1966
April 19, 20,
June 30

THE BOARD FOR REGISTRATION OF ARCHITECTS & CIVIL ENGINEERS
v.
CHRISTODOULOS KYRIAKIDES

[ZEKIA, P., VASSILIADES, MUNIR, JOSEPHIDES, JJ.]

THE BOARD FOR REGISTRATION OF ARCHITECTS AND CIVIL ENGINEERS,

Appellant,

v.

CHRISTODOULOS KYRIAKIDES,

Respondent

(Revisional Jurisdiction Appeal No. 9)

Architects and Civil Engineers—Registration—Licensing—Qualifications—The Architects and Civil Engineers Law, 1962 (Law No. 41 of 1962)—Constitutionality of sections 7 and 9 of the said Law—Articles 25 and 28 of the Constitution—Sections 7 and 9, and particularly sections 7 (1) (b), 9 (1)(A)(iii) and 9 (1) (B)(a) (iii) are constitutional—Nothing therein is contrary or repugnant to Articles 25, paragraph 2, and 28 of the Constitution—Law 41 of 1962 (supra) *sections 7, 9 and* 11

Constitutional Law—Liberty to practise any profession or to carry on any occupation, trade or business—Subject to such formalities conditions or restrictions as may be prescribed by law—Relating exclusively to the qualifications usually required for the exercise of any profession etc etc etc—Article 25, paragraphs 1 and 2 of the Constitution—See, also under Architects and Civil Engineers above

Constitutional Law—The principle of equality and non-discrimination—Scope—Article 28 of the Constitution—See, also, under Architects and Civil Engineers, Constitutional Law, above

Constitutional Law—Constitutionality of laws—Judicial control of the constitutionality of legislative enactments—Approach to the question—General principles applicable to such control—General principles laid down in the matter by the Supreme Court of the U.S.A., although not binding, adopted

American Law—Judicial control of the constitutionality of statutes—Approach—General principles applicable as laid down by the Supreme Court of the U.S.A.—See also, above

Statutes—Constitutionality of—Judicial control of the constitutionality of statutes—See above

This appeal raises the question of the constitutionality of sections 7 and 9 of the Architects and Civil Engineers Law, 1962 (Law No. 41 of 1962). This issue was originally raised in ten cases which were heard together. One Judgment was given in respect of all cases (this Judgment is published in (1965) 3 C.L.R. 617 *sub nom* "Kyriakides (No. 2) and the Council for Registration of Architects and Civil Engineers"), but three separate appeals were filed against that Judgment. One of those three appeals is the present one.

Sections 7 and 9 of the Architects and Civil Engineers Law, 1962, (Law No. 41 of 1962) provide :

"7.—(1) A person shall be entitled to be registered as an Architect if he satisfies the Board that he is of good character, and that—

"(*a*) he is the holder of a diploma or degree in architecture of the Ethnikon Metsovion Polytechnion of Athens or of the Istanbul Teknik Universitesi ; or

(*b*) he is the holder of a diploma or degree in architecture of such other University or Institution of a standard equivalent to those mentioned in paragraph (*a*) above as may from time to time be approved by the Council of Ministers on the advice of the Board and, until the Board is constituted, by the Council of Ministers, by notification published in the Official *Gazette* of the Republic;

or

(*c*) he is an associate member or fellow of the " Royal Institute of British Architects";

(*d*) he is the holder of a qualification which is " recognised by the Royal Institute of British Architects for exemption from their final examination and has had at least one year's practical experience acquired after obtaining such qualification :

. . . . . ."

"9.—(1) Notwithstanding anything contained in this Law, a person who is a citizen of the Republic shall, on application to the Board made in the prescribed form and upon payment of the prescribed fee, be entitled to be issued a Licence as a licensed—

(A) Architect by profession—

If he satisfies the Board that he is of good character and—

(i) that he has adequate knowledge of the work of an Architect or Civil Engineer; and

(ii) that at the date of the coming into operation of this Law he was *bona fide* engaged in the Republic as a principal in the practice of the profession of an Architect or Civil Engineer or in a responsible capacity under a person entitled to be registered as an Architect or Civil Engineer or in the service of the Government or other public body or authority ; and

(iii) that he has been so engaged for at least seven years before the coming into operation of this Law ;

or

(B) Building technician—

(*a*) if he is of good character and he satisfies the Board by examination or work, submitted to the Board, in architecture or civil engineering carried out and completed by him personally—

(i) that he has adequate knowledge of the work of an Architect or Civil Engineer ; and

(ii) that at the date of the coming into operation of this Law he was *bona fide* engaged in the Republic as a principal in the practice of the profession of an Architect or Civil Engineer or in a responsible capacity under a person entitled to be registered as an Architect or Civil Engineer or in the service of the Government or other public body or authority ; and

(iii) that he has been so engaged for at least four years before the coming into operation of this Law ;

or

(*b*) If he is of good character and is either the holder of a certificate of the Technical Schools or Institutions

prescribed by the Council of Ministers or has passed an examination prescribed by the Board and has received not less than two years' practical training under a Registered Architect or a Registered Civil Engineer :

. . . . . .

(2) Applications under subsection (1) (A) or subsection (1) (B) (*a*) of this section shall be submitted within a period of twelve months from the date of the coming into force of this Law.

(3) The Board shall consider and determine an application submitted to it under this section and reply accordingly to the applicant within three months of the date of submission of such application."

. . . . . .

If a person is so licensed under section 9 (1) (A) of the Law as an "Architect by profession" then, under the provisions of section 11 of the said Law, he is entitled to practise and to enjoy the same rights and privileges as a Registered Architect under the provisions of section 7.

Article 25 of the Constitution provides :

"25.1 Every person has the right to practice any profession or to carry on any occupation, trade or business.

2. The exercise of this right may be subject to such formalities, conditions or restrictions as are prescribed by law and relate exclusively to the qualifications usually required for the exercise 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 morals or the protection of the rights and liberties guaranteed by this Constitution to any person or in the public interest :

"Provided . . . . . .

3. . . . . ."

Article 28 of the Constitution provides :

"28.1 All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby.

2. Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class or on any ground whatsoever, unless there is express provision to the contrary in this Constitution.

3. ..... 4. ..... ".

The applicant (respondent) in this case filed a recourse under Article 146 of the Constitution against the decision of the Board for the Registration of Architects and Civil Engineers (appellants in this appeal and respondents in the recourse at the first instance) refusing to register him as a licensed "Architect by profession" under the provisions of section 9 (1) (A) of the aforesaid Law 41 of 1962. The Board rejected the applicant's (now respondent) application because he did not fulfil the requirements of sub-paragraph (iii) of section 9 (1) (A) of the Law, (*supra*), to the effect that he had not been engaged in the Republic in the practice of the profession of an architect for at least seven years before the coming into operation of the Law as provided in that paragraph.

The learned Judge held that the provisions of sub-paragraph (iii) of section 9 (1) (A) and those of sub-paragraph (iii) of section 9 (1) (B) (*a*) of the said Law (*supra*) were unconstitutional on the ground that they did not relate exclusively to qualifications usually required for the exercise of the profession and that they were not necessary in the sense of Article 25, paragraph 2, of the Constitution ; and that they were discriminatory, contrary to the provisions of Article 28 of the Constitution.

The Board by this appeal appealed against the above decision contending that such provisions were necessary within the ambit of Article 25, paragraph 2, of the Constitution (*supra*) and that they related exclusively to qualifications usually required for the exercise of the profession.

The applicant (respondent in the appeal) cross-appealed on several grounds. The first ground reads as follows :—

"The Court ought to have declared the whole Law 41 of 1962 (*supra*) unconstitutional since it has declared unconstitutional section 9 (1) (A) (iii) and section 9 (1) (B) (*a*) (iii). Or, at any rate, the whole section 9, or section 9 (1) or section 9 (1) (A) and (B) ought to have been declared unconstitutional."

In allowing the appeal and dismissing the cross-appeal the Supreme Court :—

Held, (1). In considering the question of the constitutionality of a statute we have to be guided by certain well-established principles governing the exercise of judicial control of legislative enactments. In doing so we have looked for guidance to cases decided by the Supreme Court of the United States of America and, although not bound by such cases, we have adopted the following principles applicable by American Courts, as we are in agreement in the reasoning behind them :—

(*a*) A rule of precautionary nature is that no act of legislation will be declared *void* except in a very clear case, or unless the act is unconstitutional beyond all reasonable doubt. In other words a Law is presumed to be constitutional until proved otherwise "beyond reasonable doubt".

(*b*) Another maxim of constitutional interpretation is that the Courts are concerned only with the constitutionality of legislation and not with its motives, policy or wisdom, or with its concurrence with natural justice, fundamental principles of government or spirit of the Constitution.

(*c*) It is a cardinal principle that if at all possible the Courts will construe the statute so as to bring it within the law of the Constitution.

(*d*) The judicial power does not extend to the determination of abstract questions *viz.* the Courts will not decide questions of a constitutional nature unless absolutely necessary to a decision of the case.

(*e*) In cases involving statutes, portions of which are valid and other portions invalid, the Courts will separate the valid from the invalid and throw out only the latter unless such portions are inextricably connected.

(*f*) With regard to the power of the State to regulate the right to exercise a profession or carry on any trade or

business it has been held that the power to impose reasonable conditions on such right includes that of excluding those who cannot meet those conditions.

(2) (*a*) We are satisfied that the conditions or restrictions laid down in section 7 of Law 41 of 1962 (*supra*) relate exclusively to qualifications usually required for the exercise of the profession of an architect ; and, also, that they are necessary in the interests of public safety, for the protection of the rights of others and in the public interest. We, therefore, hold that the provisions of the section are not repugnant to or inconsistent with, the provisions of Article 25, paragraph 2 of the Constitution (*supra*).

(*b*) As regards the submission that the provisions of section 7 (1) (*b*) of the Law (*supra*) are unconstitutional, being contrary to the provisions of Article 25, in that it is left to the Council of Ministers to decide as to the equivalence of other Universities or Institutions, this has been rejected by the learned Judge at first instance and we are in agreement with his reasoning and the conclusion reached.

(3) Turning now to the provisions of section 9 of the Law (*supra*).

(*a*) Sub-section (1) (A) provides that, notwithstanding any other provision in the Law, a person shall be entitled to be issued a licence as a licensed "architect by profession" if he satisfies the Board that—

(i) he has adequate knowledge of the work of an architect ; and

(ii) that on the date of the coming into operation of the Law he was *bona fide* practising as an architect in the Republic ; and

(iii) that he had been so practising for at least seven years prior to the Law.

On the other hand a person so licensed as an " architect by profession " is entitled, under the provisions of section 11 of the Law (*supra*) to practise and to enjoy the same rights and privileges as a Registered Architect under the provisions of section 7 (*supra*).

(*b*) The learned Judge held that the provisions of sub-paragraph (iii) of section 9 (1) (A) and those of sub-paragraph (iii) of section 9 (1) (B) (*a*) of the Law (*supra*)

were unconstitutional on the ground that they did not relate exclusively to qualifications usually required for the exercise of the profession and that they were not necessary in the sense of Article 25, paragraph 2 of the Constitution (*supra*). He also held that the aforesaid provisions were unnecessary for the attainment of the purpose of excluding non-competent persons from the particular profession and that they were discriminatory, contrary to the provisions of Article 28 of the Constitution (*supra*), because they rigidly excluded persons who would possibly otherwise be found to be competent under sub-paragraph (i) (*supra*).

(*c*) As we see it, by section 9 (1) (A) (*supra*) the legislature has made a special concession, for a limited transitional period, in the case of those practising in Cyprus immediately prior to the Law, provided they applied for registration within twelve months from the date of the coming into operation of the Law. The concession allowed to that special class of persons is that the legislature does not insist on the full qualifications required under section 9 (*supra*) but is prepared to accept lesser qualifications.

(*d*) Considering the qualifications usually required in other countries and that a period of not less than 6–7 years full-time is required to study, pass the examination and acquire practical experience for the purpose of qualifying for an architect's diploma or degree, or for registration as an architect under the provisions of section 7 (which we held earlier in this judgment to be constitutional), it cannot be said that the provisions of sub-paragraph (iii) (*supra*) do not relate exclusively to qualifications usually required for the exercise of the profession of an architect ; nor can it be said that these provisions are not necessary in the interests of the public safety or for the protection of the rights of others or in the public interest ; (see paragraph 2 of Article 25 of the Constitution (*supra*)). Needless to say that we are not concerned with the adequacy or wisdom of this concession made by the legislature.

(*e*) With great respect to the learned Judge we cannot accept the view that " adequate knowledge of the work " of an architect, provided under sub-paragraph (i) of section 9 (1) (A) of the Law (*supra*) can be acquired under a period of seven years, considering : (*a*) the length of time required to acquire the qualifications prescribed for

registration as architect, under section 7 (*supra*), and (*b*) that a licensed "architect by profession" under section 9 (1) (A) is given the full rights and privileges as a fully qualified architect registered under section 7, without any limitation whatsoever.

(*f*) Holding, as we do, that the provisions of section 9 are a concession to a special class, we cannot accept the view that the period of seven years' practice, required by section 9 (1) (A) (iii), is in any way discriminatory, contrary to Article 28 of the Constitution (*supra*), as rigidly excluding persons who could possibly be found to have "adequate knowledge of the work of an architect" under sub-paragraph (i) of section 9 (1) (A) of the Law (*supra*). *Smith* v. *Texas, distinguished.*

(4) We have to consider also whether a person who had practised as an architect before the enactment of the Law has acquired a vested right to continue practising such profession, that is, whether such right is protected by either Article 25 or 28 of the Constitution (*supra*); and whether the denial to a person (the applicant-respondent) of the right to practise his profession without the licence required, constitutes a deprivation of such vested right. In deciding this point we have derived considerable help from the Judgment of the Supreme Court of the United States of America, *Dent* v. *State of West Virginia.*

(*a*) Assuming, without deciding, that such a vested right exists, we are of the view that there is nothing in our statute which indicates an intention of the legislature to deprive one of any of his rights. No one has a right to practise as an architect without having the necessary qualifications of learning and skill; and the Law only requires that whoever assumes by offering to the community his services as an architect that he possesses such learning and skill, shall present evidence of it by a licence from a body designated by the legislature as competent to judge of his qualifications (See *Dent's* case).

(*b*) The nature and extent of the qualifications required must depend primarily upon the judgment of the State as to their necessity subject to the provisions of the Constitution. If they are appropriate to the profession and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty.

(5) Dealing now with the cross-appeal by the applicant :—

(*a*) The first ground of the cross-appeal reads as follows : " The Court ought to have declared the whole Law No. 41 of 1962 (*supra*) unconstitutional since it has declared unconstitutional section 9(1)(A)(iii) and section 9(1)(B)(*a*)(iii), *or, at any rate the whole of section 9, or section 9 (1) or* section 9 (1) (A) and (B) ought to have been declared unconstitutional."

We cannot agree with that submission, as we do not find any other section of the Law unconstitutional, and even if sub-paragraph (iii) of section 9 (1) (A) was unconstitutional, this portion of the Law is not inextricably connected with the other portions of the Law which are valid and could, therefore, be separated (*Pollock* v. *Farmers' Loan and Trust Company infra*).

(*b*) As regards the points raised in the three other grounds of cross-appeal of the applicant, they were fully and exhaustively considered in the Judgment of the learned Judge at first instance. We are in full agreement with the reasoning and conclusions reached and have nothing to add.

The cross-appeal accordingly fails,

Appeal allowed. Cross-Appeal dismissed.

Cases referred to :

The Attorney-General v. *Ibrahim* 1964 C.L.R. 195.

American cases :

Calder v. *Bull*, 3 Dall. 386, 399 (1798) ;

Ogden v. *Saunders*, 12 Wheat. 212 (1827) ;

Federation of Labor v. *McAdory*, 325 U.S. 450 (1945) ;

Watson v. *Buck*, 313 U.S. 387 (1941) ;

Nebbia v. *New York*, 291 U.S. 502 (1933); 78 Law. ed. 940, at p. 957 ;

United States v. *C.I.O.* 335 U.S. 106 (1948) ;

Miller v. *United States*, 11 Wall. 268 (1871) ;

Ashwander v *Tennessee Valley Authority*, 297 U S 288 (1935), 80 Law ed 688,

Burton v *United States* 196 U S 283, 295, Law ed 482, 485, 25 S Ct 243,

Liverpool, N Y and P S S Co v *Emigration Comrs* 133, U S 33, 28 Law ed 899, 5 S Ct 382,

Pollock v *Farmers' Loan and Trust Company* 158 U S 601, 635 (1895),

Gant v. *Oklahoma City*, 289 U S 98, 53 S Ct 530, 177 Law ed 1058,

Smith v *Texas*, 233 U S 630, 58 Law ed 1129;

Chicago, B and Q R Co v *McGuire*, 219 U S 549, 569 (1910), 55 Law ed. 328, 339,

Dent v *State of West Virginia*, 129, U S 114 (1889), 32 Law ed. 623,

Tyson and Bro v *Banton*, 273 U S 418, 445-447 (1927)

Appeal.

Appeal by the Respondent and cross-appeal by the Applicant against the judgment of a Judge of the Supreme Court of Cyprus, (Triantafyllides, J.) given on the 11th December, 1965, (Revisional Jurisdiction Case No 218/63) on certain legal issues raised in a recourse against the decision of the Respondent refusing to register Applicant as a licensed "Architect by profession" under the provisions of section 9(1)(A) of the Architects and Civil Engineers Law 1962 (No. 41 of 1962).

Lellos Demetriades for Appellant.

A. Triantafyllides for Respondent

The Attorney-General of the Republic, Criton Tornaritis, with L. Loucaides, Counsel of The Republic, as amici curiae.

Cur. adv vult.

VASSILIADES, J.: The Judgment of the Court will be delivered by Josephides, J. I agree with this Judgment and I have been authorized by our brother Judges Zekia, P. and Munir, J. to state that they also concur.

JOSEPHIDES, J.: This appeal, as well as Revisional Appeals Nos. 7* and 8*, raise the question of the constitutionality of sections 7 and 9 of the Architects and Civil Engineers Law, 1962 (No. 41 of 1962).

This issue was originally raised in ten cases which were heard together. One Judgment** was given in respect of all cases, but three separate appeals were filed against that Judgment and, consequently, we have to deal with each appeal separately. The present Judgment is given in Revisional Appeal No. 9 (Case No. 218/63).

The Applicant in this case (to whom I shall refer as "the Applicant") filed a recourse, under the provisions of Article 146 of the Constitution, against the decision of the Respondent Board for the Registration of Architects and Civil Engineers (to which I shall refer as "the Board") refusing to register him as a licensed "Architect by profession" under the provisions of section 9(1)(A) of the aforesaid Law 41 of 1962 (to which I shall refer as "the Law").

The Applicant based his recourse, filed on the 9th November, 1963, on the following facts alleged in his application:

"1. Applicant is a graduate of a Greek Technical School.

2. He has been practising the profession of an architect in Cyprus since 1961. He has been working as such in Greece since 1955.

3. Ever since 1961 he has carried out as architect works of several thousands of pounds".

The Board rejected his application because the Applicant did not fulfil the requirements of paragraph (iii) of section 9(1)(A) of the Law, to the effect that he had not been engaged in the Republic in the practice of the profession of an architect for at least seven years before the coming into operation of the Law.

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* Reported respectively at pp. 666 and 671 of this part *post.*

** This Judgment is reported in (1965) 3 C.L.R. p. 617 under the name "*Kyriakides (No. 2) and The Council for Registration of Architects and Civil Engineers*".

The relevant sections of the Law which we have to consider are the following:

"7. (1) A person shall be entitled to be registered as an Architect if he satisfies the Board that he is of good character, and that—

(a) he is the holder of a diploma or degree in architecture of the Ethnikon Metsovion Polytechnion of Athens or of the Istanbul Teknik Universitesi; or

(b) he is the holder of a diploma or degree in architecture of such other University or Institution of a standard equivalent to those mentioned in paragraph (a) above as may from time to time be approved by the Council of Ministers on the advice of the Board and, until the Board is constituted, by the Council of Ministers, by notification published in the Official Gazette of the Republic; or

(c) he is an associate member or fellow of the Royal Institute of British Architects;

(d) he is the holder of a qualification which is recognised by the Royal Institute of British Architects for exemption from their final examination and has had at least one year's practical experience acquired after obtaining such qualification:

"

"9. (1) Notwithstanding anything contained in this Law, a person who is a citizen of the Republic shall, on application to the Board made in the prescribed form and upon payment of the prescribed fee, be entitled to be issued a licence as a licensed—

(A) Architect by profession—
If he satisfies the Board that he is of good character and—

(i) that he has adequate knowledge of the work of an Architect or Civil Engineer; and

(ii) that at the date of the coming into operation of this Law he was bona fide engaged in the Republic as a principal in the practice of the profession of an Architect or Civil Engineer or in a responsible capacity under

a person entitled to be registered as an Architect or Civil Engineer or in the service of the Government or other public body or authority; and

(iii) that he has been so engaged for at least seven years before the coming into operation of this Law; or

(B) Building Technician—

(a) If he is of good character and he satisfies the Board by examination of work, submitted to the Board, in architecture or civil engineering carried out and completed by him personally—

(i) that he has adequate knowledge of the work of an Architect or Civil Engineer; and

(ii) that at the date of the coming into operation of this Law he was bona fide engaged in the Republic as a principal in the practice of the profession of an Architect or Civil Engineer or in a responsible capacity under a person entitled to be registered as an Architect or Civil Engineer or in the service of the Government or other public body or authority; and

(iii) that he has been so engaged for at least four years before the coming into operation of this Law; or

(b) If he is of good character and is either the holder of a certificate of the Technical Shools or Institutions prescribed by the Council of Ministers or has passed an examination prescribed by the Board and has received not less than two years' practical training under a Registered Architect or a Registered Civil Engineer:

(2) Applications under subsection (1)(A) or subsection (1)(B)(a) of this section shall be submitted within a period of twelve months from the date of the coming into force of this Law.

(3) The Board shall consider and determine an application submitted to it under this section and reply accordingly to the applicant within three months of the date of submission of such application.

"

The main argument for the applicants was that the provisions of sections 7 and 9 were repugnant to or inconsistent with the provisions of Article 25 of the Constitution which provides that every person "has the right to practise any profession or to carry on any occupation, trade or business"; but the exercise of this right "may be subject to such formalities, conditions or restrictions as are prescribed by law and relate exclusively to the qualifications usually required for the exercise of any profession, or are necessary only in the interests of the ..... public safety ..... or for the protection of the rights and liberties guaranteed by this Constitution to any person or in the public interest".

In considering the question of the constitutionality of a statute we have to be guided by certain well-established principles governing the exercise of judicial control of legislative enactments. In doing so we have looked for guidance to cases decided by the Supreme Court of the United States of America and, although not bound by such cases, we have adopted the following principles applicable by American Courts, as we are in agreement with the reasoning behind them.

A rule of precautionary nature is that no act of legislation will be declared void except in a very clear case, or unless the act is unconstitutional beyond all reasonable doubt (*Calder* v. *Bull,* 3 Dall. 386, 399, (1798)). Sometimes this rule is expressed in another way, in the formula that an act of Congress or a State Legislature is presumed to be constitutional until proved otherwise "beyond all reasonable doubt": see *Ogden* v. *Saunders,* 12 Wheat. 212 (1827); and other cases ending with *Federation of Labor* v. *McAdory,* 325 U.S. 450 (1945); see also *The Attorney-General* v. *Ibrahim* 1964 C.L.R. 195.

Another maxim of constitutional interpretation is that the Courts are concerned only with the constitutionality of legislation and not with its motives, policy or wisdom, or with its concurrence with natural justice, fundamental principles of government or spirit of the Constitution: see *Watson* v. *Buck,* 313 U.S. 387 (1941).

As was said by Mr. Justice Roberts in *Nebbia* v. *New York,* 291 U.S. 502 (1933); 78 Law. ed. 940, at page 957, "with the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the Courts

are both incompetent and unauthorised to deal. The course of decision in this Court exhibits a firm adherence to these principles. Times without number we have said that the legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favour of its validity, and that though the Court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power".

It is a cardinal principle that if at all possible the Courts will construe the statute so as to bring it within the law of the Constitution: *United States* v. *C.I.O.*, 335 U.S. 106 (1948); *Miller* v. *United States,* 11 Wall. 268 (1871).

The judicial power does not extend to the determination of *abstract* questions: *Ashwander* v. *Tennessee Valley Authority* 297 U.S. 288 (1935); 80 Law. ed. 688. "It is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case": *Burton* v. *United States,* 196 U.S. 283, 295; 49 Law. ed. 482, 485, 25 S. Ct. 243. The Court will not "formulate a rule of constitutional law broader than is required by the *precise* facts to which it is to be applied": *Liverpool, N.Y. & P.S.S. Co.* v. *Emigration Comrs.* 113 U.S.33; 28 Law. ed. 899, 5 S. Ct. 382.

In cases involving statutes, portions of which are valid and other portions invalid, the Courts will separate the valid from the invalid and throw out only the latter unless such portions are inextricably connected: *Pollock* v. *Farmers' Loan and Trust Company,* 158 U.S. 601, 635 (1895).

With regard to the power of the State to regulate the right to exercise a profession or carry on any trade or business it has been held that the power to impose reasonable conditions on such right includes that of excluding those who cannot meet those conditions: *Gant* v. *Oklahoma City,* 289 U.S.98, 53 S. Ct. 530; 77 Law. ed. 1058.

With those principles in view we now turn to consider whether the provisions of sections 7 and 9 of the Law offend against the provisions of Article 25(2) of the Constitution.

Although the legal and medical professions had been regulated by legislation long ago, the profession of an architect and that of a civil engineer had not been so regulated until 1962 when the House of Representatives decided to enact

the Law under consideration. In doing so, by section 7 they laid down the qualifications required for registration as an architect. Those qualifications are—

(a) a diploma or degree in architecture of the Ethnikon Metsovion Polytechnion of Athens or of the Istanbul Teknik Universitesi, or

(b) a diploma or degree in architecture of such other University or Institution of a standard equivalent to those mentioned in paragraph (a) above as may from time to time be approved by the Council of Ministers on the advice of the Board, or

(c) Associate Membership of the Royal Institute of British Architects;

(d) a qualification which is recognised by the Royal Institute of British Architects for exemption from their final examination and at least one year's practical experience acquired after obtaining such qualification.

This Law came into operation on the 30th May, 1962, and by a notice published in the Official Gazette of the Republic on the 24th January, 1963 (Supplement No. 3, page 56, No. 40) the Council of Ministers approved the following 11 diplomas or degrees in architecture as being of a standard equivalent to those mentioned in paragraph (a) above:

1.	Beirut–Lebanon	American University Beirut–Bachelor of Architecture and Engineering.
2.	Brussels–Belgium	Royal Academy of Fine Arts–Brussels–Diploma in Architecture.
3.	Brussels–Belgium	Institute Superieur d' Architecture et d'Arts Decoratifs Saint Lue Bruxelles–Diploma in Architecture.
4.	Durham–United Kingdom	Kings College–Diploma in Architecture.
5.	Geneva–Switzerland	Universite de Geneve, L'Ecole d' Architecture–Diploma in Architecture.

6.	Liege–Belgium	Royal Academy of Fine Arts Liege– Diploma in Architecture.
7.	Manchester–United Kingdom	University of Manchester, Shool of Architecture– Bachelor of Arts in Architecture.
8.	Milano–Italy	Politechnico di Milano– Dottore in Architettura.
9.	New York–U.S.A.	Columbia University– Bachelor of Architecture.
10.	Paris–France	Ecole National Superieur des Beaux Arts de Paris– Diploma in Architecture.
11.	Sheffield–United Kingdom	University of Sheffield– Bachelor of Arts in Architecture.

The evidence adduced in this case shows that the qualifications usually required for the exercise of the profession of an architect in other countries are as stated in the following paragraphs.

In the United States of America one has to be a registered architect in order to have the right to practise. The following qualifications are required for registration:

(a) academic qualification in architecture plus three years' practice; or

(b) ten years' practice plus examination for registration.

In Greece in order to practise as an architect one is required to possess a degree from the National Metsovion Polytechnic or an equivalent degree from a foreign university in addition to passing professional examinations. It takes about six years to qualify. There is also provision for registration as a "sub–architect" after attending a course from 3 to 5 years at the Athens and Salonika Schools of Architecture. This confers a limited right to practise.

In 1934 an amending law (No. 6434 of 1934) was enacted in Greece, amending section 7 of the original Law No. 4663, whereby persons who had practised for at least 15 years as recognised "ἐμπειροτέχναι" were given the limited right to practise without passing an examination, that is to say,

(a) they were allowed to draw up plans for "simple architectural or structural works up to two-storey buildings"; but

(b) they were expressly prohibited from making use of the title or style of "architect" or "engineer".

This provision was repealed in 1948 by Law No. 795.

In the case of the United Kingdom before any one can practise as an architect he must obtain certain educational and practical qualifications. These qualifications lead to two goals: the first is Associate Membership of the Royal Institute of British Architects (which was incorporated by Royal Charter in 1837), and the second is registration as an Architect under the Architects' Registration Acts 1931-1938. One has to take a full-time five-year course at one of the recognised schools of architecture, and pass an intermediate and a final examination after five years. In addition to that one has to have two years' of practical experience and to sit the examination in "professional practice and practical experience". It, therefore, follows that it takes at least 7 years full-time for a person to become a fully qualified architect. Following that he is eligible to apply for registration as an architect by the Architects' Registration Council of the United Kingdom. Under the aforesaid Acts of 1931-1938 only registered architects may practise or carry on business under the name, style or title of "architect". If full-time study is not possible there are alternatives (three years at a school of architecture and then passing of examination while working in an architect's office) which take from 8 to 9 years (see "The Public and Preparatory Schools Year Book 1964", pages 966-967).

The question which falls for determination is, do the conditions or restrictions prescribed by section 7 conflict with the provisions of Article 25(2) of the Constitution? Having regard to what has been stated above, with regard to qualifications usually required we are satisfied that the conditions or restrictions laid down in section 7 relate exclusively to qualifications usually required for the exercise of the profession of an architect; and we are also satisfied that they are necessary in the interests of public safety, for the

protection of the rights of others and in the public interest. We, therefore, hold that the provisions of section 7 are not unconstitutional.

As regards the submission that the provisions of section 7(1)(b) of the Law are unconstitutional, being contrary to the provisions of Article 25, in that it is left to the Council of Ministers to decide as to the equivalence of other Universities or Institutions, this has been rejected by the learned Judge at first instance and we are in agreement with his reasoning and the conclusion reached.

Turning now to the provisions of *section* 9: subsection (1)(A) provides that, notwithstanding any other provision in the Law, a person shall be entitled to be issued a licence as a licensed "architect by profession" ('Αρχιτέκτων ἐξ ἐπαγγέλματος) if he satisfies the Board that–

(i) he has adequate knowledge of the work of an Architect; and

(ii) that on the date of the coming into operation of the Law he was *bona fide* practising as an architect in the Republic; and

(iii) that he had been so practising for at least seven years prior to the Law.

If a person is so licensed as an "architect by profession" then, under the provisions of section 11 of the Law, he is entitled to practise and to enjoy the same rights and privileges as a Registered Architect under the provisions of section 7.

Subsection 1(B)(a) of section 9 provides for persons of lesser knowledge and with four years' practice prior to the Law (paragraph (iii)) to be licensed as "building technicians". This licence gives them a limited right to practise as architects where the work relates to a building of not more than two storeys or of a cubical content not exceeding 20,000 cubic feet.

The learned Judge held that the provisions of subparagraph (iii) of section 9(1)(A) and those of sub-paragraph (iii) of section 9(1)(B)(a) were unconstitutional on the ground that they did not relate exclusively to qualifications usually required for the exercise of the profession and that they were not necessary in the sense of Article 25(2). The reason for so holding was that it could not be said validly that the rigid period of seven years' practice was necessary so as to ensure

possession of the required experience; and that under sub-paragraph (i) of paragraph (A) the Board was fully entitled to go into the question of experience—such notion being included in the term "knowledge". He also held that the aforesaid provisions were unnecessary for the attainment of the purpose of excluding non-competent persons from the particular profession and that they were discriminatory, contrary to the provisions of Article 28, because they rigidly excluded persons who could possibly otherwise be found to be competent under sub-paragraph (i), as in the case of *Smith* v. *Texas,* 233 U.S. 630; 58 Law. ed. 1129.

The Board appealed against the above decision contending that such provisions were necessary within the ambit of Article 25(2) and that they related exclusively to qualifications usually required for the exercise of the profession.

The applicant cross-appealed on four grounds. The first ground reads as follows:

"The Court ought to have declared the whole Law 41/62 unconstitutional since it has declared unconstitutional section 9(1)(A)(iii) and section 9(1)(B)(a)(iii). Or at any rate the whole of section 9, or section 9(1) or section 9(1)(A) and (B) ought to have been declared unconstitutional".

We shall refer to the other grounds of the cross-appeal later.

Dealing first with this ground of the cross-appeal, we cannot agree with the submission that the whole Law (No. 41 of 1962) is unconstitutional, as we do not find any other section of the Law unconstitutional; and even if sub-paragraph (iii) of section 9(1)(A) was unconstitutional, this portion of the Law is not inextricably connected with the other portions of the Law which are valid and could, therefore, be separated (*Pollock* v. *Farmers' Loan and Trust Company,* quoted earlier in this Judgment).

With regard to the contention that the whole section 9 or 9(1) or 9(1)(A) and (B) should be declared unconstitutional, if we accept the applicant's submission, the result will be that the provisions of section 7 only will apply. And although those provisions are more stringent we have held that section 7 is constitutional.

As regards the points raised in the other grounds of the cross-appeal of the applicant, they were fully and exhaustively considered in the Judgment of the learned Judge at first

instance. We are in full agreement with the reasoning and conclusions reached and have nothing to add. The cross-appeal accordingly fails.

There remains now the question whether sub-paragraph (iii) of section 9(1)(A) regarding the requirement of seven years' practice prior to the Law is constitutional.

In the first part of this Judgment we expressed the opinion that the conditions prescribed in section 7 of the Law relate exclusively to qualifications usually required for the exercise of the architect's profession, and that such conditions are necessary in the interests of the public safety, in the public interest and for the protection of the rights of others. As we see it, by section 9(1)(A) the legislature has made a special concession, for a limited transitional period, in the case of those practising in Cyprus immediately prior to the Law, provided they applied for registration within twelve months from the date of the coming into operation of the Law. That period has since expired.

The concession allowed to that special class of persons is that the legislature does not insist on the full qualifications required under section 7 but is prepared to accept lesser qualifications. Considering the qualifications usually required in other countries (as stated earlier in this Judgment), and that a period of not less than 6-7 years full-time is required to study, pass the examination and acquire practical experience for the purpose of qualifying for an architect's diploma or degree, or for registration as an architect under the provisions of section 7 (which has been held constitutional) it cannot be said that the provisions of sub-paragraph (iii) do not relate exclusively to qualifications usually required for the exercise of the profession of an architect; nor can it be said that these provisions are not necessary in the interests of the public safety or for the protection of the rights of others or in the public interest. Needless to say that we are not concerned with the adequacy or wisdom of this concession made by the legislature (*Nebbia* v. *New York* and *Watson* v. *Buck*, quoted earlier: and *Chicago, B and Q.R. Co.* v. *McGuire*, 219 U.S. 549, 569 (1910); 55 Law. ed. 328, 339).

With great respect to the learned Judge we cannot accept the view that "adequate knowledge of the work" of an archi-

tect, provided under sub-paragraph (i) of section 9(1)(A), can be acquired under a period of seven years, considering (a) the length of time required to acquire the qualification prescribed for registration as architect under section 7, and (b) that a licensed "architect by profession" under section 9(1)(A) is given the full rights and privileges as a fully qualified architect registered under section 7, without any limitation whatsoever. Holding, as we do, that the provisions of section 9 are a concession to a special class, we cannot accept the view that the period of seven years' practice is discriminatory, contrary to Article 28, as rigidly excluding persons who could possibly be found to have "adequate knowledge of the work of an architect" under sub-paragraph (i) of section 9(1)(A).

The American case of *Smith* v. *Texas* (*supra*), which was relied upon to reach the contrary conclusion, can, we think, be distinguished. A Texas Law of 1909 provided that no person who had not worked as a brakeman or conductor on a freight train for two years could act as a conductor on a railway train. This was held to be an infringement of the liberty of contract without due process of law (contrary to the provisions of the Fourteenth Amendment). In reaching that conclusion the Supreme Court of the United States were of the view that if brakemen only were allowed the right of appointment to the position of conductors then a privilege was given to them which was denied to all other citizens of the United States. An engineer at least equally competent with a brakeman was denied the right to serve as conductor and the exclusive right of appointment and promotion to that position was conferred upon brakemen only. In the case of the American statute, considered in the *Smith* v. *Texas* case, a privileged class of brakemen was created and given a monopoly of the right to work in a special or favoured position. This is not the case with the Cyprus statute under consideration: All persons who possess the qualifications laid down in section 7, as well as those possessing a diploma or degree from one of the other 11 recognised Universities or Institutions, are entitled to be registered as architects; and even persons not possessing those qualifications but who have adequate knowledge of the work and not less than seven years' practice are entitled to be licensed as architects.

We have to consider also whether a person who had practised as an architect before the Law has acquired a vested

right to continue practising such profession, that is, whether such right is protected either by Article 25 or Article 28 of our Constitution; and whether the denial to a person (the applicant) of the right to practise his profession without the licence required, constitutes a deprivation of such vested right. In deciding this point we have derived considerable help from the Judgment of the Supreme Court of the United States in the case of *Dent* v. *State of West Virginia*, 129 U.S. 114 (1889); 32 Law. ed. 623.

Assuming, without deciding, that such a vested right exists, we are of the view that there is nothing in our statute whihc indicates an intention of the legislature to deprive one of any of his rights. No one has a right to practise as an architect without having the necessary qualifications of learning and skill; and the Law only requires that whoever assumes by offering to the community his services as an architect that he possesses such learning and skill, shall present evidence of it by a licence from a body designated by the legislature as competent to judge of his qualifications (see *Dent* case, 32 Law. ed. at page 626).

There is no arbitrary deprivation of such right, where its exercise is not permitted because of a failure to comply with conditions imposed by the State for the protection of society. The power of the State to provide for the general welfare of its people authorises it to prescribe all such regulations as in its judgment will secure or tend to secure them against the consequences of ignorance and incapacity as well as of deception and fraud, provided that such regulations are not contrary to the express provisions of the Constitution (cf. *Dent* case, at page 626).

The nature and extent of the qualifications required must depend primarily upon the judgment of the State as to their necessity subject to the provisions of the Constitution. If they are appropriate to the profession and attainable by reasonable study or application, no objection to their validity can be raised because of their stringency or difficulty. It is only when they have no relation to such profession or are not usually required qualifications that they can operate to deprive one of his right to pursue a lawful vocation. Reliance must be placed by the general public upon the assurance given by an architect's licence issued by an authority competent to judge in that respect that he possesses the requisite qualifications. Due consideration, therefore, for the

protection of society may well induce the State to exclude from practice those who have not such a licence or who are found not to be duly qualified.

The *Dent* case, referred to above, involved the validity of a statute of the State of West Virginia which required every practitioner of medicine in it to obtain a certificate from the state board of health that he was a graduate of a reputable medical college in the school of medicine to which he belonged; or that he had practised medicine in the State continuously for the period of ten years prior to the 8th of March, 1881; or that he had been found upon examination by the Board to be qualified to practise medicine in all its departments; and made the practice by any person of medicine in the State without such certificate a misdemeanour punishable by a fine or imprisonment or both (sections 9 and 15 of Cap. 93 passed on March 15, 1882). In the agreed statement of facts before the Court it was, *inter alia*, stated that "if the defendant (Dent) had been or should be prevented from practising medicine it would be a great injury to him, as it would deprive him of his only means of supporting himself and family; that at the time of the passage of the Act of 1882 he had not been practising medicine ten years, but had only been practising six, as aforesaid, from the year 1876". It was held by the Supreme Court of the United States that (1) a statute of a State, which requires every practitioner of medicine in it to obtain a certificate from the state board of health that he is a graduate of a reputable medical college, and which makes the practice of medicine without such certificate a misdemeanour, is not unconstitutional and void under the Fourteenth Amendment, which declares that no State shall deprive any person of life, liberty or property without due process of law; and that (2) legislation is not open to the charge of depriving one of his rights without due process of law, if it be general in its operation upon the subjects to which it relates, and is enforceable by usual modes adapted to the nature of the case.

In conclusion, we would like to repeat the words of Mr. Justice Holmes in *Tyson & Bro.* v. *Banton*, 273 U.S. 418, 445-7 (1927):

"I think the proper course is to recognise that a State legislature can do whatever it sees fit to do unless it is restrained by some express prohibition in the Constitution of the United States or of the State, and that courts should be

careful not to extend such prohibitions beyond their obvious meaning by reading into them conceptions of public policy that the particular court may happen to entertain.....

"I am far from saying that I think this particular law a wise and rational provision. That is not my affair. But if the people of the State of New York speaking by their authorized voice say that they want it, I see nothing in the Constitution of the United States to prevent their having their will".

For the reasons we have endeavoured to explain in this Judgment we hold that the provisions of section 9(1)(A)(iii) are not unconstitutional; and for substantially the same reasons we hold that the provisions of section 9(1)(B)(a)(iii) are likewise not unconstitutional, and we, therefore, allow the appeal of the Board and set aside the Judgment of the learned Judge to that extent The cross-appeal is dismissed

In the circumstances of this case we make no order as to costs.

Appeal allowed

Cross-appeal dismissed.

No order as to costs.