

1978 September 9

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS YERASIMOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(Case No. 121/77).

5 *Educational Officers—Elementary school—teacher—Transfer of, during
the school year without an application on his part—In order to
meet request for transfer of another school-teacher, the wife of
a member of the security forces—Regulation 18(b)(ii) of the
Educational Officers (Teaching Staff) (Appointments, Postings,
Transfers, Promotions and Related Matters) Regulations of 1972
to 1974—Though sub judice decision perhaps lawful under pro-
viso (ii) to regulation 16(3), said regulation 18(b)(ii), when read
together with regulation 21, mainly, if not solely, applicable to
10 transfers made in the normal course of events—Factor of meeting
said request for transfer erroneously treated as being of a decisive
nature—Relevant decision reached in a defective manner— Annul-
led.*

15 *Administrative Law—Administrative decision—Reached in a defective
manner through erroneously treating a factor as being of a
decisive nature—Annulled—Not a case in which it is properly
open to the Court to examine whether such decision could be
upheld by the Court, as an administrative Court, on the basis of
some other lawful reasoning.*

20 The applicant, an elementary school-teacher, was transferred
from the elementary school of Galata to the elementary school
of Katydata, as from January 10, 1977. When he objected
against this transfer the respondent Educational Service Com-

mittee rejected his objection on the ground that "his transfer was made, under Regulation 16(3)(ii)* of the Educational Officers Regulations 1972 to 1974, to meet a justified request for transfer of another school-teacher, who is a displaced person and the wife of a member of the security forces (Regulation 18(b)(ii) and (iii)** of the aforesaid Regulations)". 5

The Committee further stated that "before deciding about the said transfer has studied in detail the case of the objection as well as the cases of other school-teachers serving in the area and has decided, in the light of the personal and family circumstances of each one of them and of the educational needs, that he had to be transferred". 10

Hence the present recourse.

Proviso (ii) to regulation 16(3) reads as follows:

"An educational officer is not transferred without an application on his part except if there exist educational reasons or if his further stay at the same school conflicts with a justified request of another educational officer for transfer". 15

Regulation 18(b)(ii) provides: 20

(b) Reasons for the applied for transfer may be –

(ii) service at the same place with a spouse who is a public officer, a public educational officer, an officer of a public corporation, a member of the security forces or of the National Guard." 25

Held, that though the *sub judice* decision was perhaps lawful under proviso (ii) to regulation 16(3), great reliance was placed, in reaching such decision, on the provisions of regulation 18(b) (ii) which, when read together with those of regulation 21***, appear to be mainly, if not solely, applicable to transfers 30

* Regulation 16 is quoted at pp. 270-71 *post*.

** The material parts of regulation 18 are quoted at pp. 272-73 *post*.

*** Regulation 21 provides that transfers are normally made during the period from April to June of each year, in respect of the ensuing school year; that supplementary transfers, in view of unforeseen needs of the service, are made during the period from September up to October; and that "special transfers in the interest of the service may be made during the school-year, provided that each such case will be subject to specific consideration at the end of the school-year".

made in the normal course of events under paragraph 1 of regulation 21, and to be only very remotely applicable, if at all, to special cases of transfer under paragraph 3 of the said regulation 21; that, therefore, a factor mentioned in regulation 18(b)(ii), namely that the school-teacher for whose replacement the applicant was transferred is the wife of a member of the security forces was, apparently, erroneously treated by the respondent Committee as being of a decisive nature, with the result that its relevant decision must be regarded as having been reached in a defective manner; and that, accordingly, that decision has to be annulled, without this being a case in the particular circumstances of which it is properly open to this Court to examine whether such decision could be upheld by this Court, as an administrative Court, on the basis of some other lawful reasoning (see, *inter alia*, *Pikis v. The Republic* (1967) 3 C.L.R. 562 at p. 574).

Sub judice decision annulled.

Cases referred to:

- Pikis v. The Republic* (1967) 3 C.L.R. 562 at p. 574;
 20 *Spyrou and Others (No. 1) v. The Republic* (1973) 3 C.L.R. 478
 at p. 484.

Recourse.

Recourse against the decision of the respondent whereby applicant's objection against his transfer from the elementary school of Galata to the elementary school of Katydata was rejected.

Chr. Kitromilides, for the applicant.

A. S. Angelides, for the respondent.

Cur. adv. vult.

30 TRIANTAFYLIDIS P. read the following judgment. By the present recourse—as its scope was eventually limited during the hearing before me—the applicant is challenging the decision of the respondent Educational Service Committee by means of which there was rejected, on February 3, 1977 (see the relevant minutes *exhibit* 4), his objection, dated January 13, 1977 (see *exhibit* 3), against his transfer as from January 10, 1977, from the elementary school of Galata to the elementary school of Katydata.

In the said decision of the respondent Committee, which was

communicated to the applicant by a letter dated February 4, 1977 (see *exhibit 5*), it is stated that the transfer of the applicant was made under paragraph (ii) of the proviso to Regulation 16(3) of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations of 1972 to 1974, in order to satisfy a justified request for a transfer of another school-teacher, who is a displaced person and the wife of a member of the Security Forces; and reliance was placed, by the respondent, in this respect, on paragraphs (ii) and (iii) of Regulation 18(b) of the aforesaid Regulations. It is stated, further, that the Committee before deciding on the transfer of the applicant studied in detail his case, as well as those of other school-teachers in the area, and decided, in the light of the personal and family circumstances of each one of them and of the educational needs, that he had to be transferred.

Regulation 16 of the aforementioned Regulations (see Not. 205 in the Third Supplement, vol. I, to the Official Gazette of 1972) reads as follows:-

“Μεταθέσεις: 20

16.-(1) Οί εκπαιδευτικοί λειτουργοί μετατίθενται -

(α) βάσει τῶν εκπαιδευτικῶν ἀναγκῶν

(β) τῆ αἰτήσῃ αὐτῶν διὰ σοβαροὺς προσωπικοὺς ἢ οικογενειακοὺς λόγους νοουμένου ὅτι ἐξυπηρετεῖται καὶ τὸ συμφέρον τῆς ὑπηρεσίας. 25

(2) Οί εκπαιδευτικοί λειτουργοί, οἵτινες ὑπηρετοῦσι κατὰ τὴν διάρκειαν τῆς περιόδου δοκιμασίας εἰς σχολεῖα ὡς ἐν τῷ Κανονισμῷ 15 ἀναφέρεται, ὑπόκεινται εἰς μεταθέσιν μετὰ τὴν ἐπικύρωσιν τοῦ διορισμοῦ των ἢ ἐπικειμένης ταύτης -

(α) προκειμένου περὶ καθηγητῶν, εἰς σχολεῖα ἀγροτικῶν περιοχῶν καί, εἰ δυνατόν, εἰς τὴν αὐτὴν περιφέρειαν ἢ εἰς ἄλλην δι' ἣν ἔχουσιν ἐκφράσει προτίμησιν 30

(β) προκειμένου περὶ διδασκάλων, εἰς σχολεῖα Γ ἢ, μὴ ὑπαρχουσῶν εἰς αὐτὰ ἐπαρκῶν κενῶν θέσεων, εἰς σχολεῖα Β τῶν τριῶν διδασκάλων. 35

(3) Οί κατὰ τὰ ἀνωτέρω μετατιθέμενοι εκπαιδευτικοί λειτουργοί ὑπόκεινται εἰς περαιτέρω μεταθέσιν, κατόπιν ὑπηρε-

σίας ἐπὶ χρονικὸν τι διάστημα καὶ ὡς ἤθελον παρουσιασθῆ
δυνατότητες διὰ μετάθεσιν, ὡς ἀκολούθως:

(α) Οἱ καθηγηταὶ μετατίθενται εἰς ἀστικά κέντρα·

5 (β) οἱ διδάσκαλοι μετατίθενται εἰς μεγαλύτερα σχολεῖα
B καὶ ἀκολούθως, κατόπιν ὑπηρεσίας εἰς τοιαῦτα
σχολεῖα καὶ ἀναλόγως τῶν παρουσιαζομένων δυνα-
τοτήτων, μετατίθενται εἰς σχολεῖα A:

Νοεῖται ὅτι εἰς ἀμφοτέρας τὰς ὡς ἄνω περιπτώσεις -

10 (i) ἡ μετάθεσις εἶναι εἰς εὐμενεστέραν διὰ τὸν ἐκπαι-
δευτικὸν λειτουργὸν θέσιν ἐκτὸς εἰς περιπτώσεις με-
ταθέσεως λόγῳ ἐκπαιδευτικῶν ἀναγκῶν ἢ πειθαρχι-
κῆς μεταθέσεως·

15 (ii) ἐκπαιδευτικὸς λειτουργὸς δὲν μετατίθεται ἄνευ αἰτή-
σεως αὐτοῦ πλην ἐὰν συντρέχωσιν ἐκπαιδευτικοὶ
λόγοι ἢ ἐὰν ἡ περαιτέρω παραμονὴ του εἰς τὸ αὐτὸ
σχολεῖον συγκρούηται πρὸς δικαιολογημένον αἴτη-
μα ἄλλου ἐκπαιδευτικοῦ λειτουργοῦ πρὸς μετάθε-
σιν.”

(“Transfers:

20 16.-(1) Educational officers are transferred -

(a) in accordance with the educational needs;

(b) on their own application for serious personal or
family reasons, provided that the interest of the
service is also served.

25 (2) Educational officers, who are serving during the
probationary period in the schools referred to in Regulation
15, are subject to transfer after the confirmation of their
appointments or when such confirmation is about to take
place -

30 (a) in cases of schoolmasters, to schools in rural
areas, and, if possible, of the same region or of
another for which they have expressed preference;

35 (b) in cases of school-teachers, to C schools, or, if
there are not there adequate vacant posts, to B
schools with three teachers.

(3) The educational officers transferred as above are
subject to further transfer, after having served for a certain

period of time and as possibilities for transfer may occur, as follows:

- (a) Schoolmasters are transferred to urban centres;
- (b) School-teachers are transferred to larger B schools and subsequently, after serving at such schools, and depending on possibilities that may arise, are transferred to A schools: 5

Provided that in both the above instances –

- (i) the transfer is to a more favourable for the educational officer post, except in cases of transfer for educational needs or disciplinary transfers; 10
- (ii) an educational officer is not transferred without an application on his part except if there exist educational reasons or if his further stay at the same school conflicts with a justified request of another educational officer for transfer”). 15

Also, the material parts of the aforementioned regulation 18 read as follows:–

“18. Τηρουμένων τῶν διατάξεων τῶν παρόντων Κανονισμῶν, ἐφαρμόζεται ἡ ἀκόλουθος διαδικασία ἐν σχέσει πρὸς μεταθέσεις καθηγητῶν: 20

- (α) Πᾶς καθηγητής, ὅστις ἐπιθυμεῖ μετάθεσιν, δύναται, ἐντὸς τοῦ μηνὸς Φεβρουαρίου, νὰ ὑποβάλλῃ αἴτησιν ἐπὶ τοῦ ὑπὸ τῆς Ἐπιτροπῆς ὀριζομένου ἐντύπου. Ἐν αὐτῇ δέον νὰ ἀναφέρωνται οἱ λόγοι διὰ τοὺς ὁποίους ζητεῖται ἡ μετάθεσις καὶ τὸ σχολεῖον ἢ τὰ σχολεῖα, κατὰ σειρὰν προτιμήσεως, εἰς τὰ ὁποῖα ὁ αἰτῶν ἐπιθυμεῖ νὰ μετατεθῇ. 25

(β) Λόγοι δι’ αἰτουμένην μετάθεσιν δύνανται νὰ εἶναι –

- (i) λόγοι ὑγείας τοῦ καθηγητοῦ δεόντως πιστοποιούμενοι ὑπὸ Κυβερνητικοῦ ἱατροῦ καὶ ὑπαγορεύοντες εἰδικὴν θεραπείαν μὴ δυναμένην νὰ παρασχεθῇ εἰς τὸν τρόπον ἐργασίας του· 30
- (ii) συνυπηρέτησις μετὰ συζύγου δημοσίου ὑπαλλήλου, δημοσίου ἐκπαιδευτικοῦ λειτουργοῦ, ὑπαλλήλου νομικοῦ προσώπου δημοσίου δι- 35

καίου, μέλους τῶν δυνάμεων ἀσφαλείας ἢ τῆς Ἐθνικῆς Φρουρᾶς.

(iii) ἄλλοι σοβαροὶ προσωπικοὶ ἢ οἰκογενειακοὶ λόγοι δεόντως ἀποδεδειγμένοι.”

(“Subject to the provisions of these Regulations the following procedure shall apply as regards transfers of school-masters:

- 10 (a) Any schoolmaster who desires a transfer may, in the month of February, submit an application on a form prescribed by the Committee. In such form there must be stated the reasons for which the transfer is applied for and the school or schools, in order of preference, to which the applicant desires to be transferred.
- 15 (b) Reasons for the applied for transfer may be –
- (i) health reasons of the schoolmaster duly certified by a Government doctor and requiring special treatment which cannot be given where his work is;
- 20 (ii) service at the same place with a spouse who is a public officer, a public educational officer, an officer of a public corporation, a member of the security forces or of the National Guard;
- 25 (iii) other duly proved serious personal or family reasons.”).

By virtue of regulation 19(1)(b) the provisions of paragraph (b) of regulation 18 have been rendered applicable, also, as regards transfers of school-teachers.

- 30 By means of regulation 21 of the same Regulations it is provided that transfers are normally made during the period from April to June of each year, in respect of the ensuing school-year; that supplementary transfers, in view of unforeseen needs of the service, are made during the period from September
- 35 up to October; and then the following provision is made by paragraph 3 of the same regulation in relation to transfers made during the school-year:–

“(3) Ἐκτακτοὶ μεταθέσεις πρὸς τὸ συμφέρον τῆς ὑπηρεσίας

δύνανται νά διενεργῶνται κατὰ τήν διάρκειαν τοῦ σχολικοῦ ἔτους, νοουμένου ὅτι ἐκάστη περίπτωση θά δύναται νά ἐξετάζηται εἰδικῶς κατὰ τὸ τέλος τοῦ σχολικοῦ ἔτους.”

“(3) Special transfers in the interest of the service may be made during the school-year, provided that each such case will be subject to specific consideration at the end of the school-year.”) 5

I propose to examine first the legality of the *sub judice* decision concerning the transfer of the applicant:

It is necessary, in this respect, to reproduce in full the text of the decision of the respondent Committee of February 3, 1977 (*exhibit 4*), by virtue of which the objection of the applicant against his transfer was rejected; it reads as follows:- 10

“4. Γερασίουμ Ἀνδρέας (Π. 2918), Διδάσκαλος

Δι’ ἐπιστολῆς του, ἡμερομηνίας 13.1.77 ἐνίσταται διὰ τήν εἰς Κατύδατα μετάθεσίν του. 15

Ἀποφασίζεται ὅπως δοθῆ ἀπάντησις ὅτι –

(α) ἡ μετάθεσις του ἐγένετο, βάσει τοῦ Κανονισμοῦ 16(3)(ii) τῶν περὶ Ἐκπαιδευτικῶν Λειτουργῶν Κανονισμῶν 1972 καὶ 1974 πρὸς ἰκανοποίησιν δικαιολογημένου αἰτήματος πρὸς μετάθεσιν ἄλλης διδασκαλίσεως, ἐκτοπισθείσεως καὶ συζύγου μέλους τῶν δυνάμεων ἀσφαλείας (Κανονισμὸς 18(β)(ii) καὶ (iii) τῶν προειρημένων Κανονισμῶν). 20

(β) Ἡ Ἐπιτροπὴ πρὶν ἢ ἀποφασίσῃ τὴν ἐν λόγῳ μετάθεσιν ἐμελέτησε λεπτομερῶς τόσον τὴν περίπτωσιν τοῦ ἐνίσταμένου ὅσον καὶ τὰς περιπτώσεις ἄλλων διδασκάλων ὑπηρετούντων εἰς τὴν περιοχὴν καὶ ἔκρινεν ὅτι ἐν ὄψει τῶν προσωπικῶν καὶ οἰκογενειακῶν συνθηκῶν ἐνὸς ἐκάστου ἐξ αὐτῶν καὶ τῶν ἐκπαιδευτικῶν ἀναγκῶν, οὗτος ἔδει νά μετατεθῆ.” 30

“(4. *Yerasimou Andreas* (P.2918), School-teacher.

By his letter, dated 13.1.77, he objects against his transfer to Katydata.

It is decided that an answer should be given that – 35

(a) his transfer was made, under Regulation 16(3)(ii) of the Educational Officers Regulations 1972 to 1974, to meet a justified request for transfer of

another school-teacher, who is a displaced person and the wife of a member of the security forces (Regulation 18(b)(ii) and (iii) of the aforesaid Regulations).

- 5 (b) The Committee before deciding about the said transfer has studied in detail the case of the objector as well as the cases of other school-teachers serving in the area and has decided, in the light of the personal and family circumstances
10 of each one of them and of the educational needs that he had to be transferred.”)

It is clear from the above text that though the *sub judice* decision of the respondent was perhaps lawful under proviso (ii) to the aforequoted regulation 16(3), great reliance was
15 placed, in reaching such decision, on the provisions of regulation 18(b)(ii) which, when read together with those of regulation 21, appear to be mainly, if not solely, applicable to transfers made in the normal course of events under paragraph 1 of regulation 21, and to be only very remotely applicable, if at
20 all, to special cases of transfer under paragraph 3 of the said regulation 21.

Thus, a factor mentioned in regulation 18(b)(ii), namely that the school-teacher for whose replacement the applicant was transferred is the wife of a member of the security forces, was,
25 apparently, erroneously treated by the respondent Committee as being of a decisive nature, with the result that its relevant decision must be regarded as having been reached in a defective manner; and, this being so, I have reached the conclusion that that decision has to be annulled, without this being a case in
30 the particular circumstances of which it is properly open to me to examine whether such decision could be upheld by me, as an administrative Court, on the basis of some other lawful reasoning (see, *inter alia*, *Pikis v. The Republic*, (1967) 3 C.L.R. 562, 574 and *Spyrou and Others (No. 1) v. The Republic*, (1973)
35 3 C.L.R. 478, 484).

As regards costs, I order that the Republic should pay to the applicant £20 towards his costs.

*Sub judice decision annulled.
Order for costs as above.*