

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS PAPAS,

Applicant,

and

THE CYPRUS GRAIN COMMISSION,
THROUGH ITS CHAIRMAN,

Respondent.

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(Case No. 196/73).

*Executory act or decision—Decision transferring a public officer—
Taken after a previous same decision which had been suspended
upon the application of the officer concerned (the applicant in the
present recourse)—And by reconsidering the whole subject of
transfer, and examining all new facts that came into existence
since the previous suspended decision as aforesaid—It is a new
executory decision which can be made the subject of a recourse
under Article 146 of the Constitution.*

*Recourse under Article 146 of the Constitution—Executory acts or
decisions which alone can be challenged by such recourse—Transfer
of a public officer etc. etc.—See supra.*

*Administrative acts or decisions—Reasoning—Need for due reasoning
of a decision reached in exercise of discretionary powers—Reasons
may be supplemented by material in the relevant file—Transfer
of a public officer—Decision duly reasoned.*

Reasoning of administrative acts or decisions—See supra.

*Public Officers—Transfers—Decision transferring a public officer—
Trade Union status of the officer concerned—Not put before the
respondent Commission though he had been afforded every
opportunity to put forward his case—In the circumstances it cannot
be said that no reasonably necessary inquiry was conducted into
the said matter (Iordanou v. The Republic (1967) 3 C.L.R. 245
distinguished)—Cf. also infra; cf. also supra.*

*Transfers of public officers—Judicial control of—Principles upon
which the Court will interfere with the exercise of discretionary
powers by administrative bodies in case of transfers.*

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Inquiry—Due inquiry into all material factors—See supra.

Discretionary powers vested in the administration—Due inquiry into all relevant factors—Transfers of public officers—Judicial control—Principles applicable—See further supra.

By this recourse under Article 146 of the Constitution the applicant, a public officer, seeks the annulment of the decision of the respondent Commission by which he was transferred from Famagusta to Limassol.

On a preliminary point taken by counsel for the respondent, the Court ruled that the *sub judice* transfer, following a previous one but suspended at the request of the present applicant, is in the circumstances a new executory decision and that, consequently, the recourse directed against such decision is maintainable. Proceeding to deal with the substance of the case, the Court held that the said decision complained of was a duly reasoned decision reached after a due inquiry into the material facts and dismissed the recourse.

Held, (1) The decision complained of in this case, transferring the applicant, though taken after a previous same decision which had been, however, suspended at the applicant's request, is none the less in the circumstances a new executory decision taken by the respondent Commission after reconsidering the whole subject of transfers and examining all new facts that came into existence since the previous suspended decision as aforesaid. It follows that a recourse lies against the *sub judice* decision.

(2) The decision complained of is a duly reasoned decision regard being had that the reasons therefor may be supplemented by material in the relevant file.

(3) Moreover, the said decision was reached after full inquiry into the material factors. It is true that the Trade Union status of the applicant was not put before the respondent Commission; but the applicant did not think fit to put this matter before the Commission although he was afforded every opportunity to do so (*Iordanou v. The Republic* (1967) 3 C.L.R. 245, *distinguished*).

Cases referred to:

Vafeadis v. The Republic, 1964 C.L.R. 454, at pp. 464–465;

Sofocleous v. The Republic (1972) 3 C.L.R. 56, at p. 60;
Sendonaris v. The Greek Communal Chamber, 1964 C.L.R. 300;
Iordanou v. The Republic (1967) 3 C.L.R. 245, at pp. 254–255.

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Recourse.

Recourse against the decision of the respondent to transfer applicant from Famagusta to Limassol.

T. Papadopoulos with *P. Ioannides*, for the applicant.

C. Velaris, for the respondent.

A. Angelides, for the interested party.

The following judgment was delivered by:—

A. LOIZOU, J.: By the present recourse the applicant seeks the annulment of the decision of the respondent Commission, by which he was transferred from Famagusta to Limassol.

The applicant was appointed in the service of the respondent Commission upon its establishment in 1954, having previously served in the Government service since 1944. On the 5th May, 1964 he applied (*exhibit 5*) for promotion to the post of Area Manager, as a vacancy had been created by the retirement of the then Area Manager of Nicosia. He was, in fact, promoted, but it was orally suggested to him that he would be posted as Area Manager at Paphos. Upon this, and actually on the 13th July, 1964 (*exhibit 1*, bue 88) he wrote requesting that at that initial stage of his new office be posted to Famagusta instead of Paphos for two reasons: The first one was, that if posted to Paphos he would be receiving £9.— per month less, inspite of the increase in salary that his promotion had brought him, as he would not be eligible for rent allowance and his wife's house at Ayios Kassianos quarter in Nicosia was, on account of its proximity to the Turkish quarter, impossible to be let, whereas if posted to Famagusta his family would still reside in Nicosia. The second one was that the Area Manager of Famagusta who came from Paphos, wished to be transferred there for financial reasons and concluded by saying that he would be ready in future to serve anywhere in the Republic, if the interests of the Commission so required.

By letter dated the 21st July, 1964 (*exhibit 1*, blues 89–90) he was assigned the duties of an Area Manager and posted to

Famagusta, on the conditions appearing therein, which included the posting in any place in the Republic (condition 6) which the applicant by his letter of the 22nd July, 1964 (*exhibit 6*) accepted. By the 25th August, 1964, he leased a house at Famagusta and has lived there with his family ever since.

On the 6th July, 1972, the respondent Commission considered the transfers of Area Managers, and as it says in its minutes 535/5 (*exhibit 1*, blue 104)—“having studied the service of each Area Manager in the district offices and the applications of the Area Managers Ioannides and Ierides serving in Larnaca and Limassol, respectively and having heard the views of the Manager, decided that Costas Papas, be transferred from Famagusta to Limassol and that Mr. Ioannides be informed that his application for transfer from Larnaca to Nicosia was not possible to be acceded to. The post of Famagusta to be offered by the Chairman to Mr. Ioannides and if he accepted it to be transferred to Famagusta, then Ierides to be transferred to Larnaca from Limassol. If Ioannides did not accept, then Ierides to be transferred to Famagusta.”

On the 18th July, 1972 by letter (*exhibit 1*, blue 105) the decision of the Commission for the transfer of the applicant to Limassol was communicated to him, the transfer to take effect as from the 1st September, 1972, on which date Mr. Ierides would assume duties in Famagusta.

The applicant, having first explained orally the reasons why he was asking for a reconsideration of the decision for his transfer to Limassol, put the grounds upon which he was basing his said request, in writing which may be summed up as follows (*exhibit 1*, blues 107–106):—

- (a) He would have to pay higher rent than what he was paying in Famagusta and on account of the fact that his wife owned a house in Nicosia rented at £10.— per month, he was not entitled to rent allowance and he would suffer financial loss.
- (b) His son was serving in the National Guard as a Cadet Officer in the Artillery Camp at Karaolos near Famagusta and living with him, and if transferred, he would have to make other arrangements for his son that would cost him a considerable amount of money, in addition to the other financial burdens brought about by the transfer.

- (c) In addition to the normal duties pertaining to the office of Area Manager, as such, in Famagusta he had to supervise the loading and unloading of ships, and had become conversant with Customs Regulations and the Regulations regarding the preparation and interpretation of charter parties and other shipping documents, and his services, on account of such specialized knowledge, were more essential in Famagusta than in any other district, and,
- (d) he had been away from his home town for eight years and it would only be fair to be transferred to Nicosia and not to a place of less importance.

The request of the applicant for reconsideration of the decision for his transfer to Limassol came up before the respondent Commission at its meeting of the 3rd August, 1972 (minutes 536/7, exhibit 1, blue 107). The respondent Commission, having been informed by its chairman of what transpired between him and the applicant at their meeting of the 19th July, 1972, called the applicant, so that he would explain also orally the reasons upon which he based his application for a reconsideration of their decision. It appears that he advanced the following reasons:—

- (a) On account of his experience in relation to the loading and unloading, his transfer from Famagusta might possibly affect adversely the normal functioning of the services of the Commission and in addition, being one of the senior Area Managers he should serve in a district where the standard of services is higher.
- (b) He had more overtime benefits than other Area Managers, as the needs of Famagusta presuppose more hours of work and that the question of overtime did constitute necessarily a matter for the application of a measure of transfers.
- (c) For financial reasons and especially the possibility of payment of higher rent in Limassol, the additional expenses regarding the maintenance of his son serving in the National Guard at Famagusta and that the said burdens would cause him heavy financial difficulties.

Mr. Ierides was then invited and expressed his family and other service reasons and supported that his transfer to Famagusta was justified and fair.

The Commission having heard the interested parties and the views of the Manager, reached the following conclusion:—

- “(i) The Commission has the absolute competence and responsibility to decide about the structure and the manning of each district office and afford equal opportunities without discrimination to all its servants, taking into consideration all the factors from the point of view of preventive, organizational reasons, etc.
- (ii) The transfers were considered for the pure needs of the service and for the benefit of the well meant interests of the Commission and its servants.
- (iii) In the present case and especially in the case of Mr. Papas, they had to take into consideration the financial burdens that he would suffer on account of the special family circumstances that were mentioned by him, excepting the other reasons which were not acceptable.
- (iv) The Commission for reasons of good will on the one hand and the special circumstances on the other regarding the additional burdens of Mr. Papas for the maintenance of his son in the National Guard, decided that the decision taken for the transfer of Messrs. Papas and Ierides be suspended and that the matter be brought before the Committee in May–June, 1973. Mr. Papas to be simply informed that his transfer for the time being was suspended”.

On the 14th August, 1972, the applicant was informed accordingly (*exhibit 1*, blue 110). On the 17th March, 1973 he applied by letter (*exhibit 1*, blue 111) for transfer from Famagusta to Nicosia, repeating therein the fact that he had served for nine years away from his home town, that he was an Area Manager Class I and consequently he should be posted to a post analogous to his status, and that his wife was the owner of a house which yielded £10.– per month, whereas at Famagusta he was paying £26 per month rent. Nothing was said about his son, as, apparently, he would be completing his national service by the end of July. This letter of the applicant was considered by the respondent Commission at its

meeting of the 22nd March, 1973. As it is stated in its minutes, in reconsidering the subject of the transfers, they had in mind the years of service of each Area Manager, the towns at which they served, as well as the service and the other reasons relating to the abilities of each one of them and the desirability of affording equal opportunities to all of them. It heard the views of the Manager and decided that it was not possible to accede to the request of Mr. Papas for transfer to Nicosia, and that it was in the legitimate interest of the Commission and the Area Managers that Mr. Papas should be transferred to Limassol and Mr. Ierides from Limassol to Famagusta as from the 1st July, 1973. There was a dissent to the above decision by one of the members of the respondent Commission, namely, Mr. Thrasivoulides, but only to the extent that the question of the transfer of Mr. Ioannides from Larnaca to Nicosia should also be examined. (See *exhibit 2*). The applicant was informed about this decision by letter dated the 28th March, 1973 (*exhibit 3*) and the present recourse, seeking its annulment, was filed on the 9th June, 1973.

Considerable argument has been advanced as to whether the *sub judice* decision was an executory one or merely confirmatory of a previously taken executory decision, in which case, being devoid of executory character it could not be the subject of a recourse under Article 146 of the Constitution or the recourse as such, if taken as being directed at the original decision, is out of time. It was urged that the respondent Commission, having suspended the execution of the original decision for a definite period, at its meeting of the 22nd March, 1973, it only re-examined the reasons for the continuation or not of such suspension, as opposed to the re-examination of the decision for transfer itself.

Having considered the *sub judice* decision (*exhibit 2*) I have come to the conclusion that it is a new executory one. This finding is borne out from the contents of the decision itself wherein it is stated that they reconsidered the subject of the transfers and that they had in mind a number of factors in dismissing the applicant's request for a transfer to Nicosia and confirming their previous decision for his transfer to Limassol. In actual fact, it was that letter of the applicant that brought about the meeting of the Commission some months earlier than originally planned, and the safest inference to be drawn, is that in reconsidering the matter, they examined all new

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facts that came into existence since the time their previous decision was taken, thus determining the legal position as it existed at the time (see *Vafeadis v. The Republic*, 1964 C.L.R. p. 454 at 464).

I turn now to the grounds of law relied upon by the applicant in support of this recourse. The first ground is that the *sub judice* decision is not duly reasoned, the reasoning being insufficient and vague.

No doubt, as repeatedly stated in judgments of this Court, the formulation of the reasoning of a decision reached in exercise of discretionary powers, and which is subject to judicial control, must be clear, and it is clear so long as the concrete factors upon which the administration based its decision for the occasion under consideration, are specifically mentioned, in such a manner, as to render possible its judicial control. (See *Safocleous v. The Republic* (1972) 3 C.L.R. 56, at p. 60). In cases as the present one, the reasoning of a decision, may be supplemented by the material in the file, and in my view, the reasoning for the previous decision, also supplements the reasoning of the new one. As far as the material in the file is concerned, we have also a memorandum prepared by the Manager of the respondent Commission (*exhibit 1, blues 153-152*), where the general principles that should govern transfers are particularized by reference to the circumstances of each individual officer concerned. I have no difficulty in holding that the *sub judice* decision is duly reasoned.

The next ground is the lack of due inquiry. This ground is invoked in relation to the Trade Union status and activities of the applicant, for which no mention is made in any of the relevant minutes of the respondent Commission. In support of this ground, I was referred to the cases of *Sendonaris v. The Greek Communal Chamber*, 1964 C.L.R. p. 300 and *Iordanous v. The Republic* (1967) 3 C.L.R. p. 245 and in particular to pages 254-255, where it was stated that the Trade Union status of a public officer was a very material factor to be taken into consideration when deciding whether or not to transfer such an officer. With respect to counsel, I cannot agree with the submission that the respondent Commission has not proceeded in a manner in which it was capable of ascertaining in full the relevant facts of the case and that it has not conducted the reasonably necessary inquiry into the said facts. On the contrary, it has afforded to the applicant every opportunity to

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put forward his case before them, both in writing and orally and at no time he himself mentioned that his transfer from Famagusta to Limassol would interfere with his status as a trade union official. On the other hand, in *Iordanous* case (*supra*), it is apparent that the applicant in that case had expressly referred to his trade union status in two written representations made to the Public Service Commission, and yet, in their minutes presumed to set out in a summary form the substantial considerations which they weighed in reaching the decision to transfer the applicant, no reference was made at all to the trade union aspect of the matter, as stated in the judgment of the Court at page 256.

In the result I wish to reiterate the principles upon which this Court will interfere with the exercise of discretion by administrative bodies in cases of transfer; they have been set out in the cases of *Sendonaris v. The Greek Communal Chamber* and also *Vafeadis v. The Republic (supra)* where at page 465 it is stated that "the exercise of the discretion of the administration in relation to the reasons dictating a transfer, is not subject to the control of an Administrative Court, except if there exists an improper use of the discretionary power or a misconception concerning the factual situation, or the non-taking into account of material factors".

Guided by the aforesaid principles, I have not found any cause for interfering with the exercise of the discretion of the respondent Commission in the *sub judice* decision, which was reasonably open to it to be taken.

In the circumstances, the present recourse is dismissed with no order as to costs.

Application dismissed.
No order as to costs.