

1977  
Sept. 17

[A. LOIZOU, J.]

—  
ANTONIS  
MAVROMMATIS  
v.  
REPUBLIC  
(COMMANDER  
OF POLICE)

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION  
ANTONIS MAVROMMATIS,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE COMMANDER OF POLICE,

*Respondent.*

(Case No. 199/75).

---

*Administrative Law—Administrative decision—Reasoning—May be supplemented from the material in the file.*

*Transfer—Police officer—Refusal to transfer from one station to another—Refusal not disciplinary in nature—Safeguards ensured through the appropriate procedure applicable to disciplinary transfers need not be afforded to the officer concerned—Kalisperas and The Republic, 3 R.S.C.C. 146.*

5

*Equality—Principle of—“Equal before the Law” and “discrimination” in paragraphs 1 and 2, respectively, of Article 28 of the Constitution—Meaning—Mere fact that officers of equal rank as the applicant are serving at Ktima but his application for transfer thereto was refused does not establish a case of discrimination.*

10

On October 10th, 1975, the applicant, a police sergeant in charge of Archimandrita Police Station, applied to the Chief of Police for his transfer to Ktima Police Station for family reasons. In forwarding his application to the Chief of Police, by letter\* dated October 16, 1975, the Divisional Commander stated, *inter alia*, that whilst applicant was serving at Peyia station he engaged in illegal transactions with Turkish Cypriots and in consequence he received a disciplinary punishment; that he faced the possibility of a criminal prosecution for receiving stolen property; that he was transferred to Archimandrita on account of his said activities; and that on account of the aforesaid the time has not come for his transfer from Archimandrita.

15

20

25

---

\* Quoted at pp. 383-384 *post*.

On October 23, 1975 the respondent refused applicant's application for transfer by writing the following in his personal file: "To be notified that the transfer of Police Sergeant A. Mavrommatis is not approved". This decision was communicated to the applicant on October 24, 1975 and hence the present recourse.

1977  
Sept. 17  
—  
ANTONIS  
MAVROMMATIS  
v.  
REPUBLIC  
(COMMANDER  
OF POLICE)

Counsel for the applicant contended:

- (a) That the *sub judice* decision was not duly reasoned;
- (b) That from the reasons given in the letter of the Divisional Commander of October 16, 1975, it emanated that the applicant's transfer from Peyia to Archimandrita was a disciplinary one and therefore his prolonged posting at Archimandrita was due to disciplinary reasons and that the refusal of his application for transfer to Ktima was also due to disciplinary reasons.
- (c) That the *sub judice* refusal amounted to discrimination, contrary to Article 28 of the Constitution, in that 8 other officers of equal rank have at all times been posted and served at Ktima.

*Held*, (1) that the reasoning of an administrative decision may be supplemented from the material in the file (see *Hadjisavva v. Republic* (1972) 3 C.L.R. 174 at p. 205); that the reasoning of the *sub judice* decision is to be found in the file and in particular in the letter of October 16, 1975 containing the comments and opinions of the Divisional Commander; and that, accordingly, the *sub judice* decision was a duly reasoned one.

(2) That whatever the reasons were for the decision to transfer applicant from Peyia to Archimandrita which was never challenged by him, the refusal to transfer him from there to Ktima, was not disciplinary in nature so that it would require the administrative authority concerned to afford him the safeguards ensured to an officer through the appropriate procedure applicable to disciplinary transfers (see *Kalisperas and Republic*, 3 R.S.C.C. 146).

(3) That the material placed before the Court does not establish discrimination as the term "equal before the law" in para. 1 and the term "discrimination" in para. 2 of Article

1977

Sept. 17

—  
ANTONIS  
MAVRROMMATIS

v.  
REPUBLIC  
(COMMANDER  
OF POLICE)

28, safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things; that there is nothing in this case to suggest what is the intrinsic nature of things and what are the interests of the service that call for the posting of the said officers in the town as compared with the circumstances that led to applicant's posting at Archimandrita; that the mere fact that officers of equal rank as the applicant are serving at Ktima does not establish a case of discrimination; that there are so many individual characteristics relating to each officer, both with regard to the performance of one's duties and to one's personal circumstances that it cannot be said that they are equal and, therefore, a matter of discrimination arises; and that, accordingly, the contention about discrimination must fail.

*Application dismissed.*

Cases referred to:

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

*Kalisperas and The Republic*, 3 R.S.C.C. 146.

**Recourse.**

Recourse against the refusal of the respondent to transfer applicant from Archimandrita to Ktima Police Station.

*L. Papaphilippou*, for the applicant.

*Gl. Michaelides*, for the respondent.

*Cur. adv. vult.*

The following judgment was delivered by:-

A. LOIZOU, J.: By the present recourse the applicant seeks a declaration that the refusal of the respondent to transfer him from Archimandrita to Ktima Police Station, is *null* and *void* and of no effect whatsoever.

The applicant joined the Cyprus Police Force in 1959 and with the exception of the first few months, he has been all along serving in rural stations in the Paphos Division. In 1970 he was made Officer-in-charge with the rank of Acting Sergeant, first of Fiti and then of Panayia Police Stations. Whilst there, he was promoted to the rank of Police Sergeant. On the 1st August, 1974, he was transferred to Yialia Police Station and then to Peyia, where he

served as Officer-in-charge until the 27th March, 1975, when he was transferred to Archimandrita Police Station again as Officer-in-charge.

1977  
Sept. 17

—  
ANTONIS  
MAVROMMATIS  
v.  
REPUBLIC  
(COMMANDER  
OF POLICE)

5 On the 10th October, 1975, he applied to the Chief of  
Police through his Divisional Commander, for transfer to  
Paphos town so that, as he put it, he would be able to be  
near his family, give proper upbringing to his young son  
and also help his aged parents by taking them near him.  
10 He mentions in the said application that he is a family  
man with three minor children and that at Archimandrita  
village there is no house available for hire, hence his fa-  
mily was obliged to remain in the village of Houlou, a  
distance of 35 miles from him; as a consequence, his son  
has to travel daily to school, covering a distance of 30  
15 miles at the expense of £3.500 mils monthly. Reference  
was also made in the said application that several Ser-  
geants and Acting Sergeants served in Paphos town for  
many years who, in his opinion, had no serious reason or  
obligation for the continuation of their stay there and that  
20 he always served in the district.

By letter dated the 16th October, 1975, the Divisional  
Commander forwarded the said application to the Chief of  
Police. He wrote therein that the application for transfer  
from Archimandrita to Paphos was mainly for family rea-  
25 sons and went on to say:

“2. Since his transfer from Panayia to Yialia, the  
applicant established his family in owned house in  
the village of Houlou and applied for the grant of  
the relevant rent allowance which was granted to him  
30 as from the 1st September, 1974. Consequently his al-  
legation that he keeps his family away from him on  
account of the non-existence of suitable house at  
Archimandrita does not stand. He himself chose to  
be away from his family as from August, 1974.

35 3. I further mention that the applicant before his  
transfer to Archimandrita served at Peyia Station  
which is considered as one of the best of the district  
on account of its short distance from the town. Un-  
fortunately, however, he engaged in illegal transac-  
40 tions with Turkish Cypriots and in consequence he  
received a disciplinary punishment and also faced the

1977  
Sept. 17

—  
ANTONIS  
MAVROMMATIS

v.  
REPUBLIC  
(COMMANDER  
OF POLICE)

possibility of a criminal prosecution for receiving stolen property etc. I understand that he was transferred to Archimandrita on account of his said activities.

4. On account of the aforesaid, I do not think that the time has come for his transfer from Archimandrita”.

The *sub judice* decision of the respondent was taken on the 23rd October, 1975 and it reads: “To be notified that the transfer of Police Sergeant A. Mavrommatis is not approved”. (See Personal file of applicant, *exhibit ‘X’*, blue 249). This decision was communicated to the applicant on the 24th October, 1975 (Annex ‘B’ to the Application).

Before dealing with the legal aspect of the case, it should be mentioned that the applicant on the 21st June, 1975 was sentenced to the total fine of £22.- for disciplinary offences involving neglect of duty. As a result of this punishment his last two good-conduct allowances were forfeited in accordance with Regulation 23(2) (b) of the Police (General) Regulations.

In the personal file of the applicant (*exhibit ‘X’*, blue 226), opposite entry No. 5 dated 13.3.1975, the following note is to be found addressed to the Divisional Police Commander from one of his officers. It reads: “The aforesaid for your information. Sergeant 1013 destroyed Peyia Police Station, he has no cooperation with the men serving under him and his transfer from the Station is called for in the interest of the Police”. The applicant who is referred to in the minute as Sergeant 1013, was transferred as from 28.3.1975 from Peyia to Archimandrita.

Furthermore, as shown in the Police Investigation Docket (*exhibit ‘Z’*), the applicant faces the possibility of criminal prosecution for receiving during the period of 31.10.1974—22.11.1974, stolen property. In fact, this Docket containing the suggestions of the officers involved therein, was sent to the Attorney-General on 18.9.1975 for advice, whether, as the facts were, there could be any criminal prosecution against Sergeant 1013, A. Mavrommatis. The opinion of the Attorney-General which was against such a prosecution, was given on the 9th March,

1976. The applicant, therefore, on the 16th October, 1975, when the letter of that date of the Divisional Commander was written, was in fact facing the possibility of criminal prosecution for receiving stolen property. The contention, therefore, of learned counsel for the applicant that this statement contained in the said letter was not true and amounted to a misconception, if not a distortion of material facts, is not born out by the material in the file to which I have referred. With this, I dispose of one of the grounds of law relied upon by applicant in support of the present application.

The next ground of law is that the *sub judice* decision is not duly reasoned and that in any event from the reasons given in the letter of the Divisional Commander of the 16th October, 1975, it emanates that the applicant's transfer from Peyia to Archimandrita was a disciplinary transfer and therefore his prolonged posting at Archimandrita is due to disciplinary reasons and that the refusal of his application for transfer to Ktima is also due to disciplinary reasons.

It has been stated time and again that the reasoning of an administrative decision may be supplemented from the material in the file and if any authority is needed for this proposition, one may find it, among others, in the case of *Georghios Hadjisavva v. The Republic* (1972) 3 C.L.R., 174, at p. 205. The reasoning of the *sub judice* decision is to be found in the material in the file and in particular in the letter of the 16th October, 1975, containing the comments and opinions of the Divisional Commander. Further, whatever the reasons were for the applicant's transfer from Peyia to Archimandrita with which we are not concerned at this stage, and which decision was never challenged by the applicant, the refusal to transfer the applicant from there to Ktima, was not disciplinary in nature, so that it would require the administrative authority concerned to afford to him the safeguards ensured to an officer through the appropriate procedure applicable to disciplinary transfers, as was the case in *Kalisperas and The Republic*, 3 R.S.C.C. p. 146. The applicant has asked for transfer and gave certain reasons for it, mainly, family reasons. They were commented upon by the Divisional Commander in his letter of the 16th October and in so far as there was reference in the said letter to facts,

1977  
Sept. 17

—  
ANTONIS  
MAVROMMATIS  
v.  
REPUBLIC  
(COMMANDER  
OF POLICE)

they were true and accurate, as already shown in explaining the facts of this case and in so far as he was expressing an opinion regarding the reasons for the applicant's transfer from Peyia to Archimandrita, the correct facts were as hereinabove set out, contained in the personal file of the applicant (*exhibit 'Z'*), in which both the applicant's letter and the Divisional Commander's comments are to be found; there was nothing in all this that called for any explanation by the applicant and in so far as they related to the conduct of the applicant that led to his disciplinary punishment the matter had already been investigated and adjudicated upon by the appropriate organs and it was final in character. Therefore, this ground fails.

Connected with this ground is the contention that the family circumstances of the applicant which were serious and which had to be taken into consideration by the organ deciding upon the transfer, did not seem from the material on record to have been sufficiently considered, or at all. I do not subscribe to this view as it appears from the file that the family circumstances of the applicant put forward in his application were commented upon by the Divisional Commander in his letter and one may safely infer that they were not found sufficient for a decision in favour of the transfer of the applicant which was decided upon, having regard to the interests of the Force.

The last ground of law relied upon on behalf of the applicant is that of *discrimination*. In the written address filed in support of this ground, it is stated:

"The following officers have at all times been posted and served at Ktima Police Station: (a) Andreas Nicolaides, (b) Andreas Makris, (c) Costis HjiCostis, (d) Kyriacos Kokkinos, (e) Yiannakis Tsapparillas, (f) Demetris Erotokritou, (g) Savvas Sivitanides and (h) Sofoclis HjiSofokli. Most of these officers are junior to the applicant. Furthermore, they have no special reasons for being posted at Ktima. The treatment of these officers by the respondent *vis-a-vis* the applicant is discriminatory and contrary to Article 28 of the Constitution. (*Vide Mikrommatis and The Republic* 2 R.S.C.C. 125, and *Nishan Arakian v. The Republic* (1972) 3 C.L.R. 294)".

This material placed before me does not establish dis-

1977  
Sept. 17

ANTONIS  
MAVROMMATIS  
v.  
REPUBLIC  
(COMMANDER  
OF POLICE)

5 crimination as the term "equal before the law" in para. 1  
and the term "discrimination" in para. 2 of Article 28,  
safeguards only against arbitrary differentiations and does  
not exclude reasonable distinctions which have to be made  
in view of the intrinsic nature of things. In the present  
case there is nothing to suggest what is the intrinsic nature  
of things and what are the interests of the service that call  
for the posting of the aforesaid officers in the town as  
compared with the circumstances that led to the appli-  
10 cant's posting at Archimandrita.

15 The mere fact that other officers of equal rank as the  
applicant, are serving at Ktima, does not establish a case  
of discrimination. There are so many individual charac-  
teristics relating to each officer, both with regard to the per-  
formance of one's duties and to one's personal circumstan-  
ces, that it cannot be said that they are equal and, there-  
fore, a matter of discrimination arises.

20 In the result, the present recourse is dismissed, but I  
make no order as to costs.

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