

1983 November 16

[TRIANTAFYLIDIS, P., L. LOIZOU, HADJIANASTASSIOU, A. LOIZOU,
MALACHTOS AND DEMETRIADES, JJ.]

MAMAS KOUMI,

Appellant-Plaintiff.

v.

MIKKOS KORTARI AND ANOTHER,

Respondents-Defendants.

(Civil Appeal No. 6082).

*English language—Use of, in Court proceedings—Possible in view
of provisions of The Laws and Courts (Text and Proceedings)
Law, 1965 (Law 51/1965)—Which is valid on the basis of the
doctrine of necessity—Because it has not yet become possible
to translate the Laws from English into Greek—Articles 3(1) 5
and (4) and 189 of the Constitution.*

The sole issue in this appeal was whether in view of the provi-
sions of Articles 3.1 and 4 and 189* of the Constitution and
of the provisions of rule 3** of Order 58 of the Civil Procedure
Rules the statement of claim in a civil action could be written 10
in English.

Prior to the coming into force of the Constitution all the Laws,
Rules and Regulations in force were written in English and, also,
the whole legal system of the then British Colony was basically 15
modelled on and followed the English legal system.

In 1965 there was enacted The Laws and Courts (Text and Pro-
ceedings) Law, 1965 (Law 51/65) whose preamble provided as
follows:

“Whereas it has not become until to-day possible the
translation of the text of all the laws in force: And whereas 20
of the circumstances it has become necessary the temporary
legislative regulation on certain matters relating to the
procedure before the Courts,

* Articles 3.1 and 4 and 189 of the Constitution are quoted at p. 859 post.

** Rule 3 is quoted at p. 858 post.

Now, therefore, the House of Representatives enacts as follows:—”

5 Section 4 of this Law authorised the Attorney-General of the Republic to look after and supervise the translation and the English texts of the Laws in force at the coming into force of that Law, that is, in 1965, and remain in force until their translation became possible; and with regard to the conduct of proceedings in the Courts, section 4 of the Law provided that independently of the provisions of any other Law and until 10 another legislative provision is made the procedure before any Court will continue to be conducted “in any language as until then in use in the Courts”.

15 *Held*, that taking judicial notice of the existing situation as well as of the contents of the Preamble of Law 51/65 highlighting a situation as ascertained by the Executive and the Legislative and the magnitude of the task that was to be faced by those responsible for the translation of the necessary material, this Court has come to the conclusion that this law is valid on the basis of the doctrine of necessity in view of the necessity that 20 has arisen and the temporary nature of the law which has been enacted to meet it; that in view of the provisions of this Law, the trial Judge wrongly found as irregular the filing of the statement of claim in English; accordingly the appeal must be allowed.

25 *Appeal allowed.*

Appeal.

30 Appeal by plaintiff against the order of the District Court of Limassol (Artemis, D.J. dated the 27th February, 1980) (Action No. 1564/79) whereby it was ordered that the statement of claim filed in the above action and drawn up in English be struck out and a new statement of claim be filed and delivered in Greek within ten days.

Y. Agapiou, for the appellant.

L. Papaphilippou with *D. Papademas*, for the respondents.

35 *N. Charalambous*, Senior Counsel of the Republic, for the Attorney-General as *Amicus Curiae*.

Cur. adv. vult.

TRIANAFYLLIDES, P.: The judgment of the Court will be delivered by Mr. Justice A. Loizou.

A. LOIZOU, J.. In a civil action for damages for personal injuries instituted in the District Court of Limassol by the appellant, the statement of claim was written in English and the authority for it was derived from Order 58, r. 3, of the Civil Procedure Rules, whereby “documents for the use of the Court presented by advocates who are barristers shall be in English. Any documents intended for any such advocates, may, even where the client for whom he is acting is Greek—or Turkish speaking, be in English”.

After the filing of the Defence, the defendants, now respondents in this appeal, raised therein a preliminary objection to the statement of claim being written in English. There followed an application by which they claimed “the dismissal of the action or any other relief that the Court might deem just”. The application was based on Order 27, rule 3, and Articles 3.1 and 4, 28.1 and 2 and 189 of the Constitution. The ground upon which the application was argued and determined was that as the English language was no longer an official language of the State and as a statement of claim was written in a language unknown to the defendants,—who it may be mentioned here were represented by counsel not a barrister,—the remedy sought ought to be granted. It was argued that even if where the advocate of a party is a Barrister-at-Law, in the light of the provisions of Article 188.1 of the Constitution whereby “all laws in force on the date of the coming into operation of the Constitution shall, until amended, whether by way of variation, addition or repeal, . . . continue in force on or after that date and shall, as from that date, be construed and applied with such modification as may be necessary to bring them into conformity with this Constitution”, Order 58, rule 3, had to be applied with the necessary modifications to bring it in line with the Constitution.

By his Opposition the appellant relied on the provisions of Order 58, rule 3, as still permitting the filing of pleadings in English if their author is a Barrister-at-law as was the case in this instance and that in any event that was a mere irregularity.

The learned trial Judge upheld the objection and struck out the statement of claim and directed that the plaintiffs should

file and deliver a new statement of claim in the Greek language within ten days from that date and that the defendants file their defence within ten days from the delivery to them of the statement of claim. He refused, however, to dismiss the action as the proceedings were not rendered null and void ab initio as the endorsement on the writ was made in the Greek language. With regard to the costs, he "took into consideration the fact that although the practice could not prevail over the Constitution", yet as until that date the drafting of pleadings was made in English without any objections, he allowed only a part of the costs of the applicant, namely, C£15.

Paragraphs 1 and 4 of Article 3 of the Constitution read as follows:-

15 "3.1 The official languages of the Republic are Greek and Turkish.

4. Judicial proceedings shall be conducted or made and judgments shall be drawn up in the Greek language if the parties are Greek, in the Turkish language if the parties are Turkish, and in both the Greek and the Turkish languages if the parties are Greek and Turkish. The official language or languages to be used for such purposes in all other cases shall be specified by the Rules of Court made by the High Court under Article 163".

25 And Article 189, which is to be found in the part of the Constitution entitled "Transitional Provisions", provides:

"Notwithstanding anything in Article 3 contained, for a period of five years after the date of the coming into operation of this Constitution—

- 30 (a) all laws which under Article 188 will continue to be in force may continue to be in the English language;
- (b) the English language may be used in any proceedings before any Court in the Republic".

35 It appears from this latter article that when the Constitution was being drawn up, its drafters obviously took cognizance of the fact that not only the laws, rules and regulations in force at the time were written in English, but that the whole legal

system of the then British colony was basically modelled on and followed the English Legal System. Hence the necessity to allow some time which they thought would have been sufficient in the circumstances to be five years for the necessary changes in the language to be made. Circumstances proved that they were over optimistic as the English Common Law is not merely based on rules and regulations which could be translated but on caselaw as it is to be found in law reports and commented upon in text-books and writings that are all written in the English language. Moreover precedents of forms in judicial proceedings which are the products of the experience and knowledge of their drafters based on the caselaw are also written in English. It was, therefore, discovered in 1965 that that was an immense task which brought about a necessity that had to be faced by some legislative action so that there would not have followed a disruption and chaos in the administration of justice. A Law entitled *The Laws and Courts (Text and Proceedings) Law, 1965, (Law No. 51 of 1965)*, was enacted and as it has become customary in such Laws intended to meet also abnormal situations, it has also a preamble which reads as follows:

“Whereas it has not become until to-day possible the translation of the text of all the laws in force:

And whereas as of the circumstances it has become necessary the temporary legislative regulation on certain matters relating to the procedure before the Courts,

Now, therefore, the House of Representatives enacts as follows:”.

In the said Law provision is further made under section 3 authorising the Attorney-General of the Republic to look after and supervise the translation and the English texts of the Laws in force at the coming into force of that Law, that is, in 1965, and remain in force until their translation became possible. With regard to the conduct of proceedings in the Courts, section 4 of the Law provided that independently of the provisions of any other Law and until another legislative provision is made the procedure before any Court will continue to be conducted “in any language as until then in use in the Courts”.

Apparently the existence of this law escaped the attention of counsel and no reference is mentioned whatsoever to it by the trial Judge whose very preamble brings up the question of the doctrine of necessity because of not having become
5 possible to translate the laws and consequently on the ground allowing the possibility of continuing to use the English language as being one of those languages used in the proceedings in the Courts of the Republic.

10 Having given the matter our best consideration and taking judicial notice of the existing situation as well as of the contents of the Preamble highlighting a situation as ascertained by the Executive and the Legislative and the magnitude of the task that was to be faced by those responsible for the translation of the necessary material, we have come to the conclusion that
15 this law is valid on the basis of the doctrine of necessity in view of the necessity that has arisen and the temporary nature of the law which has been enacted to meet it.

It may also be pointed out that this Law does not in any way exclude the use of the Greek or Turkish languages in Court
20 proceedings and matters relevant thereto and which have in practice been extensively used. It was therefore, in view of its provisions wrong to find as irregular the filing of the Statement of Claim in English.

For all the above reasons this appeal is allowed but in the
25 circumstances there will be no order as to costs.

*Appeal allowed with no order
as to costs.*