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[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

RENOS  
KYRIAKIDES  
v.  
REPUBLIC  
(MINISTRY  
OF EDUCATION  
AND/OR  
DIRECTOR OF  
HIGHER AND  
SECONDARY  
EDUCATION)

RENOS KYRIAKIDES,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTRY OF EDUCATION AND/OR  
THE DIRECTOR OF THE HIGHER AND  
SECONDARY EDUCATION,

*Respondent.*

( Case No. 483/73).

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*Transfer—Educational Officer—Judicial control of transfers—Principles applicable.*

*Transfer—Educational Officer—Assistant Headmaster—No substantial change in duties—Evidence to the effect that transfer was made for educational reasons and in the interest of the service—Transfer not contrary to the Educational Service Law, 1969 (Law 10/69).* 5

*Administrative decision—Due reasoning—Absence of due reasoning is by itself a ground for invalidating a decision—Object of the rule requiring reasons to be given for administrative decisions—What amounts to due reasoning is a question of degree dependent upon the nature of the decision concerned—Sub judice decision concerning transfer of applicant a duly reasoned one—The reasoning thereof appearing both in the decision itself and in the official records.* 10

*Administrative Law—Abuse or excess of powers—Onus of establishing abuse or excess of powers on the applicant.* 15

*Transfers—Educational Officers—Disciplinary and other transfers—Drawing the line between the two classes of transfers—Test to be applied—In case of doubt whether a transfer is disciplinary or not such doubt ought to be resolved in favour of the officer by treating the transfer in question as being a disciplinary one in order to afford the officer concerned the safeguards ensured to him through the appropriate procedure applicable to disciplinary* 20

5 *matters—No evidence by applicant to the effect that his transfer was a disciplinary one—The onus remaining on him to prove abuse or excess of powers, applicant has failed to discharge such onus, because his transfer from one school to another was not a disciplinary transfer disguised as a transfer on educational grounds.*

10 The applicant, an Assistant Headmaster at the Pancyprian Gymnasium since September, 1968, was on the 31st August, 1973 informed by a letter of the Director of the Higher and Secondary Education in the Ministry of Education that the Appropriate Authority had decided, in accordance with section 39(2) of Law 10/1969, to transfer him from the Pancyprian Gymnasium Nicosia to the Phaneromeni Gymnasium for Girls Nicosia with effect from September 1, 1973.

15 The said transfer was effected after the appropriate authority had approved a proposal to this effect, of the Director of the Higher and Secondary Education, embodied in a document dated 31st August, 1973 which ran as follows:

“ Mr. Minister (through D.G.)

20 Pages 89-76: Submissions are hereby made for the transfer of educational officers secondary education within the same town or centre. An attempt has been made for the move of schoolmasters who have served for a long number of years at the same school or of others, for educational reasons consisting of a balanced, as far as possible, distribution of personnel to the Schools.

25 2. As it is foreseen that the necessity will arise for other movements too, due to the posting of Headmasters and Assistant Headmasters and due to the final assessment of the needs in teaching staff to be made in September after the registrations at Schools, I would request authorization for effecting such transfers within the same form after a personal or oral, if need be, consultation with you.”

30 Under s. 39 of Law 10 of 1969 transfers of educational officers, which do not involve a change in the offices held by them and the duties attached thereto or a change in the place of residence shall be made by the appropriate authority concerned; and under section 2 of the same Law the appropriate authority means the Minister acting usually through the Director-General  
40 of his Ministry.

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In challenging the validity of the above transfer, by means of a recourse under Article 146 of the Constitution, Counsel for the applicant contended:

- (a) That the appropriate authority wrongly exercised its discretionary powers under the law in transferring the applicant because, having regard to his qualifications, the said transfer was not made for the benefit of the service but for other purposes; 5
- (b) That the transfer was contrary to Law 10/1969 and the regulations made thereunder because there has been a substantial change in the duties of the office held by him; 10
- (c) That the *sub judice* decision was not duly reasoned and that such decision cannot be supplemented from the documents contained in the file itself;
- (d) That the said transfer was effected in abuse or in excess of powers because it was based on disciplinary grounds. 15

This last contention was based on a letter, addressed by the Chief of Police to the Director-General of the Ministry of Education, dated August 6, 1973 wherein it was stated that the applicant was arrested in July, 1973, under a judicial warrant with regard to a case of alleged conspiracy to use armed violence against the state; and that he was remanded in custody for 5 days and that he was released without bringing a charge against him. 20

*Held (after stating the principles on which an Administrative Court will interfere with a transfer vide p. 373 post)* (1) That in the light of the document dated 31st August, 1973 (quoted *supra*), the transfer of the applicant was made not only for educational reasons in accordance with regulation 13(a)(i) of the Regulations of 1972, but also it was made in the interests of the service. 25 30

*Per curiam:* An educationalist, or indeed any other public servant, should not expect to remain for the rest of his service life in the same school in which he has been posted originally because he thinks that he is indispensable in view of his special qualifications. 35

(2) That there is nothing in the relevant scheme of service justifying the complaint of counsel that applicant's transfer had the legal effect of a substantial change in his duties; and that in the absence of any evidence coming from the applicant that he

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15 was not given by the headmaster of the Phaneromeri Gymnasium his usual duties of the post of Assistant Headmaster, this Court has no alternative but to reach the conclusion that the complaint of applicant was due to reasons of prestige only and has no legal foundation.

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10 (3) (After stating the principles governing the requirement of due reasoning—vide pp. 374–376 post.) That because what amounts to due reasoning is a question of degree dependent upon the nature of the decision concerned (see *Georghiades and Others v. The Republic* (1967) 3 C.L.R. 653 at p. 656), this Court has reached the conclusion that in the case in hand the *sub judice* decision is duly reasoned both in the decision itself and/or in the official records (see *Papadopoulos v. Republic* (1968) 3 C.L.R. 662).

15 (4) (After stating the test to be applied in drawing the line between disciplinary and other transfers—vide pp. 376–378 post) That in the absence of any evidence this Court can hardly speculate whether, because the Chief of Police thought it his duty to inform the appropriate Ministry, that by itself, once the applicant was  
20 released without charging him with any offence, could by any stretch be connected with the question of the applicant's transfer; that the onus remains on the applicant to prove abuse or excess of power; and that in this case the applicant has failed to discharge that onus because the transfer from one school to the  
25 other was not a disciplinary transfer disguised as a transfer on educational grounds.

*Application dismissed.*

Cases referred to:

- 30 *Karayianis v. The Republic* (1974) 3 C.L.R. 420 at p. 427;  
*Re Poyser and Mills' Arbitration* [1963] 1 All E.R. 612;  
*Regina v. Minister of Housing and Local Government, ex parte Chichester R.D.C.* [1960] 1 W.L.R. 587;  
*Birmingham Corporation v. Habib Ullah* [1964] 1 Q.B. 178;  
*Rallis and The Greek Communal Chamber*, 5 R.S.C.C. 11;  
35 *Cyprus Palestine Plantations Co. Ltd. v. The Republic* (1965) 3 C.L.R. 271, at p. 282;  
*Jacovides v. The Republic* (1966) 3 C.L.R. 212 at p. 221;  
*Kasapis v. The Council for Registration of Architects and Civil Engineers* (1967) 3 C.L.R. 270 at p. 278;  
40 *Tseriotis v. The Municipality of Nicosia* (1968) 3 C.L.R. 215 at p. 222;

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*Metalock (Near East) Ltd. v. The Republic* (1969) 3 C.L.R. 351  
at p. 356;

*Hadjisavva v. The Republic* (1972) 3 C.L.R. 174 at p. 205;

*Georghiades and Others v. The Republic* (1967) 3 C.L.R. 653 at  
p. 656;

*Papadopoulos v. The Republic* (1968) 3 C.L.R. 662;

*Pilatsis v. The Republic* (1968) 3 C.L.R. 707 at pp. 710–711;

*Kalisperas and The Republic & Another*, 3 R.S.C.C. 146 at pp.  
151–152;

*Damianou v. Republic* (1973) 3 C.L.R. 282;

*Pierides v. The Republic* (1969) 3 C.L.R. 274 at p. 282.

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### Recourse.

Recourse against the decision of the respondent to transfer  
the applicant from the Pancyprian Gymnasium to the Phane-  
romeni Gymnasium for girls, Nicosia.

*L. Papaphilippou*, for the applicant.

*A. Angelides*, for the respondent.

*Cur. adv. vult.*

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The following judgment was delivered by:

HADJIANASTASSIOU, J.: In these proceedings, under Article  
146 of the Constitution, the applicant, Renos Kyriakides of  
Nicosia, seeks to challenge the decision of the respondent to  
transfer him from the Pancyprian Gymnasium to the Phane-  
romeni Gymnasium for girls, Nicosia, as being null and void and  
of no effect whatsoever.

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The facts are these:-

The applicant, a school teacher by profession, has been appoint-  
ed to the Pancyprian Gymnasium firstly for the year 1961–1962,  
and whilst still serving in that school, he was offered a scholar-  
ship and attended a course in education and science in England  
for the year 1966–1967 at the University of Southampton, In-  
stitute of Education and Science. When he returned to Cyprus,  
he was informed by the Educational Service Committee that he  
was promoted to an Assistant Headmaster as from September  
1, 1968, and that he was posted as from that date to the Pancy-  
prian Gymnasium. In para. 4 of the said letter, the Chairman  
draws the attention of the applicant that the rest of the terms of  
the office are those which are prescribed by Law 10/1963. When

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the applicant resumed his new duties he became the co-ordinator for physiognostics and was also in charge of the laboratory.

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5 On August 31, 1973, the Director of the Higher and Secondary Education of the Ministry of Education, addressed a letter to the applicant informing him that the appropriate authority had decided, in accordance with section 39(2) of Law 10/69, to transfer him from the Pancyprian Gymnasium to the Phaneromeni Gymnasium for Girls as from September 1, 1973 (see *exhibit 1*).

10 On September 13, 1973, the applicant, feeling aggrieved because of his transfer, addressed a letter to the Director of the Higher and Secondary Education objecting to his transfer, and challenging at the same time the appropriate authority that his transfer was not made for educational purposes. In that letter he said:—

15 “ On the same date, i. e. 4th September, I visited you in the Ministry of Education as my transfer to the Phaneromeni Gymnasium was not possible to have been made for educational reasons (a) because my presence as a specialist in physiognostics at the Pancyprian Gymnasium which provides practical classes and laboratories was indispensable; 20 and (b) because the Phaneromeni Gymnasium does not provide such facilities, and that the general structure of the building would not permit me to carry out properly my mission.

25 After having studied thoroughly the whole matter and in conjunction with the absence of my name from the promotion list for the post of Headmaster, I have reached the conclusion that my transfer was not made for educational reasons, but for other reasons, and I strongly object and 30 apply that my transfer be cancelled and that I return to my original post.

35 In addition, I inform you that I consider my transfer as an effort to diminish my prestige and place obstacles in my way, which prevent me from carrying out my duty in full towards my students and education in general.” (See *exhibit 2*).

40 There is no doubt, having had the occasion to go through the personal file, that the applicant appears to be from the reports, a very good educationalist. In 1969 he was both praised and criticized by the then Headmaster of the Pancyprian Gymnasi-

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um Mr. Frixos Petrides, and in a report prepared by him he says:-

“ Mr. Kyriakides undoubtedly has personality. His difficult character and his adamant views have not made it possible for him to succeed to the post of Assistant Headmaster and, therefore, his contribution to the administration of the school is a small one. He is very remarkable as a teacher in physiognostics, but in the administrative sector he has not succeeded up to this time.” (See blue 33 in the file P.M.P. 3096). 5 10

In 1968 the applicant was also praised for the way he carried out his teaching duties, both by Mr. Frixos Vrahas and Mr. Tilemahos Charalambous (See blues 27 and 28).

In 1971, the Headmaster of the Pancyprian Gymnasium, Mr. Kyprianou, in reporting about the applicant, said:- 15

“ Generally he is efficient in accomplishing his mission when he seriously undertakes to do so. From this point of view he has contributed a lot to the regular functioning of the school for the current year, and I believe that he could offer much more to the school. When in class he rules because of his scientific background, and due to his method of work, he succeeds in moving the interest of his students in that subject in carrying out further research. Besides his work in school he struggles continually to improve his scientific knowledge as well as his other interests in scientific matters.” 20 25

The writer then concludes in these words:-

“ Whilst in reality he likes his colleagues and students, sometimes he is harsh and abrupt with his colleagues, students and employees. On this point, I believe that it is possible for him to improve. I am driven to this conclusion because of my belief in his honesty and merit. An important step for him to take would be to try to get to know more about the personal problems of the people around him and to show his desire to appear more useful.” (See blue 37). 30 35

Finally, the last confidential report of the applicant, after a continuous service in the Pancyprian Gymnasium for almost 11 years, was prepared by the new Headmaster Mr. Prodromou.

It is dated June 23, 1973, (blue 48) and in this report Mr. Prodromou says:-

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5 " He is particularly interested in Biology, a subject with which he is occupied. He studies and carries out experiments. He studied visual means for one year in England. He also has wider scientific interests.

10 He enjoys teaching. He generates interest to the students and encourages them to use their initiative. He is pleasant in the classroom. He uses visual means a lot and experiments where it is possible. He was selected to help in the preparation of a series of educational television programmes once a week.

15 He has administrative abilities and gains control of the class easily; he organizes functions, festive celebrations, working on behalf of the school in co-operation with the Mother's Association etc. He undertakes a lot of the school's work with responsibility and method.

20 He likes the school and shows interest, he is regular, offers his services to the school, he co-operates in spite of the fact that he is a little domineering, and he undertakes anything assigned to him.

He has moral and patriotic principles and is particularly interested in matters connected with national indoctrination.

25 He is respectable, polite, even though sometimes he is irritated easily; he is on good relations with his colleagues, the parents, and the headmaster of the school. His interest in the school causes him to be strict with his students with regard to the regulations. He is regular and assists the school in general.

30 He is very active, as Assistant Headmaster he has various duties, he has greatly activated the Natural Science Club, assisted the Mother's Association, organized excursions etc. He also has out of school activities."

35 See also the confidential reports prepared by the Inspector Mr. Christofides, blue 45, for the year 1971-1972.

Because there was no reply by the appropriate authority to the letter dated September 13, 1973, the applicant, feeling aggrieved



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once again, filed the present recourse on November 3, 1973, and the application was based on five grounds of law, with which I shall be dealing in due course.

The present recourse was served on the respondents on November 7, 1973, and before the opposition was filed, on November 3, 1973, the Director of the Higher and Secondary Education, in reply to the applicant, said that his transfer (metakinisis) was made purely for educational reasons (see blue 99).

On December 13, 1973, the respondents gave notice opposing the application and alleged that in exercising their discretionary powers, they have considered all facts and circumstances of the case and have acted lawfully in effecting the said transfer.

Counsel in his able address argued that the appropriate authority (1) wrongly exercised its discretionary powers under the law in transferring the applicant to the said school and stressed that having regard to his special qualifications, the said transfer was not made for the benefit of the service but for other purposes; (2) that it was contrary to Law 10/69 and the Regulations made thereunder because there has been a substantial change in the duties of the office held by him; (3) that the said decision was not duly reasoned and that such decision cannot be supplemented from the documents contained in the file itself; and (4) the said transfer was effected in abuse and/or in excess of powers because it was based on disciplinary grounds.

I think it is important to state at the outset that under the provisions of s. 39 of Law 10/69 which has been modelled on the lines of Law 33/67, transfers of educational officers shall be made by the Educational Service Committee, and subsection 2 says:—

“ Transfers of educational officers, which do not involve a change in the offices held by them and the duties attached thereto or a change in the place of residence shall be made by the appropriate authority concerned:

Provided that in exceptional cases of urgent nature the appropriate authority concerned may make a temporary transfer involving a change in the place of residence for a period not exceeding forty-two days.”

The appropriate authority, in this case, according to the definition section 2, means the Minister acting usually through the Director-General of his Ministry.

There is no doubt that an educationalist, like every other civil servant, is liable to be transferred and should not expect to remain for the rest of his service life in the same school in which he has been posted originally. But, it is equally true that in exercising its powers of transfer, the Educational Service Committee or indeed the appropriate authority should always take seriously into consideration all the facts and circumstances of each case as well as the educational needs. Furthermore, the recommendation of the head of department or other senior responsible officer should be borne in mind so that the function of a public office should be performed in the general interest of the public, by public officers or by educationalists best suited to perform such duties. (See *Pierides v. The Republic*, (1969) 3 C.L.R. 274 at p. 282). A transfer, of course, is presumed to have been made for the benefit and exigencies of the service, unless it is shown to have been made as a punitive measure. If it is not a punitive transfer—and I shall be dealing with this point at a later stage—the Court is not entitled to evaluate the reasons of substance on which the transfer is made (Kyriakopoulos on the Law of Civil Administrative Officers 1974 at p. 298).

This Court will interfere, however, if there is a wrong use of the discretionary power to transfer or because of misconception concerning the factual position or if any material factors have not been taken into consideration. With this in mind, I would add however that the appropriate authority, in transferring the applicant along with a number of other educationalists must have acted within the principle which was formulated by me in *Karayiannis v. The Republic*, (1974) 3 C.L.R. 420 at p. 427), because a note was prepared by the Director of the Higher and Secondary Education recommending such transfers to the appropriate authority. I am fortified in this view because of a document which was *exhibit 7* in another case, No. 474/73, and which was made available to this Court recently. I should add that that document, dated 31st August, 1973, was brought to the notice of counsel for the other side, and I quote:

“ Mr. Minister (through D.G.)

Pages 89–76: Submissions are hereby made for the transfer of educational officers secondary education within the same town or centre. An attempt has been made for the move of schoolmasters who have served for a long number of years at the same school or of others, for educational

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reasons consisting of a balanced, as far as possible, distribution of personnel to schools.

2. As it is foreseen that the necessity will arise for other movements too, due to the posting of Headmasters and Assistant Headmasters and due to the final assessment of the needs in teaching staff to be made in September after the registrations at schools I would request authorisation for effecting such transfers within the same form after a personal or oral, if need be, consultation with you.”

I think there can be no doubt that the transfer of the applicant, in the light of the document dated 31st August, 1973, was made not only for educational reasons in accordance with regulation 13(a)(i) of the Regulations of 1972, but also the transfer was made in the interest of the service. As I have said earlier, an educationalist or indeed any other public servant should not expect to remain for the rest of his service life in the same school because he thinks that he is indispensable in view of his special qualifications. Having reached this conclusion, I dismiss the contention of counsel that the transfer was not made for the benefit of the service, because I would reiterate that it was made for educational reasons and not for any other purpose.

The next question is whether the transfer of the applicant was made contrary to the provisions of Law 10/69; and whether there has been a substantial change in the duties held by him.

Having considered very carefully the scheme of service of the post of Assistant Headmaster regarding the duties and its responsibilities, I find nothing in that scheme justifying the complaint of counsel that applicant's transfer to the second school had the legal effect of a substantial change in his duties. In the absence of any evidence coming from him that he was not given by the headmaster of that school his usual duties of the post in question, I have no alternative but to reach the conclusion that the complaint of the applicant was due to reasons of prestige only, and has no legal foundation. I dismiss, therefore, this contention of counsel also.

Another question posed is whether the decision of the respondent is not duly reasoned. I think that the requirement of due reasoning has been judicially accepted in many countries, including those where the principles of administrative law are not fully developed, and the absence of due reasoning was held as

being a ground by itself for invalidating the particular decision taken by an organ or authority. With this in mind, I turn to England, where, by the provisions of s.12(1) of the Tribunals and Inquiries Act, 1958, it is laid down in relation to a large number of tribunals, that reasons for their decisions must be furnished. Furthermore, the Courts have held that the reasons given must be proper, adequate and intelligible and must deal with the points in issue: See *re Poyser and Mills' Arbitration* [1963] 1 All E.R. 612. It should be added that in England, where review of administrative acts by way of recourse for annulment is not known, nevertheless, judicial review of administrative acts is possible by the issue of the prerogative writs, especially that of prohibition and certiorari. Error of law is one of the grounds for the issue of prohibition and certiorari. The giving of reasons in England comes within the concept of error of law, which notion includes the giving of reasons that are bad in law. (See *Regina v. Minister of Housing and Local Government, ex parte Chichester R.D.C.* [1960] 1 W.L.R. 587; and *Birmingham Corporation v. Habib Ullah* [1964] 1 Q.B. 178).

In Germany, the position is, according to the late Professor Forsthoff in his textbook "The Administrative Act" (1963) at p. 38, that the giving of reasons must, as a rule be deemed to be required by law today. This is a consequence of guarantee of access to administrative Courts as provided by law. The Professor goes on that "usually, and certainly in the case of decisions made in the exercise of discretion the person concerned is only able to pursue his rights if he knows the reasons for an administrative act."

On the other hand, in Greece, the need for due reasoning is necessitated by the principle of legality of administrative acts: See Stassinopoulos on "Law of Administrative Acts", (1951) at p. 337. Due reasoning is, thus, required in order to make possible the ascertainment of the proper application of the law and to enable the guarantee of judicial control: See Kyriakopoulos on "Greek Administrative Law" 4th ed. Vol. II, at p. 386.

In Cyprus, the first case that laid down the requirement of due reasoning is that of *Rallis and The Greek Communal Chamber*, 5 R.S.C.C. 11. Forsthoff, P., delivering the judgment of the Supreme Constitutional Court said at p. 18:-

"The existence of a jurisdiction such as the one under Article 146 contains an implied directive to the authorities,

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which are subject to such jurisdiction, to endeavour to reason duly their relevant decisions. The absence of such reasoning, though not always necessarily, in itself, a ground for invalidating the particular decision, may prove to be a grave handicap towards effectively and convincingly supporting its validity in proceedings before this Court.” 5

It appears that according to the principle laid down in that case, absence of due reasoning is not necessarily in itself a ground of invalidity, but in later decisions the view has prevailed, however, that absence of due reasoning is by itself a ground for invalidating the particular decision. (See *The Cyprus Palestine Plantations Co. Ltd. v. The Republic* (1965) 3 C.L.R. 271, at p. 282; *Jacovides v. The Republic*, (1966) 3 C.L.R. 212, at p. 221; *Kasapis v. The Council for Registration of Architects and Civil Engineers* (1976) 3 C.L.R. 270, at p. 278; *Tseriotis v. The Municipality of Nicosia* (1968) 3 C.L.R. 215 at p. 222; *Metalock (Near East) Ltd. v. The Republic* (1969) 3 C.L.R. 351 at p. 356; and *HadjiSavva v. The Republic* (1972) 3 C.L.R. 174 at p. 205). 10 15

Having regard to the principle enunciated in these cases I find myself in agreement with counsel for the applicant that the object of the rule requiring reasons to be given for administrative decisions is to enable the person concerned as well as the Court on review to ascertain in each case whether the decision is well founded in fact and in law. 20

With this in mind, and because what amounts to due reasoning is a question of degree dependent upon the nature of the decision concerned (*Georghiades and Others v. The Republic* (1967) 3 C.L.R. 653 at p. 656), I have reached the conclusion that in the case in hand the said decision is duly reasoned both in the decision itself and/or in the official records which I have referred to earlier and made available to counsel for the applicant. (*Papadopoulos v. The Republic, (Council of Ministers)*, (1968) 3 C.L.R. 662). 25 30

The final question to be decided in this recourse is whether the transfer of the applicant was made as a result of a punitive measure. Counsel relies on *Pilatsis v. The Republic*, (1968) 3 C.L.R. 707. I think it is important to state at the outset that the onus of establishing abuse or excess of power is on the applicant. It is true, of course, that transfers could be made both for reasons of misconduct and other reasons at the same time. I would go as far as to state that in such cases it may not always 35 40

be easy to draw the line between disciplinary and other transfers. But it was said that the test to be applied in such cases is to ascertain the essential nature and predominant purpose of the particular transfer. In case of doubt whether a transfer is disciplinary or not, then such doubt ought to be resolved by treating the transfer in question as being disciplinary in order to afford the public officer concerned or the educationalist concerned, the safeguards ensured to him through the appropriate procedure applicable to disciplinary matters. Such a course is to be adopted both by the Commission and by this Court when dealing within their respective competences with regard to transfers. Furthermore, it is equally important to state that in these matters there should be left no room for speculation when the application of the principles of natural justice is at stake. (*Kalisperas and The Republic & Another*, 3 R.S.C.C. 146 at pp. 151-152).

In *Simos Pilatsis v. Republic (Minister of Education and Another)*, (1968) 3 C.L.R. 707, the applicant was an elementary school teacher and until August, 1966, he was posted at Morphou. He was transferred from Morphou to Famagusta and challenged the decision of the Committee of Educational Service as being null and void and of no effect whatsoever. L. Loizou, J. in his judgment said at pp. 710-711:-

“ It appears from the report itself that the way the Applicant is alleged to have contributed to the impression being formed in the village that he had love relations with the lady in question was by going round the village with her for the purpose of selling tickets for a cinematograph performance in aid of the poor students of the school, by taking her in his car to and from the meetings of the parents’ committee at the school and by speaking and referring to her by her christian name and without using the word ‘Mrs’.

It also appears that the Inspector who carried out the investigation interviewed eleven persons from whom he sought information and evidence regarding the case. The eleventh person on the list of the persons interviewed is ‘the accused Mr. S. Pilatsis’. It is clear that the Inspector interviewed the various persons in private and in the absence of the Applicant

.....  
By his letter dated the 21st July, 1966 (*exhibit 4F*), addressed to the President and Members of the Committee of

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Educational Service the Head of Elementary Education informs them that the Applicant has by his conduct contributed to his relations with one of the women members of the Parents' Committee to be misunderstood and goes on to suggest that in the circumstances Applicant's transfer from Morphou is necessary and that this view is also shared by the School Committee." 5

Then the learned Justice, having addressed his mind to a number of authorities on the question as to whether the transfer was based on disciplinary grounds, continued as follows at p. 713:- 10

"It seems to me that in the light of all the circumstances this is clearly a disciplinary transfer disguised as a transfer on educational grounds mainly because, due to the unwillingness of vital witnesses to testify, there was no evidence to support disciplinary measures against the Applicant. But in any case, whichever way one looks at the case, it cannot in my view be said that the question whether the transfer was disciplinary or not can in any way be considered to be free from doubt and that, therefore, it should be treated as disciplinary." 15 20

See also *Damianou v. The Republic*, (1973) 3 C.L.R. 282.

Directing myself with the principle enunciated in those cases, I turn to consider what is the material before me in the case in hand. I suspect, in the absence of any evidence by the applicant—and I think for good reasons counsel did not call applicant to give evidence—the only piece of evidence is a letter addressed by the Chief of Police to the Director-General of the Ministry of Education, dated August 6, 1973. In that letter, the Chief of Police was informing the appropriate authority that the applicant had been arrested on July 29, 1973, under a judicial warrant with regard to a case of alleged conspiracy for using armed violence against the Government of the Cyprus Republic, and that on the same date the applicant appeared before the District Court of Nicosia and an order was granted for keeping him in custody for a period of 5 days and that he was released without bringing a charge against him. 25 30 35

As I said earlier, in the absence of any evidence before me, I can hardly speculate whether, because the Chief of Police thought it his duty to inform the appropriate Ministry, that by 40

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5 itself, once the applicant was released without charging him with any offence, could by any stretch be connected with the question of the applicant's transfer. I think I would reiterate that the onus remains on the applicant to prove abuse or excess of power, and in this case the applicant has failed to discharge that onus, because the transfer from one school to the other was not a disciplinary transfer disguised as a transfer on educational grounds.

10 For these reasons, I have reached the conclusion that the decision of the respondent is neither contrary to the law or to the Constitution and I would dismiss this application but in the circumstances of this case I do not propose making an order of costs against the applicant.

Application dismissed with no order as to costs.

15 *Application dismissed. No order  
as to costs.*