1986 May 24

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANGELOS VOVIDES,

Applicant,

v.

THE COUNCIL OF REGISTRATION OF
ARCHITECTS AND CIVIL ENGINEERS,

Respondent.

(Case No. 267/77).

The Architects and Civil Engineers Laws 1962-1976—S. 9(1)(b)(c)—Application for registration as sub-engineer by profession—Applicant not possessing a school leaving certificate of the Athenian Technological Institute (Doxeades School) specifically mentioned in the said provision—But possessing a school leaving certificate dated 14.11.64 of the Athenian Technological Group—His application correctly rejected—Fact that said Institute ceased to exist as from the school-year 1967-1968 does not help the case of the applicant.

Construction of Statutes—Whether a provision is mandatory or directory—Test applicable to determine such issue—Nothing short of impossibility allows a Judge to declare a statute unworkable—Doubt as to effect of enactment affecting fundamental human rights—Such doubt has to be resolved in favour of the citizen—Construction leading to unreasonable results—It should be avoided, if clearly possible to construe the enactment in a manner leading to reasonable results—The "anomalies" test—The Architects and Civil Engineers Laws 1962 to 1976, s. 9(1)(b)(c)—School leaving certificate of the Athenian Technological Institute (Doxeades School) provided in said sub-section as one of the required qualifications for registration as a sub-

engineer by profession—Said provision leaves no room for doubt as to its meaning and effect.

The applicant by means of this recourse challenges the validity of the refusal of the respondent Council to accept his application and register him as licensed sub-engineer by profession. The relevant provision in the law is sub-section 9(1) (b) (c)* of the Architects and Civil Engineers Laws 1962 to 1976. The crucial for the outcome of this case part of the said sub-section reads as follows: "... and the Council is satisfied that he possesses a school-leaving certificate of the specialization 'sub-engineer' or 'foreman' (depending on the circumstances) of the Athenian Technological Institute (Doxeades School) or of the B' Metsovion Polytechnic or of the Sivitanidios School, or any other school or other institution overseas of the same standard as the aforesaid Council may decide, having been enrolled in them before the 30th May 1962...".

When the applicant was asked by the respondent Council to produce evidential material about his studies, he submitted to the Council a certificate, issued by the Athenian Techonological Group-Secondary Technical and Professional Schools, dated 16.11.84 to the effect that he was enrolled in the final class of such school for the school year 1963-1964 and obtained his leaving certificate on 5.10.64.

On 1.5.73 the respondent Council dismissed the application on the ground that the certificate submitted was not a certificate of the Athenian Technological Institute as the law provides. On 18.6.77 the applicant requested the Council to reconsider his case. He submitted in support of such application new material to the effect that by a Legislative Order in Greece the Athenian Technological Institute ceased to exist as from the school year 1967-1968, that its school leaving certificates were substituted as from that year by school-leaving certificates of the Athenian Techonogical Group and that the use of the word "Institute" in business names was prohibited by Law.

* This sub-section as amended by s.4(1) of the amending Law 41/68 is quoted at pp. 933-934.

The Council reconsidered applicant's case, but once again refused to register the applicant because "the Law clearly specifies... the Doxeades School Leaving Certificate... and those possessing same acquired it after one additional year of studies after graduating from the Technological Group....".

Hence, the present recourse. Counsel for the applicant argued that if the words of the relevant section of the law were to be interpreted verbatim, the absurd result would follow that because of a mere change of name in the school-leaving certificate, graduates of the "Group" would not be entitled to enrolment, whereas graduates of the Institute, who acquired their school leaving certificate before 1967 would be.

Held, dismissing the recourse: (1) Applicant's diploma is dated 16.11.64, when there was no legislative enactment in Greece prohibiting the use of the term "Institute" and, moreover, school leaving certificates were in fact given at that time to its students by the Athenian Techonological Institute. Whatever changes were effected in Greece as from the school-year 1967-1968 could not apply to the case of the applicant.

(2) No universal rule can be laid down in determining whether statutory provisions are mandatory or directory. In each case the intention of the legislature must be ascertained by looking at the whole scope of the statute and, in particular, at the importance of the provision in question in relation to the general object to be secured *(Papaxenopoulos* v. *The Republic)* (1978) 3 C.L.R. 8 adopted). The required qualification under a statutory provision, aimed at protecting a profession, is by its very purpose a mandatory provision.

Nothing short of impossibility allows a Judge to declare a statute unworkable. In this case, interpreting the law in the way interpreted by the respondent Council, does not render it inoperative as it could be operative for those applicants who had been enrolled to the school in question before the 30th May 1962 and it lasted so long as there existed "the Institute".

The relevant statutory provision leaves no room for doubt that, because the school named in the Statute ceased to exist, possession of another certificate as near as possible to that provided by the law does not meet the requirements of the law in question. It follows that there is no room for the application of the principle in *Kyriakides* v. *The Improvement Board of Aglandjia* (1979) 3 C.L.R. 86 that in cases of doubt as regards an enactment affecting fundamental human rights, such doubt should be resolved in favour of the citizen; and for the same reason there is no room for the application of the "anomalies" test as expounded in *Stock* v. *Frank Jones (Tipton) Ltd.* [1978] 1 All E.R. 948.

Recourse dismissed.
No order as to costs.

Cases referred to:

Papaxenopoulos v. *The Republic* (1978) 3 C.L.R. 8;

Myrianthis v. *The Republic* (1978) 3 C.L.R. 254;

Kyriakides v. *The Improvement Board of Aglandjia* (1979) 3 C.L.R. 86;

Stock v. *Frank Jone (Tipton) Ltd.* [1978] 1 All E.R. 948;

R. v. *Yorkshire Coroner* [1982] 3 All E.R. 1098;

McCormick v. *Horsepower Ltd.* [1981] 2 All E.R. 746.

Recourse.

Recourse against the refusal of the respondent to register applicant a licensed sub-engineer by profession.

A. Andreou, for the applicant.

L. Demetriades, for the respondent.

Cur. adv. vult.

A. Loizou J. read the following judgment. By the present recourse the applicant seeks: (a) A declaration of the Court that the decision of the respondent Council by which they refused to register him as licensed sub-engineer

(υπομηχανικός), by profession is null and void and (b) A declaration of the Court that the applicant is entitled to be registered by the respondent Council as licensed sub-engineer by profession.

This is an old case with its prosecution left in abeyance for some time mainly on account of the fact that certain evidential matter, which the counsel of applicant wished to be produced, had to be brought from Athens. After several adjournments for the purpose of the parties verifying certain fatual aspects of the case, the case was before the Court on the 22nd February 1979 and was on that day adjourned sine die on the application of counsel for the applicant until, as he put it, they would be "ready to move the Court for the case to be fixed".

On the 15th October, 1984, the case was fixed by the Court ex proprio motu, for directions on the 8th December 1984, when the case was adjourned for hearing on 15th December but again on the repeated applications of counsel for the applicant the hearing was adjourned to the 22nd February 1985, when directions for written addresses were made. That of the applicant was filed on the 27th April 1985, and that of the respondent Council after extension of time was granted by the Court on the 1st February 1986, when it was further adjourned for the filing of an address in reply, "if counsel for the applicant so wished". Ultimately on the 16th May, 1986, the relevant file of the respondent Council was produced and judgment was reserved.

The facts of the case as they emanate from the various documents in the file of the respondent Council (exhibit 1), are as follows:

On the 29th June, 1968, the applicant applied to the respondent Council that he be registered as a licensed sub-engineer by profession in accordance with the 1968 amendment of the Architects and Civil Engineers Law. He further stated therein that he appended (a) copy of his school leaving certificate from the School of Foremen of the Athenian Technological Institute (Απολυτήριο Σχολής Εργοδηγών Αθηναϊκού Τεχνολογικού Ινστιτούτου). (b) A

certificate of his practical experience. Moreover there was a foot-note reading "copy of the school leaving certificate of the Athenian Technological Institute and Certificates of Practical Experience will be forwarded to you in July 1968."

It is obvious that the applicant referred in his application to subsection 9(1) (b) (c) of the Architects and Civil Engineers Laws 1962 to 1976 which subsection (c) had been amended by section 4(1) of the amending Law No. 41 of 1968 which reads as follows:

«(γ) εάν ούτος είναι καλού χαρακτήρος, και το Συμβούλιον πεισθή ότι κέκτηται πιστοποιητικόν αποφοιτήσεως ειδικότητος υπομηχανικού ή εργοδηγού (αναλόγως της περιπτώσεως) του Αθηναϊκού Τεχνολογικού Ινστιτούτου (Σχολή Δοξιάδη) ή τοῦ Β΄ Μετσοβίου Πολυτεχνείου ή της Σιβιτανιδείου Σχολής ή οιασδήποτε ετέρας σχολής, ή ετέρου ιδρύματος εν τη αλλοδαπή του αυτού επιπέδου ως τα προμνησθέντα, ως το Συμβούλιον ήθελεν αποφασίσει, εγγραφείς εις αυτά προ της 30ης Μαΐου 1962, εάν τα πρόσωπα ταύτα πείσουν το Συμβούλιον ότι έχουν εν τη Δημοκρατία τετραετή πρακτικήν εξάσκησιν συναφή προς την ειδικότητα των σπουδών των εν τω γραφείω οιουδήποτε Αρχιτέκτονος ή Πολιτικού Μηχανικού ή εν τη Δημοσία Υπηρεσία της Δημοκρατίας ή εν τη υπηρεσία δημοσίου οργανισμού ή αρχή ή εν ιδιωτική ασκήσει του επαγγέλματος».

And in English it reads:

"(c) if he is of good character and the Council is satisfied that he possesses a school-leaving certificate of the specialization 'sub-engineer' (υπομηχανικού) or 'foreman' (εργοδηγού) (depending on the circumstances) of the Athenian Technological Institute (Doxeades School) or of the B' Metsovion Polytechnic or of the Sivitanidios School, or any other school or other institution overseas of the same standard as the aforesaid as the Council may decide, having been enrolled in them before the 30th May 1962, if such persons satisfy the Council that they have, four years practi-

cal experience related to the specification of their studies in the office of any Architect, or Civil Engineer, or in the Public Service of the Republic or in the service of a public organization or authority or in private practice of the profession."

It is evident from the aforesaid statutory provision that the applicant could only be enrolled as a licensed sub-engineer if (a) he was of good character, (b) the Council of Registration was satisfied that he had a school-leaving certificate of sub-engineer or foreman of the Athenian Technological Institute (Doxeadis School), or the B' Metsovian Polytechnic, or the Sividanidios School or any other overseas institution of the same standard as the aforesaid as the Council may decide, (c) he was enrolled with such school or institution before the 30th May, 1962, and (d) he satisfied the Council that he had four years of practical experience in the Republic.

On the 18th January 1973, the applicant submitted a new application stating therein that he is a graduate of the Athenian Technological Institute (Doxeadis School) (Αθηναϊκό Τεχνολογικό Ινστιτούτο (Σχολή Δοξεάδη)), as Technical Assistant: that he was enrolled in the aforesaid school in the year 1961-1962 when the Law about "sub-engineers" (υπομηχανικούς), was in force and on the basis of that Law there were given licences for signing as sub-engineers by profession to his colleagues enrolled on the year 1959-1960.

The letter is headed Angelos Vovides, Chief Foreman, District Administration Larnaca and went on to say "when we asked from the Council the right of signature (we are four) you informed us that there were certain differences in the School Leaving Certificates. One of us filed a recourse in the Constitutional Court, the judgment of which was to produce evidential material from the School. We wrote to the secretariat of our School and it answered that they had sent a letter to the Council with all the material months ago. In view of the aforesaid I request you to examine favourably the whole case and give a reply the soonest possible".

On the 7th March, 1973, the applicant was asked by the respondent Council to submit evidential material about his studies so that it would be able to consider his application. There were submitted then by the applicant:-

(a) A copy of a school-leaving certificate issued by the Athenian Technological Group (Αθηναϊκός Τεχνολογικός Όμιλος) —Secondary Technical and Professional Schools— dated the 16th November 1964, certifying that the applicant had been enrolled for the school-year 1963-1964 in the final class of the day Department of the school and that he attended the class until the end of June 1964, when he took the final exams and obtained the school-leaving certificate on the 5th October 1964.

(b) A certificate of practical experience in the Republic from the District Officer Larnaca dated 6th March, 1973, and a certificate from the Assistant District Divisional Engineer of the Public Works Department Larnaca that he worked in the said Department as Technical Assistant (building section) from the 1st November 1968 to the 31st March, 1971.

It may be observed here that in his letter of the 6th February 1973, by which he submitted the aforesaid certificates, he mentioned that he was attaching thereto copy of his school-leaving certificate of the Athenian Technological Institute (Doxeadis School), (Αθηναϊκό Τεχνολογικό Ινστιτούτο, Σχολή Δοξεάδη).

On the 1st May, 1973, the applicant was informed by the respondent Council that it was not possible for them to register him in the class applied as the certificate which he had submitted is a certificate of graduation from the Athenian Technological Group (Αθηναϊκού Τεχνολογικού Ομίλου) and not of the Athenian Techonological Institute (Αθηναϊκό Τεχνολογικό Ινστιτούτο) as the law provides.

The applicant by letter dated the 18th June, 1977, requested the respondent Council to reconsider his case submitting at the same time new material and details which were: (a) a certificate dated the 14th May, 1973 from a Law firm in Athens which had been asked to act on his be-

half, to the effect that the Athenian Technological Institute was a manifestation of the Group (Ομιλος) operating in Athens Technological Group. But since the use of the word "Institute" in business names was prohibited by Law, this term stopped existing. Therefore it was not a change of name of the "institute" to "group" but a cessation of one of the manifestations of this "group" and finally that from the contacts he had with the appropriate Authorities of the "group" they had been informed that the aforesaid were known to the Ministry of Education and the Ministry of Foreign Affairs of Cyprus. (b) A certificate dated 17th July, 1969, to the effect that the Athenian Technological Group carried on until recently its educational activities, (Technical and Professional Schools) through the Athenian Technological Institute and that when after a decision of the Ministry of National Education the word Institute was dropped from the names of schools, it continued its functions in the name of the Athenian Technological Group and the degree were issued since then in the name of the group. Consequently Athenian Technological Institute and Athenian Technological Group, is one and the same foundation.

The respondent Council at its meeting of the 8th July, 1977 (see the relevant minutes in exhibit 1) re-examined the matter and having "studied the arguments of the applicant as regards the sufficiency of the school-leaving certificate of the Athenian Technological Group which he submitted in support of his application did not accept same since the Law clearly specifies as a required qualification as regards the Doxeades School a school-leaving certificate of specialization of sub-engineer or foreman of the Athenian Technological Institute and those possessing same acquired it after one additional year of studies after graduating from the Technological Group and which as appearing from the material submitted the applicant did not attend."

On the 14th July, 1977 the applicant was informed by letter of the respondent Council accordingly.

It is the case for the applicant and this is apparent, it was argued, from the exhibits attached to the written address

filed on his behalf that the Athenian Technological Institute as such ceased to exist as from the school year 1967-1968 by a Legislative Order in Greece and that school-leaving certificates as from that year, which were until then awarded by the Athenian Technological Institute were substituted by school-leaving certificates of the Athenian Technological Group. There was, it was urged, no way at all for anyone to be awarded a school-leaving certificate in the name of the Athenian Technological Institute.

It appears, however, that this factual aspect of the case does not help the applicant as his Diploma is dated 16th November 1964, when there was no legislative enactment in Greece prohibiting the use of the term "Institute" and moreover school-leaving certificates were in fact given at that time to its students by the Athenian Technological Institute. Whatever happened since the school year 1967-1968 as it appears from the letter of the Group dated 11th May, 1971, could not apply to the case of the applicant.

The argument, however, advanced by counsel on the basis of the aforesaid factual contention is whether it is possible for a Court to give to a relevant section of the Law an interpretation which will render the Law, or the section of the Law in this case, without any effect whatsoever, because if we were to interpret the relevant words of the section verbatim then we should inevitably come to the absurd result that because of the mere change of name in the school-leaving certificate, graduates of the "Group" would not be entitled to enrolment whilst graduates of the Institute who acquired their school-leaving certificate before 1967 would be. Furthermore the difference it was said, between the two certificates was not one of substance but one of form, the difference being in the choice of certain secondary subjects.

I was consequently invited to give to the relevant section of the law the interpretation that makes sense and gives purpose and effect to it. In this respect I have been referred to the cases of *Demetrios Papaxenopoulos* v. *The Republic of Cyprus* (1978) 3 C.L.R. 8; *Spyros A. Myrianthis* v. *Republic of Cyprus* (1978) 3 C.L.R. 254; *Frixos Kyriakides* v. *The Improvement Board of Aglandjia* (1979) 3 C.L.R.

86; *Stock* v. *Frank Jones (Tipton) Ltd.* [1978] 1 All E.R. 948.

It is an undisputed fact that the school-leaving certificate which the applicant produced to the respondent Council in support of his application is one issued by the Group and not by the Institute and that the certificate is dated the 16th November, 1964 and relates to the school year 1964. That makes it clear that it relates to another school not described in the aforesaid section 9(1) (b) (c). In the year 1964 there was no prohibition in the use of the word "Institute" and this prohibition was brought into existence by legislation in Greece that came into force since the school year 1967-1968 and not before that year. The nature of the differences between the two schools in their Syllabus does not change the situation even if they were small ones.

The principles to be discerned from the authorities hereinabove referred to do not assist the applicant and I shall endeavour to explain the position. In the *Papaxenopoulos* (supra) it was stated that no universal rule can be laid down in determining whether provisions in statutory enactments are mandatory or directory and that in each case the intention of the legislature must be ascertained by looking at the whole scope of the statute and, in particular, at the importance of the provision in question in relation to the general object to be secured.

Applying the aforesaid principle to our case, if anything the required qualification under a statutory provision aimed at protecting a profession and regulating matters relevant thereto is by their very purpose a mandatory provision.

In *Myrianthis* (supra) the principle expounded was that a statute is designed to be workable and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable. Furthermore that it is the duty of a Court to make what it can of statutes knowing that they are meant to be operative and not inept and nothing short of impossibility should allow a Judge to declare a statute unworkable.

In the case in hand interpreting the Law in the way it was

interpreted by the respondent Council it does not make it inoperative as it could be operative during the material time as regards those applicants who sought enrolment that had been admitted to the school in question before the 30th May, 1962 and it lasted so long as there existed "the Institute". If the Institute ceased to exist at it did, in this case an amendment of the law had to be effected for its replacement with what is the nearest to it, foundation or school and not for the Court to substitute the words in the statute describing a particular school with other word or words referring to another school.

In the *Kyriakides* (supra) there was reiterated the principle that where there is any doubt as regards the effect of an enactment involving interference with a fundamental human right, such as the right to property, same has to be resolved in favour of the citizen; and that where a proposed construction of a statutory provision would lead to unreasonable results same would be avoided and preferred instead one whereby it would be clearly possible to construe such provision in a manner leading to a reasonable and workable application of it.

Once it has been accepted that the statutory provision in question required a particular qualification obtained after attendance at a particular school, there is no doubt left that because there have been changes of legislation in the country where such school is operating and that school as named in our relevant legislation does not any longer exist, that possession of another certificate as near as possible to the one provided by Law does not meet the requirements of the Law in question.

In *Stock* (supra) it was held:

> "Per Lord Simon of Glaisdale. A Court is only justified in departing from the plain words of a statute if it is satisfied (1) that there is clear and gross balance of anomaly, (2) that Parliament, the legislative promoters and the draftsman could not have envisaged such anomaly and could not have been prepared to

accept it in the interest of a supervening legislative objective, (3) that the anomaly can be obviated without detriment to such legislative objective and (4) that the language of the statute is susceptible of the modification required to obviate the anomaly.

Per Lord Scarman. If the words used by Parliament are plain, there is no room for the 'anomalies' test unless it can be demonstrated that the anomalies are such that they produce an absurdity which Parliament could not have intended, or destroy the remedy established by Parliament to deal with the mischief which the Act is designed to combat."

The aforesaid dicta were applied in *R.* v. *Yorkshire Coroner* [1982] 3 All E.R. 1098 and also in *McCormick* v. *Horsepower Ltd.*, [1981] 2 All E.R. 746.

In the present case the change effected by the Law in Greece as regards the use of the word "Institute" in connection with school names after the school year 1967-1968 is irrelevant and it cannot any way affect the outcome of this recourse because the applicant obtained his qualification from the Athenian Technological Group "Ομιλος" in 1964 when there existed the Athenian Technological Institute and moreover there was no legal impediment in the use of the word "Institute".

It is evident that the school-leaving certificate of the applicant relates to another school not provided for in section 9(1) (b) (c) of the Law.

There cannot be said therefore that as regards the material time there existed any anomaly in the legislative provisions in question that indicate that the legislative enactment is susceptible to a modification required to obviate such anomaly. By saying this I should not be taken as accepting that anomaly is created by the legislative changes effected in Greece after 1967-1968.

For all the above reasons I have come to the conclusion

that the prerequisites of the Law have not been satisfied hence the sub judice decision is correct in Law and consequently this recourse has to be and is hereby dismissed.

In the circumstances, however, there will be no order as to costs.

Recourse dismissed.
No order as to costs.