1988 March 19

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE COSTITUTION

ANDRIANI P. SOLOUKKIDOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF EDUCATION,

Respondent.

(Case No. 323/86).

Administrative Act—Composite administartive act—When the final act is taken, previous acts (which could until then be challenged separately by a recourse) loose their executory character and cannot thereafter be challenged separately—By challenging the final act, the whole composite action is deemed as challenged—Transfer of educational officer—Recourse challenging the preparatory act awarding to the officer units affecting her transfer—After the final act of transfer, the decision lost its executory character—Recourse dismissed.

The facts of this case sufficiently appear in the judgment of the Court.

Recourse dismissed.
No order as to costs.

Cases referred to:

Papadopoulos v. The Republic (1983) 3 C.L.R. 1423;

Caramondani Bros. Ltd. v. The Republic (1987) 3 C.L.R. 156;

Mitidou v. CYTA (1982) 3 C.L.R. 555;

Ioannou v. EAC (1981) 3 C.L.R. 280;

Prezas and Another v. The Republic (1986) 3 C.L.R. 2525.

Recourse.

Recourse for a declaration that the decision of the respondent to estimate and consider the distance between the seat of applicant and her place of work during the school years from 1.9.63 - 1.4.65 and from 1.4.65 - 31.8.65 at 34 and 20 mils respectively is null and void and of no effect whatsoever.

M. Eliades, for the applicant.

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

Cur. adv. vult.

LORIS J. read the following judgment. Applicant is and was at all material times an Elementary School teacher; she comes from Eftakomi village in the Famagusta District and during the school years 1.9.63 - 1.4.65 she was posted and she was serving at Rizokarpaso village; from 1.4.65 - 31.8.65 she was serving at Yialoussa village; during the school years 1.9.65 - 31.8.69 she was serving at Kato Varossia.

During the period 1974 - 1978 she was serving, being a displaced person, at Limassol whilst her seat was still Famagusta.

During the years 1978 - 1985 was serving at Acropolis Nicosia and her seat was Strovolos - Lakatamia.

On 22.8.85 the applicant applied for the reconsideration of the units which had been allowed to her for the purposes of the regulations governing transfers. (Vide Blue 85 in her personal file).

On 23.9.85 a letter was adressed to the applicant by the competent authority in virtue of s. 39(2) of Law 10/69 (which was still in force as the relevant amendment was effected by virtue of s. 8 of Law 65/87) by virtue of which she was informed that she was being transferred to Dhali village.

The applicant lodged an objection for her aforesaid transfer, and after the exchange of several letters between the applicant and competent authority a letter was addressed to the applicant by respondent dated 6.3.86 (Blue 96) informing her that respondent entertained part of her objections with regard to the units as aforesaid, which have been allowed to her for the purposes of the regulations governing transfers; in the aforesaid letter it was stated inter alia that the distance from Eftakomi to Risokarpaso and from Eftakomi to Yialoussa village was computed at 34 and 20 miles respectively. By means of the said letter applicant was further informed that during the school years 1.9.65 - 31.8.69 her seat was considered to have been, K. Varossia.

Applicant feeling aggrieved filed the present recourse praying for (A) a declaratory judgment to the effect that the decision of the respondent to estimate and consider the distance between the seat of applicant and her place of work during the school years from 1.9.63 - 1.4. 65 and from 1.4.65 - 31.8.65 at 34 and 20 miles respectively set out in the letter of the applicant dated 6.3.86 is null and devoid of any legal effect whatsoever.

(B) A declaratory judgment to the effect that the refusal and/or omission of the respondent to approve and accept the service of the applicant at Kato Varossia Elementary School during the school years 1965 - 1969 as service outside her seat for the purposes of crediting units, is null and devoid of any legal effect.

Learned counsel acting for applicants in his written address asserted the following:

Respondent relying on his erroneous and misconceived judgment considered that the applicant had a lesser number of units than the actual ones and as a result she was eventually transferred to a school outside her seat. From the above statement of facts which emanates from the applicant herself, it is clear that in taking the decision to transfer applicant, the number of units as above was taken into considerationin reaching at the decision for transfer. It is therefore clear that the transfer stated by the applicant

was reached at in two stages; the first one which was actually the computation of the units (based on distances) and the action taken thereunder, that is the transfer itself. It is clear therefore that we ha a composite administrative act which resulted in the transfer of applicant, which is not challenged by means of the present rec se.

The gist of the present recourse, the first leg of the composite admin startive act, being in other words a preparatory act, could be imp gned separately provided that "the preparatory act would itself prejudge the result of the final administrative act as it would then create legal results by itself". (*Vide Papadopoulos v. Republic* (1983) 3 C.L.R. 1423 at p. 1426 and *Caramondani Bros Ltd. v. The Republic* (1987) 3 C.L.R. 156 at p. 159.

From the moment however, that the composite administrative act is completed, which is the present case according to the statement of the applicant that she was transferred, the challenge of the original or intermediate preparatory act looses its individual executory character and it cannot be thereafter challenged separately. And when the final act only is being challenged then of course the whole composite act is considered as challenged at the same time. (vide *Mitidou v. CYTA* (1982) 3 C.L.R. 555 at pp. 577 et seq. - vide also *Ioannou v. EAC* (1981) 3 C.L.R. 280 at p. 299; *Prezas and another v. The Republic* (1986) 3 C.L.R. 2525.

Applying the law as above stated to the facts of the present case I hold the view that the decision regarding the units which is being impugned by the present recourse, was merged in the subsequent decision regarding the transfer of the applicant which is not being impugned by the present recourse. It is clear that the sub-judice decision in connection with the units lost its executory character and it is not any more justiciable separately under Article 146.

In the result present recourse fails and is accordingly dismissed.

Let there be no order as to costs.

Recourse dismissed.
No order as to costs.