

1986 April 17

[TRIANTAFYLIDIS, P.. A. LOIZOU, DEMETRIADES,  
SAVVIDES. LORIS, STYLIANIDES, KOURRIS, JJ].

MICHALIS HJI PAVLOU,

*Petitioner,*

v.

GEORGHIOS CHARALAMBIDES AND OTHERS.

*Respondents.*

*(Election Petition Nos. 1/85 and 2/85).*

*Elections—The Election of Members of the House of Representatives Laws 1979-1985—General Election for the House of Representatives—Second and any further distribution of seats—Method to be used—Sections 33(1) and 33(4) of the said laws.*

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*Constitutional Law—Equality—Constitution, Article 28.1—The Election of Members of the House of Representatives Laws 1979-1985—General Election for the House—Sections 33(1) and 33(4) of the said laws—Said sections as well as the way they were applied to the general election of 8.12.85 not contrary to the principle of equality.*

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The above two election petitions relate to the general election for the House of Representatives, which was held on 8.12.85. The Petitioners contend that section 33(4) of Law 72/79 as amended was applied erroneously with the result that in the final distribution of the two seats, which had not been allocated during the first and second distributions, there was allocated, first one seat to the Democratic Rally for the constituency of Larnaca and then the other seat to the Democratic Party for the constituency of Limassol, whereas if the said section had been applied correctly, there would have been allocated, first one seat to the Democratic Rally for the constituency of Limassol and then the other seat to the Democratic Party for the constituency of Larnaca.

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*Held*, dismissing the petitions (1) It is only after the first distribution of seats that there can be found to exist unused remainders of votes for each party in respect of each constituency separately. For this reason in the second distribution of seats and in any further distributions of seats the process of the consecutive allocation, on a constituency by constituency basis of as yet unallocated seats (which is regulated by s. 33(4) has to be based on the unused, after the first distribution remainder of votes of each party in respect of each constituency separately inasmuch as thereafter section 33(1) treats the Republic as a whole as one single constituency (*Zachariades v. Liveras* (Election Petition 4/81) affirmed), even though in order to determine the sequence of priority as regards the final distribution of the two as yet unallocated seats, there were relied on the still unused, after the second distribution of seats, remainders of votes of each political party in respect of the country as a whole.

(2) The said provisions and the way they have been applied do not contravene the principle of equality, safeguarded by Article 28.1 of the Constitution, because in the context of the electoral system of proportional representation, there has to be and is actually, ensured substantial proportionate equality as regards the distribution of seats to political parties on a countrywide basis, and not necessarily in respect of each particular constituency, too.

*Petitions dismissed.*

*No order as to costs.*

**Cases referred to:**

*Zachariades v Liveras* (Election Petition 4/81).

**30 Election petitions.**

Election petitions against the allocation of the last two remaining seats in the House of Representatives, which had not been allocated during the first and second distributions, one seat to the Democratic Rally for the constituency of Larnaca and the other seat to the Democratic Party for the constituency of Limassol.

40 *L. Tsikkinis* with *C. Tsirides*, *A. Koumoundouros* and *Chr. Hadjianastassiou* for the petitioner in

petition 1/85, who is also respondent 3 in petition 2/85.

*M. Nicolatos* for the petitioner in petition 2/85, who is also respondent 3 in petition 1/85.

*P. Polyviou* for respondent G. Charalambides. 5

*Chr. Triantafyllides* for respondent G. Tzirkotis.

*A. Evangelou* Senior Counsel of the Republic, for the respondent Minister of Interior and the respondent Chief Returning Officer.

No appearance for the respondent Democratic Party 10  
and the respondent Democratic Rally.

TRIANTAFYLLIDES P. read the following judgment of the Court. These two related to each other election petitions were filed separately on the 14th December 1985 and on the 23rd December 1985, respectively, but they were heard together and we shall proceed to give now this judgment in respect of both of them. 15

During their hearing both these petitions were withdrawn and were consequently dismissed, in so far as the respondent Minister of Interior was concerned. 20

As regards the general election for the House of Representatives, which was held on the 8th December 1985, both petitioners seek, in effect, a decision of this Electoral Court that, first, the election of respondent Georghios Charalambides as a Democratic Party Representative for the constituency of Limassol is void, that, secondly, the election of respondent Georghios Tzirkotis as a Democratic Rally Representative for the constituency of Larnaca is void, that thirdly, the petitioner in petition 1/85, Michalis Hadjipavlou, was elected as Democratic Rally Representative for the constituency of Limassol, and that, fourthly, the petitioner in petition 2/85, Hambis Kyriacou, was elected as Democratic Party Representative for the constituency of Larnaca. 25 30

The petitioners have contended that section 33(4) of the Election of Members of the House of Representatives 35

Laws 1979-1985 (Law 72/79 amended, in particular, by Laws 73/80, 16/81, 124/85, 159/85 and 164/85) was applied erroneously with the result that in the final distribution of the last two remaining seats in the House of Representatives, which had not been allocated during the first and second distributions, there was allocated, first, one seat to the Democratic Rally for the constituency of Larnaca and then the other seat to the Democratic Party for the constituency of Limassol and as a result, respondents Tzirkotis and Charalambides were treated as having been elected, respectively, as Representatives for the said constituencies, whereas if the said section 33(4) had been correctly applied there would have been allocated, first, one seat to the Democratic Rally for the constituency of Limassol and then the other seat to the Democratic Party for the constituency of Larnaca; and, consequently, on the basis of the party preference votes received by each one of them, the petitioners would have to be treated as elected as Representatives as follows: Petitioner Hadjipavlou as Democratic Rally Representative for the constituency of Limassol and Petitioner Kyriacou as Democratic Party Representative for the constituency of Larnaca.

We have carefully considered all the arguments advanced by counsel for the parties and we have reached the conclusion that section 33(4) of the aforesaid Laws has been applied correctly, in the light, too, of the judgment of this Court in *Zachariades v. Liveras* (Election Petition No. 4/81) which we affirm as correct.

In this connection we are, in particular, of the view that as regards the second distribution of seats and any further distribution of seats thereafter the process of the consecutive allocation, on a constituency by constituency basis, to political parties of as yet unallocated seats—which is regulated by the provisions of section 33(4) of the aforementioned Laws—has to be based on the unused, after the first distribution of seats, remainders of votes for each party in respect of each constituency, because it is only after the first distribution of seats that there can be found to exist unused remainders of votes for

each party in respect of each constituency separately, inasmuch as thereafter the Republic as a whole is treated, according to section 33(1) of such Laws, as one single constituency and, consequently, it cannot be said that there can then be found to exist unused remainders of votes for each party in respect of each constituency separately.

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Thus, even though in order to determine the sequence of priority as regards the final distribution of the two as yet unallocated seats there were relied on the still unused, after the second distribution of seats, remainders of votes of the Democratic Rally and of the Democratic Party in respect of the country as a whole, nevertheless the consecutive allocation, on a constituency by constituency basis, to the said political parties of the two seats in the constituencies of Larnaca and Limassol, in each one of which there was still one unallocated seat, had to be based on the criterion of the unused, after the first distribution of seats, remainders of votes for each party in respect of each constituency, with the result that the Democratic Rally was, first, allocated the seat in Larnaca and, then, the Democratic Party was allocated the other seat in Limassol.

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We are, moreover, of the opinion that the aforesaid legislative provisions, as well as the way in which they have been applied in this instance, are not in conflict with the right to equality which is safeguarded by Article 28.1 of our Constitution, because in the context of the proportional representation electoral system, which is at present in force in Cyprus for a general election for the House of Representatives, there has to be, and is actually, ensured substantial proportionate equality as regards the distribution of seats to political parties on a countrywide basis, and not necessarily in respect of each particular constituency, too. We are, indeed, of the view that the adoption for the purposes of all subsequent distributions of seats of the aforementioned criterion of the unused after the first distribution of seats remainders of votes for each party in respect of each constituency did not result in any significant distortion of the overall proportionate equality of distribution of all the seats in the

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House of Representatives to the political parties participating in the general election for the House of Representatives on the 8th December 1985.

5 In the light of all the foregoing these petitions fail and have to be dismissed; but we shall not make any order as regards their costs.

*Petitions dismissed.*

*No order as to costs.*