

1982 March 29

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. GEORGHIOS VORKAS
2. CHRYSO G. VORKA,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE, AND/OR
THE MINISTRY OF EDUCATION,

Respondents,

(Case No. 363/81).

5 *Administrative Law—Administrative acts or decisions—Need for due reasoning—Transfer of elementary school teachers—Reasons for the transfer in answer to applicant's objection and reasons appearing in a communique on the question of transfers generally, in direct conflict—Sub judice transfers annulled for lack of due reasoning.*

10 *Administrative Law—Administrative acts or decisions—Need to be reached after a proper inquiry—Transfer of elementary school teachers—Objection—No sufficient inquiry into the grounds of objection—Transfers annulled as being the result of insufficient inquiry.*

15 The applicants who are husband and wife have from 1976 to 1980 been serving as elementary school teachers at the elementary school of Aglandjia. On July 24, 1981, the respondents decided to transfer them to Psevdas village. Applicants objected against the transfer by letter* dated July 27, 1981 and the respondents replied to the objection by letter** dated November 9, 1981 in which it was stated, inter alia, that the objection could

* The letter appears at pp. 316-319 *post*.

** The letter is quoted at pp. 312-13 *post*.

not be entertained because of educational reasons consisting of the existence of surplus of teachers at Nicosia schools and corresponding scarcity of teachers at rural schools. In a communique issued by the respondents, apparently in answer to criticism against their decisions in connection with transfers of elementary school teachers, they spoke about surplus of teachers in the Districts of Limassol and Paphos. 5

Upon a recourse by the applicants against the above transfer:

Held, that the administration must give proper reasons for its decision so that the Court may be enabled to ascertain whether the decision complained of is well founded; that though the reasoning of an administrative organ may be ascertained and supplemented from the material in the files of the administration, in the present case no such reasoning can be derived from the documents and files produced in the Court; comparing the reasons that allegedly led the respondents to the transfer of school teachers, as they appear in their said communique, and the contents of their letter of the 9th November, 1981, one cannot reach the conclusion that the respondents arrived at their decision in a reasonable manner; that, further, it is a basic principle of administrative law that the administrative organ concerned in each case, in reaching its decision, must have carried out a proper inquiry; that in this case, it does not appear either from the relevant files or from their letter of the 9th November, 1981, that the respondents have gone thoroughly into the grounds put forward by the applicants in their objection against their transfer; and that, therefore, the sub judice decision has to be declared null and void for lack of due reasoning and as being the result of insufficient inquiry on the part of the respondents. 10 15 20 25

Sub judice decision annulled. 30

Cases referred to:

Eleftheriou and Others v. The Central Bank (1980) 3 C.L.R. 85 at p. 98;

Bagdades v. The Central Bank of Cyprus (1973) 3 C.L.R. 417 at pp. 428, 429;

Savva v. The Republic (1980) 3 C.L.R. 675 at p. 696. 35

Recourse.

Recourse against the decision of the respondents to transfer

applicants from the Fifth Elementary School of Aglandjia to the Elementary School of Psevdas.

A. S. Angelides, for the applicants.

R. Vrahimi-Karyda (Mrs.), for the respondent.

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Cur. adv. vult.

DEMETRIADES J. read the following judgment. By means of the present recourse the applicants seek the following relief:

1. A declaration and/or decision of the Court that the decision and/or act of the respondents to transfer the applicants from the Fifth Elementary School of Aglandjia to the Elementary School of Psevdas is null, void and of no effect whatsoever.
2. A declaration of the Court that the omission of the respondents to answer and/or examine the objection of the applicants as to the said transfer and/or their omission to decide or review their decision about the transfer of the applicants to Psevdas is void and everything omitted should be done.
3. A declaration of the Court that the decision and/or the persistence of the respondents to transfer the applicants to Psevdas notwithstanding their objection is void and of no legal effect.

The applicants are husband and wife and they are serving as elementary school teachers since 1960 and 1962, respectively.

From the time of their appointment, and until 1975, they had both served in rural schools. In 1975 they were transferred to Dasoupolis elementary school, which is classified as type 'A', where they served for one year and from 1976 to 1980 they were posted at the 4th and 5th elementary schools of Aglandjia, which are of type 'A' and 'B'.

The decision for the transfer of the applicants from Aglandjia to Psevdas village was reached by the respondents on the 24th July, 1981, but it was not communicated to them till the 18th August, 1981. On the 27th July, 1981, the applicants, who were informed about their transfer from the daily press, objected in writing against the said decision, setting out the reasons why it ought not to be implemented. Their objection, which is

appended to this judgment and is marked as Document No. 1, was address to the “Τμηματάρχη Στοιχειώδους Έκπαιδύσεως ‘Υπουργείου Παιδείας” (Head of Elementary Education of the Ministry of Education), and as it appears from it, it was received by “‘Υπηρεσία Προσωπικού ‘Υπουργείου Παιδείας” (Personnel Service of the Ministry of Education), on the 30th July, 1981. At p. 2 of the objection, there is the following handwritten note: “Ε.Ε.Υ.”, which apparently means “‘Επιτροπή Έκπαιδευτικής ‘Υπηρεσίας”, “για ένήμερωση και πιθανή ένέργεια παρ.”; (Educational Service Committee, for information and possible action please). This note is initialled and bears as date the 29th July, 1981.

Though the applicants were interviewed by the respondent Educational Service Committee in connection with their said objection at about the end of August 1981, the official letter sent to them, by which they were informed that they were transferred to Pseudas, was received by them on the 12th September, 1981. The applicants did not, until the 9th November, 1981, receive any reply to their said objection, nor were they informed why their objection was rejected.

In their reply of the 9th November, 1981, the respondents set out the reasons why the objection of the applicarts was rejected. The above letter reads as follows:-

“9 Νοεμβρίου 1981

Κύριο
Γεώργιο Βορκά
Δάσκαλο
Δημοτικό Σχολείο Ψευδά
(Μέσω Γενικού Διευθυντή)

‘Αναφέρομαι στην αίτηση/ένσταση σας σχετικά με τη μετάθεσή σας και σās πληροφορώ ότι η ‘Επιτροπή Έκπαιδευτικής ‘Υπηρεσίας άφου εξέτασε την ένσταση σας και τις περιπτώσεις όλων τών δασκάλων που ύπηρετούσαν στη Λευκωσία για πέντε τουλάχιστο χρόνια, δέν μπόρεσε νά ικανοποιήσει τó αίτημά σας, για τούς άκόλουθους λόγους:

(α) Έκπαιδευτικοί λόγοι συνιστάμενοι στην ύπαρξη πλεονασμάτων στα σχολεία Λευκωσίας και άντιστοιχων έλλειμάτων σε σχολεία ύπαίθρου.

(β) ‘Ανάγκη ικανοποίησης δικαιολογημένων αίτημάτων άλλων συναδέλφων σας για μετάθεση.

(γ) Οί μεταπεθέντες ή ήπερετοϋντες στη Λευκωσία δάσκαλοι
είχαν ισχυρότερους λόγους για παραμονή.

(Υπ.) Ι. ΒΑΡΝΑΒΑΣ
Πρόεδρος."

5 ("Mr. Georghios Vorkas
Teacher
Elementary School of Psevdas
(Through Director-General)

10 I refer to your application/objection in respect of your transfer
and inform you that the Educational Service Committee after
considering your objection and the cases of all the teachers
serving in Nicosia for at least five years, could not satisfy your
application for the following reasons:

- 15 (a) Educational reasons consisting of the existence of
redundancies in the Nicosia schools and the respective
shortage in rural schools.
- (b) Need to satisfy justified claims of other colleagues
of yours for transfer.
- 20 (c) Those teachers transferred or serving in Nicosia had
stronger reasons for their stay.

(Sgd) I. Varnavas
Chairman."

25 It is worth to note that this letter was sent to the applicants
approximately one month after they had filed the present
recourse.

30 As it appears from the statements made by counsel during
their addresses, the reasons why the applicants were transferred
to Psevdas were the following: On the 26th June, 1981, two
teachers, who were then posted at Psevdas elementary school,
were transferred to nearby villages and a couple who was teaching
in Nicosia was transferred to Psevdas village, but after an
objection by the latter, the respondents decided that they had
good reason not to be transferred and on the 24th July, 1981,
they decided to transfer the applicants to Psevdas in the place
35 of the other couple. No explanation has been given to the
Court why the two teachers were transferred from Psevdas
to nearby villages and what made necessary their said transfers.

As it appears from the documents filed, the applicants have

three children. Two of them are attending the Pancyprian Gymnasium at Nicosia and the third is a five-year's old daughter. They have nobody to look after the children when they are away at Psevdas and for this reason they are forced to take the youngest child with them to Psevdas. 5

I have already stated the reasons given by the respondents for the transfer of the applicants to Psevdas, but none answers the grounds put forward by the applicants in their objection.

On the 12th October, 1981, however, the respondents, by a communique issued through the Public Information Office, apparently in answer to criticism made against their decision in connection with the transfer of elementary school teachers, among others, they gave the following explanation for such action: 10

“(γ) ‘Η κατάσταση στην ‘Εκπαίδευση μετά την εισβολή και τόν έκτοπισμό χιλιάδων συμπατριωτών μας παρουσίασε πολλά και Ιδιάζοντα προβλήματα π.χ. πλεονάσματα δασκάλων στην έπαρχία Λεμεσοῦ και Πάφου όπου έγκαταστάθηκε μεγάλος αριθμός προσφύγων δασκάλων και έλλείματα στις έπαρχίες Λάρνακας και ‘Αμμοχώστου. ‘Η ‘Επιτροπή είναι υποχρεωμένη να αντιμετώπισει αυτά τὰ προβλήματα και είναι φυσικό να υπάρχουν διαμαρτυρίες και αντιδράσεις”. 15 20

“(c) The situation in Education after the invasion and the displacement of thousands of our compatriots presented many and particular problems i.e. redundancies of teachers in Limassol and Paphos Districts where a great number of refugee teachers have settled and shortages in the Larnaca and Famagusta Districts. The committee has to face these problems and it is natural that there should be protests and reactions”). 25 30

It is obvious that the reasons given by the respondents in rejecting the objection of the applicants against their transfer to Psevdas are in direct conflict with their communique issued on the 12th October, 1981, as in that communique they speak about surplus of teachers in the districts of Limassol and Paphos, whilst in their letter explaining their refusal to accede to the request of the applicants they speak about surplus of teachers in the Nicosia schools. They are, further, an afterthought. 35

It has been repeatedly stated by this Court in a number of

cases that the administration must give proper reasons for its decision so that the Court may be enabled to ascertain whether the decision complained of is well founded.

5 In the case of *Eleftheriou and Others v. The Central Bank*, (1980) 3 C.L.R. 85, Hadjianastassiou J. had this to say (at p. 98):

10 "It is said and rightly so, with respect, that it is one of the concepts of administrative law that decisions must be duly reasoned, and which in effect means, that clear and adequate reasons must be given, especially in cases of decisions taken by collective organs. Indeed, this is essential when
15 a decision is unfavourable to the subject, and because in the absence of such reasons, the Court is unable to ascertain whether the decision complained of is well-founded in fact and in accordance with the law".

(See also, inter alia, *Bagdades v. The Central Bank of Cyprus*, (1973) 3 C.L.R. 417, 428, 429; *Savva v. The Republic*, (1980) 3 C.L.R. 675, 696).

20 Though the reasoning of an administrative organ may be ascertained and supplemented from the material in the files of the administration, in the present case no such reasoning can be derived from the documents and files produced in the Court.

25 Comparing now the reasons that allegedly led the respondents to the transfer of school teachers, as they appear in their said communique, and the contents of their letter of the 9th November, 1981, one cannot reach the conclusion that the respondents arrived at their decision in a reasonable manner. Further, it is a basic principle of administrative law that
30 the administrative organ concerned in each case, in reaching its decision, must have carried out a proper inquiry. In the present case, it does not appear either from the relevant files or from their letter of the 9th November, 1981, that the respondents have gone thoroughly into the grounds put forward
35 by the applicants in their objection against their transfer.

Therefore, the sub judice decision has to be declared null and void for lack of due reasoning and as being the result of insufficient inquiry on the part of the respondents.

In view of my above findings, I consider it unnecessary to deal with the other issues raised in these proceedings.

For all the above reasons, the sub judice decision is declared null and void and of no legal effect.

Costs of this application shall be against the respondents. 5

Sub judice decision annulled. Order for costs as above.

“Γεώργιος Βορκᾶς

Δ/λος

Ὀμήρου 11, Τ.Τ.115

Λευκωσία.

10

Λευκωσία 27 Ἰουλίου, 1981.

*Ἐντιμον Κύριον

Τμηματάρχη Στοιχειώδους Ἐκπαιδεύσεως

Ἐπιτελεῖον Παιδείας

Λευκωσία.

15

Ἐντιμε Κύριε,

Με τὴν ἐπιστολή μου αὐτή, θέλω νὰ διαμαρτυρηθῶ γιὰ τὴν τελευταία μετάθεση μου ἀπὸ τὸ Ε΄ Δημοτικὸ Σχολεῖο Ἀγλαντιζιάς στὸ Δημοτικὸ Σχολεῖο Ψευδᾶ τῆς ἐπαρχίας Λάρνακας.

20

Εἶμαι δάσκαλος με 22 χρόνια ὑπηρεσίας καὶ λόγω ἀρχαιότητος, σύμφωνα με τοὺς κανονισμοὺς μεταθέσεων, πρέπει νὰ τυγχάνω καλύτερης μετάθεσης.

Ἐχω ὑπηρετήσει γιὰ 15 συνεχῆ χρόνια στὴν ὑπαιθρον καὶ μάλιστα σὲ σχολεῖα διδιδάσκαλα καὶ τριδιδάσκαλα πὺ βρίσκοντο σὲ μακρινὲς ἀποστάσεις.

25

Ἡ ἀπόσταση μεταξύ τῆς μόνιμης διαμονῆς μου καὶ τῆς νέας μετάθεσης μου εἶναι ἀρκετὰ μεγάλη, περίπου 22 μίλια, καὶ λόγω τοῦ ὅτι δὲν δικαιούμαστε ὁδοιπορικὰ ἀλλὰ μόνο κάποιον ἐπίδομα ἐνοικίου, τὰ ἐξοδα μεταβάσεως μου στὸ Ψευδᾶ εἶναι δυσανάλογα με τὸ ἐπίδομα πὺ δικαιουῖμαι.

30

Ἐπίσης ἡ μεγάλη ἀπόσταση δυνατὸν νὰ ἐπηρεάζει καὶ τὴν ἐγκαιρη προσέλευση μου στὸ σχολεῖο λόγω ἀπροβλέπτων δυσκολιῶν.

Ἐχω δυὸ παιδιά πὺ φοιτοῦν σὲ Γυμνάσιο καὶ ἓνα πὺ εἶναι προσχολικῆς ἡλικίας καὶ πηγαίνει σὲ νηπιαγωγεῖο καὶ δὲν μπορῶ νὰ μετοικήσω στὸ Ψευδᾶ καὶ ν' ἀφήσω τὸ σπίτι μου. Πολλὲς

35

δὲ φορές συμβαίνει νὰ μεταφέρω ὁ ἴδιος τὰ παιδιά μου στὸ σχολεῖο, εἴτε γιατί ὁ καιρὸς εἶναι βροχερὸς εἴτε γιὰ ἄλλους λόγους.

Μ' ὄλο τὸ σεβασμὸ πού τρέφω πρὸς τὸ πρόσωπο σας κύριε τμηματάρχῃ, μὲ τὴ νέα μετάθεσι μου σχημάτισα τὴν ἐντύπωσι
 5 ὅτι βρίσκομαι σὲ διωγμὸ ἢ ὅτι τιμωροῦμαι ἀπὸ τὴν ὑπηρεσία. Χωρὶς νὰ τὸ θέλουμε σὰν ἄνθρωποι, συγκρίνουμε ποιά μεταχείριση ἔχουν ἄλλοι συνάδελφοι, πού ὄχι μόνο δὲν ὑπηρετήσαν στὴν ὑπαιθρο ἢ ὑπηρετήσαν πολὺ μικρὸ χρονικὸ διάστημα σὲ μεγάλα
 10 σχολεῖα τῆς ὑπαιθρου καὶ γιὰ συνεχῆ ὀλόκληρα χρόνια, ὑπηρετοῦν πάντα σὲ θέσεις πολὺ βολικὲς μέσα στὴν πόλῃ πού κατοικοῦν.

Χωρὶς νὰ νομισθεῖ, ὅτι ζηλεύω συναδέλφους πού τυγχάνουν πάντα προνομιακῆς μεταχείρισης θὰ ἤθελα νὰ ἀναφερθῶ στὰ
 15 τελευταῖα χρόνια τῆς ὑπηρεσίας μου στὴ Λευκωσία. Μετακινήθηκα σὲ τρία σχολεῖα, ἀπὸ τὰ ὁποῖα τὰ δύο ἦταν νεοῖδρυτα. Ἐναφέρομαι στὸ Δ' Δημοτικὸ Σχολεῖο Ἀγλαντιζιάς καὶ τὸ Ε' Δημοτικὸ Σχολεῖο Ἀγλαντιζιάς.

Τὸν πρῶτο χρόνο ἐργάστηκα στὰ σχολεῖα αὐτὰ κάτω ἀπὸ πολὺ ἀντίξοες συνθῆκες διότι συνεχίζετο ἡ ἀνέγερσι τους καὶ
 20 τὸ δεῦτερο χρόνο σὲ συνθῆκες σκληρῆς δουλειᾶς γιὰ ὀργάνωσι σχολεῖου καὶ διαμόρφωσι ἐξωτερικῶν χώρων.

Αὐτὰ τὰ ἀναφέρω, ὄχι γιατί θέλω προνομιακὴ μεταχείριση ὅπως ἄλλους συναδέλφους, ἀλλὰ γιατί δὲν ἀνέχομαι οὔτε καὶ νὰ ἀδικοῦμαι.

Ἄν πραγματικὰ ὑπάρχουν λόγοι γιὰ τοὺς ὁποῖους τυγχάνω
 25 αὐτῆς τῆς μεταχείρισης σᾶς παρακαλῶ πολὺ νὰ μοῦ τοὺς γνωστοποιήσετε.

Μὲ ἐκτίμησι,
 Γ. Βορκᾶς

E.E.Y.

30 Γιὰ ἐνημέρωσι καὶ πιθανὴ ἐνέργεια, παρ. 29.7.81

Υ.Γ. Οἱ ἴδιοι λόγοι πού ἀναφέρονται στὴν ἐπιστολὴ τοῦ συζύγου μου, ἰσχύουν καὶ γιὰ τὸ ἄτομο μου.

Μὲ ἐκτίμησι,
 Χρ. Βορκᾶ'.

("Georghios Vorkas
 Teacher
 Omerou Str. 11, T.T. 115
 Nicosia
 Nicosia 27 July, 1981

5

Hon. Head of Elementary Education
 Ministry of Education
 Nicosia.

Hon Sir,

With this letter of mine, I wish to protest against my last
 transfer from the 5th Elementary School of Aglandjia to the
 Elementary School of Psevdas of Larnaca District.

10

I am a teacher with 22 years service and due to seniority,
 according to the Regulation regarding transfers, I must have a
 better transfer.

15

I have served for 15 years in rural posts, in schools with two
 or three teachers which were located in long distances.

The distance between my permanent residence and my new
 transfer is quite long, about 22 miles, and due to the fact that
 we are not entitled to any travelling allowance but only to some
 rent allowance, the costs of my proceeding to Psevdas are dispro-
 portionate to the allowance I am entitled to.

20

The great distance may also affect my punctual attendance
 to the school due to unforeseen difficulties.

I have two children attending the Gymnasium and one of
 pre-school age who is attending a kindergarten and I cannot
 change residence and move to Psevdas and leave my house.
 Many times it happens that I take my children to school, either
 because the weather is rainy or for other reasons.

25

With all the respect I have for your person Mr. Director,
 with my new transfer I formed the opinion that I am under
 persecution or that I am being punished by the service. With-
 out intending it, as men, we compare the treatment which other
 colleagues receive, who not only have not served in rural posts
 or have served for a very short period in big rural schools and
 for many continuous years, are serving always in posts very
 convenient in the town where they live.

30

35

Without being considered that I am jealous of colleagues who have always received privileged treatment I would like to refer to the last years of my service in Nicosia. I have been moved to three schools, two of which were newly established.

5 I refer to the 4th Elementary School of Aglandjia and the 5th Elementary School of Aglandjia. The first year I served in these schools under very difficult conditions because their erection continued and the second year under conditions of hard work for organizing the school and the formation of the
10 outside space.

I state these, not because I want privileged treatment as other colleagues, but because I cannot tolerate being treated unjustly.

If there really exist reasons for which I receive this treatment, I request you to notify them to me.

15

With respect
(Sgd) G. Vorkas

E.S.C.

For information and possible action please.

20

(Sgd)
29.7.81

P.S. The same reasons referred in my husband's letter refer to my person also.

With respect
(Sgd) Chryso Vorka"