

1974
April 23
—
ALEXANDROS
MAVROMATIS
v.
EDUCATIONAL
SERVICE
COMMITTEE

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ALEXANDROS MAVROMATIS,

Applicant,

and

THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(Case No. 405/73).

*Educational Officers—Transfer—Trade Union status of applicant—
Duly considered—Iordanou v. The Republic (1967) 3 C.L.R.
245, distinguished.*

*Educational (or Public) Officers—Transfer—Discretionary powers—
Judicial control—Principles upon which an Administrative Court
will interfere with the exercise of discretion by administrative
bodies in cases of transfer—Well settled—Restated.*

*Transfers—Educational (or Public) Officers—Discretion—Judicial con-
trol of—Principles applicable—See supra.*

*Discretionary powers—Transfers of Public (or Educational) Officers—
Judicial control—Principles applicable—Restated—See supra.*

*Trade Union—Trade union status—Educational (or Public) Officer—
Transfer of officer engaged in the affairs of his Trade Union—
See supra.*

*Administrative acts or decisions—Due reasoning required—Must be
clear—Concrete factors upon which the administration based its
decision must be specifically mentioned—In such a manner as to
render possible its judicial control (see Sofocleous v. The Republic
(1972) 3 C.L.R. 56, at p. 60)—But there are cases where the
reasoning of a decision may be supplemented by the material in
the file or, even, by the reasoning for a previous decision—Deci-
sion to transfer the applicant in the present case—A duly reasoned
one—Inter alia, because reasoning therefor is supplemented by
the reasoning for a previous decision.*

Reasoning of administrative decisions—Due reasoning—Must be clear and specific—It may be supplemented by the material in the file, or, even, by the reasoning for a previous decision—See immediately hereabove.

1974
April 23
—
ALEXANDROS
MAVROMATIS
v.
EDUCATIONAL
SERVICE
COMMITTEE

By this recourse the applicant, who is Headmaster in the Secondary Education, seeks the annulment of the decision of the respondent Educational Service Committee to transfer him from the Third Gymnasium, Famagusta town, to the Gymnasium of Eyialousa village (in the District of Famagusta). At all material times the applicant was the Secretary of the District Committee of OELMEK, Famagusta branch (a Trade Union comprising the Headmasters and Schoolmasters, in the Secondary Education).

The main grounds on which the recourse was based are as follows:—

- (A) In transferring the applicant, the respondent Committee deprived him of his right, safeguarded under Article 21.2 of the Constitution, to enter into association with others, including the right to form and to join trade unions for the protection of his interests. In his capacity as a Member and Secretary of the District Committee of OELMEK, Famagusta, (*supra*), the applicant was actively participating in the activities of the said union and as a result of his transfer he is restrained from doing so. If the respondent Committee failed to consider this fact, they are wrong in law; on the other hand, if they have considered it, then they have misconceived the facts.
- (B) The *sub judice* decision is not duly reasoned or at all.
- (C) The respondent Committee acted on a misconception of fact in that they did not take into consideration the personal circumstances of the applicant, namely the educational needs of his children.

None of the above arguments appeared convincing to the learned Judge who dismissed the recourse and:—

Held, (1) There is no doubt that the respondent Committee in transferring the applicant took into account his trade union status (*Jordanou v. The Republic* (1967) 3 C.L.R. 245, *distinguished*). Moreover, it is evident from the material on record that

1974
April 23

—
ALEXANDROS
MAVROMATIS
v.
EDUCATIONAL
SERVICE
COMMITTEE

the Committee duly considered the other personal circumstances of the applicant, including the problem in connection with his child.

(2) (A) As repeatedly stated in judgments of this Court, the formulation of the reasoning of a decision reached in exercise of discretionary powers must be clear and it is clear so long as the concrete factors upon which the administration based its decision are specifically mentioned in such a way and manner as to render possible its judicial control (see *Sofocleous v. The Republic* (1972) 3 C.L.R. 56, at p. 60).

(B) There are, however, cases where the reasoning of a decision may be supplemented by the material in the file; and furthermore, the reasoning for a previous decision may, also, supplement the reasoning of the new one. In the present case the applicant was originally transferred to Ayios Amvrosios (Kyrenia District) and as it appears from the file this transfer was effected for educational needs; upon objection taken by the applicant to the said transfer, the respondent Committee re-considering the case revoked the said transfer to Ayios Amvrosios and took the *sub judice* decision whereby the applicant was transferred to Eyialousa village instead. It is clear, therefore, that the reasoning of the new decision is being supplemented in the previous one.

(C) Consequently, I have no difficulty in holding that the *sub judice* decision to transfer the applicant to Eyialousa village is duly reasoned.

(3) (A) In conclusion, I must refer to the principles upon which this Court will interfere with the exercise of a discretion by administrative bodies in cases of transfer. These principles have been set out in the cases of *Sentonaris v. The Greek Communal Chamber*, 1964 C.L.R. 300 and *Vafeadis v. The Republic*, 1964 C.L.R. 454, at p. 465, (per Triantafyllides, J. as he then was). The effect of these principles is that the reasons dictating a transfer are not subject to the control of an Administrative Court except if there exists an improper use of the relevant discretionary powers, or a misconception concerning the factual situation, or the non-taking into account of material factors.

(B) In the present case I do not find any cause for interfering with the exercise of its discretion by the respondent Educational Service Committee in reaching its decision to

transfer the applicant. It was reasonably open to the said Committee to take the decision complained of in these proceedings.

Recourse dismissed. No order as to costs.

1974
April 23
—
ALEXANDROS
MAVROMATIS
v.
EDUCATIONAL
SERVICE
COMMITTEE

Cases referred to:

Sentonaris v. The Greek Communal Chamber, 1964 C.L.R. 300;

Vafeadis v. The Republic, 1964 C.L.R. 454, at p. 465;

Sofocleous v. The Republic (1972) 3 C.L.R. 56, at p. 60;

Jordanou v. The Republic (1967) 3 C.L.R. 245, at pp. 254-255.

Recourse.

Recourse against the decision of the respondent to transfer applicant from the Third Gymnasium of Famagusta to Eyialousa Gymnasium.

L. Papaphilippou, for the applicant.

A. Angelides, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:-

MALACHTOS, J.: The applicant in this recourse applies for a declaration of the Court that the act and/or decision of the respondent to transfer him to the Gymnasium of Eyialousa is null and void and of no legal effect whatsoever.

The salient facts of the case are as follows:

The applicant is a philologist in the Educational Service, Secondary Education. He was first appointed in 1965 and was posted to the First Gymnasium Famagusta. In 1972 he was transferred to the Third Gymnasium Famagusta, which was newly established.

The Head of the Department for Higher and Secondary Education by his letter to the Chairman of the Educational Committee dated 27.7.73, *exhibit 9*, recommended the transfer of the applicant for educational needs. The Committee at its meeting of the 27.7.73, decided to transfer the applicant to Ayios Amvrosios Gymnasium, Kyrenia District.

The relevant minutes (*exhibit 8*) read as follows:—

“ *Transfers of Educational Officers* ”

Present: Mr. K. Hji Stephanou head of the Higher and Secondary Education.

The Committee having in mind —

- (a) the provisions for Transfers of Educational Officers (Teaching Personnel) (Appointments, Postings, Transfers, Promotions and Connected Subjects) Regulations, 1972;
- (b) the educational needs as they have been expressed by the head of the Department;
- (c) the applications for transfers by the educational officers and the reasons put forward by them, decides as follows:
 - A.
 - B.
 - C.
 - D. The following educational officers are transferred on the recommendation of their Head of Department (see documents TAME dated 27.7.73, for educational reasons:

Philologists:

Alexandros	Third	Gymnasium
Mavrommatis	Gymnasium	of Ayios
	Famagusta	Amvrosios”.

The applicant objected against his transfer by letter dated 30.7.73 (blue 39 of *exhibit 6*, his personal file), where he states the reasons of his objection as being the fact that he is a permanent resident of Famagusta and his own house where he resides is opposite the Third Gymnasium of Famagusta. This protest was made in accordance with regulation 22 (1) of the Educational Officers Regulations, 1972 which reads as follows:

“ 22 (1) Any educational officer may, within ten days from the date of communicating to him his transfer, or from the date on which such transfer is published, submit to the appropriate organ an objection in writing duly

reasoned. Up to the examination of his objection he is bound to serve in the school to which he has been transferred”.

1974
April 23

ALEXANDROS
MAVROMATIS
v.
EDUCATIONAL
SERVICE
COMMITTEE

In a second letter of protest to the respondent Committee dated 6.8.73 (blue 40 of *exhibit 6*), he gives as additional grounds the fact that one of his three sons, who is a pupil of the elementary school, is problematic in arithmetic and needs special supervision, and that another one of his sons attends afternoon classes in an institute.

In a third letter of protest dated 21.8.73 (blue 41 of *exhibit 6*), he adds the fact that he is the secretary of the Famagusta District Committee of the Organization of Greek Educational Officers, Secondary Education of Cyprus (OELMEK) and states that his transfer outside Famagusta town causes him inconvenience as to the execution of his duties as such, and, furthermore, his transfer outside the Famagusta District deprives him of his right to be a resident of the said District and so automatically he is deprived of the office of the secretary of the District Committee.

The Educational Committee at its meeting of the 1.7.973, as it appears from its Minutes, *exhibit 7*, decided to transfer him to Eyalousa village, Famagusta District, and by letter dated 18th September, 1973 (blue 42 of *exhibit 6*) informed him accordingly. The relevant minutes (*exhibit 7*) read as follows:

“Transfers

Further to its decision of the 27.7.73 the Committee resumes on the subject of transfers.

The Committee having in mind -

- (a) the provisions for transfers of the Educational Officers Regulations of 1972;
- (b) the educational needs of schools;
- (c) the applications for transfers of educational officers, the objections submitted for already made transfers, as well as the reasons presented by those concerned, decides the following transfers as from 21.9.73:

A.

1974
April 23

—
ALEXANDROS
MAVROMATIS
v.
EDUCATIONAL
SERVICE
COMMITTEE

B. The following educational officers, who submitted objections for their previous transfer, are transferred as follows:

Philologists:

Mavronmatis	Ayios Amvrosios	Eyialousa
Alexandros	Gymnasium	Gymnasium”.

The applicant as a result on the 25th September, 1973, filed the present recourse.

The application is based, as stated therein, on the following grounds of Law:

1. The respondents acted contrary to Article 21.2 and 3 of the Constitution in that by the transfer of the applicant are aiming to remove him from his organic post as a district secretary of OELMEK.
2. The respondents acted on an obvious misconception of fact in that they did not take into consideration the personal circumstances of the applicant and in particular the fact that he is the District Secretary of OELMEK; that his son Zacharias is problematic and he is in need of supervision by a special teacher and that his other son attends afternoon classes in an institute and also that he is the owner of a house in Famagusta.
3. The respondents acted in excess or abuse or contrary to regulation 16 of the Educational Officers Regulations 1972.
4. The respondents acted contrary to section 39 of the Educational Service Law 1969 (10/69); and
5. The decision complained of is not duly reasoned or at all.

At the hearing of the recourse counsel for applicant in support of the allegations contained in ground 2 of the grounds of law, produced *exhibits* 1 to 5. *Exhibit* 1 is a confirmation by a teacher of mathematics to the effect that the applicant's son Zacharias has got a problem to follow and learn the lesson of mathematics and that he supervises and assists him in his work. He further states in the said *exhibit* that in his opinion this problem of the son of the applicant is due to his young age when admitted to the first class of the elementary school: He was in fact then 5½ years of age.

Exhibits 2 and 3 are notifications of the election and constitution of the new Famagusta District Committee of OELMEK verifying the fact that the applicant was elected as its secretary. *Exhibits 4 and 5* dated 3.1.74 and signed by the Chairman of the District Committee of OELMEK, certify that the applicant as from 1.11.72, is the Secretary of the said District Committee and that by his transfer outside the town of Famagusta his contribution to the functioning of the said Committee is substantially non-existent and consequently all the activities of the Committee have been detrimentally affected.

The main argument of counsel for applicant is that the respondent Committee in transferring the applicant deprived him of his right under Article 21.2 of the Constitution which provides that "every person has the right to freedom of association with others, including the right to form and to join trade unions for the protection of his interests". As a member of the District Committee of OELMEK and Secretary thereof, the applicant is actively participating in the activities of the said union and as a result of his transfer he is restrained from doing so. Counsel for applicant submitted that if they failed to consider this fact, then they are wrong in law. On the other hand, if they have considered it then they misconceived the facts. In support of his argument he relied on the case of *Iordanou v. The Republic* (1967) 3 C.L.R. page 245.

In that case, which was a case of transfer, it was decided that the Trade Union status of a public officer was a most material consideration to be given due weight. The existence of the proper and unhindered functioning of a Trade Union of public officers—such as the Cyprus Civil Service Association—is not only a matter of fundamental rights and liberties (see Article 21 of the Constitution), but it is also a matter directly related to the proper functioning of the Public Service as such. At page 254 of the report Mr. Justice Triantafyllides, as he then was, had this to say:

"In my opinion, the existence and the proper and unhindered functioning of a trade union of public officers—such as the aforementioned Association—is not only a matter of fundamental rights and liberties (see Article 21 of the Constitution), but it is also a matter directly related to the proper functioning of the public service, as such; *inter alia*, it is clear, from the material before the Court in this Case, that there is close collaboration between the

1974
April 23
—
ALEXANDROS
MAVROMATIS
v.
EDUCATIONAL
SERVICE
COMMITTEE

1974
April 23

ALEXANDROS
MAVROMATIS

v.

EDUCATIONAL
SERVICE
COMMITTEE

Government side and the Association on important matters affecting the whole structure of the public service.

I take the view that as a matter of proper administration, directly related to the proper functioning of the public service, those public officers who actively participate in the affairs of their trade union should not be transferred away from Nicosia—where is the seat of the trade union—and be, thus, prevented from attending fully to their trade union duties, unless there exist compelling reasons to the contrary; it follows that the Public Service Commission, in each case, has to weigh the needs of a particular Department as against the wider interests of the public service in general (which are involved in the proper functioning of the public officers' trade union) and has to decide, in the light of all relevant circumstances, which should prevail, giving due reasons in support of its relevant decision".

There is no doubt that the respondent committee in transferring the applicant to Ayios Amvrosios did not consider at all the fact that the applicant was the Secretary of the Famagusta District Committee of OELMEK. However, this factor, together with all other factors put forward by the applicant, was taken into account when they considered his objection to such transfer. In fact, as a result they reconsidered their said decision and decided to transfer him to Eyialousa within the aforesaid district. This amounts to revocation of their previous decision and the issue of a new one.

The *Jordanou* case, however was decided on its own merits and is distinguishable from the case in hand in that the applicant in that case was at all material times a member of the Secretariat of the Cyprus Civil Service Association and in his said capacity was a member of a sub committee consisting of representatives of the Government and of the Association, which sub committee was dealing with schemes of service of the public officers. Furthermore, as a member of the Central Committee of the Cyprus Civil Service Association in order to discharge his duties he had to reside in Nicosia. In the present case the applicant is a secretary of a District Committee. Even the members of the Central Committee of OELMEK do not have to be residents of Nicosia. Furthermore in that case there was nothing in the minutes of the Public Service Commission that the trade union status of the applicant was considered. In the

present case it is clear that this factor was considered. Therefore, the application as regards grounds 1 and 2 fails!

As regards ground 3 I find no merit in the contention of counsel for applicant that the respondent committee acted contrary to Regulation 16 of the Educational Officers Regulations, 1972.

As regards ground 4 of the application, no argument at all was advanced by counsel for applicant as to the allegation that the respondent acted contrary to section 39 of the Educational Service Law, 1969 (10/69).

The fifth and last ground for the Court to consider is that the decision complained of is not duly reasoned or at all.

Counsel for applicant on this point argued that there is no special reasoning of the decision complained of as it is required in cases of transfer. 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 *Sofocleous v. The Republic* (1972) 3 C.L.R. 56, at p. 60). There are, however, cases where the reasoning of a decision may be supplemented by the material in the file and, furthermore, the reasoning for a previous decision also supplements the reasoning of the new one. In the present case the transfer of the applicant to Ayios Amvrosios, as it appears from the file, *exhibit 6*, was effected for educational needs and so it is clear that the reasoning of the new Decision is supplemented in the previous one. Therefore, I have no difficulty in holding that the *sub judice* decision to transfer the applicant to Eyialousa is duly reasoned.

In conclusion I must refer to the principles upon which this Court will interfere with the exercise of a discretion by administrative bodies in a case of transfer. These principles have been set out in the cases of *Stavros Sentonaris v. The Greek Communal Chamber*, 1964 C.L.R. 300 and *Costas Vafeadis v. The Republic of Cyprus through the Public Service Commission*, 1964 C.L.R. 454. At page 465 of this report Triantafyllides, J. as he then was, had this to say:

1974
April 23

ALEXANDROS
MAVROMATIS
v.
EDUCATIONAL
SERVICE
COMMITTEE

1974
April 23
—
ALEXANDROS
MAVROMATIS
v.
EDUCATIONAL
SERVICE
COMMITTEE

“ The possibility of judicial interference with the exercise of discretion by administrative bodies in cases of transfer has been dealt with in Case 113/64, *Sentonaris v. Greek Communal Chamber* (reported in this volume at p. 300 *ante*). The effect of the principles adopted in that case is 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”.

In the present case I do not find any cause for interfering with the exercise of the discretion of the Educational Service Committee in reaching their decision to transfer the applicant. It was reasonably open to the said Committee to take the decision complained of.

For the above reasons this recourse fails.

In the circumstances I make no order as to costs.

*Application dismissed. No
order as to costs.*