

1986 January 11

[TRIANTAFYLIDIS. P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNIS SIEKKERIS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
1. THE MINISTER OF FOREIGN AFFAIRS,  
2. THE MINISTER OF FINANCE,

*Respondents.*

*(Case No. 52/83).*

*Executory act — Confirmatory act — The Scheme made pursuant to Reg. 15 of the Foreign Service of the Republic (Special Provisions) Regulations 1968-1975 — Rejection of application for educational allowance in respect of applicant's son for a particular school year — Rejection of a similar application for a subsequent school year — The new decision is, in the light of para 8 of the scheme, a confirmatory one of the first decision — Recourse out of time.*

5

Relying on the Scheme made under Reg 15 of the aforesaid Regulations the applicant applied for educational allowance in respect of his son's studies at «The Junior School» for the school year 1979-1980. The application was turned down. The applicant did not file a recourse.

10

A similar application for the school year 1980-81 was, also, turned down. Applicant's recourse was dismissed (Siekkeris v. The Republic (1985) 3 C.L.R. 1218), on the ground that the decision was confirmatory of the decision for the previous year.

15

By means of this recourse applicant impugns the validity of the decision whereby a similar application submitted by him in respect of the year 1982-83 was rejected.

20

Counsel for applicant argued that since the decision concerns a year different from the one in respect of which the first decision was taken, it cannot be confirmatory of such first decision.

Held, dismissing the recourse: (1) Paragraph 8 of the Scheme is applicable for a second or any subsequent school year only after the approval of an

educational allowance for the initial school year, and it is not applicable after a refusal of the application for the said initial school year (Siekens v The Republic, supra followed)

(2) It follows that the sub judge decision is confirmatory of the decision reached in respect of the school year 1979-1980 The recourse is out of time as regards such earlier decision 5

(3) In any event, the applicant lacks legitimate interest as he had failed to comply with the requirement of para 2(1) of the Scheme

*Recourse dismissed*  
*No order as to costs* 10

*Cases referred to*

*Siekens v The Republic* (1985) 3 C L R 1218,

*Asaad v The Republic* (1984) 3 C L R 1529,

*Constantinides v The Republic* (1985) 3 C L R 644

**Recourse.** 15

Recourse against the refusal of the respondents to grant to applicant educational allowance in respect of the studies of his son at the Junior School, Nicosia.

*P. Ioannides with N. Papaefstathiou*, for the applicant

*M. Photiou*, for the respondents 20

*Cur adv. vult.*

TRIANTAFYLLIDES P. read the following judgment By means of the present recourse the applicant challenges the refusal of the respondents to grant to him educational allowance in respect of the studies of his son at «The Junior School», Nicosia, for the school year 1982 - 1983. 25

The facts of this case, as they may be derived from the material before the Court, appear to be as follows:

The applicant was holding, at the material time, the post of Commercial Assistant, 2nd Grade, in the Ministry of Commerce and Industry. 30

As on 1st July 1974 he was posted at the Cyprus Commercial Centre in London and moved there with his wife and son, Athos,

who was then three years old. During their stay in London, until 20 July 1979, the son of the applicant was a pupil at English schools.

When the family returned to Cyprus, the applicant enrolled his son, as from 1 September 1979, at the Junior School, Nicosia.

- 5 On 22 October 1979 he submitted an application to the Minister of Foreign Affairs for the grant to him of an educational allowance for the school year 1979-1980 pursuant to a Scheme which had been made under regulation 15 of the Foreign Service of the Republic (Special Provisions) Regulations 1968 to 1975, and  
10 approved by the Council of Ministers on 11 September 1975 (see its decision No. 14 271).

On 28 June 1980 the applicant was informed that the circumstances of his case were such that the Minister of Foreign Affairs could not approve his application.

- 15 The applicant objected against this decision on 16 July 1980 and sought a reconsideration of his case.

On 9 September 1980 he was informed that there was nothing to be added to the previous decision in the matter.

- The applicant submitted a new application on 3 September  
20 1980 for the grant to him of an educational allowance for the school year 1980-1981. This application of the applicant was also refused on 1 November 1980 for the same reasons for which his earlier application had been refused.

- Against the rejection of his application dated 3 September 1980  
25 the applicant filed, on 2 January 1981, recourse No. 22/81, which was dismissed on 21 June 1985 (see *Siekkens v. The Republic*, (1985) 3 C.L.R. 1218) mainly on the ground that the sub-judice decision was confirmatory of the decision for the previous school year and, therefore, it could not be challenged by a recourse under  
30 Article 146 of the Constitution.

During the pendency of the *Siekkens* case, *supra*, the applicant applied, on 2 September 1981, for an educational allowance for the school year 1981-1982 and his application was, once again, refused on 27 November 1981.

- 35 The applicant reverted, again, on 23 August 1982, and sought once more an educational allowance for the school year 1982-1983. The application was, also, rejected on 27 November 1982.

and it is against this last refusal that the present recourse has been filed.

I will deal first with preliminary objections raised by counsel for the respondents:

It has been submitted by him that, in view of the earlier administrative decisions in this matter of 28 June 1980 and 1 November 1980, the applicant did not possess a legitimate interest, in the sense of Article 146.2 of the Constitution, entitling him to proceed with his present recourse. 5

Further, he has argued that the sub judice decision cannot be challenged by his recourse because it is out of time as it is confirmatory of the earlier decision dated 28 June 1980, and of the subsequent one dated 27 November 1981, which were not challenged by a recourse. 10

It is well settled in our administrative law that only executory acts or decisions may be subjected to judicial control and that confirmatory acts or decisions cannot be challenged by a recourse under Article 146 of the Constitution (see, inter alia, the *Siekkeris* case, supra, *Asaad v. The Republic*, (1984) 3 C.L.R. 1529, 1531, 1532 and *Constantinides v. The Republic*, (1985) 3 C.L.R. 644, 650, 651). 15 20

Counsel for the applicant had submitted that, on a correct interpretation of paragraph 8 of the Scheme concerned, a decision reached by the Minister of Foreign Affairs for a particular school year is a new executory decision and may be challenged by a recourse, as on every such occasion the decision is the product of a new exercise of his discretion on the part of the Minister. 25

The same argument was raised in the *Siekkeris* case, supra, and was rejected (see pp. 1224, 1225 of the report of that case) and I agree with the reason given in this respect in the judgment in the *Siekkeris* case, namely that paragraph 8 of the Scheme is applicable for a second or any subsequent school year only after the approval of an educational allowance for the initial school year and that it is not applicable after a refusal of the application for the said initial school year. 30 35

It follows, therefore, in the light of the foregoing, that the sub judice decision has to be treated as being confirmatory of the decision reached for the initial school year 1979-1980, on 28 June 1980, against which no recourse was made by the applicant; and,

consequently, the present recourse has to be dismissed on the ground that it could not have been made against the confirmatory sub judice decision and because it is out of time as regards the initial decision of 28 June 1980.

- 5 It has, also, been pointed out that the applicant failed, when he submitted his first application, to comply with paragraph 2(1) of the Scheme, in that he enrolled his son at the Junior School without having first obtained the approval of the Minister of Foreign Affairs.
- 10 So, in any event, because of the non-compliance by the applicant with the requirement in paragraph 2(1) of the Scheme he did not have, at any material time, a legitimate interest, under Article 146.2 of the Constitution, enabling him to challenge the sub judice decision by means of a recourse.
- 15 In view of all the foregoing in this judgment there is no need to pronounce on any other point raised by counsel for the applicant and the present recourse fails and is dismissed accordingly; but with no order as to its costs.

*Recourse dismissed.*

*No order as to costs.*