

1984 July 19

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MARIGO MICHAELIDOU-DEMETRIOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE EDUCATIONAL SERVICE COMMITTEE,
2. THE COUNCIL OF MINISTERS,

Respondents.

(Case No. 484/80).

*Time within which to file a recourse—Article 146.3 of the Constitution
—Time begins to run from date the person concerned acquires
knowledge of the sub judice act—Though exact time when appli-
cant acquired knowledge of the sub judice act not known nor the
manner in which such knowledge was acquired, she came to know
of the sub judice decision and complained to the respondents by
letter within a time more than 75 days from the filing of the re-
course—Therefore the recourse, which was filed outside the period
of 75 days prescribed by the above Article of the Constitution,
dismissed as filed out of time.*

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On the 4th September, 1980 the Council of Ministers decided that there should be renewed all the contracts of school masters who were serving on contract during the school-year 1979-1980; and as a result of this decision the respondent on 10.9.80 decided to renew all such contracts. By her letter of 27.9.80 which was addressed to the respondent Commission the applicant referred to the above decision of the Council of Ministers and to the renewal of the above contracts by the Commission, in pursuance of such decision, and invited the Commission to appoint her to the post of school master. The Commission rejected her request by its letter dated the 10th October, 1980 and hence this recourse which was filed on the 22nd December 1980.

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Though the question whether the recourse was filed within

the time-limit of 75 days prescribed by Article 146.3 of the Constitution was not raised in the opposition the Court examined it *ex proprio motu* and:

5 *Held, that it is a principle of administrative law that in case of*
 individual administrative acts time begins to run from the date
 the person concerned acquires knowledge thereof; that though
 the exact time when applicant acquired knowledge of the sub
 10 judice decision is not known neither the manner in which such
 knowledge was acquired, it is a fact evidenced by her above
 letter of 27.9.80, that she knew, by that date, both of the sub
 15 judice decision as well as the decision of the Council of Ministers
 and her consequential non-appointment; that, therefore, the
 time prescribed by Article 146 of the Constitution has started
 running the latest since the 27th September, 1980, the date by
 which the applicant must have acquired knowledge of such
 20 decision, whereas the present recourse was filed on the 22nd
 December, 1980, outside the period of 75 days prescribed by the
 Constitution; accordingly the recourse must be dismissed as
 filed out of time.

Application dismissed.

Cases referred to:

Pissas (No. 1) v. E.A.C. (1966) 3 C.L.R. 634;

Papakyriacou v. Republic (1982) 3 C.L.R. 1151; and on appeal
 (1983) 3 C.L.R. 870 at pp. 881-882;

25 *Christodoulou v. Republic* (1983) 3 C.L.R. 668.

Recourse.

Recourse against the omission of respondent 1 to appoint
 applicant as a master of Secondary Education during the school
 year 1980-1981.

30 *A. S. Angelides* with *D. Michaelidou (Mrs.)*, for the ap-
 plicant.

M. Photiou, for the respondents.

Cur. adv. vult.

35 SAVVIDES J. read the following judgment. The applicant
 prays for a declaration that:

“1. The omission of respondent No. 1 to appoint the applicant
 as a master in schools of Secondary Education during
 the school year 1980 - 1981 is void, being contrary to the

- provisions of the Constitution and/or the Law and/or as being made in abuse and/or excess of power, and/or
2. The omission of respondent No.1 to proceed to the filling of the vacant posts and/or one of the vacant posts of master in English Literature by appointing the applicant to such post, on the excuse that the renewal of the appointment of those school masters serving on contract was made after a decision taken by respondent No.2, is void and of no effect whatsoever, being contrary to the provisions of the Constitution and/or the Law and/or in that it was made in excess or abuse of power; and/or 5 10
 3. The act and/or decision of respondent No.1 to take and/or follow orders and/or interventions by an incompetent organ, which led to the non-appointment of applicant by respondent No. 1, is void and of no legal effect whatsoever, being contrary to the provisions of the Constitution and/or the Law and/or in that it was taken in excess or abuse of power; and/or 15
 4. The decision of respondent No. 1 not to appoint the applicant to one of the vacant posts of master in English Literature, communicated to the applicant personally and/or through her counsel by letter dated the 10th October, 1980, is void and of no legal effect whatsoever; and/or 20
 5. The intervention of respondent 2 in the duties and competences of respondent 1 and/or the appointment by it of school master for the school year 1980 - 1981 was a void act and/or decision, and/or of no legal effect whatsoever being contrary to the provisions of the Constitution and/or the Law and/or outside the powers and competences of respondent No. 2 and/or in that it was made in excess and/or abuse of power and such intervention and/or order should therefore have been ignored by respondent 1; and/or 25 30
 6. Any act and/or decision of respondent 2 with regard to the appointment of school masters was void and of no effect whatsoever, being contrary to the provisions of the Constitution and/or the Law and/or in that it was taken in excess or abuse of power." 35

In short, what the applicant prays for is a declaration that the act or decision of respondent 1, dated 10.9.80 by which it approved the decision of respondent 2 to renew the contractual appointments of the schoolmasters serving on a contractual basis during the previous year (1979 - 1980), omitting thus to appoint the applicant who was not so employed during the previous year, as being absent abroad, is null and void and of no legal effect whatsoever and that respondent 2 was an incompetent organ to take such a decision.

10 The facts of the case are briefly as follows:-

The applicant possesses a diploma in English Literature from Athens University which she obtained in 1973. In 1975 - 1976 she was appointed on several occasions as a substitute in replacement of other school masters who were absent during those periods. She was then appointed on a contractual basis from 8.10.76 - 31.8.77 and then again from 23.9.77 - 31.8.78.

On the 22nd July, 1978, the Educational Service Committee (E.S.C.) offered to the applicant a renewal of her contract until 31.8.79. The applicant informed the E.S.C. by letter dated 12.8.78 that he was unable to accept such appointment for at least 1 or 2 years because she was going abroad for post-graduate studies, and asked that her priority on the list of appointees be kept. As a result the decision of the E.S.C. for the renewal of applicant's contractual appointment was revoked.

25 Applicant returned from her post-graduate studies in England in 1980 and applied for appointment. At the time, she was appearing on the list of masters of English Literature eligible for appointment, under serial number 59.

On the 4th September, 1980, the Council of Ministers (respondent 2 in the recourse) took decision No. 19.509 by which it decided that there should be renewed all the contracts of schoolmasters who were serving on contract during the school-year 1979 - 1980. As a result of such decision, the Director-General of the Ministry of Education requested the E.S.C. to proceed to the renewal of such contracts, as from 1.9.80. The E.S.C. then proceeded at its meeting of 10.9.80, to renew such contractual appointments "in view of the letter of the Director-General of the Ministry of Education No. 197/69 dated 8.9.80."

The applicant then addressed, on 27.9.80, through her counsel, the following letter to the Chairman of the E.S.C. (attached to the application as Appendix 'C').

"I have been instructed by my client Mrs. Marigo Michaelidou-Demetriou of Limasol, master in English Language, who served in schools of Secondary Education from 31.10.75 - 31.8.78, to refer to the matter of her non-appointment and non-renewal of her contract for the school year 1980 - 1981.

As you should know my client went to England for post-graduate studies for the Diploma of Education in the Institute of Education of London University. Before her departure from Cyprus she was given the assurance of the Ministry of Education that upon her return to Cyprus she was to be appointed and/or her contract be renewed and that her priority for appointment would not be changed in any way prejudicial to her.

However, after the relevant decision of the Council of Ministers for the renewal of the contracts of masters in Secondary General and Technical Education who served during 1979 - 1980 for one more year, my client, though she is senior to many of them, as you may verify from the material before you, has not been appointed or employed in contravention of the relevant laws and/or Regulations and other related provisions concerning the Educational Service.

You are therefore invited to reconsider the whole matter once again and proceed immediately to the employment and/or appointment of my client as a school master, otherwise she will have to file a recourse in the Supreme Court against you for your unlawful omission to effect such employment and/or appointment.

I request a relevant reply to the above matter within the legally prescribed time".

The Chairman replied by letter dated the 10th October, 1980 as follows (Appendix 'B' to the application).

"I refer to your letter dated 27.9.80, regarding your client Marigo Demetriou and inform you the following:

The renewal of the appointments of schoolmasters who

were serving on contract during the school year 1979 - 1980 was made after a decision of the Council of Ministers. Since there is surplus of masters in English, no new appointment is foreseen, at the present stage, in this specialisation.

5 The case of Mrs. Demetriou will be examined as soon as the possibility arises."

The applicant filed, on the 22nd December, the present recourse. Several grounds of law have been advanced by counsel for the applicant to the effect that the decision of the E.S.C. is
10 invalid in that the Committee failed to exercise its discretion under the Law and approved the decision taken by another organ (the Council of Ministers) which had no competence to take such a decision and that if the proper procedure was followed then her client should have been appointed as having priority on
15 the list of persons eligible for appointment to the post of master in English language.

Counsel for the respondent raised in opposition the following grounds of law:

20 (1) The omissions complained of are not omissions of any legal duty and are, therefore, outside the ambit of Article 146.

(2) The decision of the Council of Ministers is not a decision within the ambit of Article 146.

25 (3) No existing legitimate interest of the applicant has been affected.

And in the alternative,

(4) The sub judice decision was lawfully taken.

Irrespective of the above grounds of law, I have decided to
30 examine first, *ex proprio motu*, another point which has not been raised, that of time, that is, whether the present recourse was filed within the time limit of 75 days prescribed by Article 146 of the Constitution (See *Pissas (No. 1) v. The Electricity Authority of Cyprus* (1966) 3 C.L.R. 634, 636).

35 It is a principle of administrative law that in the case of individual administrative acts time begins to run from the date the person concerned acquires knowledge thereof. In the present case the sub judice decision was taken by the E.S.C. on the 10th

September, 1980. The exact time when applicant acquired knowledge of same is not known, neither the manner in which such knowledge was acquired. It is, however, a fact evidenced by the letter of applicant's counsel to the E.S.C., dated 27.9.80, that the applicant knew, by that date, both of the sub judge decision as well as the decision of the Council of Ministers and her consequential non-appointment. Reference to the full contents of such letter has already been made earlier in this judgment. I need only refer to the first paragraph thereof, which reads:

"I have been instructed to refer to the matter of her non appointment and non renewal of her contract for the school year 1980 - 1981".

It is clear from the contents of such paragraph that the applicant knew of the decision of the E.S.C. not to appoint her, the latest by 27.9.80.

With regard to the decision of the Council of Ministers (which was simply confirmed by the E.S.C. at its meeting of 10.9.80). I make reference to the third paragraph of the above letter, which leaves no room for doubt that, at the time when such letter was written, the applicant had knowledge about the acts or decisions complained of.

The time prescribed by Article 146 of the Constitution has therefore started running the latest since the 27th September, 1980, the date by which the applicant must have acquired knowledge of such decision, whereas the present recourse was filed on the 22nd December, 1980, outside the period of 75 days prescribed by the Constitution.

With regard to the letter of the Chairman of the E.S.C. to applicant's counsel dated 10.10.80 (reference to which has already been made) which, presumably, has been treated by counsel for applicant as setting the time in motion, I need only say that it is obvious from its contents that it does not contain any executory act or indeed any act at all, but is merely of an informatory character and, therefore, non executory.

The recourse must, therefore, be dismissed as being filed out of time.

Having reached such conclusion, I find it unnecessary to

examined in detail the substance of the case. Nevertheless, I feel that I should mention that similar legal issues were raised in two recent cases before this Court, Cases Nos 453/80, *Papakyriacou v. The Republic* (1982) 3 C.L.R. 1151, and 72/81, *Christodoulou v. The Republic* (1983) 3 C.L.R. 668, in which the same decision of the E.S.C. and the same decision of the Council of Ministers, as in the present recourse, were challenged. The trial Judge dismissed the first one (*Papakyriacou*) on the substance of the case and the second one (*Christodoulou*) as being filed out of time. The two judgments were appealed from, but the appeal on the *Christodoulou* case was later abandoned. The Full Bench of this Court in Revisional Jurisdiction Appeal No. 293 reversed the judgment of the trial Judge and found that the Council of Ministers was not the competent organ to decide who should be appointed and that the decision of the E.S.C. was also invalid as by adopting the decision of the Council of Ministers the E.S.C. failed to exercise its own discretion as to who should be appointed. See *Papakyriacou v. The Republic* (1983) 3 C.L.R. 870, where it was said at pp. 881 - 882 that:

“We are unable to support the view of the trial Judge that the Council of Ministers had power under s.27(1) of Law 10/69 to decide who should be appointed by it by renewal of contract. Their powers were confined to deciding the mode of filling a vacant post by permanent, temporary, or by appointment on contract and not the selection of the candidate for the post thus to be filled.

This is manifest from the plain provision of s.27(1):

‘A permanent post is filled either on a permanent or temporary basis or by contract for a specified period of time or from month to month as the Council of Ministers might decide.’

Therefore the Council of Ministers in deciding who should be appointed exceeded their powers. Their suggestion for filling the post by the renewal of existing contracts ought to be disregarded by the respondents. Far from disregarding them, the respondents approved the recommendation of the Council of Ministers in this respect and appointed officers who were serving during the preceding year on a contractual basis. They acted contrary to the

provisions of the law, notably s.5(1), making them in the absence of provision to the contrary the sole judges of who should be appointed. This duty they failed to carry out completely. They failed to exercise any discretion in the matter. They merely rubber stamped the decision of the Council of Ministers.” 5

The Court, however, left open the question of priority among candidates and whether a candidate who refuses appointment on contract in one year forfeits his priority vis a vis others who accept appointment with regard to a future appointment. (See p. 882 of *Papakyriacou* case supra). 10

As a consequence of the above judgment in *Papakyriacou* case, the acts or decisions complained of by this recourse have been annulled, so it is up to the E.S.C. to reconsider the position in the light of the above judgment, irrespective of the fact that this recourse fails, on another point. 15

In the result, this recourse fails as being filed out of time and is therefore dismissed, with no order as to costs.

Recourse dismissed. No order as to costs.