

1980 October 23

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NIKI LADAKI-PHILIPPOU,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE DIRECTOR OF PERSONNEL DEPARTMENT,

*Respondent.*

(Case No. 199/77).

5 *Public Officers—Transfers—Disciplinary and other transfers—Rule  
in case of doubt—Transfer to be treated as disciplinary in order  
to afford the officer the safeguards provided for disciplinary matters  
—Interdiction of officer following lodging of complaint by Minister  
and commencement of police investigations—Interdiction termi-  
nated but officer transferred to another Department—Transfer  
of a punitive nature and not in the interest of the service—In abuse  
or in excess of power—Annulled.*

10 The applicant has been holding the post of Stenographer  
1st Grade and has since the establishment of the Ministry of  
Education in 1965 been exercising successfully the duties of a  
private secretary to the Minister of Education. Following  
a complaint by the Minister of Education, to the effect that  
15 applicant has been preparing photocopies of certain official  
documents out of her own initiative police investigations com-  
menced and the applicant was on May 5, 1977, interdicted from  
duty by the Public Service Commission pending the completion  
of these investigations. The interdiction was terminated on  
20 July 7, 1977; and on July 8, 1977 the applicant was transferred  
by the respondent Director of Personnel from the Ministry of  
Education to the Department of Town Planning and Housing.  
Hence this recourse.

*Held*, that 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 the safeguards ensured to him through the appropriate procedure applicable to disciplinary matters; that the applicant has become the victim of the Minister that she was a spy and the respondent without investigating fully the case of the applicant, transferred her to another post immediately; that the transfer was not made in the interest of the service, but simply because the Minister of Education wanted, for reasons of his own, to get rid of his private secretary; that as the transfer was made for reasons of a punitive nature, it was made in abuse and/or in excess of the powers vested in the respondent; accordingly it must be annulled (see, *inter alia*, *Kalisperas v. The Republic*, 3 R.S.C.C. 146 and *Damianou v. Republic* (1973) 3 C.L.R. 282).

*Sub judice decision annulled.*

Cases referred to:

*Kalisperas v. Republic*, 3 R.S.C.C. 146;

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

*Pilatsis v. Republic* (1968) 3 C.L.R. 707.

**Recourse.**

Recourse against the decision of the respondent to transfer the applicant from the Ministry of Education to the Department of Town Planning and Housing.

*P. Ioannides*, for the applicant.

*M. Flourentzos*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

HADJIANASTASSIOU J. read the following judgment. In these proceedings, under Article 146 of the Constitution the applicant, Niki Ladaki-Philippou, seeks a declaration of this Court that the act or omission of the respondent, dated 8th July, 1977, in transferring the applicant from the Ministry of Education to the Department of Town Planning and Housing is null and void and of no effect whatsoever.

*The Facts*

The applicant has been appointed and was serving under the Greek Office of Education as from the 1st August, 1959. She was emplaced to the post of stenographer 2nd class with the duties of a private secretary to the Chairman of the Greek

Educational Council of Cyprus. On 12th October, 1960, she was appointed and was attached to the Greek Communal Chamber, viz., to the post of stenographer 1st class, as well as with the exercise of duties of private secretary for the President.

5 In accordance with the provisions of Law 12/65 later on she came under the jurisdiction of the public service and was exercising the duties of a private secretary to the Minister of Education. She was exercising those duties until 8th July, 1977. In effect the applicant has served continuously to that post and has  
10 exercised her duties with great zeal, and successfully in the interest of the service, a fact which was recognized and/or conceded by her superior officers and by all ministers under whom she had served except one.

15 Unfortunately, for reasons which will appear in a moment, the Director General of the Ministry of Education Mr. P. Adamides on instructions from the Minister addressed a letter to the Director General of the Ministry of Finance and had this to say:-

20 "I have instructions from the Minister of Education to inform you that certain facts which are related with Mrs. Niki Ladaki-Philippou stenographer 1st class who is posted at the Ministry of Education and who is exercising until the 29th April, 1977, the duties of a private secretary of the Minister of Education, appear in the following note  
25 of the Minister to me".

Then the writer quotes verbatim the letter of the Minister to him, which reads:-

30 "In accordance with certain information and given facts I called today to my office in your presence the private secretary Mrs. Niki Ladaki-Philippou. I told her it has come to my attention that out of her own initiative and ignoring the Minister, she photocopies my notes either from the envelopes or those which I write into separate sheets of paper.

35 Mrs. Philippou admitted that she had done it and alleged that it was one act of service to the Minister. She further alleged that she had her own criteria in choosing certain documents for photocopying. She produced an envelope

in which she had four notes—photocopies, whilst she told us that she was photocopying until now all the notes of the Minister and particularly the administrative ‘ones’. She also produced six copies which were not in the envelope, of notes of the Minister of Education regarding Mr. Papanenophontos. This note has been sent from the Director General to the Chairman of the Public Service Commission on 19th February, 1976. 5

I consider that there is a serious matter, please to send away immediately Mrs. Philippou in accordance with the law (through the institution of granting leave of absence) from the office of the Minister and to refer the whole matter to the Director General of the Ministry of Finance. 10  
(Sgd.) Dr. Chr. Sophianos.”

Having quoted the letter of the Minister and without in any way either discussing or inquiring whether the deeds of the applicant were contrary to the interest of the service he concluded his letter as follows:— 15

“In the meantime leave was granted to Mrs. Philippou for seven days as from 29th April. Also a police investigation is taking place with a view of finding any possible criminal offence and in accordance with the recent note of the Minister, disciplinary proceedings should be instituted in accordance with the law”. 20

On 4th May, 1977, Mr. G. Demetriou on behalf of the Director General of the Ministry of Finance addressed a letter to the Chairman of the Public Service Commission and had this to say:— 25

“I have been instructed to send to you a copy of a letter of the Director General of the Ministry of Education under No. Y.Π. 6 Π. and dated 2nd May, 1977, in which it is referred that the Minister of Education accused Mrs. Niki Ladaki-Philippou 1st class stenographer, that by her own initiative and ignoring the Minister she was photocopying his notes, and that a police investigation is taking place for a possible criminal offence. 30 35

In the light of the institution of police investigation for a possible committal of a criminal offence by Mrs. Philippou, I request that she is put on interdiction in accordance

with s. 84 of the Public Service Law, in the public interest from duty pending the investigation and until the final completion of the case”.

5 On 5th May, 1977, Mr. Markides, on behalf of the Chairman of the Public Service Commission, addressed a letter to the applicant and had this to say:—

10 “I have been instructed to inform you that in view of the fact that a police investigation has begun with the object of bringing criminal proceedings against you, the Commission has decided that in the public interest to put you and by this (letter) interdicts you from duty as from 6th May, 1977, pending the investigation and until the final disposal of the case”.

15 On 7th July, 1977, Mr. A.S. Metaxas on behalf of the Chairman of the Public Service Commission, addressed a letter to the applicant, and had this to say:—

20 “I have been instructed to refer to my letter under No. Π 8734 of 5th May, on the subject of your interdiction, and to inform you that in the light of the fact that the reasons for which you have been placed under interdiction from duty are no longer in existence, the Public Service Commission decided that your interdiction from duty is terminated and by this (letter) is terminated”.

25 On the 8th July, 1977, Mr. Metaxas addressed a letter to the applicant informing her that she was transferred from the Ministry of Education to the Department of town Planning and Housing, from the 8th July, 1977.

30 The applicant, feeling aggrieved, and quite rightly in my view, after the ordeal she had suffered because of the behaviour of the Minister and of the Director of the Personnel Department, in transferring her from the Ministry of Education to the Department of Town Planning and Housing, filed the present recourse claiming, as I said earlier, that her transfer was made without valid reasons and was null and void and of no effect whatsoever.

35

### *THE OPPOSITION*

On 3rd September, 1977, counsel in support of the facts and reasons put forward, said that the transfer of the applicant

from the Ministry of Education to the Department of Town Planning and Housing was made in the interest of the service by the appropriate authority, viz., the Director of the Personnel Department in accordance with paragraph 6 of the facts of the opposition. As there was no organic post in the public service of a private secretary and as it follows that as a result it is not indispensable that the stenographers of the General Secretarial Personnel to do duties of a private secretary to the Minister and or Director Generals etc. The Personnel is made available out of the interchangeable personnel which are exercising the duties of a private secretary. 5 10

*Grounds of Law for respondent*

Counsel for respondent based his opposition on the following legal points: (1) that the decision attacked was reached lawfully and in the interest of the service; (2) the decision attacked in transferring the applicant was taken by the appropriate organ under the law and in accordance to section 48(2) of the Public Service Law 1967 (Law 33/67); and (3) the decision attacked in transferring the applicant does not constitute a disciplinary punishment but constitutes an administrative measure in the interest of service. 15 20

On the contrary, counsel for the applicant relied on the following legal points: (1) that the act or decision attacked was made in excess and/or in abuse of powers vested in such organ because (a) was unreasonable and vindictive and/or of a disciplinary nature, and without adhering to the provisions of the Disciplinary Code and of sections 73–85 of Law 33/67; (b) that such act and/or decision in substance it entails an illegal demotion and/or emplacement of the applicant at a post lower to that post to which she was emplaced until 8th July, 1977; and (c) the decision was taken in a hurry and without affording to the applicant the chance to put forward her views; (2) the said act and/or decision was made illegally and arbitrarily and serves an alien purpose contrary to the law and is of a vindictive nature and against the character of the applicant and in excess or in abuse of power; and (3) the said act and/or decision was taken by an organ without competence and contrary to section 48(2) of Law 33/67—the competent organ being the Commission, once the transfer made brought basic change of the duties of the post held by the applicant. 25 30 35 40

I consider it pertinent to reiterate once again that to my mind the Judges are the guardians of our Constitution, and as I said time and again, the Supreme Court has exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint  
 5 that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ and that any decision given under paragraph 4  
 10 of this article shall be binding on all courts and all organs or authorities in the Republic and shall be given effect to and acted upon by the organ or authority or person concerned. With that in mind, there is no doubt at all that the applicant, as it appears from the letter of the Minister quoted earlier and of the note made by the Director General in the letter addressed  
 15 to the Director General of the Ministry of Finance, was forced to take leave contrary to the provisions of Law 33/67, and quite rightly in my view, counsel for the applicant complained to the Chairman of the Commission for the violation of Law 33/67. But in spite of the fact that the applicant was according to the  
 20 Commission exonerated from the charges against her, regretfully, she had become the victim of great gossip and ugly rumours and her name was leaked in the press that she was a spy and for serving the interest of certain fereign governments.

I find it convenient to add even at this very late stage that all  
 25 accusations against the applicant proved to be gossip and were worthless, and in fairness to her, I would add, that in going through the various testimonials and all letters written by some of the Ministers under whom she served were praising fully her work.

30 The question is who is the applicant and what were her capabilities as a loyal faithful public officer. I think this answer is to be found in the report of the late Minister of Education Mr. Spyridakis who in praising her work for a period of eleven years working with him had this to say on 29th June, 1970:--

35 “Επί τῶν τερματισμῶν τῆς ἐν τῶν Ὑπουργείῳ Παιδείας ὑπηρεσίας μου ἐπιθυμῶ νά ἐκφράσω πρὸς σᾶς τὰς θερμότεας εὐχαριστίας μου διὰ τὴν ἐπὶ ἑνδεκα καὶ πλέον ἔτη ἐν τῶν Ἑλληνικῶν Ἐκπαιδευτικῶν Συμβουλίῳ, τῆ Ἑλληνικῆ Κοινοτικῆ Συνελεύσει καὶ τῶ Ὑπουργείῳ Παιδείας παρασχεθεῖσαν εἰς ἐμέ ἐξαιρετικὴν βοήθειαν, τὴν ὁποῖαν βαθύτατα ἐξετίμησα.

Ἡ προθυμία, ὁ ζήλος, ἡ ἐργατικότητα, ἡ ἐχεμύθεια, ἡ ἀφοσίωσις εἰς τὸ καθήκον ἦσαν αἱ ἀρεταί, αἱ ὁποῖαι διεῖπτον τὴν ἐργασίαν σας, ἥτις ὑπῆρξε λίαν ἀποτελεσματικὴ καὶ διηκολύνε καὶ ἐβοήθει τὸ ἔργον τοῦ Ὑπουργοῦ εἰς μέγιστον βαθμὸν.

5

Ἄνευ τῆς ἰδικῆς σας βοήθειας εἶναι ζήτημα, ἂν θὰ κατωρθοῦτο ἡ τόσον ἀκριβὴς καὶ ταχεῖα διεκπεραίωσις τῆς ἐκάστοτε συσσωρευομένης ἐργασίας εἰς τὸ γραφεῖον μου. Θὰ διατηρήσω ἀγαθωτάτην ἀνάμνησιν τῆς βοήθειας καὶ συνεργασίας ταύτης, τὴν ὁποῖαν εἶμαι βέβαιος ὅτι θὰ παράσχητε μετὰ τοῦ αὐτοῦ ζήλου καὶ ἀφοσιώσεως πρὸς τὸν διάδοχόν μου, οἷαν ἐπεδειξατέ καὶ πρὸς ἐμέ”.

10

(“On the termination of my services in the Ministry of Education I wish to express to you my warmest thanks for the excellent help you have rendered to me for more than eleven years in the Greek Educational Council, the Greek Communal Chamber and the Ministry of Education, which help I deeply appreciated.

15

The willingness, zeal, industriousness, secrecy and devotion to duty were the virtues which governed your work which has been very effective and facilitated and helped the task of the Minister to the highest degree.

20

Without your help it is doubtful whether the so precise and early dispatch of the work accumulated from time to time in my office would have been achieved. I shall retain a good memory of this help and cooperation which I am sure you will render with the same zeal and devotion as you have shown to me to my successor”).

25

On 30th June, 1972, the Minister of Education Mr. Frixos Petrides in a strong and sentimental note said:-

30

“Τὸ ἐγγραφον τοῦτο εἶναι γιὰ νὰ ἐκφράσῃ τις πιὸ θερμὲς καὶ εἰλικρινεῖς μου εὐχαριστίες γιὰ τὴν τόσο πρόθυμη συνεργασία σας κατὰ τὴν διάρκειαν τῆς ὑπουργίας μου

Μοῦ εἶναι ἀρκετὰ δύσκολο νὰ ἀπαριθμήσω τις ἱκανότητες καὶ τὰ προσόντα ποὺ συνθέτουν τὴν προσωπικότητά σας ὡς ἰδιαιτέρας γραμματέως καὶ γι’ αὐτὸ περιορίζομαι στὸν σύντομο καὶ λιτὸ χαρακτηρισμὸ τῆς ἐξαιρέτου.

35

Ἐπιθυμῶ ὁμως νὰ ἀναφερῶ ἰδιαιτέρως στὸν ἄνθρωπο,



πού έκτελεῖ τὰ καθήκοντά της μὲ τέτοια ἀνθρώπινη προσέγγιση, διακριτικότητα καὶ ἐχεμύθειαν, ὥστε νὰ δημιουργῆ αἰσθήματα πραγματικῆς συγκινήσεως, θερμῆς φιλίας καὶ ἀμοιβαίας ἐκτιμήσεως.

5 Ἡ ἀποχώρησίς μου ἀπὸ τῆ θέσιν τοῦ Ὑπουργοῦ Παιδείας ὁμολογῶ ὅτι δὲν μοῦ προξενεῖ καθόλου θλίψιν. Κάποια λύπη ἀπλῶς αἰσθάνομαι, γιατί ἀποχωρώντας δὲν θὰ ἔχω τῆ μεγάλη εὐχαρίστησιν νὰ συνεργάζωμαι καθημερινῶς μὲ ἀνθρώπους πού ἐκτιμῶ ἰδιαιτέρως, μεταξύ τῶν ὁποίων

10 σεῖς, Κυρία μου, ἔχετε πρωτεύουσαν θέσιν. Ἐλπίζω ὅτι τὰ συναισθηματά μου αὐτά ἐπιτρέπουν τὴν συνέχισιν τῶν φιλικῶν δεσμῶν πού ἀνεπτύχθησαν κατὰ τὴν περίοδον τῆς συνεργασίας μας καὶ τοὺς ὁποίους ἔχω περὶ πολλοῦ”.

15 (“This document is to express my warmest and sincere thanks for the so willing co-operation during my term of office as Minister.

It is very difficult for me to enumerate the abilities and qualifications which constitute your personality as a private secretary and for this reason I limit myself to the short and plain description of excellent.

20

I wish, however, to refer especially to the woman who performs her duties with such a human approach, distinctiveness and secrecy, so that she creates feelings of real emotion, warm friendship and mutual respect.

25 My departure from by post as Minister of Education, I confess, does not cause to me any grief I simply feel some grief because on departing I will not have the great pleasure of cooperating daily with people whom I particularly esteem and among whom, Madam, you rank first.

30 I hope that these feelings of mine permit the continuation of the friendly ties that have developed during the period of our co-operation and which I greatly value”).

On 30th October, 1976, the Minister of Education Mr. Andreas Mikellides in praising her work and in commenting about her personality and her eagerness to serve her Minister said:

35

“ Ἡ μετάθεση μου στὸ Ὑπουργεῖον Ὑγείας πού ἔγινε σὲ περίοδο πού ἔλειπε στὸ ἔξωτερικὸ καὶ τὸ χρονικὸ διάστημα

πού μεσολάβησε έκτοτε, έδωσαν τήν εύκαιρία νά κατασταλάξουν μέσα μου αισθήματα έντυπώσεις κι' αντίδράσεις κι' έτσι νά είμαι σέ θέση σήμερα νά εκφράσω τίς εύχαριστίες και τήν εύγνωμοσύνη μου γιά τήν βοήθεια (πρόθυμη κι' άνεπιφύλακτη) πού μου έδωσες κατά τήν διάρκεια τής θητείας μου στο Έπουργείο Παιδείας. 'Η ζεστή σου προσωπικότητα, τó πρόσχαρο ύφος σου, ή έτοιμότητα κι' ή προθυμία νά έπωμισήης ώρισμένες εύθνες δικές μου και νά μου συμπαρασταθής με κάθε τρόπο υπήρξαν γιά μένα μιá πραγματική δαση κι' ένα ξρεισμα πάνω στο όποιο μπορούσα νά στηριχθώ σέ περίοδο πού με πίεζαν προβλήματα και δυσκολίες.

Θά διατηρήσω μέσα μου μιá άπεριόριστη εκτίμηση γιά σένα κι' ένα φιλικό στοργικό αίσθημα.

Γιά μιá άκόμη φορά σ' εύχαριστώ γιά όλα".

("My transfer to the Ministry of Health which took place during a period that you were absent abroad and the period of time which intervened since then, gave me the chance to have my feelings, impressions and reactions filtered and so to be in a position to day to express my thanks and gratitude for the help (willing and unreserved) you have given me during my term of office in the Ministry of Education. Your warm personality, your cheerful look, your readiness and willingness to undertake some of my responsibilities and to assist me in every way have been for me a real oasis and a support on which I could lean at a period when I was pressed with problems and difficulties.

I shall retain in me an unreserved esteem for you and a friendly and loving feeling.

Once again I thank you for everything").

In the light of those weighty recommendations by all the Ministers, and because the applicant, for a period of 18 years has been praised for her ability to co-operate, I am unable to understand or follow the reasons for which the last Minister lodged a complaint against her once the aim of the applicant was to tide the affairs of the Minister. Be that as it may, very fairly and ably indeed, counsel for the respondent argued that (a) the transfer of the applicant does not make a change to her duties and that it was made in accordance with s. 48(2) of the

Public Service Law, 1967 (Law 33/67), once such transfer does not involve a change in the office held by the applicant and the duties attached thereto or a change in the place of residence.

5 Counsel further argued that unless the facts and circumstances as related by counsel for the applicant show that the said transfer was made for reasons of a vindictive nature, and/or for punishing her, the Court cannot interfere. In effect, what counsel is putting forward is that in cases of this nature the Court usually does not interfere. Counsel relies on Kyriakopoulos Greek  
10 Administrative Law, 4th edn., Vol. 3 at p. 312.

Finally, counsel invited the Court that if it was satisfied from the facts and circumstances of this case that the said transfer was made for vindictive reasons or was made by the Commission contrary to the provisions of the Constitution or of any law  
15 or was made in excess or in abuse of powers, then the Court not only would interfere, but has a duty to do so in order to do justice to the applicant.

On the contrary, counsel appearing for the applicant argued very ably indeed that once in effect the transfer was made not  
20 in the interest of the service but for vindictive reasons only, a fact known to the Commission, then the Court should, and in this particular case, must interfere, because the transfer was made for vindictive reasons and because she was victimized by the Minister of Education. Counsel further argued that  
25 this is a unique case in which the Public Service Commission was aware of the interference by the Minister of Education in transferring the applicant to another post.

I have considered very carefully the arguments of both counsel, and I feel that I must express my indebtedness to both for their  
30 stand in the present case and for putting before me everything which they thought would help the Court in reaching a correct decision.

I am positive that from the totality of the evidence before me, as well as the documents which have been produced, in my  
35 view it clearly shows that the applicant has become the victim of the Minister that she was a spy and because the Commission, without investigating fully the case of the applicant, transferred her to another post immediately. In my view, the transfer was not made in the interest of the service, but simply because

the Minister of Education wanted, for reasons of his own, to get rid of his private secretary. Having reached this conclusion, and that the transfer was made for reasons of a punitive nature, I have no alternative but to say that the transfer was made in abuse and/or in excess of the powers vested in the Commission. 5

### CASE LAW

That this is so, I find further support in Nicos Kalisperas and the Republic (P.S.C.) and another, (1962) 3 R.S.C.C. 146. In this case, Munir, J., in delivering the Judgment of the Court, had this to say at pp. 151-152:- 10

“It should be made clear that it is not as a rule required in the case of a transfer of a public officer that such officer should be given an opportunity to be heard by the Commission. As, however, a transfer may also be a means of exercising disciplinary control, in the sense of paragraph 15 1 of Article 125, it is necessary in the case of such a transfer to give an opportunity to the officer concerned to be heard in accordance with the principles expounded in Case No. 33/61. (*Andreas Antoniou Marcoullides, Larnacu, and The Republic Public Service Commission*), 3 R.S.C.C. 20 letter E p. 31).

Since under Article 125 the power to make all transfers of public officers, including disciplinary transfers, is vested in one and the same authority, i.e. the Public Service Commission, it is essential that strict attention should be paid 25 in ensuring that disciplinary transfers are to be kept and treated as distinct from all other transfers in view of the necessity for applying the appropriate procedure in the case of disciplinary matters.

It is, of course, possible for transfers to be made, in 30 varying degrees, both for reasons of misconduct and other reasons at the same time. In such cases, it may not always be easy to draw the line between disciplinary and other transfers. 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 35 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 the safeguards

5 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 particular transfers. There should be left no room for speculation when the application of the principles of natural justice is at stake”.

10 In *Damianos K. Damianou v. The Republic*, (1973) 3 C.L.R. 282, in delivering the Judgment of the Court, I had this to say regarding the transfer of a public officer and whether in the circumstances it was a disciplinary transfer, at pp. 289-290:-

15 “It has been said judicially in a number of cases that except for an adverse transfer, every other transfer amounts to a simple administrative measure, which is presumed to have been taken in the interest of the exigencies of the service. The decision, therefore, of the administration concerning the reasons dictating the transfer, is not subject to the control of the annulling Judge unless there exists an improper use of the discretionary power or a misconception of facts. See *Pierides v. The Republic*, (P.S.C.) 20 (1969) 3 C.L.R. 274 at p. 283.....

25 It is, of course possible for transfers to be made, in varying degrees, both for reasons of misconduct and other reasons at the same time. In such cases it may not always be easy to draw the line between disciplinary and other transfers. 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 30 by treating the transfer in question as being disciplinary in order to afford the public officer 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, 35 within their respective competences, with particular transfers. There should be left no room for speculation when the application of the principles of natural justice is at stake”.

40 In *Pilatsis v. The Republic (Minister of Education and Another)* (1968) 3 C.L.R. 707, Mr. Justice Loizou, dealing with the

question of transfer and relying and adopting the principle formulated in *Kalisperas and the Republic of Cyprus (Public Service Commission and Another)*, 3 R.S.C.C. 146, had this to say at p. 713:-

“It seems to me that in the light of all the circumstances 5  
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 10  
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.....”

In view of the foregoing, it is, to my mind, quite clear 15  
that the decision to transfer the applicant was arrived at  
through a procedure which denied the applicant the  
minimum rights safeguarded by Article 12 of the Constitu-  
tion, the provisions of which have been held to be applicable  
to offences in general (see *Haros and the Republic*, 20  
4 R.S.C.C. p. 39 at p. 44), and which was contrary to the  
rules of natural justice and has to be declared to be null  
and void and of no effect whatsoever”.

In the light of these weighty judicial pronouncements which 25  
I would adopt and apply in the present case, and for the reasons  
I have given at length, I would declare that the decision of the  
Commission is null and void and of no effect whatsoever.

Decision annulled, but under the circumstances, I am not  
making an order for costs against the respondent.

*Sub judice decision annulled. No 30  
order as to costs.*