

1986 February 6

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANTONIS PAPANTONIOU,

Applicant,

v.

THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondent.

(Case No. 412/82).

5 *Legitimate interest—Constitution, Article 146.2—Burden to establish the existence of such interest—If its existence is challenged, such burden rests on the applicant—Electricity Authority of Cyprus—Revocation of transfer of applicant from Dhekelia A to Dhekelia B power station—Applicant's legitimate interest affected by said revocation.*

Administrative act—Revocation of lawful administrative act—Principles applicable.

10 On the 3.2.82 the respondent Authority advertised, inter alia, a vacant post of Assistant Engineer, Grade 1, in the Department of Electrical Maintenance at the Dhekelia "B" Power Station. The applicant, who was at the time serving as Assistant Engineer, Grade 1, at the Dhekelia "A" Power Station applied for the post. On the
15 11.6.82 the respondent decided to fill the vacant post by the transfer of applicant as from 1.8.81.

20 On 2.7.82 the Trade Union of the employees of the Authority protested on various grounds to the Authority against the said transfer. As a result on 27.7.82 the Authority decided to revoke the said transfer and by letter dated 31.7.82 informed the applicant accordingly.

Counsel for the respondent raised the issue that appli-

cant did not have a legitimate interest. It was argued in this respect that the transfer or posting did not create any rights in favour of the applicant, who, therefore, has not suffered any detriment.

Held, dismissing the recourse: (1) As the applicant's legitimate interest has been challenged, the burden was on him to establish its existence. In the circumstances the applicant's legitimate interest was certainly affected by the sub judice revocation of the transfer. 5

(2) A lawful administrative act can be revoked, if by the revocation the rights of the citizen created by the revoked act are not affected or if such revocation takes place within a reasonable time. In the present case the transfer was revoked within a short and reasonable time and in fact before the day on which such transfer was to take effect. 10 15

*Recourse dismissed.
No order as to costs.*

Cases referred to:

- Sevastides v. The Republic* (1968) 3 C.L.R. 308; 20
Tatianos Georghiou v. E.A.C. (1965) 3 C.L.R. 177;
Constantinou v. The Republic (1966) 3 C.L.R. 174.

Recourse.

Recourse against the decision of the respondent whereby applicant's transfer to the post of Assistant Engineer, Grade 1, in the Department of Electrical Maintenance of the Electric Power Station at Dhekelia B in the Electricity Authority of Cyprus was cancelled. 25

E Efsthathiou, for the applicant.

A. Stylianidou (Miss) for *G. Cacoyannis*, for the respondent. 30

Cur. adv. vult.

MALACHTOS J. read the following judgment. The applicant in this recourse claims, as stated therein, a declaration

of the Court that the decision of the respondents, which was communicated to the applicant by letter dated 31.7.82, by which they decided to cancel the appointment of the applicant to the post of Assistant Engineer, Grade I, in the
5 Department of Electrical Maintenance of the Electric Power Station of Dhekelia B in the Electricity Authority of Cyprus, is void and/or illegal and/or of no legal effect whatsoever.

The relevant facts of the case are the following:-

10 The applicant was first appointed on 2.1.68 by the Electricity Authority of Cyprus as an Assistant Engineer, Grade II, on probation for a period of six months. This appointment of his was, however, revoked by the respondent
15 Authority on the 1.10.68, after protest and representations by the Free Trade Union of the Electricity Authority Employees that such appointment was contrary to the Collective Agreement between the Trade Union and the respondent Authority. Instead he was offered employment as an
20 Electrical Engineer Trainee from 2.1.68 to 31.1.70 on condition that during this period he would acquire the academic qualifications required in order to become an Associate Member of the Institute of Electrical Engineers of the United Kingdom. This period was further extended to
25 the 30.6.70, but still he failed to obtain the said qualifications. Nevertheless, on the 13.6.70, he was offered by the respondent Authority, appointment to the post of Assistant Engineer, Grade II, as from 1.7.70.

30 On the 1.7.77 he was promoted to the post of Assistant Engineer, Grade I, at the Dhekelia Electric Power Station.

35 On the 3.2.82 the respondent Authority advertised various vacant posts, including a post of Assistant Engineer, Grade I, in the Department of Electrical Maintenance at the Dhekelia "B" Power Station for which post the applicant applied.

At its meeting of 11.6.82 the respondent Authority decided to transfer the applicant from the Dhekelia

Power Station to the Dhekelia "B" Power Station (Department of Electrical Maintenance) as from 1.8.82 and notified the applicant accordingly.

On 2.7.82 the Trade Union wrote to the Chairman of the Board of the respondent Authority, protesting against the filling of the said post by the transfer of the applicant, stating that such transfer adversely affected the promotion and progress of the existing personnel at the Dhekelia "B" Power Station and also that the said transfer was effected contrary to the existing agreement between the Trade Union and the respondent by which the Union had agreed to the original appointment of the applicant, subject to certain conditions, despite the fact that he had been unable to obtain and thus lacked the necessary qualifications.

As a result of this letter, the respondent met on the 27.7.82, considered the matter and decided to revoke its decision. Accordingly, on the 31.7.82, the Authority wrote to the applicant informing him of their latter decision. As a result the applicant filed the present recourse.

A preliminary objection was put forward on behalf of the respondent Authority that the applicant lacks the necessary legitimate interest to file this recourse. It was argued that the sub judice decision was not in respect of any promotion or appointment of his but only in respect of a transfer or posting which does not create any rights in his favour and he has thus suffered no detriment. *Kyriacopoulos: Administrative Law*, at pp. 111 - 112 and the case of *Sevastides v. The Republic* (1968) 3 C.L.R. 308 at 318 have been cited in support of this argument.

Counsel for applicant, on the other hand, has argued that the applicant's legitimate interest was created by the fact that there was a decision in respect of his posting or transfer which has been adversely affected by the subsequent revocation of the said decision. To support this, the case of *Tatianos Georghiou v. E.A.C.* (1965) 3 C.L.R. 177 at p. 185 was cited, where it was held that the abolition

of a post aimed at preventing the applicant from being appointed to that post, adversely and directly affected his existing legitimate interest in the sense of Article 146.2 of the Constitution.

5 As stated in the case of *Constantinou v. The Republic* (1966) 3 C.L.R. 174 at page 180:

10 "It is not necessary for an applicant to establish affirmatively that he has the necessary legitimate interest entitling him to file a recourse. Such proof has to be adduced only if the existence of his legitimate interest is challenged".

See also *Recourse for Annulment by Tsatsos*, 3rd edition, page 35.

15 Since in the present case the legitimate interest of the applicant has been challenged the burden was on him to establish its existence.

20 In the case in hand, it is clear from the facts before me that we are concerned with the decision to transfer the applicant which decision was communicated to him and which was shortly afterwards revoked. Certainly the applicant's legitimate interest was affected by the revocation of the transfer, and, consequently, he had a right to file a recourse under Article 146.2 of the Constitution.

25 Having found that the applicant possessed such legitimate interest, I shall proceed to deal with the merits of this recourse.

30 The main ground of law upon which this recourse is based, is that the respondent Authority by revoking its decision to transfer the applicant, exercised its discretion wrongly and acted in abuse and in excess of power and contrary to the general principles of administrative law.

35 As stated in the Conclusions from Case Law of the Greek Council of State, 1929 - 1959 at page 200, the revocation of lawful administrative acts, as in the present case, is as a rule allowed if by the revocation the rights of

the citizen created by the revoked act are not affected or if such revocation takes place within a reasonable time.

In the present case, since the revocation in question by the respondent was within a short and reasonable time after the communication of the original decision to the applicant, and in fact before the appointed date on which such transfer was about to take effect, I hold the view that it was open to the respondent Authority to take such decision.

This recourse, therefore, fails and is hereby dismissed with no order as to costs.

Recourse dismissed.

No order as to costs.