

(1988)

1988 March 2

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. MILTIADES EROTOKRITOU,
2. MARTHA EROTOKRITOU,

Applicants,

v.

- THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF EDUCATION AND/OR
THE DIRECTOR-GENERAL,
 2. THE EDUCATIONAL SERVICE COMMISSION,

Respondents.

(Case No. 394/83).

*Competence—Reference of matter by a Minister to Council of Ministers—
As from such submission the latter became, in the circumstances, the sole
competent organ to deal with it.*

Due inquiry—Lack of—Ground of annulment.

*General principles of administrative law—Act consequential to an act an-
nulled by the Court—Should, also, be annulled.* 5

The applicants, who are husband and wife, were members of the Educational Mission in England. Due to problems concerning the mission, the Minister of Education, in March 1982, made a submission to the Council of Ministers, which as a result, decided to appoint a Ministerial Committee with instructions to look into the matter and report back to the Council. In 1983 the Council appointed a new Ministerial Committee for the same purpose. 10

Due to the inability of the members of the last committee to meet, the

Minister of Education, having consulted the other members of the Committee, instructed the Director-General of the Ministry to recall five members of the mission, including the applicants.

5 By means of this recourse, the applicants challenge (a) the decision to recall them, and (b) The decision to post them at Larnaca and, subsequently, at Xylophagou.

Held, *annulling the sub judice decisions*:

10 (1) Once the matter was referred to a hierarchically superior organ, i.e., the Council of Ministers, such organ was seized of the matter, and, irrespective of any power until then vested with the Minister of Education, it became the sole competent organ to deal with the matter. Sub judice decision (a) has, therefore, to be annulled for lack of competence.

(2) It has, also, to be annulled for lack of due inquiry (failure to examine applicants' personal circumstances and their relevant objections).

15 (3) Decision (b) is an act consequential to decision (a) and has for this reason to be annulled.

Sub judice decision annulled.
No order as to costs.

Recourse.

20 Recourse against the decision of the respondents to terminate applicants' participation in the Educational Mission in England and order them to return to Cyprus.

A. S. Angelides, for applicants.

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

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Cur. adv. vult.

STYLIANIDES J. read the following judgment. In the present recourse the applicants seek:-

1. Declaration of the Court that the decision of the Respondent 1, contained in his letter dated 11.8.83, whereby he (a) terminated the participation of the applicants in the Educational Mission in England and (b) ordered the applicants to return and/or be transferred to Cyprus is null and void and with no legal effect whatsoever. 5

2. Declaration of the Court that the transfer and posting of the applicants at Larnaca and subsequently to Xylophagou, decided by respondent 2, after the aforesaid act of respondent 1, is null and void and with no legal effect. 10

The applicants are husband and wife. They are both teachers in the Elementary Education.

In the United Kingdom there is a very large Cypriot community composed of Cypriots who immigrated to that country, most of whom are of Greek origin. In order to advance Greek education, learning of the Greek language and to assist the Cypriot Greek community of educational and cultural matters in England, an Educational Mission was established and teachers from Cyprus were posted in that Mission. 15

The applicants, following an advertisement in the press of vacancies in the Educational Mission in the United Kingdom, on 11.9.78 applied to the Director of Elementary Education for such post. They were selected and by letter dated 27.9.78 they were informed that they would serve until 31.8.80, that is for two school years. That letter contained, also, certain terms and conditions of their service. 20

The applicants, however, continued to serve under the same conditions after the expiration of the original term of their appointment. The extension of their service was not done regularly before or shortly after the expiration of each period. By letter dated 28.8.80 their service was prolonged until 31.8.81. By letter dated 1.2.82 their service was extended to 31.8.82 and their service until 31.8.83 was extended by letter dated as late as 23.2.83. 25 30

It appears that they continued to serve after the expiration of each period and only in the middle of the academic year the extension of the service was decided and communicated to them.

5 Due to problems that had arisen, concerning the Mission, the Ministry of Education made a submission to the Council of Ministers in March 1982. The Council of Ministers set up a Ministerial Committee composed of the Ministers of Education, Foreign Affairs, Interior, Finance and Presidency to study the problems arising from such submission and report to the Council.

10 This Committee met on 11.12.82, made preparatory work and fixed a new meeting for 15.3.83 to decide:-

(a) On the structure and composition of the Cyprus Educational Mission.

15 (b) The criteria of the selection of the members of the Mission.

(c) The administration and supervision of the Mission.

(d) The progressive renewal of the members of the Mission.

20 The Ministerial Committee met on 23.4.83. In pursuance of a decision of the sub-committee, a questionnaire was prepared and sent to the teachers of the Mission who would complete five or more years in the United Kingdom by September 1983 in order to ascertain whether there were any serious obstacles for their recalling to Cyprus for the School year 1983 - 1984.

25 In May 1983 the applicants sent their replies to that questionnaire, giving their reasons for the continuation of their service in the Mission.

The Ministerial Committee continued its inquiry and delibera-

tions. After a meeting on 8.6.84 further meetings were fixed but due to inability of the Ministers to attend, they were not held.

The Minister of Education on 1.8.83 made a submission to the Council of Ministers on the subject of the Mission.

The Council of Ministers on 2nd August decided that: "a Committee be appointed consisting of the Ministers of Education, Presidency and Foreign Affairs in order to study the said suggestions and submit a report to the Council." 5

Shortly afterwards, on 8.8.83, the Secretary to the Council of Ministers requested the Ministerial Committee set up on 2.8.83 to meet and report back to the Council without delay. 10

They neither met, nor reported to the Council of Ministers.

Due to the inability of the Ministers to meet, the Minister of Education on 11.8.83 instructed the Director-General of his Ministry to recall five members of the Mission, including the applicants. This he did "after consultation with the members of said Committee." 15

The Director-General of the Ministry, implementing the aforesaid instructions, wrote to the applicants, informing them that it was decided that their participation in the Educational Mission in the United Kingdom was terminated as from 31.8.83 and, consequently, on 1.9.83 they should return to their duties in Cyprus. 20

The applicants were at the material time on holidays in Greece and they took notice of this letter sometime later. They protested in vain. They returned to Cyprus and they were posted by Educational Service Commission at Larnaca and Xylophagou. 25

The applicants contend:-

(a) that the administrative act challenged was taken by an incompetent organ.

(b) that it lacks due or any reasoning and was taken without due inquiry.

The respondents in their opposition alleged that the applicants have no legitimate interest. The sub judge decision is an administrative act issued by a public authority. It was taken for a public purpose, for the composition of an Educational Mission in which the public has a vital interest. It created legal results affecting the position of the applicants. The applicants are possessed of the necessary legitimate interest to empower this Court to take cognizance of their recourse.

From the facts to which reference was made earlier on in this Judgment, it is plain that, irrespective of which was the competent organ prior to March 1982, on 18.3.82, after the submission of the Minister of Education, the Council of Ministers was seized with this matter and appointed a Ministerial Committee to study the problem and report back to the Council. The Council became the competent organ. Thereafter neither the Minister of Education, nor the Committee of Ministers were competent to take decision.

The Minister of Education, even if he had any power under the Law, he placed the matter in the hands of a superior collective organ, the Council of Ministers, who thereafter became the sole competent authority.

The sub judge decision emanates from the Ministerial Committee, though it was implemented by the Director-General of the Ministry on the instructions of the Minister of Education. The Ministerial Committee exceeded the authority vested in it by the decision of the Council of Ministers and thus the sub judge decision is faulty, being the result of excess and/or abuse of power.

For this ground only the sub judge decision to terminate applicants' service in the United Kingdom Educational Mission will be declared null and void.

Even if the Ministerial Committee were a competent organ,

again the sub judice decision is faulty, as there was no inquiry, or due inquiry into the personal circumstances of the applicants and their objections set out in response to the questionnaire sent to them in May 1983.

Furthermore no reasons are given, either in the directive of the Minister, or in the letter communicating the said decision to the applicants and none is found in the material in the file. 5

The second relief prayed refers to the posting of the applicants in Cyprus. It was an act consequential to the termination of their service in the United Kingdom Educational Mission, and in view of the annulment of the first act, it became unnecessary to examine the validity of these postings. 10

For the aforesaid reasons, the decision for the termination of the participation of the applicants in the Educational Mission in England and the order to return or be transferred to Cyprus, contained in the letter 11.8.83, is hereby declared null and void and with no legal effect whatsoever. 15

Let there be no order as to costs.

Sub judice decision annulled.
No order as to costs. 20