

1986 June 10

[TRIANAFYLLIDES, P., MALACHTOS, DEMETRIADES,  
SAVVIDES, LORIS. PIKIS, KOURRIS. JJ.]

ANDREAS EVZONAS.

*Petitioner,*

v.

GEORGHIOS PAPADOPOULOS AND OTHERS,

*Respondents.*

*(Election Petition No. 1/86).*

*Elections—General Election for the House of Representatives—  
Election Petition—Procedure—Application by summons  
for recounting of the preference votes cast for the peti-  
tioner and respondent 1 and for extending the time within  
which the petitioner should submit a list of votes against  
which he intends to object—The Election of Members of  
the House of Representatives (Election Petitions) Rules  
of Court, 1981—Rule 6(1).* 5

By means of the above election petition the petitioner  
seeks the annulment of the election of respondent 1, as 10  
Representative of the Democratic Rally in the House of  
Representatives in respect of the constituency of Paphos  
and a declaration that the petitioner has been elected,  
instead of respondent 1, as Representative of the said  
party for the said constituency. 15

The petitioner filed an application by summons seeking  
the recounting of the preference votes cast respectively  
for himself and respondent 1 and praying for an order  
extending thereafter for a period not exceeding 15 days  
the time within which there should be submitted to the 20  
Chief Registrar by him a list of the votes against which  
he intends to object. It is clear that the extension of time  
is sought in order to enable the petitioner to comply  
with rule 6(1) of the above rules. Respondents opposed  
the application. 25

According to the official results respondent 1 received 1627 and the petitioner 1563 preference votes. Great tension was reigning in the hall, in which the counting was taking place, in the early hours of 9.12.85 amongst the representatives of the various parties.

*Held*, granting the application: (1) The recounting is absolutely necessary in order to enable the petitioner to know the correct facts and, thus, give a list of the votes against which he intends to object pursuant to rule 6(1) above.

This Court will not normally order a recounting as a means of ascertaining the true facts in the course of the hearing of an election petition, but this is an exceptional case in view of the very small difference between the preference votes received by the petitioner and respondent 1 and of the turbulent situation that was prevailing during the counting, which may have been conducive to the commission of errors.

(2) This is proper case for an extension of time under rule 6(1) above.

*Order accordingly.*

**Election petition.**

Election petition against election of respondent No. 1, as representative of the Democratic Rally (ΔΗ.ΣΥ.) in the House of Representatives in respect of the constituency of Paphos.

*C. Tsirides with Ph. Apostolides*, for the petitioner.

*L. Papaphilippou with A. Constantinou*, for respondent 1.

*A. Evangelou*, Senior Counsel of the Republic with *M. Photiou*, for respondents 2, 3 and 4.

No appearance for respondent 5.

*Cur. adv. vult.*

TRIANTAFYLLIDES P. read the following decision of the Court. This election petition was filed on the 3rd January

1986 and by means of it the petitioner is, in effect, seeking a decision of this Court annulling the election of respondent 1, Georghios Papadopoulos, as Representative of the Democratic Rally (ΔΗ.ΣΥ.) in the House of Representatives in respect of the constituency of Paphos and declaring that the petitioner has been elected, instead of respondent 1, as Representative of the Democratic Rally for the said constituency. 5

At the commencement of the hearing of this petition, on the 26th March 1986, counsel for the petitioner withdrew it in so far as respondent 4 was concerned and it was dismissed accordingly to that extent. 10

During the hearing on the 26th March 1986 the following Order was made by us:

“At this stage, on the application of counsel for the petitioner and without objection on the part of counsel for the respondents, the further hearing of this petition is adjourned sine die in order to afford time to counsel for the petitioner to file an application for directions pursuant to prayers (A) and (B) in the petition and for any other direction that counsel for the petitioner may consider necessary in relation thereto. 15 20

The said application is to be filed within two weeks from today. If for any reason such application is not so filed this petition will have to be considered as abandoned and will be dismissed with no order as to its costs. 25

The question of the costs of today's adjournment is reserved.” 30

Then, on the 7th April 1986, the petitioner filed an application by summons seeking, inter alia, that there should be recounted the preference votes cast respectively for the petitioner and respondent 1 and, furthermore, an order extending thereafter for a period not exceeding fifteen days the time within which there should be submitted to the Chief Registrar by the petitioner a list of the votes against which the petitioner intends to object. 35

It is quite clear that the petitioner is seeking the said extension of time in order to be enabled to comply with the procedural requirement set out in rule 6(1) of the Election of Members of the House of Representatives (Election Petitions) Rules of Court, 1981 (see Second Supplement to the Official Gazette of the Republic of 29th May 1981)

Counsel appearing for the respondents have opposed the application which was filed, as aforesaid, by the petitioner on the 7th April 1986 and such application was heard by this Court on the 25th April 1986.

According to the official results respondent 1 received 1627 preference votes as a candidate of the Democratic Rally for the constituency of Paphos whereas the petitioner received as a candidate of the Democratic Rally 1,563 preference votes, and, consequently, respondent 1 was declared as elected instead of the petitioner.

As it appears from an affidavit which was sworn on the 18th April, 1986 by respondent 2, who was the Returning Officer for the constituency of Paphos, the petitioner was, initially, due to a clerical error, found to have received 1,553 preference votes but when such error was discovered the above figure was reviewed in favour of the petitioner and was adjusted to 1,563.

It is stated, too, in the said affidavit of respondent 2 that in the hall in which the counting of the votes was taking place, in the early hours of the 9th December 1985, there was reigning great tension amongst the representatives of the various political parties and as a result of it there were occurring from time to time altercations between them and on some occasions there nearly occurred scuffles too.

It seems to us that, in the circumstances of this case, the order for a recounting of the preference votes cast in favour of respondent 1 and of the petitioner, which is being sought by the petitioner by means of his application filed on the 7th April 1986, is absolutely necessary in order to enable the petitioner to know the correct facts

and, thus, give a list of the votes against which he intends to object pursuant to rule 6(1), above.

We would not normally take the step of ordering a recounting of preference votes as a means of ascertaining the true facts in the course of the hearing of an election petition, but it seems to us that this is an exceptional case in view of the fact that the difference between the preference votes received by respondent 1 and by the petitioner is very small indeed and, furthermore, in view of the turbulent situation which, according to the affidavit of the Returning Officer, was prevailing at the time of the counting of the votes and which may have been conducive to the commission of errors in the course of ascertaining the preference votes validly cast for the petitioner and for respondent 1.

Moreover, after having carefully weighed all relevant considerations, we have decided that this is a proper case in which to order an extension of time under rule 6(1), above, within which the petitioner is to give a list of the votes against which he intends to object.

Thus, in the light of all the foregoing, we have decided to order a recounting of all the preference votes cast in favour of the petitioner and of respondent 1, and in the course of it there should, also, be ascertained how many such votes were treated officially as validly or invalidly cast. In this respect there will be taken into account all the preference votes cast for the petitioner and respondent 1 on validly cast votes for the Democratic Rally in the Paphos constituency.

The recounting ordered by us now should take place in the presence of the Returning Officer, respondent 2, and of the Chief Registrar and in the presence of all such other officials as the two of them will deem necessary; and the petitioner and respondent 1, as well as their counsel and a sufficient number of representatives of theirs as may be deemed necessary for the purposes of the recounting, may, also, be present.

Such recounting is to be completed not later than within three weeks from today.

5 We extend for a period of fifteen days thereafter the period under rule 6(1) of the relevant Rules of Court within which the petitioner will file a list of the votes against which he intends to object, together with the reasons why he objects against each one of them.

This case is fixed on the 25th July 1986, at 9.30 a.m., for further directions.

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*Order accordingly.*