1985 July 19

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANTONIOS PAPAIOANNOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS,

Respondent.

(Case No. 382/71).

Legitimate interest—Article 146.2 of the Constitution—The applicant must establish that, at the material time, he was entitled to that which he claims to have lost as a result of the decision challenged.

Public Education Service—Competency of the Council of Ministers to classify a post in the Public Education Service—Article 54(d) of the Constitution—Section 2 of Law 10/1969.

Constitutional Law—"Terms and Conditions of Service" in Article 192 of the Constitution.

The applicant was the holder of the post of Educational Phychologist which was created by the Education Office (Organisation) Law 7/60 of the Greek Communal Chamber.

Law 7/60 was repealed by the Competence of the Greek Communal Chamber (Transfer of Exercise) and Ministry of Education Law 12/1965 and the applicant was transferred by virtue of s.16 of this Law to the service of the Republic and was posted by the Public Service Commission to the post of Educational Psychologist in the Ministry of Education as from 1.7.1966. Such service under the Republic is by virtue of the provisions of the said s. 16

under the same terms and conditions as were applicable to the officer immediately before the enactment of Law 12/65.

On the 28.6.71 the Council of Ministers approved, under s.2 of Law 10/1969, the classification of the post of Educational Psychologist in the Public Educational Service*.

Against this decision the applicant filed the present recourse, complaining that the respondents wrongly interpreted and/or applied the Law, that they had no competence in the matter and that his rights relating to his status in the service were adversely affected.

In the course of the hearing counsel for the respondents raised the issue of applicant's legitimate interest to pursue the present recourse.

The only ground put forward by counsel for the applicant to show why and how the sub judice decision had adversely affected an existing legitimate interest of the applicant was that as a member of the Public Service he was entitled to a hut at Troodos in the summer, but not as a member of the Educational Service.

Held, dismissing the recourse -

(A) *As to the issue of Legitimate Interest* (1) In order to arrive at the conclusion that an existing legitimate interest of the applicant was adversely affected, the applicant must first establish that, at the material time, he was entitled to that which he claims to have lost as a result of the sub judice decision. If, indeed, the scheme relating to the huts at Troodos covers only officers in the Public Service as distinct from officers in the Educational Service, it is difficult to see how the sub judice decision would affect the applicant, who before the enactment of Law 12/1965 was in the service of the Greek Communal Chamber and by virtue of s. 16 of the said Law his service after his transfer to the service of the Republic was subject to the same terms and conditions that were applicable to him before the enactment of Law 12/1965.

(2) Be that as it may, nothing has been said in the pre-

* The relevant part of this section is quoted at p. 1556.

sent case as to the conditions that an officer must fulfil in order to qualify under the scheme relating to huts at Troodos. The Court is not in a position to know whether the applicant fulfilled such conditions or whether, if he did, he would be entitled to the lease of a hut as of right. This is not a matter that falls within "the terms and conditions of service" safeguarded by Article 192 of the Constitution, but only a concession and apart from that there is nothing on record to show that the scheme was in existence and the applicant held an office in the Public Service at the material time, i.e. when the Constitution came into operation. Even on the assumption that all conditions for the application of Article 192 were fulfilled, the most that can be said is that the applicant had an expectation to rent a hut and this only for so long as the scheme remained in force and so long as it applied to him; such an expectation does not establish an existing legitimate interest in the sense of Article 146.2 of the Constitution.

(3) Article 192 of the Constitution safeguards for those officers to whom it applies the "terms and conditions of service" as defined therein and it does not provide against re-organization of the service or of any particular department.

(B) *As to the issue of respondents' competence:*

(1) Sections 22 and 23 of the Public Service Law 33/1967 and sections 19 and 20 of the Public Educational Law 1960 cited in support of the proposition that the respondents had no competence in the matter are irrelevant to the issue as they relate to the creation of new posts and not to the classification of an already existing post.

(2) The provisions defining "Public Educational Service" in s. 2 of Law 10/1969 give power to the respondents to take a post of the Public Service and classify it in the Public Educational Service.

(3) In any event the respondents had competence to take the sub judice decision under the general powers vested in them under Article 54(d) of the Constitution.

Recourse dismissed.
No order as to costs.

Cases referred to:

Piperis v. *The Republic* (1967) 3 C.L.R. 295;

Economides v. *The Republic* (1972) 3 C.L.R. 506;

Cother v. *Midland Railway Co.* (1948) 2 Phill. 469, reported in the English Reports, vol. XLI, Ch. p. 1025.

Recourse.

Recourse against the decision of the respondent to classify the post of Educational Psychologist in the Public Educational Service.

M. Christofides, for the applicant.

S. Georghiades, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

L. LOIZOU J. read the following judgment. By this recourse the applicant challenges the validity of the decision of the Council of Ministers to classify the post of Educational Psychologist in the Public Educational Service.

The applicant was the holder of the post of Educational Psychologist which was created by the Education Office (Organization) Law, 1960 (Law 7 of 1960) of the Greek Communal Chamber.

Law 7/60 was repealed by the Competence of the Greek Communal Chamber (Transfer of Exercise) and Ministry of Education Law, 1965 (Law 12 of 1965) and the applicant was transferred by virtue of s. 16 of this Law to the service of the Republic and was posted by the Public Service Commission to the post of Educational Psychologist in the Ministry of Education as from the 1st July, 1965.

Such service under the Republic is by virtue of the provisions of the said s. 16 under the same terms and conditions as were applicable to the officer immediately before the enactment of Law 12/65.

On the 18th March, 1969, the Ministry of Education made a submission to the Council of Ministers by means of

which it requested the classification, amongst other posts, of the post of Educational Psychologist in the Public Educational Service as the duties and responsibilities of such posts were mainly related to work in schools or the education in general and the holders of such posts were serving under the supervision and the control or directions of the Director of Education or the Heads of Departments of the Directorate of Education.

On the 28th March, 1969, the Minister of Education sought the advice of the Attorney-General of the Republic as to whether there was any objection to the classification of the above posts in the public Educational Service under the provisions of s. 2 of the Public Educational Service Law, 1969, and whether such classification was indicated. The Attorney-General replied by letter dated the 31st March, 1969, that the post of Educational Psychologist was such that it could be defined by the Council of Ministers as included in the Public Educational Service, but that as the matter was sub judice in view of the filing by the applicant of recourse No. 48/69 it would not be correct for the Council of Ministers to take any action.

The said recourse was eventually withdrawn and the Ministry of Education made a new submission to the Council of Ministers on the 19th June, 1969.

On the 28th June, 1971, the Council of Ministers by its decision No. 10.568 approved, under s. 2 of Law 10/69, the classification of the post of Educational Psychologist in the Public Educational Service.

Against this decision the applicant filed the present recourse.

The grounds of Law upon which the application is based are that the respondents wrongly interpreted and/or applied the Law and that they had no competence to take the sub judice decision; and that by the said decision rights of the applicant relating to his status in the service were adversely affected. A third ground of Law to the effect that the decision was not duly reasoned was abandoned.

By the Opposition it was contended by the respondents that the decision was lawfully taken; that no right of the

applicant relating to his status in the service was affected; and that, in any case, any effect on his rights does not constitute a ground for annulment unless such rights are safeguarded by constitutional or legal provision.

In the course of the hearing of the recourse learned counsel for the respondents raised the preliminary objection that the applicant had no legitimate interest to pursue this recourse.

I propose to deal with this issue first.

In his short address all that learned counsel for the applicant had to say with regard to this issue was that the reason only that the applicant had been the holder of the post of Educational Psychologist gives him a legitimate interest. But the only ground he put forward to show why and how the sub judice decision had adversely affected any existing legitimate interest of the applicant was that as a member of the Public Service he was entitled to a hut at Troodos in the summer but not as a member of the Educational Service.

But in order to arrive at the conclusion that an existing legitimate interest of the applicant was adversely affected he must first establish that, at the material time, he was entitled to that which he claims to have lost as a result of the decision challenged. And if, indeed, the scheme covers only officers in the Public Service as distinct from officers in the Educational Service, as alleged by learned counsel, it is difficult to see how it would affect the applicant who before the enactment of Law 12 of 1965 was in the service of the Communal Chamber and in view of the express provisions of s. 16 to the effect that his service after his transfer to the service of the Republic was subject to the same terms and conditions that were applicable to him before the enactment of Law 12/65.

But, be that as it may, in the present case although it may be open to this Court to take judicial notice of the fact that there is a scheme in existence whereby certain public officers are allowed to occupy government huts at Troodos for a short period of time and upon payment of rent during the summer months, nothing has been said as

to the conditions that the officer must fulfil in order to qualify under the scheme. Nor is the Court in a position to know that the applicant fulfilled such conditions or that even if he did he would be entitled to the lease of the hut as of right. Certainly this is not a matter that falls within the "terms and conditions of service" safeguarded by Article 192 of the Constitution but only a concession and apart from this there is nothing on record even to show that the scheme was in existence on the date the Constitution came into operation or that the applicant held an office in the Public Service at the material time which would entitle him to the same terms and conditions of service as were applicable to him before that date.

And even on the assumption that he did and also assuming that the scheme was then in force and he fulfilled its conditions the most that can be said is that he had a mere expectation to rent a hut and this only so long as the scheme remained in force and so long as it applied to him which, in my view, does not establish an existing legitimate interest in the sense of Article 146.2.

With regard to Article 192 it may be added that what it safeguards for those officers to whom it applies is the "terms and conditions of service" as defined therein and as it has been held in a number of cases it does not provide against re-organization of the service or of any particular department. (See, in this respect, *Piperis* v. *The Republic* (1967) 3 C.L.R., 295 at 299; *Economides* v. *The Republic* (1972) 3 C.L.R., 506 at 520; and Conclusions from the Case Law of the Greek Council of State 1929-1959 at p. 313.)

This being the position and since it is not alleged that the applicant was otherwise affected by the sub judice decision I must hold that he has failed to establish an existing legitimate interest to pursue this recourse which must, therefore, fail on this ground.

But, I propose, nevertheless, to deal briefly with the other point raised by learned counsel for the applicant.

He contended that the respondents had no competence to take the decision complained of as the creation of a post

should have been made by law and not by a decision of the Council of Ministers and he cited sections 22 and 23 of the Public Service Law, 1967 and sections 19 and 20 of the Public Educational Service Law, 1960 in support of this proposition. But the above sections are, in my view, quite irrelevant to the issue in the present case because they relate to the creation of new posts and we are not here concerned with the creation of a new post but with the classification of an already existing post.

It was further submitted that, in any case, there is no law by virtue of which the Council of Ministers could take a post out of the public service and classify it in the Public Educational Service and that the definition of "Public Educational Service" in s. 2 of Law 10/69 does not give them such power.

The definition in question reads as follows:

> " 'public educational service' means the service which includes the posts of inspectors, school-masters and teachers as well as any other post which the Council of Ministers may define and 'educational service' will be interpreted accordingly."

In *Cother* v. *Midland Railway Co.* (1848) 2 Phill. 469 (reported in the English Reports vol. XLI Ch. p. 1025) the word "railway" was interpreted by section 3 of the Railways Clauses Consolidation Act 1845 to mean "the railway and works by the special Act authorized to be constructed" and it was held by the Lord Chancellor, Lord Cottenham, that, by virtue of this interpretation clause, the company had power to take land compulsorily for the purpose of building a railway station.

But, quite independently of the above, I am inclined to the view that the Council of Ministers had competence to take the decision complained of also under the general powers vested in them by the provisions of Article 54(d) of the Constitution.

In the light of the above this recourse was bound to fail on its merits also.

In the result the recourse is dismissed. There will be no order as to costs.

5 *Recourse dismissed.*
No order as to costs.