

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS MARCOU AND ANOTHER,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE,

Respondent.

(Case Nos. 32/67 & 33/67).

Public Officers—Education Grants—Rights to education grants—Refusal of the Respondent to pay Applicants education grants for their children pursuing university studies in Greece—The only reason put forward for such refusal being the fact that no budgetary provision had been made for the payment of education grants—Otherwise the entitlement of Applicants to such grants was not disputed—Refusal held to be unconstitutional, as being contrary to Article 192 of the Constitution (see paragraphs 1 and 7 of that Article and Loizides and The Republic 1 R.S.C.C. 107)—See, also, herebelow under Constitutional Law ; Public Officers.

Public Officers—Education grants—Amount of education grants—What has been safeguarded in favour of public officers such as the Applicants, under Article 192 of the Constitution is not a fixed yearly amount, but a contribution by the Government to a certain extent of the cost of educating abroad their children—The last fixed amount for an education grant, at £130 a year, was so fixed in 1957 on the basis of the, at the time, presumed total cost of the relevant studies, taken to be £440 per year—Thus the Applicants are entitled to education grants which bear the same relation to the total cost of educating their children in Greece, as the relation between £130 and £440—Such total cost of studies to be fixed on the basis of the cost of such studies in Greece at the time when such education grant becomes due and payable—In other words what has been safeguarded by Article 192 of the Constitution is a contribution by the Government in the same ratio as on the 16th August, 1960 (date of the establishment of the Republic) towards the costs of studies on the basis of the cost of such studies – in Greece, in these cases – at the time such education grants become due—And not on the basis of the cost

of such studies in Greece for the Academic year 1960-1961, as it was done in these two cases by the Respondent in reaching the figure of £60 per annum—Thus the Respondent's decision in fixing at £60 per annum the amount of the relevant education grants is unconstitutional and, also, in abuse and excess of powers as having been based on a misconception regarding material factors—See minutes of the Joint Consultative Committee for the Civil Service, June, 1957, and the Government Circular No. 1411 of the 20th July, 1957.

Administrative and Constitutional Law—Decision contrary to Article 192.1 of the Constitution—Also, in excess and abuse of powers as having been taken under a misconception regarding material factors—See above.

Abuse and excess of powers—Discretion—Misconception of material factors—See above.

Education Grants—See above.

Constitutional Law—Budget—Absence of Budgetary provision for the purposes of meeting an established liability of the Government—Failure of the Legislature to vote the necessary funds to meet such liabilities of the Government—Does not and cannot avoid the meeting of such liability by the Government—Such absence of budgetary provision, therefore, could neither disentitle the Applicants from claiming the grants due to them, nor validate the refusal of the Respondent to pay to the Applicants their due—Such failure can only lead to needless delay and expense—Because once the person entitled pursues his claim in court and obtains a judgment in his favour, then such judgment has to be charged on, and satisfied out of, the Consolidated Fund of the Republic, under Article 166.1(d) of the Constitution—See, also, above, under Public Officers.

Budget—Absence of Budgetary provision for the purposes of meeting an established liability of the Government—Legal effect of such failure—See above under Constitutional Law.

Consolidated Fund of the Republic—A judgment is a charge thereon—Article 166.1 (d) of the Constitution—See above under Constitutional Law.

Both Applicants in these two recourses complain against the refusal of the Director of the Department of Personnel—who comes under the Respondent Minister of Finance—to pay to them education grants in respect of their children, who are pursuing university studies in Greece. The right of the

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Applicants to such education grants was conceded and the only reason put forward for the refusal to pay to the Applicants these education grants was the fact that no Budgetary provision has been made for the payment of such grants. There has been also a complaint about the quantum of such grants.

In granting the applications and annulling the *sub judice* decisions the Court :

Held, I. (1) It was not the concern of the Applicants, but of the Government, to ensure that such Budgetary provision should be made and the absence of the said Budgetary provision could neither disentitle the Applicants from claiming the grants due to them, nor validate the refusal of the Respondent to pay to the Applicants their due ; such refusal was still contrary to Article 192 of the Constitution which safeguarded for public officers, such as the Applicants, the right to an education grant. This point has already been gone into in the case of *Boyiatzis and The Republic* 1964 C.L.R. 367 at p. 376 per Josephides, J. giving the judgment for the Full Bench of this Court. Cfr : *Loizides and The Republic*. 1 R.S.C.C. 107.

(2) It might be observed that the failure of the Legislature to vote the necessary funds for the purpose of meeting an established liability of the Government—such as that in cases of education grants—does not and cannot avoid the meeting of such liability by the Government ; it can only lead to needless delay and expense because once the person entitled pursues his claim in Court and obtains a judgment in his favour then such judgment has to be charged on, and satisfied out of, the Consolidated Fund of the Republic, under Article 166.1 (d) of the Constitution.

Held, II. As to the collateral issue of the amount of education grants due yearly to each Applicant :

(1) (a) I agree with counsel for the Respondent that what has been safeguarded in favour of public officers such as the Applicants, under Article 192 of the Constitution, is not a fixed yearly amount, but a contribution by Government to a certain extent of the cost of educating abroad their children. The last-fixed amount for an education grant, at £130 a year, was so fixed—having been increased from its previous figure of £100 per year—on the basis of the, at the time, presumed total cost of the relevant studies, which was taken to be £440 per year (see the minutes of the Joint Consultative Committee for the Civil Service in June 1957, and a subsequent Government circular No. 1411 of the 20th July, 1957).

(b) Thus the Applicants are entitled to education grants which bear the same relation to the total cost of educating their children in Greece as the relation between £130 and £440.

(2) (a) But I cannot agree, on the other hand, with counsel for the Respondent that the total cost of studies in Greece should be taken to be, for the above purpose, that which it was when the Constitution came into force on the 16th August, 1960.

(b) What has been safeguarded under Article 192 of the Constitution is a contribution by the Government, in the same ratio as on the 16th August, 1960, towards the cost of studies—in Greece, in these two cases—on the basis of the cost of such studies at the time when an education grant becomes due ; therefore, the cost of studies in Greece on the basis of which the relevant education grants had to be calculated should have been the cost of studies in Greece at the time when the education grants became payable to the Applicants, under the relevant scheme, in relation to the studies of their children in Greece ; and not the cost of studies in Greece for the academic year 1960–1961, as it was done—according to counsel for the Respondent—in reaching the figure of £60 per annum.

Held, III. (1) Thus, while the refusal to pay the Applicants the grants, at all, is unconstitutional, the decision fixing the yearly amount at £60 is unconstitutional, too, and also in abuse and excess of powers as having been based on a misconception regarding material factors.

(2) For all the above reasons the *sub judice* acts and decisions of the Respondent are declared to be null and void and of no effect whatsoever and the matter has to be examined afresh in the light of this judgment.

I have decided to award each Applicant £10 towards costs.

Sub judice acts and decisions annulled. Order for costs as aforesaid.

Cases referred to :

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

Boyiátzis and The Republic 1964 C.L.R. 367 at p. 376.

Recourse.

Recourse against the refusal of the Director of the Department of Personnel to pay to Applicants education grants in respect of their children who are pursuing university studies in Greece.

D. Papachrysostomou, for the Applicants.

M. Spanos, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment* was delivered by:—

TRIANTAFYLIDIS, J.: These two recourses have been heard together in view of the fact that common issues are involved in both; and now this Judgment will be given in respect of both.

Both Applicants complain against the refusal of the Director of the Department of Personnel—who comes under the Respondent Minister—to pay to them education grants in respect of their children, who are pursuing university studies in Greece; each Applicant having claimed such a grant in respect of one child of his. They also complain against a related decision to the effect that, in any case, the education grants to be paid to them would not have been at the rate of £130 yearly—as claimed by them—but at the rate of £60 yearly in respect of each child.

The said refusal and decision were communicated to the Applicants by, more or less, identical letters, dated the 4th February, 1967 (see *exhibits 1A and 1B* respectively).

The only reason put forward for the refusal to pay the Applicants the education grants was the fact that no Budgetary provision had been made for the payment of education grants; otherwise the entitlement of the Applicants to such grants was not disputed.

During the hearing of these Cases the right of the Applicants to education grants was conceded once again, by counsel for the Respondent, who has stated, further, that a Supplementary Appropriation Bill was to be introduced to cure the Budgetary deficiency which had prevented the payment of the grants of the Applicants.

Regarding the question of the absence of Budgetary provision for the payment of education grants, it was not the concern of the Applicants, but of the Government, to ensure that such

*For final decision on Appeal see (1968) 5 J.S.C. 508 to be published in due course in (1968) 3 C.L.R.

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a provision should exist, and the said absence of Budgetary provision could neither disentitle the Applicants from claiming the grants due to them, nor validate the refusal of the Respondent to pay to the Applicants their due; such refusal was still contrary to Article 192 of the Constitution which safeguarded for public officers, such as the Applicants, the right to an education grant. This point has already been gone into in *Boyiatzis and The Republic*, (1964 C.L.R. 367 at p. 376) where, Josephides J., giving Judgment for the Full Bench of this Court, had this to say, *inter alia*:-

“... it was submitted on behalf of the Respondent that the reply of the Director of Personnel, dated the 15th May, 1962, did not deny the Applicant’s right to an education grant but it simply stated that it was not possible to accede to his application as the House of Representatives had not passed the Supplementary Appropriation Bill which would provide funds for education grants to public servants. This, it was contended, was not a decision, act or omission on the part of the Director of Personnel, within the provisions of Article 146.1 of the Constitution. However one looks at this, the net result was that the Applicant was not paid the education grant of £100 for the school year in question, to which he was entitled under the provisions of Article 192, paragraphs 1 and 7(b), through the refusal of the Director of Personnel which is an act or decision but *not* an omission on the Director’s part. It makes no difference whether the Members of the Executive failed (which they did not) in their duty to introduce a Supplementary Appropriation Bill to the House of Representatives, or the Members of the House of Representatives failed to pass such a Bill, which would have provided funds for education grants to public servants, pursuant to the decision of the Supreme Constitutional Court in the *Loizides’* Case, dated the 31st May, 1961.”—(For the report of *Loizides and The Republic* see 1 R.S.C.C. p. 107).

It might be observed at this stage that the failure of the Legislature to vote the necessary funds for the purpose of meeting an established liability of the Government—such as that in cases of education grants—does not and cannot avoid the meeting of such liability by the Government; it can only lead to needless delay and expense because once the person entitled pursues his claim in Court and obtains a judgment in his favour then

such judgment has to be charged on, and be satisfied out of, the Consolidated Fund of the Republic, under Article 166.1(d) of the Constitution.

Regarding the collateral issue of the amount of the education grants due yearly to each Applicant, I am in agreement with counsel for the Respondent that what has been safeguarded in favour of public officers such as the Applicants, under Article 192, is not a fixed yearly amount, but a contribution by Government to a certain extent of the cost of educating abroad their children; it does, indeed, appear from the minutes of the Joint Consultative Committee for the Civil Service, in June 1957 (*exhibit 5*) and a subsequent Government circular No. 1411, of the 20th July, 1957 (see *exhibit 6*) that the last-fixed amount for an education grant, at £130 per year, was so fixed—having been increased from its previous figure of £100 per year—on the basis of the, at the time, presumed total cost of the relevant studies, which was taken to be £440 per year.

Thus, the Applicants are entitled to education grants which bear the same relation to the total cost of educating their children in Greece as the relation between £130 and £440.

But I cannot agree, on the other hand, with counsel for Respondent that the total cost of studies in Greece should be taken to be, for the above purpose, that which it was when the Constitution came into force on the 16th August, 1960.

What has been safeguarded under Article 192 is a contribution by Government, in the same ratio as on the 16th August, 1960, towards the cost of studies—in Greece in these Cases—on the basis of the cost of such studies at the time when an education grant becomes due; therefore, the cost of studies in Greece on the basis of which the relevant grants had to be calculated should have been the cost of studies in Greece at the time when the education grants became payable to the Applicants, under the relevant scheme, in relation to the studies of their children in Greece; and not the cost of studies in Greece for the academic year 1960–1961, as it was done—according to counsel for the Respondent—in reaching the figure of £60 per annum.

Thus, while the refusal to pay the Applicants the grants, at all, is unconstitutional, the decision fixing the yearly amount at £60 is unconstitutional, too, and also in abuse and excess of powers as having been based on a misconception regarding material factors.

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For all the above reasons the *sub judice* acts and decisions of the Respondent are declared to be null and void and of no effect whatsoever and the matter has to be examined afresh in the light of this Judgment.

I have decided to award to each Applicant £10 towards costs.

Sub judice acts and decisions annulled. Order for costs as aforesaid.