

1982 February 17

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

EKATERINI KARAPATAKI,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF FINANCE AND OTHERS,

Respondents.

(Case No. 110/81).

Legitimate interest—Article 146.2 of the Constitution—For the pursuit of a recourse legitimate interest must exist at the time when the sub judice decision is taken, the recourse is filed and at the trial—When sub judice decision ceases to have effect, for the recourse to be sustained applicant should have suffered, in the interval that elapsed, damage recoverable under Article 146.6 of the Constitution—Transfer of Public Officer—And recourse against such transfer—Subsequent transfer to another Department which was not challenged by a recourse—Sub judice transfer ceased having any effect because of the subsequent transfer—Applicant having suffered no matériel damage as a result of the subsequent transfer he possesses no legitimate interest to pursue the recourse.

Administrative Law—Administrative acts or decisions—Executory act—Is one producing legal results—Public officer—Transfer—Not entailing change of residence and not bringing about any change in the position and duties of applicant—Is not an executory act because it has not produced legal results, “legal” in this context encompassing the position and standing of the applicant in the service viewed from an objective angle.

Public Officers—Transfers—Interchangeable Staff—Transfer not involving change in residence—Is within the competence of the Department of Personnel and not that of the Public Service Commission—Section 48(2) of the Public Service Law, 1967 (Law 33/67).

Costs—Unsuccessful recourse for annulment—Applicant not ordered to pay costs of these proceedings with hesitation.

5 The applicant, a stenographer 2nd Grade, in the General Clerical Staff, serving in the Department of Personnel was in 1979 transferred to the Ministry of Commerce and Industry. On January 3, 1981, she was transferred to the Department of Public Works and she challenged the validity of this transfer by means of this recourse. Subsequent to the institution of these proceedings, but before the hearing, she was transferred to the Ministry of Interior but she has not challenged this transfer. 10 The sub judice transfer was effected by the Director of the Department of Personnel; and the main contention of counsel for the applicant was that it was effected by an incompetent organ because the organ Competent to make the transfer was the Public Service Commission and not the Director of the Department of Personnel. 15

Counsel for the respondents raised the preliminary objection that the recourse was not maintainable because

- 20 (a) the action complained of was not of an executory character; and
- (b) the subsequent transfer of applicant to the Ministry of Interior has removed the substratum of the recourse causing applicant to forfeit any legitimate interest she might have in its pursuit.

25 Regarding the merits of the recourse Counsel for the respondents argued that the authority invested with power in law to make the sub judice transfer was in the light of the provisions of s.48(2) of the Public Service Law, 1967 (Law 33/67) the Director of the Personnel Department.

30 *Held*, that for an act to be cognizable by a court of revisional jurisdiction, the applicant must possess a legitimate interest at the three crucial stages for the pursuit of a recourse, that is, at the time when the decision is taken, the recourse is filed, and at the trial; that when the decision challenged ceases to have effect, as in this case by the transfer of the applicant to the Ministry of the Interior, to sustain the recourse it must be made to appear, like the case of revocation of an administrative act, that the applicant suffered, in the interval that elapsed, 35

damage recoverable under Article 146.6 of the Constitution; and that since no suggestion has been made that the applicant suffered any material damage as a result of her transfer to the Public works, and none is discernible the continuation of this recourse has been rendered superfluous. 5

Held, further, (1) that the transfer of the applicant did not amount to an executory act amenable to the jurisdiction of the Court because it did not bring about any alteration to the status or position of the applicant in the service, and was under any circumstances, non-productive of legal results; that "legal" in this context, has a wide connotation and encompasses the position and standing of the applicant in the service viewed from an objective angle; that obviously, the decision did not bring about any change in the position of the applicant because, inter alia, she continued to hold the same position, that is, stenographer 2nd Grade, and continued to perform the duties envisaged by the relevant scheme of service. 10 15

(2) That the recourse would again be doomed to failure on an interpretation of the plain provisions of s.48(2) of Law 33/67; that the authority competent to effect transfers of members of the staff of the Personnel Department is, where the decision does not entail any change of residence, the head of the Personnel Department and not the Public Service Commission as it was contended for by the applicant. 20

(3) That it is with a degree of hesitation that applicant is not ordered to pay the costs of these proceedings in a case where the outcome was so hopelessly predictable from the start. 25

Application dismissed.

Cases referred to:

- Christofides v. C.Y.T.A.* (1979) 3 C.L.R. 99; 30
Kyriakides v. The Republic, 1 R.S.C.C. 66 at p. 74;
Christodoulides v. The Republic (1978) 3 C.L.R. 187 at p. 197;
Hapeshis v. The Republic (1979) 3 C.L.R. 550;
Yiallourou v. The Republic (1976) 3 C.L.R. 220;
Papadopoulos v. The Republic (1975) 3 C.L.R. 89 at p. 95. 35

Recourse.

Recourse against the decision of the respondents to transfer

applicant from the Ministry of Commerce and Industry to the Department of Public Works.

Ph. Valiandis, for *L. Papaphilippou*, for the applicant.

N. Charalambous, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. Ekaterini Karapataki, the applicant, was appointed in the public service in 1967, stenographer 2nd Grade with the Personnel Department, a post she holds since. Her duties are defined in the service scheme pertaining to the post; they are:—

- (a) To take shorthand notes and transcribe same, and
- (b) to type from written texts.

These duties may comprehensively be described as those of a shorthand-typist. It was part of her responsibilities to do either or both, take shorthand notes and copy-type. She belonged to the changeable personnel, attached to the Personnel Department, that is, personnel available for service, depending on the exigencies of the public service, in various government departments as need might arise. Hence the applicant had a duty to serve wherever she might be posted by the appropriate authority. She had no valid claim to serve in any particular department of government.

She served with the Personnel Department until 1979, when she was transferred to the Ministry of Commerce and Industry, where, she was assigned duties of a typist. But she entertained hopes, as it appears in these proceedings, to become the stenographer of the Minister, an assignment more agreeable to her. Such hopes were not based on any concrete facts; they were more in the realm of expectations.

On 3rd January, 1981, she was transferred to the department of Public Works of the Ministry of Communications and Works. To this transfer she objected and challenged its validity by the present recourse. Two are the main grounds upon which she bases the present action:—

- (a) That the transfer was effected by an incompetent organ, that is, an authority having no power in law to make

it. It is her case that the transfer was effected by the head of the Personnel Department, whereas the authority vested with power to make such a posting is the Public Service Commission.

- (b) That the transfer was revengeful and, consequently, the authority that effected it is guilty of an abuse of its powers in that it used the powers vested in it by law for an ulterior purpose and not in the bona fide interests of the public service. 5

Subsequent to the institution of the present proceedings, but before the hearing of the application, the applicant was transferred from the Public Works department to the Ministry of the Interior. This transfer was not challenged; therefore, we can presume that the applicant raises no objection to it and does not contest its validity. 10 15

The respondents maintain that the recourse is not justiciable because—

- (a) The action complained of is not of an executory character and in any event the applicant has no legitimate interest cognizable in law to maintain this recourse, and 20
- (b) the events subsequent to the recourse, notably her transfer to the Ministry of the Interior, sap the recourse of legal content.

More specifically, it is the case for respondents that the subsequent transfer of the applicant has removed the substratum of the recourse, causing applicant to forfeit any legitimate interests she might have in its pursuit. This is, logically, the first question that must be answered for, if the submission of respondents is upheld, the recourse is deprived of litigable content. Further, it is submitted that the recourse is not, under any circumstances, justiciable because the decision complained of lacks executory character. At no time, it is submitted, did the applicant possess a legitimate interest in prosecuting this recourse; therefore, it is, in the respondents' contention, ill-founded. On the merits they argued that the authority invested with power in law to make the sub-judice transfer is, in the light of the provisions of s.48(2) of the Civil Service Law 33/67, the Personnel Department. 25 30 35

The allegation of applicant, that the transfer under consideration was of a revengeful character, was not pressed before me, nor has the applicant made any attempt to discharge the burden cast on her in this respect to establish abuse of power.

5 Her complaint owes, so it seems, its origin to suspicion or conjecture rather than fact.

Legitimate Interest to Prosecute a Recourse to Conclusion:

It is a fundamental precept of administrative law that for an act to be cognizable by a court of revisional jurisdiction,
10 the applicant must possess a legitimate interest at the three crucial stages for the pursuit of a recourse, that is, at the time when—

(a) the decision is taken,

(b) the recourse is filed, and

15 (c) at the trial.

(See, inter alia, “*Application for Annulment*” by Th. Tsatsos, 3rd ed., pp. 51 and seq., “*Conclusions of Caselaw*” of the Greek Council of State 1929–59, pp. 256–277, and *Christofides v. C.Y.T.A.* (1979) 3 C.L.R. 99).

20 Where the decision challenged ceases to have effect, as in this case by the transfer of the applicant to the Ministry of the Interior, to sustain the recourse it must be made to appear, like the case of revocation of an administrative act, that the applicant suffered, in the interval that elapsed, damage recoverable under Article 146.6 of the Constitution. (See,
25 inter alia, “*Application for Annulment*” by Th. Tsatsos, 3rd ed., p. 370, *Kyriakides v. The Republic*, 1 R.S.C.C., p. 66 at p. 74, *Christodoulides v. The Republic* (1978) 3 C.L.R. 187, at p. 197, and *Hapeshis v. The Republic* (1979) 3 C.L.R. 550).

30 The assumption of jurisdiction is justified only where it is aimed to acknowledge or restore such rights of the applicant as are cognizable under the law. Only when such rights of the applicant are at stake, can a litigant validly invoke the jurisdiction of the Court for the nullification of the act complained
35 of. No suggestion is made that the applicant suffered any material damage as a result of her transfer to the Public Works department, and none is discernible. Hence the continuation of this recourse has been rendered superfluous.

But this is not the only ground upon which the recourse must be dismissed. The transfer of the applicant did not amount to an executory act amenable to the jurisdiction of the Court. It did not bring about any alteration to the status or position of the applicant in the service, and was, under any circumstances, non productive of legal results. "Legal" in this context, has a wide connotation and encompasses the position and standing of the applicant in the service viewed from an objective angle. Obviously, the decision did not bring about any change in the position of the applicant. She continued to hold the same position that is, stenographer 2nd grade, and continued to perform the duties envisaged by the relevant scheme of service. Nor did the transfer had any repercussions detrimental to the position of the applicant, and, certainly, it did not entail any change of residence for the discharge of her duties. It was for the Personnel Department to judge the needs of the service; therefore, the applicant had no legitimate interest to seek that she be positioned in any particular government department. Consequently, the recourse must be dismissed for this reason as well.

Lastly, even if the Court could enter the merits of the case, the recourse would again be doomed to failure on an interpretation of the plain provisions of s.48(2) of Law 33/67. The authority competent to effect transfers of members of the staff of the Personnel Department is, where the decision does not entail any change of residence, the head of the Personnel Department and not the Public Service Commission as it was contended for by the applicant. Any doubts that might be entertained on the subject, were dispelled by the decisions of the Supreme Court in the cases of *Chr. Yiallourou v. The Republic* (1976) 3 C.L.R. p. 220, and *Papadopoulos v The Republic* (1975) 3 C.L.R. p. 89 at p. 95. Evidently, the legislature entrusted to the Personnel Department the assignment of duties to members of its staff within the same town, taking the view that the Personnel Department is best suited to appreciate the needs of the service in this area.

The recourse is dismissed. It is with a degree of hesitation that I shall not order the applicant to pay the costs of these proceedings in a case where the outcome was so hopelessly predictable from the start. Let there be no order as to costs.

Application dismissed. No order as to costs.