

1984 June 6

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

MICHAEL MAVRONICHIS,

*Applicant,*

v.

THE INDUSTRIAL TRAINING AUTHORITY,

*Respondent.*

*(Case No. 478/81).*

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*Recourse for annulment—Abatement—Resignation of interested party from the sub judice post and abolition of such post—In the circumstances recourse not abated.*

5 *Damages—Constitution, Article 146.6 and Article 146.4—  
Annulment of an administrative act a pre-condition for  
the recovery of damages suffered thereby.*

10 The applicant challenges by means of this recourse the  
appointment of interested party to the post of Head of  
Accounts Section of the respondent. The interested party  
resigned from the said post about a year after his ap-  
pointment (October 1982). The post was abolished in  
November 1983. The question raised is whether in the  
light of the above facts this recourse has been abated.

15 *Held.* (1) The position in Greece is different because  
there, in case of abatement, the applicant may sue for  
damages and the Civil Court has power to examine the  
validity of the administrative act, whereas in Cyprus da-  
mages can be recovered only under Article 146.6 of the  
Constitution, which presupposes a judgment annulling  
20 under Article 146.4 the administrative act in question.

(2) The applicant, who was the only other candidate  
for appointment to the said post, had not been appointed

because he was found to possess higher qualifications than those required for the post. If it is found that the applicant was erroneously not chosen for appointment, it would appear that as a result of his non-appointment he suffered a detriment. It follows that this recourse has not been abated. 5

*Recourse not abated.*

**Cases referred to:**

- Lyonas v. The Republic* (1975) 3 C.L.R. 536;  
*Christodoulides v. The Republic* (1978) 3 C.L.R. 193; 10  
*Karapataki v. The Republic* (1982) 3 C.L.R. 88;  
*Falas v. The Republic* (1983) 3 C.L.R. 523;  
*Agrotis v. The Republic* (1983) 3 C.L.R. 1397;  
*Decision 3920/73 of Greek Council of State.*

**Recourse.** 15

Recourse against the decision of the respondent to appoint the interested party to the post of Head of Accounts Section of the Industrial Training Authority in preference and instead of the applicant.

*E. Efstathiou* with *C. Anastassiades*, for the applicant. 20

*M. Spanos* with *M. Spanou (Miss)*, for the respondent.

*Cur. adv. vult.*

TRIANTAFYLIDIS P. read the following decision. The applicant has challenged, by means of this recourse, the decision of the respondent Authority to appoint Cleanthis Ioannou (hereinafter to be referred to as the "interested party") to the post of Head of Accounts Section of the respondent. 25

Counsel for the respondent has contended that this recourse should be dismissed on the ground that it has been abated because the interested party resigned from the post in question after the filing of the recourse and the post concerned was abolished, by a decision of the Council of Ministers taken on the 3rd November 1983, and was re- 30

placed by the new post of Head of Financial Management, which has not yet been filled.

Reference has been made by counsel to the legal principles governing in Greece the abatement of a recourse on the ground that its subject-matter has ceased to exist.

It is correct that in Greece if an administrative act which has been operative for a period of time ceases to exist a recourse for annulment, which has been made against it whilst it was operative, is treated as having been abated and any damages suffered as a result of such act by the applicant who has filed the recourse may be assessed by a civil Court which is entitled to examine, in this respect, the validity of the administrative act in question (see. for example, the decision of the Greek Council of State in case 3920/73).

In Cyprus, however, the position is different in the sense that damages suffered by an applicant as a result of an administrative act, even of a limited duration and which has ceased to exist after the filing of a recourse against it, can be recovered only under Article 146.6 of the Constitution, which presupposes a judgment annulling, under Article 146.4 of the Constitution, the administrative act in question; and, in this connection, it is useful to refer to relevant case-law of our Supreme Court such as *Lyonas v. The Republic*, (1975) 3 C.L.R. 536, *Christodoulides v. The Republic*, (1978) 3 C.L.R. 193, *Karapataki v. The Republic*, (1982) 3 C.L.R. 88, *Falas v. The Republic*, (1983) 3 C.L.R. 523, and *Agrotis v. The Republic*, (1983) 3 C.L.R. 1397.

In the present case the interested party was appointed, instead of the applicant, to the post concerned on the 2nd November 1981 and he resigned from such post about a year later, in October 1982.

The applicant was the only other candidate for appointment to the post in question; and it is to be noted that there appears from the material at present before me that the applicant was not selected for appointment not because he was not qualified for appointment but because he was found to possess qualifications higher than those which were required for the duties of the post in question and

it was presumed that he had ambitions which might not be satisfied by the prospects offered to him through service at such post.

In the light of all the foregoing I have decided that the present recourse has not been abated inasmuch as, if it is found eventually that the applicant was erroneously not chosen for appointment, it would appear prima facie that as a result of his non-appointment he has suffered detriment in the sense that he was prevented from serving at the post in question, during the limited period when the interested party was serving at that post by virtue of the sub judice decision of the respondent, and, thus, the applicant was deprived for that period of the emoluments from such post. 5 10

I shall, therefore, proceed to hear this case on its merits. 15

*Order accordingly.*