

(1988)

1988 August 31

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NIOVI PAPAIOANNOU,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE DIRECTOR OF ELEMENTARY EDUCATION,
2. THE PERMANENT UNDER SECRETARY OF THE MINISTRY OF EDUCATION,

*Respondents.*

*(Case No. 601/86).*

*Acts or decisions in the sense of Article 146.1—Educational Officers—"Move" from one school to another, not involving change of status or residence—An internal measure of administration—Therefore it is outside the ambit of Article 146.1.*

*Words and phrases: "Appropriate authority" in section 2 of the Educational Service Law, 1969 (Law 10/1969).* 5

The facts of this case sufficiently appear from the judgment of the Court.

*Recourse dismissed.*

*No order as to costs.* 10

*Cases referred to:*

*Yiallourou v. The Republic* (1976) 3 C.L.R. 214;

*Karapataki v. The Republic* (1982) 3 C.L.R. 88;

*Nissiotou v. The Republic* (1985) 3 C.L.R. 1335.

**Recourse.**

Recourse against the decision of the respondents to transfer applicant from Lycavitos Elementary School to Phaneromeni Elementary School.

5 A.S. Angelides, for the applicant.

P. Clerides, for the respondents.

*Cur. adv. vult.*

A. LOIZOU P. read the following judgment. By the present recourse the applicant challenges the validity of:

10 (a) the decision of the respondent to transfer her from the Lycavitos Elementary School to the Phaneromeni Elementary School, and

(b) the decision of the respondent to dismiss her objection against the said transfer.

15 The applicant who is a Headmistress in Elementary Education was transferred from the Lycavitos Elementary School where she had been serving during the school year 1985-1986 to the Phaneromeni Elementary School as from the 19th September 1986.

20 The applicant objected to the said transfer or "move (μετακίνησης)" by letter dated the 10th September 1986. On the 18th September 1986 she was informed by letter of the Director of Elementary Education that her transfer was made for her own benefit as well as that of the school. As a result she filed the present recourse.

25 Before embarking on the grounds of law as argued on behalf of the applicant I must consider first the preliminary objections put forward on behalf of the respondent to the effect that the sub-judice decision is an internal measure of the administration and is

thus not amenable to review. See *Yiallourou v. Republic* (1976) 3 C.L.R. 214 at p. 220-221; *Karapataki v. Republic* (1982) 3 C.L.R. 88 at p. 94; *Nissiotou v. Republic* (1985) 3 C.L.R. 1335 at p. 1347.

I consider that such transfer is indeed an internal measure as it did not entail any change in the applicant's status or her place of residence but it was merely a "μετακίνηση" (move) as defined by s. 2 of the Public Educational Service Law 1969, (Law No. 10 of 1969) as amended by s. 2 of Law No. 4 of 1985, that is a posting within the same place of work which was well within the discretionary powers of the respondent. The recourse therefore fails. 5  
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It was also put forward on behalf of the respondent that the decision to move the applicant lost its executory character having merged in the decision of the respondent disposing of her objection. This is correct but as the applicant challenges also the decision of the respondent dismissing her objection, this argument is without substance. 15

In spite of the result arrived at I still feel that I ought to deal with one further issue raised in this recourse.

It was argued on behalf of the applicant that though the original decision regarding her transfer was taken by the Minister of Education as the appropriate authority, nevertheless she was informed of the outcome of her objection by the Director of Elementary Education who in the circumstances had no competence. 20

To begin with, from the aforesaid letter of the Director of Elementary Education of the 18th September 1986 it does not appear whether he actually disposed of her objection or whether he was merely informing her of its outcome. Nevertheless from reading the definition of "appropriate authority" and "Minister" in section 2 of Law No. 10 of 1969 I am lead to the conclusion that the Director of Elementary Education does fall within the definition of "appropriate authority". The matter was also considered in the case of *Republic v. Nissiotou* (supra) where the following was 25  
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stated at p. 1345.

5 "Moreover, having in mind the definitions of "appropriate  
authority ('αρμοδία αρχή') and of 'Minister' ('Υπουργός') in  
section 2 of the Public Educational Service Law, 1969 Law  
10/69), which have to be read together, we are of the opinion  
that for the purposes of Law 10/69 the 'appropriate authority'  
is the Minister of Education, acting usually through the Direc-  
tor-General of the Ministry of Education, and that the notions  
of Minister of Education and Ministry of Education have to be  
10 understood as including, also, every Department of such Min-  
istry and, consequently, as including, too, every Head of De-  
partment in the Ministry of Education."

15 For the reasons stated above this recourse fails and is hereby  
dismissed but in the circumstances there will be no order as to  
costs.

*Recourse dismissed.  
No order as to costs.*