

1981 June 17

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANTONIOS CHRISTOFOROU AND OTHERS,

*Applicants,*

v.

THE EDUCATIONAL SERVICE COMMITTEE,

*Respondent.*

(Case No. 304/80).

*Constitutional Law—Equality—Unequal treatment between equals—  
 Article 28 of the Constitution—Educational Officers (Teaching  
 Staff) (Appointments, Postings, Transfers, Promotions and  
 Connected Subjects) Regulations 1972 (as amended in 1974)—  
 Regulation 6(3)(b)—Unconstitutional as offending Article 28* 5  
*of the Constitution.*

*Educational Officers (Teaching Staff) (Appointments, Postings,  
 Transfers, Promotions and Connected Subjects) Regulations,  
 1972 (as amended in 1974)—Regulation 6(3)(b)—Creates* 10  
*arbitrary differentiation between graduates of the Cyprus Pae-  
 dagogic Academy who attended a three years' course there and  
 graduates who attended the first two years' course in another  
 Academy—And, therefore, it offends Article 28 of the Consti-  
 tution.*

The applicants having completed a two years' course in the 15  
 Paedagogic Academy of Greece were admitted to the third  
 year of the Paedagogic Academy of Cyprus and upon complet-  
 ing successfully that year, after taking the final examinations,  
 they were awarded the Academy's School leaving Certificate  
 in 1973. 20

5 The respondent Committee relying on regulation 6(3)(b)\* of the Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Connected Subjects) Regulations, 1972 (as amended in 1974) excluded the applicants from appointment to the post of elementary school teacher and appointed instead the nine interested parties who had attended the three years' course of the Cyprus Paedagogic Academy.

10 Upon a recourse by the applicants challenging the above decision counsel for the respondents conceded that the said regulation 6(3) (b) created an arbitrary discrimination among those of the graduates of the Cyprus Paedagogic Academy with three years of studies there and those who did the first two years of studies in another Academy and after completing  
15 their third year in Cyprus were awarded the School Leaving Certificate of the Cyprus Academy; and that this differentiation amounted to unequal treatment between equals and, therefore, the subject decision could not, in law, be supported as it offended Article 28 of the Constitution.

20 *Held*, that this Court is in agreement with the stand taken by counsel for the Republic in the matter ; that once the applicants were admitted to the third year of the Academy in Cyprus on the strength of their previous two years record in another Academy, it cannot but be considered that such record was  
25 in all respects equivalent to the two years schooling of the Cyprus Academy ; that being so, it offers no room for differentiation between the graduates who do all three years in the Academy and those that do only the third year ; that, therefore, the subject decision is contrary to Article 28 of the  
25 Constitution and must be annulled.

*Sub judice decision annulled.*

### Recourse.

Recourse against the decision of the respondent to appoint

\* Regulation 6(3)(b) reads as follows:

"Also, notwithstanding the provisions of this Regulation and of the relevant schemes of service in filling vacant posts of elementary school teacher there should always be given priority to all those included in the list of the graduates of the Paedagogic Academy of Cyprus after a course of three years there".

the interested parties to the post of Elementary School Teacher in preference and instead of the applicant.

*N. L. Clerides*, for the applicant.

*V. Aristodemou*, Senior Counsel of the Republic, for the respondent.

5

*Cur. adv. vult.*

A. LOIZOU J. gave the following judgment. By the present recourse the applicants seek a declaration that the decision of the respondent Committee to appoint the nine interested parties named in Schedule 'B' attached to the application, permanently to the post of Elementary School Teacher as from the 1st July, 1980, is null and void and of no effect whatsoever.

10

The applicants having completed the two years course in the Paedagogic Academy of Greece, returned to Cyprus and were admitted to the third year of the Paedagogic Academy of Cyprus and on the successful completion of that year, after taking the final examinations, they were awarded the Academy's School Leaving Certificate in 1973.

15

The interested parties did all three years at the Paedagogic Academy in Cyprus, took the final examinations and were awarded the School Leaving Certificate of the Academy in 1975.

20

The exclusion of the applicants from appointment and the appointment in preference to them of the interested parties was based on the provisions of regulation 6(3)(b) of The Educational Officers (Teaching Staff) (Appointments, Postings, Transfers, Promotions and Connected Subjects) Regulations of 1972, as amended by the amending Regulations of 1974, published in Supplement No. 3 to the official Gazette of the Republic dated the 22nd February, 1974, under Notification No. 54. Regulation 6(3)(b) reads as follows:

25

30

“Ωσαύτως, παρά τὰς διατάξεις τοῦ παρόντος Κανονισμοῦ καὶ τῶν οικείων σχεδίων ὑπηρεσίας, εἰς τὴν πλήρωσιν κενῶν θέσεων διδασκάλου δίδεται πάντοτε προτεραιότης εἰς πάντας τοὺς περιλαμβανομένους ἐκάστοτε εἰς τὸν πίνακα τῶν ἀποφοίτων τῆς Παιδαγωγικῆς Ἀκαδημίας Κύπρου κατόπιν τριετοῦς ἐν αὐτῇ φοιτήσεως”.

35

(“ Also, notwithstanding the provisions of this Regulation

and of the relevant schemes of service in filling vacant posts of elementary school teacher there should always be given priority to all those included in the list of the graduates of the Paedagogic Academy of Cyprus after a course of three years there”).

Learned counsel for the respondents has conceded that the aforesaid paragraph creates an arbitrary discrimination among those of the graduates of the Paedagogic Academy of Cyprus who had done all their three years of studies there and those who did the first two years in another Academy which was in all respects found to offer equivalent qualifications as the first two years at the Paedagogic Academy offer and who, after completing their third year in Cyprus, were awarded the School Leaving Certificate of the Academy. It was stated that this differentiation amounted to unequal treatment between equals and therefore the subject decision could not, in law, be supported as it offends Article 28 of the Constitution.

I agree fully with this stand which so responsibly learned counsel for the Republic has taken in the matter. Once the applicants were admitted to the third year of the Academy in Cyprus on the strength of their previous two year record in another Academy, it cannot but be considered that such record was in all respects equivalent to the two years schooling of the Cyprus Academy. That being so, offers no room for differentiation between the graduates who do all three years in the Academy and those that do only the third year.

For all the above reasons the subject decision is annulled, but in the circumstances I make no order as to costs.

*Sub judice decision annulled.  
No order as to costs.*