1988 June 30

[A LOIZOU, P, STYLIANIDES, PIKIS JJ]

ATHANASIOS POYIATZIS,

Appellant-Respondent,

v

1 CONSTANTINOS PILAVAKIS,
2 MASTELLO LTD,

Respondents-Applicants

(Civil Appeals Nos 7230 7231)

Rent Control — The Rent Control Law 23/83, Section 11(1)(h) (iii) — The prerequisites for the issue of an ejectment order thereunder — The notion of «reasonable requirement» — How sub paragraph (iii) is to be interpreted — Lamarco Ltd v Kranos (1987) 1 C L R 336 **distinguished on its facts — Once the requirements of the section are** *satisfied, there is no room for discretion — The fact that upon issuing the building permit part of the land becomes part of the street is irrelevant*

Rent Control — The Rent Control Law 23/83, section 11(1)(h)(iii) Building permit — Whether open to Court to examine its validity — It being an administrative act, its validity is presumed until it is either annulled under Art 146 1 of the Constitution or revoked

Rent Control — The Rent Control Law 23/83 — Section 12 — Compensation in case of ejectment under inter alia section **11(h) — Increased on appeal to an amount equivalent to 18 months'** *rent*

Rent Control — The Rent Control Law 23/83 section 11(1)(h)(iii) — Constitutes a radical departure from previous legislation

The respondents (landlords) are the owners of a big ground floor house in Limassol, used by the tenant as a cafe restaurant and for housing the Limassol branch of Anorthosis Club The first floor of the House is in the ownership of a third person

The respondents prepared plans for alterations These alterations involved the demolition of twelve toilets standing in the yard fourteen walls, internal and external, the erection of ten new walls

and the building, which is separated internally into a number of rooms, will be converted into three shops and stores. The entrance which opens on the one street will be built up and the shops will face and open on the other street.

This is an appeal from the judgment of the Rent Control Court, whereby an order of ejectment was issued against the tenant (appellant) under section 11(1)(h)(iii) of Law 23/83.

It is common ground that at the time of the hearing the landlords had the necessary building permit, but counsel for the tenant invited the Court to say that the Municipality has no power to renew it and that, therefore, there was no valid permit at the time of the hearing, as the renewal was void.

Held, Pikis, J. dissenting. (1) For a landlord to succeed under section 11(1)(h)(iii) of Law 23/83, he has to satisfy the Court that; a) He has given the four months' notice in writing to the tenant; b) he has obtained, where necessary, the permit for such alterations; c) The premises are reasonably required by the landlord for effecting the alterations; and d) (i) the alterations are substantial and radical (ii) They are intended for the purposes of development of the premises; (iii) They result in radical and total change of the premises.

(2) The circumstances relevant to this claim, including the obtaining of the permit, are those existing at the date when the case is heard.

(3) The notion of «reasonable requirement», in a case of a claim for possession on this ground, is linked only to whether or not it is reasonable for the landlord to obtain possession for the purpose of the alterations and it is unrelated to any other factor.

(4) The alterations must be substantial and radical. They must be made for the purpose of development of the building and must result to radical and total change of it. The interpretation of this paragraph should not be approached with a dictionary. The teleological or purposive interpretation coupled with the ordinary and pragmatic meaning of the words should be employed. No exhaustive definition can be given. It is a question of degree depending on the facts and circumstances of each case, having regard to the totality of the work proposed to be done.

(5) If the Court is convinced that the requirements of the section are satisfied, there is no room for any discretion.

(6) In this case the requirements were satisfied.

(7) The fact that a good part of the yard will be ceded to the road, in compliance with the Street Widening Scheme, cannot be taken into consideration.

(8) The issue of a building permit is an administrative act An administrative act is and continues to be valid, unless annulled by the Supreme Court — or revoked by the issuing authority Neither of the two happened and, therefore, the permit was a valid one

5 (9) A party must know the reasons for the failure of his case The reasons are further necessary to enable a party to decide whether and on what grounds an appeal should be lodged As the administration of justice is a public function, the public in general are entitled to know the reasons of the judicial decisions What is considered
10 sufficient «reasoning» depends largely on the circumstances of each particular case

In the instant case though the drafting of the judgment may not be the best desirable, nevertheless the reasoning of it is clear and it sufficiently conveys the reasons on which the Ejectment Order was
15 made

(10) In virtue of section 12 of Law 23/83 the Court awarded as compensation an amount equal to ten months of the current rent Having regard to the length of the tenancy and all circumstances pertaining to the case this Court increases the compensation to eighteen months rent i e £1980
20

(11) The execution of the ejectment order is stayed for a further period of 3 months as from to-day

Appeal partly allowed
No order as to costs

25 *Cases referred to*

Kontou v Solomou (1978) 1 C L R 425,

Michaelides v Iacovides (1978) 1 C L R 123,

Murude Mehmet Ali v Hassan Remzi Shenikli, 20 Part, II C L R 68

Yerasimou v Rousoudhiou (1974 1 C L R 107,

30 *Kontou v Solomou* (1978) 1 C L R 425

Demetriou and Others v Ioannides (1982) 1 C L R 16,

Lamarco Ltd , v Kranos (1987) 1 C L R 336,

Archangelos Domain Ltd v Van Nievelt Condrian and Co (1988) 1 C L R 51,

35 *Panagi v Police* (1968) 2 C L R 124,

Ioannidou v Dikeos (1969) 1 C L R 235,

Pioneer Candy Ltd and Another v Stelios Tryfon and Sons (1981) 1 C L R 540,

Papageorghiou v. HjiPieras (1981) 1 C.L.R. 560;

Hambou and Others v. Michael and Another (1981) 1 C.L.R. 618;

Christou and Another v. Angelidou and Another (1984) 1 C.L.R. 492;

Re Charalambous (1987) 1 C.L.R. 427; 5

Psaras and Another v. Republic (1987) 2 C.L.R. 132;

Neophytou v. Police (1981) 2 C.L.R. 195.

Appeals.

Appeals by respondent against the judgment of the Rent Control Court of Limassol dated the 7th July, 1986 Appl. No. E. 10 56/84 whereby an ejectment order was made against him.

Fr. Saveriades, for the appellant.

St. McBride, for the respondent.

A. LOIZOU P.: H.H. Justice Stylianides will deliver his Judgment first. 15

STYLIANIDES J.: These appeals are directed against the Judgment of the Rent Control Court sitting at Limassol, whereby Ejectment Order was made against the appellant (tenant).

The salient facts of the case over which there is no dispute are as 20 follows:

The respondents (landlords) are the owners in equal undivided shares of immovable situate in Limassol town, Plot 4/1, Sheet/ Plan LIV/58.3.II. It consists of a big old ground floor house standing on the corner of two major streets — Kaningos and Griva Dhigenis — between the Public Gardens and the Court House. 25 The house on the first floor is the ownership of a third person.

The tenant, a displaced person from Famagusta, was in occupation of the subject premises since 1975. He housed therein a cafe—restaurant and the Limassol branch of Anorthosis Club. It 30 was partly used as a gambling place.

The landlords applied to the Rent Control Court sitting at Limassol for ejectment of the tenant and recovery of possession, on the ground that they reasonably require it for substantial and radical alterations resulting to the radical and total change of it, for the purposes of development, under section 11(1)(h)(iii) of the 35 Rent Control Law, 1983 (Law No. 23/ 83).

It is common ground that the landlords have given the required statutory notice. The necessary building permit, issued by the appropriate authority — The Municipality of Limassol — with the drawings attached to it, were produced.

5 The Court granted the relief prayed by the landlords. It gave a stay of execution for six months and ordered the landlords to pay to the tenants ten monthly rents as compensation, obviously under section 12 of the same legislation.

The tenant being aggrieved took this appeal.

10 Counsel for the tenant argued the following grounds:

(a) That the alterations for which the premises are required do not satisfy the requirements of the Law;

(b) That the building permit was illegal and should not have been acted upon by the Court;

15 (c) That the Judgment is not duly reasoned; and

(d) That the amount of compensation awarded is not sufficient in the circumstances of the case.

Section 11(1)(h)(iii) reads as follows:

«11.-(1) Ουδεμία απόφασις και ουδέν διάταγμα
20 εκδίδεται διά την ανάκτησιν της κατοχής οιασδήποτε κατοικίας ή καταστήματος, διά το οποίον ισχύει ο παρών Νόμος, ή διά την εκ τούτου έξωσιν θεσμίου ενοικιαστού, πλην των ακολούθων περιπτώσεων:

....

25 (η) εις περίπτωσιν καθ ην το ακίνητον απαιτείται λογικώς υπό του ιδιοκτήτου

(ι)

(ιι)

(ιιι) δι ουσιαστικάς και ριζικάς αλλαγάς συνεπαγο-
30 μένας την ριζικήν και ολικήν μετατροπήν τούτου διά σκοπούς αξιοποιήσεώς του,

Και το Δικαστήριον είναι πεπεισμένον ότι ο ιδιοκτήτης εξησφάλισε διά τα ανωτέρω οσάκις ήτο επάναγκες την αναγκαίαν προς τούτο άδειαν και ότι ο ιδιοκτήτης δεν
35 δύναται λογικώς να πρόβή εις τα εν ταις υποπαραγρά- φοις (ι), (ιι) και (ιιι) διαλαμβανόμενα άνευ ανακτήσεως

της κατοχής του ακινήτου και νοουμένου ότι παρέσχεν ουχί βραχυτέραν των τεσσάρων μηνών έγγραφον προειδοποίησιν εις τον ενοικιαστήν να εκκενώση το ακίνητον, ή»

(English version):

«11. - (1) No judgment or order for the recovery of possession of any dwelling—house or business premises, to which this Law applies, or for the ejectment of a statutory tenant therefrom, shall be given or made except in the following cases:

(h) Where the immovable is reasonably required by the landlord

(i)
(ii)
(iii) For substantial and radical alterations resulting in the radical and total change of it for purposes of its development.

And the Court is satisfied that the landlord has, where necessary, the necessary permit and that the landlord cannot reasonably execute the aforementioned in paragraphs (i), (ii) and (iii) without recovery of possession of the immovable and has given to the tenant not less than four months' notice in writing to vacate the immovable; or»

Corresponding provision is found in all the Rent Control Laws as from 1942 - (see The Increase of Rent (Restriction) Law, 1942, section 8(1)(d); The Rent (Control) Law, 1954, Cap. 86, section 16(1)(i) as amended by the Rent Control (Amendment) Law, 1968, (Law No. 8/68); The Rent Control (Business Premises) Law, 1961 (Law No. 17/61), section 10(1)(h). The Rent Control Law, 1975 (Law No. 36/75), was a comprehensive legislation which was enacted after the catastrophe caused by the Turkish invasion and the plight of more than one third of the population of the country, who were uprooted from the north.

Section 16 (1)(h) of Law 36/75 reads as follows:

«16 - (1) No judgment or order for the recovery of possession of any dwelling - house or shop, to which this Law applies, or for the ejectment of a tenant therefrom, shall be given or made except in the following cases:

(ii) Where the dwelling - house or shop is reasonably required by the landlord for the substantial alteration or reconstruction thereof in such a way as to affect the premises or for the demolition thereof, and the Court is satisfied that the landlord has, where necessary, obtained the necessary permit for such alteration, reconstruction or demolition and has given to the tenant not less than three months' notice in writing to vacate the premises; or»

This was judicially considered in *Anastassia S. Kontou v. Antonis Solomou* (1978) 1 C.L.R. 425 and in *Yiangos Michaelides, v. Andreas Iacovides* (1978) 1 C.L.R. 123.

The interpretation given in the last case by the Court to «substantial alterations» entitling a landlord to recover possession of the premises under the provisions of section 16(1)(h) of the Rent Control Law, 1975, opened the door to landlords to evict their tenants, thus contravening the intention of the legislature, which was to give security of tenure to the tenant. The legislator, in order to remedy this mischief, departed radically from the provisions of the previous legislation when enacting the Rent Control Law, 1983. A mere glance at the wording of the two sections supports this view.

For landlord to succeed, under this ground, he has to satisfy the Court:-

(a) That he has given the four months' notice in writing to the tenant;

(b) That he has obtained, where necessary, the permit for such alterations;

(c) That the premises are reasonably required by the landlord for effecting the alterations; and

(d) That:

(i) The alterations are substantial and radical;

(ii) They are intended for the purpose of development of the premises;

(iii) They result in radical and total change of the premises.

The circumstances relevant to this claim, including the obtaining of the permit are those existing at the date when the case is heard - *(Murude Mehmet Ali v. Hassan Remzi Shenikli;* 20, Part II, C.L.R. 68).

The notion of «reasonable requirement» imports objective criterion. The objective evaluation of the demand for recovery of possession must be examined from a broad common sense view point in the same way as men of the world transact their affairs of daily life. The notion of «reasonable requirement», in a case of a claim for possession on this ground, is linked only to whether or not it is reasonable for the landlord to obtain possession for the purpose of the alterations and it is unrelated to any other factor.

The Court, if convinced that the requirements laid down in section 11(1)(h) were satisfied, then there is no room for the exercise of any discretion on its part in relation to the making of an order for possession (*Andreas Yerasimou v. Andreas Rousoudhiou* (1974) 1 C.L.R. 107; *Anastassis Kontou v Antonis Solomou* (1978) 1 C.L.R. 425; *Chrystalla Demetriou and Others v. Savvas Ioannides* (1982) 1 C.L.R. 16).

The legislator in 1983 made a radical departure from the provisions of the previous legislation. The legislator designed this ground in such a way as to tighten the prerequisites for recovery of possession for the purpose of alterations to a building. This paragraph of section 11 was judicially considered in *Lamarco Ltd. v. Heraclis G. Kranos*, (1987) 1 C.L.R. 336.

The alterations must be substantial and radical. They must be made for purpose of development of the building and must result to radical and total change of it. The interpretation of this paragraph should not be approached with a dictionary. The teleological or purposive interpretation coupled with the ordinary and pragmatic meaning of the words should be employed.

Changes to qualify as substantial and radical must be extensive and fundamental in character. They must be made for purposes of development. If the general structural character of the building remains unchanged, they fall short of satisfying this requirement.

No exhaustive definition can be given. It is a question of degree depending on the facts and circumstances of each case, having regard to the totality of the work proposed to be done.

In the present case the building is an old house, which was let and used as business premises. The proposed changes include, as it appears from the drawings before us, the demolition of twelve

toilets standing in the yard, fourteen walls, internal and external, the erection of ten new walls and the building, which is separated internally into a number of rooms, will be converted into three shops and stores. The entrance, which opens on the one street, will be built up and the shops will face and open on the other street.

The fact that a good part of the yard will be ceded to the road, in compliance with the Street Widening Scheme, cannot be taken into consideration.

The expert of the landlords testified that, having regard to the fact that the upper storey belonged to a third person, this was the only way for the development of this building. The expert of the tenant admitted that this was one of the modes of development, though there might be others. It is common of the experts of both sides that the proposed alterations are intended for the development of the building.

The Judge is entitled to look at the totality of what is proposed to be done and as matter of fact and common sense to ask himself the question whether these alterations satisfy the requirements of the Law. The Judge on the evidence before him has to reach a conclusion of fact.

In the present case the trial Court, having regard to the primary facts before him, which he meticulously stated in his Judgment, issued the Order for Ejectment.

We subscribe to his view. The intended alterations are both substantial and radical. They are intended for the purpose of development of the building and consequentially the structural character of the building will be totally and radically changed.

The changes in the *Lamarco* case, which were found to fall short of satisfying the Law, were completely different. Each case has to be decided on its own facts.

The building permit was duly issued by the Municipality of Limassol as from 3rd October, 1984. It was renewed thereafter and there was a valid permit at the time of the hearing of the case.

Mr. Saveriades argued that, as the work has not commenced, the Municipality was not empowered to renew the building permit.

The issue of a building permit is an administrative act. An administrative act is and continues to be valid, unless annulled by the appropriate Court - the Supreme Court - or revoked by the issuing authority. Neither of the two happened and, therefore, the permit was a valid one. 5

The fact that the tenant long after the filing of the case before the Rent Control Court instituted a recourse before the Supreme Court, N. 295/86, does not in any way affect the validity of the permit.

It is the constitutional obligation and duty of Judges determining 10 the civil rights and obligations of a person to give reasons for their decisions.

The notion of «fair trial» requires reasons to be given by a Court for its decision and this applies both to civil as well as to criminal proceedings. 15

A party must know the reasons for the failure of his case. The reasons are further necessary to enable a party to decide whether and on what grounds an appeal should be lodged. As the administration of justice is a public function, the public in general are entitled to know the reasons of the judicial decisions. 20 Adequate judicial reasoning and its soundness upholds faith in the Law and strengthens confidence in the judiciary.

The mandatory provision of paragraph 2 of Article 30 of the Constitution has been judicially considered by this Court in a number of cases. (See inter alia *Archangelos Domain Ltd., v. Van* 25 *Nievelt Condrian & Co's.*, Civil Appeal No. 6842, Judgment delivered on 29th January, 1988, not yet reported*; *Anastassis Panayi v. The Police* (1968) 2 C.L.R. 124; *Theodora Ioannidou v. Charilaos Dikeos* (1969) 1 C.L.R. 235; *Pioneer Candy Ltd. and Another v. Stelios Tryfon and Sons Ltd.*. (1981) 1 C.L.R. 540; 30 *Papageorghiou v. Hjipieras* (1981) 1 C.L.R. 560; *Androulla Georghiou Hambou and Others v. Maria Charalambous Michael and Another* (1981) 1 C.L.R. 618; *Michael Christou and Another v. Maria Angelidou and Another* (1984) 1 C.L.R. 492; *In the matter of Eleftheria Charalambous* (1987) 1 C.L.R. 427 and *Psaras and* 35 *Another v. The Republic* (1987) 2 C.L.R. 132.

What is considered sufficient «reasoning» depends largely on the circumstances of each particular case.

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* *Reported in (1988) 1 C.L.R. 51.*

In the instant case, though the drafting of the judgment may not be of the best desirable, nevertheless the reasoning of its is clear and it sufficiently conveys the reasons on which the Ejectment Order was made.

5 In virtue of section 12, the Court issuing judgment under paragraphs (f), (g) and (h) of section 11, has a discretionary power to order the applicant-landlord to pay to the tenant compensation, which in the case of shops should not exceed an amount equal to current rent for eighteen months.

10 The Court in this case awarded £1,100.-, an amount equal to ten months' of the current rent. Having regard to the length of the tenancy and all circumstances pertaining to the case, we increase the compensation to eighteen months' rent, i.e. £1980.-.

For the foregoing reasons the appeals fail on the main grounds.
15 We vary only the order for compensation.

The trial Court stayed the execution of the Ejectment Order for six months. Having regard to the time that elapsed, we stay the execution of the Judgment for a period of three months from today, provided that the tenant pays the rent lawfully due.

20 In the circumstances appeals are partly allowed as above with no order as to costs.

A. LOIZOU, P.: I agree with the Judgment of Stylianides, J., which has just been delivered and I have nothing useful to add.

PIKIS J.: The appeal turns on the interpretation of s.11(1)(h)(iii)
25 of the Rent Control Law 1983 (23/83), and its application to the facts of the case. The Limassol Rent Control Court made an order of recovery of possession on the application of the owners entailing the eviction of the appellant, the tenant of the premises. The facts relevant to the determination of this appeal can be
30 recounted as follows:

The building, subject matter of the lease, consists of a ground floor enclosing a good number of rooms, surrounded by a large yard that encompasses 12 lavatories. Seemingly, in days past, the premises were used as a school. The premises belonged to
35 Respondent 1 who let them to the appellant for use as business premises. They are used as a cafe-restaurant and as a lobby for the congregation of the supporters of the Famagusta football club «ANORTHOSIS». On top of the premises there is another building used as a residence; the property of a third party. Part of the yard

is the property of that party As acknowledged, the appellant qualifies as a statutory tenant under the provisions of the Rent Control Law 1983.

Respondent 2 aspired to acquire the building as a whole (the ground and upper storev) with a view to its demolition and 5 reconstruction; but it was not to be. His plans were frustrated by the unwillingness of the owner of the first storey to sell. He succeeded only in acquiring the ground floor of which he became registered as part-owner. To minimise his losses he submitted plans for the development of the ground floor entailing the demolition of the 10 toilettes and the conversion of the house into three modern shops with appurtenant stores. To make feasible this development a large area of 8,800 sq. ft. will have to be ceded for street-widening in accordance with a street-alignment scheme in force. The implementation of the project envisages demolition of a number 15 of internal and external walls. But the structure of the building remains unaffected, including support for the building above. In effect, the plans provide for the conversion of this roomy business premises into three modern shops, a development set within the framework of the existing structure of the building. 20

The Rent Control Court did, as acknowledged by counsel for the appellants, properly direct itself in law, drawing attention, in the process, to the introduction of a more stringent test by the 1983 legislation for the recovery by the owner of premises for the purpose of effecting alterations to the building. Not only the 25 changes contemplated must be in themselves substantial and radical, but must also entail sequentially thereto the radical and total transformation of the building effected for purposes of developments. Evidently, the legislature intended, in the spirit of the new legislation, to curtail the right of recovery of possession at 30 the instance of the landlord to cases bordering on demolition and reconstruction.

The effect and implications of the new legislation were the subject of examination in *Lamarco Limited v. Kranos**, that founded the decision of the Court in that case. The following 35 passage from the judgment in the above case, serves to elicit the

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* *(1987) 1 C.L.R. 336*

first hurdle that the owner must overcome in order to pave the way for an order of recovery of possession:

«To qualify as substantial and radical, the first hurdle that the owner must overcome, it must be established that the changes are consequential to the character of the building and sufficiently fundamental to qualify as radical. The antonym of 'substantial' in the context of this provision of the law is 'superficial'.»

The second requirement is that the changes, substantial and radical as they must be, must entail not only the radical but the transformation of the building in its entirety. The word «ριζική» (radical) in both Greek and English connotes, in the context of changes, fundamental alterations going to the root of the object of change. The word «ολική» (whole), in the context of changes to a building, signifies fundamental alterations transforming, as the law indeed says, the character of the building.

The trial Court failed, as counsel for the respondents indirectly conceded, to ponder whether the planned changes to the building entail its radical and whole transformation. The Court confined its inquiry to the reasonableness of the request for recovery of possession and the need for assumption by the respondents of possession of the premises in order to carry out the changes. The vacuum in the findings of the Court in this crucial area of the fact-finding process is nowhere bridged. On the contrary, there are passages in the judgment that do indicate that the Court did take into account irrelevant considerations in deciding the issue. One affected the demolition of the lavatories, a matter wholly unconnected with the structure of the main building. The other was the attachment of importance to the fact that the street would, as a result of the planned alterations, have noticeable effects on the width and character of the street; a wholly irrelevant consideration to the matter at issue.

The primary facts of the case, those affecting the planned alterations, make it feasible for the Court of Appeal to fill the gap in the judgment of the Court. This Court is in essence required to apply the law to known facts and decide whether they bring the case of the respondents, for recovery of possession, within the provisions of s.11(1)(h)(iii) of the Rent Control Law 1983. The answer, as in the case of *Lamarco Ltd.*, supra, is in the negative.

The proposed changes will leave the structure and character of the building unaffected. What is planned is the sub-division of existing business premises into three shops within the framework of the existing structure. Though the changes may qualify as substantial and radical in that they alter the interior of the building, they will not produce radical and total transformation of the building. In my judgment the dismissal of the application for recovery of possession was inevitable on the facts noted by the trial Court.

Before leaving this appeal, a word or two about the complaint of counsel that the judgment is not reasoned in the way ordained by para. 2 of article 30 of the Constitution; an additional ground for setting aside the judgment of the trial Court.

The attributes of a duly reasoned judgment (the entrenched right of every litigant under article 30.2 of the Constitution), were the subject of judicial decision in a great number of cases*. In pressing this ground counsel for the appellant appeared to me to equate faulty reasoning with the absence of reasoning.

Gaps or omissions in the process of reasoning of a judgment do not sap the judgment of reasoning, but make it vulnerable to be set aside for logical inconsistency, provided the inconsistency is material to the deliberations of the Court, or error in law.

I would, for the above reasons, allow the appeal. That being my decision it is unnecessary to probe the other issue raised on appeal, affecting the compensation that should be paid to the tenant sequentially to dispossession of the premises.

Appeal partly allowed
No order as to costs.

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* *(See, inter alia, Ioannidou v Dikeos (1969) 1 C L R 235, Pioneer Candy Ltd v Stelios Tryfon & Sons Ltd (1981) 1 C L R 540, 541, Androulla Georghiou Hambou and Others v Maria Charalambous Michael and Another (1981) 1 C L R 618 Nephytou v Police (1981) 2 C L R 195, and Charalambos Tilemachou Psaras of Limassol and Another v The Republic (1987) 2 C L R 132*