

1986 October 17

[A. LOIZOU, SAVVIDES, LORIS, STYLIANIDES, KOURRIS, JJ.]

- 1. THE MINISTER OF INTERIOR,
- 2. THE COMMANDER OF POLICE,

Appellants,

v.

PANICCOS KYRIACOU,

Respondent.

(Revisional Jurisdiction Appeal No. 570).

Executory act—Internal measure of administration—Police Force—Transfers—Transfer entailing change of duties within the general concept of the duties of a police-man, but not a change of status or of residence—Not an executory act, but an internal measure of administration.

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The respondent in this appeal, who is a member of the Police Force, challenged by means of a recourse his transfer from the prosecution section of the Police to a police station. The President of this Court dismissed a preliminary objection that the sub judice act is not an executory act, but an internal measure of administration. As a result the present appeal was filed.

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Held, allowing the appeal and dismissing the said recourse: (1) The principle to be discerned from the cases of *Yiallouros v. The Republic* (1976) 3 C.L.R. 214, *Karapataki v. The Republic* (1982) 3 C.L.R. 88 and the *Republic v. Nissiotou* (1985) 3 C.L.R. 1355 is that in cases as the present one, where there is no question of change of residence, a transfer that does not entail a change of status of the service of an officer but entails a mere change of posting is an internal measure of administration.

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(2) The above principle applies to the facts of the present case. The applicant was asked to perform nothing more and nothing less than the duties of a police-man

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within the terms of his service under the Police Law and the Regulations made thereunder and in particular section 17(1) of the Law.

5 (3) The fact that the sub judge transfer was taken under Police Order 13, which was made in virtue of legislative powers and entails the change of posting and duties does not make the act anything less than an internal measure of administration. The mere change of duties within the general concept of the duties of a police-man, 10 which does not involve change of residence or status, is an internal measure of administration.

Appeal allowed. Recourse dismissed. No order as to costs.

Cases referred to:

- 15 *Yiallourous 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. 1355.

Appeal.

20 Appeal against the judgment of the President of the Supreme Court of Cyprus (Triantafyllides, P.) given on the 19th March, 1986 (Revisional Jurisdiction Case No. 909/85)* whereby the preliminary objection of the appellants to the effect that the transfer of the respondent from the Prosecution Section of the Police in Nicosia is 25 not an executory administrative act in the sense of Article 146 of the Constitution, was dismissed and it was ordered that the case would be heard on its merits.

A. Vladimirov, for the appellants.

P. Angelides, for the respondent.

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Cur. adv. vult.

A. LOIZOU, J. read the following judgment of the Court. The sole issue in the present appeal is whether the sub judge decision is an internal measure of

* Reported in (1986) 3 C.L.R. 1687.

administration or an executory act or decision in the sense of Article 146 of the Constitution.

The facts of the case in so far as they are necessary to be referred to for the purposes of this judgment are briefly these. The respondent who is a graduate of the Law School of Salonica University and has passed the examinations on the Laws of the Republic, was serving as a Police Prosecutor in Nicosia in the Prosecutions Section of the Police. By order of the Chief of Police published in the Police Weekly Orders of the 2nd September 1985, he was transferred from that section to Lykavitos Police Station in Nicosia town as from the 1st September, 1985.

By a recourse under Article 146 of the Constitution, he challenged this decision. The learned President of this Court, who tried same in the first instance under the provisions of section 12(2) of the Administration of Justice (Miscellaneous Provisions) Law 1964, decided, when the matter was raised by way of preliminary objection, that the sub judice act is an executory administrative act in the sense of the said article and consequently the recourse could be heard on its merits. He referred to the cases of *Yiallouros v. The Republic* (1976) 3 C.L.R. 214, *Karapatakis v. The Republic* (1982) 3 C.L.R. 88 and the *Republic v. Nissiotou* (1985) 3 C.L.R. 1355 in which it was held that an administrative measure of an internal nature is not an executory administrative act or decision capable of being challenged by a recourse for annulment. After giving the reasons for his conclusions he distinguished the *Yiallouros case* (supra) as in that case it was found that by the transfer no change of duties was involved.

His approach to the facts and circumstances of the present case was this. Elaborate provisions were made for the regulation of such transfers as the one in hand in Police Order No. 13 issued by the Chief of Police under the provisions of Section 9 of the Police Law, Cap. 285, and which order by virtue of paragraph 3(2) thereof provides that transfers from or to special services, such as among others, the Prosecution Section, are effected by the

Divisional Police Commander but only with the approval of the Chief of Police and that such approval to be obtained the Divisional Commander of Police must submit under paragraph 3(4) of the said Police Order a written report containing the reasons for which the transfer is proposed. The main reason in his opinion that prompted the shrouding of such transfers with such procedural solemnity and safeguards was because it was a transfer entailing substantial change of duties and therefore as at present advised, he was inclined to hold that the sub judge transfer was not merely an internal measure of administration but a decision of executory nature which could be challenged by means of a recourse under Article 146 of the Constitution. As it can clearly be discerned from the cases of *Yiallouros*, *Karapataki* and *Nissiotou* (supra), the test in matters as the present ones where there is no question of change of residence is that a transfer (μετακίνησης), that does not entail a change of status of the service of an officer who ordains a mere change of posting is an internal administrative measure which cannot be challenged by means of a recourse. This principle applies to the facts of the present case as the applicant was asked to perform nothing more and nothing less than the duties of a police-man within the terms of his service under the Police Law and the regulations made thereunder and in particular section 17(1) of the Law which provides that "every member of the force shall ... perform such duties as may be conferred or imposed upon a police officer under any Law in force and shall obey all lawful directions in respect of the execution of his office which he may from time to time receive from his superiors in the force."

The fact that the sub judge decision was taken under an order made by virtue of a legislative provision and entails the change of posting and duties does not make the act anything else than an internal administrative measure. The mere change of duties within the general concept of the duties of a policeman or a public officer at that, which does not involve change of residence or change of status is a matter of internal measure of administration and as such not capable of being the subject of a recourse under Article 146 of the Constitution. The existence in our view of the Statutory provisions or Regulations or Standing or Police

Orders as in the present case that prescribe a procedure for the regulation of such matters cannot change the nature of an act or decision and turn what is an internal administrative measure into an executory administrative act.

For all the above reasons the appeal is allowed and the recourse is dismissed as not challenging an executory administrative act in the sense of Article 146 of the Constitution. There will be, however, no order as to costs.

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Appeal allowed.

*Recourse dismissed with
no order as to costs.*

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