

1985 June 8

[TRIANTAFYLIDIS, P]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS PAPANDREOU,

Applicant,

v

1 THE EDUCATIONAL SERVICE COMMISSION,
2 THE MINISTRY OF EDUCATION,

Respondents

(Case No 597/84)

Legitimate interest — Secondment of an educationalist to the Paedagogical Academy not instead of the applicant and independently of the refusal to second the latter to the Academy — Applicant does not possess a legitimate interest to challenge the secondment

5 *Executory act — Internal measure of administration — Refusal to second an educationalist to the Paedagogical Academy — The change of duties and terms of service involved in such a secondment indicate, as at present advised, that the matter is one for executory administrative action*

10 In this case the following two preliminary issues were set down for determination by the Court, namely

15 (a) Whether the applicant, an educationalist, has a legitimate interest to challenge the secondment of the interested party, another educationalist, to the Paedagogical Academy, and (b) Whether the refusal of the respondents to second the applicant to the said Academy is an internal measure of administration

Held (1) As the interested party was not seconded to the Academy instead of the applicant and the decision to second the interested party was taken independently of the refusal to second the applicant, the latter has no legitimate interest to challenge the secondment of the interested party

20 (2) The change of duties and of collateral terms of service that would be involved in the secondment of an educationalist, such as the applicant, to the Academy indicates that the matter of secondment is not merely an internal measure of administration, but a matter of executory administrative action

(3) It follows that as regards the refusal to second the applicant there should be a hearing on the merits.

Order accordingly.

Preliminary objections.

Preliminary objections as to whether the applicant has a legitimate interest under Article 146.2 of the Constitution entitling him to challenge the secondment of the interested party to the Paedagogical Academy and whether the refusal of the respondents to second applicant to the said Academy constitutes an internal measure of administration which cannot be attacked by means of a recourse. 5 10

A.S. Angelides, for the applicant.

R. Vrahimi (Mrs.), for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following decision. At the present stage of these proceedings I have to pronounce on the following two preliminary issues: 15

(a) Whether the applicant has a legitimate interest, in the sense of Article 146.2 of the Constitution, entitling him to challenge by this recourse the secondment of another educationalist, G. Papadopoulos, to the Paedagogical Academy; and 20

(b) Whether the refusal of the respondents to second the applicant to the said Academy is an internal measure of administration which cannot be attacked by means of the present recourse. 25

From the material before me there appears quite clearly that G. Papadopoulos was not seconded to the Academy instead of the applicant, inasmuch as he and the applicant were not compared as regards suitability for secondment to the Academy in order to teach English there since the decision to second G. Papadopoulos was taken independently of the decision of the appropriate organs in the Ministry of Education that in any event the applicant was not to be seconded to the Academy because in the past his services there had not been satisfactory. 30 35

It follows, therefore, that the secondment of G. Papadopoulos to the Academy did not, and could not, affect directly and adversely any existing legitimate interest of the applicant, in the

sense of Article 146.2 of the Constitution; and, consequently, this recourse, in so far as it is aimed at such secondment could not have been made and cannot be pursued and has to be dismissed to that extent.

- 5 As regards the issue of whether the refusal or failure of the respondents to second the applicant to the Academy is an internal measure of administration and, as such, it does not come within the ambit of the jurisdiction under Article 146(1) of the Constitution, at this stage of the proceedings, and as at present
10 advised, I am of the view that the change of duties and of collateral terms of service that would be involved in a secondment of a schoolmaster, such as the applicant, to the Academy indicate strongly that this matter cannot be treated as merely an internal measure of administration and that it has to be regarded as
15 executory administrative action which could be made the subject-matter of the present recourse under Article 146.1 of the Constitution.

In relation, therefore, to the said refusal there should be a hearing of this case on the merits.

20

Order accordingly.