

1985 February 22

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

ANDREAS ECONOMIDES,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
1. THE EDUCATIONAL SERVICE COMMITTEE,  
2. THE MINISTRY OF EDUCATION,

*Respondents.*

(Case No. 385/81).

*Legitimate interest—Article 146.2 of the Constitution—Elementary Education teacher—Recourse against transfer—Applicant ceasing, by the time of the hearing of the recourse to hold a post in the elementary education having been appointed in the secondary education retrospectively —His retrospective appointment cannot erase the fact that he had been transferred and his transfer, which entailed a change of residence, caused some kind of damage which continued to exist—His legitimate interest to pursue the recourse not extinguished.* 5 10

*Administrative Law—Administrative acts or decisions—Reasoning—Due reasoning—Inconsistency of sub judice decision with the relevant administrative records—Leads to its annulment for lack of due reasoning—Transfer of elementary school teacher—Reasoning of sub judice decision contradicted by the statement of facts in the opposition and by a note in the file of the applicant—Sub judice transfer annulled.* 15

*Constitutional Law—Omission to reply to applicant's objection against his transfer—Once applicant proceeded by recourse, under Article 146 of the Constitution, against the* 20

substance of the transfer, he cannot continue to have a legitimate interest under Article 146.2 unless he has suffered some material detriment which would entitle him to a claim for damages under Article 146.6 which is not the case here.

The applicant, now a teacher in the secondary education, was, at the material time, serving in the elementary education. During the school-year 1980-81 he was posted or seconded to the 4th Gymnasium of Paphos as a teacher of technical knowledge. On the 8th September, 1981 the respondent Educational Service Committee decided to transfer him from Paphos to the elementary School of Larnaca with effect from the 10th September, 1981. He objected against this transfer by a telegram dated 9th September, 1981 and on the 14th September, 1981 he was informed that he was transferred from the elementary School of Larnaca to the elementary School of Ayios Lazaros B. On the 29th September, 1981, the respondent decided to offer appointment to him retrospectively as from the 1st January, 1979 in the secondary education and by the same decision he was posted at the Dianéllios Technical School of Larnaca. He accepted the offer with reservation of his rights regarding his posting. He, also, by his telegram dated the 13th October, 1981, protested against his transfer from Paphos to Larnaca and requested that such transfer be reconsidered.

By means of the present recourse the applicant prayed for a declaration that:

"1. The act and/or decision of the respondents to transfer him from the 4th Gymnasium of Paphos to the elementary School of Larnaca is null, unlawful and of no legal effect whatsoever.

2. The decision to transfer the applicant from the elementary School of Larnaca to the elementary school of Ayios Lazaros B is null, unlawful and of no legal effect whatsoever.

3. The omission of the respondents to consider and/or reply to the objection of the applicant and/or their omission to reconsider their decision to transfer the

applicant from Paphos to Larnaca is unlawful and everything omitted should have been performed”

Though in the sub judice decision it was stated that the sub judice transfer was taken after examining the applications for transfers “and bearing in mind the provisions of the law and the regulations and the educational needs” in the statement of facts relating to this recourse, which were prepared by the Office of the Educational Service Committee for the assistance of Counsel of the Republic who was representing them, it was stated that the transfer was made because of serious family reasons put forward by applicant’s wife namely the relationship of her husband with another woman.

Counsel for the respondent raised the preliminary objection that the applicant has lost his legitimate interest and as a result the recourse cannot be pursued any longer. Counsel contended in this connection that since an appointment was offered to the applicant in the secondary education retrospectively, as from the 1st January 1979, which he has accepted, even though with reservation of his rights concerning his posting, his legitimate interest has ceased to exist.

*Held, (1) on the preliminary objection:*

That though the applicant had ceased, by the time of the hearing of the recourse, to hold a post in the elementary education having been appointed in the secondary education retrospectively, his retrospective appointment cannot erase the fact that he had been transferred to a school of elementary education at Larnaca for so long as the transfer has lasted; that there is no doubt that a transfer entailing a change or residence causes some kind of damage which continues to exist; that applicant’s legitimate interest has not, therefore, been extinguished especially in view of the fact that his posting at the Dianellios Technical School of Larnaca has not been accepted by him, but is the subject of recourse No. 393/81 (see Tsatsos Application for Annulment 1971 ed. at pp. 40-41; and Spyliotopoulos, A Manual of Administrative Law, 1977, ed., at

p. 397); and that, therefore, the applicant has a legitimate interest to pursue this recourse.

5 *Held, (II) on the merits of the recourse: That the inconsistency of the decision challenged with the relevant administrative records leads to the annulment of the decision on the ground of lack of due reasoning (see, in this respect, inter alia, Mikellidou v. The Republic (1981) 3 C.L.R. 461); that, therefore, the sub judice decision must be annulled on the ground*  
10 *of lack of due reasoning in that the reasoning of the sub judice decision is contradicted by the statement of the facts in the Opposition and by the note in the file of the applicant and, to say the least, raises a grave suspicion that the respondents in transferring applicant have acted under the pre-*  
15 *tence of educational needs whilst such transfer was made for other extraneous purposes involving an element of a disciplinary character about which the applicant was never informed (see, Pilatsis and The Republic (1968) 3 C.L.R. 707 and Pittakas v. The Republic (1984) 3 C.L.R. 897).*

25 *Held, further, that with regard to paragraph 3 of the prayer for relief which concerns the omission of the respondents to consider and or reply to the objection of the applicant, once he has proceeded under Article 146 in respect of the substance of the matter for which a reply had been sought it cannot be said that he continues to have a legitimate interest as provided by paragraph 2 of Article 146 unless it was established that as a result of such failure itself he has suffered some material detriment which would entitle him to a claim under paragraph 6 of the Article, which is not*  
30 *the case in these proceedings; that this being the position and having regard to the circumstances of this case the applicant is not entitled to a distinct and separate decision of this Court in respect of the failure complained of once the substance of the matter for which a reply was sought has been*  
35 *proceeded with and adjudicated upon; (see in this respect, inter alia, Kyriakides and The Republic,*  
40

1 R.S.C.C. 66 at p. 77 and *Pitsillos v. C.B.C.* (1981) 3 C.L.R. 614 at p. 619 and, on appeal (1982) 3 C.L.R. 208).

*Sub judice decision annulled.*

Cases referred to:

- Christofis v. Republic* (1970) 3 C.L.R. 97;
- Christofides v. C.Y.T.A.* (1979) 3 C.L.R. 99;
- Karapataki v. Republic* (1982) 3 C.L.R. 88;
- Mikellidou v. Republic* (1981) 3 C.L.R. 461;
- Vorkas and Another v. Republic* (1982) 3 C.L.R. 309; 10
- Fournia Ltd., v. Republic* (1983) 3 C.L.R. 263;
- Pilatsis v. Republic* (1968) 3 C.L.R. 707;
- Pittakas v. Republic* (1984) 3 C.L.R. 897;
- Kyriakides v. Republic*, 1 R.S.C.C. 66 at p. 67;
- Pitsillos v. C.B.C.* (1981) 3 C.L.R. 614 at p. 619; 15
- and on appeal (1982) 3 C.L.R. 208.

**Recourse.**

Recourse against the decision of the respondents to transfer applicant from the 4th Gymnasium of Paphos to the elementary school of Larnaca. 20

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

*E. Papadopoulou (Mrs.)*, for the respondents.

*Cur. adv. vult.*

L. LOIZOU J. read the following judgment. The applicant by this recourse prays for the following relief: 25

For a declaration of the Court that:

1. The act and/or decision of the respondents to transfer him from the 4th Gymnasium of Paphos to the ele-

mentary school of Larnaca is null, unlawful and of no legal effect whatsoever.

2. The decision to transfer the applicant from the elementary school of Larnaca to the elementary school of Ayios Lazaros B is null, unlawful and of no legal effect whatsoever.

3. The omission of the respondents to consider and/or reply to the objection of the applicant and/or their omission to reconsider their decision to transfer the applicant from Paphos to Larnaca is unlawful and everything omitted should have been performed.

The relevant facts of the case are as follows:

The applicant is now a teacher in the secondary education but at the material time he was serving in the elementary education, having been first appointed in 1961. On the 24th July, 1980, he applied for secondment to the secondary education for the purpose of teaching the subject of technical knowledge, stating that he had attended a series of seminars for this purpose (blue 121 in file Π3312). Consequently, he was posted for the school year 1980-81 to the 4th Gymnasium of Paphos (blue 122).

In the meantime, negotiations were taking place for the permanent appointment to the secondary education of applicant and another 52 teachers who had received special training for the purpose of teaching the subject of technical knowledge. As no decision was reached until March, 1981, the applicant addressed on the 11th March, 1981, a letter (blue 124) to the Director-General of the Ministry of Education asking for the termination of his secondment with effect from the 16th March, 1981, until the matter of his permanent appointment in the secondary education was settled, and placing himself, until then, at the disposal of the Head of Elementary Education.

No reply was given to the above letter and on the 8th September the Educational Service Committee decided to transfer the applicant to the elementary school of Larnaca with effect from 10th September, 1981. Applicant received notice of his transfer first through the press and then by letter dated 16th September, 1981 (blue 126) and objected against his transfer from Paphos to Larnaca by

a telegram dated 9th September, 1981 (blue 128). By another letter dated 14th September, 1981, the applicant was informed that he was transferred by the appropriate authority from the elementary school of Larnaca to the elementary school of Ayios Lazaros B as from the 10th September, 1981 (blue 127). 5

In the meantime the Council of Ministers by its decision No. 20363, dated 14th May, 1981, approved the appointment in the secondary education of the 53 teachers concerned. This decision of the Council of Ministers was communicated to the Director-General of the Ministry of Education on the 25th May, 1981. It was not, however, until some time in September that the Ministry of Finance gave its approval for the filling of the said posts. The Educational Service Committee decided at its meeting of the 29th September, 1981, to offer appointment to the 53 teachers concerned retrospectively as from the 1st January, 1979. By the same decision the applicant was posted at the Dianellios Technical School of Larnaca. On the 13th October, 1981, the applicant sent a telegram to the Minister of Education protesting against his transfer from Paphos to Larnaca and requesting that such transfer be reconsidered (blue 1 in file No. 7066/2). 10 15 20

On the 20th October, 1981, the present recourse was filed. On the 22nd October, 1981 a letter was addressed to the applicant by the Educational Service Committee informing him of his appointment to the secondary education and his posting to the Dianellios Technical School of Larnaca as a result of which applicant filed on the 24th October, 1981, another recourse (No. 393/81) against his posting and/or transfer to the Dianellios Technical School of Larnaca. The offer for appointment was made to the applicant by letter dated the 7th November, 1981; he accepted the offer by letter dated the 18th November, 1981, with reservation of his rights regarding his posting at the Dianellios Technical School of Larnaca which he did not accept. 25 30 35

The present recourse is based on the following grounds of law:

1. The respondents acted in excess and/or abuse of 40

powers and/or contrary to the law and/or the regulations and/or with no authority and against the interests of education.

5 2. The respondents acted without due inquiry and discriminated against the applicant.

3. They ignored and/or did not take into consideration the grounds of objection submitted by the applicant and/or failed to communicate to the applicant their decision.

10 4. The sub judice decision amounts to a punitive act or disguised disciplinary action against the applicant or aims at an extraneous purpose other than educational needs and was taken in contravention of the principle of equality and the rules of natural justice.

15 5. The successive transfers were taken by a procedure which is contrary to the law and in violation of the vested rights of the applicant and unlawfully altered the service rights and status of the applicant.

6. The sub judice decision lacks reasoning which cannot possibly be supplemented by the material in the file.

20 It is pertinent to note that in his written address counsel for the applicant limits his prayer for relief to paragraphs 1 and 3 and does not touch at all paragraph 2 i.e. applicant's transfer from the elementary school of Larnaca to the elementary school of Ayios Lazaros B. It may be  
25 reasonably assumed that that paragraph of the prayer has been abandoned.

30 Counsel for the respondents raised, by her Opposition, the preliminary objection that the applicant has lost his legitimate interest and as a result the recourse cannot be pursued any longer.

I propose to deal with this preliminary objection first.

35 With regard to this, counsel for the respondents argued that legitimate interest must exist at three stages: Firstly at the time of the issue of the act or decision complained of, secondly, at the time of the filing of the recourse and, lastly, at the time of the hearing of the re-



course. It was her contention that since an appointment was offered to the applicant in the secondary education retrospectively, as from the 1st January, 1979, which he has accepted, even though with reservation of his rights concerning his posting, his legitimate interest has ceased to exist. 5

Counsel for the applicant, on the other hand, has argued that the legitimate interest of the applicant still subsists because by reason of his transfer he has sustained both moral diminution which affects the execution of his duties and material damage. Further, counsel argued, this legitimate interest of the applicant exists both with regard to the application for the annulment of the sub judice transfer, for the period that it lasted, as well as with regard to the omission of the respondents to consider his objection. Lastly, counsel maintained that the acceptance by the applicant of his appointment in the secondary education did not deprive him of his legitimate interest to pursue the present recourse since such acceptance was made only with regard to the appointment and not the posting which was not accepted by him. 10 15 20

The principles governing the issue of legitimate interest have been stated in a number of cases such as *Christofis v. The Republic* (1970) 3 C.L.R. 97; *Christofides v. C.Y.T.A.* (1979) 3 C.L.R. 99; *Karapataki v. The Republic* (1982) 3 C.L.R. 88. Useful reference may also be made to Conclusions from the Case Law of the Greek Council of State 1929-59 at p. 263 and Tsatsos Application for Annulment, 1971 ed., at p. 371. 25

In the present case the applicant had ceased, by the time of the hearing of the recourse, to hold a post in the elementary education having been appointed in the secondary education retrospectively. Nevertheless, his retrospective appointment cannot erase the fact that he had been transferred to a school of elementary education at Larnaca for so long as the transfer has lasted. There is no doubt that a transfer entailing a change of residence causes some kind of damage which continues to exist. Applicant's legitimate interest has not, therefore, been extinguished especially in view of the fact that his posting at the Dia- 30 35 40

nellios Technical School of Larnaca has not been accepted by him, but is the subject of recourse No. 393/81 (see Tsatsos Application for Annulment (supra) at pp. 40-41; and Spyliotopoulos A Manual of Administrative Law, 5 1977, ed., at p. 397).

I. therefore, find, on the basis of the above that the applicant has a legitimate interest to pursue this recourse. Having come to this conclusion I now come to consider the case on its merits.

10 It is the contention of counsel for applicant that applicant's transfer from the 4th Gymnasium of Paphos to the elementary school of Larnaca is contrary to regulations 14(1) and 16(1) of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and 15 Related Matters) Regulations, 1972 and was made to serve extraneous purposes and not educational needs; that according to these regulations applicant could have been transferred only for educational needs as verified by the appropriate authority (the Minister of Education) or on 20 his application, neither of which is the case. In his allegation the transfer was made for other reasons and more particularly for the reasons stated in paragraph 2 of the facts in support of the Opposition and, further, that it is not duly reasoned. Counsel for the respondent maintained, 25 on the other hand, that the sub judice transfer was effected by the Educational Service Committee for educational reasons and also having in mind a request for transfer by applicant's wife. Regulations 14(1) and 16(1) read as follows:

30 "14(1). The postings and transfers of educational officers are made by the appropriate organ on the basis of educational needs as these are verified by the appropriate authority, and in this respect the preferences of educational officers are taken also 35 into consideration to the extent that this is possible.

16(1). Educational officers are transferred—

(a) On the basis of educational needs;

(b) Upon their application for serious personal or

family reasons provided the interest of the service is also served.”

The effect of the above regulations is that transfers are made only in order to meet educational needs which are verified by the appropriate authority and in doing so the Educational Service Committee takes also into account the wishes of those educational officers who have applied for a transfer. 5

It is common ground that the applicant did not apply for a transfer. Therefore, it must be presumed that his transfer could only have been made in order to meet educational needs. The relevant decision of the Educational Service Committee dated 8th September, 1981, which is attached to the Opposition reads as follows: 10

“B. *Elementary Education Transfers* 15

In continuation of its decisions dated 25/6/81 and 24/7/81, the Committee, having examined both the applications for transfer as well as the objections submitted about transfers which were decided on 25/6/81 and 24/7/81 and bearing in mind the provisions of the law and the regulations and the educational needs (generally and for each school) as those were transmitted by the Head of Elementary Education, decides the transfers shown in the attached Appendix ((pp. 1-7) which will be effective as from the 10/9/81. 20 25

.....  
Economides Andreas 4th Gymnasium Paphos-Larnaca 30  
Economidou Xenia 3rd Paphos-Larnaca.”

Although it is not specifically stated in the above decision that the applicant was transferred either because of any application of his or on the basis of any educational needs it may reasonably be deduced from its contents that the Educational Service Committee has examined all applications for transfers and tried to fill the educational gaps having in mind the wishes of the officers who had applied for a transfer. 35

In paragraph 2 of the facts in support of the Opposition, however, it is stated:

5           “2. The wife of the applicant Mrs. Xenia Economidou came to the office of the committee met some of its members and stated that for serious reasons of a family nature she was asking for a transfer from Paphos both for herself and her husband. Indeed the Educational Service Committee having in mind the above request on the one hand and on the other the  
10           unfavourable consequences which a family scandal in the Society of Paphos would have on education generally, decided that the transfer of both to Larnaca was necessary.”

15           This also appears in a statement of facts relating to both this recourse and recourse No. 393/81 obviously prepared by the office of the Educational Service Committee for the assistance of counsel for the Republic who was representing them, in preparing the Opposition (see blue 15 in applicant's file No. 7066). It is clarified in  
20           this statement that the serious family reasons put forward by applicant's wife in support of her application that they should both be transferred from Paphos was the relationship of her husband with another woman.

25           A mere reading of the minutes of the Educational Service Committee dated 8th September, 1981, cited earlier on, which led to the decision challenged and of paragraph 2 of the facts in support of the Opposition reveals an inconsistency and a contradiction between the two.

30           It has been held in a number of cases that the inconsistency of the decision challenged with the relevant administrative records leads to the annulment of the decision on the ground of lack of due reasoning. See, in this respect *Mikellidou v. The Republic* (1981) 3 C.L.R. 461; *Vorkas and Another v. The Republic* (1982) 3 C.L.R. 309;  
35           and *Fournia Ltd. v. The Republic* (1983) 3 C.L.R. 263.

On the basis of the above I feel bound to annul the sub judice decision on the ground of lack of due reasoning in that the reasoning of the sub judice decision is contra-

dicted by the statement of the facts in the Opposition and by the note in the file of the applicant and, to say the least, raises a grave suspicion that the respondents in transferring applicant have acted under the pretence of educational needs whilst such transfer was made for other extraneous purposes involving an element of a disciplinary character about which the applicant was never informed. (See, *Pilatsis and The Republic* (1968) 3 C.L.R., 707 and *Pittakas v. The Republic* (1984) 3 C.L.R. 897). 5

In view of the conclusion that I have reached I find it unnecessary to deal with any of the other issues raised in the recourse. 10

With regard to paragraph 3 of the prayer for relief which concerns the omission of the respondents to consider and/or reply to the objection of the applicant, once he has proceeded under Article 146 in respect of the substance of the matter for which a reply had been sought it cannot be said that he continues to have a legitimate interest as provided by paragraph 2 of Article 146 unless it was established that as a result of such failure itself he has suffered some material detriment which would entitle him to a claim under paragraph 6 of the Article, which is not the case in these proceedings. This being the position and having regard to the circumstances of this case I do not think that the applicant is entitled to a distinct and separate decision of this Court in respect of the failure complained of once the substance of the matter for which a reply was sought has been proceeded with and adjudicated upon. In this respect see, inter alia, *Kyriakides and The Republic*, 1 R.S.C.C. 66 at p. 77 and *Pitsillos v. C.B.C.* (1981) 3 C.L.R. 614 at p. 619 and, on appeal, (1982) 3 C.L.R. 208 which in my view apply by analogy to this case. 15 20 25 30

In the result the recourse is allowed and the sub judice decision to transfer the applicant from the 4th Gymnasium of Paphos to the elementary school of Larnaca is hereby annulled. There will be no order as to costs. 35

*Sub judice decision  
annulled. No order as  
to costs.* 40