

1986 December 20

[LORIS. J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

DESPINA NEOCLEOUS,

Applicant

v

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMISSION

Respondents

(Case No 734/85)

Recourse for annulment—Revocation of sub judice act—When applicant entitled to judgment on the merits

5 *Educational Officers —Transfers —The Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) (Amendment) Regulations 1985 (71/85)—Reg 23(2)—Ultra vires enabling law —Aristides v The Republic (1986) 3 CLR 466 adopted*

10 The sub judice transfer of the applicant, a Secondary Education Schoolmistress, from Limassol to Agros, was revoked following the decision in *Aristides v The Republic* (1986) 3 CLR 466, whereby Regulations 20(c) and 23(2) of the said Regulations were declared invalid. Thus the question arose whether this recourse has been abated

15 *Held annulling the sub judice decision* (1) A recourse has to be examined on its merits, if the revoked sub judice decision has brought about consequences, which, if the applicant is successful may entitle him to redress under Article 146 6 of the Constitution

20 (2) In this case such consequences have been produced whilst the sub judice act was operative

(3) The sub judice act was based mainly on Reg 23

(2) of the said Regulations. This Court is in full agreement with the decision in *Aristides*, supra that such regulation is ultra vires the enabling law.

Sub judice decision annulled.

No order as to costs.

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Cases referred to:

Aristides v. The Republic (1986) 3 C.L.R. 466;

Kyriakides v. The Republic 1 R.S.C.C. 66;

Malliotis v. The Municipality of Nicosia (1965) 3 C.L.R. 75;

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Christodoulides v. The Republic (1978) 3 C.L.R. 193;

Hapeshis v. The Republic (1979) 3 C.L.R. 550;

Kittou v. The Republic (1983) 3 C.L.R. 605;

Agrotis v. The Republic (1983) 3 C.L.R. 1397;

Kampis v. The Republic (1984) 1 C.L.R. 314;

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Anastassiades and Others v. The Republic (1984) 3 C.L.R. 312;

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

Payiatis v. The Republic (1984) 3 C.L.R. 1239;

Salem v. The Republic (1985) 3 C.L.R. 453;

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Vakis v. The Republic (1985) 3 C.L.R. 534;

Philippides and Son v. The Republic (1985) 3 C.L.R. 2588.

Recourse.

Recourse against the decision of the respondent to transfer applicant from Limassol (Fifth Gymnasium) to Agros.

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A. S. Angelides, for the applicant.

A. Vassiliades, for the respondent.

Cur. adv. vult. 30

LORIS J. read the following judgment. The applicant in the present recourse, a Secondary Education Schoolmistress, by means of the present recourse challenged the decision of the respondent Commission dated 9.8.85 whereby she was transferred from the town of Limassol (Fifth Gymnasium) to Agros.

The present recourse which was filed on 29.8.85 was mainly based on the legal ground that the sub judge decision was relying on Regulations 20(c) and 23(2) of the Educational Officers (Teaching staff) (Appointments, Postings, Transfers, Promotions and Related Matters) (Amendment) Regulations 1985 (Regulations 71/85), which allegedly were ultra vires the enabling enactment.

During the pendency of this recourse the aforesaid Regulations were on 12.3.86 declared ultra vires the enabling enactment by the learned President of this Court in the case of *Aristides v. The Republic* (1986) 3 C.L.R. 466; following the aforesaid judgment the respondent Commission revoked the sub judge decision on 25.4.1986

The learned counsel for applicant argued that the applicant was entitled to judgment on the merits in spite of the revocation in view of the allegation that the administrative act in question has produced results, before ceasing to be effective, detrimental to her for which she was entitled to compensation.

It is well settled that despite the revocation of an administrative act a recourse has to be examined on its merits if the sub judge decision revoked, has brought about consequences in relation to which, if the applicant is successful in the recourse he might be entitled to redress under Article 146.6 of the Constitution (*Kyriakides v. Republic* 1 R.S.C.C. 66, *Malliotis v. The Municipality of Nicosia* (1965) 3 C.L.R. 75 at p. 94, *Christodoulides v. Republic* (1978) 3 C.L.R. 193, *Hapeshis v. Republic* (1979) 3 C.L.R. 550, *Kittou v. Republic* (1983) 3 C.L.R. 605, *Agrotis v. Republic* (1983) 3 C.L.R. 1397, *Kampis v. Republic* (1984) 1 C.L.R. 314 (FB), *Anastassiades & others v. Republic*, (1984) 3 C.L.R. 312, *Kikas and others v. Republic* (1984) 3 C.L.R. 852, *Payiatis v. Republic*

public (1984) 3 C.L.R. 1239 (FB), *Salem v. The Republic* (1985) 3 C.L.R. 453, *Vakis v. Republic* (1985) 3 C.L.R. 534, *Philippides & Son v. Republic* (1985) 3 C.L.R. 2588).

Having considered the matter I decided that the sub
 judice decision which was given on 9.8.85 and remained in
 force up to 25.4.1986 produced results while operative, 5
 which might entitle the applicant to redress under Article
 146.6 of the Constitution, if successful in the recourse un-
 der consideration. In the circumstances I have heard fur-
 ther argument on the merits of the recourse. 10

It is abundantly clear that the sub judice decision was
 based mainly on Regulation 23(2) of the Educational Of-
 ficers (Teaching Staff) (Appointments, Postings, Transfers,
 Promotions and Related Matters) (Amendment) Regulations 15
 1985, which was declared ultra vires by the learned Presi-
 dent of this Court in the case of *Aristides v. The Republic*
 (supra); I am in full agreement with the learned President
 that the aforesaid Regulation is ultra vires the enabling
 enactment and I adopt his reasoning in the aforesaid
 judgment to this end. 20

In the result the sub judice decision in this case is here-
 by declared null and devoid of any legal effect.

In view of the fact that the sub judice decision was
 reached at on 9.8.85 and the aforesaid Regulations were 25
 declared ultra vires on 12.3.1986, I have decided to make
 no order as to the costs of this case, as the respondent Com-
 mission had to apply the regulations in question when
 reaching at the sub judice decision.

Sub judice decision annulled.
No order as to costs. 30