

[LOIZOU, J]

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CHRISTODOULOS  
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v  
REPUBLIC  
(MINISTER OF  
FINANCE)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION  
CHRISTODOULOS PHYSENTZIDES.

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF FINANCE,

*Respondent*

(Case No 142/66).

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*Public Officers—“Terms and conditions of service” of public officers prior to Independence Day viz the 16th August, 1960—Safeguarded by Article 192 1 of the Constitution—So that such terms and conditions cannot be altered thereafter to the disadvantage of the officers concerned during their continuance in the public service of the Republic—And not merely so long as they hold the same office—Therefore, the fact that the Applicant in the present case has been appointed after the establishment of the Republic to new posts in the public service of the Republic is immaterial—See also herebelow*

*Public officers—Rent allowance—Rent allowance under Circular No 1317 of the 7th April, 1956—It is part of the terms and conditions of service” safeguarded by Article 192 1 of the Constitution in view of the definition of the said words by paragraph 7 of the same Article—See Loizides case and also Boyiatzis case (infra)—Amendments of the said Circular 1317 by Circulars Nos 68 and 83, of the 15th January 1964 and 15th October 1964, respectively—Amendment amounting to an alteration of the rent allowance scheme and therefore of the terms and conditions of service” to Applicant’s disadvantage—It follows that such amendments are not applicable to the Applicant in view of the provisions of Article 192 1 and 7 of the Constitution—And the scheme applicable to him is the rent allowance scheme provided by the first Circular No 1317 of the 7th April 1956—Construction of that Circular—Definition of the words ‘ Family and Officer’s total income” under paragraph 7 of the said Circular 1317—See also herebelow*

*Rent allowance—Scheme of rent allowance introduced by the aforesaid two last Circulars No 68 and 83, respectively—Notional rent*

*at £3 per month deemed to be paid to the public officer concerned by his child of full age, earning an income and living with him—Scheme not applicable to the Applicant in the present case as constituting an alteration to his disadvantage of the original scheme under Circular No. 1317 of the 7th April, 1956—Article 192 of the Constitution—See, also, above.*

*Constitutional Law—Article 192.1 and 7 of the Constitution—Safeguard of rights of public officers existing prior to Independence during their continuance thereafter in the public service of the Republic—The appointment of such officers to new posts after the establishment of the Republic does not take them automatically outside the safeguard and protection under Article 192 of the Constitution—See, also, above.*

*“ Terms and Conditions of service ”—Article 192, paragraphs 1 and 7 of the Constitution—Definition—Paragraph 7 of Article 192—See, above.*

*Words and Phrases—“ Children ” in Circular No. 1317 of the 7th April, 1956—The word means what it says and does not mean “ dependent children ” only—“ Family ”—Definition of in Circulars Nos. 1317 and 83, respectively (supra)—See above.*

By this recourse the Applicant challenges the decision of the Rent Allowance Appeals Committee to the effect that the payment of rent allowance to him is regulated by the conditions laid down in Circular No. 83 of the 15th October, 1964, and not by those in Circular No. 1317 of the 7th April, 1956.

The Applicant is an officer in the public service of the Republic and prior to the coming into operation of the Constitution on the 16th August, 1960, he held office under the Government of the then Colony of Cyprus, his last such office being that of Registrar, 1st Grade, in the Supreme Court of Cyprus. This post he held until January, 1961, when he was appointed to the post of Registrar in the Supreme Constitutional Court ; as from the 1st November, 1963, he has been appointed to his new post of Minister Plenipotentiary in the foreign service of the Republic. It is clear from the above that the Applicant is included in the category of public officers “ the terms and conditions of service ” of whom are safeguarded by Article 192.1 of the Constitution and which, therefore, cannot be altered to the disadvantage of such officers during their continuance in the service of the Republic (not necessarily in the particular post held by them on the date of the coming into operation of the Constitution, i.e. the 16th August, 1960). On the other hand it is not in dispute

that the phrase " terms and conditions of service ", safeguarded as aforesaid, includes such benefits as rent allowance, in view of the relevant definition in Article 192 7 (see the decision in *Loizides and The Republic*, 1 R S C C 107 and *Boyiatzis and The Republic* 1964 C L R 367. It is to be noted that the offers made to the Applicant with regard to the last two posts referred to hereabove and his letters of acceptance have been produced. In each of the two said offers mention is made of the salary scale of the new post and of the cost of living allowance and in each it is further stated that the " other terms and conditions of service remain unchanged "

The Applicant is married and he has two children one of whom, a son, is studying abroad and the other, a daughter of full age, who, as from the 1st February, 1965, has been earning income, is living with him. He has been in receipt of rent allowance since 1957 by virtue of the said Circular No 1317 of the 7th April, 1956. This Circular has remained in force unchanged until 1964 when first Circular No 68 and then Circular No 83 of the 15th October, 1964 (*supra*) were issued. The material changes introduced by these two last Circulars provide that " with effect from the 1st January, 1964, all officers who draw rent allowance and have full age children with income living with them should be considered as receiving a rent of £3 per month from each such child and such rent should be set off against the rent which the officer pays for the house in which he resides ". This provision of Circular 68 has been embodied in the last Circular No 83 (*supra*) and it is now paragraph 13 of the rent allowance scheme in the last-mentioned Circular.

The calculation of the rent allowance is made on the basis of the 'officer's total income' for the preceding calendar year.

Under paragraph 7 of the first Circular No 1317 the words ' family ' and " officer's total income " are defined as follows:

- 'Family' means wife, children and dependent parents.
- 'Officer's total income' means the officer's total emoluments for the preceding calendar year plus income from other sources for the same year (including income of the officer's wife and minor children).

In the said Circular No 83 of the 15th October 1964 the definition of the word ' family ' has been amended by the

substitution of the words "dependent children" for the word "children" and the words "Applicant's total income" are defined as "Applicant's total emoluments for the preceding calendar year, plus gross income from other sources for the same year (including income of the officer's wife, minor children and dependent parents) . . . .".

The decision challenged by this recourse is to the effect that the rent allowance payable to the Applicant should be calculated on the basis of paragraph 13 of the Circular No. 83 (*supra*) i.e. that the sum of £3 per month should be set off against the rent which the Applicant pays for the house in which he resides, that sum of £3 being the notional rent which the Applicant is deemed to be receiving from his said daughter of full age, earning an income of her own and living with him.

The contention of the Applicant is that rent allowance is, under the definition in paragraph 7 of Article 192 of the Constitution, part of the terms and conditions of his service which, in view of paragraph 1 of that Article 192, cannot be altered to his disadvantage after the establishment of the Republic and that, consequently, the said amendment of the original Circular 1317 of the 7th April, 1956, is unconstitutional.

It was argued on behalf of the Respondent that (a) the decision complained of as well as the Circular No. 83 under which it was taken do not contravene Article 192 of the Constitution, (b) that, in any event, as the Applicant was, after the establishment of the Republic, promoted to another post, Article 192 has no application in his case, and (c) in any event, even before the establishment of the Republic, the Applicant was not entitled to rent allowance without the income of his daughter of age being taken into consideration, and in the alternative, (d) even if he was so entitled, when he accepted appointment after the establishment of the Republic first to the post of Registrar Supreme Constitutional Court and then to that of Minister Plenipotentiary he accepted appointment subject to the terms and conditions of service prevailing at the time.

In granting the application and annulling the *sub judice* decision, the Court :

*Held*, (1). This case has to be decided in the light of the provisions of Article 192 of the Constitution safeguarding the terms and conditions of service applicable to officers such as

the Applicant before the coming into operation of the Constitution on the 16th August, 1960.

(2) Rent allowance is undoubtedly included in the "terms and conditions of service" as defined in paragraph 7 of Article 192 of the Constitution (see *Loizides and The Republic* 1 R.S.C.C. 107 and *Boyiatzis and The Republic* (1964 C.L.R. 367).

(3) (a) It is equally clear to me that the amendment, in 1964, of Circular No. 1317 of the 7th April, 1956 amounts to an alteration of the rent allowance scheme and, therefore, of the terms and conditions of service, to the Applicant's disadvantage which is precluded by Article 192.1 of the Constitution.

(b) I cannot accept the submission by counsel for the Respondent that the word "children" in the definition of "Family" in the said Circular No. 1317 cannot mean any children generally but only dependent children and that, therefore, the Applicant, even before the establishment of the Republic, was not entitled to rent allowance without the income of his daughter of age being taken into consideration. In my view the word "children" in the said Circular No. 1317 means what it says and it includes children of age and earning income of their own.

(4) I need not, for the purposes of this case, consider whether the terms and conditions of service applicable to an officer and safeguarded by Article 192 of the Constitution may be altered to his disadvantage by a condition to that effect in the offer of appointment to a new post and his acceptance thereof. The offers made to the Applicant in the present case not only did not contain such a condition but on the contrary it was expressly stated in each of them that, apart from the salary scale and the cost of living allowance, the other terms and conditions of service would remain unchanged.

(5) Can it then be said that the mere fact that an officer is appointed to a new post, as it is the case of the Applicant, automatically takes him outside the protection of Article 192 of the Constitution? I think that the answer must be in the negative. The wording of paragraph 1 of this Article clearly indicates that an officer in the public service is, after the date of the coming into operation of the Constitution, entitled to the same terms and conditions of service as were applicable to him before that date and that such terms and conditions cannot be altered to his disadvantage *during his continuance*

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*in the public service of the Republic*—and not merely so long as he holds the same office.

(6) In the result the decision challenged is hereby declared null and void and of no effect whatsoever as being contrary to the provisions of Article 192 of the Constitution.

Order for costs in the sum of £18 in favour of the Applicant.

*Decision complained of annulled.  
Order for costs as aforesaid.*

Cases referred to :

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

*Boyiatzis and The Republic* 1964 C.L.R. 367

### **Recourse.**

Recourse against the validity of the decision of the Rent Allowance Appeals Committee to the effect that the payment of rent allowance to Applicant is regulated by the conditions laid down in Government Circular No. 83 of the 15th October, 1964 and not by those in Circular No. 1317 of the 7th April, 1956.

*A. Triantafyllides*, for the Applicant.

*K. Talarides*, Counsel of the Republic, for the Respondent.

*Cur. adv. vult.*

The following Judgment was delivered by:

LOIZOU, J.: By this recourse the Applicant challenges the validity of the decision of the Rent Allowance Appeals Committee to the effect that the payment of rent allowance to him is regulated by the conditions laid down in circular No. 83 of the 15th October, 1964, and not by those in circular No. 1317 of the 7th April, 1956.

The relief claimed under paragraph (b) of the Application relating to the decision of the Respondent to recalculate and recover the rent allowance allegedly overpaid to the Applicant has not been proceeded with in view of a declaration on behalf of the Respondent that he does not claim repayment of any rent allowance paid up to the 28th February, 1966.

The Applicant is an officer in the public service of the Republic and prior to the coming into operation of the Constitution he

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held office under the Government of the then colony of Cyprus. Before the establishment of the Republic Applicant's post in the public service was that of Registrar, 1st Grade, in the Supreme Court of Cyprus. This post he held until January, 1961 when he was appointed to the post of Registrar in the Supreme Constitutional Court; as from the 1st November, 1963 he has been appointed to the new post of Minister Plenipotentiary in the foreign service of the Republic. The offers made to him with regard to the last two posts and his letters of acceptance have, by consent, been produced to the Court after the conclusion of the hearing of the case and I have marked these four documents as *exhibit* 12. In each of the two offers made to the Applicant mention is made of the salary scale of the new post and of the cost-of-living allowance payable and in each it is further expressly stated that "the other terms and conditions of service remain unchanged".

The Applicant is married and he has two children one of whom, a son, is studying abroad and the other, a daughter of full age, who, as from the 1st February, 1965, has been earning income, is living with him.

He lives in a rented house consisting of two bedrooms a hall and a living-dining room. He has been in occupation of this house for the last four years and the rent he pays is the same as the one he was paying prior to 1960.

He has been in receipt of rent allowance since 1957. Such rent allowance was payable by virtue of circular No. 1317 (*exhibit* 1). This circular was issued on the 7th April, 1956 and has remained in force unchanged until 1964 when first circular No. 68 (*exhibit* 11) and then circular No. 83 (*exhibit* 3) were issued. On the 23rd January, 1962, another circular, No. 24, (*exhibit* 2) was issued setting up a committee under the chairmanship of the Chief Establishment Officer "to review the rent allowance now payable by Government and, subject to the provisions of the Constitution, to make recommendations:

- (i) As to whether such allowance should continue to be paid to officers; and
- (ii) if so, to prepare for consideration a new scheme of general application which would be more satisfactory and less costly to Government. (Such scheme would not affect the rights of officers safeguarded by the Constitution)".

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The scheme contained in circular 83 (*exhibit 3*) is probably the result of the recommendations of this committee.

Circular No. 68 was issued on the 15th January, 1964; it provides that "with effect from the 1st January, 1964, all officers who draw rent allowance and have full age children *with income* living with them should be considered as receiving a rent of £3 per month from each such child and such rent should be set off against the rent which the officer pays for the house in which he resides". This provision of circular 68 has been embodied in circular 83; it is paragraph 13 of the rent allowance scheme in the last-mentioned circular.

The extent of the rent allowance to which an eligible officer is entitled is governed by the "conditions" at paragraph 2 of the circular *exhibit 1*. Under these conditions for an eligible officer to qualify for rent allowance the rent payable by him must exceed 15% of his total income; but the maximum rent allowance payable in each case is limited according to the extent of the officer's total income.

The calculation is made on the basis of the "officer's total income" for the preceding calendar year.

Under paragraph 7 of this circular the words "family" and "officer's total income" are defined as follows:-

"Family" means wife, children and dependent parents and includes living in servants".

"Officer's total income" means the officer's total emoluments for the preceding calendar year, plus income from other sources for the same year (including income of the officer's wife and minor children) as it has been or will be declared to the Commissioner of Income Tax. In the case of an unmarried officer the income of his parents should also be added".

In the circular No. 83 (*exhibit 3*) which was issued on the 15th October, 1964, the definition of the word "family" has been amended by the substitution of the words "dependent children" for the word "children" and the words "Applicant's total income" are defined as "Applicant's total emoluments for the preceding calendar year, plus gross income from other sources for the same year (including income of the officer's wife, minor children and dependent parents) as it has been or will be declared to the Commissioner of Income Tax. In the case of an unmarried officer the income of his parents should also be added". (It will be observed that in the definition



of "officer's total income" in both circulars the income of *minor* children is expressly included).

As stated earlier on the Applicant has a daughter of full age living with him who, as from the 1st February, 1965, has been earning income.

On the 5th July, 1965 the Auditor-General in a letter addressed to the Director-General, Ministry of Foreign Affairs, observed that in the case of the Applicant instruction 13 of circular No. 83 was not complied with and instructed that Applicant's rent allowance for 1965 should be recalculated and that the sum erroneously paid should be recovered. To this letter the Applicant replied by his letter dated 29th November, 1965, pointing out that the provisions of instruction 13 of circular No. 83 were not applicable in his case as rent allowance was being paid to him on the strength of circular 1317 of the 7th April, 1956, and that in view of the definition of an officer's total income in the said circular his daughter's income could not be included in his income as she was not a minor child. "The privilege which I have been enjoying on the strength of the circular of the 7th April, 1956"—the Applicant goes on to say in his reply—"is being safeguarded by the provisions of Article 192 of the Constitution which cannot possibly be overruled by the provisions of circular No. 83 of the 15th October, 1964".

Eventually the Applicant had to appeal to the Rent Allowance Appeals Committee. The decision of this Committee which is attached to the Application (*exhibit 7*) was taken on the 27th May, 1966 and reads as follows:

"The Committee is of the opinion that Mr. Physentzides is receiving rent allowance by virtue of the Ministry of Finance Circular No. 83 of the 15.10.64 and therefore instruction No. 13 thereof fully applies to his case.

Whether the said instruction No. 13 is unconstitutional on the ground that it deprives him of a right which has been safeguarded under Art. 192 of the Constitution is a question which is not the function of this Committee to decide.

The appeal is therefore dismissed".

Consequently the present recourse was filed on the 10th June, 1966.

The contention of the Applicant, in short, is that rent allowance is part of the terms and conditions of service which,

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in view of the provisions of Article 192 of the Constitution, cannot be altered to his disadvantage after the establishment of the Republic and that, consequently, the amendment of circular No 1317 by circular No 83 contravenes the provisions of the said Article and is, therefore, null and void

It is contended in the Opposition that the decision complained of was lawfully taken in accordance with the provisions of the rent allowance scheme in force which is contained in circular No. 83 and that this circular and the *sub judice* decision do not contravene Article 192 of the Constitution. It is further contended that as the Applicant was, after the establishment of the Republic, promoted to another post Article 192 has no application in his case

Learned counsel for the Respondent in the course of his argument submitted that even before the establishment of the Republic the Applicant was not entitled to rent allowance without the income of his daughter of age being taken into consideration and, in the alternative, he argued that even if he was so entitled, when he accepted appointment after the establishment of the Republic first to the post of Registrar Supreme Constitutional Court and then to that of Minister Plenipotentiary he accepted appointment subject to the terms and conditions of service prevailing at the time

I pause here for a moment to observe that the Applicant was appointed to both the above posts on dates prior to 1964 when circulars Nos 68 and 83 were issued.

Be that as it may, it seems to me that this case has to be decided in the light of the provisions of Article 192 of the Constitution and the terms and conditions of service applicable to this officer before the coming into operation of the Constitution

In support of his submissions learned counsel for the Respondent argued that the word "children" in the definition of "family" in the circular No 1317 of the 7th April, 1956 (*exhibit 1*) should be construed to mean "dependent children" and this in view of the fact that the definition of "officer's total income" in the same circular includes only the income of minor children and not that of children generally. A father, he argued, is not entitled to receive the income of a grown-up child and he has no obligation to support a grown-up child who earns income and, for this reason, the word "children" in the definition of "family" cannot mean all children generally but only dependent children

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Mr. Charalambos Artemis, the officer in charge of the Personnel Department, gave evidence in support of the case for the Respondent. He gave the history of the rent allowance scheme as from the time when it was first introduced; with regard to the circular *exhibit* 1 he said that the definition of the word "family" was inserted in order to make it clear that Government will pay rent allowance for the accommodation of an officer's family only and not for the accommodation of other persons. He was not, he said, in a position to say whether prior to the establishment of the Republic the income of children of age was taken into consideration in computing an officer's total income, but he was in a position to say that an officer applying for rent allowance was not required to give particulars regarding grown up children living with him who earned income. Referring to the circular *exhibit* 3 he said that the word "dependent" was added in the definition of "family" in order to make it clear that dependent children only were to be accommodated with the family of the officer; he agreed that the insertion of this word changed the meaning of the word "family" as defined in the circular *exhibit* 1; but he, nevertheless, went on to say that the intention was that the word "children" in the 1956 circular should be read as "dependent children".

In the course of his evidence he was asked by counsel for the Respondent:

Q. "Would Mr. Physsentzides have been entitled to the rent allowance he claims now before the Republic not taking into account the income of his grown up daughter?"

A. No he would not be entitled after the issue of circular No. 68 of the 16th January, 1964.

Q. If the case was referred to you before the Republic what would have been the result?

A. The result would have been that we would have issued that circular earlier".

And although, when questioned further on this point, in the end he said that he would have taken into account the income of the daughter and that he would deduct £3 from the rent paid by the Applicant, even though there was no provision in the circular to this effect, I think that the answers above quoted about sum up the position.

I cannot, for one moment, accept the view that it was either intended that the word "children" in the definition of "family"

in Circular No. 1317 (*exhibit 1*) should be construed to mean “dependent children” or that it is reasonably open to the Court, in the circumstances, to attribute to the word any meaning other than its ordinary and natural meaning. The fact that an officer applying for rent allowance prior to the issue of the two 1964 circulars was not required to give particulars of any grown up children living with him who earned income, in my opinion, supports this view. Furthermore, it seems to me, that if the intention really was to qualify the meaning of the word “children” there was nothing to prevent them from doing so expressly and clearly in the same way as they did with the word “parents” which immediately follows. The most probable explanation is that nobody thought about this until 1964, and when they did, they found it necessary to issue circulars No. 68 and 83 in order to amend the scheme accordingly.

In the circumstances I am clearly of opinion that, prior to the coming into operation of the Constitution, Applicant was entitled to rent allowance without being considered as receiving a rent of £3 per month from a child with income living with him.

The next question is whether rent allowance is included in the “terms and conditions of service” as defined in paragraph 7 of Article 192. That this is so was not disputed and was in fact conceded by learned counsel for the Respondent—quite rightly, in my opinion, in view of the judgments in *Loizides* and *The Republic* 1 R.S.C.C. p. 107 and *Boyiatzis* and *The Republic*, 1964 C.L.R. 367.

It is equally clear to me that the amendment, in 1964, of the circular *exhibit 1* amounts to an alteration of the rent allowance scheme and, therefore, of the terms and conditions of service, to the Applicant’s disadvantage.

Lastly I come to Respondent’s alternative contention that in any case the Applicant is not entitled to the same terms and conditions of service in view of the new appointments after the establishment of the Republic.

I need not, for the purposes of this case, consider whether the terms and conditions of service applicable to an officer and safeguarded by Article 192 may be altered to his disadvantage by a condition to that effect in the offer of appointment to a new post and his acceptance thereof. The offers made to the Applicant in the present case not only did not contain such a condition but on the contrary it was expressly stated in each

of them that the other terms and conditions of service would remain unchanged.

Can it then be said that the mere fact that an officer is appointed to a new post automatically takes him outside the protection of Article 192 of the Constitution? I think that the answer must be in the negative. The wording of paragraph 1 of this Article clearly indicates that an officer in the public service is, after the date of the coming into operation of the Constitution, entitled to the same terms and conditions of service as were applicable to him before that date and that such terms and conditions cannot be altered to his disadvantage *during his continuance in the public service of the Republic*—and not merely so long as he holds the same office.

For all the above reasons this recourse must, in my view, succeed.

In the result the decision challenged is hereby declared null and void and of no effect as being contrary to the provisions of Article 192 of the Constitution. With regard to costs I think that the Applicant is entitled to his costs which in the circumstances I assess at £18.—

*Decision complained of annulled.*

*Order for costs as aforesaid.*

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