

1980 February 13

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CONSTANTINOS CARAYIANNIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTRY OF EDUCATION,

2. THE EDUCATIONAL SERVICE COMMITTEE,

Respondents.

(Cases No. 351/69).

*Administrative Law—Administrative acts or decisions—Reasoning—
Due reasoning—May be found not only in the letter communicating
sub judice decision but in the relevant minutes of the administrative
organ concerned.*

5 *Educational Officers—Transfers—Judicial control—Principles applic-
able.*

*Administrative Law—Discretionary powers—Educational officers—
Transfers—Judicial control—Principles applicable.*

10 *Educational Officers—Transfers—Headmasters—Posting of head-
mistress to Girls Gymnasium by acting on recommendation of
Ministry of Education that Headmistresses should be posted at
schools for girls—Not improper use of relevant discretionary
powers by respondent Committee—Course adopted reasonably
open to it in the circumstances—And was adopted for the purpose
15 of implementing educational policy.*

*Administrative Law—Discretionary powers—Policy—Sub judice deci-
sion, relating to transfer of educational officer, taken for the
purpose of implementing educational policy—Whether administra-
tive Court can interfere.*

20 *Practice—Reserved judgment—Retirement of Judge, who has heard*

*the case and reserved judgment, before delivery of judgment—
Judgment can be delivered on the basis of the record by another
Judge, by consent of parties.*

On April 7, 1969, the applicant, a headmaster of a secondary education school, posted at the Lapithos Gymnasium, applied for transfer from Lapithos to Nicosia on the ground, *inter alia*, that his daughter was suffering from asthmatic bronchitis and it was necessary for her to avoid a climate with high humidity like that at Lapithos. The respondent Committee turned down his application due to lack of vacant posts of headmasters in the Nicosia area and transferred him to the Gymnasium at Morphou, which is nearer to Nicosia and with a climate different from that of Lapithos. Applicant was informed of this decision by letter dated August 27, 1969 and hence this recourse.

Counsel for the applicant contended:

- (a) That the *sub judice* decision was not duly reasoned.
- (b) That there was actually a vacant post of headmaster, at the material time.
- (c) That once it was decided to refuse the application of the applicant for transfer to Nicosia, the respondent Committee wrongly decided to transfer him to Morphou as he had not applied for a transfer there, but only to Nicosia; and he had so applied after he had come to know of a relevant circular of the Ministry of Education, dated March 20, 1969, which invited applications for transfers.

Counsel argued in this connection that the said circular has resulted in the respondent Committee having become legally bound to transfer the applicant only as applied for by him or to refuse to transfer him; and not to transfer him to another place to which he had not applied to be transferred.

With regard to contention (b) above the vacant post was at the Phaneromeni Gymnasium for Girls and it was decided, on the basis of a recommendation of the Ministry of Education to the effect that, as far as possible, at schools for girls there should be posted headmistresses, to post there a very recently appointed headmistress instead of transferring to it the applicant.

*Held,** (1) that the letter by means of which the *sub judice* decision was communicated to the applicant must be read together with the relevant minutes of the respondent Committee; that in the said minutes there are set out full and adequate reasons for which the applicant could not, in the opinion of the respondent Committee, be transferred to Nicosia; and that, accordingly, contention (a) must fail.

(2) (*After stating the principles governing intervention of this Court in cases of recourses relating to transfers—vide p. 44 post*) that the course of posting a headmistress at the Phaneromeni Gymnasium, which was adopted by the respondent Committee, does not amount to an improper use of its relevant discretionary powers; that, on the contrary, it was a course which was reasonably open to the Committee, in the circumstances, and, moreover, it was adopted for the purpose of implementing educational policy; that it is well settled that administrative Courts do not enter into the question as to whether or not a policy adopted by an administrative organ is a proper one, because doing so would be beyond the limits of a jurisdiction such as that conferred on this Court by means of Article 146 of the Constitution; and that, accordingly, contention (b) must fail.

(3) That it is clear, on reading the said circular of March 20, 1969, as a whole, that it did not mean that no transfer would be effected unless the educationalist affected by it had applied to be transferred; that, therefore, there is no merit in the contention of the applicant that he could not be transferred to Morphou because he had applied to be transferred only to Nicosia; and that, accordingly, the recourse must fail.

Application dismissed.

30 Cases referred to:

Makrides v. Republic (1967) 3 C.L.R. 147, 151;

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

Sentonaris v. Greek Communal Chamber, 1964 C.L.R. 300 at pp. 304, 305;

* As the Judge who heard this case has retired before delivering his reserved judgment Counsel for the parties agreed that the reserved judgment should be delivered on the basis of the record by another Judge of this Court, who after studying the case was satisfied that it was not necessary in the interests of justice to have it reheard all over again.

- Vafeadis v. The Republic*, 1964 C.L.R. 454 at p. 465;
Pierides v. The Republic (1969) 3 C.L.R. 274 at p. 283;
Mouzouris v. The Republic (1972) 3 C.L.R. 43 at p. 49;
Matheou v. The Republic (1972) 3 C.L.R. 304 at p. 308;
Elia v. The Educational Service Committee (1974) 3 C.L.R. 73 5
 at p. 77;
Papas v. The Cyprus Grain Commission (1974) 3 C.L.R. 143
 at p. 151;
Kyriakides v. The Republic (1976) 3 C.L.R. 364 at p. 373;
Savvidou v. The Republic (1970) 3 C.L.R. 118 at pp. 121, 122; 10
Pernaros v. The Republic (1975) 3 C.L.R. 175 at pp. 184, 185.

Recourse.

Recourse against the refusal of the respondent to transfer applicant from Lapithos Gymnasium to Nicosia.

- M. Christofides*, for the applicant. 15
A. Eftychiou, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment. This is a case in which judgment was reserved by a Judge of this Court who has retired before having the opportunity to deliver the judgment which he reserved after the hearing of the case. 20

On December 20, 1979, counsel for the parties agreed that the reserved judgment should be delivered on the basis of the record by another Judge of this Court, and, therefore, in accordance with the practice adopted on similar occasions in the past (see, *inter alia*, *Makrides v. The Republic*, (1967) 3 C.L.R. 147, 151), I shall proceed to deliver judgment in this case, having been satisfied, after studying it, that it is not necessary in the interests of justice to have this case re-heard all over again. 25 30

The applicant, who, at the material time, was a headmaster of a secondary education school and posted at the Lapithos Gymnasium, applied to be transferred to Nicosia, but respondent 2, the Educational Service Committee, did not grant his request and transferred him instead to the Morphou Gymnasium. 35

The relevant decision of the Committee was communicated to him by means of a letter, dated August 27, 1969, after having

been reached at a meeting of the Committee on August 26, 1969. The transfer of the applicant to Morphou Gymnasium, as headmaster, was made with effect as from September 1, 1969.

5 The applicant had applied earlier to be transferred from
Lapithos to Nicosia as from the commencement of the school
year 1968-1969. When his application was turned down he
filed a recourse, No. 332/68, in which judgment was given on
July 16, 1969, annulling the refusal of the Educational Service
Committee to accede to his request; the annulment of the said
10 refusal was based on the ground that the relevant decision of
the Committee was not reasoned and that all relevant considera-
tions were not duly weighed (see, *Carayiannis v. The Republic*,
(1969) 3 C.L.R. 341).

15 Then, he applied, once again, on April 7, 1969, for transfer
from Lapithos to Nicosia, and the grounds of his application
were more or less the same as the grounds of his earlier applica-
tion.

20 One of these grounds was the fact that his daughter Maria
was suffering from asthmatic bronchitis, and it was necessary
for her to avoid a climate with high humidity like that at
Lapithos (see, in this respect, the medical certificate attached
to an earlier application for a transfer, dated March 26, 1968,
to which reference is made in the subsequent application of
April 7, 1969).

25 From the relevant minutes of the respondent Committee
(*exhibit 2*) it appears that the reasons put forward by the
applicant in support of his application for a transfer to Nicosia
from Lapithos were duly weighed and that his request was
refused due to lack of vacant posts of headmasters in the Nicosia
30 area; he was, however, transferred to the Gymnasium at
Morphou, which is nearer to Nicosia and has a climate different
from that of Lapithos.

35 The applicant complains, in the present case, that the *sub*
judice decision is not duly reasoned, but I cannot accept that this
contention is well-founded, because the letter by means of which
the said decision was communicated to the applicant, on August
27, 1969 (*exhibit 1*), must be read together with the aforemen-
tioned minutes (*exhibit 2*) and in the said minutes there are set

out full and adequate reasons for which the applicant could not, in the opinion of the respondent Committee, be transferred to Nicosia.

In reviewing, in the present proceedings, the exercise of the relevant discretionary powers of the Committee there must be borne in mind the principles which govern the intervention of the Court in a case of this nature, namely a recourse against a decision relating to transfer. It is well established that the evaluation, made by a competent organ, in relation to the factors militating for or against, as the case may be, a transfer, is not subject to the control of an administrative Court, except where there exists improper use of the relevant discretionary powers or misconception concerning the factual situation or failure to take into account a material factor (see, *inter alia*, *Sentonaris v. The Greek Communal Chamber*, 1964 C.L.R. 300, 304, 305, *Vafeadis v. The Republic*, 1964 C.L.R. 454, 465, *Pierides v. The Republic*, (1969) 3 C.L.R. 274, 283, *Mouzouris v. The Republic*, (1972) 3 C.L.R. 43, 49, *Matheou v. The Republic*, (1972) 3 C.L.R. 304, 308, *Elia v. Educational Service Committee*, (1974) 3 C.L.R. 73, 77, *Papas v. The Cyprus Grain Commission*, (1974) 3 C.L.R. 143, 151 and *Kyriakides v. The Republic*, (1976) 3 C.L.R. 364, 373).

In the light of the aforementioned principles I shall now examine the specific complaints of the applicant in the present case:

It has been contended by counsel for the applicant that there was actually a vacant post of headmaster at a Gymnasium in Nicosia, at the material time, but that—as it appears from the relevant minutes of the respondent Committee—it was at the Phaneromeni Gymnasium for Girls and that it was decided, on the basis of a recommendation of the Ministry of Education to the effect that, as far as possible, at schools for girls there should be posted headmistresses, to post there a very recently appointed headmistress instead of transferring to it the applicant. I can see no reason for holding that the course thus adopted by the respondent Committee amounted to an improper use of its relevant discretionary powers; on the contrary, it was a course which was reasonably open to the Committee, in the circumstances, and, moreover, it was adopted for the purpose of implementing educational policy; and it is well settled that

administrative Courts do not enter into the question as to whether or not a policy adopted by an administrative organ is a proper one, because doing so would be beyond the limits of a jurisdiction such as that conferred on this Court by means of
5 Article 146 of our Constitution (see, in this respect, *inter alia*, *Savvidou v. The Republic*, (1970) 3 C.L.R. 118, 121, 122, and *Pernaros v. The Republic*, (1975) 3 C.L.R. 175, 184, 185).

Counsel for the applicant has argued, also, that once it was decided to refuse the application of the applicant for transfer to
10 Nicosia, the Committee has wrongly decided to transfer him to Morphou, as the applicant had not applied for a transfer there, but only to Nicosia; and he had so applied after he had come to know of a relevant circular of the Ministry of Education, dated March 20, 1969 (*exhibit 4*), which invited applications for trans-
15 fers.

It was argued further, in this connection, that the said circular has resulted in the respondent Committee having become legally bound to transfer the applicant only as applied for by him or to
20 refuse to transfer him; and not to transfer him to another place to which he had not applied to be transferred.

I would be inclined to agree with counsel for the applicant on this point if this was genuinely a case in which the administration had laid down, by means of the aforementioned circular, that transfers would be effected *only* on application by those
25 concerned (see, in this connection, Zacharopoulos Digest—“ Συμπλήρωμα Νομολογίας ”—1953–1960, vol. 1, λ-ω, p. 343, paras. 1004, 1005, and Economou on the Judicial Control of the Exercise of Discretionary Powers in Public Administration—“ Ο Δικαστικός Έλεγχος τής Διακριτικής Έξουσίας εν τῇ
30 Δημοσία Διοικήσει ”—1965, p. 165).

It is clear, however, on reading the said circular of March 20, 1969, as a whole, that it was sent because the respondent Ministry of Education and the respondent Committee were going to
35 consider the matter of postings of educationalists at the various schools, before the end of the current school year, and, as it was considered that the transfers of educationalists were clearly related to such matter, it was decided to afford, by means of the aforesaid circular, to all wanting a transfer an opportunity to apply accordingly; but this did not mean that no transfer would

be effected unless the educationalist affected by it had applied to be transferred.

I find, therefore, no merit in the contention of counsel for the applicant that his client could not be transferred to Morphou because he had applied to be transferred only to Nicosia; and, in any event, it is clear that the transfer of the applicant to Morphou was made in order to solve, as far as possible, the family problem of the applicant due to the fact that the health of his minor daughter Maria was affected by the highly humid climate of Lapithos.

In the light of all the foregoing I find that the recourse of the applicant cannot succeed and it is, therefore, dismissed accordingly; but, having in mind all relevant considerations, I do not propose to make an order of costs against him.

Application dismissed. No order as to costs.