

1988 February 26

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS PAPANTONIOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMISSION,

Respondent.

(Case No. 765/85).

Recourse for annulment—Revocation of sub judice act—Recourse has to be examined on its merits, despite the revocation, if the revoked act has brought about consequences in relation to which, if the applicant is successful, he might be entitled to redress under Art. 146.6 of the Constitution.

Educational Officers—Transfers—The Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) (Amendment) Regulations 71/85, Reg. 23(1)—Ultra vires enabling law—Aristides v. Republic (1986) 3 C.L.R. 466, adopted. 5

The facts of this case sufficiently appear in the judgment of the Court.

Sub judice decision annulled. 10
No order as to costs.

Cases referred to:

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

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

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

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;

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

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

Anastasiades & Others v. Republic (1984) 3 C.L.R. 312;

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

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

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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;

Evlogimenos v. Republic (1986) 3 C.L.R. 2042.

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Recourse.

Recourse against the decision of the respondent to transfer applicant from Nicosia to Larnaca.

A. Haviaras, for the applicant.

A. Vassiliades, for the respondent.

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Cur. adv. vult.

LORIS J. read the following judgment. The applicant in the

present recourse, a Secondary Education Schoolmaster, challenges the decision of the Respondent Educational Service Commission dated 9.8.85 to transfer him from Nicosia to Larnaca.

It was common ground that in reaching at the sub-judice decision the Respondent E.S.C. relied on regulation 23(1) of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) (Amendment) Regulation 1985 (see No. 71 in Part I of the Third Supplement to the Official Gazette of the 22nd February 1985) to be referred to herein below as Regulations 71/85).

Regulations 71/85 were declared ultra vires the enabling Law in *Aristides v. Republic* (1986) 3 C.L.R. 466.

Following the decision in the *Aristides* case (supra) the Attorney - General of the Republic advised the Respondent E.S.C. to revoke the sub-judice decision; the E.S.C. acting in pursuance of such advice revoked the sub-judice transfer by means of its decision dated 23.4.86.

Learned counsel for applicant submitted that the applicant was entitled to judgment on the merits, inspite of the revocation of the sub-judice decision, as allegedly the administrative act in question has produced detrimental results to him before ceasing to be effective, for which he 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-judice 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, *Anastassiades & others v. Republic*, (1984) 3

5 C.L.R. 312, *Kikas and Others v. Republic* (1984) 3 C.L.R. 852, *Payiatas v. Republic* (1984) 3 C.L.R. 1239, *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, *Evlogimenou v. Republic* (1986) 3 C.L.R. 2042).

10 Having examined the submission of learned counsel in the light of the above authorities, I have come to the conclusion that the sub-judice decision which was recalled as late as 23.4.86 might entitle the applicant to redress under Article 146.6 of the Constitution, if he was successful in the present recourse. So I heard further argument on the merits.

15 It is abundantly clear that the sub-judice decision was mainly based on Regulation 23 of Regulations 71/85 which was declared to be ultra vires the enabling enactment in the *Aristides case and Evlogimenou case* (supra).

In line with the above decisions, the reasoning of which I adopt, I hold the view that the said regulations are ultra vires the enabling enactment.

20 In the result the sub judice decision is hereby declared null and devoid of any legal effect.

Let there be no order as to costs.

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