

1987 August 31

[TRIANAFYLIDES P MÁLACHTOS DEMETRIADES LORIS
STYLIANIDES, PIKIS KOURRIS JJ]

PAVLOS ANGELIDES

Petitioner,

v

- 1 CHRISTOS PETAS
- 2 A K E L ,
- 3 ANDREAS YIANNAI OY, AS RETURNING OFFICER,

Respondents

(Election Petition No 1/87)

Election petition — Constitution, Articles 85 and 145 — The Election of Members of the House of Representatives Laws 1979 1986 — Whether the Court can take cognizance of an Election Petition based on contention of unconstitutionality of relevant legislation notwithstanding that such a ground is not expressly referred to in sections 57(3) and 58 of the aforesaid laws — Question answered in the affirmative

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The respondents in this Election Petition raised the preliminary objection that the Petition cannot be proceeded with, because it is based on contention of unconstitutionality of the House of Representatives (Filling of Vacancy) Law 95/86, that is on a ground other than the grounds on which an Election Petition can be based in accordance with sections 57(3) and 58 of the Election of Members of the House of Representatives Laws 1979-1986

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Held, *dismissing the preliminary objection* (A) Per Triantafyllides, P (1) The words «ασκουμένης κατά τον εκλογικόν νόμον» («made under the provisions of the Electoral Law») in Article 145 cannot be construed as meaning that the grounds of a petition can be limited by such law so as to exclude a ground of unconstitutionality of the relevant legislation

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(2) Moreover, the aforesaid sections 57(3) and 58 do not enumerate exhaustively the grounds on which an election petition may be based so as to exclude a ground of unconstitutionality of the relevant legislation. Such ground is not expressly referred to by either section, but it is envisaged by section 57(1), which speaks of «πράν θέμα» («any matter»)

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5 (B) *Per Pikiis J* (1) Articles 85 and 145 of the Constitution confer jurisdiction on the Supreme Constitutional Court as an Electoral Court to adjudicate upon «πρόσα ενστάσις» (every objection) to the validity of an election. What the Constitution empowers the legislature to regulate by law is the adjectival side of the proceedings, namely the form and content of the petition and matters incidental thereto.

10 (2) The Electoral Law must be read subject to the pertinent provisions of the Constitution. The Constitution confers an unqualified right to question an election upon any ground and bestows correspondingly jurisdiction on an Electoral Court to heed and take cognizance of every objection to an election.

Preliminary objections dismissed

Cases referred to

President of the Republic v House of Representatives (1985) 3 C L R 872

Preliminary objection.

15 Preliminary objection that the present petition, which is based on the contention that the provisions of the House of Representatives (Filling of Vacancy) Law, 1986 (Law No. 95/86) is unconstitutional as being contrary to Article 66 2 of the Constitution, cannot be proceeded with.

20 Applicant appeared in person.

Chr Demetriades with A Papaioannou for respondents 1 and 2.

N. Charalambous, Senior Counsel of the Republic, for respondent 3.

25 *E. Efstathiou with A. Andreou and M. Papapetrou*, for the House of Representatives, as interested party

A. Andreou, for DHSY, as interested party.

No appearance for DHKO.

E. Efstathiou for EDEK, as interested party.

30 *Cur. adv. vult.*

The following judgments were read:

TRIANTAFYLLIDES P.: At this stage we are dealing with preliminary objections which have been raised by counsel for the respondents and counsel for the interested parties.

As regards those of the objections which relate to matters of procedural formalities we are of the view, in the light of the Decision of our Supreme Court in the case of *The President of the Republic v. The House of Representatives*, (1985) 3 C.L.R. 872, that they have been rightly abandoned and, therefore, we are no longer concerned with them. 5

As regards the preliminary objection that the present petition cannot be proceeded with because it is, in effect, based on the contention that the provisions of the House of Representatives (Filling of Vacancy) Law, 1986 (Law 95/86) is unconstitutional, as being contrary to Article 66.2 of the Constitution, and because a ground of unconstitutionality of the relevant legislative provisions is not a ground on which an electoral petition can be based under sections 57(3) and 58 of the Election of Members of the House of Representatives Laws, 1979-1986, we are of the opinion that for the reasons set out hereinafter it cannot be sustained: 10 15

In giving such reasons we find it useful to refer to Articles 85 and 145 of the Constitution which read as follows:

«ΑΡΘΡΟΝ 85

«Παν θέμα σχετικόν προς τα προσόντα εκλογιμότητος των υποψηφίων και πάσα ένσταση κατά των εκλογών εκδικάζονται οριστικώς και αμετακλήτως υπό του Ανωτάτου Συνταγματικού Δικαστηρίου.» 20

ARTICLE 85 25

(«Any question with regard to the qualifications of candidates for election and election petitions shall be finally adjudicated by the Supreme Constitutional Court.»)

ΑΡΘΡΟΝ 145

«Το Ανώτατον Συνταγματικόν Δικαστήριον κέκτηται αποκλειστικήν δικαιοδοσίαν να αποφασίζη οριστικώς και αμετακλήτως επί πάσης εκλογικής ένστάσεως, ασκουμένης κατά τον εκλογικόν νόμον, αναφερομένης δε εις την εκλογήν του Προέδρου ή του Αντιπροέδρου της Δημοκρατίας ή των βουλευτών ή των μελών των Κοινοτικών Συνελεύσεων.» 30 35

ARTICLE 145

(«The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on any election petition,

made under the provisions of the Electoral Law, with regard to the elections of the President or the Vice-President of the Republic or of members of the House of Representatives or of any Communal Chamber.»)

- 5 We might point at once that the words «ασκουμένης κατά τον εκλογικόν νόμον» («made under the provisions of the Electoral Law») in Article 145, above, cannot be construed as meaning that the grounds on which a petition can be based may be limited by the Electoral Law so as to exclude a ground of unconstitutionality
- 10 of the relevant legislation because such a construction would be incompatible with both the letter and spirit of Article 145 as a whole and, also, it appears to be excluded by the clear and unambiguous wording of Article 85, above and by the nature and extent of the jurisdiction of the Supreme Constitutional Court, which is exercised now by our Supreme Court.
- 15 Moreover, we are, in any event, of the opinion that the aforementioned sections 57(3) and 58 have to be interpreted and applied as not enumerating exhaustively the grounds on which an electoral petition can be based so as to exclude the ground of unconstitutionality of the relevant legislation, which is not referred
- 20 to expressly in either section 57(3) or 58, but which is clearly envisaged by section 57(1) of the Electoral Laws which provides that «πᾶν θέμα» («any matter») which may arise in relation to the right of any person to become or to remain a Member of the House of Representatives is determined by the Electoral Court, that is, in
- 25 a case such as the present one, by our Supreme Court.

We, therefore, hold that this petition cannot be dismissed on the basis of preliminary objections raised by counsel for the respondents and for the interested parties and has to be determined on its merits.

- 30 PIKIS J.: While I agree that procedural objections to the justiciability of the petition cannot be sustained and ought to be dismissed, a separate judgment will be given as the reasons for my decision do not coincide with those of my colleagues. The basic objection to the validity of the proceedings is that the petition is
- 35 founded on grounds other than those limitatively specified in the Election of Members of the House of Representatives Law (72/79), notably, the grounds enumerated in s. 58 of the law. Inherent in the submission of counsel is the suggestion that the jurisdiction of the Electoral Court to review the return or election of members
- 40 of the House of Representatives is defined and sequentially limited

by the law By necessary implication we are invited to hold that it is competent for the legislature to define the jurisdiction of an Electoral Court in a manner directly contravening the provisions of Articles 85 and 145 of the Constitution For both articles in unqualified terms confer jurisdiction on the Supreme Constitutional Court as an Electoral Court and the Supreme Court as the successor of that body to take cognizance of and adjudicate upon 'πάσα ένστασις' (every objection) to the validity of an election 5

What the Constitution empowers the legislature to regulate by law and the Supreme Court by rules of Court, is the adjectival side of the proceedings, namely, the form and content of the petition and matters incidental thereto Objections to the regularity of the petition from the angle of the relevant Rules of Court have been abandoned, wisely I believe, in light of the decision of the Supreme Court in *The President of the Republic v House of Representatives** and the caselaw reviewed therein 10 15

Like Art 146 1 of the Constitution, Art 145 2 too defines the jurisdiction of the Supreme Court in the area of its purview, namely, review of the validity of elections In fact a series of articles in Part IX of the Constitution aim to establish the jurisdiction of the Supreme Court in specific areas of competence, notably, Articles 137, 138, 139, 140, 141, 142, 143 These articles of the Constitution as well as Art 145, are preceded and introduced by Art 136 that lays down «the Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on all matters as provided in the ensuing articles» One of these matters is, in accordance with the expressed provisions of Art 145, objection to the validity of an election 20 25

The Constitution confers an unqualified right to question an election upon any ground and bestows correspondingly jurisdiction on the Electoral Court to heed and take cognizance of every objection to an election, subject always to the power of the Court to dismiss summarily a frivolous proceeding, as provided in Art. 134 2 The breadth of the jurisdiction of the Court to review the validity of an election is, to my mind, intended to underpin the democratic process by safeguarding unimpeded access to the 30 35

* (1985) 3 C L R 872

Court and competence to take cognizance of and adjudicate upon every complaint of alleged breach of the Constitution, the law or any irregularity

5 The electoral law cannot but be read subject to the pertinent provisions of the Constitution. Where the jurisdiction of a Court of law is comprehensively defined by the Constitution it is profitless to go further and inquire whether any given law curtails judicial power. For this reason I consider it unnecessary to debate whether the electoral law read in its entirety purports to limit the
10 competence vested in the Court by the Constitution. Jurisdiction is assumed in virtue of the Constitution and an inquiry will be held in order to examine the validity of the objections raised to the election, elicited in the form prescribed by the Rules. Hence I join in the order for dismissal of the preliminary objection to the
15 sustenance of the proceedings.

*Preliminary objection
dismissed*