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[ZEKIA, P., VASSILIADES, TRIANTAFYLLIDES, MUNIR AND
JOSEPHIDES, JJ]

IN THE MATTER OF ARTICLE 144 OF THE CONSTITUTION.
IN THE MATTER OF A REFERENCE BY THE DISTRICT
COURT OF LARNACA IN MAINTENANCE APPLICATION
No 1/62, ENTITLED

IN THE MATTER OF MAINTENANCE ORDERS
(FACILITIES FOR ENFORCEMENT) LAW, CAP 16,

and

IN THE MATTER OF MYRIANTHI P CHRISTOU,
Applicant,

and

PANAYIOTIS CHRISTOU,

Respondent

(Case No 272/62)

Constitutional Law—Maintenance order—Provisional maintenance order made by a court in England or Ireland—Subject to confirmation by a District Court in Cyprus—The Maintenance Orders (Facilities for Enforcement) Law, Cap 16, section 6—The aforesaid section 6 is not unconstitutional as being contrary to Articles 87 1, 152 2 or 30 1 and 3 of the Constitution—However, a District Court in confirming a provisional order of maintenance under section 6 (supra), would not be entitled to decide itself any issue of personal status, as such, which may arise in the proceedings—Such an issue would still remain to be decided by the competent court—‘Personal status’—Articles 87 1 (c) 152 2 of the Constitution

Constitutional Law—Fair trial—Scope and effect of Articles 12 5 (d), 30 1 and 3 of the Constitution

Constitutional and International Law—Fair trial—Article 6 (1) and (3) (d) of the European Convention on Human Rights—In force in Cyprus under Article 169 3 of the Constitution by virtue of the European Convention on Human Rights (Ratification) Law, 1962 (Law of the Republic No 39 of 1962)

Constitutional Law—Issue of unconstitutionality of a law—Reference under Article 144 of the Constitution—Issue of unconstitutionality reserved will be decided in toto without being

limited to the Articles of the Constitution mentioned in the reference by the lower court—A party, however, cannot be allowed to challenge at the hearing before the Supreme Court the constitutionality of a law as a whole in a general and sweeping manner, without specifying the provisions thereof alleged to be unconstitutional.

This is a reference under Article 144 of the Constitution, made by the District Court of Larnaca, whereby it is sought to be determined whether having regard to Article 12.5 (c) and (d), the Maintenance Orders (Facilities for Enforcement) Law, Cap. 16, is unconstitutional, and more particularly whether section 6 (3) of Cap. 16 is unconstitutional as limiting the respondent's defence to such defences as he might have raised in the original proceedings before a foreign court.

The applicant in the case under reference is in England and there she applied and obtained, for herself and her infant children, a provisional maintenance Order against her husband, the respondent, who is in Cyprus. Such Order and relevant documents were forwarded to the District Court Larnaca for the further proceedings envisaged under section 6 of Cap. 16.

At the hearing before the Supreme Court, counsel for the respondent, who has raised the question of unconstitutionality before the District Court of Larnaca, stated that he did not intend to rely any longer on Article 12 of the Constitution, because it was not applicable to maintenance proceedings (in fact it is applicable only to criminal proceedings) and he sought to rely on Article 30.1 and 3, Article 87.1 and Article 152.2 of the Constitution. He was allowed to do so in view of the principle already adopted in references under Article 144, *viz.* that in such cases the question of unconstitutionality reserved is decided *in toto* without being limited to the Articles of the Constitution mentioned in the reference.

The Maintenance Orders (Facilities for Enforcement) Law, Cap. 16, section 6 (1) provides that where a maintenance order has been made by a court in England or Ireland, and the Order is provisional only and has no effect unless and until confirmed by a court in Cyprus, a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed, are transmitted to Cyprus and, if it appears

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that the person against whom the order was made is resident in Cyprus, a summons is issued calling upon the said person to show cause why that order should not be confirmed. As it appears from sub-section (2) of the same section the Cyprus Court concerned is the District Court having jurisdiction where the aforesaid person happens to be. Sub-section (3) of the said same section provides that "At the hearing, it shall be open to the person on whom the summons was served to raise any defence which he might have raised in the original proceedings had he been a party thereto, but no other defence".

It was argued on behalf of the respondent that he had been, thus, deprived of access to the court assigned to him by, or under, the Constitution, contrary to Article 30.1 thereof, such court so assigned being a Greek Communal Court (and not a District Court) envisaged under Article 152.2 of the Constitution and legislated for under Article 87.1 of the Constitution.

Article 30.1 of the Constitution provides .

"No person shall be denied access to the court assigned to him by or under this Constitution. The establishment of judicial committees or exceptional courts under any name whatsoever is prohibited."

Article 87.1 provides :

"The Communal Chambers shall, in relation to their respective Community, have competence to exercise within the limits of this Constitution and subject to paragraph 3 of this Article, legislative power solely with regard to the following matters :

..

(c) 'personal status';"

Article 152.2 provides :

"The judicial power with respect to civil disputes relating to personal status and to religious matters which are reserved under Article 87 for the Communal Chambers shall be exercised by such courts as a communal law made under the provisions of this Constitution shall provide."

It was, further argued, that Articles 30.3 (b) and (c) of the Constitution are contravened because a respondent is not able to present his case before the court concerned as

he is informed of the case against him after a provisional order had already been made; also, because a respondent is deprived of the opportunity to cross-examine the applicant and her witnesses, and the defences he can raise are limited to those only that would have been open to him before the English Court.

Article 30.3 of the Constitution provides :

“ 3. Every person has the right—

- (b) to present his case before the court and to have sufficient time necessary for its preparation ;
- (c) to adduce or cause to be adduced his evidence and to examine witnesses according to law ;”

Held, (1) at the hearing before this court, counsel for the respondent, who has raised the question of unconstitutionality before the District Court of Larnaca, stated he did not intend to rely any longer on Article 12 of the Constitution, because it was not applicable to these proceedings and he sought to rely on Articles 30.1 and 3, 87.1 and 152.2. He was allowed to do so in view of the principle already adopted in references under Article 144 of the Constitution, *viz.* that in such cases the question of unconstitutionality reserved is decided *in toto* without being limited to the Articles of the Constitution mentioned in the reference (*Tyllirou and Tylliros* 3 R.S.C.C. 21 at p. 23 *applied*)

(b) On the other hand a party cannot be allowed to challenge at the hearing before this court, the constitutionality of a law as a whole in a general and sweeping manner, without specifying what provisions thereof and for what reasons, are alleged to be unconstitutional. Under Article 144 the court would not decide whether it is in general unconstitutional to legislate on a certain matter (*in re Ali Ratip*, 3 R.S.C.C. 102, at p. 104, *followed*).

(c) This reference, therefore, must be taken as limited only to the question of the alleged unconstitutionality of section 6 (3) of Cap. 16 (*supra*), as well as of such parts of the aforesaid section 6 of Cap. 16 as are necessarily involved in the question under examination.

2 (a) It is clear that proceedings taking place before a District Court under section 6 of Cap. 16 (*supra*) consequent upon provisional order of maintenance issued in England,

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are not proceedings instituted in Cyprus ; they are only proceedings completing in Cyprus proceedings originally instituted in England. On the other hand Article 30.1 of the Constitution is by its very terms applicable only to proceedings instituted in Cyprus.

(b) In view of this it cannot, therefore, be said that the respondent has been denied access to the court assigned to him by or under the Constitution, *i.e.* to a Greek Communal Court, contrary to Article 30.1, because of the part played by the Cyprus District Court under section 6 of Cap. 16 (*supra*) in finalizing proceedings instituted in England. The purpose of the provisions of section 6 is not to deprive a litigant of access to a court in Cyprus but to provide him with quasi-access to a foreign court, through a tribunal in Cyprus.

(c) The nature of the proceedings under section 6 of Cap. 16 (*supra*) is not made any different because of the fact that under sub-section (7) of section 6 the confirmatory Order of a District Court of Cyprus is made subject to appeal, because by virtue of such a provision, it is only intended to ensure that the confirmatory proceedings in Cyprus shall have been conducted in a proper manner according to law.

(d) Similar considerations apply to the provisions of sub-section (6) of section 6 for subsequent variation or rescission of the Order confirmed in Cyprus by the District Court in Cyprus, or even for remittance of the case back to the English Court which has made it. Such provisions are designed to remedy any injustice that may occur in future by virtue of the Order having been confirmed.

(3) Once it is borne in mind that the proceedings are foreign proceedings, to which a provision such as sub-paragraph (b) of Article 30.3 could not have been intended to apply, it will at once be seen that the procedure under section 6 of Cap. 16 is designed to further than to impair the purpose of the said sub-paragraph.

(4) Nor, again because of the foreign nature of the proceedings, is it contrary to the Constitution to limit under section 6 (3), the defences open to respondent, to those defences that would have been open to him before the English Court.

(5) In proceedings envisaged under Article 30.3 (c), all that a litigant is ensured of is the enjoyment of his procedural rights as existed under legislation in force. In this

case the legislation in force is Cap. 16, and in particular section 6. Therefore, no question of violation of sub-paragraph (c) arises.

(6) It is correct to interpret the provisions of our own Article 30.3 which are obviously intended to apply mainly to civil cases (in view of the particular provision made under Article 12.5 for criminal cases) as designed to ensure the conduct of fair trial.

(7) In the result neither section 6 (3) nor, indeed, section 6 of the Maintenance Orders (Facilities for Enforcement) Law, Cap. 16, is unconstitutional as being contrary to Articles 87.1, 152.2 or 30.1 and 3 of the Constitution.

Order in terms.

Cases referred to :

Tyllirou and Tylliros, 3 R.S.C.C. 21, at p. 23 ;

In re Ali Ratip, 3 R.S.C.C. 102, at p. 104 ;

Recourse 852/60 of the European Commission of Human Rights (No. 4, Yearbook of European Convention of Human Rights p. 354).

Per curiam : It may be usefully added that the court has reached the conclusions set out in this judgment, bearing in mind that a District Court in Cyprus in confirming a provisional Order of maintenance under section 6, would not be entitled to decide itself any issue of personal status, as such, which may arise in the proceedings, but that such an issue would still remain to be decided by the competent court.

Reference.

Reference made, by the District Court of Larnaca, under Article 144 of the Constitution, of the question whether having regard to Article 12.5 (c) and (d) of the Constitution, the Maintenance Orders (Facilities for Enforcement) Law, Cap. 16, is unconstitutional, and more particularly whether section 6 (3) of the same Law is unconstitutional as limiting the respondent's defence to such defences as he might have raised in the original proceedings before a foreign Court in Maintenance Application No. 1/62 filed by Applicant's

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wife for the enforcement of a provisional maintenance Order, obtained in England against her husband, the respondent.

No appearance for the applicant.

G. *Pikis*, for the respondent.

K. C. *Talarides*, Counsel of the Republic, as *amicus curiae*.

Cur. adv. vult.

ZEKIA, P.: The judgment will be delivered by Mr. Justice Triantafyllides.

TRIANTAFYLLIDES, J.: This is a reference made by the District Court of Larnaca under Article 144 of the Constitution, whereby it is sought to be determined whether having regard to Article 12 (5) (c) and (d), the Maintenance Orders (Facilities for Enforcement) Law, Cap. 16, is unconstitutional, and more particularly whether section 6 (3) of Cap. 16 is unconstitutional as limiting the respondent's defence to such defences as he might have raised in the original proceedings before a foreign court.

The applicant in the case under reference is in England and there she applied and obtained, for herself and her infant children, a provisional maintenance Order against her husband the respondent, who is in Cyprus. Such Order and relevant documents were forwarded to the District Court, Larnaca, for the further proceedings envisaged under section 6 of Cap. 16.

At the hearing before the court, counsel for the respondent, who has raised the question of unconstitutionality before the District Court of Larnaca, stated that he did not intend to rely any longer on Article 12 of the Constitution, because it was not applicable to maintenance proceedings and he sought to rely on Article 30 (1) and (3), Article 87 (1) and Article 152 (2). He was allowed to do so in view of the principle already adopted in references under Article 144, *viz.* that in such cases the question of unconstitutionality reserved is decided *in toto* without being limited to the Articles of the Constitution mentioned in the reference. (Vide *Tyllirou and Tylliros*, 3 R.S.C.C. p. 21, at p. 23).

On the other hand, a party cannot be allowed to challenge, at the hearing before this Court, the constitutionality of a Law as a whole in a general and sweeping manner, without

specifying what provisions thereof, and for what reasons, are alleged to be unconstitutional. Under Article 144 the court would not decide whether it is in general unconstitutional to legislate on a certain matter (vide *In re Ali Ratib*, 3 R.S.C.C., p. 102, at p. 104).

This reference, therefore, will be taken as limited only to the question of the alleged unconstitutionality of section 6 (3) of Cap. 16, as well as of such other parts of section 6 of Cap. 16 as are necessarily involved in the question under examination.

Sub-section (3) of section 6 provides that "At the hearing, it shall be open to the person on whom the summons was served to raise any defence which he might have raised in the original proceedings had he been a party thereto, but no other defence, . . .". To appreciate exactly the position it is necessary to have in mind the provisions of sub-section (1) of the same section which provides that where a maintenance Order has been made by a court in England or Ireland, and the Order is provisional only and has no effect unless and until confirmed by a court in Cyprus, a certified copy of the Order, together with the depositions of witnesses and a statement of the grounds on which the Order might have been opposed, are transmitted to Cyprus and, if it appears that the person against whom the Order was made is resident in Cyprus, a summons is issued calling upon the said person to show cause why that Order should not be confirmed. As it appears from sub-section (2) of section 6 the Cyprus court concerned is the District Court having jurisdiction where the aforesaid person happens to be.

Articles 87 (1) and 152 (2) of the Constitution which have been relied upon in this reference, have not been stated to be infringed directly by the provisions of section 6 : they have been referred to as specifying the court allegedly assigned to respondent under Article 30.1. It has been argued in this connection that such court is a Greek Communal Court, envisaged under Article 152.2 and legislated for under Article 87.1, and that by having the question of the maintenance claim of applicant decided upon provisionally before an English Court and liable to be confirmed, under section 6 of Cap. 16, by a District Court in Cyprus, respondent is deprived of access to the court assigned to him by, or under the Constitution, contrary to Article 30.1.

It is clear that the proceedings taking place before a District Court in Cyprus under section 6 of Cap. 16, consequent upon a provisional Order of maintenance made in

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England, are not proceedings instituted in Cyprus ; they are only proceedings completing in Cyprus proceedings originally instituted before an English Court. On the other hand Article 30.1 is by its very terms applicable only to proceedings instituted in Cyprus. In view of this it cannot, therefore, be said that the respondent has been denied access to the court assigned to him by or under the Constitution, *i.e.* to a Greek Communal Court, contrary to Article 30.1, because of the part played by the Cyprus District Court under section 6 in finalizing proceedings instituted in England. The purpose of the provisions of section 6 is not to deprive a litigant of access to a court in Cyprus but to provide him with quasi-access to a foreign court, through a tribunal in Cyprus.

Actually in proceedings under section 6 the respondent husband is much better off procedurally than would have been if a final Order for maintenance was made in England and only registered for execution purposes in Cyprus, with a District Court, as it may be done under section 3 of Cap. 16. By their essential nature the proceedings under section 6 are mainly designed to give additional opportunity of defending proceedings instituted in a foreign court and the defence of which would ordinarily have involved a lot of difficulty and expense for a respondent.

The nature of the proceedings under section 6 as above described, is not made any different because of the fact that under sub-section (7) of section 6 the confirmatory Order of a District Court of Cyprus is made subject to appeal, because by virtue of such a provision, it is only intended to ensure that the confirmatory proceedings in Cyprus shall have been conducted in a proper manner according to law. Similar considerations apply to the provisions of sub-section (6) of section 6 for subsequent variation or rescission of the Order confirmed in Cyprus, by the District Court in Cyprus, or even for remittance of the case back to the English Court which has made it. Such provisions are designed to remedy any injustice that may occur in future by virtue of the Order having been confirmed.

Coming now to paragraph (3) of Article 30 : counsel for respondent has relied in particular on sub-paragraphs (b) and (c) thereof.

It has been submitted that sub-paragraph (b) is contravened because a respondent is not able to present his case before the court concerned, as he is informed of the case against him only after a provisional Order has already been

made and it is sought to confirm it. Yet the very purpose of making the Order provisional, in the first instance, and of seeking confirmation in Cyprus, is to afford an opportunity to a respondent to present his case, a thing which would have been denied to him in practice, in view of the difficulties and expense involved, had the whole proceedings been conducted in England. Once it is borne in mind that the said proceedings are foreign proceedings, to which a provision such as sub-paragraph (b) of Article 30.3 could not have been intended to apply, it will at once be seen that the procedure under section 6 of Cap. 16 is designed to further than to impair the purpose of the said sub-paragraph.

Nor, again because of the foreign nature of proceedings, is it contrary to the Constitution to limit, under section 6 (3), the defences open to respondent, to those defences that would have been open to him before the English Court.

It has been also argued that respondent is deprived of the opportunity of cross-examining the applicant and her witnesses whose evidence is taken before the English Court. In this respect it is useful to note the corresponding provision in Article 12.5 (d), which is applicable to criminal proceedings. There, the right to cross-examine witnesses appears to have been expressly safeguarded. On the other hand all that is safeguarded under Article 30.3 (c) is the right "to adduce or cause to be adduced his evidence and to examine witnesses according to law".

It will be seen, thus, that there is a difference in this respect between criminal and other proceedings. In proceedings envisaged under Article 30.3 (c), all that a litigant is ensured of is the enjoyment of his procedural rights as existing under legislation in force. In this case the legislation in force is Cap. 16, and in particular section 6. Therefore, no question of violation of sub-paragraph (c) arises.

Moreover the essential intention of provisions such as those contained in Article 30.3 is to secure the conduct of a fair trial. As the Order made in England, on the basis of the evidence taken there is only provisional in nature and such Order may or may not be confirmed, in view of the evidence to be given or adduced by the husband before the District Court in Cyprus, we fail to see how the absence of an opportunity for the husband to cross-examine his wife or her witnesses in England, can operate so as to weigh unfairly the scales against him, as the wife similarly has no opportunity to cross-examine him or his witnesses in Cyprus.

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The equality of arms in the court proceedings in question is not disturbed at all in view of the provisions of section 6 of Cap. 16.

In this respect it is relevant to note the position as it is to be found in relation to the European Convention on Human Rights which has largely served as the prototype for Part II of the Cyprus Constitution, in which Article 30 is included, and which by virtue of the European Convention on Human Rights (Ratification) Law, 1962 (Law 39/62) is in force in the Republic under Article 169.3. The corresponding clause of the Convention is 6 (3) (d), which is the same as Article 12.5 (d) in Cyprus, and is applicable likewise to criminal proceedings only. No analogous provision exists in the Convention for civil proceedings, in the form of our Article 30.3 (c) or otherwise. It has been significantly held, however, by the European Commission of Human Rights (see Recourse 852/60 No. 4 Yearbook of European Convention on Human Rights, p. 354) that "it is nevertheless conceivable that, in certain types of cases or in certain circumstances, the refusal by a court to allow the witness or witnesses called by the plaintiff to testify, could involve a violation of Article 6, paragraph (1), which recognizes the right of everyone to a fair hearing by an impartial tribunal that will determine his civil rights and obligations". It seems, therefore, that it is correct to interpret the provisions of our own Article 30.3, which are obviously intended to apply mainly to civil cases (in view of the particular provision made under Article 12.5 for criminal cases) as designed to ensure the conduct of fair trial.

For the above reasons the Court has decided that section 6 (3) of Cap. 16 is not unconstitutional as being contrary to articles 87.1, 152.2 or 30.1 and 3 of the Constitution.

It may be usefully added that the court has reached the conclusions set out in this judgment, bearing in mind that a District Court in Cyprus in confirming a provisional Order of maintenance under section 6, would not be entitled to decide itself any issue of personal status, as such, which may arise in the proceedings, but that such an issue would still remain to be decided by the competent court.

Order as aforesaid.