

1983 August 29

[MALACHTOS J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS PRODROMOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS THROUGH
THE MINISTRY AND/OR THE MINISTER OF EDUCATION,

Respondent.

(Application in Recourse No. 395/80).

*Administrative Law—Administrative acts or decisions—Revocation
—Does not necessarily consist in the use of strict wording in the
subsequent act but may be derived indirectly from it—Recourse
against transfer from Pancyprian Gymnasium to Akropolis B'
Gymnasium—Provisional order suspending transfer pending deter- 5
mination of the recourse—Following compliance with provisional
order respondent deciding transferring applicant from Akropolis B'
Gymnasium to the Pancyprian Gymnasium—Such decision amounts
to a revocation of the previous decision—Recourse remained
without an object—Application for imposition of punishment 10
on respondent for disobedience to the provisional order dismissed.*

Provisional order—Disobedience—Contempt proceedings.

On 16.8.1980 the respondent Authority decided to transfer
the applicant from the Pancyprian Gymnasium to the Akropolis
Gymnasium. As against this decision the applicant filed the 15
above recourse and, at the same time, applied for a provisional
order. On 10.12.1980 this Court granted the provisional order
applied for on the ground that the respondent authority has
not acted in compliance with the relevant Law and the
Regulations made thereunder. Immediately after the granting 20
of the provisional order the respondent Authority instructed
the applicant to report for duty at the Pancyprian Gymnasium
and in fact he resumed his duties as Headmaster at the
Pancyprian Gymnasium on 11.12.1980.

On the 22nd December, 1980 the Head of the Higher and Secondary Education addressed the following letter to the applicant:

5 “We inform you that the Appropriate Authority decided on the basis of section 39(2) of Law 10/69, for educational reasons to transfer you from the Akropolis ‘B’ Gymnasium to the Pancyprian Gymnasium (Lyceum) as from 15th December 1980”.

10 By letter dated 18.7.1983 the applicant was informed that the appropriate authority had decided for educational reasons to transfer him to Makarios C’ Gymnasium as from 1st September, 1983.

15 It was the case for the applicant that the provisional Order issued on 10th December, 1980, was still in force since the recourse has not been finally determined. So the respondent Authority by issuing the decision contained in the letter dated 18.3.1983 acted in disobedience to the provisional Order and by the present application the Court was prayed to impose on the respondent the appropriate punishment.

20 *Held*, that the revocation of an administrative act, does not necessarily consist in the use of strict formal wording in the subsequent act but may be derived indirectly from it; that the respondent authority by instructing the appellant to return to the Pancyprian Gymnasium and resume his duties on the 11.12. 1980, fully complied with the Provisional order; that it could be reasonably be inferred that the letter of the 22.12.1980 contains a decision by which the previous decision to transfer the applicant was revoked and so the present recourse remained without an object; accordingly the application must fail.

30 *Application dismissed.*

Application.

Application for an order of the Court compelling the respondent to comply with the order of the Court dated 10.12.80 whereby the suspension of the transfer of applicant was ordered.

35 *A. S. Angelides*, for the applicant.

G. Constantinou (Miss), Counsel of the Republic, for the respondent.

40 MALACHTOS J. gave the following judgment. In view of the urgency of these proceedings I shall proceed and deliver judgment forthwith.

On the 23rd July, 1983, the present application was filed by the applicant claiming, as stated therein, the following relief:

- A. An Order of the Court compelling the respondent to comply with the Order of the Supreme Court in the above number and title case dated 10.12.80, by which, among other matters, it was decided and ordered the suspension of his transfer from the post of Headmaster of the Pancyprian Gymnasium of Nicosia till the final determination of the recourse, and 5
- B. An Order of the Court compelling the respondent to obey the Order of the Supreme Court in the above number and title recourse by imposing a fine or imprisonment or damages and costs. 10

The relevant facts as far as the present application is concerned, shortly put, are the following:

The respondent authority by virtue of section 39(2) of the Public Educational Service Law of 1969 (Law 10/69), decided on 16.8.80 to transfer the applicant from the Pancyprian Gymnasium as from 1.9.80 to the Akropolis B' Gymnasium. As against this decision the applicant on 4.11.80 filed the above recourse and, at the same time, applied for a Provisional Order. On 10.12.80 this Court, after hearing counsel on both sides, granted the Provisional Order applied for on the ground that the decision of the respondent authority, as admitted by counsel for the Republic, was not in compliance with the relevant Law and the Regulations made thereunder. The judgment of the Court is reported in (1981) 3 C.L.R. 38 and the relevant part at page 41 is as follows: 15 20 25

“In the instant case learned Counsel for the Republic conceded that from a search of the relevant files which she had made this was a case of flagrant illegality and gave all the relevant details. 30

From the facts which have been placed before me it is apparent that there exists flagrant illegality in the instant case and according to the principles which have been set out hereinabove the provisional order applied for should be made. I would, therefore, make a provisional order ordering the suspension of the transfer of the applicant from the post of Headmaster of the Pancyprian Gymnasium 35

Nicosia to the post of Headmaster of the B' Gymnasium Acropolis Nicosia until the final determination of the recourse.

5 With regard to costs I hereby make an order for the payment by the respondents of £20.- to applicant towards his costs.

10 Regarding the substance of the case due to the statement of the learned Counsel of the applicant and due to the fact that, as appearing in the file of the case, the opposition has not yet been filed, the case is adjourned sine die with instructions to the Registrar to have the case fixed for Directions on the application of any one of the parties”.

15 Immediately after the issue by the Court of the above decision, the respondent authority instructed the applicant, who was at the time serving at the Akropolis B' Gymnasium to report for duty at the Pancyprian Gymnasium. In fact, the applicant resumed his duties as Headmaster at the Pancyprian Gymnasium on the 11th December, 1980.

20 On the 22nd December, 1980, the Head of the Higher and Secondary Education addressed the following letter to the applicant:

25 “We inform you that the Appropriate Authority decided on the basis of section 39(2) of Law 10/69, for educational reasons to transfer you from the Akropolis B' Gymnasium to the Pancyprian Gymnasium (Lyceum) as from 15th December, 1980.”

30 On the 9th September, 1981, counsel for applicant applied to the Registry for the fixing of the recourse but for unknown reasons the application remained in the file and no further step was taken by the parties.

By letter dated 18th July, 1983 the applicant was informed that the appropriate authority had decided for educational reasons to transfer him to Makarios C' Gymnasium as from 1st September, 1983.

35 It is the case for the applicant that the Provisional Order issued on 10th December, 1980, is still in force since the recourse

has not been finally determined. So the respondent Authority by issuing the decision contained in the letter dated 18th July, 1983, acted in disobedience to the provisional Order and by the present application the Court is prayed to impose on the respondent the appropriate punishment. 5

On the other hand, counsel for the respondent submitted that the respondent authority complied with the Provisional Order and that by its subsequent decision contained in the letter to the applicant dated 22nd December, 1980 revoked the decision contained in the previous letter to him dated 16th August, 1980 and so the net result is that the recourse remained without an object. 10

I have considered the arguments of counsel and I must say that I fully agree with the submission put forward by counsel for the respondent. It is clear that the respondent authority by instructing the applicant to return to the Pancyprian Gymnasium and resume his duties on the 11th December, 1980, fully complied with the Provisional Order issued by the Court on the previous day. 15

It could also be reasonably inferred that the letter of the Head of the Higher and Secondary Education to the applicant dated 22nd December, 1980, contains a decision by which the previous decision to transfer the applicant was revoked and so the present recourse remained without an object. 20

As it is stated in the Conclusions from Case Law of the Greek Council of State 1929 - 1959 at page 199, the revocation of an administrative act does not necessarily consist in the use of strict formal wording in the subsequent act but may be derived indirectly from it. 25

For the above reasons this application fails and is dismissed. 30

On the question of costs I make no Order.

Application dismissed with no order as to costs.