

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KYRIAKI E. GALAZI, A MINOR THROUGH
HER FATHER AND/OR GUARDIAN EFSTATHIOS GALAZIS,
Applicant,

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KYRIAKI E.
GALAZI
v.
MINISTER OF
EDUCATION
AND OTHERS

and

THE MINISTER OF EDUCATION, AND/OR
THE DIRECTOR OF SECONDARY EDUCATION, AND/OR
THE HEADMASTER OF THE CENTRAL PANCYPRIAN
GYMNASIUM AND/OR THE COUNCIL OF MINISTERS,
Respondents.

(Case No. 183/67).

Secondary Education—Students—Transfer of student from one school to another—Application for a provisional order suspending the effect of the relevant decision of the Respondents until final determination of the recourse already made under Article 146 of the Constitution—Circumstances—Merits of the case—Harm—Provisional order refused on the main ground that the non-making of such order is not likely to cause any irreparable damage or harm or, indeed, any harm or damage at all, to the Applicant either financial or moral—See, also, herebelow.

Recourse under Article 146 of the Constitution—Provisional Order—Rule 13 of the Supreme Constitutional Court Rules, 1962, which continue in force by virtue of section 17 of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33 of 1964)—Provisional order refused—See above under Secondary Education.

Students—Secondary Education—Transfer of a student from one Educational Institution to another—See above under Secondary Education.

Provisional Order—In a recourse under Article 146 of the constitution—See above under Secondary Education ; Recourse under Article 146 of the Constitution.

The Applicant applied for a provisional order suspending the effect and operation of the decision of the Respondents to have her name removed from the register of students of the Science Department of the Pancyprian Gymnasium and/or

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to have her transferred from the said Department to the newly established Science Department of the Pallouriotissa Gymnasium for girls pending the final determination of this case. The Court refused the provisional order on the main ground that the non-making of that order is not likely to cause any irreparable damage or harm or, indeed, any damage or harm at all, to the Applicant either financial or moral.

The facts are sufficiently set out in the decision of the Court.

Application.

Application for a provisional order suspending the effect and operation of the decision of the Respondents to have the name of Applicant removed from the register of students of the Science Department of the Pancyprian Gymnasium and/or to have her transferred from the said Science Department of the Pancyprian Gymnasium to the newly established Science Department of the Pallouriotissa Gymnasium for girls pending the final determination of a recourse against such decision.

L. Papaphilippou, for the Applicant.

G. Tornaritis, for the Respondents.

Cur. adv. vult.

The following Decision was delivered by:

Loizou, J: The Applicant applies for a provisional Order suspending the effect and operation of the decision of the Respondents to have her name removed from the register of students of the Science Department of the Pancyprian Gymnasium and/or to have her transferred from the said Science Department of the Pancyprian Gymnasium to the newly established Science Department of the Pallouriotissa Gymnasium for girls pending the final determination of this case.

The Application is presumably made under r. 13 of the Supreme Constitutional Court Rules 1962, which continue in force by virtue of the provisions of section 17 of the Administration of Justice (Miscellaneous Provisions) Law, 1964.

The Applicant who is a minor, has instituted these proceedings through her father.

The facts, so far as relevant, are as follows:

The Applicant is a resident of Pallouriotissa and up to the

end of the last school-year she attended at the Pallouriotissa Gymnasium for girls having successfully completed the third class. She has shown proficiency in mathematics, physics and geography. Her intention is to follow university studies in applied sciences. Up to the end of the last school-year there was no science department at the Pallouriotissa Gymnasium for girls. On the 12th September, 1967 the Applicant was accepted as a student of the 4th class of the science department of the Pancyprian Gymnasium. She paid all dues. On the 22nd September, 1967, obviously in view of a decision on the part of the Respondents, or any of them, to operate a science department at the Pallouriotissa Gymnasium for girls, Applicant's name was removed from the register of students at the Pancyprian Gymnasium and she was told to continue to attend at Pallouriotissa. Her father objected to this and he was told that all students of the Pallouriotissa Gymnasium who wished to attend at the science department would have to attend at Pallouriotissa and not at the Pancyprian Gymnasium. This was also conveyed to him in writing by a letter dated 23rd September, 1967 signed by the assistant director of the Pancyprian Gymnasium. This letter is attached to the Application. On the 22nd September, 1967 Applicant's father wrote a letter to the Minister of Education (also attached to the Application) complaining about his daughter's transfer to the Pallouriotissa Gymnasium and asking for his approval that the Applicant might attend at the Pancyprian Gymnasium. The reasons he gives in this letter for such application are that his house is nearer the Pancyprian Gymnasium and that as his son also attends at the same school it would be easier for him to take his children to school. He concludes his letter by saying that since we live in a democratic country in which parents pay for their childrens' education they should not be deprived of the right to choose the school at which they would like their children to be educated. On the 25th September, 1967 a reply was sent to Applicant's father informing him of a decision of the Council of Ministers to the effect that all school girls who in previous years attended at the Pallouriotissa Gymnasium for girls should continue to attend at the science department of that school and not at any other school and especially the Pancyprian Gymnasium.

On the 28th September the Applicant filed a recourse against the decision of the Respondents and at the same time she filed the present Application.

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Applicant's father has sworn an affidavit in which he states, *inter alia*, that the Pancyprian Gymnasium has educational tradition and is perfectly equipped, whereas the Pallouriotissa Gymnasium for girls, where a science section will operate for the first time, lacks both in equipment and in other respects. He further states (para. 7) that if the provisional Order applied for is not made the Applicant will suffer irreparable harm.

Applicant's main argument was that if the Applicant is made to attend at the Pallouriotissa Gymnasium for girls even for a few months she will suffer irreparable harm because as a result of the low standard of that school a vacuum will be left in her education which, in view of her tender age and the fact that she just now commences to attend the Science Department, it will not be possible to fill at any future time.

In deciding this case I bear particularly in mind the Jurisprudence in Greece as set out, *inter alia*, in the textbook Τὸ Ἐνδίκον Μέσον τῆς Αἰτήσεως Ἀκυρώσεως ἐνώπιον τοῦ Συμβουλίου Ἐπικρατείας by Th. Tsatsos 2nd ed. at p. 281 et seq.

The merits of a particular case are, no doubt, a relevant factor in determining an application for a provisional Order; in the case before me this factor cannot have a decisive effect as it is not possible, at this stage, on the material before me either to say that the Applicant's claim is obviously unfounded or that it is bound to succeed.

I am, however, not at all satisfied that the non-making of the provisional Order applied for will cause any irreparable damage or harm or any damage or harm at all to the Applicant either financial or moral.

The Applicant has failed to prove that the science section of the Pallouriotissa Gymnasium for girls, which has only just now commenced to function, is either so badly equipped or staffed as to be unfit for her or any other student to attend or that it is incapable of providing the required standard and quality of education.

In all probability the reason Applicant's father prefers the Pancyprian Gymnasium is that given in his letter to the Minister or, it may well be, that he is assuming that because the Science Department of the Pancyprian Gymnasium has been functioning for twenty years it must, for this reason, be superior to that

of the Pallouriotissa Gymnasium for girls which is new; but even so, this is a long way from saying that the latter school is incapable of providing the required standard and quality of education and that its students will as a result suffer irreparable harm. It is difficult to see how one may safely judge the standard of an educational institution even before it starts to function and on material as scanty as the material available in the present case.

As I have already said I am not satisfied that the non-making of the Order applied for is likely to cause any irreparable harm to the Applicant and consequently this Application must fail. Regarding costs I think that in all the circumstances the costs of this Application should be costs in cause.

Application for a provisional Order dismissed.

Costs in cause.

*Order and order as to costs
in terms.*

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