

1986 March 19

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

PANIKKOS KYRIACOU.

*Applicant.*

v.

1. THE MINISTRY OF INTERIOR.
2. THE COMMANDER OF POLICE.

*Respondents.*

(Case No. 909/85).

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5 *Executory act—Internal measure of administration—Transfer of member of Police Force from the Prosecution Section to a police station—Police Order No. 13 (para. 3(2)), issued under s. 9 of The Police Law, Cap. 285—Procedure to be followed in respect of transfers from or to special services—Reason of solemnity of such procedure—As at present advised such transfer is of an executory nature.*

10 By means of this recourse the applicant challenges his transfer from the Prosecution Section to Lykavitos Police Station (Nicosia). Counsel for the respondents raised the preliminary objection that the sub judge decision is not of an executory nature, but an internal measure of administration.

15 *Held, dismissing the preliminary objection:* (1) Para. 3(2) of Police Order No. 13 provides for a particular procedure to be followed in respect of transfers from or to special services, such as, among others, the Prosecution Section.

20 (2) The main reason of such procedural solemnity is that such a transfer entails substantial change of duties. It follows that, as at present advised, the Court is in-

clined to hold that the transfer in question is of an executory nature. (*Yiallourou v. The Republic* (1976) 3 C.L.R. 214 distinguished).

*Preliminary objection dismissed.*

Cases referred to:

*Tseriotis v. The Republic* (1984) 3 C.L.R. 693;

*Kyriakidou v. The Republic* (1984) 3 C.L.R. 122;

*Yiallourou v. The Republic* (1976) 3 C.L.R. 214;

*Karapataki v. The Republic* (1982) 3 C.L.R. 88;

*Republic v. Nissiotou* (1985) 3 C.L.R. 1335.

**Recourse.**

Recourse against the decision of respondent 2 to transfer applicant from the Prosecution Section to Lykavitos Police Station in Nicosia.

*P. Angelides*, for the applicant.

*A. Vladimirov*, for the respondent.

*Cur. adv. vult.*

TRIANTAFYLLIDES P. read the following decision. By means of the present recourse the applicant is challenging the decision of respondent 2 to transfer him from the Prosecution Section to Lykavitos Police Station (Nicosia) as from the 1st September 1985.

The applicant is a graduate of the Law School of Thessaloniki University, in Greece, and has passed the Statute Laws examinations of the Government of Cyprus.

The sub judice decision was published in the Police Weekly Orders on the 2nd September 1985.

Counsel for the respondents has raised, by means of the Opposition, the preliminary objection that the said decision is not executory, but an internal measure of administration not amenable to the jurisdiction of this Court under Article 146 of the Constitution.

It is well settled that only an executory administrative act or decision can be challenged by a recourse for annulment, such as the present one (see, inter alia, *Tseriotis v. The Republic*, (1984) 3 C.L.R. 693 and *Kyriakidou v. The Republic*, (1984) 3 C.L.R. 122); and that an administrative measure of an internal nature is not executory (see, in this respect, *Yiallourou v. The Republic*, (1976) 3 C.L.R. 214, *Karanataki v. The Republic*, (1982) 3 C.L.R. 88, and *Republic v. Nissiotou*, (1985) 3 C.L.R. 1335).

10 Paragraph 3(2) of Police Order No. 13 (which was issued under section 9 of the Police Law, Cap. 285) provides that transfers from or to special services, such as, among others, the Prosecution Section, are effected by the District Police Commander only with the approval of the Commander of  
15 Police; and for such approval to be obtained the District Police Commander must submit, under paragraph 3(4) of the said Police Order No. 13, a written report containing the reasons for which the transfer is proposed.

In my opinion the main reason why provision has been  
20 made, as aforesaid, shrouding a transfer such as that of the applicant with procedural solemnity and safeguards is because it is a transfer entailing substantial change of duties and, therefore, as at present advised, I am inclined to hold that the sub judice transfer is not merely an internal  
25 measure of administration but a decision of executory nature which can be challenged by means of a recourse under Article 146 of the Constitution.

Consequently, the present case, on the basis of its own particular circumstances, is distinguishable from the  
30 *Yiallourou* case, supra, where it was found that no change of duties was involved.

As a result the preliminary objection raised by counsel for the respondents cannot be sustained and this case will be heard on its merits.

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*Order accordingly.*