

1984 December 21

[PICKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHARALAMBOS PHILIPPIDES AND SON LTD.,

Applicants,

v.

THE REPUBLIC OF CYPRUS AND/OR

1. THE MINISTRY OF EDUCATION,
2. THE DIRECTOR OF SECONDARY EDUCATION, AND
3. THE DIRECTOR OF TECHNICAL EDUCATION,

Respondents.

(Case No. 578/84).

*Act or decision in the sense of Article 146.1 of the Constitution—
Which can be made the subject of a recourse thereunder—
Decision of educational Authorities specifying the books approved
for use at secondary schools for instruction in the French language
5 —Is within the domain of public law and is reviewable at the
instance of persons upon whose rights it has repercussions.*

*Administrative Law—Administrative acts or decisions—Executory
act—Form used to communicate a decision, a circular, cannot
disguise its character and detract from its executory character—
10 Even if sub judice decision related to a matter within exclusive
discretion of the Administration it is again subject to review.*

On the 12.9.1984 a high level Committee of the Ministry of
Education, chaired by the Minister, took a decision specifying
the books approved for use at Secondary Schools for instruction
15 in the French language; and circularised it the following day
to school authorities for due implementation. Before the
sub judice decision was taken, publishers and their agents were
invited to submit books suitable for the teaching of the language
to enable the educational authorities to make an informed
20 choice. The applicants tendered for consideration on behalf

of the publishers, whom they represent in Cyprus, the book "Je Parle Francais", until then in use at schools for instruction in the French language at a certain level. By the decision taken, the use of the book at schools would be limited as from the current academic year and further curtailed in years to come. 5

Upon a recourse by the applicants against the validity of the above decision the respondents contended that it could not be made the subject of review because it lacked executory character and because it concerned a matter exclusively within the discretion of educational authorities. 10

Held, that since the educational authorities were under a duty to observe the decision and allow only the use of books indicated therein for the instruction of students in French; and that since implementation of the decision would have direct repercussions upon the rights of the applicants, their interest in the review of the decision is perfectly legitimate; that the choice of teaching material at schools is of vast interest to the public; and that, therefore, the decision sounds in the domain of public law and it is reviewable at the instance of the applicants. 15 20

Held, further, (1) that the form used to communicate the decision, by a circular, could not be allowed to disguise its character or detract from its executory character; that in so far as the circular contained a directive to subordinate authorities, it was no doubt an internal matter, but to the extent it affected outside parties, it could be the subject of review if otherwise executory. 25

(2) That even if the sub judice decision relates to a matter within the exclusive discretion of the Administration this could not take it outside the realm of review. The magnitude of discretionary powers has to do with the freedom of action of the Administration, not the justiciability of the decision. The object of review of administrative action is to test its legality and ensure that the Administration, wide as its discretionary powers may be, operates within the confine of the law. 30 35

Cases referred to:

Frangos v. Medical Disciplinary Board (1983) 1 C.L.R. 256;

Sofoclis Demetriades & Sons and Another v. Republic (1969)
3 C.L.R. 557;

Vorkas and Others v. Republic (1984) 3 C.L.R. 757;

Decisions of the Greek Council of State Nos. 59/58 and 2233/79.

5 Recourse.

Recourse against the decision of the respondents specifying the books approved for use at the secondary schools for instruction in the French language.

A. S. Angelides, for the applicants.

10 R. Vrahimi (Mrs.), for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. The subject of review in these proceedings is a decision of a high level committee of the Ministry of Education, chaired by the Minister, of 12.9. 15 1984, specifying the books approved for use at secondary schools for instruction in the French language. The decision was circularised the following day to school authorities for due implementation. Before the decision was taken, publishers and their agents were invited to submit books suitable for the 20 teaching of the language to enable the educational authorities to make an informed choice. The applicants tendered for consideration on behalf of the publishers, whom they represent in Cyprus, the book "Je Parle Francais", until then in use at 25 schools for instruction in the French language at a certain level. By the decision taken, the use of the book at schools would be limited as from the current academic year and further curtailed in years to come.

In the contention of respondents the above decision cannot be made the subject of review because it lacks executory character 30 and, moreover, concerns a matter exclusively within the discretion of educational authorities. These were the principal grounds, stated in the opposition, allegedly making the decision non justiciable. Further submissions were raised in argument, supporting their case for inamenity to review. Counsel argued 35 the decision fell outside the domain of public law and drew attention to features distinguishing the process of selection of books from the decisions of the Government Tender Board. More emphatically still, she contended the decision had to do

with an internal matter of the Administration, not a proper subject for review. The fact, she argued, that the decision was embodied in a circular was, of itself, indicative of its internal character and absence of jurisdiction to review.

Counsel for the respondents disputed the validity of the above submissions and invited the Court to take cognizance of the recourse because of the interest of the public in educational matters and the direct financial consequences of the decision on the applicants, paling every suggestion that they lacked legitimate interest to seek its review. Moreover, circularisation of the decision left its character and effect unchanged. 5 10

A substantive, as opposed to a formal appraisal of the decision is, under Cyprus law, the test for its justiciability¹. A similar test has been consistently adopted by Greek courts as well². The decision of the Greek Council of State in case 59/58 reflects the approach of Greek Courts to the matter. In the above case it was decided that notwithstanding embodiment of the decision in a circular, and the fact that circulars are not ordinarily justiciable³, the recourse could be entertained because of its implications and effects on the rights of third parties. The form used to communicate the decision, by a circular, could not be allowed to disguise its character or detract from its executory character. 15 20

The circular of 13.9.1984, in this case, aimed to bring to the notice of educationalists the decision of higher educational authorities binding them to follow it. In so far as the circular contained a directive to subordinate authorities, it was no doubt an internal matter. But to the extent it affected outside parties, it could be the subject of review if otherwise executory. What was, then, the effect of this decision on the rights of the applicants? It is clear the educational authorities were under a duty to observe the decision and allow only the use of books indicated therein for the instruction of students in French. Implementation of the decision would have direct repercussions upon the rights of the applicants and, for that matter, those of 25 30 35

1 See, *Frangos v. Medical Disciplinary Board* (1983) 1 C.L.R. 256; *Sofoclis Demetriades and Son and Another v. The Republic* (1969) 3 C.L.R. 557.

2 See, *Analysis of Greek Caselaw by Prof. Demetrios Papanicolaides in the Hon. Tome of the Greek Council of State 1929-59*, p. 164.

3 See, *Vorkas and Others v. The Republic* (1984) 3 C.L.R. 757.

other publishers and their agents competing for selection of their books as aids for instruction. By the limitation or exclusion of use of the book "Je Parle Francais", sales of the book to students, thousands of them we were told, would drop in
5 direct proportion thereto. Their interest in the review of the decision is, in my judgment, perfectly legitimate.

Notwithstanding the submission to the contrary, it is difficult to argue that the decision is not noticeable in the domain of public law. The choice of teaching material at schools is of
10 vast interest to the public; it has to do with the impartation of knowledge to students and the building of their outlook through the acquisition of knowledge. The decision of the Greek Council of State in case 2233/79 suggests that even matters peripherally connected with education, the choice of the location
15 of a school, in that case, are of concern to the public, making review of the decision justified at the instance of a party prejudiced thereby¹. It is with no hesitation I rule the decision sounds in the domain of public law and that it is reviewable at the instance of the applicants.

20 More difficult I found to follow the submission of respondents that the decision presently under consideration is non reviewable because it relates to a matter within the exclusive discretion of the Administration. Even if that is the case—and at this stage I express no opinion—it would not take the decision outside
25 the realm of review. The magnitude of discretionary powers has to do with the freedom of action of the Administration, not the justiciability of the decision. The object of review of administrative action is to test its legality and ensure that the Administration, wide as its discretionary powers may be, operates within the confine of the law.
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For the reasons hereinabove indicated, I hold the decision complained of is a proper subject for judicial review. A date will be given for the hearing of the merits of the case.

Order accordingly.

¹ See, *Greek Constitution 1975—Corpus I 1982, P. Paravas.*