IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANTONIS VRAHIMI,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF FINANCE
2. THE COUNCIL OF MINISTERS,

Respondents.

(*Case No.* 206/68).

Public Service and Public Officers—Scheme for education grant—Only applicable to public officers whose children are studying in the United Kingdom and the British Commonwealth (outside Cyprus) and Eire—It cannot be deemed to include countries other than those mentioned above—The case (decided by the Supreme Court on appeal) Constantinides v. The Republic, *reported in this Part at p.* 523 ante followed—*Articles* 20, 28 *and* 192 *of the Constitution considered—Circulars No.* 1286 *and* 1374.

Education—Right to—Article 20 *of the Constitution.*

Equality—Principle of—Discrimination—Article 28 *paragraphs* 1 *and* 2—*Reasonable differentiations not repugnant thereto.*

Education grants—See hereabove under Public Service and Public Officers.

Constitutional Law—Articles 20, 28 *and* 192 *considered—See hereabove.*

Cases referred to:

Loizides and Others and The Republic, 1 R.S.C.C. 107;

Mikrommatis and The Republic, 2 R.S.C.C. 125 at p. 131;

Boyiatzis v. *The Republic,* 1964 C.L.R. 367;

Constantinides v. *The Republic,* decided by the Supreme Court on appeal and reported in this Part at p. 523 *ante, followed.*

The facts sufficiently appear in the judgment of the Court whereby, following the case of *Constantinides (supra)*, it dismissed the present recourse.

Recourse.

Recourse against the refusal of Respondent 1 to pay to the Applicant education grants in respect of his two children who were studying abroad.

M. Christofides, for the Applicant.

L. Loucaides, Senior Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following judgment* was delivered by:-

HADJIANASTASSIOU, J.: In these proceedings, under Article 146 of the Constitution, the Applicant seeks a declaration that the refusal of the Respondent to pay to the Applicant education grants in respect of his children Louise for the years 1965-66, 1967-68, and Saverios for the year 1967-68, is *null* and *void* and of no effect whatsoever.

The Applicant has been a public servant since December 4, 1944. On March 21, 1968, he had addressed a letter (*exhibit* 1) to the Director of the Department of Personnel, through the Acting Auditor-General, which is in these terms:-

> " I have the honour to apply for an education grant in respect of my daughter Louise Vrahimis who was studying at the Ecole des Soeurs de St. Joseph de l' Apparition in Beirut during the period 4.10.65 to 24.6.67. As from 30.10.67 my daughter has gone to France for studies and I wish to apply for an education grant in respect of the school years 1965/66, 1966/67 and 1967/68.
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> 2. Besides my daughter, I have a son, Saverios Vrahimis who left Cyprus on the 5th July, 1967, for the U.S.A. to study Civil Engineering at the Dartmough college, Hanover N.H. U.S.A. He was granted a part-scholarship by the Fulbright Office in Cyprus but I am also required to contribute towards his studies an amount of £200 per annum.

*For final decision on appeal see (1971) 4 J.S.C. 496 to be reported in due course in (1971) 3 C.L.R.

3. While Circular No. 123 dated 18th August, 1967, restricts the payment of education grants to officers whose children are studying in Greece, in view of the statement contained in the judgment of the Supreme Court in Case 212/62 *Charalambos Boyiatzis* v. *The Republic* to the effect that the question whether the scheme could be applied modified to include countries other than Greece and Turkey was left open—see (1964) 5 J.S.C. page 15, item C—I should be glad if you would consider my present application sympathetically and approve the payment to me of an education grant in respect of my two children."

On March 28, 1968, the Director of the Personnel Department, in reply to the Acting Auditor-General, had this to say in his letter (*exhibit* 2):-

"I am directed to refer to a letter dated 21st March, 1968, forwarded through you to this Department by Mr. Antonis Vrahimis, Messenger, 1st Grade, and to request you to inform Mr. Vrahimis that he is not eligible for education grant under the education scheme in force."

On June 7, 1968, the Applicant, feeling aggrieved because of the refusal of the Director of the Department of Personnel, which comes under the Ministry of Finance, filed the present recourse. The recourse was based on the following grounds of law: 1) That "the decision complained of is unconstitutional contrary to Articles 20 and 28." 2) "The decision complained of discriminated against those public servants whose children do not study in Greece or Turkey. The freedom of education is also contravened." 3) "It is submitted that *Loizides*' case (1 R.S.C.C. p. 107) should be reconsidered."

The opposition was filed on July 2, 1968, to the effect that the decision complained of was properly taken after all relevant facts and circumstances were taken into consideration.

It is not in dispute that the scheme for the payment of financial grants to Government officers towards the expense of educating their children in the United Kingdom and the Commonwealth countries is contained in a Government circular No. 1286 dated December 6, 1955. (See *exhibit* 3). It would be observed that by a Circular No. 1411 dated July 20, 1957, the amount of the scheme has been increased from £100 to £130.

The Acting Chief Establishment Officer, by a circular dated February 23, 1961, informed all the Heads of the Government Departments of the decision of the Council of Ministers that the scheme for the payment of financial grants should be discontinued, except in so far as it relates to public officers who, on the date of the coming into operation of the Constitution, i.e. the 16th August, 1960, were already in receipt of such educational grants.

Counsel for the Applicant has contended (a) that the decision of the Respondent was unconstitutional, because it offended against the provisions of Articles 20 & 28 of the Constitution; (b) that the *Loizides* case should be reconsidered and overruled as far as the adaptations effected are concerned; (c) that the Court should make the necessary adaptations in the case in hand so as to bring it in line with the new spirit of the Constitution, as regards the right of the parents to secure education for their children.

Furthermore, counsel has argued that by substituting the words "every country in the world" for the words "Commonwealth country" this adaptation would be more realistic because of the fact that the amount paid for educational purposes remains the same whether the child goes to the United Kingdom, Greece, Turkey or America.

Counsel for the Republic, on the contrary, has contended (a) that if there ever was any discrimination, it was because Article 192 of the Constitution has safeguarded the rights of those officers who held an office in the public service prior to the date of the coming into operation of our Constitution; (b) that in the absence of any legislation or of any administrative act of the Republic, the Applicant could not complain of any discrimination; and (c) that the Court should not in any way extend or modify by giving to the public servants more rights than they were originally entitled to before the coming into operation of the Constitution.

With regard to the first submission of counsel—that the refusal of the Respondent offended against the provisions of Article 20 of the Constitution—with respect, I take a different view, because of the provisions of that Article. Article 20, so far as relevant, reads:-

> "1. Every person has the right to receive, and every person or institution has the right to give, instruction or

education subject to such formalities, conditions or restrictions as are in accordance with the relevant communal law and are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or the standard and quality of education or for the protection of the rights and liberties of others including the right of the parents to secure for their children such education as is in conformity with their religious convictions.

2. .....

3. .....

4. Education, other than primary education, shall be made available by the Greek and the Turkish Communal Chambers, in deserving and appropriate cases, on such terms and conditions as may be determined by a relevant communal law."

It will be observed from the wording of this Article, paragraph 4, that what was clearly intended had nothing to do with, and is not applicable to education abroad, but only with regard to education other than primary education in Cyprus.

In the light of this finding, I would dismiss this contention of counsel for the Applicant.

With regard to the complaint of discrimination, with the greatest respect to counsel's argument, I find myself unable to agree with him, because Article 28 of the Constitution provides that all persons are equal before the law, administration and justice, and are entitled to equal protection thereof and treatment thereby, unless there is express provision to the contrary in this Constitution. In this case, there is express provision in Article 192, which makes it quite clear that in the case of all officers, including the Applicant, who held an office in the public service before the date of the coming into operation of the Constitution, after that date they should be entitled to the same terms and conditions of service as were applicable to them before that date, and those terms and conditions shall not be altered to their disadvantage during their continuance in the public service of the Republic.

It is to be observed, therefore, that in this particular case, the constitutional drafters, for reasons best known to them, have decided to safeguard the rights of those officers only, and therefore, no question of discrimination arises in the present case. These public officers will continue to receive those rights which they were entitled to before the coming into operation of the Constitution. The Applicant, having elected freely to send his children to Beirut, France and to America instead of to the United Kingdom, the Commonwealth countries, or Greece, cannot now complain that the administration treated him differently.

I would, therefore, find myself in agreement with counsel for the Republic, that in the absence of any legislation or of any administrative act, the Applicant cannot in any way put forward the question of discrimination; because, obviously, Article 192 was inserted in the Constitution, as I said earlier, to safeguard his own interests.

As it was aptly put, the term "equal before the law" in paragraph 1 of Article 28, does not convey the notion of exact arithmetical equality, but it safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things. Likewise, the term "discrimination" in paragraph 2 of Article 28, does not exclude reasonable distinctions as aforesaid. Per Forsthoff, P. in *Mikrommatis* and *The Republic* 2 R.S.C.C. 125, at p. 131.

In view of what I have endeavoured to explain, I would also dismiss this contention of counsel.

With regard to the second contention of counsel, I would desire to comment on the one case which was much discussed before me, i.e. the *Loizides*' case, particularly so, because the correctness of the Supreme Constitutional Court's decision in that case was challenged by the Applicant's counsel.

Forsthoff, P., delivering the judgment of the Supreme Constitutional Court, had this, *inter alia*, to say at p. 111:–

> " The Constitution and the Zurich and London Agreements on which it is based, throughout their provisions—and mention may here be made in particular of such Articles of the Constitution as Articles 3, 4, 5 and 108—clearly show that the Constitution and the aforesaid Agreements,

recognize, and make provision for, the close affinity of the Greeks and Turks of Cyprus with the Greek and Turkish Nations, respectively.

The Court is, therefore, of the opinion that the grant of free return passages and education grants, to which the Applicants were entitled immediately before the date of the coming into operation of the Constitution, are saved under paragraph 1 of Article 192 'subject to the necessary adaptations under the provisions of' the Constitution, by virtue of the definition of 'terms and conditions of service' contained in the aforesaid sub-paragraph (b) of paragraph 7 of that Article. This being so, the Court is of the opinion that the Applicants are entitled to the grant of free return passages and education grants, under the same terms and conditions to which they were entitled immediately before the coming into operation of the Constitution, subject to the necessary adaptations of the relevant schemes. In view of the above considerations and of the general framework of the Constitution of the Republic, and having recourse to the nearest and only possible analogy in the circumstances, the Court is of the opinion that the said 'necessary adaptations', should be the substitution for the expressions 'United Kingdom' and 'Commonwealth country', as the case may be, of Greece or Turkey, respectively, depending on whether the member of the public service concerned is a Greek or a Turk as defined in paragraph 1 of Article 186 of the Constitution."

As I said in the case of *Constantinides* v. *The Republic through the Minister of Finance* (Revisional Jurisdiction Appeal No. 33, decided on the 9th December, 1969)* I regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases, because it provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules. Nevertheless, I also recognize that too rigid adherence to precedent may lead to injustice in this particular case and also unduly restrict the proper development of the law. I propose, therefore, to depart from the previous decision of the Supreme Constitutional Court, because it appears to

*Reported in this part at p. 523 *ante*.

me the right thing to do. Indeed, I am further of the view that the Supreme Court of Cyprus should not shrink from overruling a decision or series of decisions which establish a doctrine plainly outside the Constitutional Law, the law of the land, or for any other good reason which appears to the Court right to do so.

After considering more fully the reasoning behind the judgment in the *Loizides*' case (*supra*), I have no doubt that it has been wrongly decided and, therefore, I find myself in agreement with counsel for the Applicant that the adaptations effected are wrong and are contrary to the provisions of Article 192 of the Constitution.

I would like to reiterate that the substance of the application of the Applicant appears to be, in effect, whether the scheme could be applied modified to include countries other than Greece and Turkey was left open in the *Boyiatzis* case. On the 9th December, 1969, this point was finally settled and decided in the *Constantinides* case (*supra*).

The learned President of this Court, in delivering his judgment had this to say:

> " As it may be seen from the order made, the nature of the scheme, and in particular the condition regarding the country where the public officer's children had to receive the assisted education, was not one of the issues which had to be decided in that case; nor was the constitutionality of the scheme put into question. What fell to be determined, was the validity of the ministerial decision to discontinue the scheme, challenged by the public officers who made a recourse, under Article 146, basing their case upon the provisions of Article 192. Going beyond that matter, the Court stated their opinion as to adapting a certain part of the scheme to the spirit and the 'general framework' of the Constitution. But such adaptation was not 'necessary', in my opinion, for the determination of the *Loizides*' case where the scheme did not fall to be applied.
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> Apart from the fact that such an obiter dictum cannot be considered as a decision constituting a precedent, looking at it in the light of developments since that time (May 1961) I take the view that it went too far; and it must now be adjusted."

Mr. Justice Josephides, delivering a separate judgment in the same case had this to say:-

> " Article 179.1 provides that the Constitution 'shall be the supreme law of the Republic'; and Article 179.2 provides that no law or decision of the House of Representatives, and no act or decision of any organ, authority or person in the Republic exercising executive power or any administrative function 'shall in any way be repugnant to, or inconsistent with any of the provisions of this Constitution'.
>
> In the light of those provisions I read Article 192.7(b) to mean that an 'adaptation' is only 'necessary' 'under the provisions of this Constitution', if, and only if, any of the 'terms and conditions' is repugnant to, or inconsistent with any of the provisions, that is, the express provisions, of the Constitution; and such adaptation is necessary to bring them into conformity with the provisions of the Constitution.
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> As I cannot find that the term or condition regarding the payment of an education grant, as laid down in Circular No. 1286, dated the 6th December, 1955, and Circular No. 1374, dated 23rd February, 1957, is repugnant to, or inconsistent with, any of the express provisions of the Constitution—and no relevant provision has been quoted by Respondent's counsel—the only irresistible conclusion, as a matter of interpretation, is that no adaptation whatsoever is 'necessary' 'under the provisions of this Constitution' (Article 192.7(b)). I accordingly hold that an education grant is payable to the public officers entitled and protected under Article 192.1, that is, officers in the Public Service on the 15th August, 1960, towards the expense of educating their children in the 'British Commonwealth' and 'Eire' only, as laid down in the above-mentioned Circulars No. 1286 and 1374.
>
> It, therefore, follows that, with respect, as a matter of construction, I would not be prepared to make the adaptations made by the Court in the *Loizides*' case."

In the light of the decision in the *Constantinides*' case, (*supra*), I find myself in disagreement with counsel for the Applicant because, all along, I have taken the view that the Court should

exercise its power to legislate only in those circumstances and only when the provisions of the educational scheme plainly contravene or are repugnant to the provisions of the Constitution. In the case in hand, I take the view that I have found no provision in the said education scheme which in any way contravenes the provisions of our Constitution or justifying the course of adaptation followed by the Supreme Constitutional Court in the *Loizides*' case. Once I have taken the view that the scheme is only applicable to studies in the United Kingdom, the British Commonwealth and Eire, I do not find it necessary, and indeed, that would not be in line with the recent reasoning in the *Constantinides*' case, to adapt the scheme to include every country in the world. I would, therefore, dismiss this contention of counsel also.

For the reasons I have endeavoured to explain, and in the light of the reasoning of the decision in the *Constantinides*' case, I would dismiss the application with no order as to costs.

Application dismissed;
no order as to costs.