

1988 December 27

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS DAMIANIDES,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE EDUCATIONAL SERVICE COMMISSION,

*Respondent.*

(Case No. 25/87).

*General principles of administrative law—Administrative practice—Importance of—Consequences emanating therefrom.*

*Educational Officers—The Public Educational Service Law, 10/69, section 76 (1) and its proviso—Administrative practice not to recognize for purposes of increments any previous service with community schools abroad, if such schools are not recognized by the Greek Ministry of Education—Not inconsistent with section 76(1).*

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The applicant is a schoolmaster since 1959. Having obtained leave without pay he went to South Africa, where he served with the Greek Community School of Natal in Durban. His leave was terminated as from 31.8.76. He returned to Cyprus and was posted to an elementary school in Limassol.

On 10.9. 1986 the applicant applied for recognition of his service in overseas schools for purposes of entitlement to increments and promotion.

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Having inquired into the matter the respondents dismissed the application on the ground that the school, where the applicant served during the

period of his leave, was not duly recognized by the Greek Ministry of Education.

The inquiry was based on the proviso to section 76(1)\* of Law 10/1969.

Applicant contended that the proviso did not save previous laws and, therefore, the respondents wrongly relied on section 16 of Law 7/63 of the Greek Communal Chamber. Respondents replied that they did not rely on such section, merely followed the practice established during the last twenty years. 5

Held, dismissing the recourse: 10

(1) An administrative practice which is consistent with the correct construction of the relevant legislation is properly applicable (A passage from *P. M. Tseriotis Ltd. and Others v. The Republic* (1970) 3 C.L.R. 135 at 143 followed). The fact that it has been followed for a long time not only makes it lawful, but also creates certain consequences which impose certain duties namely, a reasoning when a change is decided. 15

(2) The practice followed in this case is not contrary to or inconsistent with Section 77 of Law No. 10 of 1969.

(3) Moreover, the applicant did not base his claim on any particular legal provision. 20

*Recourse dismissed.  
No order as to costs.*

*Cases referred to:*

*P. M. Tseriotis Ltd. and others v. The Republic* (1970) 3 C.L.R. 135; 25

*Ieromonahos v. Republic*, 4 R.S.C.C. 82.

**Recourse.**

Recourse against the refusal, of the respondent to recognize applicant's service as a teacher with the Greek Community

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\* Quoted at pp 2604 - 2605 post.

School of Natal in Durban, South Africa as service for the purposes of pension, promotion and increments.

*S. Karatsis*, for the applicant.

*St. Theodoulou*, for the respondent.

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*Cur. adv. vult.*

A. LOIZOU P. read the following judgment. By the present recourse the applicant seeks the annulment of the decision of the respondent Commission by which it refused to recognize his service with the Greek Community School of Natal in Durban South Africa as service for the purposes of pension, promotion and increments.

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The applicant is a School-Master since 1959. As the from 11th September 1973, he served as a Teacher with the aforementioned School in South Africa after being given originally leave without pay for six months. The said leave was granted by the appropriate Authority upon the application of the applicant. In March, 1983, the appropriate Authority sent all the educational officers who were holding a permanent post in Cyprus but were living and working abroad, a questionnaire with which there appeared its intention not to renew the leave for educationalists who were engaged in teaching work in Greek Community Schools abroad. The applicant continued working until the 31st August 1986, after being given the relevant leave from the appropriate Authority, expressly and/or by implication. The leave of the applicant was terminated on the 31st August 1986 by letter dated the 27th February 1986, and he was transferred to the "H" Elementary School of Limassol (KA), in which the applicant took up duties on the 1st September 1986.

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The applicant by letter dated the 10th September 1986, submitted various documents for recognition of his service in overseas schools for purposes of entitlement to increments and promotion. The appropriate Authority conducted then the necessary

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inquiry from which it transpired that the school in which the applicant was serving was not duly recognized by the Greek Ministry of Education (See Appendix "A" attached to the opposition). On the basis of the outcome of that inquiry and in view of the Provisions of the Laws in force the appropriate Authority dismissed the application of the applicant by their letter dated the 6th November 1986. (See Appendix "B"). It may be noted here that the applicant had not been seconded for duty to the said Community School.

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The inquiry carried out by the respondent Commission, was based on Section 76, of the Elementary Education Service Law, 1969, (Law No. 10 of 1969) and in particular to the proviso to subsection 1, of the said section which reads as follows.

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"Το Υπουργικόν Συμβούλιον δύναται να εκδίδη Κανονισμούς προς καλυτέραν εφαρμογήν των διατάξεων του παρόντος Νόμου και προς ρύθμισιν γενικώς παντός θέματος αφορώντος εις την Επιτροπή, την εκπαιδευτική υπηρεσία και τους εκπαιδευτικούς λειτουργούς:

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Νοείται ότι μέχρις ότου οι τοιούτοι Κανονισμοί εκδοθώσιν ή οιονδήποτε θέμα καθορισθή άλλως δυνάμει του παρόντος Νόμου, οιοδήποτε κανονισμοί ή διοικητικά πράξεις και διοικητικά οδηγία αι οποία περιέχονται εις εγκυκλίους ή άλλως και η υφιστάμενη τακτική αναφορικώς προ την εκπαιδευτικήν υπηρεσίαν και εκπαιδευτικούς λειτουργούς εξακολουθούσι να ισχύωσι καθ' ην έκτασιν δεν αντίκεινται προς τας διατάξεις του παρόντος Νόμου."

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In English it reads:-

"The Council of Ministers may issue regulations for the application of the provisions of this Law and for the regulation generally of ... subject relating to the Commission, the educational service and the educational officers:

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Provided that until such regulations are issued or any other

5 matter is defined otherwise by virtue of the present Law, any regulations or administrative acts and administrative instructions which are contained in circulars or otherwise and the existing practice relating to the educational service and the educational officers will continue to be in force is so far as they are not contrary to the provisions of this Law".

10 It is the case for the applicant that the respondent Commission refused to recognize his service relying on the provisions of Section 76(1) of the Elementary Education Law, 1969 (Law No. 10 of 1969) and that the said Section and proviso thereto preserves the regulatory acts that pre-existed the enactment of the Law, but does not make any saving regarding previous Laws. This argument was advanced because Section 16 of the Teachers of the Elementary Education Communal Schools Law 1963 (Law No. 7  
15 of 1963 of the Greek Communal Chamber), which was providing that recognized service was to be the service in recognized Greek Schools in Cyprus or abroad duly certificated by the appointing Authority.

20 Learned counsel for the applicant argued at length that the said provision could not be relied upon as it has been repealed by Section 77 of Law 10 of 1969. On this point learned counsel for the respondent agrees and maintains that the respondent Commission never relied on that provision but merely in carrying out a proper inquiry in the circumstances followed the practice established during the last twenty years and nothing more.  
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30 It was further contended on behalf of the applicant that the proviso to Section 76(1) of Law No. 10 of 1969 could not save and keep in force administrative acts, Regulations, Circulars, wherever they could be found, or even, the existing practice, even if they had been made or established by virtue of the provisions of Law No. 7 of 1963 of the Greek Communal Chamber and that the repeal of that Law had as a consequence the repeal of all that subsidiary legislation, circulars, practice etc.

Counsel for the respondents posed two questions firstly

whether the established practice is a lawful basis for the taking of administrative decisions or acts especially when the practice is set as a criterion for the exercise of an administrative discretion by an existing law and secondly whether the established practice in the case in hand is contrary to any of the provisions of Law No. 10 of 1969. 5

In the case of *P. M. Tseriotis Ltd. and Others v. The Republic of Cyprus, through the Minister of Finance* (1970) 3 C.L.R. 135 at p. 143 the following is said:

"But, leaving aside the complicated question of principle as to whether or not, and to what extent, custom, can be the source of law for administrative law purposes (see Kyriacopoulos on Greek Administrative Law, 4th ed., Vol. I, pp. 78-80 and Dendias on Administrative Law, 5th ed. , Vol. 1, pp. 51-52), it seems to be sufficiently clear that an administrative practice which is consistent with the correct construction of the relevant legislation is properly applicable (see Lectures on Administrative Law by Stassinopoulos, 1957, p. 127). 10  
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This administrative practice on this subject has been the basis for the exercise of administrative discretion and the fact that it has been followed for a long time not only makes it lawful, but also creates certain consequences which impose certain duties namely a reasoning when a change is decided, (See Stassinopoulos, the Law of Administrative Acts (1951) p. 19.) Furthermore the General Orders and Colonial Regulations, which were of an administrative, or procedural nature continued to be in force in the form of an existing practice. (See *Panaretos Ieromonahos v. Republic*, 4 R.S.C.C. 82). 20  
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In my view the practice followed is not contrary to or inconsistent with Section 77 of Law No. 10 of 1969. Moreover the applicant does not establish any legal foundation for his claim as he has made no reference to any legal provision saying that the years of his absence on leave without pay abroad could be considered as service bringing him within the ambit of the relevant Pensions Laws and the other Laws regarding the earning of increments and 30  
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eligibility for promotion.

For all the above reasons the recourse is dismissed but in the circumstances there will be no order as to costs.

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*Recourse dismissed.  
No order as to costs.*