IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS LAMBROU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(*Case No.* 407/69).

Recourse under Article 146 *of the Constitution—It is made against the act or decision (or omission) which is its subject-matter—And not against any party as such—It follows that failure to file an opposition or the absence of any party from the proceedings need not prevent the Court from examining (and determining) the validity of the subject-matter of the recourse—See also* infra.

Recourse for annulment under Article 146 *of the Constitution—Absence of Respondent from the hearing of the case—Annulment of the* sub judice *decision notwithstanding such absence—Past attitude of Respondent towards Applicant and failure on his (Respondent's) part to file an opposition, taken into account in reaching the conclusion that the* sub judice *decision should be annulled.*

Reasoning of administrative acts or decisions—Due reasoning required—Sweeping statements such as: "Your application for transfer from Xeros to Larnaca cannot be granted for educational reasons", are utterly inadequate—Said refusal annulled as not being duly reasoned i.e. as being contrary to law and in excess and abuse of powers.

Abuse and excess of powers—Decision contrary to law—See supra.

In this case the Applicant, a master in the Secondary Education, complains against the decision of the Respondent Educational Service Committee whereby they refused to accede to his request dated April, 3, 1969 to be transferred from the Xeros Technical School to Larnaca town. After various delays (see *post* in the judgment) on the part of the Respondents, a letter was addressed by them to the Applicant dated November

24, 1969, which informed him that his aforesaid application of April 3, 1969, for a transfer to Larnaca could not be granted " for educational reasons". As a result the present recourse was filed on December 30, 1969, and it was duly served on January 3, 1970. No opposition was filed and nobody appeared on behalf of the Respondent at the hearing of the recourse on March, 10, 1970.

Annulling the refusal complained of, the Court:-

Held, (1). A recourse under Article 146 of the Constitution is made, in effect, against the act or decision (or ommission) which is its subject-matter; it is not made against any party, as such (see *Cyprus Transport Co. Ltd. and Another (No. 1) and The Republic* (1969) 3 C.L.R. 501). It follows that absence of any party need not prevent this Court from examining the validity of the decision subject-matter of the recourse (see *Tsatsos* on the Recourse for Annulment, 2nd edition p. 238).

(2) I think that it is, indeed, proper (in view, too, of the past attitude of the Respondents towards the application for transfer of the Applicant, see *Lambrou* v. *The Republic* (1969) 3 C.L.R. 497) to proceed at once to decide on the validity of the *sub judice* decision.

(3) Bearing in mind the grounds on which the Applicant has based his aforesaid application for transfer dated April 3, 1969 and looking upon such grounds in the light of the relevant principles referred to by this Court in *Petrondas and The Attorney-General* (1969) 3 C.L.R. 214, *Carayiannis and The Republic* (1969) 3 C.L.R. 341, and *Yiallourides and The Republic* (1969) 3 C.L.R. 379, and not having before me even an Opposition to the present recourse but only the sweeping statement that the Applicant's transfer could not be made for "educational reasons", I cannot but treat the *sub judice* decision as a not duly reasoned decision and, therefore, as being contrary to law and in excess and abuse of powers.

(4) The whole conduct of the Respondent in this matter and especially the failure to file an Opposition and defend this case so as to put before the Court all relevant material, is an element which I can duly take into account in annulling the *sub judice* decision; this view is in accordance with the spirit of the decisions of the French Council of State in the

cases of *Barel* (on May 28, 1954) and Coulon (on March 11, 1955).

Sub judice decision annulled. Order for £25 costs against the Respondent.

Cases referred to:

Petrondas and the Attorney-General, (1969) 3 C.L.R. 214;

Carayiannis and The Republic (1969) 3 C.L.R. 341;

Yallourides and The Republic (1969) 3 C.L.R. 379;

Cyprus Transport Co. Ltd. and Another (No: 1) and The Republic (1969) 3 C.L.R. 501;

The decisions of the French Council of State:
Barel (on May 28 1954);
Coulon (on March 11, 1955);

Cf. *Lambrou and The Republic* (1969) 3 C.L.R. 497.

Recourse.

Recourse against the decision of the Respondent not to transfer the Applicant from Xeros Technical School to Larnaca.

E. Lemonaris, for the Applicant.

No appearance for the Respondent.

The following judgment was delivered by:

TRIANTAFYLLIDES, J.: In this case the Applicant complains against the decision of the Respondent Educational Service Committee not to transfer him from the Xeros Technical School to Larnaca.

The history of the matter is shortly as follows:-

On the 7th August, 1968, the Applicant filed a recourse (272/68) against a decision by the Respondent "transferring" him from the Evrychou Gymnasium to the said Technical School.

In the body of the Application in such recourse there were stated reasons for which the Applicant should have been

transferred to Larnaca, instead of to Xeros. By the Opposition in that case (see its file *exhibit* 2) it was stated that the Applicant from 1966–1968 was posted at both the Evrychou Gymnasium and the Xeros Technical School and that all that had taken place was that he had been posted only at the Xeros Technical School. It was stated, further, that he could not be transferred to Larnaca—(where he had served in the past)—because the Larnaca School Committee, by a document quoted in the Opposition, and dated the 18th June, 1968, had requested that the Applicant should not be posted at Larnaca.

It might be observed at this stage that the said document is drafted in most vague terms, it is full of generalities and contains no cogent reasons at all.

On the 30th August, 1968, case 272/68 was withdrawn because the Applicant intended to take further steps, before the Respondent, in pursuing his request for a transfer to Larnaca.

On the 3rd April, 1969, the Applicant submitted a new application for transfer from the Xeros Technical School to Larnaca, on the ground of both family and financial reasons; he adopted thereby all that was stated in his previous recourse, 272/68.

On the 1st September, 1969, the Applicant, having not heard anything in reply to his application, filed a new recourse, 281/69. (His said application is *exhibit* 3 in the file of recourse 281/69, which is *exhibit* 3 in the present proceedings).

Case 281/69 was heard on the 19th November, 1969 and it was then found out that the aforementioned application of the Applicant, dated the 3rd April, 1969, had not been dealt with up to the date of the filing of Case 281/69.

As a result judgment was given in that case*—in the presence of counsel for Respondent—by means of which the Respondent was found guilty of an omission to deal with, and reply, in due time to the application for transfer of the Applicant.

Eventually, on the 24th November, 1969, a letter was addressed by the Respondent to the Applicant (*exhibit* 1) which informed him that his said application could not be granted "for educational reasons".

* Reported in (1969) 3 C.L.R. 497.

As a result the present recourse, 407/69, was filed on the 30th December, 1969, and it was served on the Respondent on the 3rd January, 1970.

On the 21st January, 1970, when the case came up for directions, it was fixed, in the presence of counsel for Respondent, for hearing at 10 a.m. on the 10th March, 1970—today—and it was directed that the Opposition be filed within a month's time. This was not done; and, so, by notice dated the 2nd March, 1970—copies of which were sent to both the Respondent and to its counsel—it was fixed for today, at 9 a.m. for directions "in view of the failure of Respondent to file the Opposition".

No Opposition was filed, and until 9.25 a.m. this morning nobody appeared on behalf of the Respondent. In the circumstances it was directed that the case should proceed to be heard at 10 a.m. today, as fixed.

A recourse under a jurisdiction such as that provided for under Article 146 of the Constitution is made, in effect, against the act or decision which is its subject-matter; it is not made as against any party, as such (see, also, *Cyprus Transport Co. Ltd. and Another (No. 1) and The Republic* (1969) 3 C.L.R. 501). It follows from this premise that absence of any party need not prevent the Court from examining the validity of the subject-matter of a recourse (see Tsatsos on the Recourse for Annulment, 2nd edition, p. 238).

Having, therefore, heard counsel for the Applicant and nobody having, as yet, appeared for the Respondent, I think that it is, indeed, proper—(in view, too, of the past attitude of the Respondent towards the application for transfer of the Applicant and the failure of Respondent to even file an Opposition in the present recourse) to proceed, at once, to decide on the validity of the *sub judice* decision on the material that exists before me and in spite of the absence of the Respondent from today's hearing.

Bearing in mind the grounds on which the Applicant has based his request for a transfer, and looking upon such grounds in the light of some of the relevant principles referred to by this Court in *Petrondas* and *The Attorney-General* (1969) 3 C.L.R. 214, *Carayiannis* and *The Republic* (1969) 3 C.L.R. 341, and *Yiallourides* and *The Republic* (1969) 3 C.L.R. 379, and not having before me even an Opposition to the present

recourse but only the sweeping statement that the Applicant's transfer could not be made "for educational reasons" (as set out in *exhibit* 3), I cannot but treat the *sub judice* decision, on the basis of the material at present before me, as a not duly—in the circumstances—reasoned decision, as being contrary to law and in excess and abuse of powers.

As a matter of fact the whole conduct of the Respondent in this matter, and especially the failure to file an Opposition and defend this case so as to put before the Court all relevant material, is an element which I can duly take into account in annulling the *sub judice* decision; this view is, I think, in accordance with the spirit of the decisions of the French Council of State in the cases of *Barel* (on the 28th May, 1954) and *Coulon* (on the 11th March, 1955).

The decision of Respondent, challenged by this recourse, is, therefore, declared to be *null* and *void* and of no effect whatsoever. It is now up to the Respondent to deal with this matter in compliance with all relevant principles.

Respondent to pay to the Applicant £25.- costs.

Sub judice decision annulled.
Order for costs as above.