

1978 July 27

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANTONIOS L. KOUFETTAS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 81/77).

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*Practice—Recourse for annulment of an administrative decision—  
Particulars of recourse—Amendment as regards the “interested  
party”—Principles applicable.*

5 By means of this recourse the applicant has challenged the  
secondment to the post of Senior Surveyor, of a certain Panayio-  
tou, as the “interested party”.

10 From the minutes of the respondent Commission it appeared  
that the above interested party was on the 10th September,  
1976 promoted to the post of Land Officer; and as a result of  
the vacancy created thereby and of another vacancy, two per-  
sons, Marinos and Pantazis, were promoted and seconded,  
respectively, to the post of Senior Surveyor.

15 From the whole of the contents of the recourse, examined in  
conjunction with another related recourse, it appeared that it  
was the intention of the applicant, all along, to attack the  
secondment of Pantazis to the post of Senior Surveyor and  
not to challenge a promotion to the post of Land Officer.  
The recourse was filed in time as regards the secondment of  
20 Pantazis and it was clear that really due to an oversight the  
name of Panayiotou was referred to instead of that of Panta-  
zis, as the name of the interested party.

On an application for leave to amend the recourse by sub-

situting in the place of the name of Panayiotou the name of Pantazis:

*Held*, granting the application, that a recourse may be construed so as to be treated as attacking a decision other than the one which appears to have been challenged by it; that, subject to the limitation regarding the time of filing, a recourse has to be looked at as a whole in order to ascertain what is exactly its subject-matter; that in the circumstances of this case it is proper to construe and treat this recourse as aimed at the secondment of Pantazis to the post of Senior Surveyor and that it should be deemed to have been made against this secondment all along; and that, accordingly, the applicant should be allowed to amend, in the particulars of the recourse the name of the interested party, so that it should be Pantazis instead of Panayiotou. *Practice of the Greek Council of State in Cases 702/1954, 73/1955, 2321/1968 and 350/1964 followed.*

*Application granted.*

Cases referred to:

*Cases 702/1954, 73/1955, 2321/1968 and 350/1964 of the Greek Council of State.*

#### **Application.**

Application for leave to amend a recourse, challenging a secondment to the post of Senior Surveyor, by substituting in the place of the name of Panayiotou, which was mentioned as the "interested party" in the recourse, the name of Pantazis.

*E. Efstathiou*, for the applicant.

*R. Gavrielides*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

TRIANTAFYLLIDES P. read the following decision. In the present case the applicant has challenged the secondment to the post of Senior Surveyor, in the Department of Lands and Surveys, of a certain Kyriacos Panayiotou.

The recourse was filed on March 1, 1977. On the same day the applicant filed another recourse, No. 80/77, challenging the promotion to another vacancy in the same post of a certain Theodoros Marinos.

It appears from the relevant minutes of the Public Service

Commission, of September 10, 1976, that Panayiotou was promoted to the post of Land Officer and, as a result of this promotion, there was created a vacancy in the post of Senior Surveyor; and that vacancy plus another already existing  
5 vacancy in such post were filled on the same day by the promotion of Marinos and the secondment of a certain Alexandros Pantazis.

The applicant has sought leave in the present case to amend the recourse by substituting in the place of the name of Panayiotou the name of Pantazis, and he has alleged that the mention  
10 of the name of Panayiotou, instead of that of Pantazis, as the "interested party", was due to an oversight.

There is no precedent in our case-law regarding a situation such as the present one; but I have found very useful guidance  
15 in the practice of the Council of State in Greece, as it is described in the Conclusions from the Case-Law of the Council of State (Πορίσματα Νομολογίας του Συμβουλίου τῆς Ἐπικρατείας) 1929-1959, pp. 271-272.

It appears that the basic question is how to construe a recourse in order to ascertain at what, in effect, it is aimed.  
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It is possible, in such a situation, to construe a recourse so as to treat it as attacking a decision other than the one which appears to have been challenged by it; a case which may be referred to, in this respect, is 702/1954, which was decided by  
25 the Council of State in Greece where it was held that another decision could be deemed to be the subject matter of the recourse, on the basis of the administrative records before the Court, and that the decision originally challenged by the recourse was referred to in such recourse due to an oversight.

Also, it seems that a recourse has to be looked at as a whole in order to ascertain what is exactly its subject matter. Case-law which is helpful in this respect are the decisions of the Council of State in Greece in cases 73/1955 and 2321/1968; and from this case-law it appears that the Court is not prevented  
30 from looking at the whole of the recourse in order to ascertain its true subject matter even if what it is so ascertained and treated as the subject matter of the recourse may concern other  
35 third parties, too.

There is one limitation to this power of the Court and this is that the Court cannot treat as the true subject matter of a recourse, and deem the recourse as being aimed at it, a decision which is other than the decision originally challenged if the recourse when filed was out of time as regards the decision which is found to be the true subject matter of the recourse (see the already mentioned case 2321/1968, and case 350/1964, also decided by the Council of State in Greece). 5

In the present case there cannot be the slightest doubt that it was the intention of the applicant, all along, to attack the filling of the vacancies in the post of Senior Surveyor and not to challenge a promotion to the post of Land Officer. This can be unmistakably derived from the whole of the contents of recourse No. 81/77, especially when it is examined in conjunction with recourse No. 80/77. 10 15

The recourse No. 81/77 was filed in time as regards the secondment to one of these vacancies of Pantazis and it is, in my view, clear that really due to an oversight the name of Panayiotou was referred to instead of that of Pantazis, as the name of the interested party. Even the respondent realized that this was so and that is why it is pointed out in paragraph 8 of the Opposition that the interested party is Pantazis and not Panayiotou. 20

In all these circumstances I think that it is proper for me to construe and treat this recourse, No. 81/77, as aimed at the secondment of Pantazis to the vacant post of Senior Surveyor and that it should be deemed to have been made against this secondment all along. The application for amendment was only necessary in order to regularize the position, because, as I have pointed out, it is more a question of construing the recourse rather than of amending it. 25 30

It is, therefore, directed, on the basis of the procedure adopted in the similar, but not exactly analogous, case of *Tikirou v. The Public Service Commission*, (1968) 3 C.L.R. 515, that the applicant should be allowed to amend, in the particulars of the recourse, the name of the interested party, so that it should be Pantazis instead of Panayiotou; I do not think that in the present instance it is necessary to file an amended Application in this recourse; but, if necessary, an amended Opposition may be filed within one month from today. 35

This case, No. 81/77, has to be heard together with related case No. 80/77 and it is directed accordingly.

There shall be no order as to the costs of this application for amendment of the recourse.

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*Application granted. No order as to costs.*