

1983 April 29

[Pikis, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOLAS SANTIS AND OTHERS,

*Applicants.*

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE COUNCIL OF MINISTERS,

2. THE MINISTER OF FINANCE,

*Respondents.*

(Case No. 38/83).

---

*Pensions Law, 1980 (Law 49/80)—Children of Parliamentarian who died before the enactment of the Law entitled to its benefits—If the relevant provisions of the Law provided otherwise then they would be unconstitutional because of repugnancy to the provisions of Article 28.1 of the Constitution.*

5

The sole issue in this recourse was whether the Pensions Law, 1980 (Law 49/80), providing for the conferment, under certain circumstances, of pension to the President of the Republic, the Members of the Executive and the Members of the Legislature, expressly, or by necessary implication, excluded from the class of beneficiaries children of a Parliamentarian who died before the enactment of the Law.

10

*Held*, that as a matter of interpretation of the provisions of Law 49/80 children of a Parliamentarian who died before the enactment of the Law were entitled to the benefits of the Law.

15

*Held*, further, that if the relevant provisions of Law 49/80 compelled this Court to rule otherwise, it would unhesitatingly declare that part of the Statute that denies benefits to children of Parliamentarians who died before the enactment of the Law, as unconstitutional because of repugnancy to the provisions of Article 28.1.

20

*Sub judice decision annulled.*

## Cases referred to:

- R. v. Inhabitants of St. Mary White Chapel* [1848] 12 Q.B.120;  
*R. v. Inhabitants of Christchurch* [1848] 12 Q.B.149;  
*Master Ladies Tailors Organisation v. Minister of Labour* [1950]  
 2 All E.R.525; 5  
*Cummins Ballrooms Ltd. v. Zenith Investments (Torquay) Ltd.*  
 [1970] 2 All E.R.871 at p. 893 (H.L.);  
*Nortam v. London Borough of Barnet* [1978] 1 All E.R.1243  
 (C.A.);  
*Police v. Ekdotiki Eteria* (1982) 2 C.L.R. 63; 10  
*Papaxenophontos and Others v. Republic* (1982) 3 C.L.R.1037.

**Recourse.**

Recourse against the refusal of the respondents to acknowledge applicants' pension rights as persons entitled to a pension upon the death of Georghios Santis, a member of the House of Representatives. 15

*G. Triantafyllides*, for the applicants.

*M. Photiou*, for the respondent.

*Cur. adv. vult.*

PIKIS J. read the following judgment. A neat question of law is the only issue calling for resolution in this recourse: 20

Are the benefits of the Pension Law of 1980 - Law 49/80, providing for the conferment, under certain circumstances, of pension to the President of the Republic, the Members of the Executive and the Members of the Legislature, confined to members of the aforesaid classes of entitled persons that were in being, i.e. alive at the time of the enactment of the law of 1.8.1980? 25

The particular question we must answer is, whether the children of a Parliamentarian, namely Georghios Santis, who predeceased the enactment of the law, are entitled to the benefits of the aforesaid legislation. The recourse on the part of their mother was withdrawn and it is dismissed. 30

Georghios Santis was a Representative of the Famagusta district to the House of Representatives, from the year 1960 to 1970 - a period exceeding in duration the minimum service necessary to entitle a Representative or his widow and orphans 35

to a pension (48 months for a Representative returned in a general parliamentary election - s.2, Law 49/80). The late Representative died in December, 1979, at the age of 50, leaving two orphans qualifying as persons entitled to a pension upon the death of a Representative, in view of their age, at the time of the death of their father, 17 and 15 respectively (see s.7(3) of the law). Their application for the acknowledgment of their pension rights, dated 7.10.1982, was refused on 12.12.1982 on the ground that their father passed away before the enactment of the law, consequently, no rights could accrue to any member of his family.

The present proceedings are aimed to challenge the validity of this decision. The denial of pension rights to the applicants was, as stated in the statement of facts supporting the opposition, justified as a matter of interpretation of the relevant provisions of Law 49/80, inasmuch as the law confined the benefits accruing thereunder to Parliamentarians who survived the enactment of the law. Parliamentarians predeceasing the enactment of the law could enjoy no benefits under the law nor their family dependants.

On examination of the provisions of the law, it appears that pensionable service is not tied to service in the House of Representatives at any particular period of time, past, as well as present service in the House confers a similar right. The time at which a Parliamentarian vacates Office is only relevant to the ascertainment of the pecuniary pension benefits or gratuity in case he, or an entitled person, opts for one (s.6(1) of the law). It is transparent that the object of the law was to grant pensions to Representatives who served in the House for a qualifying period irrespective of the time at which service was rendered. An express provision of the law disqualifies from the enjoyment of pension rights Parliamentarians guilty of disgracing their Office (s.14).

The pertinent question in these proceedings is whether the law expressly, or by necessary implication, excludes from the class of beneficiaries children of a Parliamentarian who died before the enactment of the law. In other words, did the law exclude from its ambit orphans of Representatives who died before

1.8.1980, as the case was with Georghios Santis? If the answer is in the affirmative and the law excluded from the list of beneficiaries children of predeceased Parliamentarians, a second question must be answered, whether the law, in making this distinction, makes a discrimination offensive to the principle of equality before the law, safeguarded by Article 28.1 of the Constitution. 5

If the distinction suggested on behalf of the respondents is really warranted by the provisions of the law, it would indeed be difficult to identify the rationale behind it. Orphans of predeceased Parliamentarians merit no less protection from orphans-to-be of Parliamentarians living at the time of the enactment of the law. The smallness of the number of predeceased Parliamentarians is a factor in itself, making it most unlikely that the legislature consciously contemplated their exclusion. The injustice and unfairness inherent in such a distinction, is another potent factor that militates against the possibility of the legislature wittingly opting for such a course. To the same conclusion I am driven on examination of the purposes the law, set out to achieve to secure Parliamentarians and their immediate dependants from financial strain, presumably in order to rid them while in Office from financial pressure. This was the aim of the law. Notwithstanding arguments to the contrary, I am, however, of the opinion, that the legislature did not make the distinction suggested on behalf of the respondents. 10  
15  
20  
25

*To start with, nowhere do they say that entitled persons, including orphans of deceased Parliamentarians, are to be excluded from the compass of the law in cases where their father died before the coming of the law in force. The physical existence of a Parliamentarian at the time of the enactment of the law, is not set as a prerequisite for the accrual of benefits under the law to his children. Originally, the respondents rested their case, as Mr. Photiou informed me, on the assumption that the acknowledgment of benefits to the children of Georghios Santis would entail giving retrospective effect to the law. But after hearing the exposition of the case of the applicants, made by Mr. Triantafyllides on their behalf, he felt constrained to admit that the recognition of the applicants as entitled persons does not require giving the law retroactive effect.* 30  
35

Retrospectivity, in the context of legislation, primarily signifies alteration of rights and the imposition of obligations *ex post facto*. It is a course regarded as repugnant to fairness and justice, destructive of certainty in the law and the legal process.

5 Under English law, there is a presumption against giving retrospective effect to a statute. Effect must be given to this presumption unless it is displaced by clear statutory language or by a distinct implication of its provisions. This presumption is given statutory force in Cyprus, by virtue of the provisions of  
10 sections 6, 7 and 10 of the Interpretation Law, Cap. 1.

It is imperative to keep in perspective that a statute is not retrospective in character merely because the rights accruing thereunder are determinable by reference to passed events. Events of the past and experience gained in times gone is the  
15 underlying theme of most statutes. A statute retains its prospective character so long as rights conferred thereunder, or obligations created thereby arise from the date of its enactment or from a future date. Such legislation does not change the law, as it stood in days past upsetting what the subjects then  
20 confidently regarded the law to be.

The old case of *R. v. Inhabitants of St. Mary White Chapel* [1848] 12 Q.B. 120, illustrates the implications of a prospective statute on events covered by its provisions but occurring before its enactment. The right of a widow to remain in the parish for  
25 a year after the death of her husband, under the provisions of s.2 of the Poor Removal Act of 1846, accrued on the date of the enactment of the law and not earlier. It certainly did not accrue on the day her husband passed away for, it was a right not recognised by law at the time. Therefore, the period of one  
30 year did not count from the date of the death of her husband. The right accrued on the date of the enactment of the law and not earlier. (See, also, *R. v. Inhabitants of Christchurch* [1848] 12 Q.B. 149 and, the judgment of *Somervell L.J.* in *Master Ladies Tailors Organisation v. Minister of Labour* [1950] 2 All E.R. 525  
35 - also, *Maxwel* on the *Interpretation of Statutes*, p.217 et seq.). *Craies* depicts retrospective legislation in the following terms:

“..... A statute which takes away or impairs any vested rights acquired under existing law, or creates a new obligation, or imposes a new duty, or attaches a new disability

in respect of transactions or considerations already past.”  
(6th edition, p.18).

The payment of pension to a Parliamentarian under the law is dependent on his attaining the age of 60 (s.6(2)). Therefore, the date of the enactment of the law is not definitive for the accrual of pension rights. The magnitude of pension benefits on the other hand, is again computed by reference to facts totally extraneous to his physical existence at the time of the enactment of the law; they are dependent on his emoluments at the time of cession of service (s.6(1)). Those provisions that purport to define the implications arising from the death of a Parliamentarian, encountered in sections 7, 9 and 12, are again in no way related to his physical existence at the time of the enactment of the law.

I am unable to sustain the submission of counsel for the respondents that the provisions of s.7(1) support his preferred construction of the law in the area under consideration. It lays down that upon the death of a Parliamentarian, before the grant to him of a pension, entitled children acquire, as from that date, pension benefits. This provision does not deprive the children of a predeceased Parliamentarian of pension rights but merely suspends, by interpreting the law prospectively, the accrual of the right to the date of the enactment of the law. But this provision, neither expressly nor by necessary implication, excludes entitled children from the class of beneficiaries of the law.

I find it unnecessary to debate at any length in these proceedings the several canons of statutory construction or their interplay. I merely note that exclusion of the orphans of a predeceased Parliamentarian from the range of beneficiaries, would be contrary to the purposes of the law outlined above, a course that should be avoided, if possible, on a consideration of the wording of the law. (See, *Cummins Ballrooms Ltd. v. Zenith Investments (Torquay) Ltd.* [1970] 2 All E.R. 871, 893 (H.L.) and, *Nortman v. London Borough of Barnet* [1978] 1 All E.R. 1243 (C.A.). Another rule of statutory interpretation of relevance here, is that in construing statutes, we must start from the premise that the legislature was aware of and intended to observe the provisions of the Constitution. (See, *Police v.*

*Ekdotiki Eteria* (1982) 2 C.L.R. 63). Therefore, they can be presumed not to have intended to have made a distinction that smacks of unreasonableness and injustice, a differentiation inimic to the concept of equality.

5 In my judgment, as a matter of interpretation of the provisions of Law 49/80, the applicants were entitled to the benefits of the law of which they were wrongly deprived by the sub judge decision. Inevitably the decision must be set aside. If the relevant provisions of Law 49/80 compelled me to rule otherwise,  
10 I would unhesitatingly declare that part of the Statute that denies benefits to children of Parliamentarians who died before the enactment of the law, as unconstitutional because of repugnancy to the provisions of Article 28.1. The decision of Stylianides, J. in *Papaxenophontos and Others v. Republic*  
15 (1982) 3 C.L.R. 1037, is very much on the point. The learned Judge declared, after reviewing the principles bearing on equality, unconstitutional that part of the provisions of the Pensions (Amendment) Law (No.2) - Law 39/81 and Pensions (Secondary School Teachers) (Amendment) Law - Law 40/81  
20 that excluded from the benefits of the law a small class of educationalists for no valid reason. The following passage is relevant to the question in hand:

25 "The applicants share common and relevant properties and qualifications with the rest of the officers with interrupted service out of which they were specially selected to be cut off. There was no objective basis for leaving them out." (p.1052).

30 In conclusion, the decision under review is based upon a misconception of the law and must be set aside. The decision is hereby annulled. Let there be no order as to costs.

*Sub judge decision annulled. No order as to costs.*