1985 November 21

[TRIANTAFYLLIDES, P., SAVVIDES, PIKIS, JJ.]

SOUZI STEPHANIDOU,

Appellant,

v.

ZACHARIAS ANTONAKI IOANNIDES,

Respondent.

(Civil Appeal No. 6395)

Constitutional Law—Separation of Powers between the Legislative and the Judicial Power—S. 32(2) of the Rent Control Law 23/83 does not contravene the separation of Powers —It is well settled in Constitutional Law that the Legislature may enact a law of a general application with retrospective effect, which may affect relations that have been judicially regulated.

Constitutional Law—Constitution, Article 28—Equality—S. 32 (2) of Law 23/83 does not violate the principle of equality safeguarded by Article 28.

The Rent Control Law 23/83—S. 32(2).

Appeal—An appeal is a proceeding by way of rehearing—Once an appeal is filed the judgment of first instance appealed from ceases to be of a final nature—Therefore it cannot be said that s. 32(2) of Law 23/83 interfered with the "final" determination of the present case.

After the filing of the present appeal against the judgment, whereby an order for the possession of premises of which the appellant is the statutory tenant was made under the provisions of the Rent Control Law 36/75 in favour of the respondent as the landlord, the Rent Control Law 23/83 was enacted. Section 32(2) of Law 23/83 provides that all appeals pending on the date of the coming into force of Law 23/83 are to be heard and determined by

the Supreme Court taking into consideration the provisions of Law 23/83.

Counsel for the appellant argued that in view of s. 32 (2) of Law 23/83 and as the relevant to the present case provisions of Law 36/75 and of Law 23/83 are, respectively, substantially different the order for possession must be set aside and an order for a new trial must be made. Counsel for the respondent submitted that s. 32(2) of Law 23/83 is unconstitutional because it contravenes the separation of Powers between the Legislative Power and the Judicial Power of the Republic.

Held, allowing the appeal and ordering a new trial, Pikis, J. dissenting:

(1) The judgment of the trial Court was, when it was given, subject to an appeal which is a proceeding by way of rehearing. Though final when it was given it ceased to be of a final nature as soon as the appeal was filed. (*Attorney-General of The Republic* v. *Georghiou* (1984) 2 C.L.R. 251 distinguished on the ground that that decision was reached for the purposes of Article 83.2 of the Constitution and the situation in that respect is clearly distinguishable from the situation in the present instance). Consequently it cannot be said that by the retrospective operation of s. 32(2) of Law 23/83 the legislature interfered with the "final" determination of the present case.

(2) It is well settled that the Legislature by enacting a law of general application with retrospective effect, which may affect relations that have been judicially regulated, does not contravene the separation of Powers since such law does not prescribe the particular outcome of a specific judicial proceeding.

(3) The application of s. 32(2) of Law 23/83 does not violate the principle of equality safeguarded by Article 28 of the Constitution because a reasonable differentiation can be made between a case in which no appeal has been made and a case in which after a first instance judgment had been made an appeal was filed and was pending when Law 23/83 was enacted.

(4) This appeal has, therefore, to be determined in accordance with s. 32(2) of Law 23/83. In view of the substantial differences between the corresponding relevant provisions of Law 36/75 and of Law 23/83 a new trial has to be ordered.

Appeal allowed. New trial ordered. No order as to costs.

Cases referred to:

Kyriacou and Son Ltd. v. *Rologis* (1985) 1 C.L.R. 211;

Pyrgas v. *Stavridou* (1969) 1 C.L.R. 332;

Attorney-General of The Republic v. *Georghiou* (1984) 2 C.L.R. 251;

Police v. *Hondrou,* 3 R.S.C.C. 82;

Charalambous and Another v. *CY.T.A.* (1974) 3 C.L.R. 175;

Papaphilippou v. *Republic,* 1 R.S.C.C. 62;

President of The Republic v. *House of Representatives* (1985) 3 C.L.R. 1724;

President of The Republic v. *House of Representatives* (1985) 3 C.L.R. 2165;

Antonis Kourris v. *The Supreme Council of Judicature* (1972) 3 C.L.R. 390;

Keramourgia "AIAS" Ltd. v. *Yiannakis Ctristoforou* (1975) 1 C.L.R. 38;

Papapetrou v. *Republic,* 2 R.S.C.C. 61;

Diagoras Development Ltd. v. *National Bank of Greece* (1985) 1 C.L.R. 581;

Republic and Charalambos Zacharia, 2 R.S.C.C. 1;

Malachtou v. *Attorney-General* (1981) 1 C.L.R. 543;

Chokolingo v. *A.-G. of Trinidad* [1981] 1 All E.R. 244;

Yiannis Kyriacou Pourikkos v. *Mehmed Fevzi*, 1962 C.L.R. 283;

Economides v. *Zodhiades*, 1961 C.L.R. 306;

Rashid Adem v. *Lutfiye Mevlid* (1963) 2 C.L.R. 3;

Police v. *Ekdotiki Eteria* (1982) 2 C.L.R. 63;

Decisions of the Greek Council of State Nos: 843/54, 1762/54, 1459/55, 871/66, 2868/73, 2976/73, 3937/73 and 488/53.

Appeal.

Appeal by applicant-tenant against the judgment of the District Court of Nicosia (S. Stavrinides, D.J.) dated the 13th February, 1982 (Action No. 149/81) whereby an order for the possession of premises of which the appellant is the statutory tenant was made in favour of respondent as the landlord.

A. S. Angelides, for the appellant.

A. Pandelides with *Chr. Kitromelides*, for the respondent.

Cur. adv. vult.

The following judgments were read:

TRIANTAFYLLIDES P.: This is a judgment expressing the views of Mr. Justice Savvides and of myself regarding the outcome of this appeal. Mr. Justice Pikis will give a separate dissenting judgment.

By the present appeal the appellant challenges the judgment in Rent Control Application 149/81, in the District Court of Nicosia, by means of which an order for the possession of premises of which the appellant is the statutory tenant was made in favour of the respondent as the landlord.

At the commencement of the hearing of this appeal counsel appearing for the appellant argued that after the judgment which is challenged by this appeal was given on the 13th February 1982, under the provisions of the Rent Control Law, 1975 (Law 36/75), and after the present appeal was filed on the 25th February 1982, there was

enacted, on the 22nd April 1983, the Rent Control Law, 1983 (Law 23/83), section 32(2) of which provides that all appeals pending on the date of the coming into force of Law 23/83 are to be heard and determined by the Supreme Court taking into consideration the provisions of Law 23/83.

Counsel for the appellant went on to argue that the relevant to the present case provisions of Law 36/75 and of Law 23/83 are, respectively, substantially different and that, in view of section 32(2), above, of Law 23/83, the order for possession made on the basis of the provisions of Law 36/75 cannot be sustained on appeal on the basis of the substantially different corresponding provisions of Law 23/83 and has to be set aside and an order for a new trial must be made.

A similar situation arose in *Kyriacou and Son Ltd.* v. *Rologis Ltd.*, (1985) 1 C.L.R. 211, where the following were stated (at pp. 214-215):

> "After the present appeal had been filed, and before it could be heard, Law 36/75 was repealed, as from the 22nd of April 1983, by section 35 of the Rent Control Law, 1983 (Law 23/83), and provision was made, by section 32(2) of Law 23/83, that all appeals pending on the date of the coming into force of Law 23/83 are to be heard and determined by the Supreme Court taking into consideration the provisions of Law 23/83.
>
> In Law 23/83, and particularly in its section 11 which corresponds to section 16 of Law 36/75, there is not to be found a provision of the nature of subsection (1)(1) of section 16 of Law 36/75.
>
> When the hearing of the present appeal was about to commence counsel for the appellants raised the issue of the effect, as regards the fate of this appeal, of the enactment, after the filing of such appeal, of Law 23/83.
>
> We have no difficulty in arriving at the conclusion that section 32(2), above, has rendered retrospectively applicable to all appeals, such as the present one, the

provisions of Law 23/83 to the exclusion of any corresponding or other provisions of Law 36/75; and that, moreover, such section 32(2) clearly manifests an intention contrary to the application to an appeal of this nature of the provisions of section 10(2) of the Interpretation Law, Cap. 1.

This appeal is, by virtue of rules 3 and 8 of Order 35 of the Civil Procedure Rules and of section 25(3) of the Courts of Justice Law, 1960 (Law 14/60), a proceeding by way of rehearing (see, inter alia, in this respect, *Pyrgas* v. *Stavridou*, (1969) 1 C.L.R. 332, 342). Thus, the position is closely similar to the hearing of an appeal by the Court of Appeal in England under the previously in force rule 1 of Order 58 of the Rules of the Supreme Court in England and the now in force rule 3 of Order 59 of such Rules (see the Supreme Court Practice, 1982, vol. 1, pp. 922, 923).

Consequently, this Court, when dealing with an appeal such as the present one, can consider changes in the law which have occurred since the trial and apply legislation which has been enacted since the trial and which is retrospective, as have been rendered retrospective the relevant provisions of Law 23/83 by virtue of section 32(2) of such Law."

It is correct that in the *Kyriacou* case, supra, there was not raised the issue of the constitutionality of section 32(2) of Law 23/83, whereas in the present instance counsel for the respondent has argued that section 32(2) of Law 23/83, by providing that the provisions of Law 23/83 are to be applied retrospectively on appeal to cases already determined in the first instance under the provisions of Law 36/75, contravenes the Separation of Powers between the Legislative Power and the Judicial Power and it is, therefore, unconstitutional.

It has to be borne in mind, in the first place, that the judgment of trial Court which was given under Law 36/75 was, when it was given, subject to an appeal, which is a proceeding by way of rehearing (see the *Kyriacou* case,

supra, at pp. 214-215) and, therefore, though the first instance judgment was final at the time when it was given it ceased to be of a final nature as soon as an appeal has been made against it.

In our opinion the decision of the majority of the Supreme Court in the case of *Attorney-General of the Republic* v. *Georghiou*, (1984) 2 C.L.R. 251, regarding the effect and finality of a conviction in the first instance, notwithstanding that an appeal has been made against it, is a decision reached for the purposes of Article 83.2 of the Constitution and the situation in that respect is clearly distiguishable from the situation in the present instance. Consequently, it cannot be said that by the retrospective operation of section 32(2) of Law 23/83 there has been interfered with by the legislation the "final" judicial determination of the present case.

In any event, it is well settled in constitutional law that the Legislature by enacting a Law of general application which has retrospective effect and which may affect relations that have been judicially regulated does not contravene the Separation of Powers since such Law does not prescribe the particular outcome of any specific judicial proceeding; and, of course, the eventual application of such a Law to any individual case is only within the competence of the Courts. Useful reference, in this respect, may be made, inter alia, to the Decisions of the Greek Council of State in cases 843/1954, 1762/1954, 1459/1955, 871/1966, 2868/1973, 2976/1973, 3937/1973, and, particularly, in case 488/1953 (which is reported in "Θέμις", vol. ΞΔ p. 254).

Consequently, it cannot be held that section 32(2) of Law 23/83 offends against the Separation of Powers between the Legislative Power and the Judicial Power.

Nor can it be said that the application of section 32(2) of Law 23/83 to pending appeals results in a violation of the right to equality, which is protected by Article 28 of our Constitution, because a reasonable differentiation can, indeed, be made between a case in which no appeal has been made and a case in which after the first instance judg-

ment an appeal had been made and was pending when Law 23/83 was enacted.

In the light of all the foregoing this appeal has to be determined in accordance with the provisions of section 32(2) of Law 23/83 which is not unconstitutional; and in view of this we have to order, by majority, a new trial because of the substantial differences between the corresponding relevant provisions of Law 36/75, on the basis of which the first instance judgment for recovery of possession of the premises concerned was given, and of Law 23/83 in the light of which this appeal has to be determined.

We do not propose to make any order as to the costs of this appeal in view of the novel nature of the issues which have been raised in it.

PIKIS J.: A question of constitutionality must be determined, revolving on the constitutionality of subsection 2 of section 32 of the Rent Control Law, 1983. The question is of tremendous importance because the Court is required to draw the line between the legitimate spheres of competence of the legislative and judicial power of the State. It is the case of the parties claiming the law to be unconstitutional, that its provisions, on a fair reading of them and upon contemplation of the implications of their application, constitute an impermissible encroachment on the powers of the Judiciary, enacted in breach of -

(a) the separation between the legislative and judicial powers entrenched in the Constitution, and

(b) the limitation of the powers of the Supreme Court provided for in Article 155 of the Constitution.

The sphere of competence of the House of Representatives, particularly amenity, if any, to reverse the effect of first instance judgments is the nub of the first issue in this appeal. The second concerns primarily the compatibility of the provisions of s. 32(2) with those of Article 155 of the Constitution.

Subsection 2 of section 32 provides that all appeals pending at the time of its enactment (meaning appeals in

cases of statutory tenancies), be determined by the Supreme Court in accordance with the provisions of Law 23/83 that repealed and superseded the pre-existing rent control legislation (Law 36/75 that in turn repealed prior rent control legislation). The 1983 legislation introduced important changes in the law, particularly respecting recovery of possession. The grounds upon which possession could be recovered were materially altered, changing the basis upon which possession could be recovered. In view of the sweeping changes in the law, s. 32(2) necessarily contemplates disturbance of the finality of a binding judgment of a Court of first instance and implies competence on the part of the legislature to upset or reverse final acts of the judicial power of the State. Furthermore, it purports to vest jurisdiction in the Supreme Court to determine the matter de novo in accordance and subject to the principles of the new legislation. Thus, competence is bestowed on the Supreme Court to make, in the exercise of its appellate jurisdiction, an inquiry into the factual background of the case in order to resolve it according to the principles established by Law 23/83. And the first question we must answer is whether it is in the power of the legislature to assume competence over final judicial acts.

The powers of the State are distributed among its three main components, the Executive, the Legislature and the Judiciary, by separate Chapters of the Constitution (Caps. III, IV, and IX & X), an arrangement that serves to underline the separation between them, institutionally entrenched in the Constitution. Repeatedly, separation has been acknowledged[1] as a salient feature of the Constitution permeating every aspect of it. The implications in practice of the application of the doctrine, as identified by the case-law of the Supreme Court are the following:-

(A) In the absence of express provision to the contrary in the Constitution, the competence of each power is

[1] Police v. Hondrou, 3 R.S.C.C. 82; Charalambous and Another v. CY.T.A. (1974) 3 C.L.R. 176.

confined to exercise of jurisdiction in relation to acts intrinsically in the nature of its powers[1].

(B) Acts incidental to the natural competence of a particular power of the State are subject to its regulation notwithstanding their character, in the interest of the autonomy and sovereignty of each power in its principal domain[2].

(C) A corollary of the above is that the residue of State powers vests in the three branches the State depending on nature of the act[3]. Recently[4], the Full Bench of the Supreme Court declared unconstitutional section 2 of Law 92/84 because it purported to supply an interpretation of the law[5] (Debtors Relief (Temporary Provisions) (Amendment)) Law 1979—Law 24/79, a judicial function within the exclusive jurisdiction of the judicial power of the State. The competence vested in the legislature to legislate in any matter is, by the tenor of the Constitution and the principle of separation of powers underlying it, limited to acts of a legislative character.

The principal objects of the doctrine of separation of powers are -

(a) To provide for the decentralisation of State power and its exercise by coordinate branches of the State, and

(b) to ensure the supremacy of the law by the establishment of constitutional checks and balance in the exercise of State power.

In *Chokolingo* v. *A-G of Trinidad*[6] the Privy Council emphasized that in a system of separation of powers only the Courts can formally declare the law in any

---

[1] See, inter alia, Papaphilippou v. Republic, 1 R.S.C.C. 62; Reference No. 1/84—President of the Republic v. House of Representatives, (1985) 3 C.L.R. 1724; Reference No. 4/85—President of the Republic v. House of Representatives, (1985) 3 C.L.R. 2165.

[2] Kourris v. The Supreme Council of Judicature (1972) 3 C.L.R. 390; Keramourgia «AIAS» Ltd. v. Yiannakis Christoforou (1975) 1 C.L.R. 38.

[3] See, inter alia, Papapetrou v. Republic, 2 R.S.C.C. 61.

[4] See, Diagoras Development Ltd. v. National Bank of Greece (1985) 1 C.L.R. 581.

[5] See, also, Republic and Charalambos Zacharia, 2 R.S.C.C. 1; Malachtou v. Attorney-General (1981) 1 C.L.R. 543.

[6] [1981] 1 All E.R. 244.

given case. It was pointed out that due process would be subverted if parallel courses were open for the pursuit of the same rights after their elicitation by the Courts.

In *Attorney-General* v. *Georghiou*[1] it was authoritatively decided by the majority judgments of the Full Bench of the Supreme Court, that the administration of justice under our system of law is not pegged to a two-tier system and that finality ensues with the issue of judgment at first instance. The Constitution does not safeguard a right of appeal nor does it make finality of first instance judgments dependent on affirmation on appeal. Under our legal system the role of the Supreme Court is confined—subject to specified exceptions that need not concern us here—to the exercise of appellate jurisdiction designed to oversee the correctness of first instance judgments. The ratio in the case of *Georghiou*, a criminal proceeding, applies with equal force to civil litigation. In the same way as an appeal in a criminal case does not suspend the finality or effect of the judgment, in much the same way an appeal against judgment in a civil case does not stay execution (see Ord. 35 r. 18—Civil Procedure Rules). Section 25(3) of the Courts of Justice Law—14/60, that defines the appellate jurisdiction of the Supreme Court, in no way subordinates the finality of judgments of trial Courts to affirmation on appeal; nor does it exonerate the parties from placing before the Court all facts material for the determination of the case. As the Supreme Court reminded in *Yiannis Kyriacou Pourikkos* v. *Mehmed Fevzi*[2] "this statutory provision (referring to s. 25(3) of Law 14/60) was never intended to relieve a plaintiff at trial from the true duty of placing before the Court all available relevant evidence"[3].

The judgment of the Court at first instance is a final expression of the exercise of judicial power, sealing thereby the rights of the parties thereto, subject only to correction

---

[1] (1984) 2 C.L.R. 251.

[2] (1962) C.L.R. 283, 288.

[3] See, also, Economides v. Zodhiatis, 1961 C.L.R. 306; and Rashid Adem v. Lutfiye Mevlid (1963) 2 C.L.R. 3.

on appeal in the event of a misconception of the law or misapprehension of the evidence before the Court. Any attempt by any of the other two powers of the State to interfere with such final expression of the exercise of the judicial power, or reduce its effect, constitutes an impermissible encroachment on the jurisdiction of the Judiciary and as such is unconstitutional. Acknowledgment of such power to the legislature would necessarily subordinate the judicial to the legislative power of the State, contrary to the tenor and letter of the Constitution, with destructive effects upon the principle of separation of powers. The foundations of the administration of justice would be shaken to the core. Litigants would be encouraged to make random appeals in the hope of persuading the legislature in the meantime to pass legislation, reversing directly or indirectly judgments of first instance courts, with catastrophic consequences on the rule of law. The administration of justice would inevitably be subordinated to the legislative power of the State.

The second question is easier to answer for the range of inquiry is limited to juxtaposition of the provisions of s.32(2), with those of Article 155 in order to determine compatibility of the former with the latter. In express terms s. 32(2) confers competence on the Supreme Court to try the case de novo with all that this course entails, reception of evidence and adjudication upon the facts. In essence, it bestows first instance jurisdiction on the Supreme Court in direct breach of the provisions of Article 155 that confines its competence subject to limited exceptions, to the exercise of appellate jurisdiction. However benevolently we construe the provisions of s. 32(2)[1] in an effort to streamline them with the Constitution, incompatibility with Article 155 is unavoidable. Section 32(2) in its entirety smacks of an attempt to subordinate the exercise of judicial power to the will of the legislature, contrary to the letter and spirit of the Constitution.

Therefore, the appeal falls to be decided on the correctness of the judgment of the trial Court.

[1] Police v. Ekdotiki Eteria (1982) 2 C.L.R. 63.

TRIANTAFYLLIDES P.: In the result the judgment of the trial Court is set aside by majority and a retrial is ordered.

There will be no order as to the costs of this appeal.

Appeal allowed by majority.
Retrial ordered.