

1988 November 16

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

- 1. MARIA SIMILLI,
- 2. PANAYIOTIS SIMILI,

Applicants.

v.

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

Respondents.

(Case No. 813/88).

Provisional order—Irreparable damage—What the concept connotes—Damage that is in the power of an applicant to avoid or remedy—Can hardly qualify as irreparable—In this case applicant failed to establish that if his sub judice transfer is not suspended, he would suffer such a damage.

Legitimate interest—Moral interest—Must not be assimilated with inconvenience or emotional upset.

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Provisional order—Public interest—Must be pondered at every stage of the review of the act in question.

Public interest—Its impact must be pondered at every stage of the review of the administrative action.

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Practice—Recourse for annulment—Misjoinder of causes of action—Effect.

The two applicants are husband and wife. They are both educational officers. The husband was transferred to Kokkinotrimithia. The wife to Larnaca. The acts of transfer were distinct of each other.

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The applicants' home is at Strovolos. The transfers made life difficult

5 for the family, no less for the husband, who had to transport daily the two children of the applicants to Aglandjia, where their schools are situated. The difficulties would have been reduced, if the children had been transferred to schools near their home. The applicants, however, chose to keep them at their schools at Aglandjia.

This is an application for provisional order suspending the effect of the transfer of the husband on ground of irreparable damage.

10 Counsel for the respondents raised the issue of misjoinder in one recourse of two distinct and separate acts. The issue, however, was not canvassed at any depth.

Held, dismissing the application: (1) Misjoinder of causes of actions does not inexorably invalidate the proceedings*. In any event competence is acknowledged to the Court to deal with the first cause sought to be reviewed.

15 (2) Damage or injury that is in the power of an applicant to avoid can hardly qualify as irreparable. The concept of irreparable damage connotes financial or moral injury which is irreversible in the sense that such injury cannot be remedied by any of the reliefs available to a finally successful applicant or by appropriate administrative action consequential to annulment of the act in question.

20 (3) The impact of public interest must be assessed at every stage of the review of an administrative action. Suspension of the transfer would entail a number of other transfers in order to restore the status quo ante and the vacuum that will be created.

25 (4) Moral interest must not be assimilated to personal inconvenience or emotional upset. Moreover, it must not be confused with moral obligations to others.

(5) In this case the applicant failed to establish irreparable damage.

*Application dismissed.
No order as to costs.*

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* Civil Procedure Rules, 0.9 R.10, 0.64 and 0.13 R.7.

Application for a provisional order.

Application by applicant No.2 for a provisional order suspending his transfer from Nicosia to Kokkinotrimithia on grounds of irreparable damage.

A.S. Angelides, for applicant.

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R. Petridou (Mrs.), for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. This is a combined action of wife and husband, co-applicants, for the annulment of two distinct acts of the administration entailing their transfer from Nicosia schools to Larnaca and Kokkinotrimithia, respectively. Notwithstanding the separateness of the impugned acts, the two causes were joined in one action in order to focus attention on the cumulative adverse effects of the two transfers on the family uniting the applicants in the ventilation of a shared grievance.

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What we are concerned to decide at this stage is an application of the husband to suspend his transfer on grounds of irreparable damage. No suggestion is made that the act is flagrantly illegal. The damage derives from hardship to the family and deprivation to the children likely to be suffered from lack of proper care and attention. Husband and wife served in the elementary education (Headmaster) and secondary education, respectively.

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The daily absence for long hours of both parents from the family home at Strovolos makes life difficult for every member of the family, no less for the applicant (husband) who has to convey every morning the two children to schools in the Aglandjia area before travelling to Kokkinotrimithia where he was posted, entailing a drive of approximately 20 minutes from Nicosia. In the course of the hearing the applicant acknowledged through his counsel that the difficulties would be reduced if the children were transferred to schools near their home. Nevertheless, the appli-

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5. cant and his wife chose to keep them at schools at Aglandjia, in order to accommodate the wishes of the children to remain near their friends. The one of the two children attends the first class of the Gymnasium and the other is a pupil of the Elementary School. The children attended schools in that area because their father before his transfer to Kokkinotrimithia served at a school at Aglandjia, a fact that made it easy for him to convey them to schools near the school where he served. It is apparent that part of the difficulties of the family are of their own choosing. Naturally damage or injury that is in the power of the applicant to avoid or remedy can hardly ever qualify as irreparable. The concept of irreparable damage connotes financial or moral injury, the effects of which are irreversible in the sense that they cannot be remedied by any of the reliefs available to a successful party in a recourse under Art. 146 or by administrative action sequential thereto.

10. Counsel for the Republic submitted that the application is ill-founded mainly for the following reasons:

20. (a) The joinder of the plaintiffs and their grievances in one action rendered the recourse abortive because of the separateness of their causes. For his part counsel for the applicant submitted that notwithstanding the separateness of the two decisions challenged, joinder was permissible because the acts emanated from the same authority and the repercussions stemming therefrom afflicted both applicants.

25. (b) The personal hardship to the applicant cannot be allowed to override public interest that dictates in the absence of exceptional circumstances that the administrative process should not be upset; and

30. (c) The damage to the applicant characterized to be of a moral nature does not qualify as injury that warrants the intervention of the Court by means of a provisional order. Counsel for the applicant replied that financial loss is not the only base upon which a claim for irreparable damage may be granted. The plea, he submitted, may be founded on irreparable moral damage too.

Unrelated causes of action by different parties cannot be joined in the same proceeding. This is the position under the Civil Procedure Rules adopted *mutatis mutandis* by Rule 18 (Supreme Constitutional Court Rules 1962) and the adjectival law applicable to administrative disputes (See Professor *Tsatsos*, Application for Annulment before the Council of State, 1951, page 357, para. 175). In accordance with the provisions of Ord. 9, r. 10, Civil Procedure Rule Law, misjoinder of parties does not inexorably invalidate the proceeding. The Court has discretion to deal with the matter in such a way as the interests of justice warrant. This position conforms to the general rule incorporated in Ord. 64 respecting the effects of non-compliance with the Rules (See also Ord. 13, r.7, with regard to the implications of misjoinder of causes of action). The relevant principles emerging from Greek caselaw identified by Professor *Tsatsos*, are broadly of a similar effect. Misjoinder does not entail the invalidation of the proceedings as such; the action survives with competence acknowledged to the Court to deal at least with the first cause sought to be reviewed. In this case the first complaint relates to the decision affecting the husband, the applicant, for a provisional order.

The question of misjoinder was not canvassed to any depth nor do I feel ready to pronounce on the implications of what appears to be a misjoinder by the combination in the same recourse of two separate and distinct acts. I shall, therefore, proceed to examine the remaining aspects of the application.

PUBLIC INTEREST

Administrative action is *ex hypothesi* intended to serve and promote public interest. Public interest is at the core of administrative action. Its impact must be assessed at every stage of review of administrative action. As Professor *Skouris* explains (Temporary Protection in the Domain of Public Law, 1979, p.66) public interest is a juridical concept that the Court must ponder *ex officio* at every stage including the stage at which preliminary relief is sought. Ponderation of public interest in the context of this application compels us to reflect upon the implications of sus-

5 pending the transfer of the applicant. This would inevitably have the effect of restoring the status quo ante. Applicant would have to return to his duties at the school where he previously served, his successor would have to be transferred to or be positioned in another school and furthermore provision would have to be made for his replacement at Kokkinotrimithia.

MORAL INTEREST.

10 Prejudice to moral interest legitimizes recourse to the Court and justifies in an appropriate case suspension of the decision pending determination of the action. Moral interest must not be assimilated to personal inconvenience or emotional upset. Moreover, it must not be confused with moral obligations to others. The prejudice, be it moral, must derive from the decision itself and must personally affect the subject of administrative action. I doubt
15 whether personal difficulties as such, of the nature complained of by the applicant in this case can ever justify injunctive relief. Nonetheless I shall confine myself to noting that nothing in the nature of irreparable damage has been established to justify the intervention of the Court at this stage, an intervention that would, unavoidably, upset the functioning of the Administration.

20 In view of the above conclusion it is unnecessary to debate the second hurdle that the applicant must inevitably overcome in every application for a provisional order, namely, to make out a serious or an arguable case on the merits.

25 The application is dismissed. Let there be no order as to costs.

*Application dismissed.
No order as to costs.*