

1972  
Jan. 24

[A. LOIZOU, J.]

SOFOCLES  
SOFOCLEOUS  
(No. 1)

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

v.

SOFOCLES SOFOCLEOUS (No. 1),

REPUBLIC  
(MINISTRY  
OF EDUCATION)

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTRY OF EDUCATION,

*Respondent.*

(Case No. 327/71).

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*Administrative acts or decisions—Reasoning—Vague reasoning is tantamount to absence of reasoning and vitiates the act or decision—In the instant case the vagueness of the reasoning of the decision to transfer the applicant is not cured by the material in the file—Sub judice decision annulled.*

*Secondary Education—Director—Transfer—Not duly reasoned—Decision annulled—Section 39(2) of the Public Educational Service Law, 1969 (Law 10/1969).*

*Reasoning of administrative acts or decisions—Proper reasoning required—Vagueness of reasoning tantamount to absence of reasoning—See supra.*

The facts sufficiently appear in the judgment of the learned Judge, annulling the *sub judice* decision due to vagueness of its reasoning.

Cases referred to :

*Petrondas v. The Attorney-General* (1969) 3 C.L.R. 214 at pp. 222—223;

*PEO v. Board of Cinematograph Films Censors and Another* (1965) 3 C.L.R. 27;

*Savvides v. The Republic* (1968) 3 C.L.R. 675;

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*Decisions of the Greek Council of State :*  
Nos. 948/1937, 1535/1950.

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**Recourse.**

v.

Recourse against the decision of the respondent transferring the applicant from the Neapolis Gymnasium to the Evening Gymnasium in Nicosia.

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*K. Michaelides*, for the applicant.

*G. Tornaritis*, for the respondent.

*Cur. adv. vult.*

The following judgment was delivered by :-

A. LOIZOU, J. : The complaint of the applicant in the present case is against his transfer from the Neapolis Gymnasium to the Evening Gymnasium in Nicosia. The four grounds of law upon which the present recourse was originally based appear in my decision (\*) on the application for a provisional order for the stay of applicant's transfer. For the sake of brevity I do not propose to repeat them herein, suffice it to say that two more grounds of law were added after the applicant acquired full knowledge of the file of the respondent. They are the following :

"(5) The respondent under no circumstances was empowered to transfer and or post applicant against his will to the Evening School;

(6) The applicant will further contend at the trial of this recourse that the act or decision complained of is not duly reasoned."

The applicant, who is 55 years of age, has been a Secondary Schoolteacher since 1948. In 1961 he was

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(\*) Reported in (1971) 3 C.L.R. 345.

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posted at Lefkoniko and promoted to Director Grade B. in 1964. In 1969 he applied for transfer to Nicosia. His application, together with the applications of five other directors, was considered by the Committee of the Educational Service at its meeting of the 26th August, 1969. Part of the minutes of the Committee appear in *exhibit 6*, where the contents of a document of the Ministry of Education dated 26.8.1969, presented by the Head of the Department of Secondary and Higher Education are set out; it gives the guiding principles to be followed in relation to the posting of Directors in secondary schools. I shall revert to its contents in due course. The decision and its reasoning for the transfer of the applicant to Nicosia appear in *exhibit 1*, another part of the minutes of the said meeting.

As from the 1st September, 1970, the applicant has been promoted to Director Grade A.; the communication of the said decision as well as the Schemes of Service for this post being *exhibits 2* and *3* respectively.

On the 16th July, 1971, the applicant was informed (*exhibit 4*) by the Head of the Department of Secondary and Higher Education that the appropriate authority decided his transfer as from the 1st September, 1971, from the Neapolis Gymnasium—an ordinary day Gymnasium working during normal hours—to the Evening Gymnasium Nicosia—a Gymnasium functioning between 5—9 p.m. and attended mainly by grown up persons desirous of obtaining a secondary school leaving certificate. The applicant objected in writing to this transfer but his objections were turned down by letter dated 7th August, 1971, (*exhibit 7*). The circumstances under which his transfer was effected appear in *exhibit 5*, where the relevant minutes can be found.

On the 10th July, 1971, Mr. Koutsakos, General Inspector of Secondary Education, addressed to the Director of Education the following minute :

“Having in mind the document dated 26.8.1969 of the Head of the Department of Higher and Secondary Education regarding the manning with Directors of the Secondary Schools of large urban

centres, and especially Nicosia, and the principles therein set out, I suggest the transfer of Mr. Sophoclis Sophocleous from the Neapolis Gymnasium to the Evening Gymnasium as from the 1st September, 1971. I request that my suggestion be submitted to the proper authority for approval."

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The Director of Education on the same day referred the matter to the Director-General of the Ministry with the note "approval is recommended." The Director-General in his turn submitted to the Minister "I suggest approval" and the Minister of Education wrote "I approve." The reasoning, therefore, for this decision, unfavourable as it is and adversely affecting the applicant, has to be deduced from the material in the file and in particular from the minute of Mr. Koutsakos and the document referred to therein of the 26th August, 1969. This document which is quoted in *exhibit 6* in the present recourse, was, by coincidence, *exhibit 6* in the case of *Chr. Petrondas v. The Attorney-General* (1969) 3 C.L.R. 214— one of the unsuccessful applicants for transfer to Nicosia, whose application was examined at the same time as that of the present applicant. At pages 222—223 of the judgment in the said case Triantafyllides, J., said :-

"From the generality of the statements made as a preface to the lists of transfers decided upon and applications for transfers rejected (in *exhibit 6*) it is not possible to know with any certainty at all which were the particular reason or reasons which led to the rejection of the application of the applicant for transfer; thus the *sub judice* decision cannot be regarded as being duly reasoned (see, *inter alia*, *Constantinides v. The Republic* (1967) 3 C.L.R. 7). Moreover, the aforesaid statements are, to a large extent, vague generalities based on the contents of the relevant statutory provisions in Law 10/63, and, therefore, according to well established principles of Administrative Law, such statements cannot be regarded as amounting to due reasoning for the individual decision affecting the Applicant (see Conclusions from the Jurisprudence of the Greek Council of State 1929—1959, p. 186). I am, therefore, driven

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to the conclusion that the decision to refuse the application of the applicant for transfer should be annulled as not being duly reasoned, and as being, therefore, contrary to law and in abuse of powers."

I fully adopt the description of the said document as hereinabove given. It contains directives and guiding principles applicable to all cases on account of their generality. In fact it has been used in at least two cases, the *Petrondas* case and the present one. There is nothing objectionable to them, but in the circumstances of this case it had to be shown by due reasoning how they were applied to the case under consideration.

The decision for the transfer of the applicant was taken by the Minister acting as the appropriate authority under Section 39(2) of Law 10/69, inasmuch, as the transfer of the applicant did not involve a change in the office held by him and the duties attached thereto or a change in the place of residence.

In accordance with the well established principles of administrative law, the formulation of the reasoning of a decision reached in exercise of discretionary powers and which is subject to judicial control, must be clear; and it is clear so long as the concrete factors upon which the administration based its decision for the occasion under consideration are specifically mentioned in such a manner as to render possible its judicial control. On the other hand the reasoning is considered vague if it is given in a general and vague manner without stating the facts upon which the administration based its decision (See Economou, "The Judicial Control of Administrative Power," 1965, p. 235).

Furthermore, the reasoning is considered vague when the factors invoked in the reasoning are applicable not only to the *sub judice* decision but to any other instance or account of the generality in their formulation (See Decision of the Greek Council of State 1535/50), or when instead of a reference being made to the concrete circumstances relating to the case under consideration, there is simply a reference to descriptions of either legal or technical nature, the meaning of which is not

particularized to the facts of the case.

As in the case of insufficient reasoning, so the vague reasoning is tantamount to absence of reasoning and renders the *sub judice* act or omission null and void for that reason. (See The Decisions of the Greek Council of State, 948/37 1535/50).

In the case before me the vagueness of the reasoning of the *sub judice* decision has not been cured by the material in the file, as there is nothing to show how these guiding principles contained in *exhibit 6* were applied to the case of the applicant who had only been transferred to Neapolis Gymnasium two years earlier. Consequently the decision remains as insufficiently reasoned and contrary to the aforesaid principles of administrative law and the implied directive to all authorities contained in Article 146 of our Constitution to reason duly their decisions. (*PEO v. Board of Cinematograph Films Censors & Another* (1965) 3 C.L.R. 27).

I have all along in this judgment used the word "transfer" in describing the decision complained of, because that is the word used in section 39(2) of Law 10/69. In effect, however, (see *Andreas Savvides v. The Republic* (1968) 3 C.L.R. 675) it is only a "move" (metakinisis) from one school to another in the same town, as can be seen from the facts explained earlier.

In conclusion, I might add that although the better view is that normally in the case of a decision to transfer under section 39(2) of the law, there is no need for special reasoning (see Decision of the Greek Council of State 364/57), in the circumstances of the present case, and in particular, the recent transfer of the applicant, his evident seniority and the character of the Evening Gymnasium, especially the hours of its functioning, I have come to the conclusion that it was a case that called for clear and concrete reasoning.

Having reached this conclusion, I do not think that I should proceed to examine the remaining grounds of law which I leave entirely open.

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In the circumstances, the *sub judice* decision is declared as null and void and of no effect whatsoever. Respondent to pay £10 against applicant's costs.

*Sub judice decision annulled;  
order for costs as aforesaid.*