

1986 May 10

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

PETROS PAPACHARALAMBOUS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF EDUCATION AND/OR
THE DIRECTOR OF SECONDARY EDUCATION,

Respondents.

(Case No. 541/85)

Administrative act—Preparatory, intermediate or advisory act preceding a future executory act—Such preparatory, intermediate or advisory act can only be impeached by a recourse together with the final act—Educational Officers--Service Reports—Such reports are preparatory, intermediate or advisory acts preceding the final act, i.e. the promotion of an interested party or the non-promotion of the applicant—It follows that it can only be impeached by a recourse together with the final act—Any fault in such reports taints the final act, which, therefore, has to be annulled.

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The Public Educational Service Law 10/69 as amended by Law 53/79—Section 35(1)(c), 35(2), 35(3) and 76—The Educational Officers (Inspection and Rating) Regulations, 1976—Regulations 21 and 22.

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The applicant, who is a teacher of secondary education, requested by letter dated 4.3.85 to be informed of his rating for the school-years 1982-1983 and 1983-1984. As however, he was only entitled to be informed of his last rating, the Inspector-General of Secondary Education com-

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municated to the applicant by letter dated 15.3.85 the applicant's rating for the year 1983-84.

5 The applicant by letter dated 16.4.85, purportedly in virtue of reg. 22 of the Educational Officers (Inspection and Rating) Regulations, 1976, but long after the lapse of the 15 days' period prescribed by this regulation, asked for the review of his said rating. By letter dated 14.5.85 the Director of Secondary Education, i.e. the Head of the appropriate Department, informed the applicant that
10 "after examination it was decided that he was correctly rated".

Hence the present recourse.

15 *Held*, dismissing the recourse: (1) Service reports on educational officers are in no way different from the confidential reports prepared for civil servants. Such reports, containing the assessment of the service abilities and essential qualities of an officer, do not produce direct legal results. They are not executory administrative acts. They are intermediate, preparatory or advisory acts preceding
20 a future executory act—promotion. (*Savva v. The Republic* (1985) 3 C.L.R. 2288 distinguished on the ground that service reports in this case do not affect the entitlement to promotion, whereas the priority list in *Savva* case affected the entitlement and eligibility for appointment in order
25 of priority of the candidates whose names were set out in the list.) It might have been otherwise if the promotions were made only on the sole factor of the rating in the service reports.

30 (2) The service reports, as being intermediate, preparatory or advisory acts, may be attacked together with the final act—the promotion of an interested party or the non-promotion of the applicant—and, in such a case, any fault in such reports taints the final act, which therefore, has to be annulled. The confirmation of the rating by the
35 Head of the Department does not render the report not liable to impeachment.

(3) In the light of the above and as it is well settled

that only an administrative act of an executory nature can be challenged by recourse, this recourse has to be dismissed.

Recourse dismissed.

No order as to costs.

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Cases referred to:

Colocassides v. The Republic (1965) 3 C.L.R. 542;

Pappous v. The Republic (1966) 3 C.L.R. 77;

Cyprus Flour Mills Co. Ltd. v. The Republic (1968) 3 C.L.R. 12;

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Papanicolaou (No. 1) v. The Republic (1968) 3 C.L.R. 225;

Agrotis v. E.A.C. (1981) 3 C.L.R. 503;

Georgiades v. The Republic (1982) 3 C.L.R. 16;

Public Service Commission v. Papaonisiforou (1984) 3 C.L.R. 370;

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Christofides v. The Republic (1985) 3 C.L.R. 1127;

Pavlidis v. The Republic (1977) 3 C.L.R. 421;

Tanis v. The Republic (1978) 3 C.L.R. 314;

Savva v. The Republic (1985) 3 C.L.R. 2288;

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Economides v. The Republic (1978) 3 C.L.R. 230.

Recourse.

Recourse against the decision of the respondents whereby applicant's objection against his rating for the period 1983-1984 was rejected.

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A. S. Angelides, for the applicant.

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

Cur. adv. vult.

STYLIANDES J. read the following judgment. The applicant by this recourse under Article 146 of the Constitution seeks the annulment of the decision whereby his objection to his rating for the period 1983-1984 was rejected.

5 The respondents in their opposition raise the issue that the sub judge decision could not be the subject of a recourse on the ground that the act complained of does not fall within the ambit of Article 146 of the Constitution in the sense that it is not an executory administrative act.

10 The applicant is a teacher of secondary education. He was first appointed in 1964.

The matter of inspection and rating of educational officers is governed by the Educational Officers (Inspection and Rating) Regulations, 1976, made under s. 76 of the Public Educational Service Law, 1969 (Law No. 10/69).
 15 The reports on educationalists were referred to in Law No. 10/69 as "confidential reports" but by the amending Law No. 53/79 they were renamed into "service reports"

Section 35(1) of Law No. 10/69, as amended by Law
 20 No. 53/79, provides that -

"No educational officer is promoted to another post unless -

(a)

(b)

25 (c) He was not reported upon in the last two service reports as unsuitable for promotion".

Section 35(2) reads:-

30 "In the examination of the claims of educational officers for promotion, merit, qualifications and seniority are duly taken into consideration in accordance with the prescribed procedure".

And Subsection (3) :-

"In making a promotion the Committee shall have due regard to the service reports on the candidates. .".

Special reports are prepared biannually for each educational officer and ordinary reports at least every three years. The rating in the report is on the following items:-

- (a) Professional Qualifications;
- (b) Sufficiency at Work; 5
- (c) Organization, Administration and Public Relations;
- (d) General Conduct and Activities.

For each of the four items a maximum of 10 marks is given and, according to Regulation 29 -

Excellent corresponds to	36 marks and over;	10
Very Good	from 31 - 35 marks, inclusive;	
Good	" 26 - 30 marks, inclusive;	
Satisfactory	" 20 - 25 marks, inclusive.	

The reports, unless they are adverse, are in general confidential. Their contents are not communicated to the educational officer but at his request the rating on the items and the general rating are communicated to him—(Regulation 21). 15

Under Regulation 22 he is entitled to apply in writing, within 15 days from such communication, to the Inspector-General for the deletion or amendment of the part of the report communicated to him or the review of the rating communicated to him. Provision is made in Regulation 22 about the procedure to be followed by the Inspector-General on receipt of such application. Finally, the applicant educational officer is informed in writing of the result of his such objection. 20 25

In the present case the applicant by letter dated 4.3.85 requested the communication to him of his rating for the school-years 1982-83 and 1983-84. As obviously he was entitled only to be informed of the last rating, promptly, on 15.3.85, the Inspector-General of Secondary Education 30

informed him (Blue 94) that his rating for the year 1983-1984 was -

	(a) Professional Qualifications	8
	(b) Sufficiency at Work	8
5	(c) Organization - Administration - Public Relations	8
	(d) General Conduct and Activities	9
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10	<i>GENERAL EVALUATION</i> - Very Good	33
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The applicant by document dated 16.4.85, purportedly in virtue of Regulation 22, but long after the lapse of the 15 days' period prescribed by this Regulation, asked for the deletion and/or amendment and review of the aforesaid rating for the period 1983-84. After investigation into the objection, the Director of Secondary Education, who is the Head of the appropriate Department under the Law, by letter dated 14.5.85, informed the applicant that "after examination it was decided that he was correctly rated"

It is well settled that only an administrative executive act that adversely and directly affects the legitimate interest of an applicant may be challenged by a recourse—(See, inter alia, *Colocassides v. The Republic*, (1965) 3 C.L.R. 542; *Antonakis Pappous v. The Republic*, (1966) 3 C.L.R. 77; *Cyprus Flour Mills Co. Ltd. v. The Republic*, (1968) 3 C.L.R. 12, 24-25; *Papanicolaou (No. 1) v. The Republic (Minister of Health and Others)* (1968) 3 C.L.R. 225, 230-31).

The late Professor Forsthoff in his treatise on *The Administrative Act*, at p. 11, gave the following definition:-

"An administrative act includes all unilateral, authoritative acts of an authority of public administration which have direct legal effect, with the exception of legislative and judicial acts".

In *Papanicolaou* (supra) at p. 230 we read:-

“An executory (εκτελεστή) act—or decision—is an act by means of which the ‘will’ of the Administration is made known on a given matter, and which aims at producing a legal situation concerning the citizen affected (see the Conclusions from the Jurisprudence of the Council of State in Greece, 1929-1959, pp. 236-237); and the executory nature of an act is closely linked to the requirement, under paragraph 2 of Article 146, that a person can make a recourse only if an existing legitimate interest of his has been adversely and directly affected by the act complained of.

Thus, acts of a ‘preparatory nature’ are not executory acts (See Conclusions etc., supra, p. 239); they merely, prepare the ground for the making of executory acts”.

The service reports on educational officers are in no way different from the confidential reports prepared for civil servants under the Civil Service Law. Their use is identical. Such reports, containing the assessment of the service abilities and the essential qualities of a civil servant and of an educational officer, are intermediate, preparatory or advisory acts; they are acts preceding a future executory act—promotion. They do not produce direct legal results. The picture of a candidate for promotion in the service reports is one of a number of factors taken into consideration in the case of promotion.

In matters of promotion confidential reports are intermediate acts and the ascertainment of their invalidity brings the invalidity of all subsequent acts for the issue of which the act found to be illegal constitutes a legal prerequisite—(Stavros Agrotis v. Electricity Authority of Cyprus, (1981) 3 C.L.R. 503, at p. 513; Georghiades v. The Republic, (1982) 3 C.L.R. 16; P.S.C. v. Papaonissiforou, (1984) 3 C.L.R. 370; Christofides v. The Republic, (1985) 3 C.L.R. 1127). The confirmation of the rating by the Head of the Department does not in any way render the service report for educationalists not liable to impeachment, as aforesaid.

Learned counsel for the applicant argued that in Greece the tendency is for the Council of State to control judicially

the decisions of the Service Boards which consider in a hierarchical recourse the objections of civil servants. It may be observed that the decisions of the Greek Council of State were mostly based on the contents of the Greek legislative enactment—The Civil Service Code. Furthermore, there are a number of decisions and textbook writers which militate against the submission of counsel.

The Courts in this country have accepted that the service reports—ordinary or special—for educationalists are not executory acts but only preparatory or advisory ones which, however, may be attacked together with the final act—the promotion of an interested party or the non-promotion of the applicant—and any fault of such report taints the challenged final act which is, therefore, annulled—(See *Iacovos Pavlides v. The Republic*, (1977) 3 C.L.R. 421, a judgment of Malachtos, J.; *Tanis v. The Republic*, (1978) 3 C.L.R. 314; a judgment of A. Loizou, J.).

Reference was made to the judgment of H. H. the President in *Efstathios Savva v. The Republic of Cyprus, through the Minister of Education and the Educational Service Committee*, in Recourse No. 361/83, delivered on 23rd November, 1985.* It was argued by Mr. Angelides that on the basis of this judgment any decision taken on the strength of legislative provisions and subsidiary legislation is an executory act and, therefore, amenable to the jurisdiction of this Court.

I went through *Economides v. The Republic*, (1978) 3 C.L.R. 230, and *Efstathios Savva* case (supra). *Savva* case is distinguishable from the present one. The service reports in the present case do not affect the entitlement to promotion whereas the priority list in *Savva* case affected the entitlement and eligibility for appointment in order of priority of the candidates whose names were set out in such list. It might have been otherwise if the promotions were made only on the sole factor of the rating in the service reports.

In view of the aforesaid I am of the opinion that the sub judice decision has not directly and adversely affected an existing legitimate interest of the applicant in the sense of Article 146.2 of the Constitution; it is not an executory act

* Reported in (1985) 3 C.L.R. 2288

but merely a preparatory or advisory one and cannot be the subject of a recourse under Article 146.

For all the foregoing reasons the preliminary objection raised by counsel for the respondents is sustained and, therefore, this recourse is dismissed. Let there be no order as to costs. 5

Recourse dismissed.

No order as to costs.