

1976
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[TRIANTAFYLIDIS, P.]

—
CHRYSTALLA
YIALLOUROU
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
CHRYSTALLA YIALLOUROU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF INTERIOR,
2. THE DIRECTOR OF THE PUBLIC
INFORMATION OFFICE,

Respondents.

(Case No. 47/75).

—
*Administrative Law—Executory Act—Public Officers—Transfers—
Posting of Press Assistant 2nd Grade from one section to another
in the Public Information Office and within the same building—
No change of residence—Duties in both sections those envisaged
by the relevant scheme of service of the above post—Such posting 5
not an act of an executory nature—An internal measure of admin-
istration which cannot be challenged by a recourse under Article
146 of the Constitution—Section 48 of the Public Service Law,
1967 (Law 33/67).*

*Legitimate Interest—Article 146.2 of the Constitution—Posting of 10
Press Assistant 2nd Grade from one section to another in the
Public Information Office—Duties in both sections those envisaged
by the relevant scheme of service of above post—New posting
not entailing change of residence and not amounting to a de- 15
motion—Sub judice posting has not adversely affected any exi-
sting legitimate interest of applicant in the sense of the above
Article.*

*Public Officers—Transfer—Posting from one section to another in
one and the same Department and within the same building— 20
Whether the act of posting can be challenged by a recourse under
Article 146 of the Constitution.*

The applicant was on November 10, 1969 appointed to the
post of Press Assistant, 2nd Grade, in the Public Information
Office. After she had served for about three years in the Cen-
tral News Service she was posted at the Foreign Press Service. 25

By means of a letter of the Director of Public Information Office she was on February 8, 1975 posted again at the Central News Service.

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Hence the present recourse.

5 At the commencement of the hearing of the recourse counsel for the respondents has raised two preliminary objections, namely that no legitimate interest of the applicant, in the sense of Article 146.2 of the Constitution, was directly and adversely affected by her posting at the Central News Service, and, also,
10 that such posting was not an executory act, because it was, merely, an internal administrative measure.

15 It was common ground that Press Assistants, 2nd Grade, were serving in both the Central News Service and the Foreign Press Service of the Public Information Office; and that though the work carried out in the Central News Service was not, in all respects, of the same nature as the work which was carried out in the Foreign Press Service, nevertheless, the work in both these sections entailed, in so far as Press Assistants, 2nd Grade, were concerned, the performance by them of duties envisaged by the
20 scheme of service* of their post.

25 It was, also, common ground that applicant has not had to move to a building other than the one where she was working when she was posted at the Foreign Press Service, because both the said Service and the Central News Service are housed together in the main office-building of the Public Information Office; and there has not been necessitated any change of her residence as a result of her new posting.

30 *Held*, (1) that an administrative act of an internal nature does not amount to an executory act; that an act ordaining a mere change of posting of a public officer, without an alteration of his status is an internal administrative measure which cannot be challenged by means of a recourse (see Conclusions from the Case Law of the Council of State in Greece p. 238); that in view of the facts of this case, and especially of the fact that the applicant after her posting at the Central News Service had to perform duties—specified in the relevant scheme of service—which she was earlier performing at the Foreign Press Service, this
35 Court has reached the conclusion that her posting at the Central News Service is not of an executory nature, being an internal
40 measure of administration.

* Quoted at p. 217 *post*.

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(2) That the *sub judice* act has not adversely affected any existing legitimate interest of the applicant, in the sense of Article 146. 2 of the Constitution because applicant is performing such duties at the Central News Service as she was performing at the Foreign Press Service, and her new posting does not entail a change of residence for her, and, also, it does not, in any way, amount to a demotion (*Decisions of the French Council of State* in, *inter alia*, *Auge* (on 7. 2. 1962) and *Mollet* (on 25. 10. 1963) clearly distinguishable from the present case). 5

(3) That the present recourse cannot be proceeded with further because it has not been validly made against an act or decision which can be the subject matter of a recourse under Article 146 of the Constitution, and because, in any case, no legitimate interest of the applicant has been adversely affected in the sense of paragraph (2) of Article 146 and that it will, accordingly, be dismissed. 10 15

Application dismissed.

Cases referred to:

Nedjati and The Republic, 2 R.S.C.C. 78 at p. 82;
Yiorkas and The Republic, 5 R.S.C.C. 56; 20
Papadopoulos v. The Republic (1975) 3 C.L.R. 89 at p. 95;
Kolokassides v. The Republic (1965) 3 C.L.R. 542 at pp. 549, 551;
Ioannou v. The Commander of Police (1974) 3 C.L.R. 504 at p. 508;
Zivlas v. The Municipality of Paphos (1975) 3 C.L.R. 349 at p. 25
360;
Decision of the Greek Council of State in Case No. 1461/57;
Decisions of the French Council of State:
Auge (on 7.2.1962);
Mollet (on 25.10.1963); 30
Pailou (on 4.1.1964);
Lombardy (on 26.5.1967);
Gille (on 21.7.1970);
Martin (on 27.11.1970).

Recourse. 35

Recourse against the decision of the respondents whereby applicant was posted at the Central News Service, in the Public Information Office.

K. Talarides, for the applicant.

V. Aristodemou, Counsel of the Republic, for the respondents. 40

Cur. adv. vult.

The following judgment was delivered by:-

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5 TRIANTAFYLIDIS, P.: The applicant has attacked by the present recourse her posting at the Central News Service, in the Public Information Office; such posting was communicated to her by a letter of respondent 2, the Director of the Public Information Office, on February 8, 1975 (*exhibit 2*).

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10 The applicant was, at the material time, a Press Assistant, 2nd Grade; she was first appointed to this post on November 10, 1969. After she had served for about three years in the Central News Service she was posted at the Foreign Press Service of the Public Information Office, and, later, she was posted, again, as complained of, at the Central News Service.

15 It is common ground that Press Assistants, 2nd Grade, are serving in both the Central News Service and the Foreign Press Service of the Public Information Office.

The duties and responsibilities of the applicant as a Press Assistant, 2nd Grade, are described in the relevant scheme of service (see *exhibits 1 and 5*); they are as follows:-

20 "To translate from English into Greek or Turkish and vice versa, Government press releases, newspaper articles, etc. and to prepare the summary of the local and foreign press in English. To perform any other duties which may be assigned to him and which may involve shift duties or over-time work".

25 At the commencement of the hearing of this recourse counsel for the respondents has raised two preliminary objections, namely that no legitimate interest of the applicant, in the sense of Article 146.2 of the Constitution, was directly and adversely affected by her posting at the Central News Service, and, also,
30 that such posting was not an executory act, because it was, merely, an internal administrative measure.

I have heard arguments from both counsel in relation to the above two issues.

35 Counsel for the applicant has submitted that the posting complained of was an executory act and that it entailed a material change in the position, in the service, of the applicant, which affected adversely her legitimate interests, because the duties performed by Press Assistants, 2nd Grade, in the Central News Service and the Foreign Press Service, respectively, are

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not of the same nature, and the hours of work in the said two Sections are, also, different.

It has not been in dispute that the carrying out of the relevant duties at the Central News Service entails overtime work and, sometimes, work on Sundays, too.

5

It is correct, too, that the work carried out in the Central News Service is not, in all respects, of the same nature as the work which is carried out in the Foreign Press Service; but, nevertheless, the work in both these Sections entails, in so far as Press Assistants, 2nd Grade, are concerned, the performance by them of duties envisaged by the scheme of service of their post; and there is no indication, at all, on the basis of the material placed before me, that the applicant has been called upon, as a result of her posting at the Central News Service, to carry out duties not envisaged by such scheme.

10

15

Also, her having to work in shifts and, consequently, to do overtime work and to work sometimes on Sundays, is something which is expressly mentioned as being among the duties and responsibilities of her post under the said scheme.

She has not had to move to a building other than the one where she was working when she was posted at the Foreign Press Service, because both the said Service and the Central News Service are housed together in the main office-building of the Public Information Office; and, of course, there has not been necessitated any change of her residence as a result of her new posting.

20

25

I shall examine, first, whether the change of posting of the applicant is an act or decision of an executory nature, which could be attacked by the present recourse under Article 146 of the Constitution, or merely an internal administrative measure of such a nature that it is not executory and, therefore, cannot become the subject matter of a recourse:

30

Such posting is not a “transfer” in the sense of Article 125 of the Constitution; in this respect it is relevant to quote the following passage from the judgment in *Nedjati and The Republic*, 2 R.S.C.C. 78, 82:—

35

“ The Court is of the opinion, and this is not disputed, that any transfer of a public officer from one Ministry to another, or from one Department to another within the same

Ministry, is a 'transfer' in the sense of paragraph 1 of Article 125.

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5 There remains the question whether, and if so to what extent, a transfer within the same Department is a 'transfer' under paragraph 1 of Article 125.

10 In interpreting any particular provision of paragraph 1 of Article 125 due regard must be had to the context of the paragraph as a whole and, therefore, no particular provision thereof should be interpreted in such a way as to result in defeating the intention and object of all or any of the remaining provisions of the said paragraph.

15 The Court is of the opinion that paragraph 1 of Article 125 constituted the Public Service Commission as the only competent organ to decide on all matters stated therein concerning the individual holders of public offices.

20 It will be seen, therefore, that the objects of paragraph 1 of Article 125 include, not only the safeguarding of the efficiency and proper functioning of the public service of the Republic, but also the protection of the legitimate interests of the individual holders of public offices.

25 This being so the interpretation of any particular provision of the said paragraph 1 of Article 125 should be made in the light of the above objects due regard being had, at the same time, to the requirements of practicability and physical possibility.

30 Bearing the above considerations in mind, the Court is of the opinion that any transfer of a public officer within the same Department amounts to a 'transfer' in the sense of paragraph 1 of Article 125 of the Constitution if, being of a permanent nature and not only a temporary arrangement —

- 35
- (a) such transfer results in the performance of duties by such public officer not included in the duties laid down in the scheme of service relating to the substantive post which he is holding immediately prior to such transfer; or
 - (b) such transfer definitely necessitates a change of residence of such public officer".

The *Nedjati* case was followed in, *inter alia*, *Yiorkas and The Republic*, 5 R.S.C.C. 56.

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In relation to the above quotation from the *Nedjati* case, it is useful to stress that the Central News Service and the Foreign Press Service are not two different Departments, but two Sections in one and the same Department, namely the Public Information Office, which comes under the Ministry of Interior. 5

The relevant, in this respect, provision of the Public Service Law, 1967 (Law 33/67) is section 48 which reads as follows:—

“48. (1) Subject to the provisions of sub-section (2), transfers of officers shall be made by the Commission.

(2) Transfers of officers which do not involve a change in the offices held by them and the duties attached thereto or a change in the place of residence shall be made by the appropriate authority concerned: 10

Provided that in exceptional cases of urgent nature the appropriate authority concerned may make a temporary transfer involving a change in the place of residence for a period not exceeding forty-two days”. 15

As rightly pointed out by Hadjianastassiou J. in *Papadopoulos v. The Republic*, (1975) 3 C.L.R. 89, 95, subsection (2) of section 48, above, appears to have been enacted as a result of the aforementioned case of *Nedjati*. 20

It is clear, in my view, that though the change of posting of the applicant does, conceivably, come within the very wide notion of “transfer” in subsection (1) of section 48, it did not have, in view of subsection (2) of section 48, to be effected by virtue of a decision of the Public Service Commission; and the mere fact that even such change of posting is covered by the wide notion of “transfer” in subsection (1) of section 48—for the purpose of enabling the making of the differentiation contained in subsection (2) of the same section—does not, in my opinion, render, automatically, the act or decision of applicant’s Head of Department, by means of which it was effected, an executory one, so that it could be challenged by the present recourse. 25
30

That only an executory administrative act can be attacked by a recourse is by now well-settled in our administrative law (see, *inter alia*, *Kolokassides v. The Republic*, (1965) 3 C.L.R. 542, 549, 551, *Ioannou v. The Commander of Police*, (1974) 3 C.L.R. 504, 508, *Zivlas v. The Municipality of Paphos*, (1975) 3 C.L.R. 349, 360). 35

Useful reference may be made, too, to the following passage in the Conclusions from the Case Law of the Council of State in Greece, 1929–1959, at pp. 236, 237:—

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5 “Εἰς προσβολὴν δι’ αἰτήσεως ἀκυρώσεως δὲν ὑπόκειται οἱ-
δήποτε πράξεις ἀπορρέουσα ἐκ διοικητικοῦ ὄργανου, δρῶντος
ὡς τοιούτου, ἀλλὰ μόνον αἱ ἐκτελεσταὶ πράξεις, τοῦτέστιν
10 ἐκεῖναι δι’ ὧν δηλοῦται βούλησις, διοικητικοῦ ὄργανου, ἀπο-
σκοποῦσα εἰς τὴν παραγωγὴν ἐνόμου ἀποτελέσματος ἐναντι
τῶν διοικουμένων καὶ συνεπαγομένη τὴν ἄμεσον ἐκτέλεσιν
15 αὐτῆς διὰ τῆς διοικητικῆς ὁδοῦ. 487/36, 32/38, 651/40,
1890/53, 1120/55. Τὸ κύριον στοιχεῖον τῆς ἐνοίας τῆς ἐκτε-
λεστῆς πράξεως εἶναι ἡ ἄμεσος παραγωγὴ ἐνόμου ἀποτελέ-
σματος, συνισταμένου εἰς τὴν δημιουργίαν, τροποποίησιν ἢ
κατάλυσιν νομικῆς καταστάσεως, ἢτοι δικαιωμάτων καὶ ὑπο-
20 χρεώσεων διοικητικοῦ χαρακτῆρος παρὰ τοῖς διοικουμένοις.
17/38, 400/48, 1828, 2040/50, 950/54.”

(“It is not every act emanating from an administrative
organ, acting as such, that can be the subject of a recourse,
but only the executory acts, that is those by means of which
20 the will of an administrative organ is manifested, aiming at
bringing about a legal consequence concerning the affected
citizen and entailing its direct execution by administrative
means. 487/36, 32/38, 651/40, 1890/53, 1120/55. The
main element of the notion of an executory act is the direct
25 production of a legal consequence, consisting of the crea-
tion, alteration or termination of a legal situation, namely
of rights and liabilities, of administrative nature, of the
affected citizens. 17/38, 400/48, 1828, 2040/50, 950/54”).

An administrative measure of internal nature does not amount
30 to an executory act (see Conclusions, *supra*, p. 238, and Odent on
“Contentieux Administratif”, 1970–1971, vol. III pp. 771, 772,
as well as the decision of the Greek Council of State in case
1461/57); and it was held that an act ordaining a mere change of
posting of a public officer, without an alteration of his status
35 (“πράξις διατάσσουσα τὴν ἀπλὴν μετακίνησιν ὑπαλλήλου ἄνευ
μεταβολῆς τῆς ὑπηρεσιακῆς αὐτοῦ καταστάσεως”) is an internal
administrative measure which cannot be challenged by means
of a recourse (see Conclusions, *supra*, p. 238).

In view of all the foregoing, and especially of the fact that the
40 applicant after her posting at the Central News Service has to
perform duties—specified in the relevant scheme of service—

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which she was earlier performing at the Foreign Press Service, I have reached the conclusion that her posting at the Central News Service is not of an executory nature, being an internal measure of administration, and, consequently, it cannot be challenged by the present recourse under Article 146 of the Constitution. 5

In reaching the above conclusion I have not failed to consider the contents of ground of law 6 in the Application in this recourse, whereby it is alleged that the posting of the applicant at the Central News Service is in effect a measure of disciplinary 10 nature; this contention was not, however, pressed before me in argument, and, in any case, I find it to be unfounded on the basis of the totality of the material before the Court.

Because of my finding that the *sub judice* act is not an executory one, the present recourse has, in any event, to be dismissed at this stage of the proceedings. But, yet another ground, for 15 which, in the light of the arguments advanced, this recourse has to be dismissed from now, is that the *sub judice* act has not adversely affected any existing legitimate interest of the applicant, in the sense of Article 146.2 of the Constitution. This is a 20 conclusion which can be safely drawn from the fact that the applicant is performing such duties at the Central News Service as she was performing at the Foreign Press Service, that is the duties envisaged by the relevant scheme of service in respect of her appointment as Press Assistant, 2nd Grade; moreover, her 25 new posting does not entail a change of residence for her, and, also, it does not, in any way, amount to a demotion. That she is required to work on a shift basis, to do overtime work and to work sometimes on Sundays, are matters which are clearly prescribed as part of her duties under the said scheme of service 30 and, therefore, they do not warrant a conclusion that any legitimate interest of hers is being adversely affected because of them.

In an effort to persuade me to the contrary counsel for the applicant has relied on French administrative law; but, even 35 what is stated by Odent (*supra*, at pp. 762, 763), namely that the criterion for deciding whether or not there have been adversely affected the interests of an applicant should be the substance and not the form of the act complained of, and that the approach to such a matter should be an objective one, cannot lead, in the 40 circumstances of the present case, to a conclusion different than the one which I have reached in the present instance.

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I have, also, perused the decisions of the French Council of State in the cases of *Auge* (on 7/2/62), *Mollet* (on 25/10/63), *Paillou* (on 4/1/64), and *Lombardy* (on 26/5/67), which are reported in the corresponding volumes of the *Recueil Des Arrêts Du Conseil D'Etat*, as well as the decisions of the said Council in the cases of *Gille* (on 21/7/70) and of *Martin* (on 27/11/70), which are reported in the *L'Actualite Juridique Droit Administratif* (1971), at p. 295 and at p. 424, respectively. All these French cases are clearly distinguishable from the present one, because in each one of them the French Council of State has found that, in fact, the change as regards the duties or the posting of the applicant concerned amounted to more than an internal administrative measure and had resulted in affecting adversely his status in the service.

For all the foregoing reasons I find that the present recourse cannot be proceeded with further because it has not been validly made against an act or decision which can be the subject matter of a recourse under Article 146 of the Constitution, and because, in any case, no legitimate interest of the applicant has been adversely affected in the sense of paragraph (2) of Article 146; therefore, it is dismissed accordingly; but, in all the circumstances of this case, I am not prepared to make any order as to costs against the applicant.

Application dismissed. No order as to costs.