1987 November 25

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MARIOS HADJIPETROU AND ANOTHER,

Applicants.

v.

THE CYPRUS TELECOMMUNICATIONS AUTHORITY,

Respondent.

(Cases Nos 493/85, 494/85).

Administrative act — Composite administrative action — Executory act forming part of a composite action — May be challenged of its own by a recourse, provided the composite action has not yet been completed by a final act — Once such an act is taken, the component parts loose their executory character — The component parts may be, also, challenged by a recourse directed against the final act — Public Corporations — Appointments — Refusal to include applicants among the candidates on ground that applicants did not satisfy the required qualifications — Lost its executory character, when the final act of appointment was taken — Therefore, recourses filed after such appointment, but directed against said refusal, should be dismissed.

Reasoning of an administrative act — Appointments to Public Corporations — Absence of records — Deprives sub judice decision of its reasoning

Administrative law — Competency — Decision taken by an incompetent organ — Ground of annulment.

Public Corporations — Appointments — Qualifications — Due inquiry — Need of — Absence of decision that a particular diploma is equivalent to another diploma, does not justify a finding that there is no equivalence.

The applicants applied for appointment to the post of Technician III/ Technologists — Electronics/Electricians.

The required qualifications were inter alia Diploma of the Higher Technological Institute (ATI) of the Branch of Electricity or of the Centres of Higher Technical and Professional Education (KATEE), of the branch of Technicians, Electronics Technicians and Electrical Technicians or equivalent qualifications accepted by the Authority.

The applicants did not possess either of the first two qualifications The question, therefore was whether they possessed «Equivalent qualifications *accepted by the Authority*»

The Personnel Management of the respondent Authority decided that the applicants did not possess such qualification In arriving at such a decision they relied on a letter of the Director of Public Administration and Personnel of the Ministry of Finance dated 7th January 1983 to the effect that «no decision has been taken regarding the equivalence» of the Higher Diploma of the Higher College of Technology and to the effect that the matter was referred to the competent Technical Committee for consideration and a final decision on the equivalence of the said diploma will be taken upon the submission of the report of the Technical Committee

By letter dated 9 2 85 the applicants were informed that as they did not satisfy the required qualifications, they could not be included in the list of candidates The process of appointments to the said post was finalised on 19 4 85 by the appointment of 56 candidates These recourses were filed after such finalisation *By means of these recourses the applicants challenged the* refusal to include them in the list of eligible candidates for the post

Held, *dismissing the recourses* (1) An executory act forming part of a composite administrative action may be challenged by a recourse of its own so long as the said composite action has not yet been completed by a final act or decision, and it can also be attacked by a recourse directed against the final outcome of the composite action

(2) It is well settled that the component parts of a composite administrative act loose their executory character after the final act has been completed

(3) In this case it is undisputed that the composite administrative act on which the sub judice act formed part has been finalized by the appointments Therefore after the final act was completed, the sub judice act/or decision which was a part of the final act, has lost its executory character and as a result this recourse has been deprived of a subject matter and has to be dismissed

(4) If the sub judice act had not lost its executory character, these recourses would succeed and the sub judice decision would have been annulled on the following grounds, namely [1]

(a) That the organ which took such decision, i e the Personnel Management of the Authority had no competency in the matter,

(b) That in any event there had been no due inquiry into the matter of the equivalence of the third qualification, the absence of a decision on the question of equivalence, as indicated by the letter of the Director of Public Administration and Personnel does not mean that the diploma is not equivalent to the qualifications under (a) or (b) of the scheme, and, also, does

not relieve the competent organ of the Authority from the duty to carry out an inquiry into the question of equivalence of the said diploma

(c) The absence of any record deprives the sub judice act of due reasoning

Recourses dismissed
No order as to costs

Cases referred to

Koupepa v Republic (1968) 3 C L R 496,

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

Gavriel v The Republic (1971) 3 C L R 185

Ioannou v Electricity Authority of Cyprus (1981) 3 C L R 280,

Markou v The Republic (1968) 3 C L R 267

Fellas v The Republic (1972) 3 C L R 310,

Preza and Another v The Republic (1985) 3 C L R 1010,

Frangos v The Republic (1982) 3 C L R 53,

Prodromou v Educational Service Commission (1982) 3 C L R 1055,

Vassiliou and Others v The Republic (1969) 3 C L R 417,

Mikellidou v The Republic (1981) 3 C L R 461,

Christodoulou v The Republic (1967) 3 C L R 50,

Ioannou v The Republic (1970) 3 C L R 183,

Phoenicia Hotels v The Republic (1978) 3 C L R 94,

Tourpekki v The Republic (1973) 3 C L R 592,

HadjiSavva v The Republic (1969) 3 C L R 570

Recourses.

Recourses against the decision of the respondent whereby the applicants were not considered eligible for appointment to the post of Technician III/Technologists, Electronics/Electricians as they did not possess the required qualifications and/or prerequisites as set out in the announcement of the respondent Authority published in the daily press on 11th November, 1984.

N Papaefstathiou for T Papadopoulos, for the applicants

A Hadjiloannou, for the respondent

Cur adv vult

A LOIZOU J read the following judgment These two recourses have been heard together as they present common questions of law and fact The applicant in recourse No 493/85 (hereinafter to be referred to as applicant 1), is a graduate of the Technical School of Xeros and Fredenkos Technical School, Nicosia, and he is the holder of the Higher Diploma in Electrical Engineering. The applicant in Recourse No 494/85, (hereinafter to be referred to as applicant 2), is a graduate of the Technical School, Nicosia, and the holder of the Higher Diploma in Electrical Engineering

On the 11th November, 1984, the respondent Authority advertised in the daily press vacancies of Technician III/ Technologists, Electronics/Electricians, and invited applications from qualified persons

The required qualifications set out in the said advertisement which correspond to those in the relevant Scheme of Service were the following

«(a) Diploma of the Higher Technological Institute (ATI) of the Branch of Electricity or of the Centres of Higher Technical and Professional Education (KATEE), of the branch of Technicians, Electronics Technicians and Electrical Technicians or equivalent qualifications accepted by the Authority;

(b) perfect knowledge of the Greek and English languages »

Both applicants were among those who had applied for the post and both of them, were informed by letter dated 9th February, 1985, that they did not possess the required qualifications and/or prerequisites as set out in the announcement of the respondent Authority published in the daily press of the 11th November 1984 and for that reason their name could not be included in the list of candidates

An affidavit was filed on behalf of the respondent Authority sworn by the Officer in charge of its Department of Administrative Services and responsible for the keeping of minutes of the meetings of its Board in which it was stated that at the meeting of

the Board of the Authority, 24/85, dated 9th April 1985, (Exhibit 4), it was explained to the members as mentioned in page 2, thereof under (C), that «there had been submitted 463 applications for employment as Technicians III (Technologists, Electricians and Electronics) of which only 181 satisfied the requirements put by the Authority. Furthermore, that the applications of the applicants were among the number of the applicants which were dismissed and had not been invited to an interview and that the reasoning of such dismissal was elaborated and the whole procedure was approved by the Board and that only 56 candidates were appointed.

The said affiant was cross-examined by the applicants who said that the decision upon which the letter of 9th February, 1985, was sent, was taken by the appropriate services of the Authority which is the Personnel Department; that no minutes were kept, but that the check was carried out on the basis of the press announcement and the applications submitted. Further asked, as to whether the Board had carried out a further inquiry regarding the qualifications of the applicants, he answered that the Board does not engage in the initial procedure as a Committee is appointed which carries out the interviews for those that satisfy the necessary qualifications. This Committee is appointed by the Board and this appears from Exhibit 4, and that the Board was informed about it but no details were recorded in the minutes.

Before dealing however, with the merits of the recourse I shall deal ex proprio motu - as I am entitled to do, and see in this respect *Koupepa v. The Republic* (1968) 3 C.L.R. 496, with the question whether the acts complained of are of executory character and as such they come within the jurisdiction of the Court under Article 146 of the Constitution. I have adopted this course because as it appears from the material before me the process for appointment to the above posts has been finalized by the appointment of fifty-six candidates on the 19th April 1985. This recourse was filed on the 30th April 1985, i.e. after the final act of the appointments in question.

In the case of *Papanicolaou (No. 1) v. The Republic* (1968) 3 C.L.R. 225, Triantafyllides J., as he then was, held that an executory act forming part of a complete administrative action may be challenged by a recourse of its own, so long as the said composite action has not yet been completed by a final act or

decision; and it can also, be attacked by a recourse directed against the final outcome of the composite action.

The *Papanicolaou* case was followed by me in the case of *Gavriel v. The Republic* (1971) 3 C.L.R. 185 at p. 202 and *Ioannou v. Electricity Authority of Cyprus* (1981) 3 C.L.R. 280 at pp. 299-302. It was also applied by Triantafyllides P., in *Koupepa* (supra), *Markou v. The Republic* (1968) 3 C.L.R. 267 at p. 276 and by Hadjianastassiou J., in *Fellas v. The Republic* (1972) 3 C.L.R. 310 at p. 317. It was further very recently followed by Savvides J., in *Preza and Another v. The Republic* (1985) 3 C.L.R. 1010. Indeed in *Frangos v. The Republic* (1982) 3 C.L.R. 53, appears to disagree with the judgment in *Papanicolaou* (supra) by Triantafyllides P., in dealing with the *Frangos* case in the case of *Prodromou v. Educational Service Commission* (1982) 3 C.L.R. 1055 did not feel inclined to depart from his relevant reasoning in the *Papanicolaou* case (supra).

Similarly, having anxiously reconsidered the relevant issue, I am not prepared to depart from the relevant reasoning in the *Papanicolaou* case (supra).

It is well settled that the process for the filling of the said posts started from the moment the Personnel Services of the respondents considered the applications which were submitted for the post in question and was completed with the appointment of the candidates who were finally selected for appointment. Therefore the sub judice decision forms part of a composite administrative act.

It is well settled that the component parts of a composite administrative act lost their executory character after the final act has been completed. In *Vassiliou and Others v. The Republic* (1969) 3 C.L.R. 417 in which the respondents prepared a priority list containing the names of the candidates to be considered for appointment to the post of Master of Commercial subjects in the Greek Secondary Education and such list was adopted and relied upon for the purpose of appointments which were eventually made, it was held that the list was an executory act and it could be challenged by a recourse under Article 146 of the Constitution. As, however, the said list was part of a composite administrative act which resulted in appointments, it lost its executory character after the appointments were made. Therefore the recourse against the list, which was filed before the appointment could not be

proceeded thereafter as such recourse was deprived of the subject matter that could be attacked by a recourse under Article 146 of the Constitution.

In *Preza* (supra) Savvides J. cited the following passage from Tsatsos on Recourse for Annulment before the Greek Council of State Third Edition pp. 152, 153, it reads:-

«Προ της περατώσεως της συνθέτου διοικητικής ενεργείας εκάστη εκ των βαθμιαίως συναρμολογουμένων πράξεων διατηρεί τον εκτελεστόν αυτής χαρακτήρα και είναι προσβλητή κεχωρισμένως.

Αφ' ης όμως η σύνθετος διοικητική ενέργεια περατωθή, αποβαίνει απαραδεκτος η προσβολή δι αιτήσεως ακυρώσεως της αρχικής ή μεμονωμένης των ενδιαμέσων πράξεων, αίτινες αποβάλλουσι πλέον τον αυτοτελως εκτελεστόν αυτών χαρακτήρα. Προσβλητή εφεξης ειναι μόνον η όλη σειρά των ούτω δια του αποτελέσματος, εις ο απέβλεψαν, συνεχομένων πράξεων. Προσβαλλομένης δε τυχόν μόνης της τελικής πράξεως θεωρείται συμπροσβαλλομένη η όλη σύνθετος διοικητική ενέργεια και τούτο διότι μετά την περάτωσιν της συνθέτου διοικητικής ενεργείας αι προηγηθείσαι της τελικής μερικώτεραι και πρότερον αυθύπαρκτοι πράξεις απόλλυσι την αυτοτέλειαν αυτών.».

(«Before the completion of the composite administrative act, each of the gradually adopted acts retains its executory character and it can be attacked separately.

But when the composite administrative act is completed the attack by an application for annulment of the onginal or separately the intermediate acts which lose their self executory character is unacceptable. Amenable to a recourse hereafter is only the whole line of such continuous acts, the result to which they aimed. But only the final act being attacked, the whole composite administrative act is also considered as being attacked and this because after the completion of the composite administrative act which preceded the final, partial and self-existent acts lose their independence»).

Savvides J., then went on to refer to the cases of *Papanicolaou and Vassiliou* (Supra) and he cited the following passage from the latter case:

«On the other hand, there is no doubt that such list was part of the composite administrative action which resulted in the said appointments.

Once this is so I am of the opinion that after the appointments were made, the list lost its executory nature and, therefore, Case 327/68, which was filed before the appointments, could not be proceeded with thereafter, as it was deprived of a subject-matter that could be attacked by recourse, viz. the list as an executory act.

In this respect useful reference might be made to the conclusions from the Jurisprudence of the Greek Council of State (1929-1959) p. 244. Also, to Decision 648(56) of the Greek Council of State; in that case the facts were different from those of our Case 327/68, but it is useful illustration of a situation where an originally executory act lost, due to subsequent developments, its executory nature.»

And concluded by referring to the following passage from the decision of the Greek Council of State in Case 812/1933:-

«Εφ' όσον όμως επήλθεν ήδη και η τελευταία πράξις του διορισμού των εκλεγέντων, δεν δύναται πλέον *παραδεκτώς να προσβληθώσι κατ' ιδίαν αι ενδιάμεσοι* διοικητικαί ενέργειαι, αίτινες έπαυσαν πλέον έχουσαι αυτοτελή υπόστασιν, μόνον δε δια της προσβολής της περί διορισμού πράξεως του Υπουργού ηδύνατο να προστατευθή ο αιτών, επικαλούμενος και τυχόν ελαττώματα των ενδιαμέσων διοικητικών ενεργειών τούτω δε τω λόγω απορριπτέα καθίσταται η υπό κρίσιν αίτησις».

(«But since the last act of the appointment of those selected has already happened, is not possible any more to acceptably attack in particular the intermediate administrative acts, which have ceased to have an independent basis, but only with a recourse against the act of the Minister to make the appointments could the applicant be protected by invoking any defects of the composite administrative acts, and for this reason the sub judice application is dismissed»).

In this case it is undisputed that the composite administrative act of which the sub judice act formed part has been finalized by the appointments Therefore after the final act was completed, the sub judice act/or decision which was a part of the final act, has lost its executory character and as result this recourse has been deprived of a subject matter and has to be dismissed

Though in view of my above conclusion no need arises to deal with the merits of the recourse, I shall proceed to make my pronouncements on the substance of the recourse as well

The first ground of law relied upon by the applicants is that the respondent Authority failed to carry out the due and/or proper and/or any inquiry in the circumstances, as to whether the applicants satisfied at the material time the Scheme of Service and that the sub judice act was taken under a misconception of law and fact The second ground is that there is complete absence of any minutes and/or decision by the respondent authority, the third ground is that the sub judice act and/or decision lacks proper reasoning, and the fourth is that the sub judice act and/or decision is the result of wrong exercise of discretion and/or it was taken in excess and/ or abuse of power

The minutes of the respondent Authority, (Exhibit 4), in so far as relevant to the sub judice decision, read as follows

«The Acting Director-General informed the Board that the authority by announcement published in the daily press on the 11th November 1984, announced vacancies regarding a number of posts in various departments In response to this announcement there had been submitted applications by interested persons which were studied by the service and invited to interview those that satisfied the prerequisites put by the authority The interviews were carried out by the Committee which, by virtue of a decision of the authority was composed of the President, the Director-General, the Acting Director-General and the Heads of the Technical and Financial Services for the Senior Staff and the General Manager, and the Acting General Manager and the Heads of the Technical and Financial Services for the lower staff

(c) Technicians III (Technicians/Electricians/Electronics) there were submitted 463 applications by interested persons from which 181 satisfied the requirements placed by the

authority and were invited for interview on 18th, 19th, 21st and 22nd February, 1985.»

It appears that the respondent Authority had inquired into the level of the higher diploma possessed by the two applicants, not only in relation to the present post, but also on similar occasions and it asked the appropriate services of the Government to inform them as to whether this diploma which apparently is obtained after a two-year attendance at the College in question, is equivalent to the diploma one obtains after a three year attendance and upon graduation from the Higher Technological Institute. The relevant correspondence between the General Manager of the Authority and the appropriate Government department has been produced as Exhibit 1.

Now under the relevant Scheme of Service the qualifications required for the post in question are (a) Diploma of the Higher Technological Institute (ATI), or (b) Diploma of the Centre of Higher Technical and Professional Electricians (KATEE), of the branch of Electronics Technicians and Electrical Technicians or (c) Equivalent qualifications accepted by the Authority.

It is undisputed that applicants did not possess qualifications (a) or (b) above. And the question which arises is whether his qualifications, namely «Higher Diploma in Electrical Engineering» constitutes «equivalent qualifications accepted by the Authority».

In the case it is clear - see the minute Exhibit 4 and the evidence of Nicos Malekkos - that it is not the competent organ of the respondent Authority which decided about the equivalence of applicants qualifications but the Personnel Management of the Authority. It is also clear that in deciding on the equivalence or not of the applicants qualifications they relied on the letter of the Director of Public Administration and Personnel of the Ministry of Finance dated 7th January 1983 to the effect that «no decision has been taken regarding the equivalence» of the Higher Diploma of the Higher College of Technology, and to the effect that the matter was referred to the competent Technical Committee for consideration and a final decision on the equivalence of the said diploma will be taken upon the submission of the report of the Technical committee.

In a letter dated 7th February 1985, addressed by the Personnel Department of the respondent Authority to the Director-General Ministry of Communications and Works the latter was informed

that neither the Ministry of Education, nor the Public Administration and Personnel Department had taken any decision regarding the equivalence of the said diploma and that the respondent Authority awaits Government policy on the matter.

In *Mikellidou v. Republic* (1981) 3 C.L.R. 461, a case which dealt with the question whether applicant's qualification was «an equivalent qualification» under the relevant Scheme of Service, I said the following at pp. 469-471:

«There is ample authority that the interpretation of a scheme of service and its application will not be interfered with by the Court, so long as such interpretation and application was reasonably open to the competent administrative organ; the application, however, by such organ of a scheme of service to the circumstances of each particular case has to be made after sufficient inquiry regarding all the material considerations (see, inter alia, *Papapetrou v. The Republic*, 2 R.S.C.C. 61; *Georghiades v. The Republic* (1967) 3 C.L.R. 653; and *Tourpeki v. The Republic* (1973) 3 C.L.R. 592). Furthermore in determining whether a certain candidate, in fact, possesses the relevant qualifications the competent administrative organ is given a discretion and the Supreme Court can only examine whether such organ, on the material before it, could reasonably have come to a particular conclusion (see *Petsas v. The Republic*, 3 R.S.C.C. 60; *Phylachtou v. The Republic* (1973) 3 C.L.R. 444; *Zinieris (No. 1) v. The Republic* (1975) 3 C.L.R. 13; and *Stylianou v. The Republic* (1980) 3 C.L.R. 11). The question therefore which is posed, is whether the respondent Committee made a sufficient inquiry regarding all material considerations. In fact, the respondent Committee initiated the procedure for an inquiry as envisaged by the aforequoted para 3(iii) of the *Scheme* of Service But before obtaining the requested opinion of the Evaluation Committee, it proceeded to decide itself on the application of the applicant.

In *Constantinidou & Others v. The Republic* (1976) 3 C.L.R. p. 98 the sub judice decision of the Public Service Commission was annulled because the Commission failed to carry out an inquiry into the aspect of whether the certificate held by the applicant met the requirements of the relevant scheme of service. Furthermore in *Aristotelous v. The*

Republic (1969) 3 C L R 232, the said Commission had before it on the one hand an express statement of the Director of the Public Information Office that one of the interested parties did not possess the knowledge of English required by the relevant schemes of service, and on the other the statement of the officer representing the Ministry of Interior to the effect that the interested party's English was as good as the applicant's The Court following the case of *Georghiades v The Republic* (1967) 3 C L R p 65 held that it was incumbent on the Public Service Commission to satisfy itself that the interested party possessed the required knowledge of English and that since not the slightest attempt was made by the Commission to ascertain for itself whether the interested party satisfied the relevant scheme of service in respect of his knowledge of English, his appointment had to be annulled

It is established that a failure to make a due inquiry results, due to contravention of well settled principles of administrative law, in the invalidity of the relevant administrative action because the notion of 'law' in Article 146 1 of the Constitution has to be construed as including the well settled principles of administrative law (see *Ioannides v The Republic* (1972) 3 C L R 318, *Tourpeki* (supra), *Antoniou v The Republic* (1978) 3 C L R 308, and *HadjiPaschali v The Republic* (1980) 3 C L R 101) »

In this case in view of the wording of the relevant Scheme of Service - «equivalent qualification accepted by the Authority» - it was incumbent for the competent organ of the respondent Authority to carry out an «inquiry into the aspect of whether the diploma held by the applicant met the requirements of the relevant Scheme of Service», or whether it was an equivalent qualification accepted by the authority Instead of carrying out an inquiry as above stated they left the matter in the hands of the services of the Personnel Department of the Authority And the latter did not carry out any inquiry at all on the question of the equivalence - and by inquiry I mean examination of the standard of the diploma by reference to the subjects taught etc , but they relied on the fact that the Ministry of Education and the Public Administration and Personnel Department had not as yet taken any decision on the question of equivalence of the said diploma Let me say that the absence of any such decision does not mean

that the said diploma is not equivalent to the qualifications under (a) or (b) above and, also does not relieve the competent organ of the Authority from the duty to carry out an inquiry into the question of equivalence of the said diploma

The sub judice decision therefore would have been annulled because (a) it was taken by an organ having no competence in the matter (see *Christodoulou v The Republic* (1967) 3 C L R 50, *Ioannou v The Republic* (1970) 3 C L R 183, *Phoenicia Hotels v The Republic* (1978) 3 C L R 94) and (b) It was a decision taken without a due and proper inquiry *Tourpekki v The Republic* (1973) 3 C L R 592 And regarding this last ground of annulment let me say that even if the Personnel Services of the Authority had competence to decide on the equivalence of the applicants qualifications, still, as above stated, they have not carried out any inquiry into the matter

In addition to the above the sub judice decision would have been liable to annulment for absence of any record which absence deprives same of due reasoning (see *HadjiSavva v The Republic* (1969) 3 C L R 570)

In the result both recourses fail and are hereby dismissed but in the circumstances there will be no order as to costs

Recourses dismissed
No order as to costs