1984 December 20

[A LOIZOU, MALACHTOS, DEMETRIADES, LORIS, PIKIS, JJ.]

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

Appellant-Applicant,

v.

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

Respondents.

(*Revisional Jurisdiction Appeal No.* 369).

Act or decision in the sense of Article 146.1 *of the Constitution—Which can be made the subject-matter of a recourse thereunder —Exercise of disciplinary power by school authorities over pupils —Is an act of internal management of the school and is not justiciable—Decision of Principal directing pupil to leave school in order to comply with his directions respecting his appearance —An act incidental to the exercise of disciplinary powers by the school authorities—And is not justiciable.*

Education—Discipline at schools—Undesirable to judicialise exercise of discipline at schools, having regard to educational realities.

The appellant was a pupil in the first form of the Pancyprian Gymnasium. On the 12th October, 1976, the principal told him to have his hair cut, taking the view it was improperly long, incompatible with his expected appearance. The appellant and his parents took objection to this direction and defied the order of the principal. On the 14th October, 1979, the Principal reprimanded the appellant for failure to comply with his directions and asked him to leave school in order to have a haircut, telling him not to return unless he first complied with his directions. The appellant never returned to the school and he was very soon afterwards enrolled, by his parents as

a student at the English School. The trial Judge dismissed his recourse against his dismissal from school having held that the sub judice decision was an internal act, directly associated with the exercise by the School Authorities of discipline at school and, as such, beyond the ambit of judicial review. Hence this appeal.

Held, that the exercise of disciplinary power by the School Authorities, over pupils or students of a school, is an act of internal management of the school and is not justiciable, unless designed to break or sever the association of the pupil with the school, in which case it becomes prejudicial to his status and as such justiciable; that the decision of the principal to direct the appellant to leave school in order to comply with his directions respecting his appearance, was an act incidental to the exercise of disciplinary powers by the school authorities and it is not justiciable; accordingly the appeal must fail.

Held, further, that not only as a matter of legal principle but as a matter of policy of the law as well, this Court is inclined to refuse jurisdiction to review the sub judice decision; that it is undesirable to judicialise the exercise of discipline at school having regard to educational realities; that although there must be constraints to the exercise of power, such constraints need not be of a judicial character (pp. 1435–1436 post).

Appeal dismissed.

Cases referred to:

Roditis v. *Karageorghi and Others* (1965) 3 C.L.R. 230;

Decision of the Greek Council of State No. 97/80.

Appeal.

Appeal against the judgment of the President of the Supreme Court of Cyprus (Triantafyllides, P.) given on the 11th February, 1984 (Revisional Jurisdiction Case No. 253/76) whereby appellant's recourse against his expulsion from the Pancyprian Gymnasium, Nicosia was dismissed.

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

A. S. Angelides, for the respondents.

Cur. adv. vult.

* Reported in (1984) 3 C.L.R. 1187.

A. LOIZOU J.: The judgment of the Court will be delivered by Pikis, J.

PIKIS J.: The sad facts of this case began to unfold shortly after the enrolment of the appellant at the Pancyprian Gymnasium (Κεντρικό) as a student of secondary education. At first, there were complaints by the appellant and his parents about his emplacement at an allegedly ill-equipped classroom, in a division (τμήμα) of the class away from his friends and fellow-students at the elementary school. There were acrimonious exchanges on the subject with the principal of the school, Mr. Prodromou who refuted accusations of discriminatory treatment. It was against this background of ill will that the decision under review was taken, leading to the severance of the ties of the appellant with public secondary education.

On 12th October, 1976, the principal told the appellant to have his hair cut, taking the view it was improperly long, incompatible with his expected appearance. The appellant and his parents took objection to this direction and defied the order of his principal. They disputed that his appearance was in any way improper on account of the length of his hair. Not long before, in September, a while after the commencement of the school year, the appellant had a haircut, following the instructions of the school authorities.

Encouraged by his parents the appellant omitted to have a haircut, a fact noticed by Mr. Prodromou on 14.12.1976. The events that followed assumed a dimension out of all proportion to the significance of the incident as such. Perhaps the boy himself was the least to blame for what followed. On 14.10.1976 Mr. Prodromou reprimanded the appellant for failure to comply with his directions and asked him to leave school in order to have a haircut, telling him not to return unless he first complied with his directions. He intimated he would contact the pupil's father over the phone, something he neglected to do. Such communication might well have paved the way for a better understanding. Be that as it may, the reaction of the father of the appellant was no more propitious to diffusing a situation pregnant with emotional undertones. He addressed a letter to Mr. Prodromou on 16.10.1976, accusing him of vindictive motives in ordering his son to have a haircut—an allegedly revengeful reaction to the representations

earlier made to have his son transferred to another class. He asserted he had his own views about the conduct and appearance of his son, implying he should have a definite say in the matter. Hence he requested to be furnished with school regulations respecting the way students should wear their hair. It is pertinent to remind that the right of a parent to mould the conduct and appearance of his children is not absolute. It is qualified by the laws of the country in so far as their conduct in society is concerned and the rules of institutions they join. Naturally, school authorities have a large say in the conduct and appearance of students at school.

There was no response to the letter of the father of the appellant and the situation progressed from bad to worse. Mr. Prodromou stated in evidence he regarded it his duty not to accept the appellant back unless he first complied with his directions; whereas the parents of the appellant regarded it an affront to the personality and rights of their son to comply with the directions of the principal, more so, as they took the view that the length of the hair of their son was in no way offensive. Failing a favourable response from the principal of the school, steps were taken to have their son enrolled as a student at the English School that he joined early in 1976, severing thereby his links with public secondary education.

A recourse was filed, challenging the dismissal of the appellant from school on 14.10.1976 on grounds of invalidity for breach of—

(a) The right to education safeguarded by Article 20,

(b) the rules of natural justice, especially failure to afford him an opportunity to be heard before being punished, and

(c) school regulations relevant to the appearance of students or, more appropriately still, the absence of a regulation specifying the length of the hair of students.

Respondents disputed the justiciability of the proceedings for two reasons: The decision was not executory being, in their contention, an internal act of management of the school and, as such, inamenable to review. Secondly, the proceedings could not be entertained for lack of legitimate interest on the

part of the appellant who, by voluntarily withdrawing from the school, forfeited his interest to fortify his association with the school.

The learned trial Judge sustained the objections to the jurisdiction of the Court to take cognizance of the recourse. He ruled that the decision under review was an internal act, directly associated with the exercise by the school authorities of discipline at school and, as such, beyond the ambit of judicial review. The decision in *Haridimos Roditis etc.* v. *K. Karageorghi etc. & 2 Others* (1965) 3 C.L.R. 230, was distinguished as inextricably tied to the special facts of that case. Support for the decision of the Court in the present case was forthcoming from the decision of the Greek Council of State, in Case 97/80, deciding that regulation of the appearance of pupils and the exercise of discipline in connection therewith, are internal matters referable to the special administrative relationship subsisting between school authorities and students. It was found that appellant had no legitimate interest in pursuing the proceedings, on account of his voluntary withdrawal from the school and the forfeiture of any interest to sustain his relationship with the school and public education in general.

Counsel for the appellant submitted, the action of the principal of the school was, in effect, an act of expulsion that affected his status—a decision prejudicial to the right to enjoy the benefits of public education. The decision of the Greek Council of State cited earlier, is criticised as bad law, antagonistic to modern notions on the rights of man and the inviolability of human personality. Extensive reference was made to a critique of the decision by A. Tahos*, a reader in administrative law at the University of Salonica. The learned author argues from the premise that it is unreasonable in our era to acknowledge the existence of power in any authority, or institution, without subjecting its exercise to the rule of law. It is pointed out that in France the Council of State is elastic in its approach to the categorisation of measures of pre-eminently internal character. They are amenable to review if they alter an existing legal situation. The determinative element, according to the thesis of Mr. Tahos should, in line with French caselaw, be the nature of the sanctions and not their extent.

* Measures of Iternal Administration in Secondary Public Education (article).

In regard to the merits, counsel for the appellant disputed the right of the principal to expel a student for failure to comply with the school norms on appearances, especially his refusal to readmit him. There is a cloud of uncertainty as to the regulations applicable. Those believed to be in force by the educational authorities, are nothing other than a draft code, whereas, more probably, the rules applicable at the Pancyprian Gymnasium are those introduced in 1955 that made no provision whatever for the length or manner of wearing of students' hair. In any event, under neither code was the principal empowered to expel, acting on his own counsel, a student for failure to have a haircut. In her contention, the decision of the principal of 14.10.1976 was nothing other than a decision to expel the student for an indefinite period of time.

Hence, she questioned the correctness of the appreciation by the trial Judge of the facts of the case, who ruled that the decision of the 14th October was nothing more than a decision to suspend temporarily a student from school participation in anticipation of compliance with school directions for his appearance.

We have gone into every aspect of the case in our effort to perceive the facts in a correct perspective and resolve the issues raised in these proceedings, inseverable from the legal regime pertinent to the exercise of discipline at schools. It is, as may be noted, the first case of its kind to reach the Full Bench of the Supreme Court. Of course, our task is confined to the resolution of the legal issues in dispute. It is not our province to pass a moral judgment on the actions of Mr. Prodromou or those of the appellant and his parents.

What is basically at issue, is the nature of the action of the principal of the school of 14.10.1976, with a view to determining its justiciability. Administrative law draws a distinction between declarations of the administration, definitive of the rights of the subjects and, acts of internal administration or management, having no noticeable effects in law. Only acts of the former category are subject to review. Acts of the latter category, although they may have repercussions upon freedom of movement and choice of the subject, have no bearing on his status and leave his rights unaffected. The epithet "internal" is employed to characterize acts incidental to and falling within

the framework of a defined legal relationship; it is designed to denote the contrast with acts creative of a legal relationship and, therefore, executory. Professor Forsthoff, in his treatise on "*The Administrative Act*" (English translation by C. Heinzi, pages 10 and 11), classifies acts according to whether they are referable to a basic relationship or an operational relationship. Only acts of the former category are subject to review. Examples of acts arising out of an operational relationship instanced in the aforementioned work are, school penalties, directives of a superior to a subordinate as to the performance of work, and a request of the prison authorities requiring a prisoner to undergo a medical examination. What is common in these acts is that they constitute manifestations of the exercise of power inherent in a basic relationship.

Professor Stassinopoulos* explains that the exercise of discipline within an institutional relationship is a special species of an administrative act, interwoven with the special administrative relationship subsisting between an institution and those subject to it. German administrative law has a special terminology to describe such acts—"*Antaltsgewalt*"—which, translated in English, means "jurisdiction of an institution". Acts of this nature are beyond the compass of judicial review, being non productive of legal consequences. The power of discipline is regarded as institutionally necessary for the functioning of the institution. Consequently, punishments incidental to the exercise of such institutional jurisdiction, are distinguishable from disciplinary punishments proper, such as the punishment imposed upon public officers, that have direct repercussions upon their status and career. The classification of acts of punishment made by Prof. Forsthoff, noted above, found favour with Triantafyllides, J., as he then was, in *Roditis*, supra. The Court subscribed to the view that the imposition of sanctions by school authorities upon students of the school, are internal acts not amenable to review; nevertheless, in that case, an executory act had emerged because of the assumption of jurisdiction by a superior educational authority to review a disciplinary power in exercise of its supervisory jurisdiction over schools. The manner and results flowing from the exercise of such power were held to be matters in the domain of public

* *Law of Administrative Acts* 1951, pp. 141–143.

law, reviewable at the instance of an aggrieved party. In this case we are not faced with the reviewability of such action of a public authority, but we are solely concerned with the justiciability of sanctions meted out by the school authorities. The relevance of the above case to the one presently under consideration, stems from the dicta that the exercise of disciplinary power by school authorities is not, in itself, amenable to judicial review. A similar approach was adopted by the Greek Council of State in Decision 97/80, referred to by the learned trial Judge by way of guidance for his deliberations. French jurisprudence, noted by Mr. Tahos, does not obliterate the distinction between administrative acts definitive of legal rights and internal act of the Administration. The flexibility in their approach lies in readiness to assume jurisdiction when a given act has, notwithstanding its formal characteristics, noticeable consequences upon the subject. Similar flexibility was shown by the Supreme Court in the case of *Roditis*. In accordance with the principles of administrative law explained above, the exercise of disciplinary power by the school authorities, over pupils or students of a school, is an act of internal management of the school, unless designed to break or sever the association of the pupil with the school, in which case it becomes prejudicial to his status and, as such, justiciable. In agreement with the trial Court, we regard the decision of the principal to direct the appellant to leave school in order to comply with his directions respecting his appearance, was an act incidental to the exercise of disciplinary powers by the school authorities. The pupil was, in effect, suspended for defiance of the directions of the principal and in order to afford him an opportunity to comply therewith. It did not of itself have a bearing on the status of the appellant.

Not only as a matter of legal principle but as a matter of policy of the law as well, we are inclined to refuse jurisdiction to review the sub judice decision. In our opinion it is undesirable to judicialise the exercise of discipline at school having regard to educational realities. Although we agree with the proposition that there must be constraints to the exercise of power, such constraints need not be of a judicial character. Higher educational authorities are responsible for securing a healthy system of education, including responsibility for ensuring observance by educationalists of proper standards in the exercise of discipline. It is advisable they should evolve

a comprehensive code of discipline reflecting modern liberal and democratic approach to education. The exercise of school discipline is not, in our judgment, a proper subject for judicial review. Judicialisation of the process of discipline at school would, we believe, encourage a legalistic approach to the subject, whereas, what is needed is flexibility and freedom to respond to individual circumstances of a case, as well as the atmosphere prevailing at a given school. It would, we believe, be socially undesirable to render Judges the arbiters of discipline at school.

For the above reasons, the appeal fails and is dismissed accordingly. There shall be no order as to costs.

Appeal dismissed. No order as to costs.