1973
Dec. 31

LARIS VRAHIMIS, A MINOR THROUGH HIS FATHER AND NATURAL GUARDIAN, IOANNIS VRAHIMIS

v.

REPUBLIC (MINISTRY OF EDUCATION AND/OR MINISTER OF EDUCATION)

[TRIANTAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LARIS VRAHIMIS, A MINOR THROUGH HIS FATHER AND NATURAL GUARDIAN, IOANNIS VRAHIMIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTRY OF EDUCATION AND/OR THE MINISTER OF EDUCATION,

Respondents.

(Case No. 368/72).

Recourse under Article 146 of the Constitution—Practice—Administrative Court holding that the sub judice *administrative decision was validly taken on a certain ground—Need not examine validity of any other separate and additional ground on which such decision was taken.*

Equality—Principle of—Enrolment of other pupils from private school in a public school contrary to section 17(3) of the Private Schools Law, 1971—And refusal to enrol applicant—Cannot entitle him to claim that he should, upon the principle of equality of treatment, be allowed to be enrolled contrary to the said section 17(3).

*Elementary Education—Private Elementary School—Enrolment of child attending such school in the second form of a public elementary school under section 17(3) of the Private Schools Law, 1971 (Law No. 5 of 1971)—Refused on the ground that the private school concerned was not a duly registered private school under sections 3, 7 and 8 of the aforesaid Law—*Sub judice *refusal held to be a valid one—Recourse dismissed.*

Private Schools—Private Schools Law, 1971, sections 3, 7, 8 and 17(3)—See supra, passim.

Words and Phrases—"Private schools" and "pupils from private schools" in section 17(3) of the Private Schools Law, 1971 (Law No. 5 of 1971).

Dismissing this recourse, the learned President of the Supreme Court held that the applicant pupil was validly refused enrolment in the second form of a public elementary school on the ground that the private school in which he was previously enrolled was not a duly registered private school under sections 3, 7 and 8 of the Private Schools Law, 1971.

The facts are fully set out in the judgment of the learned President of the Supreme Court dismissing this recourse.

Cases referred to:

Republic v. *Georghiades* (1972) 3 C.L.R. 594, at pp. 688 - 689.

Recourse.

Recourse against the refusal of the respondents to allow the enrolment of the applicant in the second form, instead of in the first form, of a public elementary school.

E. Vrahimi (Mrs.), for the applicant.

G. Tornaritis with *A. Angelides,* for the respondents.

Cur. adv. vult.

The following judgment was delivered by:-

TRIANTAFYLLIDES, P.: By this recourse which the applicant, being a minor, has filed through his father and natural guardian—there is being attacked a decision, contained in a letter dated the 21st September, 1972 (*exhibit* 1), by means of which the respondent Minister of Education refused to allow the enrolment of the applicant in the second form, instead of in the first form, of a public elementary school.

From the material before me it appears that the applicant was enrolled, on the 9th September, 1971, when he was just five years old—having been born on the 2nd September, 1966—as a pupil in the first form of a private elementary school, the Private English Junior School, and he completed the course of such form during the school-year 1971/1972.

Then he sought to be enrolled, in respect of the school-year 1972/1973, in the second form of a public elementary school and because, as stated, this was not allowed the present recourse was filed.

The respondent Minister, by his letter of the 21st September, 1972, gave two, separate, main reasons for his *sub judice* decision: First, that in view of the age of the applicant his enrolment in the second form would be contrary to the relevant legislation and practice, and, secondly, that, in any case, the Private English Junior School had not yet been registered as a private school.

Under the Private Schools Law, 1971 (Law 5/71), and particularly, sections 3, 7 and 8 thereof, a private school has to be duly registered both as regards its founding and its functioning.

Section 17(3) of Law 5/71 provides, in effect, that pupils from private schools may be enrolled in public schools of the same or similar type.

While giving evidence in this case, on the 23rd April, 1973, the Head of the Department of Elementary Education, Andreas Christodoulides, stated that "nobody can be enrolled in a higher form—from the second upwards —unless he is a pupil who comes from another public elementary school or a recognized private elementary school and has completed the immediately previous form".

I am of the view that the above practice is a correct application of section 17(3), because I am of the opinion that "private schools" in section 17(3) can only mean private schools which are "recognized", that is, registered regarding their founding and functioning under the provisions of Law 5/71. Also, I am of the opinion that "pupils from private schools" in section 17(3) means pupils who have been *lawfully* studying at such schools, that is to say, in accordance with the terms on the basis of which they have been registered under Law 5/71.

From the relevant file of the Ministry of Education (*exhibit* 22), as well as from other evidence adduced, it is abundantly clear that the *functioning* of the Private English Junior School had not yet been finally approved under Law 5/71 until even the time when the hearing of this case was concluded; and, thus, till then the said school was not duly registered.

It is correct that *conditional* approval for the *founding* of the said school was given on the 4th September, 1971 (see document No. 7 in *exhibit* 22), just before the

applicant was enrolled as a pupil in the first form of such school—(on the 9th September, 1971)—but the matter of the fulfilment of one of the conditions, namely that relating to the nature of the curriculum, was still under examination well after the applicant had completed his studies in the first form during the school-year 1971/1972; the other condition was that in the school there would be enrolled only children of aliens residing in Cyprus temporarily or permanently (that condition was modified later in a manner not relevant to the outcome of this recourse and at a time after the recourse had been filed).

In any case, in relation to the applicant the latter of the above conditions was not complied with, because he is not the child of aliens residing in Cyprus, but he is the child of a Cypriot citizen residing in Cyprus:

He was born, as already stated, on the 2nd September, 1966, in Cyprus, and his father, Ioannis Vrahimis, was born—according to his own evidence—also in Cyprus, on the 20th May, 1930.

Both the parents of the father of the applicant were born in Cyprus, too.

The mother of the applicant, Eleni Vrahimi—who appeared in this case as counsel for the applicant—was born, according to her passport (*exhibi* 9), in Greece, on the 5th August, 1939. That passport is a British passport which expired on the 17th September, 1971.

According to his own evidence, the father of the applicant was abroad for medical studies until August 1959, when he returned to Cyprus, where he has since been residing, and practising the profession of a doctor.

At the time when the applicant was born his father was the holder of a British passport, because when he left Cyprus, in 1948, he had a British passport issued by the Government of the then British Colony of Cyprus; and he was later given a British passport in Athens in 1955, which was renewed in 1964.

As the father of the applicant was born in Cyprus after the 5th November, 1914, and as he was ordinarily resident in Cyprus for some time during the period of

five years immediately before the 16th August, 1960, when the Treaty Concerning the Establishment of the Republic of Cyprus was signed — (he was, as aforementioned, ordinarily resident in Cyprus as from 1959 onwards) — it follows, by virtue of section 2 of Annex 'D' to the said Treaty, that he became, on the 16th August, 1960, a citizen of the Republic of Cyprus; and for the purposes of this case it is not necessary to examine whether he also retained his British nationality.

In the light of the above, and in view of the provisions of the Republic of Cyprus Citizenship Law, 1967, (Law 43/67) (see in this respect, in particular, sections 3 and 4(1)(a) of such Law), the inevitable conclusion is that the applicant is a citizen of Cyprus, having been born here as the son of a citizen of Cyprus; so, the applicant could not be treated, at the time when he was a pupil of the first form of the Private English Junior School, as being the child of aliens residing in Cyprus.

Consequently, inasmuch as, when it was sought to enrol the applicant in the second form of a public elementary school in respect of the school-year 1972/1973, he was not a pupil coming from a registered private elementary school and, moreover, he had attended such school in the school-year 1971/1972 contrary to the conditions laid down, as aforesaid, by the respondent Ministry of Education in relation to the founding of such school, he did not come within the ambit of section 17(3) of Law 5/71.

In the light of the foregoing I have to hold that the respondent Minister of Education rightly refused, on the ground that the private school concerned was not registered at the material time, to allow the applicant to be enrolled in the second form of a public elementary school.

Having found that, on the aforementioned ground alone the *sub judice* decision has to be regarded as validly taken, I need not examine the validity of any other, separate and additional, ground on which such decision was based, such as the matter relating to the age of the applicant (see in this respect, *inter alia*, *Republic* v. *Georghiades* (1972) 3 C.L.R. 594 at pp. 688 - 689).

Lastly, as regards the matter of the alleged unequal treatment of the applicant, in comparison with cases of enrolment of other pupils, in relation to whom evidence has been adduced, all that I need say in order to dispose of this point is that whatever may have been done in connection with these other pupils cannot entitle the applicant to claim that he should, in the name of equality of treatment by the administration, be allowed to be enrolled—as sought by him—contrary to law, that is to say, contrary to section 17(3) of Law 5/71.

For all the foregoing reasons the applicant has failed in this recourse, which is dismissed, but, in the circumstances of the case, I shall not make any order as to costs.

Application dismissed; no order as to costs.