1984 February 11

[TRIANTAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ROUMBIS VRAHIMIS, MINOR, THROUGH HIS FATHER IOANNIS VRAHIMIS, AS HIS NATURAL GUARDIAN,

Applicant,

v.

1. GEORGHIOS PRODROMOU, AS HEADMASTER OF THE PANCYPRIAN GYMNASIUM AND PERSONALLY,
2. THE REPUBLIC OF CYPRUS, THROUGH THE ATTORNEY-GENERAL,

Respondents.

(*Case No.* 253/76).

Act or decision in the sense of Article 146.1 *of the Constitution—Which can be made the subject of a recourse thereunder—Temporary suspension of applicant from school pending his compliance with a direction of the headmaster to have his hair cut—Not a disciplinary punishment but only a temporary coercive suspension intended to ensure compliance with above direction—It was an internal administrative measure which is not amenable within the jurisdiction of this Court under the above Article.*

Legitimate interest—Article 146.2 *of the Constitution—Temporary suspension of applicant from school pending his compliance with a direction of the Headmaster—Applicant left the school and enrolled at another school before any final disciplinary measure had been taken against him—No legitimate interest to file a recourse, in the sense of the above Article.*

The applicant was a pupil in the first form of the Pancyprian Gymnasium. Soon after the commencement of the school-year the applicant was seen in a corridor of the school by the headmaster-respondent 1—and was told that his hair was too long and that he should have it cut. The applicant replied

that his father had told him that his hair was short enough and that respondent 1 could speak to him. A few days later the applicant was seen again by respondent 1 and as he had not had a haircut in the meantime he was sent away from the school and was directed to have his hair cut before returning to it.

The applicant never returned to the school and he was very soon afterwards enrolled, by his father, as a pupil of another school, namely the English School in Nicosia. He thereafter filed a recourse against his alleged permanent expulsion from the school.

Held, that respondent 1 never actually expelled permanently the applicant from the Pancyprian Gymnasium and that he only temporarily suspended him pending his compliance with the direction to have his hair cut; that the temporary suspension of the applicant was not a measure of disciplinary punishment imposed on the applicant for persisting in not complying with the direction to cut his hair—(which might have been imposed on the applicant if he had come back to school still defying and refusing to obey the direction of his headmaster about having a haircut)—but it was only a temporary coercive suspension intended to ensure compliance by the applicant with the aforesaid direction, and, in view of its essential nature, it was obviously an internal administrative measure which is not amenable within the jurisdiction of this Court under Article 146 of the Constitution (case 97/80 before the Greek Council of State, the French case-law, and *Roditis* v. *Karageorghi* (1965) 3 C.L.R. 230 distinguishable); accordingly the recourse should fail.

Held, further, that, anyhow the applicant did not possess a legitimate interest entitling him, in the sense of Article 146.2 of the Constitution, to file the present recourse, because while he was only temporarily suspended, and before any final disciplinary measure had been taken against him, he left the school of his own volition and that of his father and guardian, and enrolled at the English School.

Application dismissed.

Cases referred to:

Makrides v. *Republic* (1967) 3 C.L.R. 147 at p. 151;

Carayiannis v. *Republic* (1980) 3 C.L.R. 39 at p. 42;
Roditis v. *Karageorghi* (1965) 3 C.L.R. 230;
Decision of the Greek Council of State No. 97/1980.

Recourse.

Recourse against the decision of the respondents to expel applicant permanently from a secondary education school, namely the Pancyprian Gymnasium in Nicosia.

E. Vrahimi (Mrs.), for the applicant.

A.S. Angelides, for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment. By means of the present recourse the applicant—who at the material time was a minor and has instituted these proceedings through his father as his natural guardian—challenges, in effect, his, alleged, permanent expulsion from a secondary education school, namely the Pancyprian Gymnasium in Nicosia.

The present case was initially heard by another Judge of this Court, who, after judgment had been reserved, and before it could be delivered, has retired from the judicial service.

Then, counsel for the parties agreed that the reserved judgment could be delivered by another Judge of this Court on the basis of the record of the case and subject to counsel being afforded an opportunity to address the Court further. I have, therefore, dealt with the present case accordingly; and pursuant to the practice which was followed on other similar occasions (see, for example, *Makrides* v. *The Republic*, (1967) 3 C.L.R. 147, 151 and *Carayiannis* v. *The Republic*, (1980) 3 C.L.R. 39, 42) I will now proceed to deliver my judgment.

The applicant was a pupil in the first form of the Pancyprian Gymnasium and, as it appears from facts which are not really in dispute, soon after the commencement of the school-year the applicant was seen in a corridor of the school by the headmaster—respondent 1—and was told that his hair was too long and that he should have it cut. The applicant replied that his father had told him that his hair was short enough and that respondent 1 could speak to him. A few days later the applicant

was seen again by respondent 1 and as he had not had a haircut in the meantime he was sent away from the school and was directed to have his hair cut before returning to it.

The applicant never returned to the school and he was very soon afterwards enrolled, by his father, as a pupil of another school, namely the English School in Nicosia.

Counsel for the respondents has alleged that the applicant was never actually expelled permanently from the Pancyprian Gymnasium, as he complains, and that, even assuming that it could be said that the applicant had been temporarily suspended, this did not entitle him to file the present recourse as his suspension was an internal administrative measure for ensuring discipline at the school in question.

I was referred, in this respect, to Stassinopoulos on the Law of Administrative Acts, 1951, pp. 142-143, Kyriakopoulos on Greek Administrative Law, 4th ed., vol. A, p. 68, and to the Conclusions from the Case-Law of the Council of State in Greece, 1929-1959, pp. 238, 167-169, as well as to the case of *Roditis* v. *Karageorghi*, (1965) 3 C.L.R. 230.

Prior to the delivery of this judgment counsel for the applicant drew the attention of the Court, by a letter addressed to it through its Registry, to comments made by a writer, A. Tachos, on the decision in case 97/80 by the Council of State in Greece (see the Review of Public and Administrative Law, 1980, vol. 24, p. 115 et seq.). In that case it was decided by majority that the imposition of the disciplinary punishment of one day's expulsion from school on schoolgirls who had refused to abide by regulations regarding their dress could not be challenged by means of a recourse for annulment as it constituted an internal administrative measure, which, because of its nature, was not amenable within the relevant jurisdiction of the Council of State; and, in effect, the Council of State in Greece found that the said punishment was not of an executory nature and, consequently, its validity could not be challenged by means of a recourse. In his aforesaid comments Tachos refers to French case-law from which it may be derived that certain administrative measures which relate to school discipline are

deemed to be executory administrative acts and can be challenged by recourse for annulment in case they alter the legal status of a citizen, as by expelling a pupil from a school.

In the light of all the material that was placed before the Court in the present case I have formed the opinion that respondent 1 never actually expelled permanently the applicant from the Pancyprian Gymnasium and that he only temporarily suspended him pending his compliance with the direction to have his hair cut.

This is evident, also, from the fact that the applicant's father admitted before the Court that after the suspension of the applicant he had a telephone conversation with respondent 1 during which he was told that his son had not been permanently expelled and was asked if he had had his hair cut.

In my view, the temporary suspension of the applicant was not a measure of disciplinary punishment imposed on the applicant for persisting in not complying with the direction to cut his hair—(which might have been imposed on the applicant if he had come back to school still defying and refusing to obey the direction of his headmaster about having a haircut)—but it was only a temporary coercive suspension intended to ensure compliance by the applicant with the aforesaid direction, and, in view of its essential nature, it was obviously an internal administrative measure which is not amenable within the jurisdiction of this Court under Article 146 of the Constitution; and, thus, both case 97/80 before the Greek Council of State, and the French case-law, which were referred to earlier in this judgment, are distinguishable from the present case because they relate to disciplinary punishments.

I would, also, like to state that the present case should, likewise, be distinguished from the case of *Roditis*, supra, in which it was held that a decision of the Director of Education confirming the expulsion of the applicant from her school, by her headmistress, for three days, would, in the particular circumstances of that case, be an exercise of executive or administrative authority in the sense of Article 146 of the Constitution.

Before concluding this judgment I should state that, anyhow,

the applicant did not possess a legitimate interest entitling him, in the sense of Article 146.2 of the Constitution, to file the present recourse, because while he was only temporarily suspended, and before any final disciplinary measure had been taken against him, he left the school, of his own volition and that of his father and guardian, and enrolled at the English School.

For all the above reasons the present recourse fails and is hereby dismissed, but with no order as to its costs.

Recourse dismissed. No order as to costs.