[VASSILIADES, P., JOSEPHIDES, STAVRINIDES, LOIZOU, HADJIANASTASSIOU, JJ.]

GEORGE CONSTANTINIDES,

Appellant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF FINANCE,

Respondent.

(*Revisional Jurisdiction Appeal No.* 33).

Public Service and Public Officers—Public officers in the public service immediately before the coming into operation of the Constitution (i.e. 16th August, 1960)*—Terms and conditions of service—Safeguards and meaning—Article* 192, *paragraphs* 1 *and* 7(*b*) *of the Constitution—Scheme for education grants existing on the* 15*th August,* 1960*—Established under Circulars of the Government of the then Colony of Cyprus No.* 1286, *dated December* 6, 1955 *and No.* 1374, *dated February* 23, 1957*—Under which scheme education grants were provided for the benefit of public officers towards their expenses for the education of their children outside Cyprus but in any country within the British Commonwealth (and, also, in Eire)—Adaptations made to such scheme by the Supreme Constitutional Court in the case* Loizides and Others *and* The Republic (1961) 1 *R.S.C.C.* 107, *whereby the words "Greece" and "Turkey" were substituted for the words "United Kingdom" and "Commonwealth country" in the said circular No.* 1286*—With effect as from August* 16, 1960*—Such adaptations not "necessary" within paragraph* 7(*b*) *of Article* 192 *of the Constitution—Therefore, they are no longer law—Cf. Articles of the Constitution* 1, 2.1 *and* 2, 3, 4, 5, 108, 125.1, 179.1 *and* 2, 192.1 *and* 7(*b*)*—Cf. The British Colonial Regulations* (1956 *edition*) *regulations* 55 *to* 68.

Education grants—Scheme of such grants to public officers who were in the public service immediately before the 16*th August,* 1960, *date of the coming into operation of the Constitution—Scheme established under the aforesaid Circulars of the Colonial Government No.* 1286 *and* 1374 (supra)*—Preserved and safeguarded under Article* 192.1 *and* 7(*b*) *of the Constitution—Therefore such scheme shall continue after Independence (August* 16,

1960) *to be applied for the benefit of public officers in the public service immediately before the* 16*th August,* 1960*—Adaptations made in Loizides case,* supra, *no longer law.*

Stare decisis—Supreme Court—Entitled in a proper case to depart from, or overrule, previous decisions either of its own or of the former Supreme Constitutional Court.

Constitutional Law—Article 192.1 *and* 7(b) *of the Constitution—Interpretation.*

Education—Right of parents to secure for their children the education of their choice—Article 20 *of the Constitution—Article* 26(3) *of the Universal Declaration of Human Rights—Article* 2 *of the Protocol to the Convention of Rome (viz. The European Convention for the Protection of Human Rights).*

Human Rights—Fundamental human right—Education—See hereabove.

Universal Declaration of Human Rights—Article 26(3)*—See hereabove.*

Convention of Rome—Human rights—Education—Protocol Article 2*—See hereabove and herebelow.*

European Convention for the Protection of Human Rights—Protocol Article 2.

This is an appeal against the decision* of a Judge of the Supreme Court dismissing the Appellant's recourse, made under Article 146 of the Constitution, whereby he (the Appellant) was challenging the validity of the refusal on the part of the Respondents dated December 3, 1965, to grant to him the education grant asked for in respect of his son Haralambos, studying in England from 1961 to 1965. The material facts of this case are as follows:

On October 20, 1965, the Appellant applied for education grants, *inter alia*, in respect of his said son Haralambos who pursued higher studies in England from 1961 to 1965. His application was based on the Circular No. 1286, dated the 6th of December, 1955, of the Government of the then Colony of Cyprus. The material parts read:

*See this decision in (1967) 3 C.L.R. 483.

"..... His Excellency the Governor has been pleased to approve the following scheme for the payment of financial grants to Government Officers towards the expense of educating their children in the British Commonwealth outside Cyprus.

(a) .....

(b) The grant will be at a rate of £200 per annum per child .....

(c) .....

(d) .....

(e) No grant will be payable in respect of –

(i) any child being educated in Cyprus or outside the British Commonwealth;

(ii) .....

(*Note:* By circular No. 1374, dated February 23, 1957, the Independent Republic of Ireland was added to the countries to which a public officer's child could be sent for studies).

It is not in dispute that the Appellant was at all material times the holder of an office which entitled him to the benefit of an education grant under the aforesaid first Circular No. 1286 of the 6th of December, 1955, and whose rights and benefits, including those in respect of the aforesaid education grants, are safeguarded by Article 192, paragraphs 1 and 7(b) of the Constitution, which read as follows:

"1. Save where other provision is made in this Constitution any person who, immediately before the date of the coming into operation of this Constitution, (*Editor's note: i.e. August* 16, 1960), holds an office in the public service shall, after that date, be entitled to the same terms and conditions of service as were applicable to him before that date and those terms and conditions shall not be altered to his disadvantage during his continuance in the public service of the Republic on or after that date.

7(b) 'terms and conditions of service' means, subject to the necessary adaptations under the provisions of this

Constitution, remuneration, leave, removal from service, retirement pensions, gratuities or other like benefits".

In the case of *Loizides and Others* and *The Republic* (1961) 1 R.S.C.C. 107, the then Supreme Constitutional Court held, *inter alia*, that: (a) The combined effect of the words "remuneration" and "other like benefits" in Article 192.7(b) of the Constitution (*supra*) included education grants such as the ones provided for in the aforesaid Circular No. 1286 of the 6th December, 1955, and that (b) in view of the Constitution and the London and Zurich Agreements, the "necessary adaptations", prescribed in the said paragraph 7(b) of Article 192 (*supra*), to be made in the particular case (i.e. the said Circular No. 1286, *supra*) should be the substitution of the words "Greece" and "Turkey" for the words "United Kingdom" and "Commonwealth Country", as the case may be.

Now, the Appellant having applied on October 20, 1965, for an education grant in respect of his said son Haralambos who pursued his studies in England from 1961 to 1965, the Respondents by their said letter dated December 3, 1965, rejected his application, *inter alia*, in view of the judgment of the Supreme Constitutional Court in the *Loizides'* case (*supra*). And it was on this ground that the learned Judge of the Supreme Court dismissed the Appellant's recourse against the aforesaid decision (refusal) of the Respondents. This appeal is taken against that judgment of the trial Judge on the following two main grounds (which in substance may be reduced into one):

(a) The trial Court erred in deciding that the Applicant (now Appellant) is not entitled or eligible to education grant in respect of his son Haralambos because the latter commenced his studies in England in 1961 (i.e. after the date of the coming into operation of the Constitution); and

(b) The adaptations effected in *Loizides'* case, *supra*, are wrong and unconstitutional and the said case ought to be re-considered in so far as the said adaptations are concerned.

In allowing the appeal, the Supreme Court:–

Held, (1) per Vassiliades, P.:

(A) The scheme for education grants provides for a "benefit" safeguarded for the public officers concerned, under Article 192.1 of the Constitution (*supra*) as decided in both the *Loizides*' case, *supra*, and the case of *Boyiatzis* v. *The Republic*, 1964 C.L.R. 367.

(B) The condition in the original scheme (*supra*) that education grants shall only be made to Government Officers towards the expense of educating their children "in the British Commonwealth outside Cyprus"; and that no grant will be payable in respect of "any child being educated in Cyprus or outside the British Commonwealth", must be read subject to the necessary adaptation to the Constitution.

(C) The right of parents to choose their children's education of their choice is only subject to the limitations in Article 20 of the Constitution. This right is recognized as one of the fundamental human rights by international declarations and conventions to which the Republic of Cyprus is a signatory (see: Article 26(3) of the Universal Declaration of Human Rights (*post* in the judgment) and Article 2 of the Protocol to the Convention of Rome) that:-

"The State shall respect the right of parents to ensure (for their children) education and teaching in conformity with their own religious and philosophical convictions".

(D) The adaptation to bring the scheme in question and its application in line with the Constitution of the Republic and its international commitments may be attained, in my opinion, not in the way followed in *Loizides*' case *supra*, but merely by the removal of the limitation that the scheme is applicable only to studies in the British Commonwealth. That, I think, is sufficient; and that is all that is *necessary*. I would, therefore, adopt the scheme and its application accordingly; without the limitation or reference to Greece or Turkey or the British Commonwealth (Principles laid down in the *Loizides*' case, *supra*, regarding which are the necessary adaptations, *not followed*).

Held, (2) per Josephides, J. (Stavrinides and Loizou, JJ. concurring):

(A) I cannot find that the term or condition regarding the payment of an education grant, as laid down in Circular No. 1286, dated the 6th December, 1955, (*supra*) and Circular No.

1374 dated 23rd February, 1957, (*supra*), is repugnant to, or inconsistent with, any express provision of the Constitution.

(B) The only irresistible conclusion, as a matter of interpretation, is that no adaptation whatsoever is "necessary" under the provisions of Article 192.7(b) of the Constitution (*supra*).

(C) I hold accordingly that an education grant is payable to the public officers entitled and protected under Article 192.1 (*supra*), that is, officers in the Public Service on the 15th August, 1960 (*supra*) towards the expense of educating their children in the "British Commonwealth" and "Eire" only, as laid down in the abovementioned Circulars No. 1286 and 1374 (*supra*). It, therefore, follows that, with respect, as a matter of construction, I would not be prepared to make the adaptations made by the Supreme Constitutional Court in the *Loizides*' case (*supra*).

(D) For these reasons I would allow the appeal, set aside the judgment of the trial Judge and declare the Respondent's decision in respect of Appellant's son Haralambos *null* and *void* and of no effect whatsoever.

Held, (3) *per Hadjianastassiou, J.*

(A) Too rigid adherence to precedent may lead to injustice in this particular case, and also unduly restrict the proper development of the law. I propose, therefore, to depart from the previous decision of the Supreme Constitutional Court in the *Loizides'* case (*supra*), because it appears to me the right thing to do. Indeed, I am further of the view that the Supreme Court of Cyprus should not shrink from overruling a decision, or series of decisions, which establish a doctrine plainly outside the Constitutional Law, the law of the land, or for any other good reason which appears to the Court right to do so.

(B) I have no doubt, considering the reasoning behind the judgment in the *Loizides*' case (*supra*), that that case has been wrongly decided and that the adaptations effected thereby are wrong and contrary to the provisions of Article 192 of the Constitution.

(C) In my view there is no term or condition in the circulars in question which the Court was bound to apply with any adaptation whatsoever. I would most categorically emphasise,

that the Court should exercise its powers to legislate (i.e. make the necessary amendments and adaptations) only if and in so far as the provisions of the scheme in question plainly contravene or are repugnant to the provisions of the Constitution. But, after careful consideration, I earnestly take the view that there is nothing in the scheme in question in any way contravening the Constitution or justifying the course of adaptation followed by the Supreme Constitutional Court, *viz.* that the scheme could be applied only to Greece or Turkey, depending on whether the public officer concerned is a Greek or Turk.

(D) Consequently, I hold that in this respect the judgment in the *Loizides*' case is unconstitutional and I am bound to overrule it.

Appeal allowed. Order for £40 *costs in favour of the Appellant.*

Cases referred to:

Loizides and Others and *The Republic* (1961) 1 R.S.C.C. 107;

Pikis v. *The Republic* (1968) 3 C.L.R. 303;

Boyiatzis v. *The Republic*, 1964 C.L.R. 367.

Appeal.

Appeal against the judgment* of a Judge of Supreme Court of Cyprus (Triantafyllides, J.) given on the 19th August, 1967 (Revisional Jurisdiction Case No. 248/65), dismissing Appellant's recourse against the refusal of the Respondent to grant him education grant in respect of his son who was studying in England from 1961 to 1965.

A. Triantafyllides, for the Appellant.

A. Frangos, Senior Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following judgments were read:–

VASSILIADES, P.: Some five years before Independence, the Government of the British Colony of Cyprus, extended the benefit of an education allowance, for their children, to such

* Reported in (1967) 3 C.L.R. 483.

of the officers in the public service as they were eligible thereto, under the relevant scheme. This benefit is admittedly, one of the "terms and conditions of service" safeguarded by Article 192 of the Constitution (see *Loizides and Others and The Republic* (1961) 1 R.S.C.C. 107) under which the Republic of Cyprus was established in 1960; on the basis of the international agreements and treaties under which the British Government agreed to hand over the administration of the country and its public service, to the new State.

The subject-matter of this recourse, is the refusal of the Government of the Republic, through its appropriate organ, the Minister of Finance, to meet the Applicant's claim for education allowance under the scheme in question. The Minister contends that the Applicant is not eligible for, and therefore, not entitled to the allowance claimed. Hence the recourse.

The case was originally heard under section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, (No. 33 of 1964) by one of the Judges of this Court, whose decision in the matter is the subject of the present appeal to the Court, taken under the proviso to the same sub-section. The question to be determined in such an appeal, continues to be the validity of the administrative decision which is challenged by the recourse, as now seen in the light of the proceedings before the trial Judge, including his judgment. (See *Costas Pikis* v. *The Republic*—Rev. App. 34 (1968) 3 C.L.R. 303). The recourse under Article 146 is made to the Court; and its subject is all along the validity of the administrative act or decision challenged.

Here, the question for determination is the validity of the decision of the Acting Director of the Personnel Department, in the exercise of power presumably conferred on him by the Minister of Finance, (the Respondent in the recourse) to deal with the Applicant-officer's request for education allowance under the scheme, for his two sons; which (decision) is contained in the Ag. Director's letter dated 3rd December, 1965, (*exhibit* 1 herein) the material parts of which read:–

> " I am directed to refer to your letter of the 20th October, 1965, concerning your request for the payment to you of education grants in respect of your two sons, Antonios and Haralambos, who are studying in the United Kingdom,

and to inform you that in view of the judgment of the Supreme Constitutional Court in application No. 25/61 you are not eligible for such grants.

.....

3. Further I am to inform you that when you were seconded to the temporary post of Inspector as from 1.3.63, you were told that you would as from that date, not be eligible for any education grants. When you were promoted substantively to the post of Inspector as from 1.12.64, you were again informed that you would not be eligible for any education grants. You accepted both the secondment and the promotion without reserve."

The Minister's reasons for his decision (that the Applicant is not eligible under the scheme, to receive an education grant for his two sons in question) are: (a) that the Applicant does not qualify for such grant under the scheme as read by the Supreme Constitutional Court in Case 25/61; and (b) that the Applicant disqualified himself for such grant by accepting secondment and promotion in the public service, "without reserve" after the abolition of the scheme by the Government of the Republic, in February, 1961.

The scheme under which the request for education grant is made; and under which the administrative decision refusing it, purports to have been taken, is contained in a Government circular (No. 1286) dated December 6, 1955, which is on the record as *exhibit* 6. The material parts read:-

"..... His excellency the Governor has been pleased to approve the following scheme for the payment of financial grants to Government Officers towards the expense of educating their children in the British Commonwealth outside Cyprus.

(a) .....

(b) The grant will be at a rate of £100.- per annum per child and will be payable in not more than three instalments in respect of each calendar year upon production by the Applicant of satisfactory evidence in the form of receipted bills in his name showing that at least £100.- has been spent on the child's education during the year in question.

.....

(e) No grant will be payable in respect of -

(i) any child being educated in Cyprus or outside the British Commonwealth;

(ii) .....

(iii) part-time education or where education is free.

3. The scheme will come into operation with retrospective effect from the last term of the 1954/55 school year.

4. Applications should be submitted to the Accountant-General through the Director of Education on the attached form."

Very soon after the establishment of the Republic, the scheme was discontinued by the new Government, except in so far as it related to public officers who, "on the date of the coming into operation of the Constitution (i.e. 16th August, 1960) were already in receipt of such grants." (See the circular of the Ag. Chief Establishment Officer, dated 23rd February, 1961; *exhibit* 4 herein).

It is convenient to dispose first of the second reason for which the Minister refused the grant:- The Applicant's acceptance of secondment and promotion without reserve. In dealing with this point, the learned trial Judge held that "the fact that the Applicant was seconded in 1963, and subsequently promoted in 1964, to a higher post, subject to a condition that he would not be eligible to an education grant," cannot affect his "eligibility for and entitlement to" such a grant in respect of studies which were embarked upon much earlier. I share this view; and for the same reasons as stated in his judgment, I respectfully agree with the trial Judge's decision on this point. The Minister's refusal of a grant cannot, I think, be justified on this ground.

I may now return to the first reason: That in view of the judgment in case 25/61, the Applicant is not eligible for such grant. That was a case (*Petros Loizides and Others and The Republic, through the Council of Ministers*: 1 R.S.C.C. p. 107; *supra*) where a number of senior public officers "who immediately before the coming into force of the Constitution were entitled, under the General Orders, to: (a).....; (b) financial grants for educating their children in the United Kingdom and other Commonwealth countries", challenged by

a recourse under Article 146 of the Constitution, to the Supreme Constitutional Court, a decision of the Council of Ministers to discontinue (*inter alia*) the payment of education grants, except in certain cases as stated in the circular of the 23rd February, 1961, referred to above. The Court held that "Article 192 was intended to safeguard the rights of those civil servants who were in the service of the former Colony of Cyprus immediately prior to the date of coming into force of the Constitution, by ensuring to them the same 'terms and conditions of service' as were applicable to them before that date, (paragrs. 1 and 7(b) thereof)." The Court also held that the combined effects of the words "remuneration" and "other like benefits" in Article 192.7(b) included education grants. And annulled the decision in question under the following order:

(a) .....

(b) the decision of the Council of Ministers as set out in Circular No. 6033/55 of the Acting Chief Establishment Officer, dated 23rd February, 1961, in so far as it discontinued the educational grant payable to public officers who were entitled to receive such grant on the 15th August, 1960, are *null* and *void* and of no effect whatsoever." (at p. 108, F.).

That was the substantive order of the Court in *the Loizides' case*; and it seems to me that, far from leading to the view taken by the Ag. Director in *exhibit* 1, that the Applicant herein is "not eligible" for educational grant, the order of the Court strongly supports his case.

What, however, the Ag. Director apparently had in mind in making his decision to refuse a grant, is the part of the judgment purporting to make an adaptation of the scheme, in order to bring it into line with the Constitution, found in the "reasons" of the Court's decision, at page 111.

> " It will be observed (the Court say at p. 111, C.) that in the above quoted definition of 'terms and conditions of service', contained in sub-paragraph (b) of paragraph 7 of Art. 192, there appears the expression 'subject to the necessary adaptations under the provisions of this Constitution.' Consideration must, therefore, be given to the meaning and effect in that definition of this expression. The Court is of the opinion that the 'terms and conditions

of service' which are safeguarded by paragraph 1 of Article 192 should, therefore, be applied subject to the necessary adaptations under the provisions of the Constitution."

With great respect, I readily adopt that view. What was safeguarded by paragraph 1 of Article 192, cannot run counter to the Constitution; or be inconsistent thereto. And if so, the "necessary" adaptation must be made to bring the terms and conditions of service safeguarded, in line with the Constitution.

The question, therefore, arises: Is there anything in the scheme for education grants, contrary to or inconsistent with the Constitution? The Court dealing with *the Loizides' case*, considered that:-

> " The Constitution and the Zurich and London Agreements on which it is based, throughout their provision—and mention may here be made in particular of such Articles of the Constitution as Articles 3, 4, 5 and 108—clearly show that the Constitution and the aforesaid Agreements, recognize and make provision for, the close affinity of the Greeks and Turks of Cyprus with the Greek and Turkish nations respectively" (p. 111, D).

And in view of these considerations -

> "and of the general framework of the Constitution of the Republic, and having recourse to the nearest and only possible analogy—the Court say—in the circumstances, the Court is of the opinion that the said 'necessary adaptations', should be the substitution for the expressions 'United Kingdom' and 'Commonwealth Country', as the case may be, of Greece or Turkey, respectively, depending on whether the member of the public service concerned is a Greek or a Turk as defined in paragraph 1 of Article 186 of the Constitution." (p. 111, GH and 112, A.).

This is the part of the judgment which I find myself unable to adopt; or to follow. As it may be seen from the order made, the nature of the scheme, and in particular the condition regarding the country where the public officer's children had to receive the assisted education, was not one of the issues which had to be decided in that case; nor was the constitutionality of the scheme put into question. What fell to be determined, was the validity of the ministerial decision to

discontinue the scheme, challenged by the public officers who made a recourse, under Article 146, basing their case upon the provisions of Article 192. Going beyond that matter, the Court stated their opinion as to adapting a certain part of the scheme to the spirit and the "general framework" of the Constitution. But such adaptation was not "necessary", in my opinion, for the determination of *the Loizides case* where the scheme did not fall to be applied.

Apart of the fact that such an obiter dictum cannot be considered as a decision constituting a precedent, looking at it in the light of developments since that time (May 1961) I take the view that it went too far; and it must now be adjusted. It gave, I think, too much emphasis to the division of the people of this Island into Greeks and Turks with "close affinity to the Greek and Turkish Nations respectively." Such affinity is undoubtedly true regarding the great majority of the inhabitants. But it does not exist and it is purely a legal fiction, regarding considerable numbers of other inhabitants who are entitled to nurse their own different affinities, under the fundamental principle of equal treatment under the law. Moreover this emphasis on the division between Greeks and Turks under the law, has been—as we all, unfortunately, do know as a notorious fact—the cause of infinite trouble and difficulties in the Island.

I do not propose going further than absolutely necessary for the determination of this recourse, into this field where political difficulties still thrive and pitfalls are known to exist. But the question arises and must now be determined, whether the opinion expressed in *the Loizides case* regarding the territorial extent of the scheme—if I may use the expression—is binding on the Applicant; or may constitute a valid reason for the Minister's decision to refuse his (the Applicant's) request for education grants under the scheme, for his two sons. It is clear that without that opinion on record, the Applicant's request would stand on firm ground; and that the first reason for the Minister's decision would not exist.

The matter was considered by this Court, some three years later, in *the Boyiatzis case* (*Charalambos Boyiatzis* v. *The Republic through the Minister of Finance*, 1964 C.L.R. p. 367). There the Applicant's son was actually studying in Greece; and the question therefore, did not arise whether the scheme was or was not available for studies in Greece. The main question

which was argued in that case, was whether *the Loizides case*, upholding the public officers' right to the benefits of the scheme, was correctly decided; counsel for the Minister having argued (*inter alia*) that education grants were not included in the "benefits" safeguarded by Article 192. The Court, agreeing with the decision in *the Loizides case*, upheld the officer's claim to a grant, annulling the Minister's decision to refuse it. The question whether "the scheme could be applied modified to include countries other than Greece and Turkey", was expressly reserved by the Court and left open, as it did not arise in that case. (See judgment at p. 375).

I can now sum up my opinion; and reach my conclusions: The scheme for education grants provides for a "benefit" safeguarded for the public officers concerned, under Article 192 of the Constitution, as decided in both *the Loizides* and *the Boyatzis* cases. The condition in the original scheme that education grants shall only be made to Government Officers towards the expense of educating their children "in the British Commonwealth outside Cyprus"; "and that no grant will be payable in respect of (i) any child being educated in Cyprus or outside the British Commonwealth" must be read subject to the *necessary* adaptation to the Constitution, as decided in *the Loizides* case. The right of parents to secure for their children the education of their choice, is only subject to the limitations in Article 20 of the Constitution. This right to choose their children's education (subject only to legal limitations) is recognized as one of the fundamental human rights by international declarations and conventions to which the Republic of Cyprus is a signatory. Article 26(3) of the Universal Declaration of Human Rights provides that:-

> "3. Parents have a prior right to choose the kind of education that shall be given to their children".

And Article 2 of the Protocol to the Convention of Rome provides that -

> " The State shall respect the right of parents to ensure (for their children) education and teaching in conformity with their own religious and philosophical convictions."

The adaptation required to bring the scheme and its application in line with the Constitution of the Republic and its international commitments may be attained, in my opinion, by the removal of the limitation that the scheme is applicable

only to studies in the British Commonwealth. That, I think, is sufficient; and that is all that is *necessary*. I would adapt the scheme and its application accordingly; without the limitation or reference to Greece or Turkey or the British Commonwealth.

The financial limit of £100.- per annum (later increased to a more reasonable amount) and the provision in the scheme that grants will be payable "only for education at a recognised educational institution", together with the requirement that applications for a grant should be submitted through the Director of Education on the appropriate form, are sufficient, in my view, for the exercise of the proper administrative control in the application of the scheme.

The principal object of the scheme is to assist the public officers concerned, "towards the expense of educating their children outside Cyprus;" so as to broaden the horizons of their outlook on life, in addition to giving them academic or technical education. This is the aim of the Cypriot parents who can afford the expense of giving higher education to their children abroad. And this is what the scheme came to help parents in the public service to do; and the benefit in the terms and conditions of that service, which Article 192 safeguards for them. That the Colonial Government may have had an additional or ulterior object to serve at the same time, as suggested by the learned trial Judge, is a matter which now drops entirely out of the question. It belongs to past history.

I entirely agree with the trial Judge's proposition that –

> " A public officer's eligibility for, and entitlement to, an education grant under the scheme, has to be decided by reference to the point of time when such officer, acting reasonably in accordance with the requirements of a particular course of studies, embarks upon the venture of sending abroad his child for such studies; events subsequent to such point of time cannot affect the officer's eligibility for an education grant, or his continued entitlement to it, in respect of the particular child whom he has already sent abroad to study."

Applicant's first son went to England for his studies at the Northampton College of Advanced Technology in London in July, 1960. He had to do preliminary studies at the Regent

Street London Polytechnic before he could enter the College. He did so in scholastic years 1960–1961 and in 1961–1962. He then entered the College where he studied for a qualification degree, for three years, 1962–1965. I agree with the trial Judge that the material time for Applicant's eligibility to a grant under the scheme, is July, 1960. He sent his second son to England for studies under the scheme in 1961. Adapting the scheme as stated above, without the limitations introduced by the *Loizides case*, I reach the conclusion that (subject to other conditions being satisfied) the Applicant is eligible for education grant under the scheme for his second son as well.

I would affirm the learned trial Judge's decision regarding Applicant's eligibility for education grant in respect of his first son Antonios; and I would allow the appeal regarding his eligibility in respect of his second son, Charalambos, declaring the *sub judice* administrative decision in *exhibit* 1, to be *null* and *void* and of no effect. The matter will then have to be considered afresh by the Administration in the light of the Court's decision herein. I would also make an order for part of the costs.

JOSEPHIDES, J.: This case raises the question whether the adaptations made by the Court, in the case of *Loizides and Others and The Republic* (1961) 1 R.S.C.C. 107, to the scheme for education grants, were correctly made or not.

Immediately prior to Independence there was in force in the former Colony of Cyprus a scheme for the payment of financial grants to Government officers towards the expense of educating their children in the "British Commonwealth" and "Eire" (see Circulars No. 1286, dated 6th December, 1955, and No. 1374 dated 23rd February, 1957).

The Council of Ministers, by circular No. 6033/55 dated the 23rd February, 1961, communicated their decision to Government Officers that the scheme for the payment of such financial grants to them would be discontinued except in so far as the scheme related to public officers who, on the date of the coming into operation of the Constitution, were already in receipt of such grants, and that such officers should continue to receive the grant until the child in respect of whom it was paid completed his normal course of study.

This decision of the Council of Ministers was challenged in the *Loizides* case, as being contrary to the provisions of

Article 192, paragraphs 1 and 7(b), of the Constitution, which read as follows:

"1. Save where other provision is made in this Constitution any person who, immediately before the date of the coming into operation of this Constitution, holds an office in the public service shall, after that date, be entitled to the same terms and conditions of service as were applicable to him before that date and those terms and conditions shall not be altered to his disadvantage during his continuance in the public service of the Republic on or after that date".

7(b) 'terms and conditions of service' means, subject to the necessary adaptations under the provisions of this Constitution, remuneration, leave, removal from service, retirement pensions, gratuities or other like benefits".

The Supreme Constitutional Court in the *Loizides* case held that:

(a) the discontinuance of the education grant was unconstitutional;

(b) Article 192 was intended to safeguard the rights of those civil servants who were in the service of the former Colony of Cyprus, immediately prior to the date of the coming into force of the Constitution, by ensuring to them the same "terms and conditions of service" as were applicable to them before that date (paragraphs 1 and 7(b) thereof);

(c) the combined effect of the words "remuneration" and "other like benefits" in Article 192.7(b), included education grants; and that

(d) in view of the Constitution and the London and Zurich Agreements, the "necessary adaptations" to be made in the particular case should be the substitution of the words "Greece" and "Turkey" for the words "Commonwealth Country".

The question with regard to what was held in paragraph (c) above only, was reconsidered by this Court in 1964 in the case of *Boyiatzis* v. *The Republic*, 1964 C.L.R. 367. The only issue before us in the *Boyiatzis* case was the construction of the expressions "remuneration" and "or other like benefits"

in Article 192.7(b) of the Constitution (see page 374 of the report). We held, for the reasons given, that those expressions were sufficiently wide to include education grants. The question of the adaptations made by the Supreme Constitutional Court in the *Loizides* case under paragraph (d) above, was neither argued nor considered by us in that case.

The reasoning of the Supreme Constitutional Court for the adaptations in paragraph (d) above, reads as follows (at page 111C to 112A of the *Loizides* case):-

> " It will be observed that in the above-quoted definition of 'terms and conditions of service', contained in sub-paragraph (b) of paragraph 7 of Article 192, there appears the expression 'subject to the necessary adaptations under the provisions of this Constitution'. Consideration must, therefore, be given to the meaning and effect in that definition of this expression. The Court is of the opinion that the 'terms and conditions of service' which are safeguarded by paragraph 1 of Article 192 should, therefore, be applied 'subject to the necessary adaptations under the provisions of' the Constitution.
>
> The Constitution and the Zurich and London Agreements on which it is based, throughout their provisions— and mention may here be made in particular of such Articles of the Constitution as Articles 3, 4, 5 and 108— clearly show that the Constitution and the aforesaid Agreements, recognize, and make provision for, the close affinity of the Greeks and Turks of Cyprus with the Greek and Turkish Nations, respectively.
>
> The Court is, therefore, of the opinion that the grant of free return passages and education grants, to which the Applicants were entitled immediately before the date of the coming into operation of the Constitution, are saved under paragraph 1 of Article 192 'subject to the necessary adaptations under the provisions of' the Constitution, by virtue of the definition of 'terms and conditions of service' contained in the aforesaid sub-paragraph (b) of paragraph 7 of that Article. This being so, the Court is of the opinion that the Applicants are entitled to grant of free return passages and education grants, under the same terms and conditions to which they were entitled immediately before the coming into

operation of the Constitution, subject to the necessary adaptations of the relevant schemes. In view of the above considerations and of the general framework of the Constitution of the Republic, and having recourse to the nearest and only possible analogy in the circumstances, the Court is of the opinion that the said 'necessary adaptations', should be the substitution for the expressions 'United Kingdom' and 'Commonwealth country', as the case may be, of Greece or Turkey, respectively, depending on whether the member of the public service concerned is a Greek or a Turk as defined in paragraph 1 of Article 186 of the Constitution."

The learned trial Judge in the present case, after considering the adaptations made by the Court to the scheme for education grants in the *Loizides* case, reached the conclusion that that case was correctly decided. His reasons for reaching that conclusion were the following (vide (1967) 3 C.L.R. 483 at pp. 492–493):–

"There is no doubt in my mind that the scheme for education grants was primarily introduced as a means of solidifying the ties of Cyprus as a British Colony with Great Britain and the British Commonwealth; had it been introduced primarily for the benefit of education it would not have been restricted to studies in countries of the British Commonwealth only.

When Cyprus ceased to be a British Colony and its inhabitants British subjects, I think that the adaptations decided upon in the *Loizides* case were, indeed, necessary and were properly adopted on the basis of the reasoning set out in the judgment in that case. The fact that Cyprus, as a totally independent State, has remained in the British Commonwealth is a radically different situation from the one which had existed when the education grants' scheme was introduced, while Cyprus was still a British Colony.

Counsel for the Applicant has submitted that the adaptations introduced by the *Loizides* case result in unequal treatment as between public officers, because those who wish to send their children to, for example, the United Kingdom, for the purpose of pursuing studies which cannot be sufficiently well pursued elsewhere, due to lack of required facilities, are being deprived of an

education grant. As already stated the primary purpose of the relevant scheme was not the advancement of education, and it is *as it was* that it has been preserved by Article 192 of the Constitution in favour of those eligible under it; and the Constitution prohibits unequal treatment or discrimination, except when such treatment or discrimination result through its own provisions (see, *inter alia*, Articles 6 and 28 of the Constitution).

Nor can I find anything in the adaptations introduced by the *Loizides* case which is inconsistent with the right to receive education, which is safeguarded under Article 20 of the Constitution; that Article is, clearly, applicable only to education in Cyprus and not to education abroad.

The adaptations introduced by the *Loizides* case are of a retrospective nature, in the sense that it was laid down in that case how the relevant scheme had to be applied in view of the coming into force of the Constitution; therefore, since the coming into operation of the Constitution, the Applicant was no longer eligible for an education grant for studies in England; therefore, his claim in respect of his son Charalambos, who went to England, to study, in 1961, was rightly rejected on this ground by the Respondent."

It is here convenient to refer to the facts of this case. It is not in dispute that the Appellant was at all material times the holder of an office which entitled him to the benefit of an education grant under the scheme set out in Circulars No. 1286, dated 6th December, 1955, and No. 1374 dated 23rd February, 1957. In October 1965 he applied for education grants in respect of his two sons *Antonios* and *Charalambos* who pursued higher studies in England, the first from July 1960 to 1965 and the second from 1961 to 1965.

The Director of the Personnel Department, relying on the *Loizides* case (and for other reasons which were rejected by the trial Judge, and with which we are not concerned in the present appeal), refused the grant to the Appellant on the ground that his sons had studied in England.

In the case of the Appellant's son *Antonios* the recourse before the trial Judge succeeded on the ground that he embarked on his studies in July 1960, so that the Appellant in respect of this son was entitled, under Article 192 of the

Constitution, to an education grant on the basis of the scheme as it stood in July 1960, as to refuse him such grant would be unconstitutional.

In the case of the Appellant's son *Charalambos*, however, the Director's decision was confirmed by the trial Judge (for the reasons quoted earlier in this judgment), and the recourse dismissed; and the present appeal was taken by the Appellant, in respect of his son *Charalambos* only, on the following grounds:

"(a) It is respectfully submitted that the trial Court erred in deciding that the Applicant is not entitled to education grant in respect of his son Charalambos because the latter commenced his studies in England in 1961; and

(b) It is further respectfully submitted that the adaptations effected in *Loizides* case (1 R.S.C.C. 107) are wrong and unconstitutional and that the said case ought to be re-considered in so far as the said adaptations are concerned."

Learned counsel for the Appellant addressed us in support of his grounds of appeal; his main argument being that there was no provision in the Constitution which made the adaptations of the scheme "necessary" as provided in Article 192.7(b).

Counsel for the Respondent adopted, for the purposes of his argument, the reasoning of the Court in the *Loizides* case and of the trial Judge in the present case; and, in the course of his argument, he referred to Articles 1, 2(1)(2) and 3 of the Constitution; and to the ties of the two communities in Cyprus with Greece and Turkey. Finally, he argued that the primary purpose of the British Government of the Colony of Cyprus, in paying education grants for studies in the British Commonwealth, was to "solidify" the ties of Cyprus as a British Colony with Great Britain.

Pausing there, I think that argument may have been correct originally, at the time of the first circular in December, 1955, when it was laid down that the grant would be paid to Government officers educating their children in the "British Commonwealth", though it should be borne in mind that this Commonwealth includes also places like the French-speaking

part of Canada. But, I think that the argument loses a considerable part of its force when one considers that in February 1957 (by Circular No. 1374) the Independent Republic of Ireland (Eire) was added to the countries to which a public officer's child could be sent for studies. It cannot be said, I think, that by studying in the independent Republic of Ireland, the citizens of which fought bitterly against the British for their independence, one's ties with Great Britain could or would be "solidified". But that does not really conclude the matter one way or the other.

In the present case we are concerned purely with a matter of construction of Article 192.1 and 7(b) of the Constitution. The material words which we have to construe in Article 192.7(b) read as follows:

" 'Terms and conditions of service' means, *subject to the necessary adaptations under the provisions of this Constitution*, remuneration, leave, removal from service, retirement pensions, gratuities or other like benefits". (The material words are *italicised* by me).

Now, Article 192 is to be found in that part of the Constitution entitled "Transitional Provisions"; and I take it that one of its objects, in addition to safeguarding the rights of public officers who were in the Service prior to Independence, was to give time to the interested parties, that is to say, on the one hand, the Government of the new Republic of Cyprus and, on the other, the public officers concerned (who are a dying class) through their trade union or otherwise, to consider matters and come to a reasonable understanding as regards the future, having regard to the changed conditions in Cyprus. But, unfortunately, although there has been a revision of salaries of the whole Public Service in 1968 (see Law No. 106 of 1968), and a revision of pension rights under the Pensions Law in 1967 (see Law Nos. 9 and 18 of 1967), apparently nothing has been done about this particular condition of service. On the contrary, it would seem that, from the number of cases which have been brought before this Court, both sides—Government and the public officers—have bitterly contested this question over the past eight years. For this reason it is our duty to consider again the question of the construction of the aforesaid Article of the Constitution.

In doing so, it is, I think, helpful to refer to other Articles of the Constitution to see whether the adaptations made by

the Court in the *Loizides* case were "necessary" "under the provisions of this Constitution".

Article 179.1 provides that the Constitution "shall be the supreme law of the Republic"; and Article 179.2 provides that no law or decision of the House of Representatives, and no act or decision of any organ, authority or person in the Republic exercising executive power or any administrative function "shall in any way be repugnant to, or inconsistent with, any of the provisions of this Constitution".

In the light of those provisions I read Article 192.7(b) to mean that an "adaptation" is only "necessary", "under the provisions of this Constitution", if, and only if, any of the "terms and conditions" is repugnant to, or inconsistent with, any of the provisions, that is, the express provisions, of the Constitution; and such adaptation is necessary to bring them into conformity with the provisions of the Constitution.

As I cannot find that the term or condition regarding the payment of an education grant, as laid down in Circular No. 1286, dated the 6th December, 1955, and Circular No. 1374, dated 23rd February, 1957, is repugnant to, or inconsistent with, any of the express provisions of the Constitution—and no relevant provision has been quoted by Respondent's counsel—the only irresistible conclusion, as a matter of interpretation, is that no adaptation whatsoever is "necessary" "under the provisions of this Constitution" (Article 192.7(b)). I accordingly hold that an education grant is payable to the public officers entitled and protected under Article 192.1, that is, officers in the Public Service on the 15th August, 1960, towards the expense of educating their children in the "British Commonwealth" and "Eire" only, as laid down in the above-mentioned Circulars No. 1286 and 1374.

It, therefore, follows that, with respect, as a matter of construction, I would not be prepared to make the adaptations made by the Court in the *Loizides* case.

A case in which under the provisions of Article 192.7(b), it would, I think, be necessary to make adaptations, under the provisions of the Constitution, to the terms and conditions of service, would be in respect of "removal from service" which is one of the conditions referred to in that Article (Article 192.7(b)). In interpreting that expression ("removal from service") we should bear in mind the principles underlying

disciplinary procedure as envisaged in the (British) Colonial Regulations (1956 edition)—regulations 55 to 68—subject to the necessary adaptations under the provisions of the Constitution. Those regulations embody the rules of natural justice in disciplinary proceedings involving the dismissal or compulsory retirement of an officer, that is to say, that the public officer is, broadly speaking, entitled—(a) to know the grounds upon which it is intended to dismiss or retire him, and (b) to be given an adequate opportunity of making his defence. The Colonial Regulations further provided that, depending on the status of an officer and the gravity of his disciplinary offence, the competent authority to consider and determine his removal from service would be either the Governor himself; or the Governor with the aid of the Head of the officer's Department or such other officer or officers as the Governor might appoint; or a committee consisting of not less than three persons (and presided over by a Judge, magistrate or legal officer) who would refer the matter to the Governor in Executive Council who, in his turn, would refer it to the Secretary of State in England for a final decision; or the Governor in Executive Council; or the Governor subject to the approval of the Secretary of State (see Colonial Regulations 58(ii) and (vi), 59, 60(ii) (vii) (viii) (x), 63 and 68).

Now, under the express provisions of Article 125.1 of the Constitution, matters of "dismissal or removal from office of public officers" are within the exclusive competence of the Public Service Commission. Consequently, under the provisions of the Constitution it is necessary to make an adaptation to the condition of service regarding "removal from service" of a public officer who was in the Public Service immediately prior to Independence; that is to say, to have the question of his removal from service considered and decided by the Public Service Commission, which is an independent organ of the Republic, under the provisions of Article 125.1, instead of by the Executive or an ad hoc committee etc., as previously laid down in the Colonial Regulations. That adaptation is necessary because if the provisions laid down in the terms and conditions of service of a public officer who was in the Service on the 15th August, 1960, were adhered to, they would be repugnant to, or inconsistent with, one of the express provisions of the Constitution. That is, I think, what the framers of the Constitution had in mind in making the provision in Article 192.7(b), regarding a public officer's terms

and conditions of service, "subject to the necessary adaptations under the provisions of this Constitution".

On this interpretation of Article 192.7(b) I hold that the decision of the Respondent not to pay the Appellant education grant in respect of his son Charalambos is contrary to the provisions of the Constitution and should be annulled.

For these reasons I would allow the appeal, set aside the judgment of the trial Judge and declare the Respondent's decision in respect of the Appellant's son Charalambos to be *null* and *void* and of no effect whatsoever. The question of the payment of an education grant to Appellant in respect of this son would now have to be reconsidered by the Respondent in the light of this judgment.

STAVRINIDES, J.: I agree with the judgment just delivered and have nothing to add.

LOIZOU, J.: I agree entirely with the judgment delivered by my brother Josephides, J., which I had the advantage of reading in advance, and there is nothing that I can usefully add.

HADJIANASTASSIOU, J.: I agree that the judgment of the learned trial Judge should be reversed, but in view of the importance of the constitutional issue involved, I would like to elaborate on the arguments and considerations which have led me to this result.

The present dispute arises out of the refusal of the Director of the Personnel Department of the Ministry of Finance, relying on the decision in the *Loizides*' case, 1 R.S.C.C. 107, to pay to the Applicant education grants in respect of his two sons, Antonios and Charalambos, who are studying in the United Kingdom.

The scheme for the payment of financial grants to Government officers towards the expense of educating their children in the United Kingdom and the Commonwealth countries, is contained in a Government circular No. 1286, dated December 6, 1955.

The acting Chief Establishment Officer, by a circular dated February 23, 1961, informed the Heads of the Government Departments of the decision of the Council of Ministers, that the scheme for the payment of financial grants should be discontinued, except in so far as it related to public officers, who,

on the date of the coming into operation of the Constitution, i.e. the 16th August, 1960, were already in receipt of such educational grants.

Be that as it may, the Applicant, feeling aggrieved, filed the present recourse, claiming a declaration that the decision of the Respondents contained in *exhibit* 1, that Applicant is not eligible for education grants in respect of his two sons studying in the United Kingdom, is *null* and *void* and of no effect whatsoever.

The case was heard by a single Judge of this Court, under the provisions of the Administration of Justice (Miscellaneous Provisions) Law, 1964. Mr. Justice Triantafyllides, delivering his judgment had this to say, ((1967) 3 C.L.R. 483 at pp. 492–493):–

> "There is no doubt in my mind that the scheme for education grants was primarily introduced as a means of solidifying the ties of Cyprus as a British Colony with Great Britain and the British Commonwealth; had it been introduced primarily for the benefit of education it would not have been restricted to studies in countries of the British Commonwealth only.
>
> When Cyprus ceased to be a British Colony and its inhabitants British subjects, I think that the adaptations decided upon in the *Loizides* case were, indeed, necessary and were properly adopted on the basis of the reasoning set out in the judgment in that case. The fact that Cyprus, as a totally independent State, has remained in the British Commonwealth is a radically different situation from the one which had existed when the education grants' scheme was introduced, while Cyprus was still a British Colony."

Later on he says:–

> "The adaptations introduced by the *Loizides* case are of a retrospective nature, in the sense that it was laid down in that case how the relevant scheme had to be applied in view of the coming into force of the Constitution; therefore, since the coming into operation of the Constitution, the Applicant was no longer eligible for an education grant for studies in England; therefore, his claim in respect of his son Charalambos, who went to England, to study, in 1961, was rightly rejected on this ground by the Respondent."

The Appellant now appeals against the decision of the learned trial Judge on two grounds:- (1) that the trial Court erred in deciding that the Applicant is not entitled to education grants in respect of his son Charalambos, because the latter commenced his studies in England in 1961; (2) that the adaptations effected in *Loizides* case (1 R.S.C.C. 107) are wrong and unconstitutional and that the said case ought to be reconsidered in so far as the said adaptations are concerned.

I would desire to comment on two cases which were much discussed before the Supreme Court, i.e. the *Loizides*' case and the case of *Charalambos Boyiatzis* v. *The Republic of Cyprus through the Minister of Finance*, 1964 C.L.R. p. 367, particularly so, because the correctness of the Supreme Constitutional Court's decision in *Loizides*' case was challenged by the Appellant's counsel.

The headnote of the first case reads as follows:-

" The Applicants are senior public servants who immediately before the coming into force of the Constitution were entitled, under the General Orders, to:

(a) free return passages to the United Kingdom in accordance with the provisions of G.O. 31/II, and

(b) financial grants for educating their children in the United Kingdom and other commonwealth countries.

The Council of Ministers decided (Decision 444) that with effect from the 21st January, 1961, the grant of free return passages should be discontinued. This decision was published in the Official Gazette of the 10th February, 1961, No. 40, Supplement No. 4. The Council of Ministers decided, also, to discontinue the payment of education grants except to those offices who, on the date of the coming into operation of the Constitution, were already in receipt of such grants and who should continue to receive such grants until the child in respect of whom such grant was paid completed his normal course of study. This decision was circularised to the public service on the 23rd February, 1961, by the Circular No. 60335/5.

Held: (a) the discontinuance of the grant of free return passages and the education grant was unconstitutional;

(b) Article 192 was intended to safeguard the rights of those civil servants who were in the service of the former Colony of Cyprus, immediately prior to the date of the coming into force of the Constitution, by ensuring to them the same 'terms and conditions of service' as were applicable to them before that date, (paragraphs 1 and 7(b) thereof);

(c) the combined effect of the words 'remuneration' and 'other like benefits' in Article 192.7(b), included free return passages and education grants;

(d) in view of the Constitution and the London and Zurich Agreements, the 'necessary adaptations' to be made in the particular case should be the substitution of the words 'Greece' and 'Turkey' for the words 'United Kingdom' and 'Commonwealth Country';

(e) .....".

FORSTHOFF, P., delivering the judgment of the Court, had this, *inter alia*, to say at p. 110:–

" The question which next arises is whether the grant of free return passages and the education grant in question come within the definition of 'terms and conditions of service' contained in paragraph 7 of Article 192 so as to bring such privileges within paragraph 1 of the said Article.

The Court is of the opinion that the combined effect of the word 'remuneration' and the expression 'or other like benefits' is sufficiently wide to bring the grant of free return passages and education grants within the letter and spirit of that definition. The Court is further of the opinion that the submission that such free return passages and education grants should not be regarded as covered by the aforesaid definition of 'terms and conditions', on the ground that they were subject to being discontinued at the pleasure of the Governor of the former Colony of Cyprus, cannot be accepted because, before the coming into operation of the Constitution, and due to the status of Cyprus as a Crown Colony, most terms and conditions of service of public officers, such as leave, pensions and the very security of tenure of office, were

subject to the pleasure of the Governor as representing the British Crown.

The Court is, therefore, of the opinion that the discontinuance of the provision of free return passages and education grants is unconstitutional as being contrary to paragraph 1 of Article 192 of the Constitution.

It will be observed that in the above-quoted definition of 'terms and conditions of service', contained in subparagraph (b) of paragraph 7 of Article 192, there appears the expression 'subject to the necessary adaptations under the provisions of this Constitution'. Consideration must, therefore, be given to the meaning and effect in that definition of this expression. The Court is of the opinion that the 'terms and conditions of service' which are safeguarded by paragraph 1 of Article 192 should, therefore, be applied 'subject to the necessary adaptations under the provisions of' the Constitution.

The Constitution and the Zurich and London Agreements on which it is based, throughout their provisions —and mention may here be made in particular of such Articles of the Constitution as Articles 3, 4, 5 and 108—clearly show that the Constitution and the aforesaid Agreements, recognize, and make provision for, the close affinity of the Greeks and Turks of Cyprus with the Greek and Turkish Nations, respectively.

The Court is, therefore, of the opinion that the grant of free return passages and education grants, to which the Applicants were entitled immediately before the date of the coming into operation of the Constitution, are saved under paragraph 1 of Article 192 'subject to the necessary adaptations under the provisions of' the Constitution, by virtue of the definition of 'terms and conditions of service' contained in the aforesaid subparagraph (b) of paragraph 7 of that Article. This being so, the Court is of the opinion that the Applicants are entitled to the grant of free return passages and education grants, under the same terms and conditions to which they were entitled immediately before the coming into operation of the Constitution, subject to the necessary adaptations of the relevant schemes. In view of the above considerations and of the general framework of the Constitution of the Republic, and having recourse to the nearest and

only possible analogy in the circumstances, the Court is of the opinion that the said 'necessary adaptations', should be the substitution for the expressions 'United Kingdom' and 'Commonwealth country', as the case may be, of Greece or Turkey, respectively, depending on whether the member of the public service concerned is a Greek or a Turk as defined in paragraph 1 of Article 186 of the Constitution."

Mr. Justice Josephides, delivering the judgment of the Supreme Court, in the *Boyiatzis* case, had this to say at p. 374:-

> " We do not think that it could seriously be argued that the expressions 'remuneration' and 'or other like benefits' are not sufficiently wide to include, say, the cost of living allowance, which was payable before Independence Day. In interpreting the expression 'terms and conditions of service' one has to look at the actual terms and conditions enjoyed by public officers prior to Independence and not to adhere literally to the words appearing in that definition. For instance, the expression 'terms and conditions of service' includes also 'removal from service'. If one interprets literally these three words, surely 'removal from service' as such is not a term or condition of service which was intended to be safeguarded in favour of a public officer under Article 192. In interpreting that expression ('removal from service') one has to bear in mind the principles underlying disciplinary procedure as envisaged in the Colonial Regulations (1956) (regulations 55 to 68), subject to the necessary adaptations under the provisions of the Constitution. Those regulations embody the rules of natural justice in disciplinary proceedings, that is to say, that the public officer is entitled—(a) to know the grounds upon which it is intended to dismiss him, and (b) to be given an adequate opportunity of making his defence.
>
> Likewise in interpreting the expressions 'remuneration' and 'or other like benefits' one has to look at the Government General Orders and circulars then in force (i.e. the 15th August, 1960), as these included many of the terms and conditions of the public service. If we were to accept the submission of Respondent's counsel that the latter expression refers only to provident fund and to no other benefit, then this would mean that free

medical treatment and dental treatment are no longer part of the terms and conditions of service of public officers, which could not be seriously maintained. Free medical treatment includes surgical operations, specialist examinations and medicines, and free treatment at Government's expense outside Cyprus in certain cases (see General Order III/5.1). It will thus be seen that free medical treatment is a substantial 'benefit' for public officers amounting in some cases to hundreds of pounds in one year.

For these reasons we agree with the decision in the *Loizides*' case that the expressions 'remuneration' and 'or other like benefits' in Article 192.7(b) are sufficiently wide to include education grants. The question whether the scheme could be applied modified to countries other than Greece and Turkey is left open as it does not arise in the present case."

Counsel for the Appellant has mainly argued before us (a) that the adaptations effected in the *Loizides*' case are wrong, and are contrary to the provisions of the Constitution, because the circular then in force was part of the terms and conditions of the public service and, therefore, should not have been altered to the disadvantage of a public officer; (b) that the said decision should be reconsidered and overruled, because it is no longer good law, in so far as the said adaptations are concerned.

I regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases, because it provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules. Nevertheless, I also recognize that too rigid adherence to precedent may lead to injustice in this particular case, and also unduly restrict the proper development of the law. I propose, therefore, to depart from the previous decision of the Supreme Constitutional Court, because it appears to me the right thing to do. Indeed, I am further of the view that the Supreme Court of Cyprus should not shrink from overruling a decision, or series of decisions, which establish a doctrine plainly outside the Constitutional Law, the law of the land, or for any other good reason which appears to the Court right to do so.

After considering more fully the reasoning behind the judgment in the *Loizides*' case, I have no doubt that it has been wrongly decided and, therefore, I find myself in agreement with counsel for the appellant that the adaptations effected are wrong and are contrary to the provisions of Article 192 of the Constitution. But I would further like to add that the Court, in interpreting the expression "terms and conditions of service" in the *Loizides*' case, had to look for guidance to the Government General Orders and circulars in force on August 15, 1960, in order to appreciate what were the actual terms and conditions enjoyed by the public servants; because those orders and circulars included many of the terms and conditions of the public service.

In the case in hand, what was enjoyed by a public officer prior to the coming into force of the Constitution, under the said circular with regard to the payment of an education grant, was to receive the amount allowed by such circular in order to help him to educate his children in the United Kingdom and in the Commonwealth countries. This benefit was specifically safeguarded under the transitional provisions of Article 192 of the Constitution to those officers who held office in the public service, including the Applicant, prior to the coming into force of the Constitution. In my view, therefore, whatever were the political aims or reasons of the then Colonial Government in introducing the scheme for educational grants, the framers of the Constitution, for reasons best known to them, have agreed that those officers should continue to be entitled to the same terms and conditions of service; and that those terms and conditions should not be altered to their disadvantage. It would be, therefore, surprising today, after the lapse of nine years, for this problem to remain still unsolved; and it is even a greater surprise to me, that counsel for the Republic should take the stand that the adaptations effected in the *Loizides*' case were necessary because of the structure and of the whole framework of the Constitution. Indeed, counsel has contended all along that this state of affairs should continue, and that the education of the children of those officers—a dying class—should be governed by these provisions, continuously reminding the youth of this young state, that even in matters of education, the spirit of the Zurich agreement should continue to rule and divide our children into Greek and Turkish, taking away or destroying their rights of choice for their education.

But, although I look upon the decision of the Supreme Constitutional Court with the greatest respect, the question which is posed before me is: Is there a term in that circular which the Court was bound to apply with such modification as may be necessary to bring it into accord with the provisions of our Constitution?

I would, most categorically emphasise, that the Court should exercise its powers to legislate only in those circumstances and only when the provisions of the educational scheme plainly contravene or are repugnant to the provisions of the Constitution. In this respect, I earnestly take the view, that after careful consideration, I have found no provision in the said education scheme, in any way contravening the provisions of our Constitution, or justifying the course of adaptation followed by the Supreme Constitutional Court, viz. that the scheme could be applied by analogy to Greece or Turkey respectively, depending on whether the member of the public service concerned is a Greek or a Turk.

Reading this part of the judgment of the Court, I repeat, that in my mind it is clear that the Court was trying to find some like formula of compromise, which however, was founded in my view, upon an erroneous consideration that an adaptation of the said circular was necessary. Once the rights of the public officers were safeguarded by the provisions of the Constitution, for the payment of an amount for helping them towards the expense of the education of their children in the United Kingdom and the Commonwealth countries, and once the adaptation was not necessary, I have reached the view that the decision of the Court was unconstitutional. With the greatest respect, it is for the Government of the State, in the light of the new developments, to decide whether or not they could find it necessary, in the interest of education, to include also Greece and Turkey among the Commonwealth countries and the United Kingdom and, furthermore, to extend that right to those officers, in order that they could have a greater range of choice of countries for the education of their children, as well as a choice of schools of their liking.

For the reasons I have endeavoured to advance, I feel I am bound to overrule the decision in the *Loizides'* case. I would, therefore, allow the appeal and declare the decision of the Respondent as *null* and *void* and of no effect whatsoever.

VASSILIADES, P.: In the result, the recourse succeeds; and the appeal against the part of the trial Judge's decision concerning Applicant's second son, Charalambos, is allowed; therefore the whole of the *sub judice* administrative decision in *exhibit* 1, is declared *null* and *void* and of no effect. Applicant's request for education grant as per *exhibit* 5, in respect of his two sons, will now have to be reconsidered afresh by the Administration, in the light of the determination of this recourse. The Respondent to pay to the Applicant £40.– against his costs in the recourse (including the appeal).

Appeal allowed; order for costs as above.