

1983 February 28

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

EKATERINI COLOCASSIDOU COSTEA,

Applicant.

v.

THE REPUBLIC OF CYPRUS THROUGH

1. THE DIRECTOR OF DENTAL SERVICES,
2. THE MINISTER OF HEALTH AND/OR
3. THE DIRECTOR-GENERAL OF THE MINISTRY OF HEALTH,

Respondents.

(Case No. 270/82).

5 *Public Officers—Powers and duties—Laid down in a scheme of service approved by the Council of Ministers—Scheme of service approved by Council of Ministers respecting powers of Director of Dental Services—Expressly charges the Director with responsibility for the organization of his department, its administration and smooth functioning—Allocation of duties among Senior Dental Officers a matter directly related to the organization and smooth functioning of the Department of Dental Services and as such fell exclusively within the jurisdiction of the Director.*

10 *Public Law—Powers vested by law upon a body of government cannot be delegated in the absence of express authority.*

15 *Administrative Law—Administrative acts or decisions—Executory act—Public Officers—An act is executory if it objectively affects the position of an officer in the service—Judicial control is available to safeguard the status of public officers in the interests of legality—Matters of internal administration are the exclusive province of the administration and are not subject to judicial review—Assignment of duties to applicant, a senior Dental Officer, compatible with the relevant schemes of service, a matter of internal administration*
20 *and, as such, not amenable to review.*

Administrative Law—Omissions of the Administration—Are of an executory character only if they emanate from failure of the administration to act in cases where there exists a mandatory legal provision requiring the administration to take action.

Soon after her promotion to the post of Senior Dental Officer, the Director of Dental Services assigned to her special duties in mouth and gnathic surgery which were compatible with her new duties under the schemes of service regulating duties and responsibilities of Senior Dental Officers; applicant felt aggrieved at this allocation feeling she was unequally treated vis-a-vis the interested party who was assigned administrative duties for the Nicosia District and filed the present recourse for a declaration that the part of the decision that concerned her and the interested party was invalid on the ground that she was unequally treated in breach of her right to equality safeguarded by Article 28 of the Constitution.

Before resorting to Court she addressed a letter to the Minister of Health for the reversal of the Decision of the Director and the rejection of her claim by the Minister was the subject-matter of the second prayer of this recourse; and by the third prayer she sought a declaration that the omission of the Minister to erase the assignments made was illegal and invalid and, consequently, ought not to be allowed to continue.

Section 29(1) of the Public Service Law, 1967 (Law 33/67) lays down that the powers of public servants shall be laid down in a scheme of service approved by the Council of Ministers regulating their duties, rights and responsibilities; and the scheme of service approved by the Council of Ministers respecting the powers of the Director of Dental Services, expressly charges the Director with responsibility for the organisation of his department, its administration and smooth functioning of the dental services, as well as supervision of subordinate staff.

Held, (1) that by the combined effect of s.29(1) of Law 33/67 and the scheme of service relating to the post of Director of Dental Services approved by the Council of Ministers, the Director of Dental Services was, to the exclusion of any other authority, empowered to organise his department in a manner best conducive to its efficient administration; that the allocation of duties among Senior Dental Officers was a matter directly

related to the organisation and smooth functioning of the Department of Dental Services and, as such, fell exclusively within the jurisdiction of the Director.

5 *Held*, further, that though the rule is that the powers vested by law upon a body of government, cannot be delegated in the absence of express authority, in this case the powers exercised by the Director of Dental Services vested in the Director and no question of delegation arose.

10 (2) That an act is executory if it objectively affects the position of an officer in the service; that an act does not become executory merely because the officer concerned feels subjectively aggrieved; that it is the objective insignia of the act that matter; that judicial control is available to safeguard the status of public officers in the interests of legality; that it is
15 administration subject to law, not administration by the Courts; that matters of internal administration are the exclusive province of the administration; that judicial review in that area is regarded as an unjustified interference with matters of pure administration, the province of the executive,
20 not the judiciary; that the assignment of duties to the applicant, in this case, was a matter of internal administration and, as such, not amenable to review. The recourse does not disclose a litigable cause and must be dismissed as ill-founded.

25 *Held*, further, with regard to the third prayer, that omissions of the administration are of an executory character, only if they emanate from failure of the administration to act in the face of a mandatory legal provision requiring the administration to take action; that only if the act is ordained by law, can the inaction of the administration rank as an executory act amenable to review; that in the absence of such a provision, failure to act
30 is but an expression of the discretionary powers of the administration and is consequently not justiciable in isolation from the discretionary powers otherwise vested in the administration.

Application dismissed.

35 Cases referred to:

- Evlogimenos v. Republic* (1973) 3 C.L.R. 184 at p. 190;
Yiallourou v. Republic (1976) 3 C.L.R. 214;
Karapataki v. Republic (1982) 3 C.L.R. 88.

Recourse.

Recourse against the allocation of duties by the respondents to the applicant and the interested party on their promotion to the post of Senior Dental Officer.

A.S. Angelides with *G. Triantafyllides*, for the applicant. 5

N. Charalambous, Senior Counsel of the Republic, for respondent.

Cur. adv. vult.

PIKIS J. read the following judgment. The applicant, a highly qualified dentist, first joined the Government Medical Service in 1967. In the course of her service, she ascended a number of rungs in the hierarchical ladder. Her last promotion came on 1st April, 1982, when appointed Senior Dental Officer, a post immediately below the Director in the Department of Dentistry of Government Medical Services. She was promoted along with six fellow dental medical officers, including Panikos Yannikos, the interested party. 10 15

Soon after their promotion, the Director of Dental Services assigned new duties to them ostensibly compatible with their new duties under the scheme of service regulating duties and responsibilities of Senior Dental Officers. The allocation of duties was explained by the Director in a meeting he held with Senior Dental Officers, the details of which were minuted and are embodied in a document attached to the opposition under "A". The applicant was assigned special duties in mouth and gnathic surgery. She felt aggrieved at the allocation, feeling she was unequally treated vis-a-vis the interested party who was assigned administrative duties for the Nicosia district. In her opinion, administrative duties carried, it seems, enhanced status in the service and opened wider avenues for promotion. She felt she had superior claims to the interested party to be entrusted with administrative duties. She challenged the assignments made by the present recourse. By her first prayer, she asked the Court to declare invalid and set aside that part of the decision that concerns her and the interested party, on the ground that she was unequally treated in breach of her right to equality safeguarded by Article 28 of the Constitution. 20 25 30 35

Before resorting to Court, she addressed a letter to the Minister of Health for the reversal of the decision of the

Director, albeit without success. The Minister personally or through the Director of the Ministry, turned down her application, signifying thereby approval of the decision taken. The rejection of her claim by the Minister or the Director-
5 General of the Ministry of Health, is the subject-matter of the second prayer of this recourse whereby the applicant prays for the annulment of the confirmatory action of the head of the Ministry, as contrary to the scheme of service. The decision of the Minister, like that of the Director of the Department
10 of Dental Services, ought to be annulled on the ground they were void. Lastly, by prayer 3, she seeks a declaration that the omission of the Minister or the Director of the Ministry to erase the assignments made, is illegal and invalid and, consequently, ought not to be allowed to continue.

15 The application is opposed on legal and factual grounds. It is the case for the respondents that none of the complaints of the applicant are justiciable in proceedings under Article 146 of the Constitution, for the reason that, neither the acts, subject-matter of prayers 1 and 2, nor the alleged omission,
20 subject-matter of prayer 3, are executory. The executive character of an act or omission is a prerequisite for judicial review under Article 146 of the Constitution. More specifically, the acts challenged in this recourse are not executory, in the contention of the respondents, for the following reasons:

25 The decision of the Director, subject-matter of prayer 1, is an internum of the administration and, as such, not amenable to review. It had no repercussions on the status of the applicant in the service. The Director was the only organ of administration competent to assign duties to his subordinates in the
30 Department of Dental Services. The Minister had no discretion in the matter nor was he vested with power to review the decisions of the Director. Therefore, the reply of the Minister was devoid of legal consequences.

35 The last prayer does not reveal a cause amenable to review in the absence of a legal obligation on the part of the Minister or the Director of the Ministry to decide or approve the allocation of duties in the dental services.

As the objections of the respondents go to the jurisdiction of the Court to take cognizance of the proceedings, they were set

down, with the consent of the parties, for preliminary adjudication. It would be profitless to embark on examination of the merits in the absence of jurisdiction to try the case. Mr. Charalambous argued that the power to allocate duties among Senior Dental Officers vested exclusively in the Director of Dental Services in accordance with the provisions of s.29(1) of the Public Service Law - 33/67 - and the scheme of service defining the powers and responsibilities of the Director. (See exhibit 1). As the Minister had no power in the matter, his assent to the course taken by the Director, amounted to nothing other than an expression of support for the actions of a departmental head.

Mr. Angelides, on the other hand, submitted that the Director of Dental Services made the assignments in question in abuse of his powers for, power to effect them vested either in the Council of Ministers, as the repositories of executive and administrative powers or in the Minister of Health, by virtue of the provisions of Article 58 of the Constitution, defining the powers of a Minister or as appropriate authority for the Ministry, in accordance with s.2 of Law 33/67.

Logically, the first question we must answer is, who had power to assign duties to Senior Dental Officers. It is a settled principle of administrative law that the product of the exercise of administrative powers by an unauthorised person or organ, constitutes a voidable act liable to be annulled in proceedings for the review of administrative actions as well as consequences flowing thereof. (See, *Conclusions from Jurisprudence of Greek Council of State 1929-59*, p.106). Under our system of government, executive and administrative powers vest in the Council of Ministers, unless validly entrusted by law to a subordinate organ or authority of public administration.

Was the power to assign duties to Dental Officers entrusted to any such organ of government?

Section 29(1) of the Public Service Law lays down that the powers of public servants shall be laid down in a scheme of service approved by the Council of Ministers regulating their duties, rights and responsibilities. Therefore, so far as powers vested in a public officer by a scheme of service are concerned, they are exercisable by virtue of a legislative authority, by an

authority other than the Council of Ministers. There is no conflict between the provisions of s.29(1) and those vested by the Constitution, either upon the Council of Ministers or those conferred upon a Minister under Article 58.

5 The scheme of service approved by the Council of Ministers (exhibit 1), respecting the powers of the Director of Dental Services, expressly charges the Director with responsibility for the organisation of his department, its administration and smooth functioning of the dental services, as well as supervision
10 of subordinate staff. By the combined effect of s.29(1) of Law 33/67 and the aforementioned scheme of service approved by the Council of Ministers, the Director of Dental Services was, to the exclusion of any other authority, empowered to organise his department in a manner best conducive to its efficient admin-
15 stration. The allocation of duties among Senior Dental Officers was a matter directly related to the organisation and smooth functioning of the Department of Dental Services and, as such, fell exclusively within the jurisdiction of the Director.

Extensive reference was made, in the course of argument, to
20 the principles of public law, forbidding, in the absence of express, legislative authority, the delegation of duties entrusted to a body or authority of public administration. The rule is that the powers vested by law upon a body of government, cannot be delegated in the absence of express authority. The rule pro-
25 hibits, equally, delegation to a subordinate as well as a superior. Any such delegation is regarded in law as an impermissible encroachment upon the powers of legislature who are the sole arbiters of who shall exercise the powers conferred by law. (See, *Conclusions from Jurisprudence of Greek Council of State*
30 *1929-59*, p.106). Delegation can only be strictly effected in accordance with and in furtherance to specific powers vested by law. (See, *Evipides Evlogimenos v. The Republic* (1973) 3 C.L.R. 184 at 190). A law authorising delegation of powers under certain circumstances is, as it may be noted, the Delegation
35 of the Exercise of Powers, Deriving from a Law, Law 23/62. In this case, the powers exercised by the Director of Dental Services, as above indicated, vested in the Director. No question of delegation arises.

This being the case, we must next decide whether the assign-
40 ment of duties complained of and matters consequential thereto,

are amenable to the jurisdiction of this Court, under Article 146 of the Constitution.

The jurisdiction of the Supreme Court under Article 146 is confined to administrative acts of an executory character. The character of the act derives from its repercussions in law and fact. It has been said time and again that if the act affects the status of a public officer in the service, speaking of acts bearing on the position of civil servants, it is executory. The status of an officer may be affected by legal as well as factual changes in his position in the service. It is easy to identify legal changes and determine their effect on the status of an officer. Factual changes must be empirically examined in each case in order to get to the core of the matter. If they affect his status, they are executory but not otherwise. The subject was discussed in detail by Triantafyllides, P., in *Chrystalla Yiallourou v. The Republic* (1976) 3 C.L.R. 214. Recently, opportunity arose to debate the same subject in *Karapataki v. The Republic* (1982) 3 C.L.R. 88. The implications of a decision must be objectively examined. An act is executory if it objectively affects the position of an officer in the service. An act does not become executory merely because the officer concerned feels subjectively aggrieved. It is the objective insignia of the act that matter.

In *Yiallourou*, supra, the Supreme Court adhered to the position, well established in other jurisdictions where administrative law is practised as a separate branch of the law that, matters of internal administration, otherwise internums of the administration, are not subject to review. Therefore, the transfer of the applicant from one department of the Public Information Office to another, was held not justiciable as it left the status of the applicant unaffected. She was not required to do anything other than what was envisaged in the scheme regulating her duties in the Public Information Office. The case also serves to illustrate that where responsibility vests in the director of a department for internal organisation, the director is solely responsible for the allocation of duties to his subordinates, subject always to the assignment being compatible with the duties of the officer, as defined in the scheme of service. To the same effect, is the decision in *Karapataki*, supra (see,

also, *Conclusions from Jurisprudence of the Greek Council of State* 1929-59, p.238).

The principle emerging, is that judicial control is available to safeguard the status of public officers in the interests of legality.

5 It is administration subject to law, not administration by the Courts. Matters of internal administration are the exclusive province of the administration. Judicial review in that area is regarded as an unjustified interference with matters of pure administration, the province of the executive, not the judiciary.

10 The assignment of duties to the applicant, in this case, was a matter of internal administration and, as such, not amenable to review. The recourse does not, in my judgment, disclose a litigable cause and must be dismissed as ill-founded.

I need not discuss subsidiary issues in detail, such as those
15 relating to prayer 3; although it seems to me that the contention of the applicant in that regard would, again, be doomed to failure. Omissions of the administration are of an executory character, only if they emanate from failure of the administration to act in the face of a mandatory legal provision requiring the
20 administration to take action. Only if the act is ordained by law, can the inaction of the administration rank as an executory act amenable to review. In the absence of such a provision, failure to act is but an expression of the discretionary powers of the administration and is consequently not justiciable in
25 isolation from the discretionary powers otherwise vested in the administration. (See, *Conclusions from Jurisprudence of the Greek Council of State* 1929-59, p.243).

For all the foregoing reasons, the application must be dismissed. There shall be no order as to costs.

30 *Application dismissed. No order as to costs.*