

1985 June 21

(L. LOIZOU, J.)

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

IOANNIS SIEKKERIS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF FOREIGN AFFAIRS AND  
THE MINISTER OF FINANCE,

*Respondents.*

(Case No. 22/81).

---

*Administrative Law—Administrative acts or decisions—Executory act—Confirmatory act—Rejection of application for educational grant for the school-year 1979/1980—Application repeated and rejected in respect of the school-year 1980/1981—Latter rejection a confirmatory decision of the decision of the previous school-year—And cannot be made the subject of a recourse—Paragraph 8 of the scheme for educational grant made under regulation 15 of the Foreign Service of the Republic (Special Provisions) Regulations 1968 to 1975 not meant to apply in case of a refusal thus making a negative decision for the following or any subsequent year executory.* 5  
10

On the 22nd October, 1979 the applicant applied to the respondents for the grant to him of educational allowance, under a scheme in force, with regard to the school-year 1979/1980 in respect of his son who was enrolled at the Junior school, Nicosia. His application was refused and applicant was informed accordingly by letter dated the 28th June, 1980. On the 3rd September, 1980, the applicant submitted a similar application with regard to the school-year 1980/1981; and on the 1st November, 1980 the respondents informed applicant that they saw no 15  
20

reason to change their decision of the 28th June, 1980.  
Hence this recourse.

5 Counsel for the respondents submitted that the recourse was out of time; and argued that the decision challenged was confirmatory of the decision of the 28th June, 1980 with regard to the school-year 1979/1980.

10 Counsel for the applicant, on the other hand, submitted that there were two separate and distinct decisions and that the second decision which was challenged by the recourse was a new executory act the same as the first and this in view of the provisions of para. 8\* of the scheme by virtue of which the applicant had to apply for the approval of the Minister in each year.

15 *Held*, that paragraph 8 of the scheme was meant to apply in case the initial application is approved and it was aimed to ensure that such approval will relate to only one year; that it was not meant to apply in case of a refusal thus making a negative decision for the following or any subsequent year executory; and that, therefore, the decision challenged by this recourse is confirmatory of the decision of the previous school-year; and that, accordingly, 20 it is not an executory act or decision which could be challenged by a recourse.

*Application dismissed.*

25 **Recourse.**

Recourse against the refusal of the respondents to grant applicant an educational allowance for his son.

*P. Ioannides* for *T. Papadopoulos*, for the applicant.

*M. Photiou*, for the respondents.

30

*Cur. adv. vult.*

L. LOIZOU J. read the following judgment. The applicant by this recourse challenges the decision of the res-

\* Paragraph 8 of the scheme provides as follows:

«8. The approval of the Minister of Foreign Affairs, which is necessary for each case, that is for every child and for each school year or part thereof, does not constitute a precedent and may be revised at any time».

pondents, the Ministers of Foreign Affairs and Finance, by which his application for educational allowance for his son was not approved.

At the relevant time the applicant was a Commerce and Industry Assistant, 2nd Grade, and on the 1st July, 1974, he was transferred to London where he served as a Commercial Attaché, 2nd Grade, with the Cyprus High Commission until the 21st July, 1979, when he was transferred back to the Ministry of Commerce and Industry. 5

His son was born on the 2nd May, 1971, and so when the applicant together with his family moved to London the child was just over three years old and when they returned to Cyprus just over eight years old. It is not in dispute that whilst the family were residing in London the child attended for the first two years a nursery school and for the other three years a junior school and that at both schools the teaching language was English. 10 15

When the family returned to Cyprus the applicant enrolled his son at the Junior School, Nicosia, as from the 1st September, 1979. On the 22nd October, 1979, he submitted an application to the Ministry of Foreign Affairs through the Director-General of the Ministry of Commerce and Industry for educational allowance under a scheme in force to which I shall refer presently. The application was considered and on the 28th June, 1980, the applicant was informed through the Director-General of his Ministry that the circumstances of his case were such that the Minister of Foreign Affairs was unable to approve his application. 20 25

By a letter dated 16th July, 1980, the applicant protested against the above decision, he maintained that he was entitled to educational allowance and requested that his application be re-examined. Finally, on the 9th September, 1980, he was informed that there was nothing to add to the previous letter to him rejecting his application. 30 35

All the above was with regard to the school-year 1979/1980.

On the 3rd September, 1980, the applicant submitted a similar application with regard to the school-year 1980/

1981. As it appears from the file of the Ministry of Foreign Affairs (exhibit 3), on the 15th October, 1980, the Director-General of the Ministry of Commerce and Industry wrote a letter to the Director-General of the Ministry of Foreign Affairs with copy to the Director-General of the Ministry of Finance informing him that the Ministry of Commerce and Industry found applicant's application justified and recommending the grant of the allowance. On the 1st November, 1980, the Director-General of the Ministry of Foreign Affairs informed the Director-General of the Ministry of Commerce and Industry that his Ministry saw no reason to change its decision communicated to the applicant by the letter of the 28th June, 1980, because such decision was taken after a careful study of the whole case both by the Ministry and by the Ministers of Foreign Affairs and Finance.

It is this second decision, with regard to the school-year 1980/1981, which is challenged by this recourse.

The scheme for educational grant to members of the Foreign Service now in force was made under regulation 15 of the Foreign Service of the Republic (Special Provisions) Regulations 1968 to 1975 and was approved by the Council of Ministers by its decision No. 14.271 (exhibit 2) on the 11th September, 1975. By paragraph (c) of the decision the Council decided that the scheme would apply also to officers who were not members of the Foreign Service but who were posted for service with diplomatic missions of the Republic abroad.

The scheme in question is exhibit 1 in these proceedings and the relevant, for the purposes of this recourse, paragraphs of the scheme are paragraphs 2, 3 and 8 which read as follows:

-2. Τηρουμένων τῶν διατάξεων τοῦ παρόντος σχεδίου, ἐκπαιδευτικόν ἐπίδομα πληρῶνεται εἰς ὑπάλληλον διὰ τέκνον αὐτοῦ τὸ ὁποῖον -

(1) ἐγγράφεται καὶ φοιτᾷ εἰς σχολὴν ἐγκρινομένην ὑπὸ τοῦ Ὑπουργοῦ Ἐξωτερικῶν, εἰς ἐκάστην περίπτωσηιν ἐκ τῶν προτέρων, καὶ

(2) κατὰ τὴν καθωρισμένην ἡμερομηνίαν ἐνάρξεως

τῶν τακτικῶν μαθημάτων τῆς σχολῆς εἶναι ἡλικίας πέραν τῶν πέντε ἀλλ' οὐχὶ πέραν τῶν δεκαεννέα ἐτῶν.

Νοεῖται ὅτι ἐὰν κατὰ τὴν ρηθεῖσαν ἡμερομηνίαν τὸ τέκνον τοῦ ὑπαλλήλου δὲν θὰ ἔχη συμπληρώσει ἡλικίαν πέντε ἐτῶν, ἀνάλογον ἐπίδομα πληρώνεται ἀπὸ τῆς ἐπομένης τῆς ὑπὸ τοῦ τέκνου συμπληρώσεως τοῦ πέμπτου ἔτους τῆς ἡλικίας αὐτοῦ. 5

3. Ὑπάλληλος ὑπηρετῶν ἐν Κύπρῳ δικαιούται ἐκπαιδευτικοῦ ἐπιδόματος διὰ τέκνον αὐτοῦ τὸ ὁποῖον ἐγγράφεται καὶ φοιτᾷ εἰς ἰδιωτικὴν σχολὴν ἐν Κύπρῳ, μόνον ἐὰν ἔχη μετατεθῆ ἐκ τοῦ ἐξωτερικοῦ καὶ 10

(1) κατὰ τὴν ἀμέσως πρὸ τῆς τοιαύτης μεταθέσεως τοῦ σχολικῆν περίοδον τὸ τέκνον αὐτοῦ ἐφοῖτα εἰς ἐγκριθεῖσαν ὑπὸ τοῦ Ὑπουργοῦ Ἐξωτερικῶν ἰδιωτικὴν σχολὴν ἐν Κύπρῳ ἢ εἰς δημοσίαν ἢ ἰδιωτικὴν σχολὴν ἐν τῷ ἐξωτερικῷ, καὶ 15

(2) ὁ Ὑπουργός Ἐξωτερικῶν ἰκανοποιηθῆ ὅτι τὸ τοιοῦτον τέκνον δὲν εἶναι εἰς θέσιν καί/ἢ δὲν δύνανται, λόγῳ τῆς ὡς εἰς τὴν παρ. 3(1) ἀνωτέρω προηγουμένης ἐκπαιδεύσεως ἢ γλώσσης διδασχῆς αὐτοῦ, νὰ ἐγγραφῆ καὶ φοιτήσῃ εἰς δημοσίαν σχολὴν ἐν Κύπρῳ. 20

8. Ἡ ἐγκρισις τοῦ Ὑπουργοῦ Ἐξωτερικῶν, ἥτις εἶναι ἀναγκαία δι' ἐκάστην περίπτωσιν ἥτοι δι' ἕκαστον τέκνον καὶ δι' ἕκαστον σχολικὸν ἔτος ἢ μέρος τούτου δὲν ἀποτελεῖ προηγούμενον, δύναται δὲ νὰ ἀναθεωρηθῆ καθ' οἷονδῆποτε χρόνον». 25

("2. Subject to the provisions of the present scheme, educational allowance is paid to an officer for a child of his who - 30

(1) is enrolled and attends a school approved by the Minister of Foreign Affairs in each particular case, in advance, and

(2) on the date fixed for the commencement of regular lessons of the school is of an age of over five but not over nineteen years. 35

Provided that if on the said date the child of the officer will not have attained the age of five, a proportionate allowance is paid from the date following the date on which the child attains the age of five.

5           3. An officer serving in Cyprus is entitled to an educational allowance for a child of his who is enrolled and attends a private school in Cyprus only if he is transferred from abroad, and

10           (1) during the school period immediately preceding such transfer his child was attending a private school in Cyprus, approved by the Minister of Foreign Affairs or a public or private school abroad, and

15           (2) the Minister of Foreign Affairs is satisfied that such child is not in a position and/or cannot, because of his previous education or the language of his tuition, as in para. 3(1) above, enrol and attend a public school in Cyprus.

20           8. The approval of the Minister of Foreign Affairs, which is necessary for each case, that is for every child and for each school year or part thereof, does not constitute a precedent and may be revised at any time”).

25           I have no doubt and, in fact, it was conceded, very rightly in my view, by learned counsel for the respondents that the scheme was applicable in the case of the applicant provided that its provisions were otherwise satisfied.

30           It was argued by learned counsel for the applicant that the decision challenged is illegal in that it was based on a misconception of Law in the sense that it was contrary to the scheme and also that the reasoning—which is the same reasoning on the basis of which the first application was rejected—is defective.

35           Learned counsel for the respondents, on the other hand, has, *inter alia*, submitted, in the course of the hearing, that the recourse is out of time. He also argued that there was no compliance with paras. 2 and 3 of the scheme in that the applicant enrolled his child in the Junior School

without obtaining the approval of the Minister in advance as provided by sub-para (1) of para. 2 and also without the Minister having an opportunity to be satisfied that the child was not in a position and/or could not as a result of the language problem be enrolled at a public school in Cyprus as provided by sub-para. (2) or paragraph 3. 5

I propose to deal with the issue of time limit first.

It was argued by learned counsel for the respondents that the decision challenged is confirmatory of the decision of the 28th June, 1980, with regard to the school-year 1979/1980 in that once the application was rejected that was an end to the matter as under para. 8 he could not apply again for the school-year 1980/1981 once his application for the previous year was refused; and, learned counsel further added, that the recourse would have been out of time even if it was taken that the final decision was that contained in the letter of the 9th September, 1980. 10 15

Counsel for the applicant, on the other hand, submitted that in the present case there were two separate and distinct decisions and that the second decision which is challenged by the recourse was a new executory act the same as the first and this in view of the provisions of para. 8 by virtue of which the applicant had to apply for the approval of the Minister in each year. 20

The answer to this preliminary issue then lies in the true meaning of para. 8 of the scheme. 25

Reading this paragraph in the context of the whole scheme I have no doubt that the meaning it conveys is that approval of an application for educational allowance in one year does not automatically mean approval for the next or any subsequent year and that an application has to be submitted by the officer claiming the allowance and approved by the Minister for each year in which educational allowance is claimed. In other words the paragraph is meant to apply in case the initial application is approved and it is aimed to ensure that such approval will relate to only one year. It is, in my view, equally clear that it was not meant to apply in case of a refusal thus making a negative decision for the following or any subsequent year execu- 30 35

5 tory. Apart from the clear meaning of the paragraph which does not admit of such a meaning, bearing in mind the criteria on the basis of which applications of this nature are considered such a construction would be unreasonable and would not make any sense.

10 In the light of the conclusion that I have reached I must hold that the decision challenged by this recourse is confirmatory of the decision of the previous school-year and that, therefore, it is not an executory act or decision which could be challenged by a recourse.

Although this disposes of the case I consider it, nevertheless, appropriate to deal, briefly, with the other points raised and argued by learned counsel.

15 It is clear from the notes, blues 7 and 10 in the file exhibit 3, on the basis of which the initial decision was taken, that the approach of the respondents in considering this case was not correct in view of the wrong construction that they have put on the provisions of the scheme and the decision of the Council of Ministers (exhibit 2). In the  
20 said notes doubts are expressed whether the scheme is applicable in the case of officers who are not members of the Foreign Service but are posted for service with diplomatic missions of the Republic abroad once they are transferred back to Cyprus and thus cease to be members of  
25 the diplomatic service. The view is also expressed that the object and intention of the drafters of the scheme and especially of paragraph 3 thereof must have been to cover officers who belong to the Foreign Service and are liable to transfer at any moment and not to officers in the position of the applicant who are very seldom transferred  
30 abroad again. In my view paragraph (c) of the decision of the Council of Ministers leaves no room for doubt that the scheme applies also to officers who are not members of the Foreign Service but are posted for service with diplomatic missions of the Republic abroad as the applicant  
35 was. On the other hand it is also clear that the applicant did not act in accordance with the provisions of paragraphs 2(1) and 3(2) of the scheme in that he enrolled his son at Junior School without obtaining first the approval of the  
40 Minister of Foreign Affairs and before the Minister could be satisfied that the child was not in a position, due to his



attendance at the schools in England, to attend a public school in Cyprus. But, having said this, I must add that it does not appear that the refusal to approve the initial application was in view of the non-compliance with the above paragraphs of the scheme. 5

In the result, in view of the conclusion that I have reached on the preliminary issue, this recourse has to be dismissed. There will be no order as to costs.

*Recourse dismissed.*

*No order as to costs.* 10