

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS LAMBROU,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE EDUCATIONAL SERVICE COMMITTEE,

*Respondent.*

1969  
Nov. 19  
—  
ANDREAS  
LAMBROU  
v.  
REPUBLIC  
(EDUCATIONAL  
SERVICE  
COMMITTEE)

(Case No. 281/69).

*Constitutional Law—Articles 146 and 29.2 of the Constitution—  
Omission to consider school-master's application for transfer  
ought not to have been made.*

*Constitutional Law—Omission—Recourse against omission to  
transfer—No decision existing at the time of the recourse refusing  
application for transfer—Relief claimed refused on this ground.*

*Practice—Decision on a matter not sought in the proceedings before  
the Court—Rule 17 of the Supreme Constitutional Court Rules,  
1962.*

*Omission—See above under "Constitutional Law".*

The Applicant, who is a master in the Greek Secondary Education, applied on April 3, 1969 requesting his transfer from Xeros to Larnaca. His application was not considered until after September, 1969 and the decision taken was not yet communicated to the Applicant on the day of the hearing of this case (November 19, 1969).

On September 1, 1969, the Applicant filed the present recourse seeking a declaration that the "omission" of the Respondent, to transfer him from Xeros to Larnaca ought not to have been made.

Article 29 of the Constitution reads:—

"29.1 Every person has the right individually or jointly with others to address written requests or complaints to any competent public authority and to have them attended to"

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and decided expeditiously; an immediate notice of any such decision taken duly reasoned shall be given to the person making the request or complaint and in any event within a period not exceeding thirty days.

2. Where any interested person is aggrieved by any such decision or where no such decision is notified to such person within the period specified in paragraph 1 of this Article, such person may have recourse to a competent Court in the matter of such request or complaint.”

Rule 17 of the Supreme Constitutional Court Rules, 1962, provides:-

“ If the justice of the case so requires the Court may give any judgment or Decision, under any Article granting it competence, whether or not such judgment or Decision has been sought in the proceedings before it.”

*Held*, (1). In the circumstances I cannot grant the exact relief claimed by the recourse (viz. that the Respondents ought to have transferred the Applicant from Xeros to Larnaca *supra*).

(2) But on the other hand I cannot overlook the serious omission to deal with, and reply to, the application of the Applicant expeditiously. I think this is an obvious case in which the Applicant is entitled to succeed under Articles 146 and 29.2 of the Constitution (see also, *Pikis v. The Republic* (1965) 3 C.L.R. 131).

(3) In the circumstances and exercising the powers under Rule 17 of the Supreme Constitutional Court Rules, 1962 (*supra*), I hereby declare that such an omission to deal with, and reply to, the application of the Applicant dated April 3, 1969 (*supra*) ought not to have been made. And I award costs- £15—in favour of the Applicant.

*Declaration and order  
for costs accordingly.*

Cases referred to:

*Pikis v. The Republic* (1965) 3 C.L.R. 131.

### Recourse.

Recourse against the omission of the Respondent Educational Service Committee to transfer Applicant from the Technical School of Xeros to a Secondary Education School in Larnaca.

L. Clerides with E. Lemonaris, for the Applicant.

G. Tornaritis, for the Respondent.

*Cur. adv. vult.*

The following judgment was delivered by:-

TRIANTAFYLIDIS, J.: In this case the Applicant complains against the "omission" to transfer him from the Xeros Technical School to a secondary education school in Larnaca.

The Applicant is a master in Greek secondary education teaching the subject of English.

His application for transfer from Xeros to Larnaca is dated the 3rd April, 1969 (*exhibit 3*).

As it has transpired today, in the course of the hearing, such application was not examined before the present recourse was made on the 1st September, 1969; and, as it is clearly to be derived from the evidence of Mr. N. Antoniou, the Chairman of the Respondent Committee, it was not examined up to the 18th September, 1969, but after that date.

It is common ground that the decision taken, on the application for transfer of the Applicant, has not yet been communicated to him.

As it has been explained very candidly by the said Chairman the minutes of the Respondent for its meetings after the 18th September, 1969, are not yet ready, due to lack of staff and great pressure of work.

In the circumstances, I cannot grant the exact relief claimed by the recourse, as there did not exist at the time of the filing of the recourse a decision of the Respondent refusing his applied for transfer to Larnaca. But on the other hand I cannot overlook the serious omission to deal with, and reply to, the application of the Applicant expeditiously; and Rule 17 of the Supreme Constitutional Court Rules, 1962, provides that "If the justice of the case so requires the Court may give any Judgment or Decision, under any Article granting it competence, whether or not such Judgment or Decision has been sought in the proceedings before it."

In the context of the material before the Court, and especially of the relevant dates, I think this is an obvious case in which

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the Applicant is entitled to succeed under Articles 146 and 29.2 of the Constitution (see, also, *Pikis v. The Republic* (1965) 3 C.L.R. 131).

The Applicant had applied for a transfer well in advance of the, at the time, ensuing school-year 1969/1970 and yet no decision was taken, or communicated to him, in respect of his application, even up to the 18th September, 1969, after the commencement of the said school-year on the 1st September, 1969.

In the circumstances it is declared that such an omission ought not to have been made.

As I find it very serious that an application for transfer was not considered for so long I am going to award costs against the Respondent, and in favour of the Applicant, which I assess at £15.—

*Declaration and order  
for costs accordingly.*