

1986 April 19

[TRIANTAFYLIDES, P.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

PANIKKOS THRASIVOULOU,

*Applicant,*

v.

THE LAND CONSOLIDATION AUTHORITY  
AND ANOTHER,

*Respondents.*

(Case No. 447/84).

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*Legitimate interest—Assignment of duties of District Land Consolidation Officer at Larnaca and consequential transfer thereto—Interested party preferred to applicant—Latter's legitimate interest directly and adversely affected.*

*Acts or decisions in the sense of Article 146 of the Constitution—Internal measures of administration not within the ambit of the jurisdiction under the said Article—Change of posting, without change of status, of the officer concerned—Constitutes such measure—In the circumstances of this case the selection of the interested party for assignment of duties as District Land Consolidation Officer at Larnaca and his transfer thereto is of an executory nature.*

*Executory act—See Acts or Decisions in the sense of Article 146 of the Constitution, ante.*

The applicant, a Land Consolidation Officer, and the interested party, an Assistant Land Consolidation Officer were candidates for an assignment of duties of District Land Consolidation Officer at Larnaca and transfer to Larnaca.

The interested party was preferred to the applicant who, as a result, filed the present recourse. Counsel for

the respondents raised two preliminary objections, namely that the applicant has no legitimate interest to pursue this recourse and that the sub judice decision is not of an executory nature, but an internal administrative measure

5 *Held*, dismissing the preliminary objections (1) Since both the applicant and the interested party were treated as candidates for such assignment of duties and transfer it appears, prima facie, at this stage, that the selection of the interested party in preference to the applicant affected directly and adversely a legitimate interest of the applicant

10 (2) Internal acts or decisions of the administration are not within the ambit of the jurisdiction under Article 146 of the Constitution. A mere change of posting, without change of status of the officer concerned, is an internal administrative measure. As, however, in this case there has taken place a choice between at least two candidates and the interested party was preferred in relation to what was a major step in the process of better organizing, not only internally, but vis-a-vis the public at large, the services rendered by respondent 1, the Court is inclined to the view that the sub judice decision, which was also a major development, favourable and adverse, respectively, for the careers of the parties constitutes an executory act, even if it could not be treated as prejudging the promotion prospects of the interested party.

*Preliminary Objection dismissed*

Cases referred to

- 30 *Yiallourou v The Republic* (1976) 3 CLR 214,  
*Karapatakis v The Republic* (1982) 3 CLR 88,  
*Costea v The Republic* (1983) 3 CLR 115

**Recourse**

35 Recourse against the refusal of the respondents to assign to applicant the duties of District Land Consolidation Officer and transfer him to Larnaca.

*A S Angelides*, for the applicant.

*S Matsas*, for the respondents.

*Cur. adv. vult.*

TRANTAFYLIDIS P. read the following decision. By means of the present recourse the applicant is challenging the refusal of the respondents to assign to him the duties of District Land Consolidation Officer and to transfer him to Larnaca and, at the same time, he complains about the assignment of such duties and the transfer to Larnaca, as a result of such assignment, of interested party Sofocles Phytis. 5

At the material time the applicant was a Land Consolidation Officer and the interested party an Assistant Land Consolidation Officer. 10

By a circular letter addressed to him and other officers of respondent 1 on the 19th March 1984 by respondent 2, who is the Senior Land Consolidation Officer, the applicant was informed about the plan to set up a District Land Consolidation Office at Larnaca and the proposed posting there of a District Land Consolidation Officer. 15

The applicant was asked by such letter to state whether there existed any obstacles in so far as he was concerned in case it was decided to include him in the list of candidates for the assignment to him of duties of District Land Consolidation Officer at Larnaca. 20

The applicant replied on the 24th March 1984 that he was ready to undertake such duties if it was decided to assign them to him. 25

As it appears from the minutes of the Personnel and Appointments Committee of respondent 1, which are dated the 14th and 16th April 1984, the applicant and the interested party were interviewed by the Committee and were asked to express their views regarding the organisation of a District Land Consolidation Office at Larnaca. 30

On the 30th April 1984 the Senior Land Consolidation Officer informed the interested party that it was decided to assign to him the duties of District Land Consolidation Officer at Larnaca and on the 27th June 1984 the Personnel and Appointments Committee decided to transfer him to the District Land Consolidation Office at Larnaca as from the 5th July 1984. 35

Counsel for the respondents has raised two preliminary objections on which, after having heard arguments from counsel, I have to pronounce at this stage:

5 First, that no legitimate interest of the applicant has  
been directly and adversely affected, in the sense of Article 146.2 of the Constitution, by the assignment of the duties of District Land Consolidation Officer at Larnaca to interested party, and his consequential transfer to Larnaca, and, secondly, that such assignment and transfer do  
10 not constitute executory administrative acts but they are  
only internal administrative measures which cannot be challenged by means of the remedy of a recourse for annulment under Article 146 of the Constitution.

15 Regarding the first preliminary objection I have come to the conclusion that the applicant possesses a legitimate interest entitling him to file the present recourse against the aforementioned assignment of duties to, and transfer to Larnaca of, the interested party because both the applicant and the interested party were treated as candidates  
20 for such assignment of duties and transfer to Larnaca and, eventually, the interested party was preferred instead of the applicant; and, therefore, it appears, prima facie, at this stage, that a legitimate interest of the applicant was directly and adversely affected by the selection of the interested party.  
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Regarding the second objection which was raised by counsel for the respondents there must be stressed that only executory acts or decisions are amenable to the jurisdiction of this Court under Article 146 of the Constitution and that internal acts or decisions of the administration are not within the ambit of such jurisdiction (see, inter alia, in this respect, *Yiallourou v. The Republic*, (1976) 3 C.L.R. 214; *Karanataki v. The Republic*, (1982) 3 C.L.R. 88, *Costea v. The Republic*, (1983) 3 C.L.R.  
30 115, and the Conclusions from the Case-Law of the Council of State in Greece—"Πορίσματα του Συμβουλίου της Επικρατείας"—1939-1959, pp. 236, 238); and it is well settled, too, that a mere change of posting, without an alteration of the status of the officer concerned, is an in-  
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ternal administrative measure and cannot be challenged by a recourse for annulment (see the Conclusions, supra, p. 238).

In the present case, however, there has taken place, as already stated, a choice as between at least two officers, the applicant and the interested party, and the latter was preferred in relation to a what, obviously, was a major step which was taken in the process of better organizing not only internally, but vis-a-vis the public at large, the services rendered by respondent 1. 5 10

I am, therefore, inclined to the view, as at present advised, that the assignment of duties of District Land Consolidation Officer to, and the transfer to Larnaca of, the interested party, in preference and instead of the applicant, which was also a major development favourable and adverse, respectively, for the careers of the interested party and of the applicant, was not merely an internal administrative measure but action of executory nature, even if it could not be treated as prejudging the promotion prospects of the interested party. 15 20

In the result the preliminary objections of counsel for the respondents cannot be sustained and, consequently, this case has to be heard as regards its merits.

*Order accordingly.*