1) Ch. Maimaris, 2) A. Vlachos and 3) A. Komodromos, challenging the above promotions. The interested parties in Recourse No.147/83 are: 1) A. Ieromonachou, 2) M. Paraskevopoulos, 3) V. Themistocleous and 4) V. Vassiliou.

After the inspection of the files by counsel it transpired once again that certain of the interested parties in both cases did not satisfy the requirements of the scheme of service. As a result, the respondent on 29.10.1984 revoked both decisions the subject matter of the above two recourses.

The question which arises after the revocation of the two decisions forming the subject matter of the above recourses is whether the two recourses have been deprived of their subject matter and thus abated as a result: Or whether the court can proceed to give judgment thereon.

Counsel for the respondent stated that the respondent reconsidered the matter on 20.11.84 and took a new decision. She argued that the subject matter of the recourses has been extinguished as a result of the revocation since no legitimate interests of the applicants were adversely affected. Counsel also stated that two of the applicants were already promoted by the subsequent decision of the respondent, retrospectively, (applicants Komodromos and Vlachos) whilst applicants Phylactides, and Georghiades had already been promoted, before the revocation of the sub judice decisions to a higher scale. Thus the sub judice decisions, after their revocation, left no adverse consequences on the applicants.

Counsel for the applicants contended that the revocation in this case did not extinguish the sub judice decisions ab initio and that the respondent, when reconsidering the matter, did not start the

procedure from the beginning, but instead, took into consideration and relied upon the recommendations of the Director of Technical Education which had already been proved as invalid, since there were thereby recommended for promotion

5 candidates who did not satisfy the requirements of the scheme of service. Counsel argued that as a result of this revocation and reconsideration, applicants Phylactides and Georghiades, who were not recommended by the Director, were not considered for promotion and their interests were thus adversely affected.

10 It has been established by our case law that the annulment by this court, exercising jurisdiction under Article 146, of an administrative act or decision which has caused damage to an applicant, is a prerequisite, in view of para. (6) of Article 146 of the

15 such damage (see *Agrotis and Others v. The Republic* (1983) 3 C.L.R. 1397, at p.1400).

It has similarly been established, that irrespective of the revocation of an administrative act or decision, when during the existence of such act and before its revocation adverse

20 consequences have resulted to an applicant in a recourse, such applicant is entitled to have his recourse determined so as to enable him to seek compensation under Article 146 of the Constitution. (See *Christodoulides v. The Republic* (1978) 3 C.L.R. 189, at p.190; *Hapeshis v. Republic* (1979) 3 C.L.R. 550,

25 at p.560; *Kittou v. Republic* (1983) 3 C.L.R. 605 at pp.609-610; *Irrigation Division «Katzilos» v. The Republic* (1983) 3 C.L.R. 1068, at p.1081; and the Full Bench decision in *Payiatas v. Republic* (1984) 3 C.L.R. 1239 at p.1246).

In the present case, from the material before me, it has not been

30 proved that any adverse consequences have resulted or were likely to result to the applicants during the existence of the sub judice decisions, and before their revocation, which have not been extinguished by such revocation. The fact that (as was the argument of counsel for the applicants), the respondent, at a

35 subsequent stage when reconsidering the promotions to the post in question again relied on the same recommendations of the Head of the Department, is an argument which could be properly raised in any subsequent recourse for annulment of the new decision reached by the respondent but in no way arose during the

40 existence of the sub judice decisions before their revocation.

Besides, the annulment of the sub judice decisions would not give any right to the applicants for any redress under Article 146.6 because there is no vested right to promotion as such, and the annulment of the promotions of the interested parties would not automatically have led to the promotion of the applicants instead. 5

In the result, I find that these recourses have been abated and are hereby struck out but in the circumstances I make no order for costs.

*Recourses dismissed.*

*No order as to costs.* 10