

[TRIANFAYLLIDES, P., L. LOIZOU, HADJIANASTASSIOU,
A. LOIZOU, JJ.]

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THE REPUBLIC OF CYPRUS. THROUGH
THE MINISTER OF FINANCE,

REPUBLIC
(MINISTER
OF FINANCE)

v.

Appellant,

SAVVAS
PERICLEOUS

and

SAVVAS PERICLEOUS,

Respondent.

(Revisional Jurisdiction Appeal No. 82).

Recourse under Article 146 of the Constitution—Legitimate interest—Article 146.2—Education grant—Recourse against refusal to pay to the applicant (public officer) education grant—Legal position existing at the time of the filing of the recourse such as to afford him a right to such grant—Judicially held subsequently by the Supreme Court (vide Constantinides v. The Republic (1969) 3 C.L.R. 523) that this was not so—It follows that at the time when applicant filed his present recourse he did not possess an existing legitimate interest in relation to the grant claimed by him, which was “adversely and directly affected” by the sub judice refusal—And that, therefore, he could not thus validly challenge such refusal by the recourse under Article 146 of the Constitution.

Public Officer—Education grant—See supra.

Education grant to public officers—See supra.

“Legitimate interest”—Within the provisions of paragraph 2 of Article 146 of the Constitution—See supra.

This is an appeal by the Republic from the judgment of a Judge of this Court (published in (1971) 3 C.L.R. 141) annulling the refusal to pay to the respondent (then applicant) an education grant in respect of the university studies of his son in Greece during the academic year 1966/1967. The facts of the case are very briefly as follows :

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The respondent public officer filed some time in 1968 a recourse challenging the validity of the decision taken on December 13, 1967, by the Minister of Finance and refusing him an education grant in respect of the university studies of the respondent's son in *Greece* during the academic year 1966/1967, on the ground that he (the respondent officer) had accepted an offer of promotion containing a term that he would not claim or be entitled to such a grant. The learned Judge who tried the recourse in the first instance annulled the aforesaid refusal. The Republic (through the Minister of Finance) now appeals against this judgment on the ground, *inter alia*, that the respondent (then applicant) in view of the history of events (*infra*) had at the material time (*i.e.* at the time of the filing of the recourse) no legitimate interest in challenging such refusal.

When the respondent applied, in November 1967 for the aforesaid education grant, there was in force Circular No. 123, dated August 18, 1967, by virtue of which education grant became payable to entitled officers in respect of studies of their children in *Greece*. That was then the legal position which had resulted from the adaptations effected to the scheme for education grants under Circular No. 1286 of the 6th December 1955, by the judgment of the Supreme Constitutional Court in the case of *Loizides and The Republic*, 1 R.S.C.C. 107, at pp. 111-112. On December 9, 1969, however it was held, on appeal, in *Constantinides v. The Republic* (1969) 3 C.L.R. 523, that the aforesaid adaptations made to the scheme for education grants in the *Loizides'* case (*supra*) were not necessary and that the correct legal position concerning such grants was as laid down in the said Circular No. 1286 (*i.e.* prior to the coming into operation of the Constitution whereby such education grants were being paid only for studies in Great Britain).

Allowing the appeal, the Supreme Court, after reviewing the history of the matter :-

Held. (1) When the respondent public officer filed his recourse it was regarded judicially (see the *Loizides'* case, *supra*) and consequently administratively also (see Circulars 123 and 183) that there existed a legal situation affording him a right to an

education grant for studies of his son in Greece, but it was subsequently held (see the *Constantinides*' case *supra*) that there did not exist at the material time such a situation.

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(2) It follows that when the respondent filed his recourse he did not possess an existing legitimate interest, in relation to the education grant claimed by him, which was adversely and directly affected by the *sub judice* administrative decision refusing him such a grant on the ground that he had accepted an offer of promotion containing a term that he would not be entitled to such grant.

(3) Consequently, the respondent could not validly challenge such decision by a recourse.

*Appeal allowed. Judgment
appealed from set aside. No
order as to costs.*

Cases referred to :

Loizides and Another and The Republic, 1 R.S.C.C. 107,
at pp. 111-112;

Constantinides v. The Republic (1969) 3 C.L.R. 523;

Vrahimis v. The Republic (1971) 3 C.L.R. 104;

The Republic v. Vassiliades (1967) 3 C.L.R. 82;

Pikis v. The Republic (1968) 3 C.L.R. 303;

Neophytou v. The Republic, 1964 C.L.R. 280, at p. 292.

Appeal.

Appeal from a judgment of a Judge of the Supreme Court of Cyprus (Stavrinides, J.) given on the 10th May, 1971 (Case No. 61/68) whereby a decision of the respondent refusing to pay applicant education grant was declared null and void.

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L. Loucaides, Senior Counsel of the Republic,
for the appellant.

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M. Christofides, for the respondent.

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The judgment of the Court was delivered by :-

TRIANAFYLLIDES, P. : This is an appeal from the judgment (*) of a judge of this Court, in recourse No. 61/68, by means of which there was annulled an administrative decision not to pay to the respondent an education grant in respect of the university studies of his son in Greece during the academic year 1966/1967.

The respondent, who is a public officer, applied for the said grant on the 7th November, 1967, and by letter dated the 13th December, 1967, he was informed that he was not entitled to an education grant because he had accepted an offer of promotion containing a term that he would not be entitled to such a grant.

It is common ground that the respondent, who has been in the public service since before the establishment of the Republic on the 16th August, 1960, was, prior to his promotion—in 1962—entitled to an education grant under the relevant scheme (see Circular No. 1286, dated the 6th December, 1955); his right thereto having been safeguarded by Article 192 of the Constitution. What has been in dispute is whether he has been deprived of such right in view of the inclusion of the aforementioned term in the offer of promotion which was made to him on the 22nd June, 1962, and was accepted by him on the 28th June, 1962.

When the respondent applied, in November, 1967, for an education grant there was in force Circular No. 123, dated the 13th August, 1967, by virtue of which education grants became payable to entitled public officers («δικαιούχους δημοσίου υπαλλήλου») in respect of studies of their children in Greece during the academic

* Published in (1971) 3 C.L.R. 141.

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There is no doubt at all in our minds that when the respondent submitted his application and when such application was examined by the administration, as well as when Circular No. 123 was issued, both the respondent and the administration were acting on the basis of the view that the correct legal position was that which had resulted from the adaptations effected—in view of “the general framework” of the Constitution—to the scheme for education grants (viz. the said Circular No. 1286 of the 6th December, 1955) by the judgment in *Loizides* and *The Republic*, 1 R.S.C.C. 107, at pp. 111—112; by virtue of such judgment the scheme was adapted by “the substitution for the expressions ‘United Kingdom’ and ‘Commonwealth country’, as the case may be, of Greece and Turkey, respectively, depending on whether the member of the public service concerned is a Greek or a Turk.”

On the 26th February, 1968, the respondent filed recourse No. 61/68 against the refusal to pay him an education grant. While the matter was *sub judice* and before there was given the first instance decision thereon, from which the present appeal was made, the following developments ensued :-

First, there was issued a Circular, No. 183, dated the 5th May, 1969, by means of which education grants became payable to entitled public officers in respect of studies in Greece of their children from the academic year 1960/1961 onwards; it can hardly be doubted that this Circular was (like Circular No. 123) an administrative measure taken in conformity with the legal position shaped by the judgment in the *Loizides* case (*supra*).

Secondly, on the 9th December, 1969, it was held, on appeal, in *Constantinides v. The Republic* (1969) 3 C.L.R. 523, that the adaptations made to the scheme for education grants in the *Loizides* case were not necessary and that the correct legal position concerning such grants was as laid down prior to the coming into operation of the Constitution; the *Constantinides* case

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(*supra*) was followed, on appeal, in *Vrahimis v. The Republic* (1971) 3 C.L.R. 104.

Thirdly, after the *Constantinides* case the scheme for education grants, which, once the aforesaid adaptations made in the *Loizides* case were found in the *Constantinides* case to be constitutionally unnecessary, had ceased to be applicable to studies in Greece, was extended so as to apply once again to such studies, at first by Circular No. 229, dated the 18th January, 1971, and later by Circular No. 230, dated the 11th February, 1971; the latter Circular is the one in force at present, but both these Circulars incorporated by reference, and thus continued in force, the provisions of the aforementioned Circulars Nos. 123 and 183 concerning education grants for studies in Greece. It is quite clear that the extension of the scheme so as to apply to studies in Greece, as effected by Circulars Nos. 229 and 230, was not made by way of administrative implementation of the legal position laid down in the *Loizides* case—which had already been reversed in the *Constantinides* case—but as a result of a policy decision of the Government (see, also, in this connection the observations of Hadjianastassiou, J. in the *Constantinides* case at p. 555).

In the appealed from judgment, which was given on the 10th May, 1971, the learned trial judge dealt only with the issue of the continuance or not of the right of the respondent to an education grant after his promotion and he decided it in his favour; in doing so he has proceeded on the basis of the assumption that the respondent was entitled, in every other respect, to the education grant claimed by him.

This Court in dealing with an appeal of this nature has to decide whether or not there ought to succeed the recourse in which the judgment appealed from was given; because it is a recourse which, though made to the Court as a whole under Article 146 of the Constitution, was, in view of the provisions of section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64), determined, at first instance, by only one of the judges of the Court (see *The Republic v. Vassiliades* (1967) 3 C.L.R. 82, *Pikis v. The Republic* (1968) 3

C.L.R. 303, and the *Constantinides* case, *supra*).

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As provided by Article 146.2 of the Constitution a person making a recourse must be one whose an "existing legitimate interest" is "adversely and directly affected" by the decision, act or omission which is challenged by the recourse; an analogous provision is to be found in section 48 of Law 3713/1928 in Greece; and case-law has established that the said legitimate interest should exist at the time when the recourse is made (see *Neophytou v. The Republic*, 1964 C.L.R. 280, at p. 292).

In view of the fact that when the respondent filed his recourse it was regarded judicially (see the *Loizides* case), and consequently administratively also (see Circulars Nos. 123 and 183), that there existed a legal situation affording him a right to an education grant for studies of his son in Greece, but it was subsequently held (see the *Constantinides* case) that there did not exist, at the material time, such a situation, it follows—(and see in this connection ground No. 4 in the notice of appeal)—that when the respondent filed his recourse he did not possess an existing legitimate interest, in relation to the education grant claimed by him, which was adversely and directly affected by the *sub judice* decision; and, therefore, he could not validly challenge such decision by a recourse.

In this appeal we are concerned only with that particular administrative decision and not generally with the right of the respondent to an education grant. For this reason we are leaving open the question whether by virtue of Circular No. 230—(by means of which the administration has extended, after the *Constantinides* case and thus independently of the *Loizides* case, the scope of the relevant scheme so as to render it also applicable to studies in Greece of children of entitled officers)—the respondent has become entitled to the education grant which was, earlier, refused to him by the administration. Also, as it was not necessary to pronounce on it for the purposes of this appeal, we are not dealing in this judgment with the issue of the continuance of the right of the respondent to an education grant after he was promoted in 1962 on the basis of an offer of promotion

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which contained a term to the contrary effect.

In the light of the foregoing this appeal succeeds, the decision appealed from is set aside and the recourse of the respondent fails and is dismissed accordingly; but, in view of all relevant considerations, we have decided not to make any order as to costs in relation to these proceedings either at first instance or on appeal.

Appeal allowed;
no order as to costs.