

1984 March 15

[TRIANTAFYLLIDES, P., L. LOIZOU, MALACHTOS, LORIS,
STYLIANIDES, JJ.]

STELIOS PHYLAKTIDES,

Appellant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE
EDUCATIONAL SERVICE COMMISSION AND OTHERS,
Respondents.

(Revisional Jurisdiction Appeal No. 340).

*Administrative Law—Executory act—Acts of a confirmatory and
informative nature—They lack executory nature and cannot be
made the subject-matter of a recourse under Article 146 of the
Constitution.*

On the 5th June, 1981 the appellant applied for an evaluation 5
of his qualifications with a view to becoming entitled to promo-
tion to the old salary scale B10; and on the 2nd July 1981 the
respondent Commission found that the appellant was not
entitled to such promotion under the then in force scheme of 10
service and he informed applicant accordingly by letter dated
3rd July 1981. The appellant did not file a recourse against
this decision of the Commission.

In an answer to a letter of the applicant dated 7th August,
1982, the respondent Commission, by letter dated 26th August,
1982, informed him, inter alia, that his emplacement on salary 15
scale A7, instead of on salary scale A9, was effected by virtue
of the relevant legislation. Hence a recourse, which was ori-
ginally directed against the emplacement of appellant as an
Instructor, in Secondary Technical Education, on salary scale
A7, instead of on salary scale A9, and subsequently, as reframed 20
by means of appellant's written address, directed against his
non-emplacment on salary scales A8, A10, A11.

Upon appeal against the dismissal of the recourse:

5 *Held*, that a confirmatory act lacks executory nature and cannot be the subject-matter of a recourse; that, similarly, an informative act is not an executory act and cannot be challenged by a recourse; that the letter which was written to the appellant
 10 by the respondent Commission on the 26th August 1982, in answer to his letter of the 7th August 1982, is not an act of an executory nature but, merely, of a confirmatory and informative nature; that it confirmed the action taken by the Commission in emplacing the appellant in accordance with the provisions
 15 of Law 12/81 and, obviously, on the basis of the decision of the Commission dated 2nd July 1981, and informed, at the same time, the appellant about the requirements for promotion to scale A9; and that, consequently, the contents of the said letter dated 26th August 1982 did not entitle the appellant to file a recourse under Article 146 of the Constitution as he has done; accordingly the appeal must be dismissed.

Appeal dismissed.

Cases referred to:

- 20 *Ioannou v. Republic* (1982) 3 C.L.R. 1002 at p. 1008;
Spyrou v. Republic (1983) 3 C.L.R. 354 at p. 358;
Goulielmos v. Educational Service Committee (1983) 3 C.L.R. 883 at p. 895;
Pieris v. Republic (1983) 3 C.L.R. 1054 at p. 1062;
Economides v. Republic (1980) 3 C.L.R. 219 at p. 223;
 25 *Kyprianides v. Republic* (1982) 3 C.L.R. 611 at p. 619;
Police Association v. Republic (1972) 3 C.L.R. 1 at p. 24;
Vafeadis v. Republic, 1964 C.L.R. 454 at p. 460;
Republic v. Gava (1968) 3 C.L.R. 322 at p. 325;
Metaxas v. Republic (1965) 3 C.L.R. 15 at p. 26;
 30 *Papasavva v. Republic* (1979) 3 C.L.R. 563 at p. 568.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Pikis, J.) given on the 6th October, 1983 (Revisional

Jurisdiction Case No. 477/82)* whereby appellant's recourse against his emplacement as an Instructor, in the Secondary Technical Education, on salary scale A7 instead of on salary scale A9 was dismissed.

A.S. Angelides, for the appellant. 5

R. Vrahimi (Mrs.), for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. By this appeal the appellant has appealed against the first instance judgment of a Judge of this Court who dismissed his recourse (No. 477/82) against his emplacement as an Instructor, in Secondary Technical Education, on salary scale A7, instead of on salary scale A9. 10

The emplacement of the appellant on salary scale A7 was effected by virtue of the application of section 6(1) of the Public Educational Service (Increase of Salaries, Restructuring and Placement of Certain Posts on Unified Salary Scales) Law, 1981 (Law 12/81), as amended by Laws 23/81, 51/81 and 26/82. 15

After he had filed his recourse the appellant by means of his written address presented his claim as being in effect a claim for emplacement, under section 4(b) of Law 12/81, on salary scales A8, A10, A11, and, as no objection was raised in this respect by counsel for the respondents, the recourse was determined by the trial Judge on the basis of the written addresses. 20

What gave rise to the filing of the recourse of the appellant was a letter of the Chairman of the respondent Educational Service Commission, dated 26th August 1982, by means of which he was informed, in answer to a letter of his dated 7th August 1982, that his emplacement was effected by virtue of the relevant legislation, and that he could seek explanations from the Accounts Department of the Ministry of Education; and, furthermore, that in accordance with the relevant scheme of service it was necessary to complete three years' service at the top of salary scale A7 before being promoted to salary scale A9 and that the appellant would complete such service on the 1st September 1983. 25
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* Reported in (1983) 3 C.L.R. 957.

It is to be noted that previously to the above correspondence the appellant had applied on the 5th June 1981 for an evaluation of his qualifications with a view to becoming entitled to promotion to the old salary scale B10 and on the 2nd July 1981
5 the respondent Commission found that the appellant was not entitled to such promotion under the then in force scheme of service and he was informed accordingly by letter dated 3rd July 1981. The appellant did not file a recourse against this decision of the Commission.

10 At the time when the decision of the Commission dated 2nd July 1981 was taken Law 12/81 was already in force but it appears that the relevant schemes of service for the new posts which were created by Law 12/81 had not yet been approved by the Council of Ministers; this was done later on the 18th March
15 1982. Consequently, the appellant's claim for promotion was examined on the basis of the then existing scheme of service in relation to the old salary scale B10.

It is clear from the provisions of section 4(b) of Law 12/81 that the appellant could have been promoted to the new salary
20 scales A8, A10, A11, under the said section 4(b), if he was entitled to promotion to the old salary scale B10. Thus, his application which was made, as aforementioned, on the 5th June 1981, was, in effect, an effort to establish his entitlement to promotion to salary scale B10 so as to enable him to be
25 promoted to the new scales A8, A10, A11 under the said section 4(b) of Law 12/81; and, as already stated, it was found that he was not entitled to be promoted to the old salary scale B10 and, so, by inevitable implication, he was not entitled to be promoted to the new salary scales A8, A10, A11.

30 In our opinion the letter which was written to the appellant by the respondent Commission on the 26th August 1982, in answer to his letter of the 7th August 1982, is not an act of an executory nature but, merely, of a confirmatory and informative nature: It confirmed the action taken by the Commission in
35 emplacing the appellant in accordance with the provisions of Law 12/81 and, obviously, on the basis of the decision of the Commission dated 2nd July 1981, and informed, at the same time, the appellant about the requirements for promotion to scale A9. Consequently, the contents of the said letter dated

26th August 1982 did not entitle the appellant to file a recourse under Article 146 of the Constitution as he has done.

In relation to the principle that a confirmatory act lacks executory nature and cannot, therefore, be the subject-matter of a recourse, useful reference may be made to, inter alia, *Ioannou v. The Republic*, (1982) 3 C.L.R. 1002, 1008, *Spyrou v. The Republic*, (1983) 3 C.L.R. 354, 358, *Goulielmos v. The Educational Service Committee*, (1983) 3 C.L.R. 883, 895 and *Pteris v. The Republic*, (1983) 3 C.L.R. 1054, 1062. 5

Also, in relation to the principle that an informative act is not an executory act and cannot be challenged by a recourse reference may be made to, inter alia, *Economides v. The Republic*, (1980) 3 C.L.R. 219, 223, *Kyprianides v. The Republic*, (1982) 3 C.L.R. 611, 619. 10

Moreover, we are of the view that it was rightly found by the trial Judge that there does not exist, in the present case, an omission to implement the provisions of the relevant legislation, that is of Law 12/81; and, in any event, no possibility of the existence at all of an omission could have arisen once there was a definite decision regarding the entitlement of the appellant to promotion to a higher salary scale, such as the decision taken by the respondent Commission on the 2nd July 1981 (see, in this respect, inter alia, *The Police Association v. The Republic*, (1972) 3 C.L.R. 1, 24, *Vafeadis v. The Republic*, 1964 C.L.R. 454, 460, *The Republic v. Gava*, (1968) 3 C.L.R. 322, 325, *Metaxas v. The Republic*, (1965) 3 C.L.R. 15, 26 and *Papasavva v. The Republic*, (1979) 3 C.L.R. 563, 568). 15 20 25

In the light of all the foregoing the recourse of the appellant as well as this appeal ought to be dismissed.

As regards the issue of the correct interpretation of section 4(b) of Law 12/81, which was raised before the trial Judge in relation to the claim of the appellant to promotion, we do not have to pronounce on this issue in this appeal, and, in the light of the arguments advanced before us in connection with it, we have to leave it open. 30 35

We do not propose to make any order as to the costs of this appeal.

Appeal dismissed with no order as to costs.