

1988 February 26

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CLEARCHOS MILTIADOUS,

Applicant,

v.

THE REPUBLIC OF CYRPUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 180/85).

Time within which to file a recourse—Publication of sub judice decision in the Official Gazette as required by relevant law—Time begins to run as from such publication, irrespective of when the decision came to the knowledge of the applicant.

Time within which to file a recourse—The issue may be raised and examined by Court ex proprio motu. 5

The applicant impugnes by means of the present recourse the decision of the respondent P.S.C. to appoint 12 interested parties (Nos. 1-12) and promote interested party No. 13 to the post of Administrative Officer, General Administrative Staff, in preference to and instead of the applicant. 10

The aforesaid appointments and the promotion of interested party No. 13 were published in the Official Gazette of the Republic dated 19.10.1984. The recourse was filed on 12.2.1985.

Held, dismissing the recourse: (1) Section 37(4) of The Public Service Law 33/67 required the publication of the sub judice appointment and section 44(6) of the sub judice promotion. 15

(2) The time, within which to file the recourse challenging the sub judice decision began to run as from such publication, irrespective of when the decision in question came to the knowledge of the applicant.

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*Recourse dismissed.
No order as to costs.*

Cases referred to:

Moran v. Republic, 1 R.S.C.C. 10;

Markoullides v. The Greek Communal Chamber, 4 R.S.C.C. 7;

Pissas (No. 1) v. E.A.C. (1966) 3 C.L.R. 634.

10 **Recourse.**

Recourse against the decision of the respondent to appoint and/or promote the interested parties to the post of Administrative Officer in preference and instead of the applicant.

A.S. Angelides, for applicant.

15 *A. Vassiliades*, for the respondent.

X. Xenopoulos, for interested parties 1, 2, 5, 8, 10 and 12.

A. Tryphonos (Mrs), for interested party 3.

K. Talarides, for interested party 4.

M. Papapetrou, for interested party 9.

20 *N. Panayiotou*, for interested parties 6 and 11.

M. Vassiliou, for interested part 13.

Cur. adv. vult.

LORIS J. read the following judgment. The applicant impugnes by means of the present recourse the decision of the respondent P.S.C. to appoint 12 interested parties (Nos. 1 - 12) and promote interested party No. 13 to the post of Administrative Officer, General Administrative Staff, in preference to and instead of the applicant. 5

By means of prayer "A" in the present recourse applicant challenges the letter of the respondent P.S.C. dated 2.2.85 by which he was informed that he had not been selected for promotion in the aforesaid post. 10

In virtue of prayer "B" he applies for a declaratory judgment to the effect that, the decision of the respondent P.S.C. published in the official Gazette of the Republic dated 19.10.84, whereby interested parties 1 - 12 were appointed and interested party No. 13 was promoted to the aforesaid post, be declared null and devoid of any legal effect, whatever. 15

In substance both prayers are directed to the same end notably the annulment of the sub-judice decision which was published in the Official Gazette of the Republic on 19.10.84.

The present recourse was filed on the 12th February, 1985. 20

The respondent P.S.C. in its written address as well as some of the interested parties raised the preliminary objection that the present recourse was filed out of time. The issue whether a recourse is filed out of time can, in any event, be raised by the Court acting ex proprio motu, in view of paragraph 3 of Article 146 of the Constitution, as the provisions of the said paragraph are mandatory and they have to be given effect in the public interest (vide *Moran v. The Republic*, 1 R.S.C.C. 10, *Markoullides v. The Greek Communal Chamber*, 4 R.S.C.C. 7). 25

The Public Service Law, 1967, (Law No. 33/67) in virtue of s. 37(4) requires that: 30

"A permanent appointment shall be published in the Official Gazette of the Republic as soon as possible after it has taken effect".

5 Likewise s. 44(6) of the same law ordains that "Promotions shall be published in the official Gazette of the Republic."

By virtue of the sub-judice decision interested parties 1 - 12 were appointed and interested party No. 13 was promoted to the permanent post of Administrative Officer, General Administrative Staff, with effect from 15.10.1984.

10 The aforesaid appointments and the promotion of interested party No. 13 were published in the Official Gazette of the Republic dated 19.10.1984 (vide Nos. 2469 and 2470).

The present recourse was filed on 12.2.1985 i.e. some 116 days after the aforesaid publication in the Official Gazette as aforesaid.

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Paragraph 3 of Article 146 of the Constitution reads as follows:

"Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission when it came to the knowledge of the person making the recourse."

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In the case of *Charalambos Pissas (No. 1) v. E.A.C.* (1966) 3 C.L.R. 634, at p. 637 it was held that:

"In view of the wording of such paragraph, I am of the opinion that, once there has been publication of an act, time begins to run, for the purposes of the said paragraph, from such publication, irrespective of when the act or decision in question came to the knowledge of the person concerned."

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In Greece the position is not the same because there the pro-

vision corresponding to paragraph 3 of Article 146, section 49(1) of Law 3713/1928, provides that time commences to run from the communication or publication of the act concerned or from the time when the person concerned has come to know thereof In Cyprus, however, where the relevant provision (Article 146.3) is not the same in its material parts as the relevant Greek provision (section 49(1) of Law 3713/1928), there is no room, in my opinion, for the application of the aforesaid principles, as evolved in Greece, and, therefore, it has to be held that time, in the present Case, began to run from the publication of the relevant Order of acquisition" 5 10

It is crystal clear from the above cited case, which received judicial approval repeatedly ever after, that the present recourse which was filed some 116 days after the publication of the sub-judice decision in the Official Gazette is doomed to failure having been filed out of time, which began to run for the purposes of Article 146.3 from the publication of 19.10.1984 irrespective of when the decision in question came to the knowledge of the applicant; and in this latter connection there is not an iota of evidence to the effect that the applicant did not understand that the appointment of the interested parties was connected with his non-selection. 15 20

In the result present recourse is hereby dismissed as having been filed out of time.

Let there be no order as to costs. 25

*Recourse dismissed.
No order as to costs.*