1971
Mar. 31
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ANTONIS VRAHIMIS
v.
REPUBLIC
(MINISTER OF FINANCE)

[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, STAVRINIDES, L. LOIZOU, JJ.]

ANTONIS VRAHIMIS,

Appellant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF FINANCE,

Respondent.

(Revisional Jurisdiction Appeal No. 69).

Public Officers—Education grant—Payable to the public officers entitled and protected under Article 192.1 *of the Constitution, towards the expenses of educating their children in the "British Commonwealth" and "Eire" only, to the exclusion of any other country, as laid down in the Circulars of the Colonial Government of Cyprus of* 1955 *and* 1957, *Nos.* 1286 *and* 1374, *respectively* (infra)—*The case of* Constantinides *v.* The Republic (1969) 3 C.L.R. 523, followed.

Education grant—Terms and conditions of service under Article 192.1 *of the Constitution, safeguarding rights of public officers in the public service immediately before the coming into operation of the Constitution (viz. August* 16, 1960)—*Government scheme for education grants existing on August* 15, 1960, *continues to be applicable without any alteration or adaptation*—Constantinides *v.* The Republic (1969) 3 C.L.R. 523, *followed*—Articles 192.1 and 7(*b*) of the Constitution—Cf. Article 179.2 of the Constitution.

Terms and conditions of service—Article 192.1 *and* 7(*b*) *of the Constitution—Education grant—See* supra.

Constitutional law—Canons of interpretation of constitutional provisions—The spirit of the constitution cannot be considered generally, except in construing a particular provision (διάταξιν) *in the Constitution.*

Spirit of the Constitution—See immediately hereabove.

In this case the Supreme Court, following its decision in *Constantinides* v. *The Republic* (1969) 3 C.L.R. 523, held on appeal that the appellant public officer was not entitled to any grant for the education of his two children in U.S.A. and Lebanon, respectively, under the relevant Government scheme (*infra*).

The appellant is the applicant in the recourse whereby he was seeking a declaration that the decision of the Minister of Finance that the applicant is not entitled to an education grant, under the appropriate Government scheme, for the higher education abroad of two of his children, is *null* and *void*. The recourse was heard by a single Judge of this Court who, following the Court's decision in a similar case (*Constantinides* v. *The Republic* (1969) 3 C.L.R. 523) dismissed the recourse. It is against this decision of the single Judge that the appellant now appeals.

The appellant is a public servant with over 26 years of service. He has a daughter and a son who, having graduated local schools, went abroad for higher education. The daughter went to the *Ecole des Soeurs* in Beirut, Lebanon ; the son to Dartmouth College, Hanover, N.H., U.S.A. for civil engineering.

The scheme in question (*supra*) was introduced by the Colonial Government of Cyprus in December 1955, under Circular No. 1286 (dated December 6, 1955), which provided for the payment of financial grants to public servants " towards the expense of educating their children in the British Commonwealth outside Cyprus ". In 1957 the scheme was extended so as to include also Eire (see Circular No. 1374 dated the 23rd February, 1957).

On August 16, 1960 Cyprus attained independence and its Constitution came into operation. Article 192, paragraphs 1 and 7(*b*) of the Constitution provide :

" 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 ".

Article 179.2 of the Constitution reads as follows :

" 2. No law or decision of the House of Representatives or of any of the Communal Chambers 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 ".

The question whether the scheme for education grant (*supra*) was applicable after independence (August 16, 1960) in its original terms and limitations for education in the British Commonwealth and Eire only (*supra*), to the exclusion of all other countries, or it required adaptation to the conditions established in the new State under its Constitution, was considered by the former Supreme Constitutional Court in the case of *Loizides and Others and The Republic* (1961) 1 R.S.C.C. 107, where it was held that :

" 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 ' ".

The question was again raised in the case *Constantinides* v. *The Republic* (1969) 3 C.L.R. 523, where education grants were refused to a public officer for the education of his son in England, on the ground that after the adaptation of the scheme made in the *Loizides case* (*supra*), grants were only payable for education in Greece or Turkey. The Supreme Court in the *Constantinides case* (*supra*) held on appeal that the *Loizides case* (*supra*) was wrongly decided and took the view that no adaptation was required by the Constitution and that, therefore, grants under the scheme were only payable for education in the British Commonwealth (outside Cyprus) and Eire, as it was prior to independence.

In the present case the Supreme Court, following the *Constantinides case* (*supra*), dismissed the appeal, holding that the appellant public officer was rightly refused the grants for the education of his son and daughter in U.S.A. and Lebanon, respectively (*supra*).

It was argued by counsel for the appellant that it was not necessary for the education scheme to be repugnant to any express provision of the Constitution but that it would be

enough if it was contrary to the spirit of the Constitution ; and that the education scheme, as laid down in the two aforesaid circulars (*supra*), was repugnant to the spirit of the Constitution and that, in order to bring it into conformity with the provisions of the Constitution, it was necessary to adapt such scheme to cover studies in any part of the world.

Rejecting this submission made by counsel for the appellant and dismissing the appeal, the Court :—

Held, (VASSILIADES, P., dissenting) :

(1) The only issue before us is whether an adaptation is necessary under the provisions of the Constitution, and nothing else. Under Article 192.7(*b*) of the Constitution we are not given a blank cheque to legislate or to do what we think best in the circumstances. Matters of policy are within the province of the Executive and not of the Courts.

(2) The wording of Article 192.7(*b*) (*supra*), read in conjunction with Article 179.2 (*supra*) makes it abundantly clear that the question of the repugnancy to the spirit of the Constitution cannot be considered generally, except in construing a particular provision (διάταξιν) in the Constitution ; and it has not been shown that the said education scheme is in any way repugnant to, or inconsistent with, any provision in the Constitution so as to make any " adaptation necessary . . . . . under the provisions of this Constitution " (*supra*). (See in this connection the cases of the Greek Council of State Nos. 708/1930, 719/1930 and 376/1934 ; see also the American case *Jacobson* v. *Massachusetts*, 197 U.S.11 ; 49 Law. Ed. 643, at p. 648).

Appeal dismissed.

Cases referred to :

Loizides and Others and The Republic, 1 R.S.C.C. 107 ;

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

Constantinides v. *The Republic* (1969) 3 C.L.R. 523 ;

Zambakides v. *The Republic* (1970) 3 C.L.R. 191 ;

Jacobson v. *Massachusetts*, 197 U.S. 11; 49 Law. Ed. 643, at p. 648 ;

Decisions of the Greek Council of State Nos. : 708/1930, 719/1930, 376/1934, 1140/1967 and 2521/1968.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Hadjianastassiou, J.) given on the 30th

December, 1969 (Revisional Jurisdiction Case No. 206/68) dismissing appellant's recourse against the refusal of the respondent to pay to him education grants in respect of his children.

M. Christofides, for the appellant.

L. Loucaides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgments were read :—

VASSILIADES, P. : The appellant is the applicant in recourse No. 206/68 (filed on June 7, 1968) for a declaration that the decision of the Minister of Finance (respondent in the proceedings) that the applicant is not entitled to an education grant, under the appropriate Government scheme, for the higher education abroad of two of his children, is *null* and *void*. The recourse was heard under section 11 (2) of the Administration of Justice (Miscellaneous Provisions) Law, No. 33 of 1964, by a single Judge of this Court who, following the Court's decision in a similar case (*Constantinides* v. *The Republic* (1969) 3 C.L.R. 523) dismissed* the recourse.

The appellant is a public servant with over 26 years of service. His rank is described in the relevant official correspondence as that of a Messenger Grade I. He has a daughter and a son who having graduated local schools, went abroad for higher education. The daughter went to the Ecole des Soeurs in Beirut, Lebanon ; the son to Dartmouth College, Hanover, N.H., U.S.A., for civil engineering under a Fullbright part scholarship.

The applicant considering himself entitled to education grants for the education of his children, under the Government scheme introduced in 1955, applied in March 1968, for the benefits provided in the scheme. His application was rejected on the ground that his case was not covered by the scheme, hence his recourse against the validity of that decision.

The scheme in question was introduced by the Colonial Government of Cyprus in December 1955, under circular No. 1286, which provided for the payment of financial grants to public servants " towards the expense of educating their children in the British Commonwealth outside Cyprus ". In 1957 the scheme was extended so as to include

* Vide (1969) 3 C.L.R. 587.

also Eire. Considering the conditions prevailing in the island in December, 1955, one can well appreciate the reasons for which the Colonial Government of that time favoured and encouraged the education of Cypriot youth in the British Commonwealth, to the exclusion of other countries, Greece one of them.

When Cyprus attained independence under the Zurich and London Agreements, provision was made by the British Government, safeguarding the position of the civil servants who would be passing to the public service of the new State. And the Constitution, under which the Republic of Cyprus was established on August 16, 1960, contained provisions to that effect. Article 192.1 provides that—

> " 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."

Paragraph 7 (*b*) of the same Article provides that—

> " 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."

Education grants under the scheme in question were held to be included in the benefits protected by Article 192 as " terms and conditions " of service regarding the civil servants who elected to continue in the public service after independence. (*Loizides and Others and The Republic* (1961) 1 R.S.C.C. 107). The applicant in the recourse before us, is admittedly one of such officers having joined the public service on December 4, 1944 ; and having continued in the service ever since.

The question whether the scheme for education grants (referred to above) was applicable after independence in its original terms and limitations for education in the British Commonwealth and Eire only, to the exclusion of all other countries, or it required adaptation to the conditions established in the new State under its Constitution,

was considered by the Supreme Constitutional Court of the Republic in the *Loizides case* (*supra*). For the reasons stated in their judgment, the Court came to the conclusion that the scheme required adaptation to the new conditions (which were undoubtedly very different to those existing in 1955 and prior to independence) and held that :—

> " 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 '."

The matter came up again before this Court about three years later in *Boyiatzis* v. *The Republic*, 1964 C.L.R. 367, when the Executive Authority concerned refused to pay education grants under the scheme to a public servant (a Bailiff) for the education of his son in the University of Athens, on the ground that " remuneration .. .. or other like benefits " in Article 192.7 of the Constitution did not include education grants under the scheme, which the Government of the Republic had, in the meantime, decided to discontinue.

> " The main question which was argued before us—the Court's judgment reads at page 371—was whether the case of *Loizides and Others* and *The Republic* (1961) 1 R.S.C.C. 107, was correctly decided. If it was, then undoubtedly the applicant would be entitled to receive education grants at the rate of £100 per annum from the school year 1960/1961 onwards in respect of his son."

After dealing with the points taken by counsel for the Republic in his submission that the applicant was not entitled to education grants, the Court reached the conclusion that the public officer's claim was well founded. At page 375 the judgment reads :—

> " For these reasons we agree with the decision in the *Loizides case* (*supra*) 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 can be applied modified to include countries other than Greece and Turkey is left open as it does not arise in the present case."

Some five years later the question was again raised in *Constantinides* v. *The Republic* (1969) 3 C.L.R. 523, where education grants were refused to a public officer for the

education of his son in England, on the ground that after the adaptation of the scheme made in the *Loizides case* (*supra*), grants were only payable for education in Greece or Turkey.

The matter was now mainly argued on the question whether the adaptation of the scheme, made in the *Loizides* case (*supra*), was necessary under the Constitution ? The Court answered the question by a majority decision. Four members of the Court took the view that no adaptation was required by the Constitution and that grants under the scheme were only payable for education in the British Commonwealth and Eire, as it was done prior to independence. The reasons for that decision appear fully in the considered judgment of Mr. Justice Josephides with which Stavrinides and L. Loizou, JJ., agreed. Hadjianastassiou, J., reached the same result for the reasons stated in his separate judgment.

With all respect to the reasoning which led my brother Judges to that decision, I had the misfortune of finding myself in disagreement. The reasons which led me to a different conclusion appear in the *Constantinides* case (*supra*) and I do not propose repeating them. It is sufficient, I think, to state here that I still think that the conditions which caused the limitation of an education scheme for public officers, to education in the British Commonwealth in 1955, changed fundamentally and radically after independence under the Constitution.

I take the view that public officers entitled to benefits under the terms and conditions of their service, for the education of their children abroad—benefits preserved by special provisions in the Constitution—are entitled to claim such benefits from their Constitutional Government, free from limitations which found their way in the education scheme for reasons and circumstances which the Constitution came to eradicate. They are, I think, entitled to claim adaptation of the scheme to the conditions created by the Constitution. The Constitutional Court took that view in the *Loizides* case (*supra*). I respectfully adopted that same view in the *Constantinides* case (*supra*) ; and I still hold it. But I continue to think that the adaptation made in the *Loizides case*, limiting education grants to education in Greece and Turkey only, effected a limitation which was not required by the Constitution.

> " 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—I said in the *Constantinides case* at pp. 536-537—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 find myself still on the same ground. And I believe that the Government of the Republic have now the material before them for the application of the scheme under present conditions. It seems to me that a policy decision would regulate the matter satisfactorily by giving effect and substance to an education scheme intended to assist financially public servants in need of such assistance, for the education of their children. The result of this appeal, reached by majority is that stated in the judgment of Mr. Justice Josephides, which I had the advantage of reading in advance.

TRIANTAFYLLIDES, J. : I need not deal myself, too, with the facts of this case.

Subject to what I have already said in *Zambakides* v. *The Republic* (1970) 3 C.L.R. 191, it is clear that the legal position in this case is governed by the majority view in *Constantinides* v. *The Republic* (1969) 3 C.L.R. 523, and as a result the appellant is not entitled to the education grants claimed by him and his appeal fails and has to be dismissed.

On the basis of the said view I am of the opinion that the administrative action complained of by the appellant is not unconstitutional; it is not contrary either to the letter or the spirit of the Constitution.

In what circumstances legislation or an act or decision may or may not be found to be contrary to the spirit of the Constitution is a matter which I leave open in this case because such matter does not have to be dealt with for the purposes of the present case and, moreover, it has not been argued fully in these proceedings ; however useful guidance in this respect may be obtained from decisions 1140/1967 and 2521/1968 of the Greek Council of State.

JOSEPHIDES, J. : This appeal raises once more the construction of Article 192. 1 and 7 (*b*) of the Constitution. The material part which we have to construe in *Article* 192.7 (*b*) reads as follows :

«οἱ ὅροι ὑπηρεσίας περιλαμβάνουσιν ἐπιφερομένων τῶν ἀναγκαίων προσαρμογῶν συμφώνως ταῖς διατάξεσι τοῦ Συντάγματος, τὰ ἀφορῶντα εἰς τὴν ἀντιμισθίαν, ἄδειαν, παῦσιν ἢ ἀποχώρησιν, σύνταξιν, πρόσθετα χορηγήματα ἢ ἄλλα παρόμοια ἐπιδόματα».

The English text of the Constitution reads 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).

As it is well known by now, 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 the Independent Republic of Ireland (" Eire "), as laid down in circulars No. 1286, dated the 6th December, 1955, and No. 1374, dated the 23rd February, 1957.

In February, 1961, the Council of Ministers discontinued these grants and a recourse was made to the Supreme Constitutional Court (*Loizides & Others* and *The Republic* (1961) 1 R.S.C.C. 107), in which it was, *inter alia*, held that, 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 ". There followed the case of *Boyatzis* v. *The Republic*, 1964 C.L.R. 367 ; and, eventually, the question whether the adaptations made by the Supreme Constitutional Court in the *Loizides' case* to the scheme for education grants, were correctly made or not, was raised before this Court in the case of *Constantinides* v. *The Republic* (1969) 3 C.L.R. 523. After hearing full argument on appeal, this Court held by majority that the adaptations made in the *Loizides'* case were not " necessary " under the provisions of the Constitution ; and that an education grant was 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 abovementioned circulars.

Reverting now to the facts of the present case. The appellant is challenging the refusal of the respondent to pay him education grants in respect of—

(i) a daughter who studied for two academic years (October, 1965 to June, 1967) at Beirut, Lebanon, and in France during the academic year beginning October, 1967 ; and

(ii) a son who studied during the academic year 1967–68 civil engineering, in Dartmouth College, Hannover, N.H., United States of America, as a Fullbright part-scholar. The appellant father was required to contribute £200 per annum.

The appellant is a Messenger, 1st Grade, who was first appointed in the Public Service of the Colony of Cyprus on the 4th December, 1944. He applied for such education grants in March 1968, and the respondent sent a reply dated the 28th March, 1968, stating that the appellant was not eligible for education grants under the education scheme in force. The latter thereupon challenged the respondent's decision by a recourse to this Court which was heard and determined at first instance by a single Judge of the Court who, relying on the *Constantinides'* case (*supra*), dismissed it. The present appeal was lodged by appellant's counsel two months after the decision in the *Constantinides'* case.

Counsel for the appellant in the present appeal advanced the same argument as that advanced in the *Loizides'* and the *Constantinides'* cases (which I need not repeat here), with particular emphasis on the argument that it was not necessary for the education scheme to be repugnant to any express provision of the Constitution but that it would be enough if it was contrary to the spirit of the Constitution ; and that the education scheme, as laid down in the two circulars in question, was repugnant to the spirit of the Constitution and that, in order to bring it into conformity with the provisions of the Constitution, it was necessary to adapt such scheme to cover studies in any part of the world.

The only issue before us is whether an adaptation is necessary under the provisions of the Constitution, and nothing else. Under the provisions of Article 192.7 (*b*) we are not given a blank cheque to legislate or to do what we think best in the circumstances. Matters of policy are within the province of the Executive and not of the Courts. It is not for the Courts to decide on the wisdom of policy but to pronounce on the constitutionality of statutes and administrative or executive acts or decisions.

We are not here concerned with any education scheme introduced by the Government of the Republic today, but with the safeguarding of the rights of public officers who were in the Public Service immediately prior to Independence. This is an old scheme introduced in 1955 and 1957 which is safeguarded under the provisions of Article 192 in respect of public officers who were in the Service prior to Independence. What we have to consider is whether its terms are repugnant to any particular provision in the Constitution. The appellant submits that it is repugnant to the spirit of Articles 3, 4, 5, 108 and 170 of the Constitution. A mere reading of these Articles will show beyond doubt that they are altogether inapplicable and that the safeguarding of the right to education grant, as laid down in the said circulars and enjoyed by public officers in the Service prior to 1960, is not in any way repugnant to, or inconsistent with, any of the above Articles of the Constitution. This being so, no adaptation is necessary under the provisions of the Constitution.

In the *Constantinides'* case, at pp. 544–545, in construing Article 192.7 (*b*) I said :

> " In doing so, it is, I think, helpful to refer to other Articles of the Constitution to see whether the adapta-

tions made by the Court in the *Loizides* cases 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."

I am sorry to say that I have been unable to find any substance in the argument advanced on behalf of the appellant in the present appeal. Consequently, I still hold the views I expressed in the *Constantinides*' case which should be considered as embodied in the present judgment.

Concerning the appellant's argument regarding the alleged repugnancy of the provisions of the education scheme to the spirit of the Constitution, and not to any particular provision thereof, I might perhaps quote the following extract from the American case of *Jacobson* v. *Massachusetts*, 197 U.S. 11 ; 49 Law. Ed. 643, at page 648 :—

> " We also pass without discussion the suggestion that the above section of the statute is opposed to the spirit of the Constitution. Undoubtedly, as observed by Chief Justice Marshall, speaking for the Court in *Sturges* v. *Crowinshield*, 4 Wheat. 122, 202, 4 L. ed. 529, 550, ' the spirit of an instrument, especially of a constitution, is to be respected not less than its letter ; yet the spirit is to be collected chiefly from its words '. We have no need in this case to go beyond the plain, obvious meaning of the words in those provisions of the Constitution which, it is contended, must control our decision."

To sum up, I am of the view that the wording of Article 192.7 (*b*), read in conjunction with Article 179.2, makes it abundantly clear that the question of the repugnancy to the spirit of the Constitution cannot be considered generally, except in construing a particular provision (διάταξιν) in the Constitution ; and it has not been shown that the education scheme is in any way repugnant to, or inconsistent with, any provision in the Constitution so as to make any " adaptation " " necessary ..... under the provisions of this Constitution ". In this connection compare also the cases of the Greek Council of State Nos. 708/1930, 719/1930 and 376/1934.

In these circumstances, I would dismiss the appeal, and I think that I ought to add that it is with considerable difficulty that I have decided not to make an order for costs against the appellant, viewing that the same point had been decided only two months prior to the lodging of the present appeal ; but let this serve as a warning to other litigants in the future.

STAVRINIDES, J. : On December 9, 1969, a five-member bench of this Court held in *Constantinides* v. *The Republic* (1969) 3 C.L.R. 523 that the scheme for the grant of education allowance to public officers towards the expense of educating their children in the Commonwealth and Eire, which was in force on August 15, 1960, continues to apply for the benefit of officers who on that date held " a post or office in the public service of the Republic " without any alteration

regarding countries studies in which qualify for the grant. The appellant's claim, relating, as it does, to studies in the Lebanon and the United States of America, was dismissed on the basis of that decision. Yet, exactly two months after the latter decision, the appellant filed a notice of appeal which is nothing less than an attempt to get us to go back on that decision.

I would dismiss the appeal without more and in the circumstances I would order the costs to be borne by the advocate concerned.

L. LOIZOU, J. : I also agree that the appeal should be dismissed.

Article 192.1 of the Constitution safeguards the terms and conditions of service applicable to those public officers who were in the service immediately before the coming into operation of the Constitution. The words " terms and conditions of service " as defined at para. 7 (*b*) of the same Article mean " subject to the necessary adaptations under the provisions of this Constitution, remuneration, leave, removal from service, retirement pensions, gratuities or other like benefits ".

There is no question that the payment of education grant, as laid down in circulars 1286 of the 6th December, 1955, and 1374 of the 23rd February, 1957, is one of the benefits safeguarded by Article 192 ; and the short point in this appeal is whether it is necessary to adapt this scheme for the payment of education grant in order to bring it into conformity with the provisions of the Constitution.

In the light of the provisions of Article 179.2 adaptation is only necessary where such " terms and conditions " are repugnant to, or inconsistent with, any of the provisions of the Constitution.

For the reasons stated in the majority judgment in *Constantinides* v. *The Republic* (1969) 3 C.L.R. 523 I hold the view that the payment of education grant as laid down in the above circulars is not repugnant to, or inconsistent with, any of the provisions of the Constitution, and, therefore, no adaptation is necessary. It follows that education grant is payable to those officers in the Public Service whose terms and conditions of service are safeguarded by Article 192 of the Constitution in accordance with the scheme in force at the time of the coming into operation of the Constitution *i.e.* for the purpose of educating their children in the British Commonwealth and Eire.

The appellant held an office in the Public Service immediately before the date of the coming into operation of the Constitution, the 16th August, 1960, and is, therefore, entitled to the same terms and conditions of service as were applicable to him before that date. His application for education grant was with regard to his two children one of whom, a daughter, studied in Lebanon and in France and the other, a son, in the United States of America. In neither case would he have been entitled to education grant under the education scheme in force at the relevant time. Quite clearly, therefore, his application for education grant was rightly refused and his recourse challenging such refusal was rightly dismissed.

Coming now to the question of costs and bearing in mind the circumstances of this case and especially the fact that this appeal was filed only two months after the judgment of this Court in the *Constantinides* case, I should for myself have been inclined to make an order for the payment of costs by the appellant ; but out of deference to the majority of my Brothers who have a different view I will not dissent from the proposal that there should be *no order as to costs.*

VASSILIADES, P. : In the result the appeal is dismissed with no order for costs.

Appeal dismissed. No order as to costs.