

1985 March 23

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION.

MICHAEL SAVVA,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTRY OF INTERIOR,  
THE DISTRICT ADMINISTRATION OF LARNACA,

*Respondents.*

*(Case No. 215/84).*

*Jurisdiction—Elections—Election of Chairman of Village Commission—Decision of Election Commissioner as to the eligibility of candidates—Validity can be challenged before the Electoral Court which is a Court other than the Supreme Court in the exercise of its revisional jurisdiction under Article 146.1 of the Constitution—Section 9(4) of the Village Authorities Law, Cap. 244 (as amended by Law 37/84) and s.21(5) of the Election of Members of the House of Representatives Law, 1979 (Law 72/79).* 5

*Administrative Law—Administrative acts or decisions—Executory act—Forfeiture of office of Chairman of Village Commission by virtue of the provisions of section 8(2)(e) of the Village Authorities Law, Cap. 244 (as amended by Law 37/84) because of conviction for theft—Is not an executory administrative act liable to review because forfeiture of public office upon conviction for an offence involving dishonesty or moral turpitude is automatic.* 10 15

The applicant in this recourse, who at the material time was the Chairman of the Village Commission of Mosphiloti, challenged the validity of the decisions of the respondents whereby 20

- (a) His candidature for re-election as Chairman of the Village Commission was refused; and
- (b) He had fallen from office.

5 The above decisions were taken by virtue of the provisions of sections 8(1)(a) and 8(2)(e), respectively, of the Village Authorities Law, Cap. 244 (as amended by Law 37/84) because applicant had been convicted for theft.

10 *Held*, (1) that every decision of the Election Commissioner may be challenged by an election petition before a competent electoral Court which has sole competence to determine a challenge to the validity of the decision of the Election Commissioner as to the eligibility of candidates for elections; that the electoral Court is a Court other than the Supreme Court in the exercise of its revisional jurisdiction under Article 146.1 of the Constitution; and that, accordingly, this Court, in the exercise of its jurisdiction under the said Article 146.1, has no competence to review the decision holding applicant ineligible for re-election (see section 9(4) of Cap. 244 and s. 21(5) of Law 72/79).

20 (2) That the decision whereby applicant had fallen from office is not an executory administrative act liable to review because forfeiture of public office upon conviction for an offence involving dishonesty or moral turpitude is automatic, it is an incident of the Law itself.

25 *Per curiam*:

30 (1) That Law 37/84 is not retrospective because a Law does not lose its prospective effect by making its application dependent on the existence of facts that occurred prior to its enactment (p. 461 post).

(2) That the provisions of Law 37/84 neither in terms nor in their application offend the provisions of para. 1 of Article 12 of the Constitution (p. 462 post).

35 (3) That in the absence of express legislative sanction making the provisions of section 8(2)(e) of Law 37/84 retrospective in application, applicant was entitled to remain in office until the expiration of his term (p. 463 post).

*Application dismissed.*

**Cases referred to:**

*Improvement Board of Eylenja v. Constantinou* (1967)  
1 C.L.R. 167;

*Republic v. Menelaou* (1982) 3 C.L.R. 419 at pp. 428, 429;

*Attorney-General v. Georghiou* (1984) 2 C.L.R. 251; 5

*Decision of the Greek Council of State* No. 2963/68.

**Recourse.**

Recourse against the decision of the respondent whereby applicant's candidature as Chairman of the Village Commission of Mosphiloti was refused and he was stripped of the insignia of his office. 10

*St. Kittis*, for the applicant.

*Cl. Theodoulou (Mrs.)*, Counsel of the Republic, for the respondents.

*Cur. adv. vult.* 15

PIKIS J. read the following judgment. Michael Savva, the applicant, then the chairman of the Village Commission of Mosphiloti (1) was convicted of theft and sentenced by the District Court of Larnaca to £50.- fine. The conviction was recorded and sentence passed on 3rd April, 1984, shortly before expiration of his term of office and elections for renewal of the mandate of village authorities. The conviction followed his admission of the offence on a plea of guilty to a charge of larceny. 20

The conviction of the applicant proved quite fateful for his continuance in office and his plans for re-election. On 17th April, 1984, he submitted his candidature for re-election in the prescribed form, asserting he was eligible for election under the Law, as a member of the village commission of Mosphiloti. The Election Commissioner, the Larnaca District Officer, refused his candidature on the ground he was ineligible for re-election for lack of the qualifications envisaged by Law and informed the applicant accordingly. (See letter of 30th April, 1984). The afore- 25 30

(1) Set up and functioning under the Village Authorities Law, Cap. 244.

mentioned conviction for theft, a crime involving dishonesty (στημωτικό) was found by the Commissioner to disqualify him under s. 8(1) (a) of the Law (The Village Authorities Law, Cap. 244, as amended by Law 37/84) for election to the Village Committee. By the same letter he was informed he had fallen from office by virtue of the provisions of another subsection of the Law, namely, s. 8(2) (e) and was in consequence required to hand over the seal of office and other official documents in his possession.

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Section 8(1) (a) and 8(2) (e) of the Law (1) provide conviction for an offence involving dishonesty or moral turpitude during the ten preceding years disqualify a person from election and entail forfeiture of office respectively. As indicated the decision to refuse his candidature and strip him of the insignia of office was founded on the aforesaid provisions of the Law and the fact he had been convicted for theft. The decisions communicated by the letter of 30th April, 1984, are challenged as illegal for breach of the provisions of Art. 12.1 of the Constitution and the rule against retrospectivity of legislation. Reproducing the case of the applicant in a compendious form, it may be stated in these terms: At the time of his conviction, on 3rd April, 1984, the Law did not envisage either disqualification or loss of office as an incident of a conviction for an offence involving dishonesty or moral turpitude simpliciter. It had to be accompanied by a sentence of imprisonment which was not the case here. Such disqualification to seeking or holding office was introduced by the amendment of the Law (2). Its invocation by the Election Commissioner involved the retrospective application of the Law in breach of the provisions of Art. 12.1 of the Constitution.

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The respondents disputed the justiciability of the subject-matter of the recourse and refuted every suggestion that the decisions of the respondents were invalid. The reviewability of the decision, subject-matter of prayer (a), was questioned on two grounds, namely, lack of (a) direct personal interest and (b) jurisdiction to take cognizance of the decision. Applicant had a direct interest in the decision pertaining to his eligibility to seek re-election, it affected

(1) Cap. 244.

(2) Law 37/84 that took effect on 11.4.1984.

him personally and I can, for these reasons, dismiss without further consideration the submission that applicant lacked the necessary interest to seek judicial review of the act. The second objection is far more serious and merits detailed consideration. Amenity to review the subject-matter of payer (b), the directive or request of the authorities to the applicant to surrender the seal and other property of the Committee, is again questioned for the reason that the act was not executory. 5

If the nature of the decisions justifies judicial review, it is the case for the respondents that they were warranted by the facts of the case and the application of the plain provisions of s.8 of the Law. They refuted the contention that s.8 offends the provisions of para. 1 of Art. 12 of the Constitution or the rule against the retroactive effect of statutes. 10 15

First, objections to justiciability will be examined, that is, lack of competence to review the decision holding applicant ineligible for re-election in regard to prayer (a) and absence of a litigable cause respecting prayer (b). 20

Section 9(4) of the Village Authority Law<sup>(1)</sup> makes applicable the provisions of the Election of Members of the House of Representatives Law <sup>(2)</sup> in every matter pertaining to the validity of elections and acts leading thereto, including admission of the candidature of contenders; subject to this qualification, the electoral Court is apparently the District Court of the area, while in the case of the House of Representatives it is the Supreme Court. Under s.21(5) of Law 72/79, every decision of the Election Commissioner may be challenged by an election petition before a competent electoral Court. Whether it is the District Court of Larnaca or the Supreme Court is immaterial for the purpose of these proceedings. The electoral Court is a Court other than the Supreme Court in the exercise of its revisional jurisdiction under Art. 146.1 of the Constitution. By virtue of the aforesaid provisions of the Law, the electoral Court has sole competence to determine a challenge to the validity of the decision of the Election Commissioner 25 30 35

<sup>(1)</sup> As amended by Law 60/72.

<sup>(2)</sup> Law 72/79.

as to the eligibility of candidates for elections. Failing a specific challenge to the constitutionality of s. 9(4) in the manner envisaged by authority (1), I am precluded from examining the constitutionality of s. 9(4), an enactment I must presume to be constitutional.

It does not escape my notice that provision for the establishment of an Electoral Court in respect of matters affecting the election of members of the House of Representatives is a matter specifically regulated by the Constitution, namely Art. 85 and warranted by its provisions. Art. 85 makes the Supreme Court solely competent to resolve questions affecting the validity of elections of Representatives and acts leading thereto. No similar provision is made in the Constitution in respect of elections to local authority boards. Arguments could be raised that the decision of the Election Commissioner in this case, is by its nature an executory administrative act exclusively amenable to review before a Court of revisional jurisdiction under Art. 146.1. Such proposition is not open for debate before me as the constitutionality of s.9(4) of the Law is not specifically contested.

Even if jurisdiction were assumed to review the decision disqualifying the applicant, contrary to the above, the outcome of the case would be no different. Submissions as to retrospectivity of the Law (2) are, with respect, misguided. A Law does not lose its prospective effect by making its application dependent on the existence of facts that occurred prior to its enactment. The main object of the rule against retroactive operation of a Law is to preserve rights accruing under the Law and benefits conferred thereby. It does not restrict the legislature from attaching in time to come a different significance to past events, provided there is no disturbance of accrued rights. I discussed the subject at some length at *Santis and Others v. The Republic* (1983). 3 C.L.R. 417 (3). The provisions of s.8 of the Law (as amended by Law 37/84) are wholly prospective in nature and took effect from the date of its promulgation in the

(1) See, inter alia, *Improvement Board of Eylenja v. Andreas Constantinou* (1967) 1 C.L.R. 167.

(2) Law 37/84.

(3) Respecting vested rights, see *Republic v. Menelaou* (1982) 3 C.L.R. 419, 428, 429.

official Gazette (11th April, 1984). In this case the provisions of the Law were relied upon to determine the rights of the applicant, that is, eligibility at a date subsequent to its promulgation, notably 30th April, 1984. Enforcement of the Law left unimpaired rights that vested in the applicant before the amendment of the Law. Applicant's eligibility to election, as that of every other citizen, fell to be determined at the time of the submission of his candidature.

The provisions of Law 37/84 neither in terms nor in their application offend the provisions of para. 1 of Art. 12 of the Constitution. The submission that s. 8 is in content or that it was applied in a manner invidious to the provisions of the aforesaid article of the Constitution is misguided. Art. 12.1(1) establishes the framework of criminal liability and penal sanctions and provides that both shall be exclusively dependent on the state of the Law at the time of the commission of the offence. Section 8, as amended, is not concerned with criminal liability and certainly does not purport to provide for penal sanctions for the crime of theft or any other crime. The ambit and compass of Art. 12.1 is limited to criminal liability and penal sanctions. The remaining provisions of Art. 12 reinforce this view and throw ample light on the intention of the constitutional legislator to regulate fundamental aspects of criminal liability and the rights of the accused in the criminal process. Article 12 does not aim to define and far less restrict the social and other consequences of criminal conduct. The legislature is the arbiter of the requisite qualifications for the holding of political office, provided, of course, they observe the norms of fundamental articles of the Constitution. The setting of public standards is a matter exclusively within the province of the legislature and no one has a vested right in their non alteration. Any such view would make for a static society.

Certainly it was open to the Election Commissioner to find that the offence of which applicant was convicted was tainted with an element of dishonesty and hold the applicant

<sup>(1)</sup> Art. 12.1: «No person shall be held guilty of any offence on account of any act or omission which did not constitute an offence under the law at the time when it was committed; and no person shall have a heavier punishment imposed on him for an offence other than that expressly provided for it by law at the time when it was committed».

disqualified from seeking election to the Village Commission. The subject of crimes involving dishonesty or moral turpitude was discussed in *Re Georghiou* (1983) 2 C.L.R. p. 1.

5 Turning to the declaration sought by the second prayer, the matter is not free from complication. It seems to me the provisions of s. 8(2) (e) were applied retrospectively depriving applicant of rights that vested in him under the Law  
10 viz. to hold office for as long as he complied with the provisions of the Law as it stood at the time of assumption of office. In the absence of express legislative sanction making the provisions of s. 8(2) (e) retrospective in application, applicant was entitled to remain in office until  
15 the expiration of his term. Without exploring the issue at depth, it seems to me that upon election or appointment to a certain position, a right vests in the incumbent to hold that position on condition of observance of the provisions of the Law as stated at the time of assumption of office. Any other approach would create considerable uncertainty  
20 in the continuance in office of local and other public authorities.

However, the above analysis of the rights of the applicant cannot help his case for the decision challenged in  
25 prayer (b) is not an executory administrative act liable to review. In *Attorney-General v. Georghiou* (1984) 2 C.L.R. 251, it was decided (1) that forfeiture of public office upon conviction for an offence involving dishonesty or moral turpitude is automatic; in other words, it is an incident of the Law itself(2). Noticing the forfeiture is but an act of certification of a given fact non-productive in itself of legal consequences. In other words, forfeiture follows upon conviction  
30 and not from any act affirming its occurrence. The act of the District Officer in this case, questioned by the applicant, was not of itself definitive of the right of the applicant to remain in office. It merely asserted that he had fallen from office. Any attempt to act upon an erroneous  
35 view of the Law could, if ill-founded, be rejected and if necessary stopped by an injunction of a civil Court having

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(1) By majority.

(2) See also the decision of the Greek Council of State in Case 2963/68



jurisdiction. Of course, the matter is largely academic in this case because the withdrawal from the applicant of the insignia of office nearly coincided with the expiration of his term of office. In my judgment the act challenged by prayer (B) is non-justiciable.

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For the reasons given above the recourse fails. It is dismissed accordingly. Let there be no order as to costs.

*Recourse dismissed.*

*No order as to costs.*