

1988 January 23

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LOULLA CHRISTOFIDOU,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTRY OF EDUCATION AND/OR
2. THE DIRECTOR -GENERAL OF THE MINISTRY
OF EDUCATION,

Respondents.

(Case No. 270/87).

Executory act—Informative act—Letter informing applicant of contents of a law.

5 *Constitutionality of Laws—Courts should refrain on pronouncing on such an issue, unless its resolution is indispensable for the determination of the proceedings.*

The applicant is the owner of private school for the tuition of English registered under the Private Schools Law (Law 5/71 as amended by Law 56/83). She is also the director of the school and teaches English at the Institute.

10 By letter dated 3.2.87 the applicant was informed that in virtue of the said law she would not be qualified after reaching the age of 68 either to be the principal of or a teacher at her school.

Applicant objected to this communication, but the Ministry of Education dismissed the objection informing her that their "decision" could not

be reversed. Whereupon the applicant mounted the present proceedings for a review of the legality of the decision communicated on 3.2.87.

Held, dismissing the recourse: (1) The letter of 3.6.87 does not purport either to define the status or position of the applicant or, by a process of exercise of discretionary power, readjust it. It does no more than remind the applicant of the provisions of the law. The act complained of is plainly of a non executory character. 5

(2) Only acts productive of legal consequences are cognizable by a court of revisional jurisdiction. Acts ~~informatory~~ of the existence of a legal or factual situation are not executory for the obvious reason that they do not have noticeable legal consequences. They merely assert the existence of a situation objectively identifiable. Informatory acts do not involve the exercise of any discretionary powers. 10

Recourse dismissed.

No order as to costs. 15

Cases referred to:

Karapataki v. Republic (1982) 3 C.L.R. 88;

Costea v. Republic (1983) 3 C.L.R. 115;

Vorkas v. Republic (1984) 3 C.L.R. 763;

Economides v. Republic (1980) 3 C.L.R. 219; 20

Ioannou v. Republic (1982) 3 C.L.R. 1002;

Spyrou v. Republic (1983) 3 C.L.R. 354;

Phylactides v. Republic (1984) 3 C.L.R. 1328;

Decision of the Greek Council of State No. 324/69;

Josephin v. Republic (1986) 3 C.L.R. 111; 25

Charalambous v. Republic (1986) 3 C.L.R. 557;

Hoppi v. The Republic (1972) 3 C.L.R. 269.

Recourse.

Recourse against the decision of the respondent whereby the applicant was informed that after she reached the age of 68 she would not be qualified to be the Principal of or a teacher of her
5 school.

A. S. Angelides, for the applicant.

R. Petridou (Mrs), for the respondent.

Cur. adv. vult.

PIKIS J. read the following judgment. The applicant is the
10 owner of a private school for the tuition of English, registered under the Private Schools Law.* She is also the director of the school and teaches English at the Institute.

During the school year preceding the attainment by the applicant of the age of 68, she was informed that she would not be
15 qualified after reaching that age either to be the principal of or a teacher at her school. The letter informed her of no more than what she ought to have known, namely, the content of the relevant provisions of the law under which her school was licensed as a private tuition centre; notably, those of s.18 (4) of the law.
20 The letter had been addressed to her on 3.2.87. Applicant objected to this communication and addressed, through her counsel, a letter to the Authorities, seeking a reversal of the "decision" on grounds of unconstitutionality of the law upon which it was founded, citing articles 20, 25, 26 and 28 of the Constitution.
25 The Ministry of Education dismissed the suggestion, informing her that their "decision" could not be reversed. Whereupon the applicant mounted the present proceedings for a review of the legality of the decision communicated on 3.2.87, the subject matter of these proceedings. The respondents disputed the justiciability
30 of the subject matter of the proceedings on the ground that the act challenged was not executory and as such could not be made the subject of review. In the contention of counsel for the respondents the decision communicated on 3.2.87 was nothing but

* *Law 5171 - as amended by Law 53183.*

an informatory act designed to remind the applicant of her duties under the law.

Aside from this preliminary issue, we are required, by the terms of the recourse and the opposition thereto, to determine, if necessary, 5

(a) Whether the decision, if it qualifies as executory, was issued in breach of the provisions of s.27A of the Private Schools Law, and

(b) If reviewable, whether it was founded on a law enacted in breach of the constitutional rights of the applicant, safeguarded by article 20, guaranteeing freedom of education, article 25, upholding freedom to practice a profession or carry on a trade, article 26, establishing freedom of contract and, lastly, article 28, entrenching equality before the law and the Administration. 10

The first issue we must resolve is the justiciability of the recourse. 15

Only executory acts are subject to review under article 146.1 of the Constitution, that is, acts yielding legal consequences determinative of the status and position of the subject under the law. Our task will be lightened if we reproduce the relevant communication allegedly embodying an executory act: 20

"Σύμφωνα με τον περί Ιδιωτικών Σχολείων και Φροντιστηρίων Νόμο κανένας εκπαιδευτικός δεν μπορεί να διευθύνει ή διδάξει σε ιδιωτικό φροντιστήριο εφόσον έχει συμπληρώσει το εξηκοστό όγδοο έτος της ηλικίας του. 25

Επομένως με τη λήξη του παρόντος σχολικού έτους δεν θα δικαιούστε να διευθύνετε ή / και διδάσκετε σε φροντιστήριο.

Συμβουλευσθε να συμμορφωθείτε με τις πρόνοιες του πιο πάνω Νόμου."

English Translation:

5 "In accordance with the Private Schools and Institutions Law no educationalist is allowed to direct or teach at such private institution after he completes the sixty-eighth year of his age.

Consequently, after the end of the current school year you will not be entitled to direct or teach at the institution.

10 You are advised to comply with the provisions of the aforementioned Law."

15 The letter does not purport either to define the status or position of the applicant or, by a process of exercise of discretionary power, readjust it. It does no more than remind the applicant of the provisions of the law in the context, no doubt, of a policy to remind those affected by the statute of the duty to observe them. To my mind the act complained of is plainly of a non executory character and as such beyond the revisional jurisdiction of this Court.

20 Time and again it has been asserted that acts productive of legal consequences are cognizable by a court of revisional jurisdiction*. Acts informatory of the existence of a legal or factual situation are not executory** for the obvious reason that they do not have noticeable legal consequences. They merely assert the existence of a situation objectively identifiable. Informatory acts do not involve the exercise of any discretionary powers. In my judgment the subject matter of these proceedings does not constitute an executory act and as such it is inamenable to judicial review.

* (See, *inter alia*, *Karapataki v. Republic* (1982) 3 C.L.R. 88; *Costea v. Republic* (1983) 3 C.L.R. 115; *Vorkas v. Republic* (1984) 3 C.L.R. 763).

** (See, *inter alia*, *Economides v. Republic* (1980) 3 C.L.R. 219; *Ioannou v. Republic* (1982) 3 C.L.R. 1002; *Spyrou v. Republic* (1983) 3 C.L.R. 354; *Phylactides v. Republic* (1984) 3 C.L.R. 1328; *Decision of the Greek Council of State No. 324169*).

If the applicant wishes to petition the Minister under s.27A of the law for a relaxation of the provisions of s.18 (4), she is no doubt free to do so. The reminder to the applicant of the current state of the law, in particular the provisions of section 18(4) in no way prejudices the outcome of any such application that may be made to the Minister. 5

In view of my decision, no need arises to pronounce on the constitutionality of the provisions of s.18 (4). It is firmly settled* that questions affecting the constitutionality of a law should not be gone into and the court should refrain from making a pronouncement on an issue of constitutionality unless resolution of the issue is indispensable for the determination of the proceeding. 10
In the interest of completeness of this judgment, we may mention that the question of constitutionality of the provisions of s. 18 (4) was the subject of debate and determination in *Costas M. Hoppi v. Republic*** . 15

In the light of the above the recourse is dismissed. Let there be no order as to costs.

Recourse dismissed.

No order as to costs. 20

* (See, *inter alia*, *Josephin v. Republic* (1986) 3 C.L.R. 111; *Charalambous v. Republic* (1986) 3 C.L.R. 557).

** (1972) 3 C.L.R. 269.