

1987 January 24

[STYLIANIDES, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNIS VALIANTIS AND OTHERS,

Applicants,

v

THE REPUBLIC OF CYPRUS THROUGH
THE EDUCATIONAL SERVICE COMMISSION,

Respondents

*(Case Nos 724/85, 827/85, 845/85
and 1000/85).*

*Recourse for annulment—Abatement—Revocation of sub judice decisions—
Whether and in what circumstances a recourse challenging the revoked act is
abated by reason of the revocation—Present recourses not abated as the
injurious results of the revoked acts were not obliterated by the revocation*

5 *Educational Officers—Transfers—The Educational Officers (Teaching Staff)
(Appointments, Postings, Transfers, Promotions and Related Matters)
(Amendment) Regulations, 1985—Ultra vires enabling statute—Sub judice
transfers annulled*

Damages—Constitution, Article 146 6

10 The sub judice transfers were revoked after the decision in *Anstides v The
Republic* (1986) 3 C L R 466, whereby the Educational Officers (Teaching
Staff) (Appointments, Postings, Transfers, Promotions and Related Matters)
15 (Amendment) Regulations, 1985, on the basis of which the said transfers had
been made, were found to be invalid. The question that arose for
determination is whether by reason of such revocation the above recourses
have been abated.

20 Held, (1) It is well established that only a successful applicant in a recourse
under Art 146 of the Constitution is entitled to seek just and equitable
damages under paragraph 6 of the said Article. Where an act of limited
duration has ceased to exist without having produced, before ceasing to be
operative, any adverse consequences for the applicant, the recourse filed
against it is abated. In these cases, however, the revocation did not obliterate
any adverse results, which the sub judice transfers might have caused to the
applicants. It follows that the recourses have not been abated.

25 (2) The revocation is an admission of the invalidity of the sub judice

decisions at least on the ground that they were taken on the basis of invalid delegated legislation.

(3) On the material before the Court the sub judice decisions are faulty as they were based on delegated legislation, which is ultra vires the enabling statute and unreasonable. 5

(4) Recourse of applicant 1 in 1000/85 is out of time.

*Recourse of applicant 1 in 1000/85 dismissed.
Save as aforesaid, sub judice decisions annulled.*

Cases referred to:

<i>Anstides v. The Republic</i> (1986) 3 C.L.R. 466,	10
<i>Kyriakides v. The Republic</i> , 1 R.S.C.C. 66;	
<i>Christodoulides v. The Republic</i> (1978) 3 C.L.R. 193;	
<i>Hapeshis and Others v. The Republic</i> (1979) 3 C.L.R. 550;	
<i>Agrotis v The Republic</i> (1983) 3 C.L.R. 1397;	
<i>Kittou and Others v. The Republic</i> (1983) 3 C.L.R. 605;	15
<i>Maliotis v. The Municipality of Nicosia</i> (1965) 3 C.L.R. 75;	
<i>Vafeades v. The Greek Communal Chamber</i> (1966) 3 C.L.R. 197;	
<i>Andreou v. The Republic</i> (1975) 3 C.L.R. 108;	
<i>Christodoulou v The Republic</i> , 1 R.S.C.C. 1;	
<i>Spyrou and Others v. The Republic</i> (1973) 3 C.L.R. 624;	20
<i>Papaxenophontos and Others v. The Republic</i> (1982) 3 C.L.R. 1037;	
<i>Salem v. The Republic</i> (1985) 3 C.L.R. 453.	

Recourses.

Recourses against the decision of the respondents to transfer applicants in accordance with the provisions of the Educational 25 Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) (Amendment) Regulations, 1985.

A.S. Angelides, for the applicants in Cases Nos. 724/85, 845/ 30 85 and 1000/85.

A. *Triantafyllides*, for applicant in Case No. 827/85.

A. *Vassiliades*, for the respondents.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicants
 5 in these recourses are educationalists - teachers of primary
 education and teachers of secondary education. By means of
 these recourses they seek the annulment of their transfers which
 were made on the basis and in accordance with the Educational
 Officers (Teaching Staff) (Appointments, Postings, Transfers,
 10 Promotions and Related Matters) (Amendment) Regulations,
 1985, commonly referred to as «Regulations 71/85».

The said regulations were found to be invalid by the President
 of this Court in *Soterios Aristides v. The Republic of Cyprus,*
through the Educational Service Commission, (1986) 3 C.L.R.
 15 466, for the reasons stated therein.

Consequent to the aforesaid judgment the respondents on
 23.4.86 «decided to recall the sub-judice» transfers and
 communicated this to the applicants by letter dated 25.4.86.

It is the contention of counsel appearing for the respondents
 20 that due to the revocation the recourses have been abated due to
 having been deprived of their subject-matter.

Paragraph 6 of Article 146 of the Constitution gives effect to the
 general principle laid down in Article 172 that the Republic is
 liable «for any wrongful act or omission causing damage
 25 committed in the exercise or purported exercise of the duties of
 officers or authorities of the Republic» in respect of all matters
 coming within the scope of Article 146 - (*Kyriakides v. The*
Republic, 1 R.S.C.C. 66, at pp. 74-75).

Paragraph 6 reads:-

30 «Any person aggrieved by any decision or act declared to
 be void under paragraph 4 of this Article or by any omission
 declared thereunder that it ought not to have been made
 shall be entitled, if his claim is not met to his satisfaction by the
 organ, authority or person concerned, to institute legal
 35 proceedings in a court for the recovery of damages or for
 being granted other remedy and to recover just and equitable

damages to be assessed by the court or to be granted such other just and equitable remedy as such court is empowered to grant.»

It is well established that only a successful applicant in a recourse seeking redress under Article 146 of the Constitution is entitled to seek just and equitable damages under Article 146.6 - (See, inter alia, *Christodoulides v. The Republic*, (1978) 3 C.L.R. 193; *Hapeshis and Others v. The Republic*, (1979) 3 C.L.R. 550; *Agrotis v. The Republic*, (1983) 3 C.L.R. 1397; *Kittou & Others v. The Republic*, (1983) 3 C.L.R. 605).

Where an act of limited duration has ceased to exist without having produced, before ceasing to be operative, any adverse consequences for the applicant, the recourse which was made against it is abated, because if there are no adverse consequences of such an act no need to annul it, in view of the provisions of Article 146.6, would arise - (*Maliotis v. The Municipality of Nicosia*, (1965) 3 C.L.R. 75, 94, 95; *Vafeades v. The Greek Communal Chamber*, (1966) 3 C.L.R. 197, 199; *Andreou v. The Republic*, (1975) 3 C.L.R. 108, 110).

The revocation of the sub-judice decisions is an admission of their invalidity at least on the ground that they were taken on the basis of invalid delegated legislation - (*Christodoulou v. The Republic*, 1 R.S.C.C.1; *Spyrou and Others v. The Republic*, (1973) 3 C.L.R. 624; *Papaxenophontos and Others v. The Republic of Cyprus, through the Council of Ministers and Others*, (1982) 3 C.L.R. 1037).

It is not within the task or competence of this Court to inquire whether the applicants suffered any damage from the revoked decisions. This is within the exclusive jurisdiction of the District Court.

I am of the view that the revocation has not obliterated any adverse injurious results that the challenged decisions might have caused to the applicants until the date of the revocation. The recourses, therefore, have not been abated due to having been deprived of their subject-matter- (*Salem v. The Republic* (1985) 3 C.L.R. 453).

On the material before me the sub-judice decisions are faulty as mainly they were based on delegated legislation which is ultra

vires the enabling statute and unreasonable.

Objection was taken to the recourse of applicant Marios Nicolaides, the first applicant in Recourse No. 1000/85, that it is out of time.

- 5 The decision that he challenges was taken on 23.8.85 and his transfer was with effect from 1.9.85. The recourse was filed on 25.11.85, well beyond the 75 days prescribed peremptorily by paragraph 3 of Article 146. His case cannot, therefore, be entertained by the Court and is doomed to failure.
- 10 For the foregoing reasons and in virtue of paragraph 4 (b) of Article 146, the sub-judice decisions, with the exception of the case concerning applicant Marios Nicolaides, are declared null and void and of no effect whatsoever. I need not stress that such a declaration annuls an administrative act from the time of its
- 15 genesis.

The recourse of Marios Nicolaides, applicant No.1 in Case No. 1000/85, is hereby dismissed.

Let there be no order as to costs.

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*Sub judice decision annulled
in all cases except case No.
1000/85 which is dismissed.
No order as to costs.*