

1985 August 28

[TRIANAFYLIDIS, P., A. LOIZOU, DEMETRIADES,
LORIS. KOURRIS, JJ.]

- THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTRY OF EDUCATION,
 2. THE DIRECTOR OF HIGHER AND HIGHEST EDUCATION,
 3. THE COUNCIL OF MINISTERS.

Appellants.

v.

ALEXIA CHRISTOFÓROU AND OTHERS,

Respondents.

(Revisional Jurisdiction Appeal No. 433).

5 *Constitutional law—Equality—Constitution, Article 28—Sex discrimination—Decision to admit 25 male and 25 female students to the Paedagogical Academy of Cyprus resulting to admission of male students, who had not done as well as the respondents (all female) at the entrance examination—Said decision violated both paragraphs 1 and 2 of said Article.*

10 *Legitimate interest—Constitution, Article 146.2—Decision to admit 25 male and 25 female students to the Paedagogical Academy of Cyprus—Some of the respondents (all female) not among the first fifty in order of success at the entrance examination—Some of the said fifty did not accept admission and as a result there were admitted male students, who had been less successful from anyone*

15 *of the said respondents—Latter's legitimate interest directly and adversely affected.*

20 The respondents, who are all young women, challenged the validity of the decision of the Council of Ministers to admit to the course of school-teachers at the Paedagogical Academy of Cyprus for the academic year 1984/1985

fifty new students, of whom twenty five would be male and twenty five female students, contending that as a result they had been denied admission to the Academy on the ground of sex, inasmuch as there had been admitted male candidates who had not done as well as the respondents at the entrance examinations

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The trial Judge annulled the said decision on the ground that it violated the right to education under Article 201 of the Constitution but left open the question of discrimination

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Counsel for the appellants argued, inter alia, that except the respondents who were applicants in cases 440/84 and 441/84 the remaining respondents do not possess a legitimate interest as in any event they were not among the first fifty candidates in order of success at the said entrance examinations. The material before the Court showed that some of the said fifty candidates did not accept admission with the result that at the end and in order to complete the number of 25 male students there were admitted to the academy some male candidates, who had been less successful at the examination from anyone of the respondents

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Held, dismissing the appeal (1) In the light of the material before the Court the conclusion is that each one of the respondents had been excluded from the academy by reason of the sub judice decision. It follows that an existing legitimate interest of each one of them has been directly and adversely affected

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(2) As in the present instance there was no justification rendering reasonable the distinction on the ground of sex the sub judice decision should be annulled as being in violation of both paragraphs 1 and 2 of Article 28 of the Constitution

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(3) The question of violation of Article 201 of the Constitution would be left open.

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Appeal dismissed
No order as to costs

Cases referred to:

The Republic v. Arakian (1972) 3 C.L.R. 294;

Anastassiou v. The Republic (1977) 3 C.L.R. 91;

Angelides v. The Republic (1982) 3 C.L.R. 774;

5 *Hjiloannou v. The Republic* (1983) 3 C.L.R. 1041;

Personnel Administrator of Massachusetts v. Feeney, 60
L. Ed. 2d 870.

Appeal.

10 Appeal against the judgment of a Judge of the Supreme
Court of Cyprus (Savvides, J.) given on the 22nd January,
1985 (Revisional Jurisdiction Cases No. 440/84, 441/84,
15 448/84, 449/84, 450/84, 452/84, 462/84 and 465/84)*
whereby the decision of the appellants fixing the number
of new students admitted at the Paedagogical Academy
of Cyprus for the academic year 1984-1985 at fifty of
whom 25 would be male and 25 female was annulled.

A. Evangelou, Senior Counsel of the Republic, for
the appellant.

A. S. Angelides, for the respondents.

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Cur. adv. vult.

25 TRIANTAFYLLIDES P., read the following judgment of
the Court. This is an appeal by the Republic against the
first instance judgment of a Judge of this Court by means
of which there were determined recourses of the respondents
under Article 146 of the Constitution (Nos. 440/84,
441/84, 448/84, 449/84, 450/84, 452/84, 462/84
and 465/84).

30 By the said judgment there was annulled the decision
of the appellant Council of Ministers (No. 24.659 of the
14th June 1984) that for the academic year 1984/1985
there would be admitted to the course for school-teachers at
the Paedagogical Academy of Cyprus fifty new students.

* Reported in (1985) 3 C.L.R. 272

of whom twenty-five would be male students and twenty-five female students.

By their aforementioned recourses the respondents, being all of them young women, challenged the validity of the said decision of the Council of Ministers contending that as a result of it they had been denied admission to the Academy on the ground of sex, inasmuch as there had been admitted male candidates who had not done as well as the respondents at the entrance examinations.

The learned trial Judge held that the sub judice decision of the Council of Ministers violated the right to education of the respondents, under Article 20.1 of the Constitution, and left open the question whether such decision had discriminated against the respondents on the ground of sex, contrary to Article 28.2 of the Constitution.

It has been submitted by counsel for the appellants, during the hearing of this appeal, that if there had been admitted to the Academy in order of success at the entrance examinations the first fifty candidates irrespective of their sex there would have been admitted only the respondents who were the applicants in recourses Nos. 440/84 and 441/84 and that, therefore, the remaining respondents did not possess a legitimate interest, in the sense of Article 146.2 of the Constitution, entitling them to challenge the decision in question of the Council of Ministers.

Paragraph 2 of Article 146 of the Constitution reads as follows:-

“Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a Community, is adversely and directly affected by such decision or act or omission.”

In our view those of the respondents who were not among the fifty best candidates on the basis of the entrance examinations possessed, nevertheless, a legitimate interest, in the sense of Article 146.2 of the Constitution, entitling them to file their recourses, because among the

twenty-five male candidates who were eventually admitted to the Academy for the particular academic year there were candidates who had not succeeded as well as any one of the respondents at the entrance examinations.

- 5 It seems that not all the fifty candidates who were the best at the entrance examinations accepted admission to the Academy and, as there had to be admitted, in any event, in accordance with the sub judge decision of the Council of Ministers, twenty-five male candidates, there were in
10 the end admitted male candidates who at the entrance examinations had been less successful than any one of the respondents; and, thus, each one of the respondents was excluded from admission to the Academy merely because of the said decision of the Council of Ministers and, consequently, an existing legitimate interest of theirs was
15 adversely and directly affected, in the sense of Article 146.2 of the Constitution, by such decision. They were, therefore, entitled to file their present recourses.

- Under Article 28.1 of the Constitution the respondents
20 were entitled to equality of treatment by the administration as candidates for admission to the Academy; and under Article 28.2 of the Constitution such treatment could not have been affected by direct or indirect discrimination against the respondents on the ground of their sex, unless
25 there existed provision to the contrary in the Constitution; and no such provision exists which could be found to render valid sex discrimination in the present instance.

- Of course, the right of the respondents to equality of treatment did not exclude the making of reasonable distinctions (see, in this respect, inter alia. *The Republic v Arakian*, (1972) 3 C.L.R. 294, *Anastassiou v. The Republic*, (1977) 3 C.L.R. 91, *Angelides v. The Republic*, (1982) 3 C.L.R. 774 and *Hjiloannou v. The Republic*, (1983) 3 C.L.R. 1041).

- 35 In the present instance, however, we are satisfied that there did not exist any justification which would render reasonable the distinction on the ground of sex between male and female candidates regarding admission to the Paedagogical Academy which was made by the sub judge
40 decision of the Council of Ministers, and, consequently,

we have to hold that such decision should be annulled as being in violation of both paragraphs 1 and 2 of Article 28 of the Constitution; and we might add that we find that the case of *Personnel Administrator of Massachusetts v. Feeney*, 60 L. Ed. 2d 870, which has been relied on by counsel for the appellants as supporting the sex discrimination entailed by the sub judice decision of the Council of Ministers is clearly distinguishable from the present case. 5

Since we have annulled the said decision of the Council of Ministers for the above reasons, we have decided that it is not necessary for us to pronounce on the issue of whether or not it violated the right to education of the respondents under Article 20.1 of the Constitution. 10

In the light of the foregoing this appeal fails and is dismissed; but in view of the novelty of the issues raised we have decided not to make any order as to its costs. 15

Appeal dismissed with no order as to costs.