

1985 January 22

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ALEXIA CHRISTOFOROU AND OTHERS,

Applicants,

v.

- THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTRY OF EDUCATION,
 2. THE DIRECTOR OF HIGHER AND HIGHEST EDUCATION,
 3. THE COUNCIL OF MINISTERS,

Respondents.

(Case Nos. 440/84, 441/84, 448/84,
449/84, 452/84, 462/84 and 465/84).

Constitutional Law—Right to education—Article 20.1 of the Constitution—Paedagogical Academy of Cyprus—Decision of Council of Ministers fixing the number of candidates to be enrolled in the Teachers' Section of the Academy on the basis of percentages for male and female students to be enrolled and not on the basis of the order of success in the entrance examinations—No provision either in the Annual Estimates or any other Organic Law allocating posts to males or females or allowing the imposition of any restriction on the ground of sex—Above decision constitutes a restriction within the ambit of the above Article which amounts to violation of the provision of such Article—Annulled.

The applicants challenged the decision of the Council of Ministers by which it fixed the number of candidates to be enrolled in the Teachers' Section of the Paedagogical Academy of Cyprus (P.A.C.) on the basis of percentages for male and female students to be enrolled, and not on the basis of the order of success in the entrance examina-

tions, which resulted to the acceptance as candidates for the year 1984-1985 of male students who were lower in the order of success compared to the applicants.

5 Counsel for the applicants mainly contended that the sub judge decision violated the provisions of Article 20 of the Constitution.

10 *Held*, that there is no provision either in the Annual Estimates or any other organic law allocating posts to males or females, specifically, or allowing the imposition of any restriction on the ground of sex; that depriving successful candidates from admission in the P.A.C. for reasons of sex, is a restriction within the ambit of Article 20.1* of the Constitution, which amounts to violation of the provisions of such Article; accordingly the sub judge
15 decision must be annulled.

Sub judge decision annulled.

Cases referred to:

Loizides v. Republic (1983) 3 C.L.R. 1084;

Mikrommatis v. Republic, 2 R.S.C.C. 125;

20 *Republic v. Arakian* (1972) 3 C.L.R. 294;

Kissonerga Development v. Republic (1982) 3 C.L.R. 462 at pp. 490, 491;

Anastassiou v. Republic (1977) 3 C.L.R. 91.

Recourses.

25 Recourses against the decision of the respondents fixing the number of candidates to be enrolled in the Teacher's Section of the Paedagogical Academy of Cyprus.

A. S. Angelides, for the applicants.

30 *A. Evangelou*, Senior Counsel of the Republic, for the respondents.

K. Talarides, for the interested parties.

Cur. adv. vult.

* Article 20(1) is quoted at p. 277 post.

SAVVIDES J. read the following judgment. By these re-
courses, which were tried together as presenting common
questions of law and fact, applicants challenge the deci-
sion of the Council of Ministers by which it fixed the num-
ber of candidates to be enrolled in the Teacher's Section
of the Paedagogical Academy of Cyprus (P.A.C.) on the
basis of 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 accept-
ance as candidates for the year 1984-1985 of male stu-
dents who were lower in the order of success compared to
the applicants.

All applicants who are of female sex, had applied to
the P.A.C. for enrolment as students in the Teachers' Sec-
tion of P.A.C. and for such purpose they participated in
the prescribed entrance examination which was a prere-
quisite for the selection of candidates for enrolment. The
number of students to be enrolled at the P.A.C. for the
academic year 1984-1985 in the Teachers' Section was
fixed by the Council of Ministers by its decision No.
24.659 of the 14th June, 1984 to 50. By the same deci-
sion a percentage of 25 students from each sex was fixed.
The entrance examination took place between the 2nd
July, 1984 and the 10th July, 1984. On the basis of the
results of such examination, and the order of success, 25
candidates from each sex were selected for enrolment,
from two separate lists, one for male students and the
other for female students. According to the results of the
examination, the applicants were lower in line of success
from the 25 female students enrolled, but higher than the
interested parties, of male sex, who were enrolled in pre-
ference to the applicants, on the basis of the decision of
the Council of Ministers fixing percentages between the
two sexes.

It is the contention of the applicants and this has not
been contested— that if there were no percentages fixed
for male and female students and the criteria were
based on the result of the examinations, the applicants
would have been enrolled in the P.A.C., in preference to
the interested parties. As a result, applicants filed the pre-

sent recourses, whereby they pray for the following reliefs:-

5 (1) A declaration of the Court annulling the decision of respondents 1 and 2 as published in the daily press on 11.8.84 whereby they elected for admission in the Teachers' Section of the P.A.C male candidates and excluded the applicants who had higher grades at the examination over 15 of those elected, as being illegal and in violation of the Constitution.

10 (2) A declaration of the Court that the decision of respondents 1 and 2 of 11.8.1984 not to accept the applicants for studies in the P.A.C. and/or secure for them a place in the P.A.C., notwithstanding their grades, at the prescribed entrance examinations is illegal and unconstitutional.

15 (3) A declaration of the Court that the decision of respondent 3 to fix the number of students to be enrolled in the P.A.C. on the basis of sex and not on merit or success at the entrance examinations, is null and void, unconstitutional and of no legal effect.

20 (4) A declaration of the Court that the sub judice decisions of the respondents should not be affirmed, as the only criterion for the admission was the sex of the candidates, which is contrary to the provisions of the Constitution.

The grounds of law set out in support of the applications are the following:

- 25 (a) The sub judice decisions violate the provisions of Article 20, 6 and 28 of the Constitution.
- 30 (b) They were taken in excess and/or in abuse of power and under a misconception of fact.
- (c) They were the result of alien motives and discriminatory treatment against the applicants and were taken in violation of the principles of good administration, and the selection of the best candidates.
- 35 (d) The sub judice decisions were taken in the course of

a procedure which is defective and contrary to law and the vested rights of the applicants.

(e) They are lacking due reasoning.

Both counsel for respondents and interested parties opposed the applications and the grounds set out in support of their oppositions, as appearing in the opposition of counsel of respondents which was adopted by counsel for the interested parties are:

(1) The sub judice act and/or decision was taken legally and correctly after a proper inquiry into the facts of the case had taken place in accordance with the decision of the Council of Ministers No. 24.659 dated 14.6.1984.

(2) The aforesaid decision of the Council of Ministers for the admission in the P.A.C. for the academic year 1984-1985 50 new students in the Teachers' Section (25 females and 25 males) was taken in accordance with Article 54 (a) and (d) of the Constitution in combination with sections 3, 5, 6 and 7 of Law 12/65 and does not violate the provisions of Articles 20, 6, and 28 of the Constitution, and was based on the nature of the work and the needs of elementary education.

(3) The applicants did not secure higher grades and/or better achievement, at the prescribed examinations, from the other 25 female applicants who were selected and enrolled as candidates for studies in respect of 25 vacant posts allocated to female students in the P.A.C. and, therefore, there was no discrimination against them.

The first question which I have to answer in these re-courses is whether the Council of Ministers could, in deciding the number of candidates for enrolment in the P.A.C., fix percentages based on sex criteria of such candidates.

Learned counsel for applicants contended that the fixing of percentage based on sex amounts to a restriction which, in the absence of any law, as contemplated by Article 20.1 of the Constitution, could not be imposed and that the Council of Ministers in imposing such restriction acted in violation of Article 20.1 of the Constitution.

Learned counsel for the respondents and the interested parties on the other hand, argued that the decision of the Council of Ministers does not contravene and is not inconsistent with Article 20.1 of the Constitution, as the sub
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judice decision does not infringe the right of education, the protection of which is contemplated by the said Article. The fixing of the number of candidates for enrolment, counsel added, does not amount "to a formality, condition or restriction" within the spirit of such Article, but is re-
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lated to the structure and regulation of the educational services, a power previously vested in the Communal Chamber and since 1965 transferred to the Minister of Education and the Council of Ministers by virtue of section 3(3) (a), 5, 6, 7 of the Competence of the Greek Communal
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Chamber (Transfer of Exercise) and Ministry of Education Law, 1965, (Law 12/65). Under the provisions of the said law counsel added, and also under the provisions of Article 54(a) and (d) of the Constitution, the exercise of the residue of powers not assigned to any other organ is vested in the
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Council of Ministers which has, therefore, power in relation to the structure and coordination of Education.

Article 20.1 of the Constitution, provides as follows:

"Every person has the right to receive, and every
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person or institution has the right to give, instruction or education subject to such formalities, conditions or restrictions as are in accordance with the relevant communal law and are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the
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public health or the public morals or the standard and quality of education or for the protection of the rights and liberties of others including the right of the parents to secure for their children such education as is in conformity with their religious convictions."

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The material provisions in Law 12 of 1963 to which reference has been made, read as follows:

«3.-(1) Από της ενάρξεως ισχύος του παρόντος Νόμου η Συνέλευσις και πάσαι αι υπηρεσίαι αυτής θεωρούνται ως παύσασαι λειτουργούσαι και από της ημε-

ρομηνίας ταύτης πάσαι αι έδραι των μελῶν αυτής θεωρούνται ως κενωθείσαι.

(2) Η άσκησις των κατά την ημερομηνίαν ενάρξεως ισχύος τού παρόντος Νόμου νομοθετικών αρμοδιοτήτων της Συνελεύσεως μεταβιβάζεται από της ημερομηνίας ταύτης εις την Βουλήν των Αντιπροσώπων και η άσκησις των διοικητικών αρμοδιοτήτων της Συνελεύσεως μεταβιβάζεται από της αυτής ημερομηνίας, τηρουμένων των διατάξεων του εδαφίου (3), εις το Υπουργείον.

(3) Η άσκησις των κατά την ημερομηνίαν ενάρξεως ισχύος του παρόντος Νόμου διοικητικών αρμοδιοτήτων της Συνελεύσεως—

(α) επί πάντων των εκπαιδευτικῶν, μορφωτικῶν και διδακτικῶν θεμάτων, μεταβιβάζεται από της ημερομηνίας ταύτης εις το δια του παρόντος Νόμου συνιστώμενον Υπουργείον Παιδείας και ασκείται υπό τούτου·

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5.-(1) Συνιστάται Υπουργείον Παιδείας εις ο υπάγεται εφεξής η άσκησις πασῶν των μέχρι ενάρξεως ισχύος του παρόντος Νόμου ασκουμένων διοικητικῶν αρμοδιοτήτων της Συνελεύσεως επί πάντων των εκπαιδευτικῶν, μορφωτικῶν και διδακτικῶν θεμάτων των μεταβιβαζομένων δυνάμει του εδαφίου (3) του άρθρου 3.

(2) Δι' αποφάσεως του Υπουργικού Συμβουλίου δύνανται να ανατεθῶσιν εις το Υπουργείον και άλλαι αρμοδιότητες ως ήθελον καθορισθῆ εν τη αποφάσει.

(3) Πάσα εν ισχύι νομοθετικής φύσεως διάταξις επί θεμάτων έφ. ων δεν γίνεται ειδική πρόνοια εν τω παρόντι Νόμῳ, εφαρμόζεται επί του υπουργού και του Υπουργείου.

6.-(1) Ο Πρόεδρος της Δημοκρατίας διορίζει τον Υπουργόν Παιδείας.

(2) Ο Υπουργός-

- 5 (α) προϊστάται του Υπουργείου, έχει την ανωτάτην διεύθυνσιν των υπηρεσιών τούτου, ασκεί εποπτείαν και έλεγχον επ' αυτών και επαγρυπνεί διά την υπό των υπηρεσιών διαχείρισιν των υποθέσεων συμφώνως προς τους κειμένους νόμους·
- (β) καθορίζει τας γενικάς κατευθυντηρίους γραμμάς της εκπαιδευτικής πολιτικής έντός των ορίων των κειμένων νόμων προς υποβολήν εις το Υπουργικόν Συμβούλιον·
- 10 (γ) μεριμνά δια την σύνταξιν διαταγμάτων ή κανονισμών αφορώντων εις το Υπουργείον προς υποβολήν εις το Υπουργικόν Συμβούλιον·
- 15 (δ) εκτελεί τους εις την αρμοδιότητα του Υπουργείου αναφερομένους νόμους, προβαίνει εις την έκδοσιν διαταγών και γενικών οδηγιών προς εκτέλεσιν τούτων και οιοδήποτε διατάγματος ή κανονισμού ερειδομένου επί τοιούτου νόμου·
- 20 (ε) προπαρασκευάζει προς υποβολήν εις το Υπουργικόν Συμβούλιον το τμήμα του προϋπολογισμού της Δημοκρατίας το αναφερόμενον εις το Υπουργείον και προς τον σκοπόν τούτον αποστέλλει εις τον Υπουργόν Οικονομικών τας προβλέψεις του Υπουργείου εν σχέσει προς το οικονομικόν έτος όστις, δια τους σκοπούς συντάξεως του πλήρους προϋπολογισμού της Δημοκρατίας, χρησιμοποιεί ταύτας κατά τον αυτόν τρόπον ως τας υποβληθείσας προβλέψεις των άλλων υπουργείων και ανεξαρτήτων υπηρεσιών της Δημοκρατίας.
- 30 7.-(1) Προς άσκησιν των δια του άρθρου 3 μεταβιβαζομένων διοικητικών αρμοδιοτήτων ιδρύονται αι ανάλογοι υπηρεσίαι, κατόπιν αποφάσεως του Υπουργικού Συμβουλίου όπερ καθορίζει και την διάρθρωσιν τούτων:
- 35 Νοείται ότι η κατά την ημερομηνίαν ενάρξεως ισχύος του παρόντος Νόμου υφισταμένη διάρθρωσις θα εξακολουθή να εφαρμόζεται μέχρι της εφαρμογής της δι' αποφάσεως του Υπουργικού Συμβουλίου επί τη βάσει του παρόντος εδαφίου γενομένης διαρθρώσεως.»

The English translation reads as follows:

"3.-(1) As from the coming of this Law into operation the Chamber and all services thereof shall be deemed to have ceased functioning and all seats of its members shall as from that date be deemed to have become vacant. 5

(2) The exercise of the legislative competence of the Chamber on the date of the coming into operation of this Law shall as from that date be transferred to the House of Representatives and the exercise of the administrative competence of the Chamber shall, subject to subsection (3), as from the same date be transferred to the Ministry. 10

(3) The exercise of the administrative competence of the Chamber on the date of the coming of this Law into operation- 15

(a) on all educational, cultural and teaching matters shall as from that date be transferred to, and exercised by, the Ministry of Education established by this Law; 20

5.-(1) There shall be established a Ministry of Education under which there shall henceforth come the exercise of all administrative competence of the Chamber exercised until the coming into operation of this Law on all educational, cultural and teaching matters transferred by virtue of subsection (3) of section 3. 25

(2) Such other competence may also be assigned to the Ministry by decision of the Council of Ministers as may be specified in such decision. 30

(3) Any provision of a legislative nature in force on matters on which no special provision is made in this Law shall apply to the Minister and the Ministry.

6.-(1) The President of the Republic shall appoint the Minister of Education. 35

(2) The Minister shall-

- 5 (a) be the Head of the Ministry, have the general direction of its services, exercise supervision and control over the administration of all matters and affairs by the services in accordance with the laws in force;
- (b) define the general educational policy within the limits of the laws in force for submission to the Council of Ministers;
- 10 (c) be responsible for the drafting of orders or regulations concerning the Ministry for submission to the Council of Ministers;
- 15 (d) execute the Laws falling within the domain of the Ministry and issue directions and general instructions for carrying them and any order or regulation made under such laws into effect;
- 20 (e) prepare for submission to the Council of Ministers the part of the budget of the Republic relating to the Ministry and, for that purpose, forward the estimates of the Ministry in respect of the financial year to the Minister of Finance who, for the purposes of preparing the comprehensive budget of the Republic, shall use them in the like manner as the estimates submitted by the other ministries and the independent offices of the
- 25 Republic.

7.-(1) For the exercise of the administrative competence transferred under section 3, appropriate services may be established by decision of the Council of Ministers prescribing their organizational structure:

30 Provided that the organizational structure existing on the date of the coming into operation of this Law shall continue to apply until the application of the organizational structure made by decision of the Council of Ministers under this section."

35 In *Loizides v. The Republic* (1983) 3 C.L.R. 1084, a recourse against the decision of the Board of the P.A.C. to accept for enrolment on the basis of sex criteria and not on the basis of the order of success in the entrance examina-

tions, I said the following at pp. 1090, 1091:

“The decision of the Council of Ministers referred to, reads as follows:

‘Το Συμβούλιο αποφάσισε για το ακαδημαϊκό έτος 1983-84 να γίνουν δεκτοί στην Παιδαγωγική Ακαδημία Κύπρου 90 νέοι σπουδαστές/στρίες στον κλάδο Δασκάλων και 30 νέοι σπουδαστές/στρίες στον κλάδο Νηπιαγωγών’

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The English translation of which is as follows:

(“The Council decided that for the academic year 1983-1984 90 new male/female students be enrolled in the Paedagogical Academy of Cyprus in the Teachers’ Section and 30 new male/female students in the Nursery Teachers’ Section”).

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The contents of the above decision are very clear and need not be commented upon. It only decides the number of students, male or female, to be enrolled in the P.A.C. for the academic year 1983-1984. There is no mention of any percentage on the basis of sex whatsoever. I, therefore, need not examine, at this stage, whether the fixing of a percentage based on sex by the Council of Ministers might be unlawful or unconstitutional. In Greece, the matter is regulated by law and is based on the existence of organic posts for males and females and differentiation between sexes has been treated as not violating the provisions of the law, since such differentiation was necessary in the light of the organic posts for different sexes (see, in this respect Decision 1447/58)....

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The number of students to be enrolled in the P.A.C. has always been a matter which had to be decided every particular year by the Council of Ministers which is the only appropriate organ to take such decision.”

I accept the contention of learned counsel for respondents that *Loizides* case should be distinguished from the present case, as such decision was based on different facts. It is

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correct that in *Loizides* case the recourse was directed against the decision of the Board of the P.A.C. which instead of choosing candidates for enrolment on the basis of the results of the entrance examinations, introduced the element of percentage based on sex criteria, which was not in accord with the decision of the Council of Ministers by which the number of candidates was fixed without any restriction as to sex.

Learned counsel for applicants stated that for the purposes of the present recourses he did not insist, in challenging that part of the sub judice decision whereby the maximum number of candidates for admission in the P.A.C. for 1984-1985 was fixed but the part whereby the element of sex criteria is introduced. In my view, he rightly adopted such course. The question of fixing a maximum number of candidates for admission in the P.A.C. is a regulatory matter of educational policy within the powers of the Council of Ministers under the law and within the financial provisions of the Annual Estimates, as such limitation is necessitated by the need to fill organic posts and by the provisions in the Estimates as to the expenditure approved for covering educational needs and personal allowances of students during the period of their training at the P.A.C. Therefore, I adopt what I said in *Loizides* case (supra) that the Council of Ministers is the appropriate organ to take a decision as to the maximum number of candidates for enrolment at the P.A.C.

The issue as formulated by learned counsel for applicants is with regard to the fixing of percentages for male and female students irrespective of their achievement at the entrance examinations, a fact which has deprived the applicants of securing enrolment at the P.A.C., who, on the basis of their success at the examinations were better than the interested parties.

A lot was said in argument about the allocation of posts in the Teachers' Training Academy in Greece with particular reference to decided cases, where differentiation between sexes has been treated as not amounting to a violation of the law or unreasonable discrimination. I wish to observe, as I did in *Loizides* case (supra) that the position in Greece

is regulated by law and is based on the existence of organic posts specifically for males and females. In Cyprus, no provision is made either in the Annual Estimates or any other organic law allocating posts to males or females, specifically, or allowing the imposition of any restriction on the ground of sex.

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On the material before me, I hold the view that depriving successful candidates from admission in the P.A.C. for reasons of sex, is a restriction within the ambit of Article 20.1 of the Constitution, which amounts to violation of the provisions of such Article.

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Very elaborate arguments has been advanced by all counsel appearing in these recourses as to whether the fixing of sex criteria amounts to a violation of Article 28.2 of the Constitution.

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It has been held time and again by this Court that the expression "discrimination" provided by Article 28.2 of the Constitution does not convey the notion of exact arithmetic equality but it safeguards only against arbitrary discrimination without excluding reasonable distinctions (see *Micrommatis and The Republic* (1961) 2 R.S.C.C. 125. The dictum in the *Micrommatis* case in this respect was adopted, inter alia, in *The Republic of Cyprus v. Nishan Arakian and Others* (1972) 3 C.L.R. 294, *Kissonerga Development v. The Republic* (1982) 3 C.L.R. 462, at pp. 490, 491, *Anastassiou v. The Republic* (1977) 3 C.L.R. 91).

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In view, however, of my conclusion that the sub judge decision violates Article 20.1 of the Constitution, the result of which leads to the annulment of the sub judge decision, I leave open the question as to whether, assuming that the Council of Ministers was empowered by law as provided by Article 20.1 of the Constitution, to impose restrictions based on sex criteria, the fixing of percentages for male and female candidates for admission in the P.A.C., irrespective of the order of their success in the entrance examinations, would amount to "discrimination" under Article 28.1 of the Constitution, as construed in the cases referred to above.

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In the result, these recourses succeed and the sub judge decisions are hereby annulled. There will be no order for costs.

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*Sub judge decisions
annulled. No order
as to costs.*