

1985 June 15

(FRANTAFYLLIDES P)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOS ELLINAS,

Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH
1 THE MINISTRY OF EDUCATION,
2 THE DIRECTOR OF SECONDARY EDUCATION
3 THE EDUCATIONAL SERVICE COMMISSION,

Respondents

(Case No 401/83)

Legitimate interest — Failure to reply in contravention of Art 29 of the Constitution — Once the refusal itself was challenged and the applicant did not suffer any material detriment by reason of such failure, the applicant cannot pursue his complaint against the failure to reply

5 *Legitimate interest — Transfer of Educational Officers — Decision to transfer interested parties not reached after comparison between them and the applicant regarding their suitability for transfer — Sub judice decision did not affect adversely and directly applicant's legitimate interest*

10 *Time within which to file a recourse under Art 146 of the Constitution — Objection against the refusal to transfer applicant to Paphos and the decision to transfer to Paphos two other Educational Officers — The Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations 1972, Reg 22 — Said objection outside scope of Reg 22 — It follows that time did not stop to run by reason of the objection*

15 *Educational Officers — Transfers — The Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations 1972, Reg 22 — Scope of Reg 22*

20 *The applicant challenges the refusal of the respondent Commission to transfer him to a Gymnasium in Paphos, and he also, complains against the decision of the Commission to transfer to a Gymnasium in Paphos interested parties A Papageorghiou and A Kangallis*

The transfers of the two interested parties were published in the press on 3 July 1983 and the applicant, on realizing that his application for transfer to Paphos had been turned down, lodged an objection to the respondent Commission on 9 July 1983 complaining that he had not been transferred to Paphos and, also, complaining that the two interested parties had been transferred to Paphos 5

The Commission rejected applicant's objection. The applicant was informed about the rejection of his objection on 29 September 1983

The applicant filed the present recourse on 4 October 1983. Counsel for the applicant submitted that the aforementioned objection of the applicant was lodged under the said regulation 22 and, in view of its provisions, it has to be held that the time for filing the present recourse began to run only as from the rejection of the objection 10

Held, dismissing the recourse (1) The provisions of regulation 22 cannot be invoked in the present instance as they appear to apply only to an objection by an educationalist against his own transfer and not also to an objection by an educationalist against the refusal to transfer him or against the transfer of another educationalist. It follows that the present recourse is out of time 15

(2) The decision to transfer the interested parties has not been reached after a comparison of the applicant and the interested parties as regards their suitability for transfer to Paphos and, consequently no legitimate interest of the applicant was adversely and directly affected 20

Recourse dismissed

No order as to costs

Cases referred to 25

Kynakides v The Republic, 1 R S C C 66,

Pitsillos v The Cyprus Broadcasting Corporation, (1981) 3 C L R 614, and on appeal (1982) 3 C L R 208,

Pitsillos v The Municipality of Nicosia (1982) 3 C L R 754,

Republic v Nissiotou (1985) 3 C L R 1335 30

Recourse.

Recourse against the refusal of the the respondents to transfer applicant from a Gymnasium in Polis Chrysochous to a Gymnasium in Paphos.

Ph. Valiantis, for the applicant. 35

R Vrahimi (Mrs), for the respondents

Cur adv vult

5 TRIANTAFYLLIDES P read the following judgment The applicant challenges the refusal of the respondent Educational Service Commission to transfer him from a Gymnasium in Polis tis Chrysochous to a Gymnasium in Paphos, and he, also, complains against the decision of the Commission to transfer to a Gymnasium in Paphos interested parties A Papageorghiou and A Kangallis

10 He has complained, too, that in relation to his request to be transferred to Paphos he did not receive a reply within the time-limit of thirty days prescribed by Article 29 of the Constitution, but he has not pursued this complaint when this case was heard, and, indeed, he could not have done so once he has proceeded to
15 challenge the refusal itself to transfer him to Paphos and since he has not shown that he has suffered material detriment through the failure to reply to him within thirty days (see, inter alia, *Kynakides v The Republic*, 1 R S C C 66, 77, *Pitsillos v The Cyprus Broadcasting Corporation*, (1981) 3 C L R 614, 619 and on
20 appeal (1982) 3 C L R 208, *Pitsillos v The Municipality of Nicosia*, (1982) 3 C L R 754, 762 and *The Republic of Cyprus v Nissiotou*, (1985) 3 C L R 1335

25 The applicant is a headmaster in Secondary Education and at the material time he was posted at a Gymnasium in Polis tis Chrysochous and he had asked repeatedly to be transferred to a Gymnasium in Paphos

30 Likewise interested parties Papageorghiou and Kangallis had applied to be transferred to a Gymnasium in Paphos and both of them were Headmasters in Secondary Education The first one was, at the time, serving at the Gymnasium of Polemi and the other one at the Gymnasium of Panayia

35 On 1 July 1983 the respondent Commission examined the applications for transfer of the applicant and of the two interested parties and decided to transfer both interested parties to Paphos for health reasons which they had invoked Though from the relevant minutes of the respondent Commission there appears that it examined as well on that date the application for transfer of the applicant there is nothing stated therein about the fate of such
40 application and it is only by implication that it is to be derived that it was not granted

The transfer of the two interested parties were published in the press on 3 July 1983 and the applicant, on realizing that his application for transfer to Paphos had been turned down, lodged an objection to the respondent Commission, on 9 July 1983, complaining that he had not been transferred to Paphos and, also, complaining that the two interested parties had been transferred to Paphos.

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As it appears from its relevant minutes the Educational Service Commission met on 9 September and 27 September 1983 and considered objections in relation to transfers. Though no specific reference is made in such minutes to the objection of the applicant it is to be presumed that his objection was dealt with and was rejected by the Commission.

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As it appears from the context of the Application in the present recourse the applicant was informed about the rejection of his objection on 29 September 1983.

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The applicant filed the present recourse on 4 October 1983; and counsel for the respondents submitted that, as the applicant knew since 9 July 1983 that his request for a transfer has not been granted and that the interested parties had been transferred, this recourse is out of time because it was filed after the lapse of the period of seventy-five days envisaged by Article 146(3) of the Constitution.

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Counsel for the applicant has referred to regulation 22 of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Related Matters) Regulations, 1972 (see No. 205, Third Supplement, Part I, to the Official Gazette of 10 November 1972) and submitted that the aforementioned objection of the applicant was lodged under the said regulation 22 and, in view of its provisions, it has to be held that the time for filing the present recourse began to run only as from the rejection of the objection.

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I am of the opinion that the provisions of regulation 22 cannot be invoked in the present instance as they appear to apply only to an objection by an educationalist against his own transfer and not also to an objection by an educationalist against the refusal to transfer him or against the transfer of another educationalist. If this was a case of a transfer to which regulation 22 could be treated as being applicable it might be said that the time-limit of seventy-five

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5 days had to be computed as from the date of the rejection of the objection of the applicant, but as regulation 22 is inapplicable in the present instance the time under Article 146.3 of the Constitution is to be computed as from 9 July 1983 and, therefore, the present recourse is out of time both against the refusal of the Commission to transfer the applicant, as well as against the transfers of the interested parties.

10 In any event, the complained of decision of the Commission to transfer the interested parties cannot be challenged by the applicant because such decision has not been reached after a comparison of the applicant and the interested parties as regards their suitability for transfer to Paphos and, consequently, no legitimate interest of the applicant was adversely and directly affected, in the sense of Article 146.2 of the Constitution, entitling
15 him to file this recourse against the transfers of the interested parties. For this reason, too, the recourse of the applicant in so far as it challenges the transfers of the interested parties has to be dismissed.

20 Before concluding this judgment I would like to say that, even assuming that the present recourse was not out of time as regards the refusal of the respondent Commission to transfer the applicant to a Gymnasium at Paphos, there appears from the text of the relevant minutes of the Commission of its meeting on 1 July 1983 that the Commission had at the time in mind the application of the
25 applicant for transfer to Paphos and the reasons put forward by him in support of it and carried out a sufficient inquiry into the matter; and on the material before it the decision not to transfer the applicant to Paphos was reasonably open to it.

30 In the light of all the foregoing the present recourse fails and it is dismissed accordingly, but with no order as to its costs.

Recourse dismissed.

No order as to costs.