

1986 September 26

[TRIANTAFYLIDIS, P., MALACHTOS, LORIS,  
STYLIANIDES, KOURRIS, JJ.]

NAPOLEON CHRISTOFI,

*Petitioner,*

v.

MICHALIS PITTALIS,

*Respondent.*

*(Election Petition No. 5/86).*

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*Election petition—Amendment of title by adding Returning Officer as an additional respondent—Application for, filed after expiration of time-limit provided by s. 57(4) of the Elections of Members of the House of Representatives Law, 72/79 for the filing of an election petition— Present application does not amount to an extension of the relief claimed by the petition as filed—Therefore, said time-limit does not exclude the joinder applied for.* 5

The petitioner in this election petition applied for the amendment of its title by adding as an additional respondent thereto the Returning Officer for the Election of Municipal Councils in the District of Limassol. Counsel for the said Officer stated that he did not intend to oppose the application, but counsel for the respondent opposed it on the ground that such joinder is excluded by section 57(4) of Law 72/79, which provides that an election petition has to be filed within one month from the publication of the results of the election in the official Gazette. 10 15

It should be noted that s. 57(4) is applicable to municipal elections by virtue of s. 42 of the Municipalities Law, 111/85. The present application for amendment was filed after the expiration of the said period of one month. 20

*Held, granting the application:* (1) The joinder of the Returning Officer does not entail in this instance an ex-

tension of the relief claimed by the petition and, therefore, it is not excluded by reason of the time-limit provided by s. 57(4) of Law 72/79.

5 (2) As the Returning Officer does not object to be joined as a respondent this case is distinguishable from the case of *Harmon v. Park* [1880] 6 Q.B.D. 323. Furthermore, in the light of the contents of the petition as filed he is a necessary and proper party for the purposes of its determination.

10 *Application granted.*

**Cases referred to:**

*Harmon v. Park* [1880] 6 Q.B.D. 323;

*Medhurst v. Lough*, 17 T.L.R. 230.

**Application.**

15 Application by petitioner for the amendment of the title of this election petition so as to join as an additional respondent to the petition the Returning Officer for the Election of Municipal Councils in the Limassol District.

*Chr. Melides*, for the petitioner.

20 *Ph. Apostolakis*, for the respondent.

*M. Photiou*, for the Returning Officer.

*Cur. adv. vult.*

25 TRIANTAFYLLIDES P., read the following decision of the Court. On the 11th September 1986 counsel for the petitioner applied for the amendment of the title of this petition so as to join as an additional respondent to the petition the Returning Officer for the Election of Municipal Councils in the District of Limassol.

30 Counsel for the respondent filed an opposition to such application on the 13th September 1986.

On the 15th September 1986 counsel appearing for the Returning Officer stated that it was not intended to oppose the application.

The hearing of the application took place on the 18th September 1986 and we have reserved our decision on it until today.

The matter of the addition of the Returning Officer as additional respondent in these proceedings was raised from the very first time when this case came up for directions before this Court on the 25th July 1986, because it was obvious from the contents of the petition that in effect the petition was filed against the decision of the Returning Officer that the petitioner had not been duly elected as member of the Municipal Council of Mesa Yltonia in the Limassol District.

Counsel for the respondent has argued that the joinder of the Returning Officer as a respondent is excluded by the provision in section 57(4) of the Election of Members of the House of Representatives Law, 1979 (Law 72/79), that an election petition has to be filed within one month from the publication of the results of the election in the Official Gazette of the Republic.

Section 57(4) of Law 72/79 appears to have been rendered applicable to municipal elections by means of section 42 of the Municipalities Law, 1985 (Law 111/85); and it is common ground that the disputed by the petitioner election of the respondent was published in the Official Gazette of the Republic on the 2nd June 1986 (see No. 159 in the Third Supplement, Part. I. to the Official Gazette).

In the present instance the joinder of the Returning Officer as an additional respondent does not entail an extension of the relief claimed by means of the petition as initially filed, and, consequently, such joinder cannot, in our opinion, be treated as being excluded by the time-limit laid down by section 57(4) of Law 72/79. This is not an instance in which the joinder of a party is intended to enable the petitioner to seek out of time new relief which was not claimed by the petition as initially filed.

In Halsbury's Laws of England, 4th ed., vol. 15, p. 459, paragraph 840, it is stated that where an election pe-

tion complains of the conduct of a Returning Officer he is deemed to be a respondent.

5 In *Harmon v. Park*, [1880] 6 Q.B.D. 323, 329, Lord Selborne LC pointed out that it would be vexatious and unreasonable to join as a respondent a Returning Officer, the propriety of whose conduct is not impeached and who allegedly has decided a question of law erroneously.

10 On the other hand in *Medhurst v. Lough*, 17 T.L.R. 230, it was held that the Returning Officer was properly joined as a respondent and that a Returning Officer would be properly joined as a respondent where the acts, omissions and negligence complained of by the petitioner were the acts of those who were working under him.

15 In the present instance the Returning Officer does not object to be joined as a respondent and, therefore, for this reason this case is distinguishable from the *Harmon* case, supra, and, furthermore, in the light of the contents of the petition, as initially filed, we do think that the Returning Officer is a necessary and proper party for the  
20 purposes of the determination of the present petition.

We have, therefore, decided to grant the application, in this respect, of the petitioner filed on the 11th September 1986 and to order the joinder of the Returning Officer as an additional respondent.

25 The question of costs of this application will be decided at the end of the proceedings in this petition.

*Application granted.*