[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

HARIDIMOS RODITIS AS NATURAL GUARDIAN OF HIS MINOR DAUGHTER OLYMPIA RODITOU,

Applicant,

and

1. K. KARAGEORGHI, AS DIRECTRESS OF THE PANCYPRIAN GYMNASIUM FOR GIRLS AND/OR PERSONALLY,

2. THE GREEK COMMUNAL CHAMBER, THROUGH THE DIRECTOR OF GREEK EDUCATION, AND/OR

3. THE REPUBLIC THROUGH THE ATTORNEY-GENERAL, AS SUCCESSOR TO THE GREEK COMMUNAL CHAMBER,

Respondents.

(Case No. 43/64).

Greek Secondary Schools—Expulsion of a pupil from a secondary school by way of disciplinary punishment—Expulsion based on Internal Regulations of such school adopted by decision of the Greek Communal Chamber taken under section 11 of the Greek Communal Secondary Schools Law, 1961 (Greek Communal Law No. 6 of 1961)—Enquiry, by way of review, into the matter by the Director of Greek Education and decision by him confirming expulsion—Decision a product of incomplete enquiry and not of proper administrative review—Fresh enquiry ordered.

Constitutional Law—Constitution of Cyprus, Article 146—Whether expulsion of pupil from a secondary school by way of disciplinary punishment an exercise of administrative or executive authority within such Article.

Natural justice—Equitable principles—Not possible to apply directly the rules of natural justice to discipline in schools—Relationship of teacher and pupil a special one not to be compared with judicial or quasi-judicial proceedings.

Applicant, a minor, through her father, seeks a declaration that the decision of the Director of Greek Education,

as contained in his letter of the 14th May, 1964, confirming her expulsion for three days, by way of disciplinary punishment, from the Pancyprian Gymnasium for Girls at Pallouriotissa, is *null* and *void*.

On the 3rd May, 1963, Applicant's mother had gone to the school to complain to a schoolmistress, in relation to Applicant's marks for a certain subject taught in the 3rd form, in which Applicant was at the time; eventually Applicant, her mother and the said schoolmistress had a talk in the corridor of the school. Applicant was allegedly seen by another schoolmistress to make, towards the first schoolmistress a gesture, by striking one clenched fist against the other. There and then the news of Applicant's conduct in the corridor reached Respondent 1, the headmistress, who proceeded to investigate the matter.

Eventually Applicant admitted making the gestures in question, having denied it at first.

The case of Applicant's gesture was placed before the Masters' Council of the school, and the said Council imposed a three days' expulsion, which was put into effect.

The Masters' Council reverted to the matter on the 3rd July, 1963, when fixing the Applicant's conduct rating for that school year and it was decided to give her a rating of 16 out of 20 because of the expulsion.

As a result, recourse 111/63 had been filed; that recourse was withdrawn, on the 16th January, 1964 when it was undertaken by the Director of Greek Education (Respondent 2) "to conduct himself an inquiry into the whole matter".

Held, I. On whether the review undertaken by the Director has been duly completed.

(a) I hold that the Director has not fully and properly inquired himself into the whole relevant matter; the deficiencies that exist are such that can only lead to one result i.e. that the inquiry which the Director undertook to conduct has not yet been duly completed.

(b) The decision of the Director contained in his letter of the 14th May, 1964, has to be annulled as being the product of incomplete inquiry and not of a duly and sufficiently carried out administrative review. Like any other ad-

ministrative decision, a decision taken in the process of administrative review has to be based on the reasonably necessary inquiry for the purposes of ascertaining the relevant facts, otherwise it is to be annulled.

Photiades and Co. and The Republic (1964 C.L.R. 102 followed.

II. On what, if any, provision the expulsion has been based.

(a) On the material before me I find that at the time what were in force, as internal regulations of the school in question and, thus, providing sufficient sanction for the expulsion, were the Internal Regulations of the Pancyprian Gymnasium. Such Regulations had been adopted also as the Internal Regulations of the school in question. They were based on the Royal Legislative Decree of the Kingdom of Greece, issued on the 20th June, 1955, and published on the 8th July, 1955. Such Decree has itself now been adopted, as Regulations in force in Greek Communal Secondary Schools, by decision of the Greek Communal Chamber, published on the 25th July, 1963, under section 11 of the Communal Secondary Schools Law, 1961 (Greek Communal Law 6/61).

III. On whether the expulsion of Applicant is an exercise of Administrative or executive authority in the sense of Article 146 of the Constitution.

(a) This issue is whether the expulsion of Applicant is an exercise of administrative or executive authority in the sense of Article 146 of the Constitution. But this issue does not really arise in the proceedings at all nor is it likely ever to arise in relation to this particular expulsion because the whole matter, having become in the special circumstances of this Case the object of administrative review, by concerted action of all parties concerned, it has been rendered, thus, a matter of public law and any future decision of the Director will be an exercise of executive or administrative authority in the sense of Article 146.

(b) This is a field of Administrative Law where our jurisprudence will have to grow gradually in appropriate cases. Precedents in other countries are apt to be of little use because of the close interdependence between the re-

sults reached in such precedents, on the issue under examination, and relevant specific legislative provisions in the countries concerned.

IV. On whether or not any existing legitimate interest of Applicant has been adversely and directly affected by her expulsion:

The proper subject-matter of this recourse is the decision of Respondent 2 and an existing legitimate interest of Applicant in that respect has been adversely and directly affected because it was agreed that she should withdraw her previous recourse 111/63 so that the way might be opened for an administrative review of its subject-matter. In the circumstances the Applicant had an existing legitimate interest in that she was entitled to a proper and full inquiry into the matter in question.

V. On whether or not the rule of natural justice "Audi alteram partem" should have been complied with and, in such a case, if it has been complied with.

(a) It has been alleged that such rule had been contravened by not giving a full opportunity to Applicant's parents or guardian to be heard in the matter and particularly because they were not called to appear before the Masters' Council which met in the afternoon of the 3rd May, 1963. Not even Applicant herself was called to do so.

(b) It must first not be lost sight of that the relationship of teacher and pupil,—which is analogous to that of parent and child and carried equal responsibility in many respects and it is accompanied with equivalent opportunities to do immense good or devastating harm depending on the handling of things—is a special one and is not to be compared with judicial or quasi judicial proceedings. It is, therefore, not possible in my opinion to apply directly the rules of natural justice to discipline in schools.

VI. As regards costs:

(a) Part of her costs only should be paid to Applicant which I assess to £20.—and I award against Respondent 3.

Order: The decision of Respondent No. 2, dated 14th May, 1964 is declared *null* and *void*. A new decision

will have to be reached by him in the matter of the expulsion which has given rise to these proceedings.

Decision complained of declared null and void. Order as to costs as aforesaid.

Cases referred to:

Pelides and The Republic, (3 R.S.C.C. p. 13 at p. 17);

Photiades and Co. and The Republic (1964 C.L.R. 102);

Dafnides and The Republic (1964 C.L.R. 180).

Cur. adv. vult.

Recourse.

Recourse against the decision taken by respondent No. 2 on the 14th May, 1964, that the order of expulsion of Applicant's minor daughter from the Pancyprian Gymnasium for girls made by respondent No.1 on the 3.5.1963, should stand.

L. Clerides for the applicant.

A. Hji Constantinou for respondent No. 1.

G. Tornaritis for respondents Nos. 2 and 3.

The facts of the case sufficiently appear in the following judgment delivered by:

TRIANTAFYLLIDES, J.: In this recourse Applicant, who is a minor, and has, therefore, brought the proceedings through her father as her natural guardian seeks, in effect, a declaration that the decision of the Director of Greek Education, as contained in his letter of the 14th May, 1964, confirming her expulsion for three days, by way of disciplinary punishment, from the Pancyprian Gymnasium for Girls at Palouriotissa, is *null* and *void.*

In strict form the proper framing of the description of Applicant in these proceedings should have been "Olymbia Roditou, a minor, through her father Haridimos Roditis, as natural guardian" but, in my view, the description of Applicant even as it is to be found in this recourse can be reasonably taken to convey the correct procedural state of affairs and, therefore, I do not think that any formal amendment should be ordered. On the other hand, the title of the proceedings was amended, by consent of the parties, through

the addition of a third Respondent, on the 3rd April, 1964, because of the enactment, pending the recourse, of "The Transfer of the Exercise of the Competence of the Greek Communal Chamber and the Ministry of Education Law" 1965 (12/65). Such amendment, which was jointly applied for, was a formal one and not related to any issue of substance in these proceedings. It may be noted, in particular, that the existence in law of the Office of Greek Education, and of its Director (to be referred to hereafter as "the Director") has not been affected by Law 12/65.

The Director has been brought into this Case as follows:—

On the 20th June, 1963, Applicant had filed an earlier recourse against her expulsion and when, on the 16th January, 1964, that case, No. 111/63, came up for Presentation before a Rapporteur of the Supreme Constitutional Court, the following was recorded:—

"After exchange of views between all the parties and in consequence of a suggestion made by the Rapporteur, *Mr. Georghiades* states that if the Applicant withdraws this recourse, Respondent No. 2 will conduct himself an inquiry into the whole matter, the subject-matter of this recourse, giving in the course thereof also an opportunity to Applicant to put his views before him and after review of the matter come to a final decision concerning the punishment imposed upon the daughter of the Applicant and communicate such decision to Applicant not later than the 10th March, 1964.

Mr. Clerides states that he would be prepared to withdraw this recourse, without prejudice to the allegations made therein, as it is clear that the inquiry of the Director will amount to a review so that the Applicant will not be barred from filing a new recourse if necessary which, however, he hopes that he will not have to do".

Upon that, recourse 111/63 was withdrawn accordingly.

In the above set out Court record, in case 111/63, Applicant was being referred to in the masculine gender, because of the fact that the Applicant had again brought the proceedings through her father and he was, by extension, treated, not exactly accurately, as being the Applicant himself; the "Mr. Georghiades" mentioned therein was Mr. Zenon Georghiades of the Office of Greek Education who was representing the then absent Director Mr. Cleanthis Georghi-

ades; Respondents 1 and 2 in the said earlier proceedings were the same as in these present proceedings.

After the withdrawal of recourse 111/63, and on the 3rd February, 1964, counsel for Applicant wrote a letter to the Director enclosing copy of the record of the 16th January, 1964 and requesting that the inquiry mentioned therein should be conducted the soonest possible.

The Director on the 20th February, 1964, saw Applicant and her parents, as well as her maternal uncle Mr. Nicos Ionides, in his office and heard their side of the matter.

Soon after such interview the Director had a conversation on the telephone with counsel for Applicant, during which he expressed readiness to give to the matter a conclusion favourable to Applicant, resulting in the annulment of the punishment of expulsion which had been imposed on her.

According to his evidence, this conversation took place before he had seen Respondent 1, the headmistress of the school concerned, and while he was under the impressions created through having heard only the Applicant's side of the matter. I have no reason at all to doubt the Director's version as to this.

The Director saw Respondent 1 in May, 1964. He did not see any other member of the staff of the school in connection with this matter.

On the 14th May, 1964, he wrote a letter to counsel for Applicant stating that he had reached the conclusion "that there has not been any prejudice against Applicant in the matter of the assessment of the punishment imposed on her by the Masters' Council" of the school and, so, he could not intervene by setting aside or varying the decision reached by the Masters' Council. He proceeded to add that the fact that the teaching staff had "received, in a fatherly manner, the pupil during the current school year and have behaved and are behaving towards her, in the same way as towards all the other pupils, proves that there does not exist a hostile surrounding, but on the contrary that there exists caring interest, for her".

The Director, in conclusion, informed counsel for Applicant, by his said letter, that Applicant's conduct rating for the then current school year—she had been expelled in the

previous school year—could not and would not be influenced unfavourably by what had happened in the previous year.

It is against this letter of the Director, of the 14th May, 1964, that this recourse is, in effect, made.

On the 19th May, 1964, counsel for Applicant replied to the Director recalling their aforementioned telephone conversation, pointing out that the Director's letter under reply was not in accordance with that conversation and inviting the Director to give effect to what had been agreed during such conversation.

The Director wrote back on the 25th May, 1964, stating that whatever had been said by him on the telephone to counsel for Applicant had been said before he had come into contact with Respondent 1 and had been based only on the facts as related to him by the guardian of the Applicant and the Applicant herself, and he added "after the contact which I have had with the headmistress I have been satisfied that indeed the decision of the Masters' Council was a just one. Consequently it is not possible to revise the decision taken and your client may institute a new recourse if she wishes".

It is relevant, next, to deal shortly with the salient facts relating to the expulsion of Applicant, which has given rise to the whole matter:

On the 3rd May, 1963, Applicant's mother had gone to the school to complain to a schoolmistress, Mrs. Stylianou, in relation to Applicant's marks for a certain subject taught in the 3rd form, in which Applicant was at the time; eventually Applicant, her mother and Mrs. Stylianou had a talk in the corridor of the school. As Mrs. Stylianou was going away, with her back turned to Applicant and her mother, and, therefore, without being in a position to notice anything herself, Applicant was allegedly seen by another schoolmistress, Miss HadjiMichael, to make, towards Mrs. Stylianou, a gesture, by striking one clenched fist against the other. The same schoolmistress said that she saw Applicant repeating the same gesture a few minutes later, while Applicant was still talking to her mother. On that occasion Mrs. Stylianou was not in the vicinity but Miss HadjiMichael has testified that, from what she heard being said at the time between mother and daughter, the gesture was again meant

for Mrs. Stylianou. On both occasions Miss HadjiMichael does not appear to have taken a serious view of the matter or to have regarded it as something to be immediately reprimanded, because she did not pass any remarks to Applicant there and then and she did not proceed to report it officially; but she related it to other members of the teaching staff in the staff common-room and it seems that, thus, the news of Applicant's conduct in the corridor reached Respondent 1, the headmistress, who proceeded to call Miss HadjiMichael and Applicant in her office in order to investigate the matter.

It is not really necessary to go into the details of such investigation; it suffices to say that eventually Applicant admitted making the gesture in question, having denied it at first.

Until the end, however, of this Case it has remained in dispute between the parties whether the gesture was made twice and was aimed at or referring to Mrs. Stylianou or whether it was an inoffensive gesture made once by Applicant in conversation with her mother. In this connection it is to be noted that the relevant minutes of the Masters' Council, which as we shall see came to deal with the matter later on the same day, state that "After the discussion"—between Applicant's mother and Mrs. Stylianou—"the pupil while talking to her mother made a gesture denoting that she was satisfied that remarks had been passed to her schoolmistress".

Respondent 1, as a result, asked Applicant to leave school at once. It is disputed whether she there and then expelled Applicant for four days or whether she asked Applicant to leave school until the matter could be put before the Masters' Council on that day.

Soon afterwards Respondent 1 and Applicant's mother confronted each other at the entrance of Respondent's 1 office and they had a rather abrupt exchange of words which did not at all help towards inducing a calm and peaceful approach by both sides to what was for both of them a common problem—in their respective capacities as mother and teacher of a young girl; on the contrary, after their said exchange of words a chain-reaction of events ensued which resulted in leading the Applicant and her school, twice up to now, into positions of opposing litigants before the Court.

One cannot help reflecting with considerable regret that

had it been possible there and then for Applicant's mother and Respondent 1 to discuss calmly the question of what was, when put at its worst, a manifestation of childish cheek on Applicant's part, the whole matter might have been prevented from taking any further dimensions and would not have been pending before the Court to-day.

After the exchange with Respondent 1, Applicant's mother immediately rang up her brother Mr. Nicos Ionides, the Director of Inland Revenue, who was at his office, and told him that Applicant had been expelled for four days; he came at once to the school and went to see Respondent 1 with Applicant and her mother. Respondent 1 agreed to see him alone and Applicant and her mother were left to await outside Respondent's office.

It is not necessary to go in detail into the meeting between Mr. Ionides and Respondent 1, in the office of the latter. Each side accuses the other of having been very excited; the fact remains that such meeting was not as constructive as it might have been. It started with a dispute on procedure and never became the full cooperative effort that was required for dealing with the problem of a minor's conduct. During the said meeting Mrs. Stylianou and the Applicant were called in. The Applicant admitted making the gesture in question. The significance and purpose thereof seem to have been left in the dark. Mr. Ionides and Respondent 1 parted in a rather calm mood; Mr. Ionides had pleaded for leniency and understanding and also took the, in my opinion, wise step of undertaking to deal himself with any problems arising between Applicant and her school.

The case of Applicant's gesture was placed before the Masters' Council of the school, at an extraordinary meeting thereof which was summoned by Respondent 1 in the afternoon of that same day.

It is useful to note what happened at such meeting, as it is related in the relevant minutes. Such minutes appear to have been added to or corrected subsequently. According to the evidence of Respondent 1 such minutes were corrected at the ensuing meeting of the Masters' Council, as a result of observations made by her and other members present.

It is recorded, *inter alia*, in the said minutes that the Masters' Council met at the request of Respondent 1 who

wished to have its advisory opinion in order to deal with a problem which had been caused by Mrs. Roditou—Applicant's mother—and by her daughter, the Applicant; that Applicant's mother had repeatedly come to the school, without any serious cause, complaining about the behaviour of the teaching staff towards her daughter and alleging that her daughter was being treated unjustly; that an offence had been committed in her classroom by Applicant sometime in the past, during that same schoolyear, and that her mother had been called to the school, had admitted the fault of her daughter and had asked that she should be forgiven; that afterwards, Applicant's mother had come to the school and had had a discussion with a schoolmistress, complaining at length about the marks given by the latter to her daughter and alleging that the said schoolmistress was prejudiced because of the previous offence of Applicant; that after such discussion Applicant while talking to her mother made a gesture denoting that she was satisfied that remarks had been passed to her schoolmistress; that Applicant had been summoned to the office of the headmistress in the presence of Miss HadjiMichael, who saw the gesture, and that after denying it at first, Applicant eventually admitted making the gesture in question; that the headmistress had decided that the Applicant ought to be punished both for her improper behaviour and because she chose, through lying, to defraud her school and affront the schoolmistress who had related the incident; that the headmistress sent the girl away from the school until her parents would come to know of her new offence and until the school would deal with such offence; that the mother who was at the entrance behaved most improperly and disrespectfully towards the headmistress; that later the brother of the mother came to the school and declared himself to be the guardian of the girl; that after discussion Miss Kokkinou suggested that the girl should be expelled for four days, but that the headmistress reduced the punishment to three days' expulsion and that the Masters' Council accepted the suggestion of the headmistress.

The said minutes end with an entreaty by the headmistress that her colleagues should behave as "teachers" towards the "child" and should approach her faults with understanding and try and correct them.

I pause at once in order to express my real appreciation for the attitude contained in the concluding remarks of the

headmistress, Respondent 1, at the meeting, in question, of the Masters' Council and to stress that, as they do constitute the proper and only acceptable approach of the school to Applicant and all other pupils in any matter, they are a very encouraging feature in the rather sad picture of the Case.

The punishment of expulsion, thus imposed, was duly put into effect.

The Masters' Council reverted to the matter on the 3rd July, 1963, when fixing the Applicant's conduct rating for that school year and it was decided to give her a rating of 16 out of 20 because of the expulsion.

By that time recourse 111/63 had been filed; as it has been seen that recourse was withdrawn, on the 16th January, 1964 when it was undertaken by the Director "to conduct himself an inquiry into the whole matter".

Coming now to the issues arising in this recourse it is necessary to determine, first, definitely its subject-matter.

In my opinion, this could be only the decision of the Director contained in his letter of the 14th May, 1964. Once the expulsion of Applicant became the object of an inquiry, of a hierarchical administrative review by Respondent 2, it is only the outcome of that administrative action, as contained in the said decision of Respondent 2, which can become the subject of a recourse; any defects pertaining to the expulsion itself could only be gone into if relevant to the validity of the decision of Respondent 2. In any case it would be impossible to challenge, by this recourse, the expulsion separately, because, apart from any other difficulties, such recourse would be out of time, under Article 146(3).

That the Director, Respondent 2, has acted in this matter as a higher administrative authority, is common ground between the parties and it is abundantly clear also from the record of the 16th January, 1964 in case 111/63.

It was not a mere instance of gratuitous appeal to the Director, which might have then left still final and directly subject to challenge the expulsion of Applicant by the school. It was a case of hierarchical review. It is stated in the record of the 16th January, 1964, that "Respondent 2 will conduct himself an inquiry into the whole matter, the subject-matter of this recourse" i.e. the expulsion, and after review of the

matter come to a final decision concerning the punishment imposed".

In view of his position in the structure of Greek education in Cyprus, (see *inter alia* the Education Office Law, 1960, Greek Communal Law, 7/60, ss. 3, 4 and 5) the Director had the inherent power to inquire into a matter of this nature, as an organ of administration, and having done so his decision is an exercise of administrative or executive authority in the sense of Article 146.

By way of parenthesis on this point I would like to express the view that—apart from whether or not in each case a recourse might lie to this Court—it is most desirable that problems concerning pupils and their schools should be dealt with first at the suitable administrative level of the educational structure before finding their way to this Court, if they are to come at all before it.

The administrative review was embarked upon by the Director, not *ex proprio motu*, but with the concurrence of Applicant's side. It was not an act which was necessary by way of confirmation or completion of a previous one i.e. the expulsion, but, as already stated, a review by higher authority. Once the said review was set in motion, with the consent of Applicant, no recourse was possible in the matter of the expulsion until such review would be duly carried out, because thus the expulsion ceased to be the final link in the chain of administrative action. Sufficient authority for this proposition is to be found in *Pelides and the Republic* (3 R.S.C.C. p. 13 at p. 17).

In the present Case, therefore, it is necessary to determine if the review undertaken by the Director has been duly completed. If it has, then its outcome—and through it, to the extent that is necessary or relevant, the expulsion itself—can be the subject-matter of a recourse under Article 146. If it has not been duly completed, then whatever has actually been done or omitted to be done by the Director still constitutes a matter which is subject to a recourse under Article 146. But in no case can the expulsion by itself be the subject of a recourse because it is no longer the final link of the administrative action in question.

Has then the review by the Director been duly completed or has the Director reached his decision without having duly

completed such review? This question has to be dealt with before it is possible to embark upon any examination of the validity of the outcome of such review from the point of view of the substance of the matter.

The real issue that arises is whether or not a full inquiry has been conducted "into the whole matter"

In examining such issue one is faced with grave difficulties because the Director has kept no formal minutes of such inquiry and there exists no formal reasoned decision of the outcome of such inquiry. The Director has kept no minutes, because, according to his explanation, which I do accept, he thought that there would be no room for any further proceedings.

This Court takes this opportunity of reiterating what it has stated in its judgment in *Dafnides and the Republic* (1964 C.L.R. 180, at p. 187), in connection with the absence of records of the Respondent in that case:—

"The absence of minutes, of a formally drawn up reasoned decision or of any other record of the Respondent Board renders the task of the Court very difficult. One of the purposes for which authorities should always see that all necessary records are kept in relation to their actions is in order to enable such actions to be submitted, if necessary, to the proper review either hierarchically or judicially".

Let us, nevertheless, in spite of the absence of records try to ascertain what was the extent of the inquiry conducted by the Director in this Case.

He first saw the Applicant, her parents and her uncle in his office. Then nearly two months later he saw the headmistress of the school, Respondent 1. The long interval between February when he saw the Applicant's parents, uncle and the Applicant herself, and May of the same year when he saw Respondent 1, though no doubt it must have been due to other current preoccupations of the Director, tends to indicate in my view that he did not conduct, and that he was not under the impression that he was conducting, a full inquiry by way of formal administrative review in the matter in question; the Director appears to have treated his role in this matter as being mediation rather than inquiry and decision. This is borne out to a certain extent also by the fact that he discussed the outcome, which he had in mind,

on the telephone with counsel for Applicant, before he saw Respondent 1.

It is not disputed that the Director did not see any other schoolmistress in connection with this matter. In particular he did not interview the schoolmistress who had witnessed the relevant behaviour of Applicant. The omission of the Director to see the only official eyewitness, Miss Hadji-Michael, is sufficient, in my opinion, by itself to prevent the inquiry conducted by the Director from being a full and proper inquiry.

It has been testified by the Director that when he saw Applicant's side, including Applicant and her mother he told them, after listening to their version, that if the facts were as they had related them to him there was no case against Applicant.

But before making up his mind finally the Director went to see Respondent 1, the headmistress. Unfortunately he stopped there. He did not proceed to see also Miss Hadji-Michael. Having heard two of the persons involved in the incident, Applicant and her mother, he did not hear also the other eyewitness of the incident, Miss HadjiMichael, so that he could evaluate himself which version of the incident was the correct one. He took the word of Respondent 1 about Miss HadjiMichael being right in what she saw or heard. He, of course, may have had no reason to doubt Respondent's 1 or Miss HadjiMichael's good faith in the matter, but he allowed Respondent's 1 evaluation of the correct position to be substituted in place of his own evaluation, which he had to make in order that his inquiry could be deemed to be full and proper. After all, the most disputed issue in this Case is the purpose and significance of the gesture admittedly made by Applicant in talking to her mother, and the Director could resolve it only by seeing and interrogating Miss HadjiMichael himself and not by listening to Respondent's 1 own conclusions, views and reactions in the matter; and on the 16th January, 1964, the record of case 111/63 shows that the Director would "conduct himself" an inquiry.

Furthermore, the Director has told the Court, very frankly, that he did not peruse himself the relevant minutes of the Masters' Council; Respondent 1, he told us, read out to him such minutes when he called at her office.

Had he looked at the said minutes himself he might have been led to inquire into the state of such minutes; he would, of course had been given the explanation which was given to the Court by Respondent 1, i.e. that the subsequent alterations and additions were made as a result of observations by her and others at the ensuing meeting of the Council and, no doubt, the Director would then have wanted to know what were such observations which led to altering the minutes so extensively. They might have thrown a lot of light as to how the Masters' Council dealt with the whole matter. He might have drawn the conclusion that all these subsequent alterations and additions indicated strongly that the minutes could not be taken down correctly in the afternoon of the 3rd May, 1963, due possibly to a rather hurried discussion taking place at the Council meeting on that particular day; or there may have been other reasons for which it had not been possible for the minutes to be correctly taken down. There can be little doubt that had the Director seen the minutes themselves he would have had at least food for relevant thought; by not perusing them himself he has been deprived of the opportunity of inquiring fully into this aspect of the whole matter.

Moreover, the Director, who from his letters clearly appears to have accepted that it was the Masters' Council which decided on the punishment in question, had to see himself the Council on this matter and he should not have relied on Respondent's 1 views, as the spokesman of the Council. For example, had he seen the Council then he might come to know that at least one or even more of its members felt that the parents of Applicant had to be called before its meeting of the 3rd May, 1963, and that Respondent 1 had ruled against such proposal. He might then have had to weigh the propriety of the course followed on this point in the particular circumstances.

Lastly—without however exhausting the issue under consideration—from the letter *exhibit* 1 it is clear that the Director must have been labouring under the misapprehension that what was mainly in issue was whether or not there had been prejudice in the minds of the authorities of the school in dealing with the case of Applicant and once he was satisfied that there had not existed any such prejudice he was not entitled or prepared to go further into the matter of the punishment imposed on Applicant. In my opinion, the

Director had to do much more; as what was called for was "a final decision concerning the punishment imposed", the Director had, from the detached and calm point-of-view of his high office, to inquire fully into what had actually taken place and to decide, as the person so very much responsible for proper education in Cyprus, whether or not it was right, because of the making of that gesture—even if it had in fact been made by Applicant while talking to her mother with reference to a schoolmistress—to expel Applicant for three days and, also, to reduce her conduct rating in that year accordingly. On all these I do refrain from expressing, at present, any opinion myself, one way or the other.

For all the above reasons I hold that the Director has not fully and properly inquired himself into the whole relevant matter; the deficiencies that exist are such that can only lead to one result i.e. that the inquiry which the Director undertook to conduct has not yet been duly completed.

The decision of the Director contained in his letter of the 14th May, 1964, has to be annulled as being the product of incomplete inquiry and not of a duly and sufficiently carried out administrative review. Like any other administrative decision, a decision taken in the process of administrative review has to be based on the reasonably necessary inquiry for the purpose of ascertaining the relevant facts, otherwise it is to be annulled (see *Photiades* and Co. and The Republic (1964 C.L.R. 102).

I have no doubt that the Director has acted all along with the utmost good faith and in a genuine effort to solve a difficult problem that has arisen between the particular school and the Applicant. He had the best of intentions—and that is why he may have committed himself to counsel for Applicant rather prematurely. May be because he was not present on the 16th January, 1964, he has not been given adequate opportunity to appreciate fully what was expected of him. I trust that now that he has had such an opportunity he will carry out his task fully and expeditiously.

In order not to prejudge the outcome of his review, I have refrained from making any unnecessary findings of fact on issues which are disputed. It is for him to draw his conclusions in these matters first. He is not to feel bound by any conclusion reached in the matter by Respondent 1 or the Masters' Council. He will have, *inter alia*, to examine to

what extent the expulsion of Applicant was decided as punishment only for the gesture in question or also as belated punishment for the other offence previously committed by Applicant—a matter which had already been closed apparently—and whether or not the quantum of punishment has not unfortunately and unconsciously, perhaps, been influenced by the fact that Applicant was causing her mother to come on occasions to the school and take the time of the teaching staff with complaints, which in the opinion of such staff, were unjustifiable. He will have to decide, in other words, whether or not it is possible that considerations foreign to the matter before the Masters' Council at the time, which was the assessment of the punishment for the particular offence committed by Applicant on that day, have led to a punishment which is unduly severe and has to be set aside—and again on this I express no opinion one way or the other but I am only pointing out an issue that has to be gone into by the Director.

There remain now four issues which have been raised and which in my view need to be dealt with, though not at great length.

The first such issue has been: on what, if any, provision the expulsion has been based? On the material before me I find that at the time what were in force, as internal regulations of the school in question and, thus, providing sufficient sanction for the expulsion, were the Internal Regulations of the Pancyprian Gymnasium (*exhibit* 6). Such Regulations had been adopted also as the Internal Regulations of the school in question. They were based on the Royal Legislative Decree of the Kingdom of Greece, issued on the 20th June, 1955, and published on the 8th July, 1955. Such Decree has itself now been adopted, as Regulations in force in Greek Communal Secondary Schools, by decision of the Greek Communal Chamber, published on the 25th July, 1963, under section 11 of the Communal Secondary Schools Law, 1961 (Greek Communal Law 6/61).

The next issue is whether the expulsion of Applicant is an exercise of administrative or executive authority in the sense of Article 146 of the Constitution. But this issue does not really arise in the proceedings at all nor is it likely ever to arise in relation to this particular expulsion because the whole matter, having become in the special circumstances of this

Case the object of administrative review, by concerted action of all parties concerned, it has been rendered, thus, a matter of public law and any future decision of the Director will be an exercise of executive or administrative authority in the sense of Article 146.

In my opinion, once a matter, which might be otherwise an internal matter of a school, properly becomes an object of administrative review, then, as a rule it becomes part of a matter of public law which is subject to a recourse. It need hardly be stressed that appropriate authorities may quite rightly, depending on the circumstances of each case, decline to embark upon an administrative review of an internal matter of school-functioning if in their opinion such review is not called for by the nature of things; a review need not necessarily be granted every time it is sought for; of course, in a proper case, a recourse might lie against the refusal of a review.

In relation to the possibility of challenging by recourse punishments at schools or other decisions relating to pupils, where no administrative review has taken place at all, I think it is neither proper nor possible to draw a hard and fast rule. Many such measures by their nature would be purely internal school matters and, therefore, would not be matters subject to a recourse under Article 146. Other such measures, could, because of their nature and consequences, be acts or decisions touching on the legal status of the pupil concerned and thus amenable within the competence under Article 146.

The relationship between a pupil and its school is in effect a special administrative relationship. As not all orders or decisions pertaining to a special administrative relationship are also to be deemed to be administrative acts, it is useful to adopt the distinction between "basic" relationship and "operative" relationship as a test for distinguishing between those orders or decisions which are administrative acts—and subject to a recourse—and those which are not. In the "Administrative Act", by Professor Forsthoff p. 11, it is said: " 'Basic relationship' includes all legal aspects of the position of an individual as a participant in a 'special administrative relationship'. Only acts which relate to the 'basic relationship' are administrative acts, while acts in the framework of 'operative relationship' .. are only of internal

nature and do not touch upon the legal status of the person concerned". Forsthoff mentions there a school-penalty as being an example of an act in the framework of operative relationship but, of course, depending on its nature, such a penalty could easily relate to a basic relationship, in view of its severity and consequences.

This is a field of Administrative Law where our jurisprudence will have to grow gradually in appropriate cases. Precedents in other countries are apt to be of little use because of the close interdependence between the results reached in such precedents, on the issue under examination, and relevant specific legislative provisions in the countries concerned.

The third issue which has arisen is whether or not any existing legitimate interest of Applicant's has been adversely and directly affected by her expulsion, so that the requirements of Article 146(2), regarding the making of a recourse, might be said to have been satisfied.

It is not necessary, in my opinion, to go into the question of the legitimate interest of the Applicant, if any, in the matter of such expulsion itself. As I have already said the proper subject-matter of this recourse is the decision of Respondent 2 and an existing legitimate interest of Applicant in that respect has been adversely and directly affected because it was agreed that she should withdraw her previous recourse 111/63 so that the way might be opened for an administrative review of its subject-matter; the record of the 16th January, 1964, reads "...Mr. Georghiades states that if the Applicant withdraws this recourse, Respondent 2 will conduct himself an inquiry....". In the circumstances the Applicant had an existing legitimate interest in that she was entitled to a proper and full inquiry into the matter in question.

The last, fourth, issue is whether or not the rule of natural justice "*Audi alteram partem*" should have been complied with and, in such a case, if it has been complied with.

It has been alleged that such rule had been contravened by not giving a full opportunity to Applicant's parents or guardian to be heard in the matter and particularly because they were not called to appear before the Masters' Council which met in the afternoon of the 3rd May, 1963. Not even Applicant herself was called to do so.

It must first not be lost sight of that the relationship of teacher and pupil,—which is analogous to that of parent and child and carries equal responsibility in many respects and it is accompanied with equivalent opportunities to do immense good or devastating harm depending on the handling of things—is a special one and is not to be compared with judicial or quasi judicial proceedings. It is, therefore, not possible in my opinion to apply directly the rules of natural justice to discipline in schools.

On the other hand not affording due opportunity to a pupil or the parents or the guardian to be heard at the proper time may, depending on the circumstances of each case, lead to the conclusion that the relevant matter has not been properly gone into and that there has been an excess or abuse of the relevant powers.

In the present Case, in particular, I am of the opinion, that it was really necessary—in order that the Masters' Council should be in a position to reach a correct decision in the matter of the guilt or innocence of Applicant—to call at least Applicant's mother before such Council. She was the only other eyewitness to the gesture made by Applicant. Of course, the gesture had been made; Applicant herself had admitted it to Respondent 1. But what has been so much in issue is the purpose and significance of such gesture. Applicant's mother was there and she was actually talking to Applicant at the time. This lady has not been afforded a hearing by anybody, as to the correct facts as she knew them; if she had been afforded such a hearing before her daughter was expelled and she had made known her version, which she put forward in Court, the Masters' Council might or might not have believed her, in whole or in part, but in any case it would had been enabled to do its duty without the possibility of any lacuna existing in the knowledge relating to material facts. As the matter has been handled, the Masters' Council has acted on the basis of one-sided information. Neither Miss HadjiMichael was to be credited with infallibility—so that after her version was heard to be felt that nobody else's was material—nor Applicant's mother was to be treated in advance as unreliable—so that her version could be dispensed with. If I had been dealing with the validity of the expulsion itself I might have been inclined to hold that in the particular circumstances of this Case it has been decided upon without sufficient inquiry. As, however, the Director

is to hold a full inquiry himself and decide afresh the matter, this point is no longer really decisive. It is now up to him to determine what has happened in fact and to evaluate the punishment imposed in the light of the correct facts.

Before concluding with the Judgment I have to observe that I do regret that it has not been found possible in these proceedings to put a final end to the matter of the expulsion of Applicant, decided upon nearly two years ago. Both sides may have regarded this Case as the final act of the drama. But courts have to decide according to law and determine only what it is proper for them to determine; and in this Case I have not found it proper to go any further into the merits of the expulsion. The parties will have to await the decision of the Director in the matter. Then, if necessary, the Court may have to take charge of the matter again, if called upon, though this is not an eventuality to be looked forward to by the parties to this Case, in view of the special relationship that exists between them.

Whatever the further developments might be from now on in this matter, I do trust that the proper advice given by the headmistress, in concluding the meeting of the Masters' Council on the 3rd May, 1963, regarding the proper attitude of all her colleagues towards Applicant, has been and will continue to be unwaveringly adhered to; I also expect that Applicant will never act or feel as an antagonist towards her school and will remember that next to her parents her teachers are her best friends at the present critically immature stage of her life; I have no doubt that her parents and her uncle, who has impressed me as a person of great responsibility, will not hesitate to impress upon her, if need be, her proper place and attitude at school.

In the light of all that has been stated in this Judgment the decision of Respondent No. 2, dated 14th May, 1964 is declared *null* and *void*. A new decision will have to be reached by him in the matter of the expulsion which has given rise to these proceedings.

Regarding costs I feel that the best course, in the special circumstances of this Case, would be to make an order that part of her costs only should be paid to Applicant which I assess to £20.— and I award against Respondent 3.

Decision complained of declared null and void. Order as to costs as aforesaid.