1985 March 18

[TRIANTAFYLLIDES, P., L. LOIZOU, A. LOIZOU, MALACHTOS, DEMETRIADES, SAVVIDES, LORIS, STYLIANIDES, PIKIS, JJ.]

THE PRESIDENT OF THE REPUBLIC,

Applicant,

v.

THE HOUSE OF REPRESENTATIVES,

Respondent.

(Reference No. 1/84).

Practice—Reference under Article 140 of the Constitution—Not made in compliance with formalities of rule 4(1) of the Supreme Constitutional Court Rules and not sealed as provided by rule 4(4) of the same Rules—Constant practice of the Supreme Constitutional Court and the Supreme Court not to allow formal defects to prevent it from doing justice in a case on its substance—Said reference a matter of constitutional Law and containing all essential elements which would have been set out in the form prescribed by the said rule 4(1)—Absence of precedent to guide its drafter—Treated as having actually set in motion proceedings by way of a reference under the above Article of the Constitution—Order 64 of the Civil Procedure Rules not resorted to.

On the 27th December 1984 the President of the Republic, by means of a written communication, referred to the Supreme Court for its opinion, under Article 140 of the Constitution, the question as to whether section 3 of

the Engagement of Casual Employees (Public and Educational Service) Law, 1984, was repugnant to or inconsistent with the provisions of Articles 54, 61, 116, 167 and 168.1 of the Constitution. Counsel appearing for the House of Representatives raised the preliminary objection that the reference was a proceeding which was null and void ab initio because it was not made on the form prescribed by para. (1) of rule 4 of the Supreme Constitutional Court Rules and was not sealed in accordance with para. 4 of rule 4* of the same Rules.

Held, Per Triantafyllides, P., L. Loizou, A. Loizou, Malachtos, Demetriades and Loris, JJ. concurring,

(1) that once the Reference was not made in compliance with the formalities specified in paragraph (1) of Rule 4 it could not have been sealed in accordance with paragraph (4) of Rule 4 since it was not an "application" which was "such as may be sealed" in the sense of the said paragraph (4) because compliance with paragraph (1) of Rule 4 is an essential prerequisite for sealing under paragraph (4) of such Rule.

(2) That Rule 4 is applicable to a reference under Article 140 of the Constitution (see Rule 15** of the Supreme Constitutional Court Rules).

(3) That as both paragraphs (1) and (4) of Rule 4 indicate that compliance with their provisions is necessary for the purpose of commencing the relevant proceedings on this occasion proceedings under Article 140 of the Constitution have not been commenced as envisaged by Rule 4.

(4) That bearing in mind that (a) this is a matter of constitutional Law, (b) that practically all essential elements which would have been set out in the form pres-

* Rule 4 is quoted in full at pp. 877-878 post
** Rule 15 is quoted at pp 878-879 post

cribed by paragraph (1) of Rule 4 of the Supreme Constitutional Court Rules, had such form been used, are contained in the written communication addressed by the President of the Republic to the Supreme Court as a Reference under Article 140 of the Constitution, (c) that it is the first time that such a Reference is being made and that, therefore, there was no precedent to guide its drafter, whose omission to comply with the said paragraph (1) of Rule 4 was a bona fide omission, (d) that it has been constantly the practice of the Supreme Constitutional Court and of our Supreme Court not to allow formal defects to prevent it from doing justice in a case on its substance, and (e) that there are involved in this case matters of great public interest in general, the conclusion has been reached, in the interests of justice—and without intending in the least to make it a precedent—that the communication which was addressed to the Supreme Court by the President of the Republic ought to be treated as having actually set in motion proceedings by way of a Reference under Article 140 of the Constitution.

(5) That Order 64 of the Civil Procedure Rules has not been resorted to because of the inclination to treat the said order as not being fully consonant with the nature of the judicial competence to be exercised by this Court under Article 140 of the Constitution in a matter involving the constitutionality of legislation.

Per Savvides J. in his concurring judgment:

That bearing in mind that the present reference is of great concern in the public interest as an important constitutional issue is raised, that all material facts required by the Rules are set out in the communication addressed by the President of the Republic to the Supreme Court, irrespective of the fact that they were not embodied in the prescribed form and that in the light of the practice of the Supreme Constitutional Court that formal defects will not be allowed to defeat the interests of justice, the objection raised should be overruled.

Per Stylianides J. in his concurring judgment:

That guided by the approach of the Supreme Constitutional Court to procedural matters and bearing in mind the nature of this reference, without creating a precedent, and after giving the matter a serious consideration, the conclusion has been reached that this Court should not, in the exceptional circumstances of this first invocation of Art. 140 during the 25 years from the establishment of the Republic, decline to exercise its competence in the interests of justice and the proper application of the Constitution.

Per Pikis, J. in his concurring judgment:

That since the Articles of the Constitution likely to be infringed by the promulgation of the Law, are specified as well as every other matter relevant to the exercise of our powers under Art. 140; that since, on the other hand, there is no suggestion that the House of Representatives was in any way misled as to matters at issue or prejudiced on account of initiation of the proceedings in the wrong form in the exercise of any of its rights; and that since non-compliance with the provisions of r. 4 of the Rules as to form and sealing in no way obscured matters raised for the opinion of this Court, there is no reason of principle or practice to treat non-compliance with the Rules as anything other than an irregularity remediable in the exercise of the discretion of the Court; that under Order 64 there is unlimited discretion to remedy an irregularity in any manner it is deemed best conducive to the interests of justice; and in exercise of this discretion it is directed that the reference be embodied in the form provided for by r. 4(1) within seven days.

Order accordingly.

Cases referred to:

Attorney-General v. *Kouppi and Others*, 1 R.S.C.C. 115 at pp. 116-117;

Demetriou v. *Republic*, 1 R.S.C.C. 99 at pp. 105, 106;

Republic v. *N.P. Loftis*, 1 R.S.C.C. 30;

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

President of the Republic v. *Louca* (1984) 3 C.L.R. 241;

Roussos v. *Republic* (1985) 3 C.L.R. 119;

Re Pritchard (Deceased) [1963] 1 All E.R. 873;

Spyropoullos v. *Transavia* (1979) 1 C.L.R. 421;

Demetriou and Others v. *Prodromou* (1983) 1 C.L.R. 301;

Gooding v. *Borland* [1971] 1 All E. R. 315;

Lyssandrou v. *Schiza and Another* (1979) 1 C.L.R. 267;

Evagorou v. *Christodoulou* (1982) 1 C.L.R. 771;

Anlaby v. *Pretorius* [1888] 20 Q.B.D. 764;

Whitehead v. *Whitehead (otherwise Vasbor)* [1962] 3 All E. R. 800;

Finnegan v. *Cementation Co. Ltd.* [1953] 1 All E.R. 1130; [1953] 1 Q.B. 688;

Marsh v. *Marsh* [1945] A.C. 271 at p. 284;

Austin v. *Hart* [1983] 2 All E.R. 341.

Preliminary Objection.

Preliminary objection raised by Counsel for respondents that the Reference of the President of the Republic under Article 140 of the Constitution whether section 3 of the Engagement of Casual Employees (Public and Educacational Services) Law, 1984 is a proceeding which is null and void ab initio inasmuch as it was filed without due compliance with Rule 4 of the Supreme Constitutional Court Rules.

St. Soulioti (Mrs.), Attorney-General of the Republic with *L. Loucaides,* Deputy Attorney-General of the Republic and *N. Charalambous,* Senior Counsel of the Republic, for the applicant.

Ph. Clerides with *E. Efstathiou, A. Markides, M. Papapetrou, A. Papacharalambous and Chr. Clerides,* for the respondents.

Cur. adv. vult.

The following decisions were read:

TRIANTAFYLLIDES P.: On the 27th December 1984 the President of the Republic, by means of a written communication, referred to the Supreme Court for its opinion, under Article 140 of the Constitution, the question as to whether section 3 of the Engagement of Casual Employees (Public and Educational Service) Law, 1984— περι Προσλήψεως Εκτάκτων Υπαλλήλων (Δημόσια και Εκπαιδευτική Υπηρεσία) Νόμος 1984— is repugnant to or inconsistent with the provisions of Articles 54, 61, 116, 167 and 168.1 of the Constitution.

Article 140 of the Constitution reads as follows:

"1. The President and the Vice-President of the

Republic acting jointly may, at any time prior to the promulgation of any Law or decision of the House of Representatives, refer to the Supreme Constitutional Court for its opinion the question as to whether such Law or decision or any specified provision thereof is repugnant to or inconsistent with any provision of this Constitution, otherwise than on the ground that such Law or decision or any provision thereof discriminates against either of the two Communities.

2. The Supreme Constitutional Court shall consider every question referred to it under paragraph 1 of this Article and having heard arguments on behalf of the President and the Vice-President of the Republic and on behalf of the House of Representatives shall give its opinion on such question and notify the President and the Vice-President of the Republic and the House of Representatives accordingly.

3. In case the Supreme Constitutional Court is of the opinion that such Law or decision or any provision thereof is repugnant to or inconsistent with any provision of this Constitution such Law or decision or such provision thereof shall not be promulgated by the President and the Vice-President of the Republic."

The said communication of the President of the Republic, which was signed by him, was filed in the Registry of this Court as Reference No. 1/84.

It is common ground that the competence to deal with a Reference under Article 140, which was vested in the Supreme Constitutional Court, which is not functioning now, has been vested in our Supreme Court by virtue of section 9(a) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64) and it is being exercised by the Full Bench of this Court pursuant to section 11(1) of Law 33/64.

On the 7th February 1985 learned counsel appearing for the House of Representatives filed an Opposition by means of which there was raised, inter alia, the preliminary

objection that the present Reference is' a proceeding which is null and void ab initio, inasmuch as it was filed without due compliance with Rule 4 of the Supreme Constitutional Court Rules, which were made by the Supreme Constitutional Court in the exercise of its powers under Article 135 of the Constitution.

This Court heard, first, arguments on the said preliminary objection, in the course of which the learned Deputy Attorney-General explained that there was no compliance with the aforementioned Rule 4 because it was not considered to be applicable to a Reference under Article 140 of the Constitution.

Rule 4, above, reads as follows:

"4.- (1) Save where other provision is made in these Rules, any proceedings before the Court shall be commenced by an application in writing in Form 1 of the Appendix hereto.

(2) Every such application when presented for sealing shall be signed and dated by the applicant or his advocate and shall-

(a) contain the name of the Court, the year in which the application is instituted, the Article or Articles under which it is made, the name and address in full of the applicant, his occupation, the name and address in full of the respondent, the name of the applicant's advocate, if any, and an address for service in Nicosia, and

(b) contain a statement of the case of the applicant setting out-

(i) in a summary form all the material facts relied upon, and

(ii) specifically the relief sought, and

(c) be accompanied by copies of all documents, in the possession or power of the applicant, which are referred to therein.

(3) On presenting his application for sealing the ap-

plicant shall leave for each respondent one office copy thereof for service, together with a duplicate of such copy for the affidavit of service, plus such number of additional copies as may be required by a Registrar.

(4) If the application is such as may be sealed a Registrar shall enter it in the Case Book and give it a number showing the order in which it is so entered; he shall mark the application 'Filed and sealed on the

..... day of ....., 19....';

he shall then seal the application with the seal of the Court and thereupon the proceedings shall be deemed to be commenced."

It is not disputed that the Reference which was forwarded to the Supreme Court by the President of the Republic was not made on the form prescribed by paragraph (1) of Rule 4; and such Reference, though it was filed, was not sealed in accordance with paragraph (4) of Rule 4.

Once the Reference was not made in compliance with the formalities specified in paragraph (1) of Rule 4 it could not have been sealed in accordance with paragraph (4) of Rule 4 since it was not an "application" which was "such as may be sealed" in the sense of the said paragraph (4); because, in my opinion, compliance with paragraph (1) of Rule 4 is an essential prerequisite for sealing under paragraph (4) of such Rule.

I cannot accept as correct the submission that Rule 4 is not applicable to a Reference under Article 140. In my opinion, it has been rendered so applicable by the explicit terms in which it is drafted; and this view is, I think, placed beyond any doubt when Rule 4 is read together with Rule 15 of the Supreme Constitutional Court Rules, which reads of follows:

"15.-(1) Proceedings under paragraph 1 of Article 144 or under paragraph 1 of Article 151 shall be commenced by a reference in writing by the Court concerned or the Public Service Commission, as the case may be.

(2) Proceedings under paragraph 2 of Article 139 or under Article 149 shall be commenced as follows:-

(a) if the reference is made by the Court concerned such reference shall be in writing;

(b) in every other case, with the prior leave of the Court, or any two Judges acting in agreement, applied and obtained for the purpose and in such manner as it may be directed upon granting such leave.

(3) Rules 4 to 10, both inclusive, shall not be applicable to any proceedings referred to in paragraphs (1) and (2) of this rule. All other Rules of these Rules shall be applicable, mutatis mutandis, to such proceedings, so far as circumstances permit or unless the Court or any Judge otherwise directs."

It is obvious from Rules 4 and 5, that where provisions was intended to be made in the Supreme Constitutional Court Rules about the commencement of proceedings in a manner other than that prescribed by Rule 4 such provision has been made by Rule 15.

As both paragraphs (1) and (4) of Rule 4 indicate that compliance with their provisions is necessary for the purpose of commencing the relevant proceedings I am driven to the inevitable conclusion that on this occasion proceedings under Article 140 of the Constitution have not been commenced as envisaged by Rule 4.

There remains to be examined whether the present proceedings by way of a Reference under Article 140, which have not been commenced in accordance with Rule 4 of the Supreme Constitutional Court Rules, can nevertheless be treated as having been commenced by the filing of the written communication which was addressed, as aforesaid, by the President of the Republic to the Supreme Court on the 27th December 1984:

There can be no doubt at all that it was intended that such communication should be treated as a Reference under Article 140 of the Constitution; and that it contains practically all the elements which would have been entered on

the form prescribed by paragraph (1) of Rule 4, had such form been used on this occasion.

In the case of *The Attorney-General* v. *Kouppi and others*, 1 R.S.C.C. 115, a reference under Article 144 of the Constitution was made to the Supreme Constitutional Court by the then functioning High Court of Justice in the following circumstances (see pp. 116-117 of the report of the judgment in that case):

> "This case is a reference from the High Court, dated the 21st April, 1961, and made under the provisions of paragraph 1 of Article 144 of the Constitution.
>
> It was first received in the Registry of this Court on the 22nd April, 1961, but as, inter alia, it was signed by the Acting Chief Registrar of High Court instead of by the Judges of the High Court, as had been the case in a previous reference by the High Court (Case No. 8/61), it was returned to the Acting Chief Registrar on the 25th April, 1961, with the request that the reference should comply with Article 144 of the Constitution and the Rules of this Court.
>
> It was received back again on the 9th May, 1961, still dated the 21st April, 1961, and again signed by the Acting Chief Registrar but this time there appeared for the first time on the face of such reference that it was made 'By direction of the High Court of Justice' and in a covering letter dated the 9th May, 1961, and accompaning such reference, the Acting Chief Registrar stated that the reference was sealed and signed by him pursuant to a direction made by the High Court 'on the 19th December, 1960, to the effect that all decisions and directions of the High Court of Justice required to be communicated or recorded shall be signed by the Chief Registrar by and under the direction of the Court'. "

It appears further from the report of the *Kouppi* case, supra, that the reference was allowed to be filed even though it was in an unsatisfactory form; and it is useful to quote the relevant passage from the judgment in that case (at p. 117):

"After some correspondence between a Registrar of this Court and the Acting Chief Registrar of the High Court on this matter concluding with the letter of the 25th May, 1961, this Court has decided, in the interests of justice and in the public interest in general and in order to avoid further delay, to direct that this reference should be accepted by the Registry of this Court and filed therewith in spite of the fact that it was still in an unsatisfactory form, in view of the fact that it was still signed by the Acting Chief Registrar of the High Court. This course has been adopted without in any way intending it to become a precedent. On the 26th May, 1961, this reference was, therefore, duly filed with the Registry of this Court."

When an objection was raised by the Attorney-General of the Republic that the reference was not in a proper form it was dealt as follows in the judgment of the Supreme Constitutional Court (at pp. 117-118):

"Counsel appearing for the Attorney-General has raised as a preliminary point the issue that this reference was not in a proper form under Article 144 in as much at it was signied by the Acting Chief Registrar and not by the Judges of the High Court.

This Court is of the opinion that the submission of counsel appearing for the Attorney-General is correct but, nevertheless, in accordance with its policy of not allowing technical considerations to defeat the interests of justice it has again decided to take cognizance of this reference, doing so exceptionally and again without in any way intending to create a precedent thereby.

In the opinion of this Court, the correct interpretation of paragraph 1 of Article 144 of the Constitution leaves no room for doubt that a reference under such paragraph to this Court is a reference from 'Court to Court' and as such it must be signed by the Judge or Judges of the Court making such reference and nobody else.

This decision regarding the interpretation of paragraph 1 of Article 144 is made by this Court as a decision under paragraph (b) of Article 149 of the Constitution, in accordance with Rule 16 of its Rules of Court, and in view of the fact that, due to the submission made by counsel appearing for the Attorney-General. an ambiguity has arisen regarding the correct interpretation of paragraph 1 of Article 144 in this respect.

This Court in future, therefore, will not entertain a reference which does not conform with the said Article 144. The aforesaid direction of the High Court dated the 19th December, 1960, and referred to by the Acting Chief Registrar in his letter of the 9th May, 1961, is an internal matter of the High Court, which does not affect the position under Article 144 in case of a reference from 'Court to Court' and actually it was properly not considered as being applicable to a matter of this nature because on the 21st February, 1961, the High Court referred to this Court a question of unconstitutionality which had arisen in Criminal Appeal No. 2293 (Case No. 8/61* in this Court) and such reference was duly signed by the Judges of the High Court and not by the Acting Chief Registrar of the High Court.

It does seem, therefore, that in the present instance through some misconception of the scope of the said direction of the High Court, the Acting Chief Registrar proceeded to sign the present reference himself."

In following the course which it adopted in the *Kouppi* case, supra, the Supreme Constitutional Court was obviously adhering to the approach which it foreshadowed earlier on in, inter alia, the case of *Demetriou* v. *The Republic*, 1 R.S.C.C. 99, where, in its judgment, there appear the following (at pp. 105, 106):

"It is quite correct that this Court has repeatedly stated that it will not dismiss a case for merely technical defects and it will try as far as possible to do

* The Republic and N.P. Loftis, 1 R.S.C.C. 30.

justice in a case on the substance thereof, avoiding thus duplicity of, and delay in, proceedings.

This is, however, a discretionary power of the Court which has to be exercised with due consideration and within certain limits.

Under rule 14 (2) (b) of the Rules of this Court, it is always open in a proper case for an application to be made, in conformity with the proper procedure, seeking an interpretation under Article 149(b) of an ambiguity in the Constitution and, under Rule 16 of the same Rules, the Court is also empowered in the interests of justice to make such an interpretation, inter alia, even though such decision has not been applied for by an Applicant in a particular case.

It is clear that this Application is not, and cannot as framed be deemed to be, an application under Rule 14(2) (b) of the Rules of this Court.

This Court has, further, anxiously considered whether this was a proper case in which to exercise its discretion under Rule 16 of the Rules of this Court, but taking into consideration the manner in which the Application and the Statement of Facts are couched, the fact that nowhere on the face of the Application or in the Statement of Facts does there appear set out at all in clear terms the particular ambiguity of the Constitution which needs interpretation, and lastly in view of the fact that it is still open to the Applicant in a proper case and manner to have recourse to the procedure of Rule 14(2) (b) of the Rules of this Court, or test under Article 146 the validity of the appointment of the 3rd April, 1961, the Court has come to the conclusion that this is not a proper case in which to grant relief in the interests of justice under the aforesaid Rule 16.

The Court has also considered whether ordering certain amendments or delivery of particulars would render the present proceedings adequate enough in content so as to enable it to exercise its power under Rule 16 of its Rules, but it has come to the conclu-

sion that this course, in effect, would have amounted to causing a redrafting of the Application de novo, in view especially of the dismissal of claim (B) as above, and, therefore, no useful purpose would be served as far as costs or delay are concerned.

It can usefully be observed that the aforesaid Rule 16 is meant primarily to enable the Court to dispose wholly of a case where, upon a recourse which sets out fully all the material issues arising therein, it has become necessary to give relief which has not been specifically sought for at the time when the Appication was filed."

Rule 14 of the Supreme Constitutional Court Rules, which is referred to in the above quoted passage, is Rule 15 of the now in force Supreme Constitutional Court Rules, and Rule 16, which is also referred to in the said passage, is now Rule 17.

In the case of *Kourris* v. *The Supreme Council of Judicature,* (1972) 3 C.L.R. 390, a recourse under Article 146 of the Constitution was filed by counsel who was still holding at that time the post of Senior Counsel of the Republic, in the sense that though he had resigned from that post he was still on leave prior to his retirement from such post; and there arose the question whether that recourse was filed in compliance with Rule 3 of the Supreme Constitutional Court Rules, which provides that "Whenever anything may be done by any person..., it may,... be done by an advocate acting on behalf of such person,..." This Court, after referring to Rule 19 of the Supreme Constitutional Court Rules which provides that "At any stage of the proceedings the Court or a Judge may give such direction as the justice of the case may require" and after stressing that it was never the practice of the Supreme Constitutional Court to allow formalities to prevent it from dealing with a case before it, went on to refer to the *Kouppi* case, supra, and then decided as follows (see p. 398 of the report of my judgment in the *Kourris* case):

"In the light of the above and in view of the very special circumstances of the matter—such as that counsel for the applicant when he filed this recourse was entitled, under Cap. 2, to practise an an advocate

and that he acted in perfectly good faith—we decided to hold that the recourse was duly filed on the 10th January, 1972".

It is necessary, also, to quote the following passages from the judgments delivered by Hadjianastassiou J. and A. Loizou J., respectively, in the *Kourris* case, supra, (at pp. 432, 451):

"Regarding the third issue, it is well-known that the profession of an advocate is regulated by Law, and an advocate is required to have his name enrolled and to hold a practising certificate. It is already in evidence that although counsel for the applicant was on leave prior to his resignation, nevertheless, he had been enrolled as an advocate and I take it that he was holding a practising certificate. As I said earlier, having heard counsel on this issue at length, I have agreed with the interim decision delivered on July 6, that the filing of this recourse was properly made by counsel on behalf of the applicant, for the reasons given in the judgment of the President.

. . . . . .

Nor do I propose to deal with the question whether this recourse was validly filed by counsel, who, at the time of such filing, was on leave prior to resigning from the post of Senior Counsel of the Republic, as the reasons for our unanimous decision on this point announced earlier, are contained in the judgment of the learned President of this Court."

I have approached with much anxiety, indeed the serious preliminary issue which was raised in this case as a result of the non-commencement of proceedings under Article 140 of the Constitution in a manner complying with Rule 4 of the Supreme Constitutional Court Rules.

Bearing in mind that (a) this is a matter of constitutional Law, (b) that practically all essential elements which would have been set out in the form prescribed by paragraph (1) of Rule 4 of the Supreme Constitutional Court Rules, had such form been used, are contained in the written communication addressed by the President of the Republic to

the Supreme Court as a Reference under Article 140 of the Constitution, (c) that it is the first time that such a Reference is being made and that, therefore, there was no precedent to guide its drafter, whose omission to comply with the said paragraph (1) of Rule 4 was a bona-fide omission, (d) that it has been constantly the practice of the Supreme Constitutional Court and of our Supreme Court (as manifested in the cases of *Demetriou, Kouppi* and *Kourris,* supra) not to allow formal defects to prevent it from doing justice in a case on its substance, and (e) that there are involved in this case matters of great public interest in general, I have reached the conclusion, in the interests of justice—and without intending in the least to make it a precedent—that the communication which was addressed, as aforesaid, to the Supreme Court by the President of the Republic ought to be treated as having actually set in motion proceedings by way of a Reference under Article 140 of the Constitution.

Having decided as above I still think that it is necessary to bring these proceedings into conformity with the relevant Supreme Constitutional Court Rules, and that it has, therefore, to be directed that the present Reference, which is to be treated as having been filed on the 28th December 1984, when it was first presented and filed, should be amended within seven days from today, in a manner complying fully with Rule 4 of the Supreme Constitutional Court Rules, and in particular with the formalities specified in paragraph (1) of such Rule; and that when this is done and a copy of it has been delivered to counsel appearing for the House of Representatives they will be at liberty to file, if they so wish, an amended Opposition within ten days thereafter.

In concluding I should observe that I have not thought fit, in dealing with the matter of the irregularity of the commencement of the proceedings in this case, to resort to Order 64 of the Civil Procedure Rules, which are rendered applicable, mutatis mutandis, to proceedings to which the Supreme Constitutional Court Rules apply, by virtue of Rule 18 of such Rules, because I am inclined to treat the said Order 64 as not being fully consonant with the nature of the judicial competence to be exercised by this Court

under Article 140 of the Constitution in a matter involving the constitutionality of legislation (and see, inter alia, by way of useful analogy, the cases of *The President of the Republic* v. *Louca,* (1984) 3 C.L.R. 241, and *Rousos* v. *The Republic,* in which judgment was delivered on the 8th February 1985 and has not yet been reported). *

In the light of all the foregoing it has to be held that this case can, and should, be heard and determined on its merits.

L. Loizou J.: I had the advantage of reading and discussing with the President of the Court the judgment just delivered by him and I am in agreement that, for the reasons stated therein, the preliminary objection raised cannot be sustained and that, subject to compliance with the direction for curing the irregularity, the Reference should be proceeded with and heard on its merits.

A. Loizou J.: I agree that, for the reasons given and the conclusions reached by the President of this Court, the preliminary objection raised cannot be sustained. There is only one point, however, that I feel I should stress. As a result of the question regarding the nonsealing of the present application, it came to my attention a very unfortunate situation that has been going on in the Registry of this Court for some time now. There is hardly any application which has been sealed by the Registry as provided by Rule 4 of the Supreme Constitutional Court Rules and if there did not exist this possibility of relaxing the formalities, this would have meant that every applicant whose application is pending before the Court would have been adversely affected.

I am sure that the Registry will remedy this situation and start complying with the said Rules and seal all applications filed and not take upon itself the powers to dispense with such compliance.

Malachtos J.: I am in full agreement with the reasons given and the conclusion reached by the President and I have nothing else to add.

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* Now Reported in (1985) 3 C.L.R. 119.

DEMETRIADES J.: I have nothing to add to the judgment delivered by the President of this Court and I fully adopt his reasoning.

SAVVIDES J.: A preliminary objection was raised by counsel appearing for the House of Representatives that the said Reference is a proceeding which is null and void ab initio inasmuch as it was filed without due compliance with Rule 4 of the Supreme Constitutional Court Rules.

Reference to the material facts, pertaining to the preliminary objection has already been made by the learned President of this Court in his decision just delivered and I find it unnecessary to repeat them once again.

I am in agreement with the learned President and my learned brothers sitting in this case that the Communication forwarded to the Supreme Court by the President of the Republic was not made in conformity with the provisions of Rule 4 of the Supreme Constitutional Court Rules.

I find the submission of the learned Deputy Attorney-General of the Republic that Rules 4(1) and 4(4) are not applicable to a Reference under Article 140 as untenable and I agree with the opinion expressed by the learned President of this Court that Rules 4(1) and 4(4) are applicable for the reasons given in his decision.

It has been the constant practice of this Court in the exercise of its jurisdiction as a Supreme Constitutional Court, in matters of general public interest and of great importance not to allow the failure of compliance with the Rules or other technical considerations to defeat the substance of a case and has been seized of the matter irrespective of the breach of formalities which are prerequisite to the filing of a Reference. Thus in the case of *The Attorney-General and Kouppi and others*, 1 R.S.C.C. 115, the then Supreme Constitutional Court in dealing with an objection raised by the Attorney-General of the Republic that the Reference which was filed under Article 144 of the Constitution was not in the proper form held at pp. 117, 118:

> "Counsel appearing for the Attorney-General has raised as a preliminary point the issue that this refe-

rence was not in a proper form under Article 144 inasmuch as it was signed by the Acting Chief Registrar and not by the Judges of the High Court.

This Court is of the opinion that the submission of counsel appearing for the Attorney-General is correct but, nevertheless, in accordance with its policy of not allowing technical considerations to defeat the interests of justice it has again decided to take cognizance of the reference, doing so exceptionally and again without in any way intending to create a precedent thereby."

In fact in *Kouppi* the Supreme Constitutional Court reiterated the principle pronounced earlier by it in *Demetriou* v. *The Republic,* 1 R.S.C.C. 99 that:

"It is quite correct that this Court has repeatedly stated that it will not dismiss a case for merely technical defects and it will try as far as possible to do justice in a case on the substance thereof, avoiding the duplicity of, and delay in, proceedings.

This is, however, a discretionary power of the Court which has to be exercised with due consideration and within certain limits."

In *Kourris* v. *The Supreme Council of Judicature* (1972) 3 C.L.R. 390, a recourse under Article 146 of the Constitution, the Full Bench in disposing of a question as to whether the recourse was properly filed in view of the fact that at the material time of the filing counsel who filed same was still holding the post of Senior Counsel of the Republic, being on leave prior to his retirement, and as such not entitled to act as a practising advocate for the account of a client, held (per Triantafyllides, P. at p. 398) that:

"Rule 19 of the Supreme Constitutional Court Rules provides that 'At any stage of the proceedings the Court or a Judge may give such directions as the justice of the case may require'; and it was never the practice of the Supreme Constitutional Court—(and in sitting to deal with this recourse we are exercising the powers of such Court)— to allow formalities to pre-

vent it from dealing with a case before it;

. . . . . .

In the light of the above and in view of the very special circumstances of the matter—such as that counsel for the applicant when he filed this recourse was entitled, under Cap. 2, to practise as an advocate and that he acted in perfectly good faith—we decided to hold that the recourse was duly filed on the 10th January, 1972."

The present Reference is of great concern in the public interest as an important Constitutional issue is raised. All material facts required by the rules are set out in the Communication addressed by the President of the Republic to the Supreme Court, irrespective of the fact that they were not embodied in the prescribed form.

Bearing in mind the above and in the light of the practice of the Supreme Constitutional Court (which has amalgamated with this Court) that formal defects will not be allowed to defeat the interests of justice, the objection raised should be overruled. I agree with the pronouncement made that the Communication which was addressed as aforesaid to the Supreme Court by the President of the Republic, ought to be treated as having actually set in motion the proceedings by way of a Reference under Article 140 of the Constitution, subject to the directions made as to the necessary amendments thereto.

LORIS J.: I have had the opportunity of reading in advance the decision of my brother Judge Pikis and I fully agree with his decision and the reasoning behind it, I associate therefore, myself with the order therein proposed.

STYLIANIDES J.: After anxious and serious consideration of the points raised in the preliminary objection of counsel appearing for the House of Representatives, I am in agreement with H.H. the President that the preliminary objection cannot be sustained and the Court should proceed to hear the reference on the merits, subject to the directions for amendment of the reference and the opposition.

The House of Representatives passed the Engagement of

Casual Public Officers (Public and Educational Service) Law, 1984, and transmitted same to the President of the Republic for promulgation under Article 50.2 of the Constitution. The President of the Republic returned it to the House of Representatives under Article 51.1 for reconsideration of section 3 thereof as being repugnant to a number of specified constitutional provisions. The House persisted in its decision and transmitted the Law to the President for promulgation.

The President, within the appointed time, exercised his right of reference to the Supreme Court for its opinion on the question as to whether s. 3 of the aforesaid Law is repugnant to and/or inconsistent with the provisions of Articles 54, 61, 116, 167 and 168.1 of the Constitution. He referred to the Court by a communication in the form of a letter with a number of appendices. This reference was numbered as Reference No. 1/84, filed but not sealed.

Counsel appearing for the House filed on 7.2.85 opposition. The opposition is twofold:-

(a) That this reference is null and void ab initio as there was no compliance with r. 4 of the Supreme Constitutional Court Rules, 1962; and,

(b) That s.3 of the Engagement of Casual Public Officers (Public and Educational Service) Law, 1985, is neither repugnant to nor inconsistent with any constitutional provision.

At the commencement of the hearing, on the application of counsel for the House of Representatives and with the consent of H. H. the Attorney-General, the procedural objection was taken as a preliminary point.

It is common ground and it is apparent from the record of the Court that the disputed reference was not made on the form prescribed by r. 4(1) and, though filed, it was not sealed in accordance with r. 4(4) of the Supreme Constitutional Court Rules, 1962, made by the defunct Supreme Constitutional Court in virtue of its powers under Article 135 of the Constitution.

Mr. Ph. Clerides for the House of Representatives submitted that the proceedings are null and void ab initio and non-existent as-

(a) There was no compliance at all with the provisions of Reguation 4;

(b) The proceedings never commenced; and,

(c) Order 64 of the Civil Procedure Rules, which is in some way made applicable by r. 18 of the Supreme Constitutional Court Rules, is not available for the rectification of the defect in the commencement of the proceedings as it is a nullity and not an irregularity.

The Deputy Attorney-General submitted:-

(a) That r. 4 is not applicable to a reference under Article 140 as the prescribed form provides for parties whereas in a reference of this nature there are no parties; that the Court in the exercise of its compentence under Art. 140 only expresses an opinion but does not pronounce a judgment; and that in any way a reference under Art. 140 does not come within the ambit of "proceedings"; and, in the alternative.

(b) He invited the Court to exercise its powers under r. 19, that reads: "At any stage of the proceedings the Court or a Judge may give such directions as the justice of the case may require", and give directions to rectify the defect in the interests of justice.

The jurisdiction of this Court under Art. 140 of the Constitution is not advisory. The opinion of the Court on a question referred to it is a judicial pronouncement binding both the House of Representatives and the President. The framers of the Constitution made the Supreme Constitutional Court the sole authentic interpreter of the Constitution and the sole arbiter as to any ambiguity, constitutional dispute or conflict.

This is borne out from the context of all the Articles from 136-151. I need only refer to Article 136, the overriding Article, which reads:-

"The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on all mat-

ters as provided in the ensuing Articles".

Due to the events of December, 1963, by the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33/64) the Supreme Court of Cyprus was established as a constitutional continuity with all jurisdiction and power that vested in the two Courts provided in the Constitution, i.e. the Supreme Constitutional Court and the High Court. (See ss. 9(a) and 11(1) of Law No. 33/64).

Section 11(1) of Law No. 33/64 reads as follows:-

> "Any jurisdiction, competence or power vested in the Court under s.9 shall, subject to Subsections (2) and (3) and to any Rules of Court, be exercised by the Full Bench".

Proceedings are deemed to be commenced under the Rules on due compliance with r. 4 and after the sealing with the seal of the Court. Having regard to the wording of r. 4(1), r. 15 and the definition of "case" as "any proceedings commenced in whatsoever manner before the Court", I am unable to agree with the submission of learned Deputy Attorney-General that a reference by the President under Article 140 is outside the purview of r. 4 both as to forms, contents, filing and not the least sealing. Sealing is not ornamental but a substantive step, without which no proceedings are deemed to have commenced. Sealing, though not a judicial act, nevertheless, it is a sine quo non to the commencement of proceedings and it signifies the authority of the Court, and it is only after proper sealing that a case may be treated as commenced. Therefore, the present reference has not been commenced as proscribed under the Supreme Constitutional Court Rules, 1962.

If I were to apply 0.64 of the Civil Procedure Rules, I would declare this reference as a nullity that could not be remedied. Both the majority judgment in *Re Pritchard (Deceased),* [1963] 1 All E. R. 873, that was adopted and applied by this Court in *Spyropoullos* v. *Transavia,* (1979) 1 C.L.R. 421, and *Andreas Demetriou and Others* v. *George Prodromou,* (1983) 1 C.L.R. 301, leave no room for describing the defect in the commencement of these proceedings otherwise than a nullity.

The second class of nullity the authorities establish is "proceedings which have never started at all owing to some fundamental defect in issuing the proceedings". In the present case no proceedings have commenced or issued under the Rules. The exclamation of Lord Denning, M.R., at p. 878 in *Re Pritchard*—"when an officer of the Court itself makes a mistake, the consequences should not be visited on the unfortunate litigant, but it should be remedied by the Court itself"—did not prevent the majority to decide otherwise; it only led to a radical amendment of 0.70 of the Old English Rules that corresponds to 0.64 of our Civil Procedure Rules.

In *Andreas Demetriou and Others* v. *George Prodromou* (supra) it was held that the non-filing of an affidavit prior to the sealing of a writ of summons in a probate action, as provided by 0.2, r. 13, of the Civil Procedure Rules, brought the case within the second class of *Re Pritchard*, that is, that the proceedings never came into being because of a fundamental defect in their issuing.

It is noteworthy that the last phrases of r. 12 of the Civil Procedure Rules—"he shall then seal the writ with the seal of the Court, and thereupon the writ shall be deemed to be issued and the action to be commenced"—are identical to the last words of r. 4(4) of the Supreme Constitutional Court Rules.

Rule 18 of the Supreme Constitutional Court provides:-

> "The Civil Procedure Rules in force in the Republic on the date of the making of these Rules shall apply, mutatis mutandis, to all proceedings before the Court so far as circumstances permit or unless other provision has been made by these Rules or unless the Court or any Judge otherwise directs".

The Civil Procedure Rules are inapplicable where the nature of the jurisdiction to be exercised by this Court does not permit it—(*The Republic* v. *Louca and Others*, (1984) 3 C.L.R. 241, at pp. 250, 267. See, also, *Roussos* v. *The Republic*, Revisional Appeals No. 429-430).*

The approach of this Court to technical and formal defects should be guided by the attitude of the Supreme Con-

* Reported in (1985) 3 C.L.R. 119.

stitutional Court. The relevant cases are: *Demetriou* v. *The Republic,* 1 R.S.C.C. 99, and *The Attorney-General* v. *Kouppi and Others,* 1 R.S.C.C. 115, at pp. 116-117. Useful also is the case of *Kourris* v. *The Supreme Council of Judicature,* (1972) 3 C.L.R. 390, dealt with by this Court.

In *Kouppi's* case a reference under Article 144.1 was not signed by the Judges of the Court making such reference. At p. 117 it was said:-

> "Counsel appearing for the Attorney-General has raised as a preliminary point the issue that this reference was not in a proper form under Article 144 in as much as it was signed by the Acting Chief Registrar and not by the Judges of the High Court.
>
> This Court is of the opinion that the submission of counsel appearing for the Attorney-General is correct but, nevertheless, in accordance with its policy of not allowing technical considerations to defeat the interests of justice it has again decided to take cognizance of this reference, doing so exceptionally and again without in any way intending to create a precedent thereby".

In *Demetriou* (supra) it was said:-

> "It is quite correct that this Court has repeatedly stated that it will not dismiss a case for merely technical defects and it will try as far as possible to do justice in a case on the substance thereof".

In *Kourris* case (supra) a recourse under Article 146 of the Constitution was signed by an advocate who at the material time was on leave prior to retirement from the post of Senior Counsel of the Republic and, therefore, the recourse could not have been deemed to have been signed either by the applicant or by an advocate on his behalf. The applicant, however, was not prevented from proceeding with his recourse as "it was never the practice of the Supreme Constitutional Court—(and in sitting to deal with this recourse the Supreme Court was exercising the powers of such Court)—to allow formalities to prevent it from dealing with a case before it."

The President of the Republic by his communication to

the Court that was duly served on the House of Representatives, seeks the opinion of the exclusive authoritative interpreter of the Constitution on the repugnancy or inconsistency of s.3 of the Engagement of Casual Public Officers (Public and Educational Service) Law, 1984. The delineation of the sphere of competence of the House of Representatives under the Constitution, a major constitutional matter of public interest, is involved in the present reference. All the grounds of fact and Law, though not in proper form, are set out in the communication of the President.

Guided by the approach to procedural matters by the decisions to which I have just referred and bearing in mind the nature of this reference, without creating a precedent, and after giving the matter a serious consideration, I have come to the conclusion that this Court should not, in the exceptional circumstances of this first invocation of Art. 140 during the 25 years from the establishment of the Republic, decline to exercise its competence in the interests of justice and the proper application of the Constitution.

By way of parenthesis and without being a factor that weighed in my mind, I have to place on record that I was astounded to hear from the registry that a considerable number of recourses are not, for unknown reasons, sealed. This default should forthwith come to an end.

Before, however, proceeding with the hearing of counsel appearing for the President and the House of Representatives on the merits of the reference, it is deemed necessary for the reference to be amended within 7 days from today in a manner complying fully with r.4 of the Supreme Constitutional Court Rules. Such amended reference to be filed with the registry and delivered to counsel appearing for the House of Representatives who will be at liberty to file, if they so wish, an amended opposition within 10 days thereafter.

PIKIS J.: The President of the Republic referred to the Supreme Court for its opinion the constitutionality of the Engagement of Temporary Employees (Public and Educational Service) Law, 1984. Reference to the Supreme Court

was made by letter dated 21st December, 1984, signed by the President before the promulgation of the law as provided in Art. 140 of the Constitution. The Supreme Court is requested to give its opinion on the constitutionality of the aforesaid Law, in particular, whether it is repugnant to or inconsistent with Articles 54, 116, 167 and 168.1 of the Constitution. The reference in the form presented was accepted by the Registrar of the Supreme Court, numbered but not embossed with the seal of the Court. By directions of the Court the reference and appendices thereto, an opinion of the Attorney-General and history of the legis-lation, were served on the House of Representatives signifying they could oppose the reference within three weeks.

An opposition was filed affirming the constitutionality of the Law stating it was enacted within the framework of the Constitution and in compliance thereto. Preliminary objection was raised to the justiciability of the proceedings on grounds of invalidity, allegedly misinitiated, consequently null and void. On the directions of the Court the issue of validity of the proceedings was examined before anything else in order to determine whether we can take cognizance of the proceeding and pronounce on matters raised therein. Elaborating on the preliminary objections to the validity of the proceeding, Mr. Clerides submitted the reference was initiated in violation of the Supreme Constitutional Court Rules, 1962(1), hereinafter referred to as the Rules, r.4 in particular, prescribing the form and other formalities for the institution of all proceedings other than those regulated by r. 15. The principal submissions made in support of the contention that the proceedings are invalid are:

(a) Institution of proceedings in a manner other than that envisaged by the Rules renders the proceedings invalid and as such non-justiciable. The Rules enacted in exercise of the rule making powers vested in the Supreme Court under Art. 135 of the Constitution are in pari materia with constitutional

(1) Made applicable to proceedings before the Supreme Court by the proviso to s.17 of the Administration of Justice (Miscellaneous Provisions) Law, 1964.

provisions or at the least with statutory provisions and as such must be adhered to strictly.

(b) Ord. 64 of the Civil Procedure Rules incorporated in the Rules and forming part thereof by virtue of the provisions of r. 18 of the Rules, cannot be invoked to save the proceedings for its application is confined to irregularities. While in this case we are faced with a fundamental defect in the process rendering the proceedings abortive.

Many cases were cited exemplifying the jurisdiction of the Supreme Court to remedy irregularities and its limitations with particular reference to the implications of the provisions of Ord. 64 deriving its origin and corresponding in content to Ord. 70 of the old English Rules of the Supreme Court. Prominent among the cases cited are the following: *Attorney-General of the Republic* v. *Kyriacos Kouppi and Two Others,* 1 R.S.C.C. 115; *Antonios Kourris* v. *Supreme Council of Judicature* (1972) 3 C.L.R. 390; *Re Prichard (deceased)* [1963] 1 All E.R. 873; *Gooding* v. *Borland* [1971] 1 All E.R. 315; and *Spyropoullos* v. *Transavia* (1979) 1 C.L.R. 421. To the above list one may usefully add two other decisions of the Supreme Court, namely, *Lysandrou* v. *Schiza and Another* (1979) 1 C.L.R. 267, furnishing an illustration of void proceedings for breach of the Civil Procedure Rules, and, *Evagorou* v. *Christodoulou and Another* (1982) 1 C.L.R. 771, reflecting the contemporary approach to the interpretation and application of Ord. 64 revealing a disinclination to treat a proceeding as a nullity unless such a result is unavoidable.

The Deputy Attorney-General, Mr. Loucaides, made a two-fold submission in support of the validity of the proceedings:

(a) The Rules are inapplicable because they are fashioned to proceedings in the nature of a recourse and their application is accordingly confined to proceedings of that kind. By its nature a reference under Art. 140 cannot be embodied in the form prescribed by r. 4(1) phrased in a manner peculiarly designed to define the issues in a recourse.

(b) Failing acceptance of the proposition under (a) above, omission or failure to comply with the formalities prescribed by r. 4 is an irregularity remediable under r.19 conferring jurisdiction on the court to make such directions as the justice of the case may require. Although the incorporation of Ord. 64 in the Rules was doubted in view of the provisions of r. 19, if applicable, likewise it confers jurisdiction to save the proceedings.

To begin, the submission that the Rules are inapplicable to proceedings under Art. 140 is untenable. The definition of "case" in r. 2(1) offers a conclusive answer to the submission. "Case" is defined as "any proceedings commenced in whatsoever manner before the court". Obviously a reference under Art. 140 is one of the proceedings that may be raised before the Court and as such falls within the definition of a "case". It may be inferred from the provisions of r. 15 that the Rules were intended as a comprehensive code regulating every proceeding before the Supreme Court. Special procedure was laid down for proceedings under certain Articles of the Constitution, namely, Articles 139, 144 and 149, signifying thereby the intention that the Rules should provide a comprehensive code regulating every kind of proceeding before the Supreme Court.

Further I cannot subscribe to the view that opinion seeking under Art. 140 and the process inherently suited to such a proceeding is incompatible with the form contemplated by r. 4. The rendering of an opinion under Art. 140 constitutes a judicial pronouncement binding, under para. 3 of Art. 140, on the President enjoining, him not to promulgate a Law conflicting with the Constitution. The statement of the parties in the form approved by r.4 in a manner similar to civil proceedings, does not make them adversaries in the pursuit of the constitutionality of the Law. After all the proceedings regulated by the Rules are not of an adversarial but of an inquisitorial nature. The portrayal of the parties in a manner similar to civil proceedings, does not make them adversaries in the sense of the civil Law. The proceedings are of an inquisitorial nature

and reference to the parties signifies nothing other than name the parties with an interest in the matter under review.

It is my considered view that reference by the President under Art. 140 is a proceeding within the definition of "case" in r. 2(1) of the Rules and as such governed by the provisions of r. 4 as to form and other attributes. The reference in this case was instituted in a form defying r.4. Need, therefore, arises to examine whether breach of the Rules rendered the proceedings void, as submitted on behalf of the House of Representatives or irregular, in which case there is discretion to sustain them subject, of course, to conditions the Court may deem approriate to regularize the proceedings.

Next we must decide the rules applicable and the principles relevant to determining whether a proceeding is void or irregular. Conflicting submissions were made, as indicated, respecting the applicability of Ord. 64. Unless a matter is regulated by the Rules, r. 18 provides that the Civil Procedure Rules apply mutatis mutandis to proceedings before the Supreme Court in the exercise of its jurisdiction under the Constitution and, the question arises whether r. 19 is, as Mr. Loucadies submitted, a special provision designed to regulate the validity of the proceedings and power of the Court to remedy irregularities; it provides "at any stage of the proceedings the Court or Judge may give such directions as the justice of the case may require". By its very terms it is not a provision intended to deal specifically with irregularities. The powers conferred by r. 19 are more in the nature of residual powers vested in the Court to adjudicate effectively upon a matter already pending before it. While Ord: 64 is a special provision defining the powers of the Court to deal with irregularities in proceedings and jurisdiction to rectify non-compliance with the Rules. In a recent decision of the Full Bench of the Supreme Court, that is, *Roussos* v. *The Republic*(1), it was reaffirmed that r.18 incorporates the

(1) (1985) 3 C.L.R. 119.

Civil Procedure Rules to every extent to which they are compatible with the nature of inquiry the Supreme Court is required to conduct in exercise of its revisional jurisdiction. Naturally the nature of the jurisdiction vested in the Supreme Court as successor to the Supreme Constitutional Court requires greater liberality in the construction and application of procedural requirements. Matters raised or referred to the Supreme Court in exercise of the above jurisdiction are not of interest only to the parties immediately concerned therewith, they raise matters of public Law requiring adjudication primarily in the public interest; hence procedural constraints should rarely be allowed to impede determination of the substance of a matter referred to the Court.

The dividing line between void and irregular proceedings has never been firmly drawn. Judicial approach is characterized by a steady tendency to limit the range of void proceedings. In the White Book(1) lengthy reference is made to decided cases reflecting this tendency and illustrating judicial practice in the application of the provisions of Ord. 70 corresponding to Ord. 64 of the Civil Procedure Rules(2). The impress of nullity attaches, to my comprehension, only in two situations:

(a) Proceedings defying a fundamental rule of law, and

(b) Proceedings breaching fundamental procedural safeguards bound up with the defence of the rights of the parties. A classic example of null proceedings is furnished in the decision of *Anlaby* v. *Pretorius* (3) declaring a judgment entered before time for defence had expired, to be a nullity.

The case often cited as laying down the principles demarcating void from irregular proceedings, is the majority judgment in *Re Prichard* (supra). Upjohn, L.J., as he then

(1) See Annual Practice 1958, Vol. 1, p. 1986, et seq.
(2) See also Halsbury's Laws of England, 4th Ed., Vol. 37, para 36, et seq.
(3) [1888] 20 Q.B.D. 764.

was, noticed three kinds of proceedings that may properly be described as void:

"(i) Proceedings which ought to have been served but have never come to the notice of the defendant at all. This, of course, does not include cases of substituted service, or service by filing in default, or cases where service has properly been dispensed with; see e.g. *Whitehead* v. *Whitehead (otherwise Vasbor)* [1962] 3 All E.R. 800;

(ii) Proceedings which have never started at all owing to some fundamental defect in issuing the proceedings;

(iii) Proceedings which appear to be duly issued, but fail to comply with a statutory requirement; see e.g., *Finnegan* v. *Cementation Co., Ltd.* [1953] 1 All E.R. 1130; [1953] 1 Q.B. 688"(1).

The first category concerns defects in the process that go to the root of the administration of justice, while the second concerns procedural defects of a fundamental character rendering the initiation of the process abortive; the third specifically refers to non-observance of statutory procedural requirements.

An exmaple of fundamental defect in the issuing process may be found in Ord. 2, r. 13 postulating a condition of the validity of the initiation of a probate action, the verification of the endorsement of the writ by an affidavit of the plaintiff. Another mandatory procedural requirement is contained in Ord. 25, r.2 requiring as a condition of its validity that an amendment be effected within the time limited by the Court or within 15 days in the absence of a direction. The implications of breach are examined in the case of *Lysandrou* (supra) deciding an amendment made subsequent to the time limited is void. The wording of Ord. 25, r.2 as to the consequences of non-observance of

(1) See headnote of the case at p. 883.

the rule is worthy of notice; describing the implications of breach, the Rule reads: "....become ipso facto void..."

In *Spyropoullos* (supra) the Supreme Court referred with approval to *Re Prichard* regarding the dividing line between void and irregular proceedings. The tenor of the judgment is that the irregularity must be grave and substantial in order for the Court to hold the proceedings a nullity. An action raised in contravention of the provisions of r. 3 of the Exchange Control Rules was held not to be invalidated; the irregularity was found to be remediable under Ord. 64. A similar approach, to restrict the range of void proceedings, is reflected in the decision of *Evagorou* v. *Christodoulou and Another* (supra). It was observed(1) "The power vested in the Court to decree proceedings fraught with irregularity as void is a drastic one and should be exercised with the greatest circumspection".

The Court has discretion under Ord. 64. r. 1 to declare irregular proceedings (that is, proceedings not void ab initio) as void. This is rarely done. The power to treat an irregularity as a nullifying factor, will not be exercised unless the irregularity causes substantial injustice—*Marsh* v. *Marsh* [1945] A.C. 271, 284; *Austin* v. *Hart* [1983] 2 All E.R. 341. A substantial injustice is likely to occur when because of the irregularity the rights of the other party to the proceedings are likely to be irreparably prejudiced by the waiver of the irregularity. No suggestion has been made that the rights of the House of Representatives were in any way prejudiced because of the irregularity. The gravamen of their case is that the proceedings were still-born and as such cannot be taken cognizance of.

A big part of the argument of Mr. Clerides was directed towards establishing that the Rules are in pari materia with the Constitution or at the least with statutory provisions

(1) pages 775-776.

and that in consequence non-compliance with r. 4 rendered the proceedings a nullity. As a matter of fact, the procedural requirements under consideration are not envisaged by a statute. They are like other rules of Court the offspring of the rule-making power of the Supreme Court in exercise of its constitutional powers to regulate proceedings before the courts of Law. Powers analogous to those vested in the Supreme Court by Art. 135 concerning its jurisdiction as a Constitutional Court and as a Court of administrative review, are conferred on the Supreme Court by Art. 163 to regulate by Rules the exercise of its jurisdiction in other areas of the Law. The Rules constituted a procedural code designed to regulate in the area under consideration proceedings before the Court. They cannot be assimilated to a statute.

Moreover, as pointed out in argument, Ord. 64, to the extent applicable, is no less a part of the Rules than r. 4 itself. It is a specific provision laying down that non-compliance with anyone of the Rules, and that includes r. 4, "shall not render any proceedings void unless the Court or Judge shall so direct...". Here we are confronted with non-observance of the provisions of r. 4 as to form and sealing of the application. Therefore, non-compliance is, in accordance with Ord. 64, remediable. Unless the proceedings are for some other reason invalid, there is discretion under Ord. 64 to rectify the irregularity.

Other provisions of the Rules are also suggestive of the fact that irregularities as to form and sealing are not fatal to the validity of the proceedings. R.16 empowers the Supreme Court to accept an action commenced before another Court having no jurisdiction to deal with a matter falling within the competence of the Supreme Court. Such an action is inevitably raised in the wrong form and does not bear the seal of the Supreme Court; nevertheless it may be accepted and "shall be deemed to have commenced in the Court (Supreme Court) on the date of their commencement in such other Court".(1)

(1) R.16.

The approach and practice of the Court to non-observance of procedural rules respecting the form of the proceedings and other formalities supports the above construction of the rules and confirms the width of the discretion of the Court to rectify irregularities and sustain the proceedings in the public interest and in the interest of justice. In *Kouppi* (supra) the Court accepted a reference under Art. 144.1 notwithstanding that it was initiated in contravention to explicit provisions of the Constitution. Discretion was acknowledged in the Court to rectify the matter, if this course was warranted in the interest of justice and public interest. In the case of *Kourris* (supra) we notice a similar approach and equal readiness to take cognizance of the substance of the case, if at all possible. So, the signing of the recourse by someone who was not at the time entitled to represent as advocate the applicant was held to be excusable.

In the present case the issues raised for the opinion of the Supreme Court are clearly defined in the letter of the President as well as the reasons that cast, in his opinion, doubts on the constitutionality of the Law. The articles of the Constitution likely to be infringed by the promulgation of the Law, are specified as well as every other matter relevant to the exercise of our powers under Art. 140. On the other hand, there is no suggestion that the House of Representatives was in any way misled as to matters at issue or prejudiced on account of initiation of the proceedings in the wrong form in the exercise of any of its rights. Non-compliance with the provisions of r. 4 of the Rules as to form and sealing in no way obscured matters raised for our opinion. Therefore, there is no reason of principle or practice to treat non-compliance with the Rules as anything other than an irregularity remediable in the exercise of our discretion.

Under Ord. 64 we have unlimited discretion to remedy an irregularity in any manner we deem best conducive to the interests of justice. In exercise of this discretion I direct that the reference be embodied in the form provided for by r.4(1) within seven days. Thereafter, respondents

shall be at liberty to amend their opposition within ten days.

TRIANTAFYLLIDES P.: In the result it is directed that the amended Reference should be filed and delivered to counsel appearing for the House of Representatives within seven days from today and counsel for the House of Representatives will be at liberty, if they so wish, to file and deliver to counsel appearing for the President of the Republic an amended Opposition within ten days thereafter. The further hearing of this case on its merits is fixed on the 9th and 10th April 1985, at 10.00 a.m.

Order accordingly.