

1985 October 23

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

MARINA CHRISTOFOROU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE COUNCIL OF MINISTERS,
2. THE MINISTRY OF EDUCATION,
3. THE DIRECTOR OF HIGHER AND
HIGHEST EDUCATION,

Respondents.

(Case No. 534/84).

Constitutional Law—Constitution, Art. 28—Sex discrimination
—The interested party, a male, was admitted to PAC, not-
withstanding that he obtained at the entrance examinations
lower marks than the applicant, a female, on the basis of
a decision of the Council of Ministers to accept 25 male 5
and 25 female students in the teachers section of PAC—
Sub judice decision violates the constitutional provisions
against sex discrimination.

The applicant by this recourse challenges (A) The enrolment in the Paedagogical Academy of Cyprus (PAC) of a male candidate, namely Christakis Georghiou, to the exclusion of her who had higher grades and (B) The enrolment to PAC of the same nine interested parties as in *Demetriou and Others v. The Republic* in which judgment has already been delivered* as belonging to certain special categories, instead of herself. 15

The decision challenged by prayer A above is decision

* See (1985) 3 C.L.R. 1853.

24.659 of the Council of Ministers whereby the number of students to be enrolled in PAC for the academic year 1984 - 85 was fixed to 50 students in the teachers' section (25 male and 25 female students) and 30 students in the Kindergarten's section.

The decision challenged by prayer B above is decision 24.929 of the Council of Ministers to accept nine supernumerary students in PAC as belonging to the following special categories, i.e. Persons suffering from thalassaemia, children of missing persons and children of enclaved parents. The applicant did not belong to any of these categories. The Court found that interested parties Messaritou and Nassari did not belong to such special categories.

Held, (A) As regards prayer A: Prayer A succeeds as the enrolment of Christakis Georghiou, who had obtained lower marks than the applicant at the relevant entrance examination to PAC, violates the Constitutional provisions against sex discrimination (*Christoforou and Others v. The Republic** (1985) 3 C.L.R. 272 affirmed on Appeal followed). As, however, the admission to PAC of Ch. Georghiou has already been annulled in that case, the annulment in that case is treated as applying to the present case as well to the extent of interested party Georghiou.

(B) As regards prayer B: (1) As the applicant failed to substantiate her allegations that she had been enclaved for a time and that she has brothers who are missing, her case is not in any way different from that of the applicants *Demetriou and Others v. The Republic* (supra). For the same reasons as those stated in *Demetriou and others* the applicant does not possess a legitimate interest against the interested parties except interested parties Messaritou and Nassari. The recourse succeeds as against these two interested parties on the same grounds as those stated in *Demetriou* case.

Recourse succeeds in part.

Cases referred to:

Christoforou and Others v. The Republic (1985) 3 C.L.R. 272 affirmed on appeal; this decision has not yet been reported.

Demetriou and Others v. The Republic (1985) 3 C.L.R.
1853.

Recourse.

Recourse against the decision of the respondents to select and/or admit for enrolment in the Paedagogical Academy of Cyprus the interested parties in preference and instead of the applicant. 5

A. S. Angelides, for the applicant.

A. Evangelou, Senior Counsel of the Republic, for the respondents. 10

E. Efsthathiou, for interested parties 1 - 4.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant in this case challenges:

A. The decision of respondents No. 1 and No. 2, published on 11.8.1984, by which they selected for enrolment in the Paedagogical Academy of Cyprus, a male candidate, namely, Christakis Georghiou, to the exclusion of her, who had higher grades; and 15

B. The decision of the respondents to admit for enrolment in the Paedagogical Academy of Cyprus (PAC) the same nine interested parties as in Cases Nos 512/84 and 535/84, in which judgment has already been delivered, as belonging to certain special categories, instead of herself. 20

This case was originally heard together with cases 512/84 and 535/84 as presenting common questions of law and fact, but in the course of considering them it transpired that additional issues were raised in the present case for which certain clarifications had to be made as to whether interested party Christakis Georghiou was appearing in this recourse through an advocate or whether his case was handled as in the case of all other interested parties by counsel appearing for the respondents. 25 30

The decision which is challenged by the first prayer in this recourse is decision No. 24.659 of the Council of Ministers taken on 14.6.1984, whereby the Council of 35

Ministers fixed the number of students to be enrolled in the Paedagogical Academy of Cyprus (PAC) for the academic year 1984 - 1985, to 50 students in the teachers' section (fixing the percentage of admission as 25 male and 25 female students) and to 30 in the kindergarten's section.

The decision challenged in the second prayer is decision No. 24.929 of the Council of Ministers taken on 6.9.1984 to accept nine supernumerary students, as belonging to the following special categories:

- (1) Persons suffering from thalassaemia;
- (2) Children of missing persons, and
- (3) Children of enclaved parents.

As to the way such supernumerary students, the interested parties, under prayer (B) of this recourse, were selected by the Council of Ministers, particulars appear in my judgment in Cases 512/84 and 535/84, (*Demetriou and others v. The Republic*)* and, therefore, I need not repeat them once again.

The applicant as well as all interested parties, in July, 1984, took part in the prescribed entrance examinations for enrolment as students in the PAC. Neither the applicant, nor any of the interested parties with the exception of interested party Christakis Georghiou succeeded to be enrolled in the PAC on the basis of decision No. 24.659 of the Council of Ministers fixing the number of male and female students to be admitted in the order of success in respect of each sex separately.

After the process of selection of students eligible for enrolment on the basis of the examination results was completed the decision of the Council of Ministers No. 24.929 was taken, authorising the admission of the nine interested parties whose admission is challenged by prayer (B) as belonging to the special categories referred to hereinabove.

The grounds of law advanced by counsel for applicant in support of her prayer in this recourse, are that the sub

* Reported in (1985) 3 C.L.R. 1853.

judice decisions violate Articles 20, 6 and 28 of the Constitution, they were taken in abuse and/or excess of power, they violate the principles of equal treatment and good administration and that they are illegal and violate vested rights of the applicant. 5

With regard to interested party Christakis Georghiou, counsel for applicant contended that he should not have been admitted in preference to the applicant who scored higher marks in the entrance examinations than the said interested party. As emanating from the addresses, the applicant had scored 98.204 as against 97.769 of the interested party. 10

The respondents raised a preliminary objection that the applicant does not possess a legitimate interest to pursue this recourse, as she does not belong to the special categories mentioned in the decision of the Council of Ministers especially in view of the fact that she cannot benefit from the annulment of the sub judice decision. 15

Interested party Christakis Georghiou was amongst the 15 interested parties in Cases 440/84, etc. whose admission was challenged on the ground that it was made on the basis of a decision fixing percentages for male and female students to be enrolled and not on the basis of the order of success in the entrance examinations which resulted to the acceptance of male students who were lower in the order of success compared to the applicants, which amounted to a sex discrimination contrary to the provisions of the Constitution (see *Alexia Christoforou and Others v. The Republic* (1985) 3 C.L.R. 272). 20 25

By my decision in the above case, the result of which was affirmed on appeal (the decision on appeal has not yet been reported), the decision No. 24.659 of the Council of Ministers on the basis of which the said 15 interested parties including Christakis Georghiou were admitted, was annulled as violating the provisions of the Constitution against sex discrimination. As already mentioned, the applicant scored higher marks at the entrance examinations than interested party Christakis Georghiou. 30 35

The grounds for which the admission of the interested

parties including Christakis Georghiou was annulled in the case of *Christoforou v. The Republic* (supra) apply also in the present case concerning the applicant and interested party Christakis Georghiou and therefore the claim of applicant under prayer (A) succeeds.

I come next to consider the prayer under part B of the recourse concerning the decision of the Council of Ministers No. 24.929 for the admission of the nine interested parties on the basis of special criteria, namely, Maroulla Papadopoulou (I.P. 1), Natalia Sarri (I.P. 2), Ioulia Economidou (I.P. 3), Maria Kounnapi (I.P. 4) (as belonging to the category of persons suffering from thalassaemia) Androulla Nassari (I.P. 5), Maria Koulia (I.P. 6) (as belonging to the category of children of enclaved persons), Elena Costa (I.P. 7) and Eleni Kyriacou (I.P. 8) (as belonging to the category of persons whose parents are missing persons) and Eleni Messaritou (I.P. 9) (as a person whose uncle is a missing person).

In my judgment in recourses 512/84 and 535/84 (*Demetriou and others v. The Republic* (supra)) the same issues which pose for consideration in the present case have been dealt with by me. The only additional ground which has been advanced by applicant as stated in paragraph 7 of the facts of her application, is that applicant had been enclaved for a time and that she has brothers who are missing or are war prisoners and that she is a displaced person. Such contentions were denied by counsel for respondents in paragraph 8 of the statement of facts in support of the opposition, in which it is further alleged that the applicant does not belong to anyone of the special categories in which the interested parties belong. The applicant, upon whom the burden lied, failed to substantiate her contentions and, therefore, I cannot treat her case in any different way than that of the applicants in the *Demetriou* case (supra).

In the *Demetriou* case (supra) after expounding on the modern trends concerning the notion of legitimate interest. I concluded as follows:

“The supernumerary places were created subsequently in order to benefit certain classes of persons to which the applicants do not belong and as a result

they will not benefit from a possible annulment of the sub judice decision, since they cannot be enrolled in the PAC instead of the interested parties.... I, therefore, find on the basis of the above, that the applicants do not possess a legitimate interest to pursue this recourse against interested parties Maroulla Papadopoulou, Natalia Sarri, Ioulia Economidou, Maria Kounnapi, Elena Cosma, Eleni Kyriacou and Maria Koulia.” 5

On the basis of my above findings, I dismissed the recourse of the applicants against such interested parties. 10

Concerning the interested parties Eleni Messaritou and Androulla Nassari, I found in the *Demetriou* case that they did not belong to the special categories of candidates for whom the supernumerary places were created and I concluded as follows: 15

“In the present case the enrolment of the two interested parties must be assumed to have been made on other criteria, outside the scope of the submission and the decision of the Council of Ministers. Therefore, the applicants who also did not belong to the special categories, possess a legitimate interest vis a vis these two interested parties.” 20

My final conclusion concerning these interested parties was that irrespective of whether or not the decision of the Council of Ministers concerning the supernumerary places was lawfully taken, a matter which I did not proceed to examine at that stage, once these interested parties did not belong to any of the categories which the said decision intended to benefit, the part of sub judice decision concerning the enrolment was unlawful and in excess and abuse of power (assuming that such power did exist) and in consequence it was annulled. 25 30

I entirely adopt what I said in the *Demetriou* case (supra) as applying mutatis mutandis in the present case. 35

In the result, this recourse succeeds against interested parties Messaritou and Nassari but fails against all other

interested parties referred to in prayer (B) and a declaration is made accordingly.

5 As I have already found the applicant's claim under prayer (A) succeeds. In view, however, of the decision in the *Christoforou* case (supra) by which the decision of the Council of Ministers No. 24.659 has already been annulled, I treat such annulment as applying to the present case as well to the extent of interested party Christakis Georghiou.

10 In the circumstances I make no order for costs.

*Sub judice decision annulled
to the extent indicated above.
No order as to costs.*