

1978 November 27

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNIS TANIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE
HEAD OF THE HIGHER AND SECONDARY EDUCATION,

Respondent.

(Case No. 241/77).

Administrative Law—Executory act—Preparatory act—Educational officer—Inspection, assessment and rating of work of—A preparatory act to the compilation of the lists of those suitable for promotion and to the actual acts or decisions of promotion—Not an executory act which produces direct legal consequences—It cannot be made the subject of a recourse under Article 146 of the Constitution. 5

Educational Officer—Secondary education school teacher—Assessment and rating of work of—Not an executory act which produces direct legal consequences but a preparatory act—It cannot be made the subject of a recourse under Article 146 of the Constitution—Regulations 17, 18, 28 and 29 of the Educational Officers (Inspection and Rating) Regulations, 1976 and Public Educational Service Law, 1969 (Law 10/69). 10

The applicant, a secondary school teacher of theology, complains against the act or decision of the respondent to rate him with 32 marks for the school year 1975/76 and against the decision that the rating was correct. The question of inspection and rating of educational officers is regulated by regulations 17, 18, 28 and 29 of the Educational Officers (Inspection and Rating) Regulations of 1976 enacted under section 76 of the Public Educational Service Law, 1969 (Law 10 of 1969). 15 20

The respondents raised a preliminary objection to the effect that the *sub judice* decision could not be made the subject of a recourse under Article 146 of the Constitution because the rating 25

and/or the report of inspection and/or the general assessment of the work of the applicant was not an executory administrative act as it contained assessments and/or descriptions about the service ability and/or the substantial qualifications of the applicant.

Counsel for the applicant, on the other hand, contended that the *sub judice* decision was an executory administrative act as this rating and/or the report of inspection was made by an organ which had decisive competence and as an act it had legal consequences or its administrative execution was possible.

On the question whether the decision complained of could be made the subject of a recourse:

Held, that the rating of a public officer and the general assessment of his work contained in a confidential report, ordinary or special, and the outcome of inspection or special inspection made by virtue of the above regulations and Law are preparatory acts to the compilation of the lists of those suitable for promotion (Lists "A" or "B") and to the actual acts or decisions of promotion and as such they produce no direct legal consequences and cannot be the subject of a recourse under Article 146 of the Constitution; and that, therefore, the recourse will be dismissed on this ground (*Pavlidis v. Republic* (1977) 11 J.S.C. 1739 followed).

Application dismissed.

25 Cases referred to:

Pavlidis v. The Republic (1977) 11 J.S.C. 1739 (to be reported in (1977) 3 C.L.R.);

Decisions of the Greek Council of State Nos.588/60 and 835/62.

Recourse.

30 Recourse against the decision of the respondent to rate applicant with 32 marks for the school year 1975/1976.

L. Papaphilippou, for the applicant.

A. S. Angelides, for G. Tornaritis, for the respondent.

Cur. adv. vult.

35 A. LOIZOU J. read the following judgment. By the present recourse the applicant prays for a declaration of the Court that the act or decision of the respondents to rate him with 32 marks for the school year 1975/1976 and/or the decision

that same was correct according to the letter of the Head of the Department of Higher and Secondary Education dated the 14th June, 1977, is *null* and *void* and of no legal effect whatsoever. The grounds of law relied upon by the applicant are:

- (a) That the respondents acted under a misconception of fact (particulars of which are set out in 12 separate paragraphs in the application) in the sense that one inspection only was made during one teaching period when the Inspector made no observation or suggestion or comment but on the contrary expressed satisfaction regarding the applicant and that by such isolated inspection the respondents could not form a correct appreciation of the abilities of the applicant. Moreover, the respondents failed to take into consideration, (i) the activities of the applicant outside the ordinary school programme; (ii) the fact that there was still pending his application for posting at Rizokarpasso in the Turkish occupied area; (iii) the fact that the previous year he was rated with 22 marks out of 25; (iv) that he had been a prisoner of war for a time and his family was enclaved at Rizokarpasso until the 7th January, 1975; (v) that he was in charge of a section of the school and that he had excellent professional qualifications, sufficiency and merit; and
- (b) That the sub judice decision was not duly and/or properly reasoned.

The applicant is a secondary school teacher of theology with 13 years of service, of which 10 he served at Rizokarpasso where he was captured by the Turkish forces and taken prisoner. He was released on the 24th September, 1974, and posted at the Technical School, Nicosia, where he served during the year 1974/1975. For the year 1975/1976 he was posted at the Acropolis Gymnasium 'B'.

The rating complained of is contained in a special report prepared on the 10.11.1976 by three inspectors, namely, Mr. Mitsides who appears in previous reports to be the inspector of the applicant of the lesson of Religion, Mr. Antonios Papadopoulos and Mr. Costas Constantinides, and was countersigned by the General Inspector of Secondary Education. His rating is on four items:

- (a) Professional qualifications
- (b) Sufficiency for work
- (c) Organization, administration and public relations
- (d) General conduct and activities.

5 He was given 8 marks for each rateable item making it a total of 32 marks.

The question of inspections and rating of educational officers is regulated by the Educational Officers (Inspection and Rating) Regulations of 1976, enacted by virtue of the provisions of
 10 section 76 of the Public Educational Service Law, 1969, Law 10 of 1969. It appears that the special report, subject-matter of these proceedings was prepared under the said Regulations and in particular regulations 17, 18, etc. The rating is regulated by regulations 28 and 29 of the aforesaid Regulations
 15 which gives a maximum of 10 marks for each of the four rateable items appearing on the form and which are set out in regulation 27. Regulation 29 provides that "excellent" corresponds to 36 marks and above, "very good" to 31 and above but less than 36, "good" to 26 marks and above but less than
 20 31, and "satisfactory" is between 20 or 26 marks. These reports are communicated to the Educational Officer concerned—in the present case by letter dated 22.2.1977, *exhibit 'C'*—who under regulation 22 may submit an objection to the General Inspector which the applicant did by letter dated the
 25 9th March, 1977, *exhibit 'D'*.

In accordance with the regulations, the observations of the authors of the special report on the applicant's objections were obtained (blue 47, *exhibit 1*). They insisted on the correctness of their assessment of the applicant's ability and performance.
 30 Thereupon the Head of the Department considered that the applicant was correctly rated and informed him accordingly by his letter of the 14th June, 1977 (*exhibit 'E'*).

The respondents opposed the application on the merits and also raised the issue that the sub judice decision could not be
 35 the subject of a recourse under Article 146 of the Constitution on the ground that the rating and/or the report of inspection and/or the general assessment of the work of the applicant for the school year 1975/1976 was not an executory administrative act as it contained assessments and/or descriptions

about the service ability and/or the substantial qualifications of the applicant.

The answer of the applicant to this contention was that the sub judice decision is an executory administrative act as this rating and/or the report of inspection was made by an organ which has decisive competence and as an act it has legal consequences or its administrative execution is possible. It was argued that such a general assessment of work and/or rating or inspection is performed by an organ—an inspector—who under section 2 of the Public Educational Service Law 1969, Law 10 of 1969, is defined as “the Educational Officer who performs the duty of supervision of the staff and the functioning of public schools, of elementary, secondary and higher education, as well as of the non public schools which for the purpose of supervision come under the competence of the Ministry and includes a General Inspector”. An Inspector, therefore, because of the duties entrusted to him by law is an organ of decisive competence and as such his acts produce legal results.

Furthermore, by virtue of the provisions of regulation 26 of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Connected Matters) Regulations of 1972—Notification No. 205 in Supplement No. 3 to the official Gazette as amended by regulations under Notifications Nos. 54 and 250 of 1974—the height of the marks appearing in the confidential reports of an educational officer have decisive effect as to whether one will be placed or not on the Lists ‘A’ or ‘B’ of those suitable for promotion (Κατάλογοι Προαξίμων). This regulation read in conjunction with regulations 28 and 29 and the provisions of section 35(3) of the Public Educational Service Law 1969, whereby the Educational Committee takes the confidential reports into consideration as well as the recommendations of the inspector, the assessment and rating of an Educational Officer affects the promotion of an officer and therefore it has legal consequences.

In the case of *Iacovos Pavlides v. The Republic* (1977) 11 J.S.C., p. 1739*, Malachos J., held that an assessment and grading of work is not an executory act which produces direct legal consequences but a preparatory one and as such it could

* To be reported in (1977) 3 C.L.R.

not be the subject of a recourse under Article 146 of the Constitution. He adopted therein what is stated in the conclusions from the case law in the Council of State in Greece 1929-1959, p. 239, that "acts preceding the executory act or preparatory
5 acts do not produce by themselves direct legal consequences and therefore cannot be attacked by a recourse; such acts being the reports containing the assessment of the service abilities and the substantial qualifications of a civil servant." I fully subscribe to this principle. In fact, the Greek Council of State
10 has consistently followed it and in that respect I would like to refer to its Decision 588/60 where it was held that the reports prepared under section 92 of the Public Service Code about the service activities and performance of civil servants, are not executory acts as being simple elements of assessment useful
15 for the executory act to be issued by the competent organ. Likewise in Decision No. 835/62 it was held that the service reports are plain advisory elements for the formation of the judgment of the deciding organ, do not create by themselves a new legal situation and as a result of this they are not executory
20 administrative acts capable of independent recourse for annulment.

It is obvious from the aforesaid exposition of the law that the rating of a public officer and the general assessment of his work contained in a confidential report, ordinary or special, the
25 outcome of inspection or special inspection made by virtue of the regulations and laws earlier referred to in this judgment, are preparatory acts to the compilation of Lists 'A' or 'B' of those suitable for promotion and to the actual acts or decisions of promotion and as such they produce no direct legal consequences and cannot be the subject of a recourse under Article
30 146 of the Constitution. The recourse therefore should fail on this ground. In view of this outcome I need not, therefore, deal with the recourse on the merits.

In the result the present recourse is dismissed but I make no
35 order as to costs.

*Application dismissed.
No order as to costs.*