1964
Oct. 31,
Nov. 20,
Dec. 1,
1965
April 14,
June 16, 17, 18
Dec. 11

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTODOULOS KYRIAKIDES (No.2)

Applicant,

and

THE COUNCIL FOR REGISTRATION OF ARCHITECTS AND CIVIL ENGINEERS,

Respondent.

(Case No. 218/63).

Constitutional Law—Constitution of Cyprus, Articles 25.1 *and* 25.2, 28, 35 *and* 146—*Architects and Civil Engineers Law,* 1962 *(Law* 41 *of* 1962*) (as amended), sections* 7,9,10 *and* 11—*Constitutionality of sections* 7 *and* 9 *of the Law, laying down the academic qualifications required for registration as an architect or a civil engineer—Provision in section* 7, *within the ambit of Article* 25.2 *in this respect—Provisions in paragraphs (b) of sub-sections* (1) *and* (2) *of section* 7 *can properly be regarded as being within both Articles* 25.2 *and* 28—*Restriction imposed upon the right to practise the profession of architecture and civil engineering by means of the joint effect of sections* 7 *and* 10 *of the Law, a necessary one in the sense of Article* 25.2—*Provisions of sub-paragraphs (iii) in paragraphs (A) and (B) (a) of sub-section* (1) *of section* 9, *unconstitutional.*

Administrative Law—Architects and Civil Engineers—Architect by profession—Not unconstitutional for a person licensed under paragraph (A) of sub-section (1) *of section* 9 *of Law* 41 *of* 1962 *(supra) to be designed as "an architect by profession" and not as a registered architect or a registered civil engineer as it is the case with those registered under section* 7 *of the Law—Designation imports a reasonable differentiation and a substantially accurate one and it does not contravene Article* 28 *of the Constitution—Also within the ambit of Article* 25.2.

The Court, by this decision, determines the constitutionality of sections 7 and 9 of the Architects and Civil Engineers Law, 1962 (No. 41 of 1962).

Held, I. On the Constitutionality of section 7.

(a) Section 7 is a provision of law restricting the right under paragraph 1 of Article 25 by means of prescribing the academic qualifications required for the exercise of the professions of an architect or a civil engineer. The academic qualifications specified therein are qualifications of the standard usually required for the professions in question, and, therefore, section 7, is a provision within the ambit of paragraph 2 of Article 25, in this respect.

(b) The provisions concerned can properly be regarded as being within both Article 25(2) and Article 28, because they do ensure that any academic qualification actually of the standard usually required for the professions in question will, without discrimination, be eventually declared equivalent to the qualifications expressly specified in section 7, which as I have held already are of the said usually required standard.

II. On the constitutionality of the restriction imposed by means of the joint effect of sections 7 *and* 10.

The restriction imposed upon the right to practise the professions in question, by means of the joint effect of sections 7 and 10 of Law 41/62, is a "necessary" one in the sense of Article 25(2), in the interests of, inter alia, public safety and the public interest generally, because of the need to regulate the exercise of the professions concerned and to prevent unqualified persons from intermeddling in them.

III. On the constitutionality of section 9.

(i) On the constitutionality of the provisions of paragraph (A) of sub-section (1):

(a) It is not unconstitutional for a person licensed under paragraph (A) of sub-section (1) of section 9 to be designated as an "architect by profession" and not as a registered architect or a registered civil engineer, as it is the case with those registered under section 7 of the Law.

(b) Describing a person licensed under the said paragraph (A) as an architect by profession is a reasonable differentiation in view of the difference in qualifications between such a person and a person registered under section 7.

(c) The particular designation viz. architect by profession, imports a reasonable differentiation and a substantially accurate one too and it does not contravene at all section 28 of the Constitution, because it is a reasonable distinction due to the intrinsic nature of things.

Mikrommatis and The Republic, 2 R.S.C.C. p. 125 followed.

(d) It was reasonably open to the legislative authority to regard the differentiation in style between registered architects and civil engineers on the one hand and architects by profession, on the other, as a necessary restriction in the interests, *inter alia,* of public safety and public interest generally and, in the circumstances, I am not entitled or prepared to interfere with the legislative discretion as exercised in this respect.

(*ii*) *On the constitutionality of sub-paragraph (ii) of para. A of sub-section* 1 *of section* 9 *limiting paragraph (A) to persons who were practising in the Republic at the material time.*

(a) I find nothing unconstitutional, in any way, in sub-paragraph (ii) of para. A of s.s. (1) of s. 9 limiting paragraph (A) to persons who were practising in the Republic at the material time. The purpose of paragraph (A) appears to be the safeguarding of the interests of exactly such persons, who do not possess qualifications of the standard prescribed by section 7, and it was only natural, therefore, that it should be limited to the extent of the purpose it was destined to serve. After all Law 41/62 regulates the practice of the profession of architecture and civil engineering *in Cyprus* and, therefore, it had to take care of the professional interests of those practising *in Cyprus*, and not abroad, at the time of its enactment.

IV. On the provisions of sub-paragraph (iii) of para. (A) of sub-section (1) *of section* 9, *requiring a practice of seven years prior to the coming into effect of Law No.* 41 *of* 1962.

(a) The provisions of sub-paragraph (iii) of para. *(A)* of sub-section (1) of section 9 are not necessary at all in the sense of Article 25(2).

(b) Such a fixed period, as prescribed by sub-paragraph (iii), of paragraph (A) of sub-section (1) of section

9 is not a usually required qualification, in the sense of Article 25(2), in the case of persons such as those to which paragraph (A) is intended to apply viz. persons found practising the professions in question when they were regulated by law for the first time, as has been done by Law 41/62.

(c) Sub-paragraph (iii) of section 9(1) (A) of Law 41/62 is declared to be unconstitutional and of no effect for the purpose of these proceedings.

(d) It is possible to declare *only* sub-paragraph (iii) of section 9 (1)(A) to be unconstitutional.

V. On the constitutionality of the provisions of paragraph B(a) of sub-section (1) *of section* 9.

What I have stated about the correspondent provisions of paragraph (A) of sub-section (1) of section 9, including the designation of persons licensed thereunder, applies equally, *mutatis mutandis,* to this paragraph. So, I find and declare hereby as unconstitutional only sub-paragraph *(iii)* thereof, for substantially the same reasons for which I did find as unconstitutional sub-paragraph (iii) of paragraph (A).

VI. On the constitutionality of the restrictions resulting through the combined effect of paragraph (A) and (B) (a) of sub-section (1) of section 9 *and of section* 11(2).

The restrictions resulting through the combined effect of paragraph (A) and (B) (a) of sub-section (1) of section 9 and of section 11(2) and preventing practice by non-licensed persons as architects by profession or building technicians, are constitutional.

Order in terms.

Cases referred to:

Marbury v. Madison (1 Cranch 137; 2 LAW.ED. 60);

Adkins v. Children's Hospital and Lyons 261 U.S. 525; 67 LAW.ED. 785;

The United States v. Butler 297 U.S. 1; 80 LAW.ED. 477;

Attorney-General v. Ibrahim, 1964 C.L.R. 195 at p.p. 221, 232;

Re Ali Ratip 3 R.S.C.C. p. 102;

Nebbia v. New York 291 U.S. 502; 78 LAW.ED. 940;

Munn v. Illinois 94, U.S. 113, 24 LAW.ED. 77;

Secretary of Agriculture v. Central Roig Refining Company 338 U.S. 604; 94 LAW.ED. 381;

Meyer v. Nebraska 262 U.S. 390; 67 LAW.ED. 1042;

Lawton v. Steele 152 U.S. 133; 38 LAW.ED. 385;

United States v. Witkovich 353 U.S. 194; 1 LAW.ED. 2d 765;

Irfan and The Republic, 3 R.S.C.C. p. 39;

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

Smith v. Texas 233 U.S. 630; 58 LAW.ED. 1129;

Nicosia Police and Georghiou, 4 R.S.C.C. p. 36;

The Mayor of Nicosia and The Cyprus Oil Industries Ltd., 2 R.S.C.C. p. 107;

The Police and Lanitis Bros. Ltd., 3 R.S.C.C. p. 10;

In R. v. Architects' Registration Tribunal, [1945] 2 All E.R. p. 131;

Eraclidou and The Hellenic Mining Co. Ltd., 3 R.S.C.C p. 153.

Recourse.

Recourse against the decision of the Respondent not to grant applicant's application for admission and/or enrolment as an "Architect by Profession".

A. Triantafyllides for the applicant.

Fr. Markides, A. Triantafyllides and A. Argyrides for the applicants in Cases heard together with this Case.

L. Demetriades for the respondent in this Case and the other Cases.

K.C. Talarides, Counsel of the Republic, for the Attorney-General *as amicus curiae.*

Cur. adv. vult.

The following Decision on the legel issues was delivered by:

1964
Oct. 31,
Nov. 20,
Dec. 1,
1965
April 14,
June 16, 17, 18
Dec. 11

—

CHRISTODOULOS KYRIAKIDES (No. 2)
and
THE COUNCIL FOR REGISTRATION OF ARCHITECTS AND CIVIL ENGINEERS

TRIANTAFYLLIDES, J.: By an Interim Decision given in these proceedings on the 14th April, 1965*—which is hereby adopted as part of this Decision—the constitutionality of sections 7 and 9 of the Architects and Civil Engineers Law, 1962 (Law 41/62) was left to be determined after further hearing, in which counsel appearing for the Attorney-General was invited to participate, as an *amicus curiae*, in view of the nature of the *sub judice* matters.

As in the past, the hearing of this Case on the above issue of constitutionality proceeded together with that in other Cases, pending against the same Respondent and involving, *inter alia*, the said issue. Such Cases are 220/63, 223/63, 226/63, 227/63, 228/63, 230/63, 231/63, 234/63, 253/63, 35/64 and 92/64. This Decision should be deemed as being a Decision in the proceedings in the said other Cases too—except Case 253/63 which has been withdrawn and struck out in the meantime.

In June, 1965, relevant evidence was adduced both on behalf of the Applicant and the Respondent. Also counsel for the parties, as well as counsel appearing for the Attorney-General, addressed the Court; they, *inter alia*, referred the Court to legislation abroad, regulating the prefessions in question, as well as to comparable legislation regulating other professions, both in Cyprus and abroad, by way of guidance of the Court in reaching its conclusion on the *sub judice* issue of constitutionality.

I have duly considered everything which has been placed before the Court, both during the proceedings since giving the aforesaid Interim Decision, as well as, during proceedings prior to such Interim Decision.

Deciding the issue of the constitutionality of sections 7 and 9 is an instance of judicial review of ordinary legislation, through the testing of its validity against provisions of superior force and effect viz. constitutional provisions. This is a concept which has originated and has developed considerably in the United States of America. Its roots are to be found in the well-known case of *Marbury v. Madison* (1 Cranch 137; 2 LAW.ED. 60). The relevant jurisprudence in the United States has proved, therefore, to be of much guidance value to this Court in exercising, in the present proceed-

*Decision published is this Part at p. 151 *ante*.

ings, its constitutional powers of judicial review of the *sub judice* legislation; reference is being made in this judgment to such jurisprudence, but it must not be thought, because of this, that it has been treated in any way as binding upon this Court.

The power of this Court to exercise judicial supervision over the constitutionality of legislation, is not the exercise of any substantive power to review and annul acts of the Legislature, but it is only part of the discharge of judicial power vested in this Court for the purposes of these proceedings under Article 146 of the Constitution; it is a necessary concomitant of the power to hear and dispose of a case properly before the Court by bringing to bear upon its determination the test and measure of the law (vide *Adkins v. Children's Hospital and Lyons* 261 U.S. 525; 67 LAW.ED. 785). A corollary thereof is that constitutional questions should be decided only when necessary.

With the above in mind, I have reached the conclusion that the constitutionality of sections 7 and 9 has to be determined for the purposes of all the Cases to which this Decision is intended to apply, even though some of them involve only the application of section 7 or of section 9, because, in view of their contents, such sections form, in my opinion, a uniform whole from the point of view of their effect and constitutionality.

Section 7 lays down the qualifications necessary to entitle a person to be registered as an Architect or Civil Engineer. Section 9 is mainly devoted to provisions enabling certain persons, not qualified under section 7 but who were at the time of the enactment of Law 41/62 engaged in the professions of architecture and civil engineering, to be licensed to go on practising such professions in certain circumstances.

Any doubts that could arise regarding the constitutionality of the application of the provisions of section 7 to persons found practising the prefessions in question on the date of the coming into force of Law 41/62 are in my opinion excluded by the existence of a provision such as section 9 in Law 41/62.

Sections 7 and 9 should also be read in conjunction with sections 10 and 11 of the same Law—as amended by the Architects and Civil Engineers (Amendment) Law 1964 (Law 7/64); it is through sections 10 and 11 that restrictions

upon the right to practise the professions concerned are eventually imposed.

In approaching the question of constitutionality of sections 7 and 9, this Court has been guided by well established principles governing the exercise of judicial review in a matter like the present.

I have, *inter alia*, borne duly in mind that Courts cannot interfere with legislative discretion in matters of policy, where such discretion has been exercised within the limits permitted by the relevant constitutional provisions; this Court can neither approve nor condemn legislative policy. If, however, a provision of a Law plainly infringes a right safeguarded by an Article of the Constitution—such as the right safeguarded under Article 25—in a manner not permitted thereunder, it is the plain duty of the Court to render judgment declaring such provision of no effect (vide *The United States v. Butler* 297 U.S. 1; 80 LAW.ED. 477).

A statutory provision can only be declared void for unconstitutionality, if this is shown to be so beyond reasonable doubt (vide *The Attorney-General* v. *Ibrahim*, 1964 C.L.R. 195 at p. 232. But such doubt, in order to operate in favour of the validity of a statute, must be a rational doubt (vide *Adkins v. Children's Hospital and Lyons supra*).

Consistent with the above is also the premise that there exists a presumption of constitutionality in favour of a statute, with the result that the initial burden of proof to show unconstitutionality lies with the person alleging it.

As I have, however, indicated in my Interim Decision, in a case of interference with a fundamental human right such burden of proof may shift rather easily.

It would be really a misconception if this Court were to overlook the substance of the matter before it, through blind adherence to technicalities relating to the question of the burden of proof; as a matter of fact in a Case such as the present one, where each side has placed the whole of its case before the Court, the question of the burden of proof has lost some of its significance.

Actually, such burden did shift quite a bit during the proceedings. After the *prima facie* establishment of an infringement of the right of Applicant, safeguarded under paragraph

1 of Article 25, the burden did shift on to the Respondent to show that sections 7 and 9 do come within the permissible limits of paragraph 2 of the same Article; it was certainly not up to the Applicant to show negatively that such provisions did not come within the said limits. But once it was made to appear by Respondent that the provisions in question did *prima facie* come under generic heads contained in the said paragraph 2, then the onus shifted back to Applicant to show either that the qualifications in question were not of the kind usually required or that any restrictions were not necessary, as alleged. Applicant did endeavour to establish this by argument and other material, and Respondent has countered by argument and material to the contrary. So, now, the matter has to be resolved on the totality of the material before the Court.

In the first place, I am quite satisfied that the *sub judice* provisions do considerably interfere with the fundamental right safeguarded under paragraph 1 of Article 25. In this respect I cannot accept the view put forward, during the proceedings, to the effect that one not duly qualified for a particular profession is not entitled at all to the right safeguarded under paragraph 1 of Article 25. Such a view would nullify the whole principle behind Article 25. If anyone not qualified to practise a particular profession was not entitled at all, in any case, to the protection of Article 25 there would have been no need really to provide under paragraph 2 of Article 25 that provision by law for the usually required qualifications is a permissible restriction of the right safeguarded under paragraph 1 of Article 25.

The right safeguarded under paragraph 1 of Article 25, which is not to be found directly safeguarded in older Constitutions, such as that of the U.S.A., is a feature of modern Constitutions like those of West Germany, Burma and India. Though it is a right which is regulated by provisions of the civil law relating to the capacity of persons in various matters (vide *Re Ali Ratip* 3 R.S.C.C. p. 102) it is a right which is regarded as a "natural right" and not one created by statutory provision. It is "one of those great and basic rights which are recognized and guaranteed as the natural rights inherent in the status of a citizen of a free country" (vide Basu, Commentary on the Constitution of India, 4th edition Volume I, p. 486).

It follows, that the proper interpretation of Article 25 is that every one is entitled to practise any profession or to carry on any occupation, trade or business, but legislation within the ambit of paragraph 2 may properly limit such right.

The validity, therefore, of sections 7 and 9 of Law 41/62, which do interfere with the right safeguarded under paragraph 1 of Article 25, has to be decided on the basis of paragraph 2 of Article 25; if such provisions come within its ambit they are constitutionally valid, otherwise they must be declared unconstitutional.

The regulation of the freedom of profession is an exercise of the police powers of the State, as understood in a technical sense in Constitutional Law. So paragraph 2 of Article 25 must be regarded as a constitutional provision enabling the exercise of such police powers within certain limits.

The exercise of police powers by the legislative authority is not subject to judicial control in so far as its wisdom, adequacy or practicability are concerned (vide *Nebbia v. New York* 291 U.S. 502; 78 L. Ed. 940). Also the cases referred to by counsel for Respondent in argument—*Munn v. Illinois*, (94 U.S. 113, 24 L. Ed. 77) and *Secretary of Agriculture v. Central Roig Refining Company* (338 U.S. 604; 94 L. Ed. 381)—bear out the same principle. But it is also well settled that the determination by the Legislature of what constitutes proper exercise of police powers is not final or conclusive, and it is subject to supervision by Courts acting within their competence in order to ensure that it is confined within the due limits (vide *Meyer v. Nebraska* 262 U.S. 390; 67 L. Ed. 1042, *Lawton v. Steele* 152 U.S. 133; 38 L. Ed. 385).

It is to be noted, further, in this connection that under Article 35 of our Constitution the efficient application of a provision such as Article 25(2) i.e. the supervision of the exercise of the police powers granted thereunder, is entrusted imperatively to, *inter alia*, the judicial authorities; and under Article 146, in proceedings such as the present, such duty has to be discharged by this Court.

In dealing with constitutional questions a Court is entitled and bound to take judicial notice of all matters of general knowledge (vide *The Attorney-General and Ibrahim*, 1964 C.L.R. 195 at p. 221; *United States v. Butler* 297 U.S. 1; 80

LAW.ED. 477). In the present proceedings such a course has had to be resorted to the very minimum, because, indeed, all parties taking part therein have been at great pains to adduce all relevant material, even though, sometimes, such material was a matter of general knowledge anyhow.

In the light of all the above and other relevant principles we come to deal, now, with the constitutionality of sections 7 and 9. We start with section 7.

It is a provision which is intended to lay down the academic qualifications required for the purpose of registration as an architect or a civil engineer. It specifies expressly certain academic qualifications which give the right to be registered and also lays down a machinery for declaring other academic qualifications to be equivalent, for purposes of registration, to those already expressly specified.

Section 7 is, thus, a provision of law restricting the right under paragraph 1 of Article 25 by means of prescribing the academic qualifications required for the exercise of the professions in question. On the basis of the material before me I do find that the academic qualifications specified therein are qualifications of the standard usually required for the professions in question, and, therefore, section 7, is a provision within the ambit of paragraph 2 of Article 25, in this respect.

The fact that only certain qualifications are expressly specified—and it appears that there have been so specified those which are most accessible to citizens of this country, from the point of view of, *inter alia*, language possibilities—does not detract, in my opinion, from the validity of section 7, so long as there is provision for the recognition of other qualifications as equivalent.

The declaration of the equivalent status of qualifications is effected, under paragraphs (*b*) of sub-sections (1) and (2) of section 7, by the Council of Ministers upon a previous advisory opinion of the Council for Registration of Architects and Civil Engineers which has been set up under section 3 of the same Law.

I have had some difficulty in deciding to uphold the constitutionality of provisions such as the said paragraphs (*b*), which entrust the power to decide on the sufficiency of academic qualifications for technical professions, such as archi-

tecture and civil engineering, to a political organ of the Executive Branch of the Government, such as the Council of Ministers.

Had I come to the conclusion that the true effect of the said paragraphs (*b*) was to leave it open to the Council of Ministers to reach a decision, as to whether or not a particular academic qualification is equivalent to those expressly specified in section 7, by taking into account wider considerations of general policy of the Government, unconnnected with the inherent merits of such qualification I might have reached the conclusion that the relevant provisions and consequently section 7 as a whole have to be declared unconstitutional as not exclusively relating to qualifications "usually required" and as not laying down a restriction "necessary" in the sense of Article 25(2) and as offending against the principle of equal protection embodied in Article 28 of our Constitution; such principle is applicable to regulatory legislation, such as Law 41/62 (vide *Rottschaefer* on Constitutional Law p. 551).

I have reached the conclusion, however, that the proper construction of the provisions concerned,—paragraphs (*b*) of sub-sections (1) and (2)—both on the basis of the meaning of their text, as well as of the construction which has to be given to such provisions for the purpose of avoiding constitutional doubts—as every statute has to be construed, (vide *United States v. Witkovich* 353 U.S. 194; 1 LAW.ED. 2d 765) —is that the Council of Ministers, which in any case cannot take action without a previous opinion of the Council for Registration, is bound to determine the equivalent or not of a qualification before it on the inherent merits of such qualification and cannot take into account any wider considerations of general policy. Viewed in that light, I am of the opinion, that the provisions concerned can properly be regarded as being within both Article 25(2) and Article 28, because they do ensure that any academic qualification actually of the standard usually required for the professions in question will, without discrimination, be eventually declared equivalent to the qualifications expressly specified in section 7, which as I have held already are of the said usually required standard.

It might be added that, in view of the essential nature of the particular function of the Council of Ministers for the

purpose, any decision reached by it, together with the relevant opinion of the Council with which it would form a composite administrative act, would be subject to the competence under Article 146.

Before concluding with section 7, I would add that the restriction imposed upon the right to practise the professions in question, by means of the joint effect of sections 7 and 10 of Law 41/62, is a "necessary" one in the sense of Article 25(2), in the interests of, *inter alia*, public safety and the public interest generally, because of the need to regulate the exercise of the professions concerned and to prevent unqualified persons from intermeddling in them. That such a need exists has not been disputed by any party in these proceedings, is clearly to be inferred from the oral evidence adduced, and is stated in the report of the Interior Committee of the House of Representatives (*exhibit* 1); also it exists in the opinion of the Court, in the light of present conditions in Cyprus, of which conditions this Court, being matters of general knowledge, is entitled to take judicial notice. In this respect it may be useful to draw attention to the meaning of "necessary", in Article 25(2), as stated in *Irfan and The Republic*, 3 R.S.C.C. p. 39; it has been laid down there that in deciding what is "necessary" regard must be paid to the circumstances prevailing at the relevant time.

We come next to the constitutionality of section 9—or rather to the constitutionality of such parts of paragraphs (A) and (B) (*a*) of sub-section (1) of such section, which are involved in the proceedings before me.

In dealing with such provisions of section 9, it is convenient to deal first with the provisions of paragraph (A) of sub-section (1).

Under its provisions, any citizen of the Republic may apply to the Board to be licensed as an "architect by profession" if he satisfies the Board that he is of good character and that (*i*) he has sufficient knowledge of the work of an architect or a civil engineer, (*ii*) at the date of the coming into effect of Law 41/62 he was practising as such in the Republic, and (*iii*) he had been so practising for at least seven years before the coming into effect of the said Law.

I find no sufficient grounds for declaring—as it has been submitted by Applicant—that it is unconstitutional for a

person licensed under paragraph (A), above, to be designated as an "architect by profession" and not as a registered architect or a registered civil engineer, as it is the case with those registered under section 7 of the Law.

It is quite true that under section 11(1) of the same Law, an architect by profession is entitled to practise the professions of architecture or civil engineering to the same unlimited extent as a registered architect or civil engineer, but, on the other hand, I find, nevertheless, that describing a person licensed under paragraph (A) as an architect by profession is a reasonable differentiation in view of the difference in qualifications between such a person and a person registered under section 7.

It must be borne in mind, in this respect, that anyone qualified up to the academic standard required under section 7,—though not possessing one of the specified qualifications or one of those already recognized as equivalent thereto—can always apply to have his own qualifications recognized as equivalent, for the purpose of section 7, and need not content himself with becoming an architect by profession under section 9(1) (A); therefore, those who must seek a licence under paragraph (A) are only those whose qualifications do not come up to the standard required under section 7.

This shows that the particular designation viz. architect by profession, imports a reasonable differentiation and a substantially accurate one too and it does not contravene at all section 28 of the Constitution, because it is a reasonable distinction due to the intrinsic nature of things, (*Mikrommatis and The Republic*, 2 R.S.C.C. p. 125).

Moreover, such designation comes within the ambit of paragraph 2 of Article 25. It was reasonably open to the legislative authority to regard the differentiation in style between registered architects and civil engineers on the one hand and architects by profession, on the other, as a necessary restriction in the interests, *inter alia*, of public safety and public interest generally and, in the circumstances, I am not entitled or prepared to interfere with the legislative discretion as exercised in this respect. I agree with counsel for Respondent that the provision in section 11(1) allowing architects by profession the same scope as registered architects and registered civil engineers is a concession made to the former in spite of their not possessing the necessary academic quali-

fications—granted presumably in view of the fact that the persons affected were persons already in the professions in question when Law 41/62 was enacted—but this does not mean that a citizen should not be enabled to know, through the appropriate designation, whether or not an architect whom he retains is duly qualified academically nor that those so duly qualified should not be distinguished from those who are not; in this respect the differentiation in question is necessary also for protecting the rights of others, in the sense of Article 25(2).

It is correct that in other legislation of similar nature, to which I have been referred, no differentiation has been made between persons possessing the academic qualifications laid down by the Law regulating the particular profession and those found in such profession at the material time and licensed to continue practising after its enactment without possessing the prescribed academic qualifications. But, in my opinion, in each case, this is a matter of the particular circumstances pertaining to the profession concerned and a matter of the policy behind the legislative provisions in question, in view of prevailing circumstances. In the present instance the Legislature has chosen to adopt such a differentiation in a manner within Articles 28 and 25(2) and I am not prepared or entitled, in the light of the principles of Constitutional Law expounded earlier in this judgment, to interfere in the matter. I may add also that there are on the other hand, also, examples of similar legislation where a differentiation, such as the one involved in the designation of architect by profession, has been made in relation to other professions. As I said it is a matter of legislative discretion and so long as it has been exercised correctly within the proper limits it cannot be interfered with.

I find also nothing unconstitutional, in any way, in subparagraph (*ii*) limiting paragraph (A) to persons who were practising in the Republic at the material time. The purpose of paragraph (A) appears to be the safeguarding of the interests of exactly such persons, who do not possess qualifications of the standard prescribed by section 7, and it was only natural, therefore, that it should be limited to the extent of the purpose it was destined to serve. After all Law 41/62 regulates the practice of the profession of architecture and civil engineering *in Cyprus* and, therefore, it had to take care of the professional interests of those practising *in Cyprus*,

and not abroad, at the time of its enactment.

Coming now to the provisions of sub-paragraph (*iii*) of paragraph (*a*)—requiring a practice of seven years prior to the coming into effect of Law 41/62—it must be observed at once that they constitute a very draconian and essentially retrospective measure because their effect is that anyone who did not start practising in the Republic as an architect or civil engineer seven years before the enactment of Law 41/62, and who does not possess the qualifications prescribed under section 7, is inexorably excluded from ever becoming even an architect by profession, even though he may be otherwise fully qualified, from the point of view of necessary knowledge, to become one.

It cannot be said validly that the rigid period of seven years, in question, was necessary so as to ensure possession of the required experience. Experience is a matter of length of time plus quality and quantum of work done and all such factors are bound to vary considerably according to the circumstances of each particular individual. A person involved in work of the appropriate quality and quantum may acquire the necessary experience much earlier than in seven years, whereas another person may, in certain circumstances, not acquire such experience even in seven years' time.

Furthermore, under sub-paragraph (*i*) of paragraph (A), the Council for Registration is fully entitled to go into the question of experience—such notion being included, in my opinion, in the term "knowledge"—and thus the provisions of sub-paragraph (*iii*) are, also, superfluous from the point of view of experience.

On the basis of the above considerations, and all other relevant material in this Case, I am satisfied that the provisions of sub-paragraph (*iii*) are not necessary at all in the sense of Article 25(2).

Nor on the basis of the relevant material before me, including comparable legislation regulating the two professions in question, am I of the opinion that such a fixed period, as prescribed by sub-paragraph (*iii*), is a usually required qualification, in the sense of Article 25(2), in the case of persons such as those to which paragraph (A) is intended to apply viz. persons found practising the professions in question when they were regulated by law for the first time, as has been done by Law 41/62.

A rigid provision similar to sub-paragraph (*iii*) was held invalid in *Smith v. Texas* (233 U.S. 630; 58 LAW.ED. 1129) on the ground that it admitted some who were competent for the particular calling and excluded arbitrarily others who, if tested, could be found to be equally competent. Of course, in that American case it was held that the freedom to contract (vide our Article 26) had been infringed contrary to the XIV Amendment of the American Constitution. As in the U.S.A. no specific provision guaranteeing the freedom of profession existed (such as our Article 25), nor were the limits of the exercise of the relevant police powers clearly defined, as done by Article 25(2), resort had, therefore, to be had, in the aforesaid and other cases, to cognate freedoms and to the notion of "due process" under the XIV Amendment. But I do think that the principle in *Smith v. Texas, supra*, may be usefully borne in mind as a guide, to a certain extent, in deciding the present Case.

In the present proceedings what we are primarily concerned with is the constitutionality of sub-paragraph (*iii*) in the light of our specific provision relating to the freedom of profession viz. Article 25, and also in the light of Article 28 to the extent to which it comes into play. Bearing in mind that the main purpose of the restrictions imposed by Law 41/62 is (vide *exhibit* 1) the exclusion of non-competent persons from the particular professions, I am of the view that sub-paragraph (*iii*) is not only contrary to Article 25(2), as being unnecessary for the attainment of such purpose (because competence is to be judged in any case under sub-paragraph (*i*) but it is moreover discriminatory, contrary to Article 28, because it rigidly excludes persons who could possibly otherwise be found to be competent under the said sub-paragraph (*i*), as in *Smith v. Texas supra*.

In my opinion sub-paragraph (*iii*) is not a product of legislative discretion which was exercised within the permissible limits of police powers laid down by the Constitution—under Article 25(2)—in which case I would not have interfered with it even though I might have disagreed with its wisdom, adequacy or practicability, but it is an instance where police powers have been exercised in a manner not warranted by paragraph 2 of Article 25, and also contrary to Article 28, and, therefore, it is a provision which cannot stand and has to be declared invalid.

A case where, again, the Court found that a particular provision of law was not necessary within the ambit of paragraph 2 of Article 25 is *Nicosia Police* and *Georghiou*, 4 R.S.C.C., p. 36. A very useful case also is that of *The Mayor of Nicosia* and *The Cyprus Oil Industries Ltd.*, 2 R.S.C.C. p. 107, where it was held that a provision is not necessary in the sense of paragraph 2 of Article 25, when it lays down an absolute prohibition and when, in the circumstances of the evil to be averted, such an absolute prohibition is no warranted. In that case it was held that an absolute prohibition was not necessary, because the particular food product, whose sale was being absolutely prohibited, could be injurious to health in certain circumstances but not injurious to health in other circumstances; likewise in the present Case, I am of the opinion, that there is a possibility that persons, not possessing the qualifications under section 7, and who have not practised as architects or civil engineers for seven years before the enactment of the Law in question, may, in certain cases, lack adequate experience, but there is also a great probability—to say the least—that in many other cases such persons will have acquired such experience over a much lesser period of time, therefore, an absolute prohibition, such as sub-paragraph (*iii*), is not necessary within the meaning of paragraph 2 of Article 25 As already stated, the question of adequate experience can be gone into fully under sub-paragraph (*i*) of paragraph (A), in any case

On the contrary, in *The Police* and *Lanitis Bros. Ltd* 3 R.S.C.C. p. 10, it was held that an absolute prohibition, in the circumstances of that particular case, was valid within Article 25(2), because, in the opinion of the Court, nothing short of it would sufficiently protect the public interest. I have no doubt that the same cannot be said at all about the absolute prohibition in sub-paragraph (*iii*).

Counsel for Respondent has referred me to foreign enactments concerning the profession of architecture, under which enactments a fixed period of past practice, before the enactment of the relevant regulatory legislation, is allegedly required as a qualification for being licensed to practise such profession thereafter

Two such Laws are section 8(*a*) of Cap. 306 of the Laws of Kenya, as in force in 1948, and section 6(*a*) of Cap. 147 of the Laws of Northern Rhodesia, as in force in 1964. But,

in my opinion, no analogy at all exists between the provisions of sub-paragraph (*iii*) of paragraph (A) of our Law and such foreign provisions, because there the qualifying period required is only one of six months in both cases—and not one of seven years—and such very short period is clearly intended to establish the fact of being *bona fide* in practice, in cases of persons found to be practising at the time of the enactment of the particular legislation—vide our sub-paragraph (*ii*)—and can bear no relationship to the question of acquiring the necessary experience, as our sub-paragraph (*iii*) purports to do.

In England, where the matter has been regulated by the Architects (Registration) Acts 1931 to 1938, the relevant provision comparable to our paragraph (A) of section 9(1) is section 6, of the 1931 Act, which provided that a person "practising as an architect" at the commencement of the Act was entitled to be registered under such Act. In *R. v. Architects' Registration Tribunal*, [1945]. 2 All E.R., p. 131, it was held that the phrase "practising as an architect" does enable the appropriate body to require possession of adequate skill in the profession in question. No past qualifying period of practice was laid down as required either by the Act in question or by judicial interpretation thereof.

We come now to an examination of the analogous legislation in Greece, which needs to be gone into in rather greater detail:—The first enactment with which we are concerned is Law 4663/1930 and counsel for Respondent has referred me particularly to section 5 thereof whereby a practice of three years before the enactment of the Law in question was required as a qualification for being licensed to practise the professions of civil engineer or architect. But such section cannot be looked upon in isolation and apart from the context of the whole Law. It is clear that it was intended merely to deal with a special class of persons who had been in army service. On the contrary, it will be seen from sections 1 and 2 of the same Law that no mention of a fixed period of previous practice was made in relation to allowing, in general, the practice of the professions of civil engineering or architecture by persons who had already been doing so, at the time of the coming into effect of Law 4663/30; but provision was made therein so as to enable in effect those who possessed adequate knowledge to continue practising such professions.

I have then been referred to Law 6434/1934 which amended Law 4663/1930; as it will be seen from section 6 of such Law a period of past qualifying practice was, indeed, provided for thereby, as a required qualification, but only as an *alternative* to the ascertainment of the possession of adequate knowledge through appropriate examinations, and not as a strict requirement *in addition* to the possession of adequate knowledge. (This provision of Law 6434/1934 was repealed later on by Law 795/1948, with the provisions of which we are not concerned for the purposes of this judgment).

In my opinion the above review of comparable legislation does not show, as alleged, that a provision such as sub-paragraph (*iii*) of paragraph (A), requiring a fixed period of years of practice before the coming into effect of the legislation regulating the professions of architecture and civil engineering, is a qualification "usually required" *in addition* to the possession of the necessary knowledge, in the case of persons who were *bona fide* practising such professions when regulatory legislation was introduced. Such review, on the contrary, leads to the conclusion, already expressed in this judgment, that paragraph (*iii*) is not a qualification "usually required", in the sense of Article 25(2), and also strengthens the view that such provision is not "necessary" in the sense of the same Article.

Counsel for Respondent has also referred me to legislation here and abroad regulating other professions. Of course, for comparison purposes such legislation is of rather little weight because as *Rottschaefer* states in his earlier referred to text-book on Constitutional Law, at p. 468 "the qualifications that may be deemed reasonably necessary for the protection of the public are as varied as the businesses and callings serving that public, and a requirement reasonable for one might be wholly unreasonable for another"; but I have, nevertheless, considered the legislation referred to by counsel for Respondent before reaching my decision to declare unconstitutional sub-paragraph (*iii*). Without going in detail into such legislation, I would say that I found nothing therein of sufficient weight to lead me to a conclusion contrary to the one I have expressed earlier in this Decision, concerning the unconstitutionality of the said sub-paragraph (*iii*).

Likewise, I do not propose to deal in detail with legislation

regulating other professions to which I have been referred by counsel for Applicant.

Such legislation, as well as some of the legislation referred to by counsel for Respondent, indicates quite clearly, that it is usual—and quite proper I say too—to safeguard the professional rights of those already found practising a particular profession when legislation regulating such profession is first introduced.

For all the above reasons I declare sub-paragraph (*iii*) of section 9(1) (A) of Law 41/62 to be unconstitutional and of no effect for the purpose of these proceedings.

I have pondered a lot as to whether it was proper to declare unconstitutional only sub-paragraph (*iii*) or the whole of paragraph (A) of sub-section (1) or even the whole of sub-section (1) of section 9. I have borne in mind that a presumption exists, as a rule, against the severability of a statute in constitutional matters, because the Legislature must be taken as having intended the provisions it has made to stand or fall together as a whole. On the other hand, there are occasions where, exceptionally, a provision found to be unconstitutional may be treated as severable. This is so when such a course is considered to be possible in the light of the intention of the Legislature and compatible with such intention. Such a course has been adopted in *Eraclidou and The Hellenic Mining Co. Ltd.*, 3 R.S.C.C. p. 153 in relation to certain sections of the Pneumoconiosis (Compensation) Law, 1961 (Law 11/60), including part only of a section thereof *viz.* sub-section (3) of section 20. Of course, severability in each case has to be examined on its own merits but the above case has been referred to as a useful example, though in a different context.

From a perusal of the relevant provisions I am of the opinion that sub-paragraphs (*i*), (*ii*) and (*iii*) of paragraph (A), though providing for cumulative qualifications are, nevertheless, severable, in the sense that the really material provisions—out of these three—for the purpose of implementing the clear intention of the Legislature to enable persons, possessing sufficient knowledge and practising the professions in question at the material time, to continue practising such professions, are sub-paragraphs (*i*) and (*ii*). Sub-paragraph (*iii*) merely introduces a qualification, obviously related to the aspect of experience, which can in any case be gone into under

sub-paragraph (*i*); it completes the picture, so to speak, *ex abundante cautela*. The purpose of the Legislature, therefore, can still be achieved by means of sub-paragraphs (*i*) and (*ii*) of paragraph (A) and, therefore, I find that it is possible to declare, as I have done, *only* sub-paragraph (*iii*) to be unconstitutional.

Coming now to the provisions of paragraph B (*a*) of subsection (1) of section 9, it suffices to state that what I have stated about the corresponding provisions of paragraph (A), including the designation of persons licensed thereunder, applies equally, *mutatis mutandis*, to this paragraph. So, I find and declare hereby as unconstitutional only sub-paragraph (*iii*) thereof, for substantially the same reasons for which I did find as unconstitutional sub-paragraph (*iii*) of paragraph (A).

One should not, however, be tempted to rush to the conclusion that doing away with the provisions of sub-paragraphs (*iii*), in paragraphs (A) and (B) (*a*), does also away with the difference between such paragraphs regarding their effect. There still remains this fundamental difference between sub-paragraph (*i*) of paragraph (A) and sub-paragraph (*i*) of paragraph (B) (*a*): The knowledge required under the former is knowledge sufficient for the work of architect or civil engineer to an unlimited extent, whereas the knowledge required under the latter is knowledge sufficient for such work to the limited extent laid down by section 11(1) (*i*) of the same Law.

Actually, as a ground of unconstitutionality of the provisions in question has been urged the fact that, under section 11(1)(*i*), persons licensed as building technicians can only undertake building works of a limited nature and that there is a very great difference between the unlimited scope open to architects, civil engineers and architects by profession on the one hand and the limited scope laid down for building technicians on the other hand, without any intervening grades.

I find that the differentiation concerning the respective scopes of the work to be undertaken by architects, civil engineers and architects by profession, on the one hand, and building technicians on the other hand, is a matter of legislative policy into which this Court cannot interfere so long as it is—and I do find it to be so—a restriction coming

reasonably within Article 25(2), as being necessary in the interests of the public safety and the public interest generally.

At this stage, I may add that for the same reasons for which I found, earlier in this judgment, constitutional the restrictions resulting from the combined effect of sections 7 and 10—and which reasons I need not repeat—I find as constitutional, also, the restrictions resulting through the combined effect of paragraphs (A) and (B) (*a*) of sub-section (1) of section 9 and of section 11(2) and preventing practice by non-licensed persons as architects by profession or building technicians.

The constitutionality of any other provisions of section 9 does not appear to have been put in issue yet, in these proceedings and so in this Decision I have limited myself to paragraphs (A) and (B) (*a*) of sub-section (1) only.

In my Interim Decision* in these proceedings, I have left open the issue of whether or not the provisions in issue relate "exclusively" to qualifications. As I read Article 25(2) on this point, it is intended to convey that under the guise of providing for qualifications no other foreign purpose should be served and the relevant formalities, conditions or restrictions should not relate to any other object. On all the material before me I am, indeed, satisfied that the *sub judice* provisions, to the extent to which they deal with qualifications, do relate to such qualifications exclusively and are not intended to serve any purpose foreign to them.

Before concluding this Decision I would like to point out that I have noticed that in the aforementioned report of the Committee of Interior of the House of Representatives (*exhibit* 1) reference appears to be made to the need to eliminate improper competition in the professions in question, on the part of persons not duly competent to practise them. So long as this object is served by excluding persons not qualified under section 7 or not possessing the knowledge required under the several provisions of section 9, the relevant provisions are not unconstitutional because they are necessary under Article 25(2), both in the interests of public safety and the public interest generally and for the protection of the rights of profession of duly qualified members of such professions (whether under s. 7 or under s.

*Published in this Part at p. 151 *ante*.

9). But it is not permissible under Article 25(2) to exclude competition by persons possessing the required competence and being in the profession already when Law 41/62 came into effect. Yet sub-paragraph (*iii*) of paragraph (A) and paragraph (B) (*a*) would have had this effect to a great extent and they are, therefore, unconstitutional for this reason too. I say that it would not be permissible to do so under Article 25(2) because it could not be reasonably deemed necessary, under any of the aforesaid heads, to exclude competition on the part of persons found to be possessing the required competence, but not conforming to a rigid condition as to past practice.

Finally, I would like also to stress that in dealing with sub-paragraphs (*iii*) of paragraphs (A) and (B) (*a*) of sub-section (1) of section 9 we have been dealing with provisions introducing *ex post facto* a requirement as to past practice. But nothing in this judgment should be taken as applying also to a provision requiring a qualifying period of practice in futuro. This is an altogether different consideration; its validity depends on different criteria and as we are not concerned with such a provision in this Decision I need not deal with this matter further.

Order in terms.