1986 January 25

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANTIS SOTERIADES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF FINANCE,
2. THE MINISTER OF FOREIGN AFFAIRS,

Respondents.

(Case No. 644/84).

The Foreign Service Regulations, Reg. 14(1)(a)—The Foreign Service Allowance Scheme dated 4.10.80— It is an instrument made under the Law and as such must conform to the Law empowering its issuance and be intra vires its provisions—Said scheme is intra vires the said Regulation and in no way offensive to Article 28 of the Constitution.

Constitutional Law—Constitution, Article 28.

The Foreign Service Allowance Scheme of the 4.10.80 made pursuant to regulation 14(1)(a) of the Foreign Service Regulations adopted a uniform code for the ascertainment of the allowance payable in different countries tied to a constant factor, the cost of living of diplomats in New York that constitutes the common denominator in determining the allowance payable in different capitals. The way of ascertaining differences in the cost of living under the scheme between Cyprus and other countries is the following: The tables published twice a year by the United Nations indicating differences between the cost of living of diplomats in New York and other capitals, is used as a yardstick for ascertaining differences between

Nicosia and other capitals. Through the medium of these tables differences in the cost of living between Cyprus and other capitals are established.

The applicant, who was serving at the time as an Ambassador of the Republic in Yugoslavia objected to the scheme on grounds of unfairness and discrimination and, finally, ventilated his objections by means of the present recourse.

The pertinent question is whether the scheme constitutes a valid exercise of the powers vested in the respondent Ministers by the said Regulation.

Held, dismissing the recourse (1) The scheme may appropriately be described as an instrument made under the law. As such it must conform to the provisions of the law empowering its issuance and be intra vires its provisions. The framework of the enabling law must be heeded and the content of the power to regulate vested thereby must be observed as well as promote the objects of the law. Provided there is compliance with the above, the content of the instrument is a matter for the discretion of the vestees of the power subject always to observance of fundamental provisions of the Constitution relevant to the exercise of any rule-making power, including, of course Article 28.

(2) The scheme in question is intra vires the enabling provision and in no way offensive to Article 28 of the Constitution.

(3) The fact that such scheme may be less advantageous to the applicant than the one it replaced is no ground for invalidating it.

Recourse dismissed.
No order as to costs.

Cases referred to:

Payiatas v. *The Republic* (1984) 3 C.L.R. 1239;

Ethnikos v. *KOA* (1984) 3 C.L.R. 1150;

Ioannou v. *The Republic* (1983) 3 C.L.R. 80.

Recourse.

Recourse against the approval by the respondents of a new Foreign Service Allowances Scheme for the replacement of the old one.

G. Triantafyllides, for the applicant.

M. Photiou, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. It has taken some effort to marshal the facts in the cohesive order necessary to define with appropriate certainty the issues in dispute. In the end, the emerging issue is a narrow one, turning on the legitimacy of the Foreign Service Allowance Scheme, hereinafter referred to as the scheme, of 4th October, 1980(1); in particular, its compatibility with regulation 14(1)(a) of the Foreign Service Regulations(2), hereinafter referred to as the Regulation, pursuant to which it was made.

The Regulation empowers the Ministers of Foreign Affairs and Finance, acting jointly, to approve from time to time an appropriate allowance for compensation of members of the Foreign Service, posted abroad, for differences in the cost of living between Cyprus and the country in which they serve. In exercise of this power, the Ministers approved in 1980 the scheme here under consideration impugned as ultra vires the Regulation. The scheme replaced a previous one that was in force up to the date of introduction of the new scheme. Unlike its predecessor the scheme established a uniform basis for the ascertainment of the allowance payable to members of the Foreign Service serving in different countries. The emoluments of members of the service at the date of the introduction of the scheme were safeguarded and provision was made for the payment of an allowance to make up the difference in case their

(1) Circularized under 6042/76/111
(2) Law 10/60 (Amended by Laws 35/66, 49/69, 41/75 and 19/80.

emoluments under the scheme fell below their earnings at the date of its introduction.

Applicant, who was then serving as an Ambassador in Yugoslavia(1), objected to the scheme on grounds of unfairness and discrimination. Following a series of exchanges between applicant and the respondents, the material date for the ascertainment of the safeguarded emoluments of the applicant was modified from 1st January, 1980 (the date on which the scheme came into operation), to 30th September, 1980, an alteration that resulted to the payment to the applicant of a sum of more than £6,000.- This satisfied one of the grievances of the applicant but not his general objections to the alleged intrinsic unfairness of the scheme. The present proceedings are designed to ventilate these objections with a view to the expungement of the scheme as ultra vires the Regulation. It is the case for the applicant the scheme was devised outside the framework of the Regulation, in that it was not designed and failed to reflect differences in the cost of living between Cyprus and Yugoslavia.

The pertinent question is whether the scheme constitutes a valid exercise of the powers vested in the Ministers. The evidence of Mr. Georghios Stratis, the officer in charge of the Accounts Department of the Ministry of Foreign Affairs, helped me to understand the implications of the scheme and thereby ponder the effect of its provisions in juxtaposition to the enabling powers vested in the Ministers by the Regulation. The elucidation of the issue by the evidence of Mr. Stratis is also conducive to resolving the second complaint of the applicant that the scheme is offensive to the provisions of Article 28 in that it allegedly makes for unequal treatment of members of the Ministry serving abroad by the Administration. The scheme may appropriately be described as an instrument made under the law. As such it must conform to the provisions of the law empowering its issuance and be intra vires its provisions. The framework of the enabling law must be heeded and the content of the power to regulate vested thereby must be

(1) He retired in 1983.

observed as well as promote the objects of the law. Provided there is compliance with the above, the content of the instrument is a matter for the discretion of the vestees of the power subject always to observance of fundamental provisions of the Constitution relevant to the exercise of any rule-making power(1), including, of course, Article 28. That the new scheme proved less beneficial to the applicant is not of itself a ground for invalidating it. The question we must answer is whether the scheme is designed to reflect differences in the cost of living between Cyprus and foreign countries on the one hand and, on the other, whether it makes arbitrary differentiations invidious to the provisions of Article 28.

Having studied the scheme and given due consideration to the rival submissions, I find the scheme to be intra vires the law and in no way offensive to Article 28. The scheme adopts a uniform code for the ascertainment of the allowance payable in different countries tied to a constant factor, the cost of living of diplomats in New York that constitutes the common denominator in determining the allowance payable in different capitals. The way of ascertaining differences in the cost of living under the scheme between Cyprus and other countries is the following: The tables published twice a year by the United Nations indicating differences between the cost of living of diplomats in New York and other capitals, is used as a yardstick for ascertaining differences between Nicosia and other capitals. Through the medium of these tables differences in the cost of living between Cyprus and other capitals are established. The following example will illustrate the operation of the scheme in practice: If the cost of living in New York is 100 units, in Cyprus 50 units and in the capital where the member of the foreign service is posted 75, the diplomat will be paid the difference between 50 and 75 by way of allowance to compensate him for having to live abroad instead of Cyprus. In effect what has happened is that the cost of living in different countries is established by reference to international data rather than data evolved in

(1) On the subject of ultra vires see, inter alia, Payiatas v. Republic (1984) 3 C.L.R. 1239; Ethnikos v. KOA (1984) 3 C.L.R. 1150; and Ioannou v. The Republic (1983) 3 C.L.R. 80.

Cyprus. Objectively speaking the new method appears to be more reliable than the old one, bearing in mind that the United Nations are better equipped by way of information and data to indicate differences in the cost of living between different countries.

There is nothing before me to suggest that the tables of the United Nations failed in any material way to reflect differences in the cost of living between different capitals. All that the evidence before me tends to establish is that the new scheme is less advantageous than the old one to the applicant. That in itself is, as earlier indicated, no ground for invalidating the scheme.

Moreover, far from agreeing that the scheme makes for unequal treatment, I incline to the view it provides a sounder basis for the ascertainment of foreign allowance payable to different members of the service.

For all the above reasons the recourse fails. It is dismissed. Let there be no order as to costs.

Recourse dismissed.
No order as to costs.