

1987 March 21

[TRIANAFYLIDIS, P]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

RENOS KYRIAKIDES AND OTHERS,

Applicants.

v

1 THE EDUCATIONAL SERVICE COMMISSION,

2 THE MINISTRY OF EDUCATION,

Respondents

*(Cases Nos 331/84, 349/84, 409/84,
429/84, 485/84)*

*Recourse for annulment — Abatement — Revocation of sub judice act — Whether
and in what circumstances the recourse is treated as abated*

Legitimate interest — It includes moral as well as maternal interest

5 *Legitimate interest — Recourse for annulment against promotion in the
Educational Service — Retrospective promotion of applicant from a date
prior to the sub judice promotions — Applicant ceased to possess a legitimate
interest to pursue the recourse further*

10 The applicants in these recourses are challenging the respondent's decision
dated 6 6 84, whereby the interested parties were promoted to the post of
Headmaster (Secondary Education) in preference to the applicants

On the 9 2 85 the respondents revoked the sub judice decision and on
6 3 85 proceeded to fill the vacancies created by reason of such revocation
As the applicants were once again not promoted to the post in question, they
filed new recourses to this Court

15 The question that arose for determination is whether by reason of the
aforesaid revocation the present recourses have been abated

20 Held, (1) The revocation of an administrative act or decision results in the
abatement of a recourse which was made against it, unless adverse
consequences of such act or decision detrimentally affecting a legitimate
interest of the applicant have not been completely obliterated by the
revocation The notion of legitimate interest is wide enough to include moral
as well as maternal interest

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(2) In the present cases the applicants have suffered not only a moral detriment in the sense that other Assistant Headmasters were found more suitable than the applicants for promotion, but they also suffered a material detriment, because during the period, when the sub judice decision was operative, the applicants were deprived of the opportunity to receive the emoluments of the post of Headmaster. It follows that these recourses were not abated. 5

(3) The applicant in recourse 429/84 has been subsequently promoted retrospectively as from 1980 and, therefore, he no longer possesses a legitimate interest to pursue his recourse further. 10

*Recourse 429/84 dismissed
Directions that the other
recourses be heard on their
merits*

Cases referred to 15

Falas v The Republic (1983) 3 C L R 523,

Agrotis v The Republic (1983) 3 C L R 1397,

Mavronichis v The Industrial Training Authority (1986) 3 C L R 1427,

Kittou v The Republic (1983) 3 C L R 605,

Vakis v The Republic (1985) 3 C L R 534, 20

Nicolaidis v The Republic (1987) 3 C L R 9,

Phylaktides and Another v The Republic (1987) 3 C L R 176,

Papasavvas v The Republic (1967) 3 C L R 111,

and on appeal (1968) 3 C L R 173,

Olympios v The Republic (1974) 3 C L R 17, 25

Ioakim v The Limassol Municipality (1974) 3 C L R 170,

Pantelides (No 1) v The Republic (1974) 3 C L R 203

Recourses.

Recourses against the decision of the respondents to promote the interested parties to the post of Headmaster, Secondary Education in preference and instead of the applicants. 30

Ph. Valiantis, for applicants in Cases Nos. 331/84, 349/84 and 485/84.

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A S Angelides, for applicant in Case No 409/84

N Papaefstathiou for applicant in Case No 429/84

R Vrahimi (Mrs) for the respondents

Cur adv vult

5 TRIANTAFYLLIDES P read the following decision The
applicants in these cases are challenging the decision of the
respondent Educational Service Commission reached on the 6th
June 1984, by means of which there were effected promotions of
twelve Assistant Headmasters, other than the applicants to the
10 post of Headmaster (Secondary Education)

On the 9th February 1985 the Commission revoked its said
decision of the 6th June 1984, apparently because there were
made by it twelve promotions whereas the available at the time
vacant posts were only eleven, and on the 6th March 1985 it
15 proceeded to fill retrospectively, as from the 1st September 1984,
eleven Headmaster posts which had become vacant as a result of
the aforementioned revocation of its earlier decision

As the applicants were once again not promoted to the post in
question they filed new recourses which are being heard by this
20 Court

Counsel for the respondent Commission has submitted that as
a result of the revocation by the Commission, on the 9th February
1985, of its sub judge decision of the 6th June 1984 the present
recourses have been abated because they have been deprived of
25 their subject-matter and the applicants do not possess any more
a legitimate interest entitling them to pursue them further

On the other hand counsel for the applicants have argued that
the consequences of the sub judge decision have not totally
disappeared due to its subsequent revocation and that the
30 applicants are entitled to have their recourses determined in
accordance with Article 146 4 of the Constitution in order to
become entitled, if they are successful in the present proceedings,
to claim damages under Article 146 6 of the Constitution

After the decision was reserved on the question as to whether or
35 not these recourses have been abated the applicant in case 306/
84, which was being heard together with the present cases,
withdrew his recourse as by a decision of the respondent reached

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on the 22nd September 1986 he was promoted to the post of Headmaster (Secondary Education) retrospectively as from 1st September 1982; and such recourse was dismissed accordingly.

It is well established (see, inter alia, *Falas v. The Republic*, (1983) 3 C.L.R. 523, *Agrotis v. The Republic*, (1983) 3 C.L.R. 1397 and *Mavronichis v. The Industrial Training Authority*, case No. 478/81, decided on the 6th June 1984*) that damages for detriment suffered as a result of an administrative act or decision which ceased to exist after the filing against it of a recourse under Article 146 of the Constitution can be recovered only under Article 146(6) if the recourse is determined in favour of the applicant under Article 146(4). 5 10

It is, also, well settled that the revocation of an administrative act or decision results in the abatement of a recourse which was made against it inasmuch as the recourse is deprived of its subject-matter unless adverse consequences of such act or decision detrimentally affecting a legitimate interest of the applicant have not been completely obliterated by the revocation (see, in this respect, *Kittou v. The Republic*, (1983) 3 C.L.R. 605, *Vakis v. The Republic*, (1985) 3 C.L.R. 534, the *Mavronichis* case, supra, and *Nicolaidis v. The Republic*, case No. 148/83, decided on the 7th February 1987**). In *Phylactides and another v. The Republic* (cases 67/83 and 147/83, decided on the 23rd January 1987***) it was held that the revocation of the sub judice in those cases decisions resulted in the abatement of the recourses but the relevant facts in those two cases were clearly distinguishable from those of the present cases. 15 20 25

The notion of legitimate interest is wide enough to include moral as well as material interest (see, *Papasavvas v. The Republic*, (1967) 3 C.L.R. 111, and on appeal (1968) 3 C.L.R. 173, *Olympios v. The Republic*, (1974) 3 C.L.R. 17, 24, *Ioakim v. The Limassol Municipality* (1974) 3 C.L.R. 170, 174, and *Pantelides (No. 1) v. Republic* (1974) 3 C.L.R. 203). 30

In the light of all the foregoing I have reached the conclusion that, in the circumstances of the present cases, the applicants have suffered not only moral detriment in the sense that other Assistant 35

* Reported in (1986) 3 C L R 1427

** Reported in (1987) 3 C L R 9

***Reported in (1987) 3 C L R 176

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- Headmasters were found to be more suitable than the applicants for promotion to the posts of Headmasters and, thus, their prestige as members of the public educational service was injured, but they, also, suffered material detriment in the sense that during
- 5 the period in which the sub judge decision was operative, from its inception to its revocation, the applicants were deprived of the opportunity to receive the emoluments of the post of Headmaster because by means of the sub judge decision, the validity of which they challenge, others instead of them were promoted to such
- 10 post. The applicants are, therefore, vested with a legitimate interest entitling them to pursue the present recourses to their determination under Article 146(4) of the Constitution, aiming at securing an outcome which would entitle them to claim damages under Article 146.6.
- 15 It could be said that the revocation of the sub judge decision resulted in the abatement of the present recourses only if together with such revocation the applicants were promoted to the post of Headmaster retrospectively as from the date when the sub judge decision became operative or as from an earlier date, but this was
- 20 not done.

Consequently, I find that the present recourses were not abated. As, however, the applicant in case 429/84 has been subsequently promoted retrospectively to the post of Headmaster as from the 1st September 1980 I am of the opinion that he no longer

25 possesses a legitimate interest entitling him to pursue his recourse further and, therefore, it has to be dismissed for this reason.

In view of all the aforesaid I shall proceed to deal with the remaining cases (331/84, 349/84, 409/84, 485/84) on their merits.

Order accordingly.