

1987 March 28

(TRIANAFYLIDES, P.)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KYROS DEMOSTHENOUS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMISSION,

Respondent.

(Case No. 263/84).

Evidence — Affidavits, admissibility of in evidence in proceedings by way of Recourse for annulment — Approach of the Court — Leave to file affidavits — In the circumstances did not amount to an expression of any view as to their admissibility in evidence.

On 22.2.86 the Court granted leave to counsel for the applicant to adduce evidence by way of affidavits, «which are filed now» and directed that any counter-affidavits on behalf of the respondent and the interested parties be filed «within one month...». On 5.4.86 the time for filing such counter-affidavits was extended until 30.4.86. 5

After filing such counter-affidavits counsel for the respondent raised the issue of the admissibility in evidence of the affidavits filed in support of the applicant's case. 10

Held, (1) In the circumstances the leave granted by the Court on 22.2.86 and the direction of 5.4.86 do not amount to an expression of any view by the Court as regards the admissibility in evidence of the affidavits in question. 15

(2) In the light of the approach of this Court to the admissibility of evidence adduced in proceedings by way of recourse for annulment, the Court reached the following conclusions:

(a) The parts of the affidavits relating to what happened during applicant's interview are admissible, because the applicant disputes the evaluation made by the respondent of his performance at the interview. 20

(b) The parts of the affidavits, which are directly relevant to the weight of the recommendations made by the Head of the Department are admissible.

(c) The parts of the affidavits, which constitute an attempt to contradict the evaluation of applicant's performance at the interview in such a roundabout way as to be too remote to be relevant, the parts of the affidavits consisting of arguments and the parts consisting of allegations not substantiated in any way, are inadmissible.

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(3) The counter-affidavits are admissible to the extent they tend to contradict the admissible parts of the affidavits but to the extent they constitute a reply to the inadmissible parts of the affidavits should be ignored, unless relevant to the validity of the sub judice decision.

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Ruling as above.

Cases referred to:

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

Georghiades (No.2) v. The Republic (1965) 3 C.L.R. 473;

Malais v. The Republic (1965) 3 C.L.R. 572;

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Georghiades v. The Republic (1966) 3 C.L.R. 827;

Arkakitis (No. 1) v. The Republic (1967) 3 C.L.R. 29;

Christou v. The Republic (1968) 3 C.L.R. 715, and on appeal (1969) 3 C.L.R. 134;

Michael (No. 2) v. The Republic (1975) 3 C.L.R. 432;

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Constantinides v. The Electricity Authority of Cyprus (1982) 3 C.L.R. 387;

Ioannou v. The Water Board of Limassol (1984) 3 C.L.R. 728;

Pierides v. The Republic (not reported yet);

Pilavakis v. The Republic (1987) 3 C.L.R. 6.

25 **Preliminary issue.**

Preliminary issue regarding the admissibility in evidence of affidavits filed in the above case.

A.S. Angelides, for the applicant.

R. Vrahimi - Petridou (Mrs.), for the respondent.

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Chr. Triantafyllides, for interested parties A. Tsintis and A. Constantinou.

Chr. Kitromelides, for interested parties A. Eleftheriades, P. Theodossiou and I. Papaioannou.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following decision. This case is being heard together with related cases 261/84, 274/84, 275/84, 299/84, 342/84, 377/84.

On the 28th February 1987 arguments of counsel were heard regarding the admissibility in evidence of the following affidavits: 5

(a) An affidavit sworn by the applicant on the 18th February 1986.

(b) An affidavit sworn by Th. Karydas, an ex-Inspector of Elementary Education, on 18th February 1986.

(c) An affidavit sworn by A. Christodoulides, ex-Head of the Department of Elementary Education, in the Ministry of Education, on 17th February 1987. 10

(d) An affidavit sworn by N. Papaxenophontos, ex-Head of the Department of Elementary Education, on 18th February 1986.

Counsel for the respondent objected to the admissibility of these affidavits and her objection was supported by counsel for all interested parties who are taking part in these proceedings. 15

By way of answer to the aforementioned affidavits there were filed the following affidavits:

(i) An affidavit sworn by I. Varnavas, ex-Chairman of the Educational Service Commission, on 29th April 1986. 20

(ii) An affidavit sworn by A. Papadopoulos, Head of the Department of Elementary Education, in the Ministry of Education, on 8th May 1986.

Counsel for the applicant has supported the admissibility of affidavits (a) to (d) above and has also argued that, in any event, the contents of affidavits (i) and (ii) above are part of these proceedings irrespective of the admissibility of affidavits (a) to (d). But counsel for the respondent has argued that if affidavits (a) to (d) are held to be inadmissible then affidavits (i) and (ii) should be disregarded because they were filed as counter-affidavits to them. 25 30

I shall deal, first, with a procedural issue:

Counsel for the applicant has drawn my attention to the following direction which was made by me on the 22nd February 1986: «Leave is granted to counsel for the applicant in case 263/ 84 to adduce evidence by way of affidavits, which are filed now, 35

and copies of which are delivered to counsel for the respondent and for the interested parties, who may file and deliver to counsel for the said applicant counter-affidavits within one month from today».

- 5 Also, on the 5th April 1986 I made the following direction: «The time within which counsel for the respondent is to file counter-affidavits in case 263/84 is extended up to 30.4.86». In the circumstances in which the filing of the affidavits (a) to (d) was allowed by me it is clear that leave was granted to file such
10 affidavits independently of any objections to the admissibility of their contents, which counsel for the respondent and interested parties had not had yet an opportunity to peruse before they were filed and, therefore, it cannot be said that I have, in any way, expressed a view as to the admissibility of the contents of such
15 affidavits when I allowed them to be filed.

I have examined the issue of the admissibility of the said affidavits in the light of the well settled approach to the admissibility of evidence adduced in proceedings instituted by way of a recourse under Article 146 of the Constitution, as such
20 approach is to be found in case-law of this Court, such as *Kyriakides v. The Republic*, 1 R.S.C.C. 66, 68, *Georghiades (No. 2) v. The Republic*, (1965) 3 C.L.R. 473, 481, *Malais v. The Republic*, (1965) 3 C.L.R. 572, 574, *Georghiades v. The Republic*, (1966) 3 C.L.R. 827, 840, *Arkatitis (No. 1) v. The Republic*, (1967) 3 C.L.R. 29, 30, *Christou v. The Republic*, (1968) 3 C.L.R. 715, 722 and on appeal (1969) 3 C.L.R. 134, 148, 149, 151, 154, *Michael (No. 2) v. The Republic*, (1975) 3 C.L.R. 432, 435, *Constantinides v. The Electricity Authority of Cyprus*, (1982) 3 C.L.R. 387, 389, *Ioannou v. The Water Board of
30 Limassol*, (1984) 3 C.L.R. 728, 735-739 and *Pierides v. The Republic*, case 329/80, decision given on 19 November 1986 and not reported yet, and *Pilavakis v. The Republic*, case 525/83, ruling given on 17th February 1987 and not reported yet*; and I have reached the following conclusion.

- 35 Inasmuch as it is clear that the applicant in this case disputes the evaluation by the respondent Educational Service Commission of his performance when interviewed by the Commission on the 23rd February 1984, his evidence regarding what happened at such interview is admissible and, therefore, paragraphs 1, 2 and 4
40 of his affidavit, dated 18th February 1986, are admissible as they relate to such interview. Paragraph 5, however, of his affidavit and

* Reported in (1987) 3 C.L.R. 6

the contents of the affidavits of A. Christodoulides and N. Papaxenophontos attempt to contradict the aforesaid evaluation of the Commission in such a roundabout way that they are, in my view, too remote to be relevant to what has actually happened at such interview and, I, therefore, regard them as containing evidence which for this reason is inadmissible and is excluded accordingly. The same applies to paragraph 3 of the affidavit of Th. Karydas. As regards paragraphs 1, 2 and 4 of the said affidavit of Karydas and paragraph 6 of the affidavit of the applicant I find that they contain evidence directly relevant to the weight of the recommendations made by A. Papadopoulos, the Head of the Department of Elementary Education, in the Ministry of Education, and, consequently, such evidence is admissible; and the same applies, also, to the second part of paragraph 7 of the affidavit of the applicant.

As regards paragraphs 3 and 8, as well as the first part of paragraph 7 of the affidavit of the applicant, I find that they contain arguments which should not have been included in his affidavit or allegations of fact which are not substantiated in any way, and, therefore, they cannot be treated as being relevant and, consequently, admissible evidence.

Lastly, the counter-affidavits of I. Varnavas and A. Papadopoulos to the extent to which they reply to admissible evidence adduced by the applicant by way of affidavits they are clearly admissible; and to the extent to which they reply to parts of affidavits filed by the applicant which have been declared inadmissible they would have to be ignored, unless they disclose matters relevant to the validity of the sub judice administrative process which have to be taken into account by this Court in determining this case, and the related to it cases which are being heard together with it.

Ruling as above.