

1988 April 16

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CONSTANTINOS PHOKAS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 951/87).

*Public Officers—Secondment—The Public Service Law, 1967 (Law 33/69), section 57—"To perform special duties in a section other than the one to which this section belongs"—Whether secondment under this provision presupposes existence of a post to which the officer would be seconded—Question determined in the negative.*

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*Public Officers—Secondment—The Public Service Law, 1967 (Law 33/67), section 47 - Strained relations between officer concerned and other members of the same Ministry—Whether valid ground for removing him from the Ministry by secondment—Question determined in the affirmative.*

*Reasoning of an administrative act—Administrative Court can uphold validity of a decision on ground other than that invoked by administration.*

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*General principles of administrative law—Public interest—Conflict between such public interest and the private interest of an officer in the service—The former prevails.*

The applicant held and still holds the organic post of Director of the Department of Agriculture. By means of the sub judice decision he was seconded to the Ministry of Foreign Affairs in order to perform special duties. The decision was taken under section 47 of Law 33/67.

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The respondents justified such decision on two separate reasons, i.e. the exigencies of the service, which required the performance of such duties in the Ministry of Foreign Affairs and the "strained relations between the applicant and members of the Ministry of Agriculture, which, at present, rendered the further stay of the applicant of the Ministry injurious to the public".

Section 47 provides that "when a permanent officer is required temporarily to perform the functions of a vacant office otherwise than in an acting capacity or to perform special duties in a section other than the one to which his office belongs, he is seconded to such office or section."

Counsel for applicant submitted that: (a) The predominant purpose was not the performance of special duties, but achieving other objectives, and (b) Secondment presupposes existence of a post, whilst in this case the applicant was not seconded to an existing post.

Held, *dismissing the recourse*: (1) The secondment was taken under the second leg of section 47, i.e. for performing "special duties in a section other than the one to which his office belongs". What matters is whether there arises the need for the performance of special duties in a Section of the public service and not in a post in the public service. Had the legislator intended the performance of the duties of a post, he would have said so in express language as he did in the case of the first leg of the section where he speaks of performance of functions of a vacant office. Instead in the second leg the legislator speaks of performance of special duties. Therefore, the existence of a post is not required.

(2) Having regard to the undisputed existence of strained relations between the applicant and the members of the Ministry in question, the respondent could lawfully resort to the sub judice secondment by way of an administrative measure for the sake of the smooth functioning of the Public Service.

(3) An administrative Judge can uphold the validity of an act on the basis of another lawful reasoning even though such reasoning is different from that given by the administration. In this case the validity of the sub judice act can be supported by the notion of public interest. Strained relations between the Director of a vital sector of Public Service - the Department of Agriculture - and the other members of the staff of the Ministry are not at all conducive to the smooth functioning of the particular public service but on the contrary they promote disruption and anomaly which are detrimental to the interests of the public service and in effect to the interests of the public.

Public interest required the taking of appropriate steps so that the particular public service should function smoothly. The respondents took the appropriate step by means of the sub judice decision.

*Recourse dismissed.*  
*No order as to costs.*

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*Cases referred to:*

*Tourpekki v. The Republic* (1973) 3 C.L.R. 592;

*Republic v. Koufettas* (1983) 3 C.L.R. 1950;

*Anthoupolis v. The Republic* (1980) 3 C.L.R. 296;

*Voulpiotis v. The Republic* (1974) 3 C.L.R. 313;

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*Spyrou and Others (No. 1) v. The Republic* (1973) 3 C.L.R. 478;

*Stokkos v. The Republic* (1982) 3 C.L.R. 1110.

*Prodromou v. The Republic* (1982) 3 C.L.R. 10. 3;

*Tikki v. The Republic* (1981) 3 C.L.R. 250;

*Iordanou v. The Republic* (1966) 3 C.L.R. 696;

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*Xenopoulos v. The Republic* (1979) 3 C.L.R. 546.

**Recourse.**

Recourse against the decision of the respondent to second the applicant to the Ministry of Foreign Affairs for performance of special duties relating to matters of "agricultural products and generally to matters of agriculture which emanate from the interpretation and application of the agreement for the Union of Cyprus with the E.E.C.

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*E. Efstathiou*, for the applicant.

*S. Georghiades*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

5 A. LOIZOU P. read the following judgment. The applicant has at all material times, been the Director of the Department of Agriculture in the Ministry of Agriculture and Natural Resources. By means of a letter dated 6th November, 1987, addressed to the Public Service Commission, the Acting Minister of Foreign Affairs, submitted a request for the secondment of a suitable officer  
10 of the Ministry of Foreign Affairs for the performance of special duties relating to agricultural products and generally to agricultural matters which emanate from the application of the recently signed Protocol for the Customs Union of Cyprus and the European Economic Community (E.E.C.).  
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Further the Acting Minister of Foreign Affairs, by means of a letter of the same date addressed to the Minister of Agriculture, stated that in respect of the above mentioned matters the Ministry of Foreign Affairs is in need of an officer who is conversant with  
20 matters of agricultural products and agriculture and possesses the requisite experience due to performance of the relevant duties in the Public Service for purpose of giving to the Ministry of Foreign Affairs immediate advice and guidance. Also the Acting Minister of Foreign Affairs added that such an officer is not available  
25 at the Ministry of Foreign Affairs. The Acting Minister of Agriculture and Natural Resources by his letter dated 6th November 1987, informed the Public Service Commission that as far as the Ministry of Agriculture and Natural Resources was concerned the above request of the Ministry of Foreign Affairs was accepted  
30 and for the purpose aforesaid they proposed the secondment of Mr. Constantinos Fokas, Director of the Department of Agriculture. Regarding the proposed secondment the Ministry of Agriculture and Natural Resources took into consideration:

(a) The knowledge, capabilities and experience of Mr. Fokas in relation to the matters he is expected to advise the Ministry of Foreign Affairs, and,

(b) The fact that the said secondment is deemed expedient too for the sake of the more general interest of the service of the Ministry of Agriculture and Natural Resources due to the strained relations between Mr. Fokas and members of the Ministry, which at present render the further stay of Mr. Fokas at the Ministry of Agriculture injurious to the public.

In his above letter the Acting Minister of Agriculture and Natural Resources stressed that the proposed measure of secondment was not taken due to the blame of the said officer, but its main purpose on the one hand, was the facing of the needs of the Ministry of Foreign Affairs, as same were set out in the relevant letter of the Acting Minister of Foreign Affairs, and on the other hand the more general interest of the Services of the Ministry of Agriculture and Natural Resources. The Acting Minister of Agriculture and Natural Resources, further attached an advice of the Attorney-General of the Republic which was to the effect that a transfer of an officer can be legally justified in the form of an administrative measure in cases such as this, given that by such a measure no blame is attributed to the officer and that such measure does not aim at his punishment but it is being resorted to due to a problematic situation which arises as a result of the said officer remaining at his post and damaging the smooth functioning of the Public Service, regardless of any blame on the part of the officer. In the said legal advice it was further stated that in the circumstances the Appropriate Authority which proposes the transfer/secondment and the Public Service Commission which decides thereon, may take into consideration the above problematic situation when proposing or deciding on the secondment/transfer. Finally in the said advice it was stated that the instance of the above administrative decision is distinguished from the instance of the disciplinary measure of transfer which may or may not be decided in a parallel way in respect of the same facts as a result of a disciplinary prosecution for the punishment of a disciplinary of-

fence on behalf of an officer if the facts justify such a measure.

5 The Public Service Commission at its meeting of the 7th November 1987, having taken into consideration all the material before it, observed that in the instant case there had not been followed the procedure envisaged by circular No. 64, dated 24th July, 1980, of the Chairman of the Public Service Commission in that there had not be placed before the Commission a statement of the Director General, of the Ministry of Agriculture and Natural Resources, on the question whether Mr. Fokas was aware of his proposed secondment and whether he had been given the opportunity to put forward in writing any representations. In view of all the above the Commission decided to invite Mr. Fokas before it at its impending meeting in order to be informed of the proposed secondment and be thus afforded the opportunity to put forward any representations or views. Thereupon Mr. Fokas was invited before the Commission and its Chairman explained to him the contents of the proposal regarding his secondment for the performance of special duties at the Ministry of Foreign Affairs by virtue of the second leg of section 47 of the Public Service Law 1967; and, also informed him that he could make any representations and put forward his views. Mr. Fokas enquired as to whether the secondment was dependent on his own consent and in case of secondment what would have been the legal situation regarding his status. The Chairman explained to him that secondments under the second leg of section 47 are effected notwithstanding the consent or not of the officer affected and the sole guidance is always the serving of the interests of the Service and after taking into consideration the representations of the officer affected. Regarding the second question, the Chairman replied that the seconded officer continues holding his organic post and enjoys all the benefits deriving therefrom but without performing the duties thereof. Mr. Fokas requested to be furnished with copies of all the documents which were before the Commission and asked to be given some time to place his views in writing.

35 Thereafter the Commission furnished Mr. Fokas with copies of all the relevant documents and the latter by means of his letter

dated the 10th November 1987, stated the following:

"(a) I have been a public officer for more than twenty-five years and I have been holding a Director's post since the 15th September 1985. Consequently I am aware of the obligations of a public officer and his foremost obligation to perform his duties within the framework of the laws in force and the Constitution. 5

(b) In view of all the above I am bound to obey if it were found that there are fulfilled the legal prerequisites for my secondment by reserving all my lawful rights with regard to the matter." 10

The Public Service Commission went on with the consideration of the matter at its meeting of the 10th November 1987. At the said meeting the Commission having taken into consideration all the material before it as well as the contents of the above reply of Mr. Fokas, and the contents of a letter of the Director-General of the Ministry of Agriculture and Natural Resources dated 10th November, 1987, to the effect that in the event of the proposal for the secondment of Mr. Fokas being approved the Ministry intends to submit a proposal for the appointment of an Acting Director of the Department of Agriculture, decided, by virtue of the second leg of section 47 of the Public Service Laws 1967 to 1987, to second Mr. Fokas to the Ministry of Foreign Affairs for performance of special duties relating to matters of "agricultural products and generally to matters of agriculture which emanate from the interpretation and application of the agreement for the Union of Cyprus with the E.E.C." for the serving of the interests of the Public Service. 15 20 25

The above decision was communicated to Mr. Fokas on the 10th November 1987. On the 21st November 1987, he filed the present recourse whereby he prayed for a declaration that "the decision of the respondent Commission dated 10th November 1987, by means of which they decided to second applicant to the Ministry of Foreign Affairs, with effect from 11th November 30

1987, from the post of Director of the Department of Agriculture in the Ministry of Agriculture and Natural Resources is null and void and/or illegal and/or is devoid of legal consequences, and/or the secondment ought not to have been taken".

5        Learned counsel for the applicant mainly contended that what was intended was not the secondment by virtue of section 47 for performance of special duties but the removal of applicant for the purpose of serving other objectives.

10        Further learned counsel referred to section 29(1), 58(1) (b) and 30(3) of the Public Service Law and submitted that the secondment of an officer from the post he is serving to another section presupposes the existence of a post in the public service. In the instant case in the Ministry of Foreign Affairs there was no post providing that a certain officer will perform the special duties  
15 relating to matters of agricultural products; and thus the applicant was seconded to a nonexistent post and his secondment was made in excess of power.

20        I shall now deal with the meaning of secondment. According to the text-book "Ελληνικό Διοικητικό Δίκαιο, Γ Ειδικό Μέρος, Έκδοσις Τετάρτη" by Elias G. Kyriakopoulos, secondment is thus defined at pp. 313-14:

25        "9.- Απόσπασις (άρθ. 96) είναι η απομάκρυνσις του υπαλλήλου εκ της υπηρεσίας ή του γραφείου, εις ο οργανικώς ανήκει, και η θέσις αυτού εις ετέραν υπηρεσίαν, είτε εντός είτε εκτός της έδρας του, επί τω τέλει όπως ασκήση καθήκοντα συναφή προς την λειτουργία ταύτης. Η απόσπασις δεν αποτελεί οργανικήν μεταβολήν, καθ' όσον ο αποσπώμενος εξακολουθεί ν' ανήκη οργανικώς εις την αυτήν υπηρεσίαν, αφ' ης απεμακρύνθη (Σ.Ε. 1971/1947).  
30        Η απόσπασις, ως εκ της φύσεως αυτής, εθεωρήθη, ότι αποτελεί προσωρινόν μέτρον, διό και ωρίσθη, ότι χωρεί ' δι εξάμηνον το πολύ χρονικόν διάστημα', δικαιολογείται δε μόνον προς πλήρωσιν σοβαράς υπηρεσιακής ανάγκης, και δεν είναι δυνατή αν μη προβλέπεται υπό του οικείου ορ-



γανικού νόμου."

And in English it reads:

"9.- Secondment (section 96) is the removal of the officer from the service or the office to which he organically belongs, and his posting to another service, either within or outside his seat, for the purpose of performing duties relevant to the functioning thereof. Secondment does not constitute an organic change because the seconded officer continues to belong organically to the same service wherefrom he was removed (Decision 1971/1947 of Council of State). Secondment in view of its nature was considered to be a temporary measure and for this reason it was provided to last 'for a period of six months at the maximum' and is justified only for the purposes of coping with a serious service exigency and it is not possible if it is not provided by the appropriate organic Law."

In Conclusions from the Jurisprudence of the Greek Council of State pp. 340-41 we read the following regarding secondment :-

"ΣΤ. Απόσπασις.

Απόσπασις υφίσταται οσάκις ο δημόσιος υπάλληλος απομακρύνεται της υπηρεσίας ή του γραφείου, εις ο οργανικώς ανήκει, και τίθεται εις την υπηρεσίαν άλλου γραφείου προς τον σκοπόν όπως εκτελέση υπηρεσίαν υπαγομένην εις την αρμοδιότητα του τελευταίου τούτου: 52 (33), 316, 1031 (36), 765 (38). Έξοδον δε εκτός έδρας και ουχί απόσπασιν αποτελεί η ανάθεσις εις τον υπάλληλον της εντολής προς εκτέλεσιν εκτός της έδρας του ωρισμένης εργασίας υπαγομένης εις την δικαιοδοσίαν της υπηρεσίας του Γραφείου εις ο οργανικώς ανήκει ή και υπάγεται κατ' απόσπασιν ή προσκόλλησιν: 52 (33), ίδε και 316, 1031 (36). Το άρθρον 96 του Υπαλ. Κώδικος καθορίζει μόνον τα αρμόδια όργανα προς ενέργειαν των αποσπάσεων (όπου αύται επιτρέπονται από τους οργανικούς νόμους) και προσδιορίζει την χρονικήν διάρκειαν αυτών: 1861 (53).

5 Η απόσπασις , ως εκ της φύσεως της, αποτελεί μέτρον προσωρινόν λαμβανόμενον προς πλήρωσιν υπηρεσιακής ανάγκης: 1062(46), 195(53). Κατά συνέπειαν η πράξις αύτη είναι ελευθέρως ανακλητή, της ανακλήσεως ταύτης αποτελούσης ενέργειαν υποκειμένην κατ' εξοχήν εις την διακριτικὴν ἐξουσίαν του αρμοδίου οργάνου."

And in English it reads:

"Secondment.

10 There exists secondment whenever the Public Officer is removed from the service or office to which he organically belongs, and is placed in the service of another officer for the purpose of performing services coming within the competence of the latter: (52/33, 316, 1031/36, 765/38). We have an exit outside the seat and not secondment whenever an officer is instructed to perform outside his seat, certain work which comes  
15 within the competence of the service of the office to which he organically belongs or serves by way of secondment or attachment: 52/33, see also 316, 1031/36. Section 96 of the Civil Service Code makes provision only for the competent organs which affect the secondments (whenever same are permitted  
20 by the organic laws) and defines their duration: 1861/53.

25 The secondment in view of its nature is a temporary measure, which is resorted to for the purpose of coping with a service exigency: 1062/46, 195/53. Consequently this act is freely revocable and such revocation constitutes an act which falls predominantly within the discretion of the appropriate organ."

30 Section 47 of the Public Service Law, 1967, which was relied upon by the respondent provides "that when a permanent officer is required temporarily to perform the functions of a vacant office, otherwise than in a acting capacity or to perform special duties in a section other than the one to which his office belongs, he is seconded to such office or section".

In the case of *Vasso Tourpekki v. Republic* (1973) 3 C.L.R. 592 at p. 599 I had the opportunity to consider the above quoted section and I said: "The gist of this section is the temporary performance of the functions of a vacant office and it may be said that since this office was temporarily vacated by the secondment of its holder to a senior post, the interested party was seconded temporarily to this post and not promoted, his substantive status remaining the same as his secondment could be terminated at any time and so automatically revert to the substantive post held." 5

The *Tourpekki case* (supra) was cited with approval by Stylianides J., in *R. v. Koufettas* (1985) 3 C.L.R. 1950, in which the learned Justice giving the judgment of the Full Bench, said at p. 1961: 10

"Secondment does not change the substantive status of a public officer. It is of an undeterminable duration; it is of a temporary nature. It is neither a promotion nor appointment. The fact that a secondment is effected after selection does not change its character." 15

Coming now to the second leg of section 47 on which the sub-judice decision was based. I hold that its gist is the performance of special duties in a Section other than the one to which the office of the Public Officer concerned belongs. Therefore what matters is whether there arises the need for the performance of special duties in a Section of the public service and not in a post in the public service. Had the legislator intended the performance of the duties of a post, he would have said so in express language as he did in the case of the first leg of the section when he speaks of performance of functions of a vacant office. Instead in the second leg the legislator speaks of performance of special duties. Therefore having regard to the wording of the second leg of the said Section 47, I am of the opinion that its invocation does not presuppose the existence of a post. It is enough if in the particular Section of the Public Service there arises the need for the performance of special duties by a particular officer. And in this case as it manifestly appears from the relevant correspondence such need 20 25 30

clearly arose. In view of all the above the respondent by relying on the second leg of section 47 could lawfully resort to the measure of secondment of applicant for performance of special duties as described in the sub judice decision.

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As it clearly appears from the sub judice decision and from all the material before the respondent the performance of special duties in the Ministry of Foreign Affairs was not the only reason that prompted the sub judice secondment. There was another reason merely: "The fact that the said secondment is deemed expedient for the sake also of more general interest of the services of the Ministry of Agriculture and Natural Resources in view of the existing strained relations between Mr Fokas and members of the Ministry which at present rendered the further stay of Mr. Fokas at the Ministry injurious to the public."

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Much stress was laid in the letters referred to above to the existence of "strained relations between Mr. Fokas and members of the Ministry of Agriculture". This assertion was not disputed by learned counsel for the applicant. I must therefore consider the case on the clear assumption that the relations between Mr. Fokas and members of the staff of the Ministry of Agriculture were indeed strained to the extent of rendering "at present the further stay of Mr. Fokas at the Ministry injurious to the public".

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And I shall proceed to deal with the legal aspect of a situation such as the above.

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In the Conclusions from the Case Law of the Greek Council of State we read the following at p. 339;

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"Ναι μεν ο Υπαλ. Κώδιξ εθέσπισεν εν άρθρω 133 παρ. 1 εδ. γ' ως πειθαρχικήν ποινήν την δυσμενή μετάθεσιν, πλην δια της διατάξεως ταύτης δεν κατηγορήθησαν οι κοινοί περί μεταθέσεως κανόνες, ουδέ περιορίσθησαν οι δυνάμενοι να υπαγορεύωσι ταύτην λόγοι. Συνεπώς δεν αποκλείεται η μετάθεσις, εφ' όσον αύτη κρίνεται επιβεβλημένη χάριν του γενικωτέρου υπηρεσιακού συμφέροντος, υπό

των αρμοδίων οργάνων και υπό την εγγύησιν της γνωμοδοτήσεως του κατά το Σύνταγμα υπηρεσιακού συμβουλίου, έστω και αν προεκλήθη αύτη εξ υπαιτιότητας του υπαλλήλου, ήτις εν τη περιπτώσει ταύτη εκτιμάται δια τον σχηματισμόν της κρίσεως περί του αναγκαίου της μεταθέσεως και ουχί υπό την έννοιαν της πειθαρχικής υπαιτιότητας: 1124 (57) (ίθε και 312 (56), 1056 (58). Άλλωστε και εις περιπτώσιν πειθαρχικού κολασμού του υπαλλήλου ουχί δια της ποινής της δυσμενούς μεταθέσεως είναι προφανές, ότι δύναται ν' ανακύψη, λόγω της εκ του παραπτώματος τούτου δημιουργηθείσης καταστάσεως υπηρεσιακή ανάγκη της μεταθέσεως αυτού ως διοικητικού μέτρου: 1224 (57).

("Though the Public Service Code has, under section 133 (1), made provision for the adverse transfer as a disciplinary punishment, by means of this provision the ordinary Rules relating to transfers have not been abolished nor have the reasons that may dictate a transfer been restricted. Consequently there is not excluded a transfer, so long as it is considered imperative for the sake of the more general interests of the Service, by the Competent Organs and under the guarantee of the opinion of the service council functioning under the Constitution, even if the transfer has been brought about by the default of the officer, which in such a case is for the formation of the opinion regarding the necessity to transfer and not within the meaning of disciplinary default: 1124/57 see also 312/56, 1056/56). In addition in the case of disciplinary punishment of an officer not by means of the sentence of adverse transfer it is evident that there may arise the need of the service for his transfer as an administrative measure as a result of the situation that has been created because of his offence: 1224/57")

And at p. 343:

"Και παλαιότερον εγένετο δεκτόν ότι και εν ελλείψει ειδικής διατάξεως, δεν αποκλείεται εκ των γενικών αρχών του διοικητικού δικαίου, το δικαίωμα της προσωρινής απομακρύσεως του δημοσίου υπαλλήλου από της ασκήσε-

ως των καθηκόντων του, εφ' όσον, κατά κρίσιν προστηκόντως ητιολογημένην, παραμονή αυτού εις την θέσιν του αποτελεί σοβαράν αναπόφευκτον απειλήν των υπό την επιμέλειαν αυτού δημοσίων συμφερόντων: 881 (52)."

5 ("Formerly it was also accepted that due to the lack of a special provision, it is not excluded by the general principles of Administrative law, the right of removal of the public officer from the performance of his duties, so long as according to a duly reasoned opinion, his stay at his post, constitutes a serious unavoidable threat to the public interests under his control:  
10 881/52.")

Also at p. 368:

15 "Αι περί δεδικασμένου αρχαί του δικαίου, αι συνοψιζόμεναι εν τω κανόνι ' non bis in idem' έχουσιν εφαρμογήν εντός του πεδίου του πειθαρχικού δικαίου. Επομένως αποκλείεται η επιβολή δευτέρας ποινής δια παράπτωμα δι' ο ετιμωρήθη ήδη ο υπάλληλος: 245 (30), 240 (34) 86 (39), 390 (50) κατ' εξαίρεσιν η προ του Υπαλ. Κώδικος νομολογία εδέχθη ότι δεν απεκλείετο η υπό του προισταμένου επιβολή δευτέρας ποινής δια το αυτό αδίκημα εις ην περιπτώσιν  
20 ο προϊστάμενος έκρινε την επιβληθείσαν ποινήν ανεπαρκή: 96 (30), 802 (33), 261, 320 (39). Την εξαίρεσιν όμως ταύτην από του κανόνος, δεν απεδέχθη ο Υπαλ. Κώδιξ όστις ορίζει γενικώς εν άρθρ. 139 (1) και ότι ουδείς διώκεται εκ δευτέρου δια το αυτό πειθαρχικόν αδίκημα και ότι  
25 ένεκα του αυτού πειθαρχικού αδικήματος μία ποινή επιβάλλεται. Πάντως η αρχή ' non bis in idem' δεν έχει στάδιον εφαρμογής οσάκις δια το αυτό αδίκημα δι' ο υπάλληλος ετιμωρήθη πειθαρχικώς πρόκειται να επιβληθή και εν δυσμενές διοικητικόν μέτρον. Διότι τα διοικητικά μέτρα  
30 άτινα λαμβάνει η διοίκησις ουχί επί σκοπώ ασκήσεως πειθαρχικής εξουσίας αλλά χάριν του συμφέροντος της δημοσίας υπηρεσίας ως είναι η μετάθεσις, διαθεσιμότης, αργία κλπ., δεν αποτελούσι πειθαρχικάς ποινάς. Κατ' ακολουθίαν των ανωτέρω πράξις δι' ην επεβλήθη πειθαρχική

ποινή δύναται να δικαιολογήση νομίμως και την πρόσθετον λήψιν των διοικητικών τούτων μέτρων: 111 (32), 1003 (33), 1233 (47), 884 (49)."

("The principles of law on *res judicata* which are summarised in the rule '*non bis in idem*' are applicable within the sphere of disciplinary law: Therefore the imposition of a second punishment in respect of an offence for which the officer has already been punished, is excluded: 245/30, 240/34, 86/39, 390/50. Exceptionally the Case-Law prior to the Public Service Code accepted that the imposition of a second punishment by the Head of the Department in respect of the same offence was not excluded in case he judged the punishment that has been imposed inadequate: 96/30, 802/33, 261, 320/39. This exception, from the Rule, however, has not been accepted by the Public Service Code which by its section 139 (1) provided that no one should be prosecuted for a second time in respect of the same disciplinary offence and that for the same disciplinary offence there is imposed only one punishment: The principle *non bis in idem* has no stage of application whenever in respect of the same offence for which the officer has been punished disciplinarily there is going to be imposed an adverse administrative measure too. Because the administrative measures which are taken by the administration not for the purpose of exercising disciplinary power but for the sake of the interest of the public service such as transfers, interdictions, placing off duty, etc., do not constitute disciplinary punishments. It follows from the above that an action in respect of which there has been imposed a disciplinary punishment, can lawfully justify the additional taking of these administrative measures: 111/32, 1003/33, 1233/47, 884/49."

In this case having regard to the undisputed existence of strained relations between the applicant and the members of the Ministry in question, I think that the respondent could lawfully resort to the *sub judice* secondment by way of an administrative measure for the sake of the smooth functioning of the Public Service (Χάριν της ευρύθμου λειτουργίας των δημοσίων

υπηρεσιών).

5 Notwithstanding my above conclusion I think that the validity of the sub judge decision can be upheld on the basis of another lawful reasoning for it is open to an administrative Judge to uphold the validity of an act on the basis of another lawful reasoning even though such reasoning is different from that given by the administration (see *Anthoupolis v. Republic* (1980) 3 C.L.R.296; *Voulpiotis v. The Republic* (1974) 3 C.L.R. 313, and *Spyrou and Others (No. 1) v. The Republic* (1973) 3 C.L.R. 478.)

10 The other lawful reasoning referred to above, is the reasoning relating to the notion of public interest. And being a question of public interest it can be examined not only for the purpose of affording a reasoning but even *ex proprio motu* (*Stokkos v. The Republic* (1982) 3 C.L.R.1110.)

15 As already said relations of the applicant and members of the Ministry of Agriculture were strained and the question which arises is this; Does such a situation promote public interest? I think that paramount considerations of public interest dictate that all public services should function smoothly. Smooth functioning, however, can only be achieved in a spirit of good will and brotherly relations between those burdened with the responsibility for the functioning of public services. Strained relations between the Director of a vital sector of the Public Service - the Department of Agriculture - and the other members of the staff of the Ministry -  
20 are not at all conducive to the smooth functioning of the particular public service but on the contrary they promote disruption and anomaly which are detrimental to the interests of the public service and in effect to the interests of the public. For it goes without saying that a public service whose functioning is rendered problematic functions in a manner which infringes the public interest. It  
25 was therefore imperative for the administration for paramount considerations of public interest to take appropriate steps so that the particular public service should function smoothly. And it took the appropriate step by means of the sub judge decision.  
30 Even if by such step the applicant might suffer some detriment or  
35



hardship and we would thus be having a conflict between a private interest and the public interest, the latter should prevail. (See *Prodromou v. The Republic* (1982) 3 C.L.R.1055; *Tikki v. The Republic* (1981) 3 C.L.R.250; *Iordanou v. The Republic* (1966) 3 C.L.R.696; *Xenopoulos v. The Republic* (1979) 3 C.L.R. 546). See also Dagtoglou General Administrative Law p. 115 and Dendias Administrative Law, the following passage at p. 207.

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"Αναγνωρίζεται όμως συγχρόνως ότι το δημόσιον συμφέρον υπέρκειται παντός ατομικού τοιούτου, δι' ο και η θυσία τούτου έναντι εκείνου είναι πολλάκις αναγκαία."

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In English:

"It is at the same time recognized that public interest prevails over any personal interest and for this reason the sacrifice of this as against that is on many occasions necessary."

Further even if, as contended by learned counsel for the applicant, the real and predominant purpose of the respondent was the removal of applicant from the department of Agriculture and not the performance by him of special duties, then such removal could be lawfully resorted to in the interests of the public service and on considerations of public interest because of the strained relations aforesaid.

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For all the above reasons the recourse must fail, and is hereby dismissed with no order as to costs.

*Recourse dismissed.*

*No order as to costs.*

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