

1975
Febr. 21

KERAMOURGIA
«AIAS» LTD.

v.

YIANNAKIS
CHRISTOFOROU

[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU,
HADJIANASTASSIOU, A. LOIZOU, JJ.]

KERAMOURGIA «AIAS» LTD.,

Appellant,

v.

YIANNAKIS CHRISTOFOROU,

Respondent.

(Case Stated No. 146).

P. K. IOANNOU & SONS LTD.,

Appellants,

v.

NICOLAS MAVRIKIOU AND ANOTHER,

Respondents.

(Case Stated No. 150).

*Arbitration Tribunal—A judicial organ—Setting up of—
Under section 12 of the Annual Holidays with Pay
Law, 1967 (Law 8 of 1967) and the Arbitration Tri-
bunal Regulations, 1968—Unconstitutional as offending
against the principle of separation of powers—Because
of the extent and manner of the involvement of the
Executive in the appointment and the laying down of
the terms of service of the legally qualified chairman
of the tribunal under the aforesaid section and Regu-
lations.*

5
10

Separation of Powers—Principle of.

*Constitutional Law—Constitutionality of legislation—Consti-
tutionality of section 12 of the Annual Holidays with
Pay Law, 1967 (Law 8 of 1967) and The Arbitration
Tribunal Regulations, 1968—Principle of separation of
powers.*

15

The point in issue in these proceedings was whether the Arbitration Tribunal was validly set up under the Annual Holidays with Pay Law, 1967 (Law 8 of 1967)

and the Arbitration Tribunal Regulations, 1968 made thereunder.

1975
Febr. 21

KERAMOURGIA
«AIAS» LTD.

v.

YIANNAKIS
CHRISTOFOROU

5 The main contention of the appellants has been that the way in which the Tribunal was set up rendered its existence and functioning unconstitutional, because of the contravention of the separation of powers between the Executive and the Judicial Branches of the State. Counsel for both parties, including counsel, who appeared on the invitation of the Court, on behalf of the Attorney-
10 General of the Republic, as *amicus curiae*, were unanimous in their submission that the Tribunal in question has been set up in an unconstitutional manner. They further submitted that the tribunal was a judicial organ and invited the Court to deal with the issue of constitutionality on that basis.
15

The Court after upholding this latter submission proceeded to consider on this basis the issue of constitutionality and

20 *Held*, 1. The extent and manner of the involvement of the Executive Branch of the State in the appointment and laying down of the terms of service of the legally qualified Chairman of the Tribunal—under s. 12 of Law 8/67 and the Arbitration Tribunal Regulations, 1968—offends against the principle of the separation
25 of powers, which is the basis of our constitutional structure and finds expression in several provisions of the Constitution. (See, *inter alia*, *Papaphilippou* and *The Republic*, 1 R.S.C.C. 62, at p. 64 and *Police and Hondrou and Another*, 3 R.S.C.C. 82, at p. 86);

30 2. It follows that the Tribunal was set up in an unconstitutional manner and it could not, consequently, validly exercise the jurisdiction vested in it by virtue of s. 30 of Law 24/67; thus, its decisions involved in these proceedings are void and of no effect.

35 *Order accordingly.*

Cases referred to :

United Engineering Workers Union v. Devanayagam
[1967] 2 All E.R. 367;

40 *Papaphilippou* and *The Republic*, 1 R.S.C.C. 62, at p. 64;

KERAMOURGIA
«AIAS» LTD.

Cases stated.

v.
YIANNAKIS
CHRISTOFOROU

Cases stated by the Chairman of the Arbitration Tribunal relative to his decisions of the 8th January, 1969 5
and the 8th October, 1970 in proceedings under sections 3 and 9 of the Termination of Employment Law, 1967 (Law 24 of 1967) instituted by Yiannakis Christoforou and Nicolas G. Mavrikiou and Another against Keramourgia "Aias" Ltd. and P. K. Ioannou & Sons Ltd., respectively, 10
whereby the applicants were awarded various sums as compensation for unjustified dismissal.

E. Emilianides, for appellant in C.S. 146.

An. Lemis, for respondent in C.S. 146.

Fr. Saveriades, for appellants in C.S. 150. 15

N. Pelides and *Chr. Solomis*, for respondents in C.S. 150.

K. Talarides, on behalf of the Attorney-General, as *amicus curiae*.

Cur. adv. vult. 20

The judgment of the Court was delivered by :-

TRIANTAFYLLIDES, P. : These two Cases Stated were heard together in view of the fact that there was raised the same constitutional issue in relation to both of them.

It has been argued by counsel for the appellants that 25
the Tribunal, from which these Cases Stated have emanated, was not validly set up by virtue of the Annual Holidays with Pay Law, 1967 (Law 8/67) and the Regulations made thereunder (The Arbitration Tribunal Regulations, 1968); it has been submitted, therefore, that 30
such Tribunal was acting without lawful competence when it proceeded to exercise, in relation, to the claims of the respondents, the jurisdiction vested in it by means of the Termination of Employment Law, 1967 (Law 24/67); the main contention of the appellants has been 35
that the way in which the said Tribunal was set up rendered its existence and functioning unconstitutional because of contravention of the separation of powers

between the Executive and the Judicial branches of the State.

1975
Febr. 21

KERAMOURGIA
«AIAS» LTD.

v.

YIANNAKIS
CHRISTOFOROU

5 In dealing with the issue of constitutionality we were assisted not only by counsel for the parties, but, also, by counsel who appeared, on our invitation, on behalf of the Attorney-General of the Republic, as *amicus curiae*; and there has been unanimity amongst all counsel that the Tribunal in question has been set up in an unconstitutional manner.

10 One of the matters raised in argument was that of the nature of the Tribunal; all counsel submitted that the Tribunal is a judicial organ and invited the Court to deal with the issue of constitutionality on that basis. As while considering our judgment we felt (in view, 15 *inter alia*, of the case of *United Engineering Workers Union v. Devanayagam* [1967] 2 All E.R. 367) that it might be useful to examine whether such Tribunal was an organ of judicial or of administrative nature, all counsel were given the opportunity to address us further 20 on this issue, if they so wished, but, eventually, none of them availed himself of this opportunity.

Having given this matter our consideration in the light of the material before us we have decided—as at present advised and in the absence of any sufficiently 25 convincing argument to the contrary—to treat the Tribunal as a judicial organ and to proceed to consider on this basis the relevant issue of constitutionality:

We have reached the conclusion that the extent and manner of the involvement of the Executive branch of 30 the State in the appointment and laying down of the terms of service of the legally qualified Chairman of the Tribunal—under section 12 of Law 8/67 and The Arbitration Tribunal Regulations, 1968—offends against the principle of the separation of powers, which is the 35 basis of our constitutional structure and finds expression in several provisions of the Constitution (see, *inter alia*, *Papaphilippou* and *The Republic*, 1 R.S.C.C. 62, at p. 64, and *Police and Hondrou and Another*, 3 R.S.C.C. 82, at p. 86); it follows that the said Tribunal was set 40 up in an unconstitutional manner and it could not, consequently, validly exercise the jurisdiction vested in it by virtue of section 30 of Law 25/67; thus, its deci-

1975
Febr. 21

KERAMOURGIA
«AIAS» LTD.

v.

YIANNAKIS
CHRISTOFOROU

sions involved in these proceedings are void and of no effect.

In view of the above it is unnecessary to deal with any of the other issues relating to the constitutionality issue.

5

As, in the meantime, section 12 of Law 8/67 has been repealed by section 3 of the Annual Holidays with Pay (Amendment) Law, 1973 (Law 5/73), and thereby a new section 12 has been put in its place, under which a new Tribunal has been set up, these cases are remitted, under section 5 of Law 5/73, to the new Tribunal, with our opinion as above expressed.

10

We have decided not to make any order as to the costs of the proceedings before us.

Appeals allowed. 15

No order as to costs.