

1985 March 30

[Pikis, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

NICOS VAKIS,

Applicant.

v.

THE PUBLIC SERVICE COMMISSION,

Respondents.

(Case No. 199/83).

Administrative Law—Administrative acts or decisions—Revocation—Applicant has a right to pursue a recourse to the end notwithstanding revocation because damages under Article 146.6 of the Constitution can only be recovered upon judicial annulment of the act— Revocatory decision constituting of itself an executory act liable to review at the instance of the party prejudiced thereby annulment thereof renders applicant remediless—So Court must make an independent assessment of the act revoked. 5

Public Officers—Promotions—Schemes of service—Misconstruction—Public Service Commission acted in excess or abuse of powers. 10

Under the heading “Necessary Qualifications”, the scheme required by way of academic qualifications a post-graduate degree or equivalent University title or diploma in appropriate fields of knowledge relevant to the pursuits of the Institute of Agricultural Research specifying by way of example the main domains of activity of the Institute, such as, agriculture, animal breeding and plant production. Because of an explanatory note made parenthetically clarifying that the list of fields of knowledge enumerated above is not exhaustive and that qualifications in other fields of knowledge might, depending on the needs of the service, be added at the time of filling the post, the res- 15 20

pondents—Public Service Commission construed the scheme as requiring them to make promotions in different branches of the service according to the particular demands for knowledge of each branch and they made their selection accordingly.

Upon a recourse by the applicant the respondents, on the advice of their Counsel, revoked the sub judice decision.

Held, (1) that the right to pursue a recourse to the end notwithstanding revocation of an act is implicit in para. 6 of Article 146 of the Constitution requiring judicial annulment of the act as a prerequisite to proceedings for the recovery of damage; and that, therefore, the recourse can be proceeded with to the end.

(2) That a revocatory decision constitutes of itself an executory act liable to review at the instance of a party prejudiced thereby, in this case the interested parties to the present proceedings; that if that were to happen and the recalling decision was annulled, applicant would remain remediless for he could neither seek reinstatement of the present proceedings, if abandoned, nor claim damages arising from the act revoked; and for this reason the Court cannot rest its decision on the assumption that the act revoked is valid, an issue beyond the reviewing powers of the Court in these proceedings, but must make an independent assessment of the act; and that, therefore, this Court must proceed to make its assessment of the validity of the act.

(3) That the respondents misconstrued the scheme and such misconstruction had a material bearing on their decision; that the promotions were made not exclusively by reference to the suitability of eligible candidates, as the P.S.C. was in Law bound to do, but in accordance and subject to a classification of needs unwarranted by the scheme; that in so doing they exceeded as well as abused their powers and their decision must, on that account, be set aside.

*Sub judice decision
annulled.*

Cases referred to:

Kikas and Others v. Republic (1984) 3 C.L.R. 852;

Attorney-General v. Marcoullides, 1 R.S.C.C. 242;

Christodoulides v. Republic (1977) 3 C.L.R. 190;

Frangoulides v. Republic (1982) 1 C.L.R. 460.

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Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Senior Agricultural Research Officer in preference and instead of the applicant.

A. Panayiotou, for the applicant.

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

Cur. adv. vult.

PIKIS J. read the following judgment. In the course of the trial applicant made a strong case of misconstruction of the schemes of service by the respondents; if the submission were accepted, it would upset the basis upon which the selection of the interested parties was made. By misconstruing the scheme a choice was made alien to its purpose. Counsel for the Republic prudently applied for an adjournment to look further into the matter and counsel, if necessary, appropriate remedial action. Before the adjourned hearing counsel advised the respondents to revoke the decision on the ground it involved a misapplication of the scheme vitiating the entire selection process of promotion to the post of Senior Agricultural Research Officer. And so they did in response to this advice.

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When the hearing was resumed counsel apprised the Court of the above development and invited us to declare the proceedings as abated on account of the disappearance of the subject-matter. The grievance of the applicant was remedied by the revocation of the offensive decision clearing the ground for reconsideration of the promotions.

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Though somewhat equivocal at first, the reaction of applicant crystallized into a disinclination to withdraw the

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recourse or formally abandon a right to compensation under Art. 146.6 of the Constitution. Counsel invited the Court to annul the decision; while counsel for the Republic rejoined it ought to be dismissed for lack of a justiciable cause.

In *Kikas and Others v. The Republic* (1984) 3 C.L.R. 852, it was decided that annulment of an administrative act in one proceeding obliterates the act for all purposes and saps every other recourse directed against the same act of litigable matter. In those circumstances it was held dismissal does not prejudice the right to damages under para. 6 of Art. 146 as the act, causative of damage, is annulled. So long as a party challenges the injurious act, its annulment in other proceedings preserves his rights to damages.

Here the problem is different for the act, subject-matter of the proceedings, has been revoked but not annulled. Greek caselaw establishes that revocation of an act results in the abatement of extant proceedings provided it removes, apart from the act, every consequence flowing therefrom including material loss⁽¹⁾. Failing satisfaction of damage resulting from the revoked act, the judicial cause subsists and may be pursued to conclusion.

The right to pursue a recourse to the end notwithstanding revocation of an act is implicit in para. 6 of Art. 146 requiring judicial annulment of the act as a prerequisite to proceedings for the recovery of damage ⁽¹⁾. It is worthy of mention that the French Council of State always regards this course open to it notwithstanding the effect of revocation whenever it is regarded necessary to give appropriate legal guidance to the administration ⁽³⁾. For these reasons I am of opinion the recourse can be proceeded with to the end.

A more perplexing question is final adjudication upon the validity of an act revoked. Should the Court formally annul the act on account of its revocation or is it duty bound

⁽¹⁾ See, inter alia, Conclusions of the Greek Council of State, 1929-1959, 275, et seq.

⁽²⁾ See, inter alia, *Attorney-General v. Andreas Markoullides* (1966) 1 C.L.R. 242; *Christodoulides v. The Republic* (1977) 3 C.L.R. 190; *Frangoulides v. The Republic* (1982) 1 C.L.R. 460.

⁽³⁾ *Stassinopoulos «The Law of Administrative Disputes», p. 474.*

to make an independent assessment of its validity? The question was not argued by counsel and remains, so far as I am aware, unanswered by our caselaw. However, reflection on the implications of revocation puts the answer within sight.

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A revocatory decision constitutes of itself an executory act liable to review at the instance of a party prejudiced thereby (1), in this case the interested parties to present proceedings. If that were to happen and the recalling decision was annulled, applicant would remain remediless for he could neither seek reinstatement of the present proceedings, if abandoned, nor claim damages arising from the act revoked. For this reason the Court cannot rest its decision on the assumption that the act revoked is invalid, an issue beyond the reviewing powers of the Court in these proceedings, but must make an independent assessment of the act. Nor can the Court, being a matter of public Law, act on the consensus of opinion of counsel. I shall, therefore, proceed to make my assessment of the validity of the act, not a difficult task, in view of the obvious misconstruction of the scheme of service. Under the heading "Necessary Qualifications", the scheme required by way of academic qualifications a post-graduate degree or equivalent University title or diploma in appropriate fields of knowledge relevant to the pursuits of the Institute of Agricultural Research specifying by way of example the main domains of activity of the Institute, such as, agriculture, animal breeding and plant production. Because of an explanatory note made parenthetically clarifying that the list of fields of knowledge enumerated above is not exhaustive and that qualifications in other fields of knowledge might, depending on the needs of the service, be added at the time of filling the post, the respondents construed the scheme as requiring them to make promotions in different branches of the service according to the particular demands for knowledge of each branch and they made their selection accordingly. Plainly this was a misconstruction of the scheme that had a material bearing on their decision. In the end the promotions were made not exclusively by reference to the

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(1) See Tsatsos, «Application of Annulment before the Greek Council of State», p. 370 and cases cited therein.

suitability of eligible candidates, as the P.S.C. was in Law bound to do, but in accordance and subject to a classification of needs unwarranted by the scheme. In so doing they exceeded as well as abused their powers and their
5 decision must, on that account, be set aside.

The recourse succeeds and the sub judice decision is annulled accordingly. No costs are claimed. Let there be no order as to costs.

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*Sub judice decision
annulled. No order as to
costs.*