

1976  
July 3

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PROCOPIOS  
VANEZIS

PROCOPIOS VANEZIS,

*Applicant,*

v.  
REPUBLIC  
(MINISTRY  
OF FOREIGN  
AFFAIRS  
AND ANOTHER)

*and*

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTRY OF FOREIGN AFFAIRS,
2. THE MINISTRY OF FINANCE,

*Respondents.*

( Case No. 113/75).

*Minister—He is the Head of his Ministry—Executive power exercised by him includes execution of laws relating to his Ministry—And the administration of all matters and affairs usually falling within the domain of his Ministry—Article 58 of the Constitution—Minister of Foreign Affairs—Approval for the payment of education allowance out of public funds a matter falling within his domain—Fact that Director-General is indicated by the budget as the Controlling Officer does not give him competence in the matter to the exclusion of the Minister.*

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*Budget—Controlling Officer—Designation of an officer as a controlling officer—Meaning and effect.*

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*Administrative Law—Administrative decision—Substance of, to be looked as a whole and not particular words used.*

*Administrative Law—Administrative decision—Due reasoning—Sub judice decision adopting memorandum of subordinate officer—Memorandum a thorough and elaborately reasoned document containing all necessary particulars—Said decision reached after a proper inquiry and it is a duly reasoned one—Its reasoning is supplemented from material in the file.*

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*Equality—Discrimination—Principle of equality—It is based on equality among those in equal positions—And allows reasonable distinctions—Rejection of applicant's claim for education allowance—Instances invoked by him have features that reasonably*

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*distinguish them from his own instance—Principle of equality not contravened—Article 28 of the Constitution.*

*Foreign Service of the Republic—Members of—Education allowance for their children.*

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5       The applicant, a member of the Diplomatic Service posted  
at the Cyprus High Commission in London, as Counsellor on  
educational matters applied for the payment to him of educational  
allowance in respect of the expenses of his three children for  
their studies in Private Schools in the United Kingdom on the  
10       ground, mainly, that the standard of education in private schools  
was higher than that of State Schools.

15       His application was considered by Mr. Zapitis, an officer in the  
Ministry of Foreign Affairs, who prepared an extensive memorandum  
for the Acting Director-General of the Ministry wherein he stated,  
*inter alia*, (see pp. 204–205 *post*) that though it was recognized  
that in England the standard of education of Private Schools was  
higher than that of State Schools, yet, this alone, did not constitute  
a strong and substantive criterion to permit the attendance of the  
20       children of Officers of the Ministry at Private Schools, with the  
state bearing this financial burden in educational allowance.

25       The matter was then referred to the Acting Director-General  
for his decision but it was considered by the Minister of Foreign  
Affairs himself who, in a minute addressed to the Acting Director-  
General, wrote the following:— “.....  
..... I agree with the relevant note of Mr. Zapitis  
and consequently I cannot support the payment out of public funds  
of any educational allowance for the attendance of the children of  
the Diplomatic Officers serving in London in Private Schools .....

30       “.....”

Applicant was thereupon informed that his application could not be approved and hence the present recourse.

Counsel for the applicant contended:

- 35       (a) That the *sub judice* decision was taken by a person having  
no competence in the matter inasmuch as the application had to be  
referred to the Ministry of Finance as it related to a financial matter.
- (b) That the Minister of Foreign Affairs had no competence in the  
matter in view of the fact that the control-

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ling officer of the vote for educational allowance was the Director-General.

- (c) That there was no final decision refusing the application for educational allowance because the Minister merely said that he could not support the payment out of public funds of any educational allowance. 5
- (d) That the *sub judice* decision was not duly reasoned.
- (e) That there was unequal treatment and discrimination, contrary to Article 28 of the Constitution, and also a wrong exercise of discretion as in the same and similar situations, they decided in a different way. 10

*Held*, (1) that as the vote for education allowances is controlled by the Director-General, Ministry of Foreign Affairs matters relating to such expenditure need not be referred to for approval to the Ministry of Finance. 15

(2) That under Article 58 of the Constitution a Minister is the Head of his Ministry and subject to the executive power expressly reserved, under the Constitution, to the President and Vice-President of the Republic acting either separately or conjointly, and to the Council of Ministers, the executive power exercised by each Minister includes the execution of Laws relating to and the administration of all matters and affairs usually falling within the domain of the Minister; and that the approval for the payment of education allowance out of public funds is a matter falling within the domain of the Minister of Foreign Affairs as being in execution of the Laws relating to his Ministry and the administration of matters and affairs which usually fall within its domain. 20  
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(3) That the fact that the Director-General is indicated by the Budget as the Controlling Officer does not give him competence in the matter to the exclusion of his Minister. 30

(4) That one has to look at the substance of a decision as a whole and not to particular words used, which in the present instance are nothing more but a mode of expressing the refusal of the applicant's application, hence the communication to that effect of the *sub judice* decision to the applicant; and that, accordingly, this Court cannot agree with the proposition that there was no final decision refusing the application. 35

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5 (5) That if one looks at the decision itself and the fact that it adopts the memorandum of Mr. Zapitis, a thorough and elaborately reasoned document containing all necessary particulars, will only come to the conclusion that the *sub judice* decision was reached after a proper inquiry and is duly reasoned, its reasoning supplemented from the material in the file.

10 (6) That the instances invoked by the applicant, regarding his complaint for unequal treatment and discrimination have features that reasonably distinguish them from his own and the principle of equality based on the equality among those in equal positions allows reasonable distinctions (*see Meletiou and Another v. The District Labour Officer* (1975) 2 C.L.R. 21, and the authorities therein cited); and that there has been no discrimination or unequal treatment in the present case as the grounds upon which the applicant asked for education allowance were entirely different than the grounds upon which education allowance was given in those cases.

*Application dismissed.*

Cases referred to:

20 *Meletiou and Another v. The District Labour Officer* (1975) 2 C.L.R. 21.

### Recourse.

25 Recourse against the refusal of the Respondents to pay to applicant educational allowance for the attendance of his children in Private Schools in the United Kingdom.

*M. Christophides*, for the applicant.

*G. Constantinou (Miss)*, for the respondents.

*Cur. adv. vult.*

The following judgment was delivered by:—

30 A. LOIZOU, J.: The applicant is a member of the Diplomatic Service posted at the Cyprus High Commission in London, as Counsellor on educational matters. On the 11th October, 1974, he applied for the payment to him of educational allowance in respect of the expenses of his three children, Nicolaos, Andreas and Maroulla, for their studies in Private Schools in the United Kingdom (*exhibits 2 'A', 2 'B' & 2 'C'*). Also, in a long memorandum dated the 18th March, 1974, addressed to the Director-General of the Ministry of Foreign Affairs, he set out the

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material points which, according to him, would illustrate and prove the advantages that his children could derive from "Private Education rather than "from State Education as at present practised in Great Britain". In effect, they are briefly the following:—

- 5
- (a) The size of classes in Private Schools being only 50 per cent of those in the State sector, namely, 15–20 pupils per class as against 40–45 per class at State Schools, the educational advantage derived from smaller classes being evident. 10
- (b) The teachers in charge of the smaller and more efficient classes in the Private Schools are, on the whole, better qualified and experienced than the teachers in most State Schools.
- (c) Great Britain is passing through a period of experimentation in education in connection with attempts to establish comprehensive system of education and the novelty of the comprehensive system combined with the lack of experience in such matters would, most likely, produce a period of confusion rather than educational improvement and only the most advanced and brilliant pupils will benefit therefrom. 15  
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- (d) In recent years, as a result of various considerations, there is a trend leading to the decline of discipline and the lowering of standards over the entire State sector. 25
- (e) Of those admitted to Universities, 80 per cent come from Private Schools, and
- (f) although Private Schools charge fees and some very high at that, yet, the entry applications are so numerous that only about 1/50th of the applicants can be accepted. 30

Mr. Zapitis, an officer in the Ministry of Foreign Affairs, prepared an extensive memorandum for the Acting Director-General (blues 19–21 attached to *exhibit 7*). As stated therein, *inter alia*, the prevailing view was that although recognised that in England, as well as in Greece the standard of education of Private Schools is higher than that of State Schools, yet, this alone, did not constitute a strong and substantive criterion to permit the attendance of the children of officers of the Ministry 35

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of Foreign Affairs at Private Schools, with the State, as a consequence, bearing this financial burden in educational allowance. Reference was made therein to the expenses of the daughter of Mr. L. Georghiades for the years 1973–1974 who attended the American School of London and for the years 1974–1975 who attended the Lycee Francais De Londres because, as mentioned, she spoke French from her French-speaking mother and she was intending to continue her studies either in France or Belgium where she was born and, furthermore, as stated by Mr. Georghiades himself in his application, she should be educated in French, as the experiment to be educated in English—probably referring to the American School in London—failed.

It was also mentioned that by virtue of the Regulations in force at the time, educational allowance was only paid for studies in Private Schools if a child could not attend a State School on account of the language (for instance, Moscow, Bonn or Cairo) or other special reason (the case of Mr. A. Angelides in Washington whose children attended Private School because of insecurity, etc. in Public Schools). The matter was referred to the Director-General for decision in respect of the application of Mr. Vanezis as well as that of Mr. Georghiades, which rather did not fall within the same category as that of Mr. Vanezis. It was further pointed out that when the said officers will be transferred to Cyprus by virtue of the new scheme, they will be entitled to an allowance for the attendance of their children in Private Schools, such as the Junior School, English School, etc., provided the Ministry was satisfied that their children could not attend State Schools in Cyprus on account of the fact that they were previously attending foreign-language schools abroad.

The matter was considered by the Minister of Foreign Affairs himself, whose minute addressed to the Acting Director-General (*exhibit 3*), reads as follows:

“ I refer to the memorandum of Mr. Zapitis (K 21–19) as well as the exchange of views with you and Mr. Zapitis, on the 16th instant. I agree with the relevant note of Mr. Zapitis and consequently I cannot support the payment out of public funds of any educational allowance for the attendance of the children of the Diplomatic Officers serving in London in Private Schools.

For the question of the daughter of Mr. L. Georghiades, I express my views in a separate memorandum”.

Then follows a minute (No. 28) from the Director-General to Mr. Zapitis, "to act accordingly", as a result of which the letter of the 24th May, 1975 (*exh. 1*) was addressed to the applicant, informing him that his application for the payment to him of educational allowance for the attendance of his children in Private Schools in the United Kingdom, after careful examination, could not be approved. Upon receipt of this communication the applicant within the 75 days' limit prescribed by the Constitution, filed the present recourse. 5

The payment of educational allowance for the children of members of the Foreign Service serving abroad was, at the time, governed by Regulation 15 of the Foreign Service of the Republic (Special Provisions) Regulations of 1968. Under the said Regulation, an officer serving abroad was entitled to educational allowance for the education of his children in State Schools of Elementary and Secondary Education, if and so long as the fees for the education of his children were higher than in Cyprus and it was equal to the difference of the education fees of his children in Cyprus and the fees for his education in the country where he was serving, depending on the circumstances. 10 15 20

It was conceded by counsel for the applicant, and rightly so, in my view, that the aforesaid Regulation left no room for the payment of educational allowance for the attendance of the children of officers serving abroad in Private Schools.

The validity of the *sub judice* decision has been challenged on a number of grounds. The first one is that it was taken by a person having no competence in the matter, inasmuch as the application of the applicant had to be referred to the Ministry of Finance as it related to a financial matter. 25

As pointed out by the Accounting Officer of the Ministry of Foreign Affairs who gave evidence before me, the vote for education allowances under Head 43 sub-head A 1. (9)—expenditure in respect of Foreign Services—is controlled by the Director-General, Ministry of Foreign Affairs which means that the matters relating to such expenditure need not be referred to for approval to the Ministry of Finance. Furthermore, he stated that under the procedure relating to an officer receiving education allowance it is for him to secure the approval of the Ministry and then present such approval to the cashier of the Embassy together with the receipts for the school fees paid by 30 35 40

him and be paid for the amount for which the approval was secured.

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5 It was, however, alternatively or in substitution of the afore-  
said argument, argued that in view of the fact that the control-  
ling officer of this vote, as shown in the Supplement to the Bud-  
get both for the year 1974 and 1975, is the Director-General,  
the Minister had no competence to take the *sub judice* decision.

10 Under Article 58 of the Constitution, a Minister is the Head of  
his Ministry and subject to the executive power expressly re-  
served, under the Constitution, to the President and Vice-Pre-  
sident of the Republic acting either separately or conjointly, and  
to the Council of Ministers, the executive power exercised by  
each Minister includes the execution of laws relating to and the  
15 administration of all matters and affairs usually falling within  
the domain of his Ministry.

20 It is obvious that the approval for the payment of education  
allowance out of public funds is a matter falling within the do-  
main of the Minister of Foreign Affairs as being in execution of  
the laws relating to his Ministry and the administration of mat-  
ters and affairs which usually fall within its domain. Further-  
more, the fact that the Director-General is indicated by the  
Budget as the Controlling Officer, does not give him competence  
in the matter to the exclusion of his Minister.

25 If it was to be taken that the Controlling Officer for every  
vote in the Budget is also exclusively entrusted with competence  
in the matter, then neither the Council of Ministers, nor any  
Minister has any competence to take any decision involving any  
expenditure under the Budget since neither of them is considered  
as a Controlling Officer on expenditure under the Budget.  
30 This point is made clearer if one looks at the expenditure allo-  
cated to the Judicial Department. Under Head 6, sub-head  
A. 3, the vote for transfer of judicial officers is controlled by the  
Chief Registrar and yet, no one can suggest that by virtue of  
this authorization by the Budget the exclusive competence of the  
35 Supreme Council of Judicature to decide on the transfers of  
judicial officers is taken from it and given to the Chief Registrar.  
The designation, as such, by the Budget, of an officer as a Con-  
trolling Officer, means nothing more than that the power to  
authorize the payment out of a particular vote, cannot be law-  
40 fully made, unless such authority bears his signature.



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The second ground of law relied upon by the applicant, is that there was no final decision refusing his application, because, in the said decision, the Minister merely says that he could not support the payment out of public funds of any education allowance, etc.

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I do not agree with this proposition, as one has to look to the substance of a decision as a whole and not to particular words used, which, in my opinion, in the particular instance, are nothing more but a mode of expressing the refusal of the applicant's application, hence the communication to that effect of the *sub judice* decision to the applicant as per *exhibit 1*.

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The third ground is that the decision is not duly reasoned. If one looks at the decision itself and the fact that it adopts the memorandum of Mr. Zapitis, a thorough and elaborately reasoned document containing all necessary particulars, will only come to the conclusion that the decision was reached after a proper inquiry and is duly reasoned, its reasoning supplemented from the material in the file. (See *Porismata Nomologhias* (1929–1959) p. 183).

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Finally, the question of unequal treatment and discrimination, contrary to Article 28 of the Constitution and also a wrong exercise of discretion as in the same and similar situations, they decided in a different way. The similar instances relied upon by the applicant, are those of Angelos Angelides, Counsellor in Washington for his sons Michael and Iacovos, Lefcos Georghiadis, Counsellor Grade A in London for his daughter Monik, Constantinos Loizou, Counsellor in Athens for the year 1974–1975 for his son who attended the private school Moraiti and for the group of officers serving in Bonn, Moscow and Cairo.

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I have already referred in this judgment to the instances of Angelides and Georghiadis. With regard to Constantinos Loizou, the reason given for giving him education allowance was because he was transferred from Cyprus to Athens in the middle of the academic year of 1969–1970 and his son, who was at the time attending the Junior School in Nicosia, could not attend a Greek State School. The other instances are those of the officers serving in Bonn, Moscow and Cairo and education allowance was given to them on account of the fact that the language at the respective State Schools is unrelated to the prospects of their subsequent education. It is obvious that the

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instances invoked by the applicant have features that reasonably distinguish them from his own and the principle of equality based on the equality among those in equal positions, allows reasonable distinctions. (*Meletiou and Another v. The District Labour Officer* (1975) 2 C.L.R. 21, and the authorities therein stated).

10 There has been no discrimination or unequal treatment in the present case, as the grounds upon which the applicant asked for education allowance were entirely different than the grounds upon which education allowance was given in those cases.

For all the above reasons the present recourse is dismissed, but in the circumstances I make no order as to costs.

*Application dismissed. No order as to costs.*

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