IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DOROS L. PIERIDES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF FOREIGN AFFAIRS,
2. THE DIRECTOR-GENERAL OF THE MINISTRY OF FOREIGN AFFAIRS,

Respondents.

(*Case No.* 385/74).

Foreign Service of the Republic—Diplomatic and Consular Service—Transfer of applicant from Belgrade to Nicosia—Alleged to have been made for disciplinary reasons because of contents of letters addressed to respondent Minister by applicant—Failure of applicant to discharge burden, cast on him, that those letters were actually before the Minister—Transfer held to have been effected in the interests of the service—Foreign Service of the Republic Law, 1960 (as amended by Law 35 of 1966) s. 5(4).

Foreign Service of the Republic—Diplomatic and Consular Service—Transfer in the interests of the service—Within the discretion of the respondent Minister—Reasons for sub judice *transfer having been given by Minister, who is the proper organ to decide about the needs of the Diplomatic Service, such transfer a valid one—Section 5(4) of the Foreign Service of the Republic Law, 1960 (as amended by Law 35 of 1966).*

Administrative Law—Administrative decision—Due reasoning.

Legality—Doctrine of—Courts are bound to uphold the doctrine of legality.

Transfers—Members of the Foreign Service of the Republic.

The applicant in this recourse, who is a member of the Foreign Service of the Republic, challenged the validity of the

decision of the Minister of Foreign Affairs to transfer him from Belgrade to Nicosia.

Counsel for applicant mainly contended:

(a) That the transfer was made for disciplinary reasons in view of contents of certain letters addressed by applicant to respondents;

(b) that the *sub judice* decision was not duly reasoned.

Held, (1) that no direct evidence has been called to show that those letters were in the hands of the appropriate officials concerned, and the applicant has failed to substantiate his allegation; that since the said letters were not in the hands of the Minister and the Director-General before the transfer was made the transfer was made in the interests of the service and had nothing to do with the complaint of the applicant that it was made for disciplinary reasons; and that, accordingly, counsel's contention must fail.

(2) That the Minister of Foreign Affairs is in accordance with the Foreign Service of the Republic Law, 1960 (as amended by Law 35/66) the person who has discretionary powers to effect the said transfer; that in doing so reasons for such transfer were given and being the proper organ to decide about the needs of the diplomatic service his decision was a valid one, once the transfer is presumed to be in the interest of the service, and indeed, one can go as far as to say that the said decision was also reasoned (see *Hjisavvas* v. *Republic* (1972) 3 C.L.R. 174); and that, accordingly, the recourse must be dismissed.

Application dismissed.

Observations with regard to the duty of the Courts to uphold the doctrine of legality (vide pp. 460-461 post).

Cases referred to:

Nicolaou v. *Republic* (1969) 3 C.L.R. 42 at p. 55;

Hjisavvas v. *Republic* (1972) 3 C.L.R. 174;

Republic v *Sampson* (1977) 2 C.L.R. 1 at p. 61.

Recourse.

Recourse against the decision of the respondent to transfer applicant from Belgrade to Nicosia.

L. Papaphilippou, for the applicant.

R. Gavrielides, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:-

HADJIANASTASSIOU, J.: The applicant in these proceedings, seeks a declaration that the act and/or decision of the respondents to transfer him from Belgrade to Nicosia is *null* and *void* and of no effect whatsoever. It has not been challenged by counsel on behalf of the applicant that the Minister of Foreign Affairs had the right to transfer him because in accordance with Law 35/66 (amending the Foreign Service of the Republic Law 1960, Law 10/60) section 5(2), the appointment and assignment of heads of diplomatic missions from amongst persons serving in the Diplomatic Service to offices in foreign countries, and the assignment of duties in foreign countries to persons already serving in the Diplomatic Service, as special envoys to serve therein shall be made by the Council of Ministers. Then follows subsection 4, which is in these terms:-

> "Subject to the provisions of sub-sections 2 and 3, the assignment of persons serving in the Diplomatic Service to any offices in foreign countries or in the Ministry of Foreign Affairs shall be made by the Minister of Foreign Affairs".

In *Polyvios Nicolaou* v. *The Republic (Minister of Foreign Affairs etc.)*, (1969) 3 C.L.R. 42, Triantafyllides, J., as he then was, dealing with the construction of that section (5(4)), said at p. 55:-

> "I think that the proper construction to be put on section 5(4) is that the Minister can effect postings abroad of persons already serving abroad or transfer from posts abroad to the Ministry of Foreign Affairs, in Nicosia, persons already serving abroad, in both instances such persons being officers serving, at the material time, in the Diplomatic Service".

The question posed in this case is whether, in the absence of the letters produced by the applicant himself, the

transfer of the applicant was made under circumstances amounting to a transfer not in the interest of the service, but with a view to punishing the said officer. The facts are simple: The applicant has been appointed to the Foreign Service of the Republic, and on November 19, 1973, was posted to Belgrade and was acting as a Chargé-d-Affaires, a post which comes within the diplomatic and consular service, (known as the overseas service) consisting of all public officers serving in the diplomatic services abroad.

The applicant—being married with a family—his wife and children had to stay behind because there were no schools for his children to attend. In spite of the short period he has remained in Belgrade, and with all the difficulties which every transfer creates for the diplomatic officers concerned all over the world, on September 24, 1974, the applicant was informed by the Ministry concerned that he was transferred to Nairobi, and in accordance with the allegation of the applicant in this recourse, a letter was addressed to the Minister of Foreign Affairs in Yugoslavia dated October 11, 1974, informing him of the reasons of his transfer.

Furthermore, on September 27, 1974, another telegram was sent to the applicant informing him that his transfer was postponed to November 1, and approved the application of the applicant for leave of absence from November 1, 1974 till January 15, 1975. There was a further telegram on behalf of the Ministry concerned to the applicant dated October 17, 1974, informing him of the decision reached by them. It appears further that the applicant has written a number of letters produced about the treatment afforded to him by the Minister of Foreign Affairs and of the Director-General of the same Ministry. The applicant addressed also a letter to the Acting President of the Republic of Cyprus dated October 2, 1974.

I do not propose reading these letters, for the reasons I shall give in due course, but in any event, I find it convenient to add that some of the allegations put forward are indeed unacceptable, and are of an inflammatory nature, and inconsistent with the proper behaviour expected by a member attached to the Foreign Service in spite of his grudge against his officials of the said Ministry.

It was the allegation of the applicant that the Ministry concerned in effecting the transfer did not take into consideration the personal and family reasons, and transferred him with the sole purpose of punishing him or revenging him for his national beliefs. On the other hand, counsel on behalf of the respondents alleged that the act and/or decision of the Ministry to transfer the applicant was within the discretionary powers of the Minister, having rightly exercised his powers after taking into consideration all the facts and circumstances of the case of the applicant.

The main complaint of counsel in this case was that the decision of the Minister was not reasoned, and for the reasons appearing in the documents attached to the application, the applicant was ordered to leave Belgrade. Counsel further argued that in the absence of any reasoning, the transfer is not an administrative hierarchical transfer, but a mere disciplinary one, in view of the circumstances prevailing at the Ministry of Foreign Affairs at the material time.

I have considered this argument of counsel, and I want to make this point very clear: that had I been convinced that the lengthy letters which were produced by the applicant, in spite of the warning given by this Court because of the improper language used, were before the Minister of Foreign Affairs, I would have been prepared to agree that the transfer was indeed made for disciplinary reasons, once a total disrespect was shown to the said Minister by that officer. But, having considered also the argument of counsel for the respondents, I entertain no doubt at all—and the onus remains on the applicant to satisfy me that those letters were actually before the Minister. In fact, the applicant, when giving evidence in support of that allegation that his letters addressed to the Minister of Foreign Affairs dated October 2, and 24, 1974, and also that of the Acting President were before him, relied only on the practice prevailing in that Ministry, *viz.*, that nobody is entitled to open the Minister's letters and/or the Director-General's, and as a result he drew the inference that those letters must have reached the Minister and the Director-General. As I have said earlier, no direct evidence has been called to show that those letters were in the hands of the appropriate officials concerned, and in

my view the applicant has failed to substantiate his complaint.

It appears from the material before me, that the said decision to transfer the applicant from Belgrade to Nicosia was taken on October 17, 1974, and from the tenor of the telex and the letter addressed to him, it is clearly shown that his transfer was made for the reasons connected with the service, and particularly because of the increase of volume of work in the centre (Ministry of Foreign Affairs).

It is regrettable, of course, that the applicant had to find himself within a short period of time with all the consequences as to the expenses and inconvenience which the second transfer entailed, but one would not forget that the appropriate person in this case was the Minister himself to decide the issue and in spite of the difficulties to the applicant and his family the interest of the service, particularly the diplomatic service, has always priority. What is amazing, however, in spite of the fact that the applicant was complaining all along in this recourse that the reasons of his transfer were intended to impose on him a disciplinary punishment, and/or in order to revenge him for the only reason of his national beliefs, nevertheless, in giving evidence, he referred to the difficulties and expense which a transfer entails—and I agree that such a transfer has given him a lot of difficulties—the only complaint which he put forward was that his new transfer would have placed him in the eyes of his colleagues and other officials of Belgrade that he has done something wrong. But, nowhere does he appear to be complaining that he was persecuted for his national beliefs and no details were given by him as to what were his beliefs in order to enable counsel for the other side to question him..

For the reasons I have given, I have reached the conclusion that the letters addressed by the applicant to the Minister and the Director-General were not in their hands before the transfer was made, and that the transfer was made to the interest of the service and had nothing to do with the complaint of the applicant that it was made for disciplinary reasons. I would, therefore, dismiss this contention of counsel.

The next question is whether the decision of the Mini-

ster was duly reasoned. I have pointed out at the beginning that the law was changed with regard to the powers of the Public Service Commission, derived under Law 33/67, and that the Minister of Foreign Affairs in accordance with the Foreign Service Law, is now the person who has discretionary powers to effect the said transfer. In doing so, reasons for such transfer were given and being the proper organ to decide about the needs of the diplomatic service, I am of the view that the decision was a valid one, once the transfer is presumed to be in the interest of the service, and indeed, one can go as far as to say that the said decision was also reasoned. If authority is needed, see the case of *Georghios Hjisavvas* v. *The Republic, (Council of Ministers)* (1972) 3 C.L.R. 174. As to the position in Greece, one can find useful guidance in two textbooks, in Porismata Nomologhias, 1929-1959, 1961 edn. at p. 340; and in Kyriakopoullos, Volume C, at p. 312.

In the light of what I have already said, I have reached the conclusion that the transfer of the applicant was a valid one, and I have no alternative but to dismiss this recourse.

Having reached that conclusion, I think I would add that I would be failing in my duty not to deal with the question of the conduct of the applicant, particularly in view of the fact that he was the holder of an important post in the foreign service of the Republic. The applicant, no doubt, was feeling very hurt and annoyed because of his transfer, but in spite of his difficulties, and grudge, he was bound, whilst remaining a member of the public service, to act in accordance with the law, to remain loyal, and faithfully and unfailingly to perform his duties and generally use his utmost exertion to promote the interest of the Republic. Furthermore, it was his duty not to commit any act or conduct himself in a way which may bring the public service in general or his office in particular into disrepute or which may tend to impair the confidence of the public in the foreign service.

Has this applicant conducted himself properly and within the provisions of section 58 of Law 33/67? The answer is in the negative, because the applicant had no right to refer to the President of the Republic in the letter

of October 22, 1974, as being the ex-President. In doing so, he ought to have known that both under the constitution and the law, His Beatitude remained the President of the Republic. He ought to have known that it was his duty to show respect to the President of the Republic, who always commanded the respect and loyalty of the vast majority of the people of Cyprus, irrespective of his own political views. Indeed, his whole stand in that letter shows his bias and anger and his behaviour and/or conduct was not only contrary to the law itself, but it tended to destroy his authority as a member of the foreign service, and tended to impair also the confidence of the public in the post which he was holding because everyone knew in Cyprus that both constitutionally and in law, President Makarios remained the unchallenged leader of his people.

It is regrettable that in these days a member of the foreign service of Cyprus should behave in such an unprecedented manner and was unable to control his impulses in uttering such an unacceptable statement which could provoke the feelings of the vast majority of our countrymen. Indeed, in realizing his folly, I have tried to warn him not to file that unacceptable document in Court, particularly so, when the allegation of the other side was all along that that letter was not in the hands of the Director-General when the transfer of the applicant took place, but he would not listen or take any advice, in spite of the consequences, to which I drew his attention, regarding his misconduct.

This case had to be adjourned on a number of occasions, and the record shows that it was adjourned either for the benefit of the applicant or because he was away, or perhaps because a way might have been found to compromise the case between the interested parties. Indeed, the applicant was not only afforded sufficient time in order to cool down, but he was even warned by his counsel before the delivery of this judgment, hoping that it might have been possible for the applicant, even at that very late stage to realize that his misconduct was unacceptable to the people of Cyprus and tended to destroy his authority and influence in his relations with the public.

Indeed, the Courts of Cyprus are bound to uphold the

doctrine of legality, and I think I would reiterate what I have said in the *Republic* v. *Sampson,* (1977) 2 C.L.R. 1 at p. 61 that the Judges must support the Constitution and that they must support also the legitimate authority of those lawfully entrusted with the exercise of it. On the other hand, I also stressed that Judges must curb abuse of power, and they must protect the individual from oppression in the use of it, but if the coercive action is justified by law, the Judges are bound to enforce it. In this task I emphasize once again that the Judges have very great responsibilities indeed. In supporting the Constitution, they are the ones to interpret it and say what it means. Of course, we are under a Constitution, but the Constitution is what the Judges say it is, and the judiciary is the safeguard of our liberty and of our property under the Constitution.

With this in mind, I have reached the conclusion that the applicant in the case in hand, in spite of the warnings I have given to him that the contents of that letter amounted to a conduct violating not only the provisions of the law but such conduct could bring his office in particular into disrepute and tended to impair the confidence of the vast majority of the public against him, the applicant persisted in his claim that his transfer was due to sanctions because of his national opinions or beliefs. Finally, I would add that the Republic of Cyprus has reason to feel very proud because no prosecutions were ever made against anyone for his national beliefs or opinions. I would, therefore, affirm the decision of the Minister of Foreign Affairs and dismiss this recourse. No order as to costs—once no costs were claimed by counsel on behalf of the Republic.

Order accordingly.

Application dismissed.
No order as to costs.