

1982 December 9

[TRIANTAFYLIDIS, P., HADJIANASTASSIOU, MALACHTOS,
DEMETRIADES, SAVVIDES, LORIS, JJ.]

SOTERIS DEMETRIADES,

Applicant.

v.

PAVLOS DINGLIS AND OTHERS,

Respondents.

(Election Petition No. 3/81).

5 *Elections—Parliamentary Elections—Election petition—Section 57(2)*
of the Election of Members of the House of Representatives Law,
1979 (Law 72/79)—Convict serving a sentence of imprisonment
for commission of a criminal offence—Not inscribed in the electoral
roll and had not taken any step to secure his inscription on such
roll—No attempt by anybody on his behalf to nominate him
as a candidate—And no complaint by him to the Chief Returning
Officer before the expiration of the time for nominations—Not
entitled to vote at the election in view of section 6(a) of Law
10 *72/79—And, therefore, he cannot be treated as being, in the*
sense of the above section 57(2) either an elector inscribed on
the relevant electoral roll or a person claiming to have had the
right to vote at the election concerned—Notion of “a person
alleging himself to have been a candidate at the election” in the
15 *said section 57(2)—Applicant not coming within the ambit of*
such notion in view of the particular circumstances of this case—
Section 57(2) not contrary to Articles 28 and 30.2 of the Constitu-
tion—Article 6 of the European Convention on Human Rights.

20 *Constitutional Law—Election of the House of Representatives Law,*
1979 (Law 72/79), section 57(2) not contrary to Articles 28 and
30.2 of the Constitution.

25 The applicant, by means of an election petition, sought to
declare invalid the election on 24th May, 1981 of the respondents
as Members of the House of Representatives for the electoral
district of Nicosia, on the ground that, while he was a convict

-serving a sentence of imprisonment at the Central Prisons, he was not allowed to enter his candidature in respect of the said election.

At the commencement of the hearing of this petition Counsel for the respondents raised the preliminary issue that the applicant was not, in the light of the provisions of section 57(2)* of the Election of Members of the House of Representatives Law, 1979 (Law 72/79), entitled to file the present petition. 5

Counsel for the applicant conceded that his client was not inscribed on the electoral roll; nor had he taken any step to secure his inscription on such roll by applying for the purpose to the District Officer of Nicosia either under section 10 of Law 72/79 or by objecting, under section 12 of Law 72/79, to the omission of his name from the said roll. 10

It was not in dispute that at no material time was there made any attempt by anybody on behalf of the applicant to nominate him as a candidate under section 19 of Law 72/79. 15

In a notice published by the Returning Officer for the electoral district of Nicosia, in the Official Gazette, on 17th April 1981 it was stated that the 30th April 1981 had been fixed as the date for receiving nominations in respect of the election to be held for the said electoral district on 24th May 1981. 20

On 2nd May 1981 the applicant, while being in prison, addressed a letter to the Chief Returning Officer by means of which he was complaining that on 30th April 1981 he requested the competent authorities—presumably the prison authorities—to take the necessary steps to transport him to the place where he could submit his nomination as a candidate for election as a Member of the House of Representatives in respect of the electoral district of Nicosia and that the competent authorities refused to escort him out of prison for such a purpose or to facilitate him accordingly, with the result that the time for submitting his candidature expired without any fault on his part. 25 30

* Section 57(2) reads as follows:

"The reference to the Election Court is made by means of an Election Petition filed by the Attorney-General of the Republic or by an elector inscribed on the electoral roll relevant to the election or by a person claiming to have had a right to vote at the election or by a person alleging himself to have been a candidate at the election".

By means of the same letter the applicant objected, also, against all the already submitted candidatures of other candidates in respect of the electoral district of Nicosia.

5 He was informed by a letter of the Chief Returning Officer dated 4th May 1981 that his objection ought to have been made, under section 21(2) of Law 72/79, to the Returning Officer for the electoral district of Nicosia.

On the preliminary objection:

10 *Held*, that since at all material times, the applicant was in prison serving a sentence of imprisonment after he had been convicted of a criminal offence and it would, therefore, appear in view of the provisions of section 6(a) of Law 72/79, that he was not entitled to vote at the election in question he cannot be treated as being, in the sense of section 57(2), above, either
15 an elector inscribed on the relevant electoral roll or a person claiming to have had the right to vote at the election concerned.

On the question whether the applicant was a person alleging himself to have been a candidate at such election, in the sense of section 57(2):

20 That even assuming that the applicant in the present case could benefit from a wide construction of the notion of somebody alleging himself to have been a candidate, which was adopted in England in view of the definition of "candidate" in the relevant English legislative provisions, he could still not come within
25 the ambit of such notion, which is found in section 57(2) of our Law 72/79, in view of the particular circumstances of the present case and, especially, because of the fact that he did not complain to the Chief Returning Officer until after the time for nominations had expired and that he did not pursue his objection
30 against the nominations of the respondents either under the relevant provisions of Law 72/79 or by means of any other remedy that might have been available to him (pp. 580-585 post).

*On the submission of Counsel for applicant that in case applicant is found not to come within the ambit of the said section 57(2) then such section is unconstitutional as being contrary to Article
35 30.3 and, also, Article 28 of the Constitution:*

That there is no merit in the submission of counsel for the applicant, because the provisions of section 57(2) of Law 72/79

are provisions regulating, in a reasonable manner and in the interests of the administration of justice, access to the election court by way of an election petition, and, also, they do not involve any unequal treatment or discrimination, because they are based on reasonable and just classifications. 5

Held, further, that it is expressly envisaged by the Constitution, in its Article 145, that an election petition is to be made under the provisions of the Electoral Law, such as Law 72/79. The Constitution, therefore, provides by clear implication about the right to regulate by law access to the election court by means of an election petition (see, also, Article 6 of the European Convention on Human Rights (which corresponds to Article 30.2 of the Constitution and is, itself, now, part of the law of Cyprus, after its ratification by means of the European Convention on Human Rights (Ratification) Law, 1962 (Law 39/62)). 10 15

Held, in the result, that the preliminary objection raised by counsel for the respondents should be sustained and that, consequently, as the applicant does not come within the ambit of any of the classes of persons provided for in section 57(2) of Law 72/79 this election petition could not have been filed by him and has to be dismissed accordingly. 20

Petition dismissed.

Cases referred to:

Harford v. Linskey [1899] 1 Q.B. 852 at pp. 859–862; 25

Fordham v. Webber [1925] 2 K.B. 740;

X., Y. and Z. v. Switzerland (Decisions and Reports of the European Commission of Human Rights Vol. 6 p. 107).

Election petition.

Election petition by Soteris Demetriades against the election on the 24th May, 1981 of the Members of the House of Representatives for the electoral district of Nicosia. 30

A. Eftychiou with *G. Yiallouros*, for the applicant.

M. Papapetrou, for respondents 1, 4, 10 and 11.

A. Ladas, for respondents 5 and 9. 35

M. Christophides appears in person as respondent 12 and for respondents 2, 3, 8 and 13.

Z. Katsouris with *E. Polydourou*, for respondent 7.

Cur. adv. vult.

5 TRIANTAFYLIDIS P. read the following judgment of the Court.
The applicant, by means of the present election petition, seeks to
declare invalid the election on 24th May 1981 of the respondents
as Members of the House of Representatives for the electoral
district of Nicosia, on the ground that, while he was a convict
10 serving a sentence of imprisonment at the Central Prisons, he
was not allowed to enter his candidature in respect of the said
election.

At the commencement of the hearing of this petition counsel
for the respondents raised the preliminary issue that the appli-
15 cant was not, in the light of the provisions of section 57(2) of the
Election of Members of the House of Representatives Law, 1979
(Law 72/79), entitled to file the present petition. The said
subsection (2) of section 57 reads as follows:

20 “(2) ‘Η πρὸς τὸ Ἐκλογοδικεῖον ἀναφορά γίνεται δι’ Ἐκλο-
γικῆς Αἰτήσεως καταχωριζομένης ὑπὸ τοῦ Γενικοῦ Εἰσαγ-
γελέως τῆς Δημοκρατίας ἢ ὑπὸ ἐκλογέως ἐγγεγραμμένου
εἰς τὸν ἐκλογικὸν κατάλογον ἀφορῶντος εἰς τὴν ἐκλογήν,
ἢ ὑπὸ προσώπου ἀξιούντος ὅτι εἶχε δικαίωμα νὰ ἐκλέξη
κατὰ τὴν ἐκλογήν ἢ ὑπὸ προσώπου ἰσχυριζομένου ὅτι
25 ὑπῆρξεν ὑποψήφιος κατὰ τὴν ἐκλογήν”.

(“The reference to the Election Court is made by means of
an Election Petition filed by the Attorney-General of the
Republic or by an elector inscribed on the electoral roll
relevant to the election or by a person claiming to have had
30 a right to vote at the election or by a person alleging him-
self to have been a candidate at the election.”)

It has been conceded by counsel for the applicant that his
client was not inscribed on the electoral roll; nor had he taken
any step to secure his inscription on such roll by applying for the
35 purpose to the District Officer of Nicosia either under section 10
of Law 72/79 or by objecting, under section 12 of Law 72/79,
to the omission of his name from the said roll.

Moreover, it is common ground that, at all material times, the applicant was in prison serving a sentence of imprisonment after he had been convicted of a criminal offence and it would, therefore, appear, in view of the provisions of section 6(a) of Law 72/79, that he was not entitled to vote at the election in question. 5

It may be observed, at this stage, that the disqualification in section 6(a), above, could validly be included in Law 72/79 in view of the provision in Article 63.2 of the Constitution that "no person shall be qualified to be registered as an elector who is disqualified for such registration by virtue of the Electoral Law." 10

Because of the foregoing it is clear that the applicant cannot be treated as being, in the sense of section 57(2), above, either an elector inscribed on the relevant electoral roll or a person claiming to have had the right to vote at the election concerned. 15

There remains to be examined whether the applicant is a person alleging himself to have been a candidate at such election, in the sense of section 57(2), above:

It is not in dispute that at no material time was there made any attempt by anybody on behalf of the applicant to nominate him as a candidate under section 19 of Law 72/79. 20

In a notice published by the Returning Officer for the electoral district of Nicosia, in the Official Gazette, on 17th April 1981 (No. 327, Third Supplement, Part II) it was stated that the 30th April 1981 had been fixed as the date for receiving nominations in respect of the election to be held for the said electoral district on 24th May 1981. 25

On 2nd May 1981 the applicant, while being in prison, addressed a letter to the Chief Returning Officer by means of which he was complaining that on 30th April 1981 he requested the competent authorities - presumably the prison authorities - to take the necessary steps to transport him to the place where he could submit his nomination as a candidate for election as a Member of the House of Representatives in respect of the electoral district of Nicosia and that the competent authorities refused to escort him out of prison for such a purpose or to facilitate him accordingly, with the result that the time for submitting his candidature expired without any fault on his part. 30
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By means of the same letter the applicant objected, also, against all the already submitted candidatures of other candidates in respect of the electoral district of Nicosia.

5 He was informed by a letter of the Chief Returning Officer dated 4th May 1981 that his objection ought to have been made, under section 21(2) of Law 72/79, to the Returning Officer for the electoral district of Nicosia; and the matter was, apparently, left at that without any further steps having been taken on the part of the applicant.

10 The notion of somebody alleging himself to have been a candidate for an election has been taken from similar provisions in England which go, at least, as far back as section 5 of the Parliamentary Elections Act, 1868, and such notion is to be found in, inter alia, section 108(1) of the Representation of the People
15 Act, 1949, in England (see Halsbury's Statutes of England, 3rd ed., vol. 11, p.645).

The said notion of a person alleging himself to have been a candidate is, also, to be found in section 63(c) of the Elections (House of Representatives and Communal Chambers) Law,
20 1959 (Law 47/59).

Of course the term "candidate" ("υποψήφιος") in section 57(2), above, of Law 72/79 has to be read in conjunction with the definition of such term in section 2 of Law 72/79 which reads
25 " 'υποψήφιος' σημαίνει πρόσωπον τὸ ὁποῖον ἀνεκηρύχθη ὡς ὑποψήφιος δυνάμει τοῦ παρόντος Νόμου".
("candidate" means a person who has been declared as candidate under this Law").

We must bear in mind, on the other hand, that the term "candidate" in section 108(1) of the Representation of the
30 People Act, 1949, in England must be read in conjunction with the definition of "candidate" in section 163 of the same Act, which reads as follows:

"candidate" -

35 (a) in relation to a parliamentary election, means a person who is elected to serve in Parliament at the election or a person who is nominated as a candidate at the election, or is declared by himself or by others to be a candidate on or after the day of the issue of the writ for the election, or after

the dissolution or vacancy in consequence of which the writ was issued;”

In England the expression “a person alleging himself to have been a candidate” as found in section 88 of the Municipal Corporations Act, 1882, has been considered in *Harford v. Linskey*, [1899] 1 Q.B. 852, where Wright J. stated the following (at pp. 859-862):

“The question which we have now to decide depends primarily on the construction of s.88. The words ‘a person alleging himself to have been a candidate’ cannot of course mean that a mere allegation without any colour of foundation in fact would suffice. Such a merely false allegation would be properly dealt with in a summary way. But the words used seem designed to express something wider than absolutely valid candidature, and they are at any rate consistent with the view that any person who was in fact a candidate may present and maintain a petition, just as persons who voted in fact may do whether or not they had a right to vote. Nor does there seem to be any sufficient reason why the words should be limited even to persons who have been in fact nominated in due form. It is quite possible that an intended nomination of a person may have fallen through or have been prevented in such a way that the election of another person may have been invalid - as, for instance, if the town clerk refused to supply a nomination paper, or if, by design or negligence, he, in exercising his important duty under Sched. III., Part II., r. 6, filled up a nomination paper so imperfectly as to avoid the nomination, or if, as in *Howes v. Turner*, he issued a bad notice of election, and in any such case it can hardly have been intended to deprive the aggrieved person of the right to petition. Such a construction is, further, the only one which will fit the interpretation of ‘candidate’ in s.77. Possibly that interpretation was inserted for a different purpose, namely, to define the limits of time within which a person should be affected by the enactments relating to corrupt or illegal practices. But there is nothing which expressly limits s. 77 to that purpose, and there seems to be no reason why it should not be,

But then it is said that, assuming the *prima facie* meaning of s.88 to be in favour of the petitioner, such a construction ought to be rejected because it may produce inconvenient or unreasonable consequences.

5 Such an argument *ab inconveniente* ought not to be allowed to override the proper construction of the language of the Act unless the inconvenience is clear and great. The same result might have followed if voters had been the petitioners. An election petition is not simply a matter between the parties,⁸ but is of public concern.

But it is contended that the case of *Monks v. Jackson*, decided in 1876 on the repealed Municipal Elections Act, 1875 (38 & 39 Vict. c. 40), is inconsistent with this view.

15 We are unable to discover any material difference between the language of the Acts on which *Monks v. Jackson* was decided, and the language of the Act of 1882 on which this case depends, and although the considerations which have led to a conclusion in favour of the present petitioner's right to maintain his petition were not presented to the Court in *Monks v. Jackson*, we ought to follow the decision in that case, if it can be supported since the *Bangor Case* and if it is in point. We think, though not without doubt, that it is not in point. The decision was that the petitioner had not been nominated in fact, and therefore was not qualified to petition. Here the petitioner was nominated in fact, his nomination was in form regular, and he was therefore a candidate, and in our opinion qualified to maintain this petition (not of course for the purpose of claiming the seat, but for the purpose of shewing that there was no valid election), as any of the persons who voted at the election might have done, whether they had a right to vote or not."

35 It is to be noted that the definition of "candidate" in section 77 of the Municipal Corporations Act, 1882, which is referred in the above passage from the judgment of Wright J. was as follows:

“A person elected, or having been nominated, or having declared himself a candidate for election”.

The case of *Harford*, above, was referred to with approval and was followed in *Fordham v. Webber*, [1925] 2 K.B. 740. That case was decided, also, in relation to sections 77 and 88 of the Municipal Corporations Act, 1882, and it is sufficient to quote the following part of the headnote of its report which reads as follows: 5

“An election for the office of county aldermen took place at a meeting of a county council, and voting papers were signed and personally delivered to the respondent, who was chairman of the county council and of the meeting, and were openly produced and read by him. Amongst the voting papers was one containing a vote for the petitioner by writing his name and address on the voting paper, as a county alderman. Forty-four voting papers contained votes for the respondent as a county alderman. Neither the petitioner nor the respondent had before the election declared himself to be a candidate at the election of county aldermen. The respondent declared himself to be elected amongst others a county alderman, and the petitioner was not elected. The petitioner, alleging himself to have been a candidate at the election, presented a petition against the election of the respondent. The Municipal Corporations Act, 1882, contains no provision requiring the nomination of persons for the office of aldermen, and does contain a code of rules dealing with the nomination of candidates for the office of a councillor:- 10 15 20 25

Held, that the petitioner was not right in alleging himself to have been a candidate at the election for county aldermen, as he had not been elected and had not declared himself before the election as a candidate for election, and the writing by the voter of the petitioner’s name and address on the voting paper did not amount to a nomination of him as candidate within s.77, and that therefore he was not, under s.88, entitled to present a petition for the purpose of questioning the election of the respondent.” 30 35

In the light of all the foregoing we are of the view that even assuming that the applicant in the present case could benefit from a wide construction of the notion of somebody alleging 40

himself to have been a candidate, which was adopted in England in view of the definition of "candidate" in the aforementioned English legislative provisions, he could still not come within the ambit of such notion, which is found in section 57(2) of our Law 72/79, in view of the particular circumstances of the present case and, especially, because of the fact that he did not complain to the Chief Returning Officer until after the time for nominations had expired and that he did not pursue his objection against the nominations of the respondents either under the relevant provisions of Law 72/79 or by means of any other remedy that might have been available to him.

During the course of the hearing of arguments in relation to the issue of whether the applicant comes within the ambit of the provisions of section 57(2), above, counsel appearing for him submitted that, in case the applicant is found not to come within such ambit, then section 57(2) is unconstitutional as being contrary to Article 30.2 and, also, Article 28 of our Constitution.

The said Article 30.2 provides that in the determination of, inter alia, his civil rights and obligations every person is entitled to a hearing by a Court established by law and Article 28 safeguards the right of equality of all persons before the law, the administration and justice and protects against discrimination.

We find no merit in the aforementioned submission of counsel for the applicant, because the provisions of section 57(2) of Law 72/79 are, in our opinion, provisions regulating, in a reasonable manner and in the interests of the administration of justice, access to the election Court by way of an election petition, and, also, they do not involve any unequal treatment or discrimination, because they are based on reasonable and just classifications.

Moreover, it is expressly envisaged by the Constitution, in its Article 145, that an election petition is to be made under the provisions of the Electoral Law, such as Law 72/79. The Constitution, therefore, provides by clear implication about the right to regulate by law access to the election court by means of an election petition.

In any event, it is, also, useful to point out that Article 30.2 of our Constitution corresponds to Article 6 of the European Convention on Human Rights (which is, itself, now, part of the

law of Cyprus, after its ratification by means of the European Convention on Human Rights (Ratification) Law, 1962 (Law 39/62)).

In relation to the aforesaid Article 6 of the Convention there were stated by the European Commission of Human Rights in application No. 727/60 (see the Yearbook of the European Convention on Human Rights, 1960, vol. 3, p. 302) the following (at p. 308):

“Whereas, insofar as the Applicant complains of the obligation to be represented by counsel before the Federal Court of Justice and of the fact that, owing to his failure to comply with that obligation, the Federal Court of Justice dismissed his appeal in a judgment given by default, it should be noted that the right to a fair hearing guaranteed by Article 6(1) of the Convention does not imply an obligation on the Contracting Party to allow litigants free access to the Court of last resort; whereas, in other words, Article 6(1) does not debar Contracting Parties from making regulations governing the access of litigants to the said Court, provided that such regulations do not deviate from their exclusive purpose of assuring justice according to law; whereas the afore-mentioned condition has been complied with in full, since the regulations governing access to the Federal Court of Justice were introduced for that very purpose of assuring justice according to law;”

The above decision of the Commission was referred to and reaffirmed by the Commission in its decision in relation to application No. 6919/75, *X., Y. and Z. v. Switzerland*, (Decisions and Reports, vol. 6, p.107), where the following were stated (at pp. 111-112):

“After examining the judgment of 31 January 1975 the Commission finds that the court dismissed the applicants’ claim for damages on the ground that

- X., being under guardianship, was incapable of taking part in the proceedings, and that he was acting without the consent of his guardian or that of the guardianship authority contrary to the provisions of the Civil Code;

- Y., was not entitled to bring an action because in view of the nature of the proceedings she was bound to be re-

presented by her husband (Article 168(2) of the Civil Code) who was himself incapable.

5 It thus appears that the action was in fact declared inadmissible on procedural grounds and that the Federal Court was unable to decide on the merits. It was therefore not required to 'decide' an issue relating to the civil rights obligations of the applicant so that it follows that Article 6 of the Convention does not apply to the proceedings leading to the judgment of 31 January 1975.

10 To the extent that might raise the question whether, when acting without the authorisation of his guardian or the guardianship authority, X. might have not been refused access to a court for the purpose of raising an issue relating to his civil rights obligations, the Commission refers to its
15 previous decisions according to which Article 6(1) of the Convention does not prevent the contracting parties from regulating the manner in which the public shall have access to ensure the proper administration of justice (No. 727/60, Coll. 4, Yearbook 3, p. 302)."

20 In the light of all the foregoing we find that the preliminary objection raised by counsel for the respondents should be sustained and that, consequently, as the applicant does not come within the ambit of any of the classes of persons provided for in section 57(2) of Law 72/79 this election petition could not have
25 been filed by him and has to be dismissed accordingly.

Petition dismissed.