

1985 March 4

[Pikis, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

- 1. PRIVATE TUTORIAL SCHOOL AMERICANOS
SECRETARIAL CENTRE,
- 2. KYRIACOS AMERICANOS,
- 3. ANTHI AMERICANOS,

Applicants,

v.

- THE REPUBLIC OF CYPRUS, THROUGH
- 1. THE MINISTER OF EDUCATION,
- 2. THE DIRECTOR OF SECONDARY EDUCATION,

Respondents.

(Case No. 76/84).

Private Schools Law, 1971 (as amended)—Educational Institution for graduate studies—Not a “private school” or “coaching centre” within the meaning of the Law—Owners of such Institution could not, as of right, move the respondent Minister under section 27A of the Law to relax the application of the provisions of the Law—Because they operated in the domain of private Law and the management of their institution was solely their affair—Refusal of their application did not give rise to an executory act liable to review. 5
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Act or decision in the sence of Article 146.1 of the Constitution —Which can be made the subject of a recourse thereunder —Educational Institution coming outside the provisions of the Private Schools Law, 1971—Operates in the domain of private Law—Refusal of the Minister to relax the application of the provisions of the above Law in relation to this School had no noticeable effects in public Law, was non productive of legal consequences and did not give rise to an executory act that could be made the subject of review. 15
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Legitimate interest—Article 146.2 of the Constitution—Interest necessary to sustain a recourse thereunder must be personal or direct and must not arise through the prejudice caused to a third party.

5 The applicants were the owners of an institution of higher education, offering instruction in third cycle education. Invoking the provisions of the Private Schools and Coaching Centres Law, 1971 (as amended) (“the Law”) they applied for permission to engage, on a part-time basis, the
10 services of a secondary school teacher, namely Mr. Ph. Charalambous, to instruct students in higher accountancy. The respondents refused the permission and hence this recourse.

15 Counsel for the applicants mainly contended that discretion vested in the Minister, under the provisions of section 27A of the Law to relax the application of the provisions of s. 18(5) prohibiting educationalists in the public service, as well as civil servants, from working or rendering services to private schools and coaching centres.

20 On the following questions:

(a) *The nature of the act with particular reference to the relationship of the applicants to public educational authorities, and*

25 (b) *The legitimacy of their interest to pursue the present proceedings:*

30 *Held*, (1) that since applicants’ school is an educational institution for graduate studies it is plainly outside the provisions of the Law in view of the definition of a “private school” and “coaching centre” supplied therein; that, consequently, the premise upon which the application to the educational authorities was founded, was unsound and collapses; and that, thus, the applicants could not as of right, move the Minister under s. 27A to relax the application of the provisions of the Law, or indeed to facilitate
35 the manning of their institution, its management or organisation; that they operated in the domain of private Law, the management of their institution being solely their affair; that any decision of the Minister addressed to the applicants had no noticeable effects in public Law and was

non productive of legal consequences; and that, therefore, the negative disposition of their application did not give rise to an executory act that could be made the subject of review.

(2) That applicants had no legitimate interest to question the decision of the respondents refusing leave to Mr. Charalambous to offer services to the applicants outside his duties pursuant to the provisions of s.54 of the Public Educational Service Law, 1969 because the interest necessary to sustain a recourse, under Article 146.2, must be personal or direct and it must not arise through the prejudice caused to a third party. 5 10

Application dismissed.

Cases referred to:

Pitsillos v. C.B.C. (1983) 2 C.L.R. 208 at p. 215; 15

Minister of Finance v. Public Service Commission (1968) 3 C.L.R. 691;

Vorkas and Others v. Republic (1984) 3 C.L.R. 757.

Recourse.

Recourse against the refusal of the respondents to grant applicants permission to engage the services, on a part-time basis, of Mr. Ph. Charalambous a secondary school teacher. 20

A. S. Angelides, for the applicants.

R. Vrahimi (Mrs.), for the respondents. 25

Cur. adv. vult.

PIKIS J. read the following judgment. The foremost questions are-

- (a) The nature of the act with particular reference to the relationship of the applicants to public educational authorities, and 30
- (b) the legitimacy of their interest to pursue the present proceedings.

Both questions go to the justiciability of the proceedings to which aspect of the case most of the arguments raised were directed. On their own description, set out in para. 1 of their address, the applicants are the owners of an institution of higher education, offering instruction in third cycle education. Invoking the provisions of the *Private Schools and Coaching Centres Law*¹—hereafter referred to as “the Law”—they applied for permission to engage, on a part-time basis, the services of a secondary school teacher, namely Mr. Ph. Charalambous, to instruct students in higher accountancy. Efforts to find a suitable instructor on the subject, outside the public service, failed and imperative need arose, in their contention, to be allowed to engage the services of the aforementioned educationalist for two 90-minute periods a week to lecture in the evenings at their institution.

Discretion vested in the Minister, under the provisions of the Law, notably s. 27A to relax the application of the provisions of s. 18(5) prohibiting educationalists in the public service, as well as civil servants, from working or rendering services to private schools and coaching centres. A relaxation is justified whenever strict compliance with the provisions of the Law is objectively unattainable. The Minister allegedly exercised his powers in a defective manner, by refusing leave to engage the services of Mr. Charalambous, communicated by letter dated 7.12.83. The decision was unreasoned and as such liable to be set aside. Apparently, so it was argued, the respondents rested their decision on two circulars dated 19.9.83 and 26.10.83, that purport to lay down educational policy respecting the engagement of the services of educationalists outside the public service; that, they applied without regard to the particular facts of the case.

The recourse is premised on the assumption that the educational institution of which the applicants are the owners, comes under the provisions of the Law, the provisions of which they can invoke for their benefit. This assumption is wholly fallacious and is contradicted by the very statement of the applicants that their institution is one of higher education. They are not registered under the provisions of the Law nor are they the holders of the certificate of

¹ As amended by Law 56/83.

registration envisaged by the provisions of s. 7. So far as may be gathered from the file of the case, their application for registration as "private school for post Gymnasium studies" was not accepted. The reasons appear in a letter addressed to a parent of a student seeking a subsidy for the fees of attendance of his daughter at the institution of the applicants, dated 11.3.81. He is informed that the school cannot be registered under the Law for the education offered is of a graduate (μεταγυμνασιακή) level, outside the ambit of existing legislation. 5 10

The educational institutions for graduate studies are plainly outside the provisions of the Law in view of the definition of a "private school" and "coaching centre", supplied therein. A private school is defined as one offering nursery, elementary and secondary (ordinary, technical and vocational) education, while an institution of higher education is outside the definition of a coaching centre. Consequently, the premise upon which the application to the educational authorities was founded, was unsound and collapses in view of the analysis made hereinabove. Thus, the applicants could not, as of right, move the Minister under s. 27A to relax the application of the provisions of the Law, or indeed to facilitate the manning of their institution, its management or organisation. They operated in the domain of private Law, the management of their institution being solely their affair. Any decision of the Minister addressed to the applicants had no noticeable effects in public Law and was non productive of legal consequences. Therefore, the negative disposition of their application did not give rise to an executory act that could be made the subject of review. 15 20 25 30

On the other hand, they have no legitimate interest to question the decision of the respondents refusing leave to Mr. Charalambous to offer services to the applicants outside his duties pursuant to the provisions of s.54 of the Public Educational Service Law 1969¹. The interest necessary to sustain a recourse, under Article 146.2, must be personal or direct. It must not arise through the prejudice caused to a third party. The subject is debated at length in *Pitsillos v. C.B.C.* 2, and in *The Minister of Finance v.* 35 40

¹ Law 10/69.

² (1982) 3 C.L.R. 208, 215.

Public Service Commission. ¹ In the former case, it is pointed out that the chain of causation between the decision complained of and the interest affected must be direct. In Latin terminology, it is expressed by the term "legitimitio ad causum". In the latter case, the Court refused to acknowledge a legitimate interest to the Minister of Finance to challenge a decision of the Public Service Commission affecting a department of his Ministry, namely the Department of Inland Revenue. For, in the absence of evidence that through the malfunctioning of the Department the Minister would be prejudiced in the exercise of his function, the only person competent to complain of the decision, was the Head of the Department directly affected thereby. Mr. Charalambous did not himself challenge the decision by the presumption of regularity be deemed to have been validly taken. The applicants have no right to disturb its finality in the indirect way sought by this recourse.

I may observe by way of concluding this judgment, that even if we were to assume that applicants could invoke the provisions of the Law, s. 27A in particular, their case would fair no better. At most, the Minister could relax the application of the provisions of s.18(5) by lifting the prohibition on the engagement of educationalists in the public service. Section 27 A is not designed to confer power on the Minister to authorise the employment of an individual educationalist and, far less, is it intended to modify or supplant the provisions of s.54 ² of the Public Educational Service Law. The employment of an educationalist in the public service could only be sanctioned under the provisions of s.54. In this decision, the applicants could, under no guise, have a legitimate interest. The employment of personnel in private schools under the Law is, as s.18(1) clearly lays down, a matter of private treaty.

The recourse fails. It is dismissed. Let there be no order as to costs.

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

¹ (1968) 3 C.L.R. 691.

² For a discussion of the effect of analogous provisions of the Public Service Law, s.64, see *Vorkas And Others v. Republic* (1984) 3 C.L.R. 757.