[VASSILIADES, P., TRIANTAFYLLIDES, HADJIANASTASSIOU, JJ.]

1967
May 18
1968
April 25

YIANNIS FEKKAS
v.
THE ELECTRICITY AUTHORITY OF CYPRUS

YIANNIS FEKKAS,

Appellant-Plaintiff,

v.

THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondent-Defendant.

(Civil Appeal No. 4609).

Limitation of Actions—Statutory bar—Public Corporations or Public Utility Corporations—The Electricity Authority of Cyprus—Action for a civil wrong against the Electricity Authority, instituted after the three months' period of limitation laid down in section 11(2) of the Electricity Development Law, Cap. 171 (read together with section 2 of the Public Officers Protection Law, Cap. 313)—Constitutionality of section 11(2) of the said Law—Constitution of the Republic of Cyprus Articles 28, 30, 188, paragraphs 2 and 4—Section 11(2), at any rate in so far as it applies to actions for civil wrongs against a Public Corporation such as the respondent Electricity Authority, is clearly arbitrary and unreasonable—And, thus, contrary to, and inconsistent with, Article 28 of the Constitution safeguarding the right to equality—Furthermore, the aforesaid three month's period of limitation appears to be so arbitrary and unreasonably short that it amounts to a most serious interference with the right of access to the Courts safeguarded by Article 30 of the Constitution—The aforesaid period of limitation of three months under section 11(2) of Cap. 171 (supra) is totally deprived of any rational basis—Indeed, there is no conceivable justification or rational basis for the existence of a striking distinction in relation to periods of limitation (three months as against two years under section 68 of the Civil Wrongs Law, Cap. 148)—As between an action for civil wrong against a public utility corporation, such as the respondent, and the same action against any other corporation, including the Republic—Article 172 of the Constitution—Cfr. the 14th Amendment of the U.S.A. Constitution—Cfr. the following English Acts: The Public Authorities Protection Act, 1893; The Limitation Act, 1939, section 21; The Law Reform (Limitation of Actions etc.) Act, 1954 sections 1, 2 and 3; The Fatal Accidents

Act, 1846—See, also, herebelow.

Actions—Limitation of—See above.

Civil Wrongs—Actions for civil wrongs—Periods of limitation—Two years' period under section 68 of the Civil Wrongs Law, Cap. 148—Now applicable to actions for civil wrongs against the Republic—Article 172 of the Constitution—Three months' period regarding actions against Public Authorities or Public Officers—The Public Officers Protection Law, Cap. 313—Made applicable to actions against the Electricity Authority of Cyprus—Section 11(2) of Cap. 171 (supra)—Striking differentiation (three months as against two years) Arbitrary and unreasonable—And, therefore, contrary to, and inconsistent with, Articles 28 and 30 of the Constitution—See, also, above under Limitation of Actions—Cfr. the 14th Amendment of the U.S.A. Constitution.

Electricity Authority—Civil Wrongs—Action for civil wrongs against the said Authority—Period of limitation—Now two years by virtue of the general law in section 68 of the Civil Wrongs Law, Cap. 148—Section 11(2) of the Electricity Development Law, Cap. 171 (prescribing three months' period by reference to section 2 of the Public Officers Protection Law, Cap. 313) having been held by the Court in the present case as unconstitutional—See, also, above under Limitation of Actions; Civil Wrongs.

Statutes—Constitutionality—Articles 28, 30, 188.2 and 188.4 of the Constitution—Section 11(2) of the Electricity Development Law, Cap. 171—Prescribing three months' period of limitation—Contrary to Articles 28 and 30—Therefore, to that extent no longer in force—Paragraphs 2 and 4 of Article 188—See, also, above.

Constitutional Law—The principle of equality—Article 28—The right of access to the Courts—Article 30—Section 11(2) of Cap. 171 (supra) contrary to, and inconsistent with, those Articles—See, also, above.

Equality—The principle of equality as safeguarded by Article 28 of the Constitution—Section 11(2) of Cap. 171(supra) repugnant to this Article—Cfr. the 14th Amendment of the U.S.A. Constitution—See above.

Access to the Courts—Right of access to the Courts—Article 30 of the Constitution—Cfr. the 14th Amendment of the U.S.A. Constitution—See above.

Public officers—Public Officers Protection Law, Cap. 313, *section* 2—*Section* 11(2) *of Cap.* 171 *supra—Period of limitation (three months)—Unconstitutionality—See above.*

Public Authorities—See immediately above.

Public Utility Corporations—Such as the Electricity Authority——Actions for civil wrongs against the said Authority—Period of limitation—Section 11(2) *of Cap.* 171 *(supra)—See above.*

Due process of law—And equal protection—The 14*th Amendment of the U.S.A. Constitution—See above.*

Equal protection—Due process of law—The 14*th Amendment of the U.S.A. Constitution—See above.*

This is an appeal by the plaintiff against the Ruling of the District Court of Nicosia dismissing his claim against the respondent Authority in Civil Action No. 524/64 as being statute-barred. The appellant claimed damages against the Electricity Authority of Cyprus (respondent-defendant) in respect of serious bodily injuries which he has, allegedly, suffered in the course of his employment with the respondent.

The trial Court held that the action was statute-barred under the provisions of section 11(2) of the Electricity Development Law, Cap. 171 read together with section 2 of the Public Officers Protection Law, Cap. 313. Section 11(2) of Cap. 171 reads as follows:

> "11(2) The Public Officers Protection Law shall apply to any action, prosecution or other proceedings against the Authority (*note: viz. the respondent*), or against any member, officer or servant thereof in respect of any act, neglect or default done or committed by him in such capacity".

Under section 2 of Cap. 313 (*supra*), on the other hand, a period of limitation of three months is provided for; thus, a cause of action against the respondent would become statute-barred after the lapse of the said period. In the present case the appellant suffered the injuries complained of on the 23rd July, 1963; and he filed his action against respondent on the 23rd April, 1964, *i.e.*, well after the lapse of the three months' period. As a result the trial Court found his claim to be statute-barred.

It was argued on behalf of the appellant that section 11(2) of Cap. 171 (*supra*) is contrary to, or inconsistent with, Article 28 of the Constitution, which safeguards the right to equality. Article 28, paragraph 1, reads as follows:

> "1. All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby."

In allowing the appeal, setting aside the ruling appealed from and sending the case back to the trial Court for a hearing on its merits, the Court:-

Held, (1). The main issue before us is whether or not *section 11(2) of Cap. 171 (supra), which dates back since* before the Constitution came into effect on the 16th August, 1960, is still in force thereafter, under Article 188 of the Constitution. It can only be in force if it is not "contrary to, or inconsistent with, any provision of the Constitution" (see Article 188.2).

(2) Legislative provisions which make arbitrary or unreasonable differentiations, not justified by the intrinsic nature of things, contravene Article 28 of the Constitution. In *Mikromatis* and *The Republic* (2 R.S.C.C. 125) it was held that section 19 of the Income Tax Law, Cap. 323, a pre-Constitution enactment, was to a certain extent unconstitutional, as introducing a discrimination on the ground of sex contrary to Article 28, and had to be applied modified accordingly (under Article 188.4 of the Constitution). On the other hand, reasonable differentiations were upheld, as not being contrary to Article 28, in the cases of *Haros* and *The Republic,* 4 R.S.C.C. 39 and *In re HjiKyriacos and Sons Ltd.,* 5 R.S.C.C. 22.

(3) We have, also, found useful guidance in relevant U.S.A. jurisprudence:

The following dicta (quoted *post* in the judgment considered with approval:

Dicta of *Mr. Justice Day* in *Southern Railway Company* v. *Greene* (216 US 400; 54 Law. ed. 536).

Dicta of *Chief Justice Taft* in *Truax* v. *Corrigan* (257 US 312; 66 Law. ed. 254).

(4) In applying a constitutional provision such as Arti-

cle 28, a Court can only interfere with the validity of legislation if the legislative enactment concerned is clearly unreasonable or arbitrary; the Court cannot substitute its own discretion, in the place of the discretion of the Legislature, once there do exist circumstances which could reasonably lead to the distinction or differentiation introduced by an enactment. Principles laid down by Mr. Justice Brewer in *Bachtel* v. *Wilson* (204 US. 36; 51 Law. ed. 357) and by Mr. Justice Stone in *Metropolitan Casualty Insurance Company of New York* v. *Brownell* (294 US. 580; 79 Law. ed. 1070), *applied.*

(5)(*a*) The laying down of periods of limitation is, obviously, a matter primarily within the sphere of competence of the Legislature; and different periods of limitation may be laid down in respect of different causes of action or different litigants; depending on the nature of things (see *Mattson* v. *Department of Labor and Industries of the State of Washington*, 293 US. 151; 79 Law. ed. 251; and *The Company of Chemung Canal Bank* v. *Lowery* 93 US. 72; 23 Law. ed. 806).

(*b*) Thus, the question to be resolved in this appeal is, essentially, whether or not section 11(2) of Cap. 171 differentiates, in a manner which may be found to be reasonably justified, as between the respondent Authority as a defendant, on the one hand, and other defendants, on the other hand, regarding the question of the period of limitation in respect of an action for a civil wrong.

(6)(*a*) Under the legal system in force immediately before the 16th August, 1960, in the then Crown Colony of Cyprus it was not possible to sue, in the ordinary course, for a civil wrong the Government administering the Island in the name of the British Crown; but a public officer, who had committed, in the course of the discharge of his duties, a civil wrong, could be sued personally; and eventually, a Judgment against such officer, might, in a proper case, be satisfied out of public funds, by way of established practice for the purpose.

(*b*) The period of limitation provided for, in this respect, under the Public Officers Protection Law, Cap. 313, section 2, was three months only; whereas, in relation to civil wrongs in general, as between private litigants, the period of limitation was two years (see section 68

of the Civil Wrongs Law, Cap. 148); and, as already stated, by virtue of section 11(2) of Cap. 171 (*supra)*, the period of three months prescribed under Cap. 313 (*supra)* was applicable to, *inter alia*, actions against the respondent Authority.

(*c*) Since the 16th August, 1960, Article 172 of the Constitution provides that "The Republic shall be liable for any wrongful act or omission causing damage committed in the exercise or purported exercise of the duties of officers or authorities of the Republic", and that "A law shall regulate such liability". The provisions of the Public Officers Protection Law, Cap. 313 not being applicable to the State, it must be taken that the drafters of the Constitution intended the period of limitation, in respect of actions for civil wrongs against the Republic under Article 172 (*supra*) to be two years under section 68 of the Civil Wrongs Law, Cap. 148, unless a Law regulating the Republic's liability would otherwise provide; and, actually, the position remained so until this day as no other legislative provision has been made regarding the period of limitation in respect of actions for civil wrongs against the Republic.

(7) So, in effect, in relation to actions for civil wrongs, section 11(2) of Cap. 171 (*supra*) differentiates, regarding the period of limitation as between the respondent as a defendant, on the one hand, and other defendants, *including the Republic*, on the other hand. In appreciating in full the nature of such distinction it is to be borne in mind, too, that the respondent is a body corporate which is, indeed, a public undertaking, but, at the same time, like commercial or industrial corporations, which do not enjoy the benefit of a provision such as section 11(2) of Cap. 171 (*supra*), it does engage in business, also.

(8)(*a*) The trial Court held that the distinction made through the special limitation period of three months provided for in the case of an action against the respondent Authority, is a reasonable one and cannot, therefore, be regarded as violating Article 28 of the Constitution. In the view of the trial Court a "short period of limitation in respect of Public Authorities and public officers is socially both necessary and desirable. Limitation of actions as such provided by the said laws establishes in a short

period the finality of the acts of public officers and it leaves Public Authorities free to proceed unhampered with the performance of their duties without having the fear of proceedings hanging over their head for long periods, a fact that otherwise might prevent them from planning for the future and effectively carrying out their public duties".

(*b*) We are unable to share the view of the trial Court. In so far as it relates to public authorities, such as the respondent, it is not in accordance with the correct approach to the question of periods of limitation applicable to such authorities; and in this respect it is very useful to quote from Constitutional and Administrative Law by Hood Phillips, 3rd edn. (1962) p. 683 (the passage is quoted *post* in the judgment). On the basis, especially, of the views of the Tucker Committee—as quoted by Professor Hood Phillips (*supra*) — which we do find most weighty and irrefutable, we see no conceivable justification or rational basis for the existence of a *striking* distinction in relation to periods of limitation (three months as against two years) as between an action for civil wrong against a public utility corporation, such as the respondent, and the same action against any other corporation.

(*c*) Moreover, we find the period of limitation of three months, provided for under section 11(2) of Cap. 171 (*supra*), to be totally deprived of any rational basis when it is compared to the two years' period of limitation for the same causes of action against the Republic.

(*d*) On the other hand, the differentiation introduced by section 11(2) of Cap. 171 (*supra*) cannot be upheld as violating the right to equality, because, *inter alia,* the period of limitation laid down thereby is unduly short, unreasonably insufficient and inadequate, in so far, to say the least, as actions for civil wrongs against the respondent are concerned. (Cf. *Canadian Northern Railway Company* v. *Eggen* 252 US. 553; 64 Law. ed. 713).

(9) In the light of all the foregoing we have no hesitation in saying that we are satisfied that, viewed in the context of the constitutional order in force since the 16th August, 1960, (*i.e.* date of the coming into operation of the Constitution), the aforesaid section 11(2) (*supra),* in so far, at any rate, as it applies to actions for civil wrongs

against the respondent Authority, is clearly arbitrary and unreasonable, and, thus, contrary to, and inconsistent with, Article 28 of the Constitution; therefore, it could not be applied to the case before us.

(10) Furthermore, we would observe that the three months' period of limitation laid down by section 11(2) of Cap. 171 *(supra)* appears to us to be so arbitrary and unreasonably short, by present-day standards, that it amounts, in effect, to a most serious interference with the right of access to, and hearing by, a Court, which is safeguarded under Article 30 of the Constitution; and such right coincides, in this connection, with the right to equality (see *Barbier* v. *Connolly* 113 US. 27; 28 Law. ed. 923, per Mr. Justice Field regarding the 14th Amendment of the U.S.A. Constitution providing for due process of law and equal protection of the laws).

(11)(*a*) This Court, of course, cannot substitute its own decision and fill the gap by specifying what should be the reasonable period of limitation in the circumstances (see Svolos and Vlahos on the Constitution of Greece, vol. A p. 200); all that the Court can do is to leave the matter to be regulated by the general law, which in this case is section 68 of the Civil Wrongs Law, Cap. 148 providing for a two years' period of limitation.

(*b*) But it is always open to the Legislature to provide, in future, and for good cause, periods of limitation in respect of actions for civil wrongs against an Authority such as the respondent or against the Republic itself, reasonably different from the one provided for, in general, under section 68 of Cap. 148 (*supra*).

Appeal allowed. Case sent back to trial Court to be dealt with on its merits. Costs of the appeal to be costs in cause, in any case not against the appellant.

Cases referred to:

Southern Railway Company v. *Greene* 216 US 400; 54 Law. ed. 536;

Truax v. *Corrigan* 257 US 312; 66 Law. ed. 254;

Bachtel v. *Wilson* 204 US 36; 51 Law. ed. 357;

Metropolitan Casualty Insurance Company of New York v. *Brownell* 294 US 580; 79 Law. ed. 1070;

Mattson v. *Department of Labor and Industries of the State of Washington* 293 US 151; 79 Law. ed. 251;

The Company of the Chemung Canal Bank v. *Lowery* 93 US 72; 23 Law. ed. 806;

Canadian Northern Railway Company v. *Eggen* 252 US 553; 64 Law. ed. 713;

Barbier v. *Conolly* 113 US 27; 28 Law. Ed. 923;

Mikrommatis and *The Republic* 2 R.S.C.C. 125;

Haros and *The Republic* 4 R.S.C.C. 39;

In re HjiKyriakos and Sons Ltd. 5 R.S.C.C. 22.

Appeal.

Appeal against the ruling of the District Court of Nicosia (Loizou P.D.C. & Mavrommatis D.J.) dated the 31st December, 1966 (Action No. 542/64) dismissing plaintiff's claim, for damages in respect of serious bodily injuries, as being statute-barred.

Ph. Clerides, for the appellant.

X. Clerides, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by :-

TRIANTAFYLLIDES, J. : This judgment, which is the unanimous judgment of the Court, is being delivered to day with only my brother Mr. Justice Hadjianastassiou and myself being present; Mr. Justice Vassiliades, the President of the Court, is absent from Cyprus, but before leaving he has authorized me to state that he agrees with the result reached in this appeal and with the reasons therefor.

In this appeal the appellant-plaintiff challenges the validity of the Ruling of the District Court of Nicosia dismissing his claim in civil action No. 542/64, as being statute-barred; the appellant has claimed damages, against the respondent-defendant, in respect of serious bodily injuries which he has, allegedly, suffered in the course of his employment by the respondent.

The trial Court held that the claim of the appellant was statute-barred because of the provisions of section 11(2) of the Electricity Development Law, Cap. 171, which reads as follows:-

"The Public Officers Protection Law shall apply to any action, prosecution or other proceedings against the Authority, or against any member, officer or servant thereof in respect of any act, neglect or default done or committed by him in such capacity"

The said Authority being the respondent in this case

Under section 2 of the Public Officers Protection Law, Cap 313, a period of limitation of three months is provided for, thus, a cause of action against the respondent would become statute-barred after the lapse of the said period.

The appellant suffered the injuries complained of on the 23rd July, 1963, and he filed his action against the respondent on the 23rd April, 1964, i.e. well after the lapse of three months As a result, the trial Court found his claim to be statute-barred

The main issue before us is whether or not section 11(2) of Cap. 171, which dates since before the Constitution came into effect on the 16th August, 1960, is still in force thereafter, under Article 188 of the Constitution It can only be in force if it is not "contrary to, or inconsistent with, any provision" of the Constitution (see Article 188 2).

We have had to examine, in this respect, whether or not section 11(2) is contrary to, or inconsistent with, Article 28 of the Constitution, which safeguards the right to equality.

Legislative provisions which make arbitrary or unreasonable differentiations, not justified by the intrinsic nature of things, contravene Article 28 In *Mikrommatis and The Republic* (2 R.S.C C 125) it was held that section 19 of the Income Tax Law, Cap. 323, a pre-Constitution enactment, was to a certain extent unconstitutional, as introducing a discrimination on the ground of sex contrary to Article 28, and had to be applied modified accordingly (under Article 188 4 of the Constitution). On the other hand, reasonable differentiations were upheld, as not being contrary to Article 28, in the cases of *Haros and The Republic* (4 R.S C.C. 39) and *In re HjiKyriacos and Sons Ltd.* (5 R S.C C 22).

We have, also, found useful guidance in relevant U.S.A. jurisprudence :

Mr. Justice Day in *Southern Railway Company* v. *Greene* (216 US 400; 54 Law. ed. 536) has stated:-

> "While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, cannot be justified by calling it classification".

Also, Chief Justice Taft, has said, *inter alia*, the following in *Truax* v. *Corrigan* (257 US 312; 66 Law. ed. 254):-

> "In adjusting legislation to the need of the people of a state, the legislature has a wide discretion, and it may be fully conceded that perfect uniformity of treatment of all persons is neither practical nor desirable, that classification of persons is constantly necessary, and that questions of proper classification are not free from difficulty................ Classification is the most inveterate of our reasoning processes. We can scarcely think or speak without consciously or unconsciously exercising it. It must therefore obtain in and determine legislation; but it must regard real resemblances and real differences between things and persons, and class them in accordance with their pertinence to the purpose in hand".

In applying a constitutional provision, such as Article 28, a Court can only interfere with the validity of legislation if the legislative enactment concerned is clearly unreasonable or arbitrary; the Court cannot substitute its own discretion, in the place of the discretion of the Legislature, once there do exist circumstances which could reasonably lead to the distinction or differentiation introduced by an enactment.

As Mr. Justice Brewer has put it in *Buchtel* v. *Wilson* (204 U.S. 36; 51 Law. ed. 357):-

> "In short, the selection, in order to become obnoxious to the 14th Amendment"-

of the U.S.A. Constitution which safeguards equal protection of the laws -

> "must be arbitrary and unreasonable; not merely possibly, but clearly and actually so".

Further, in *Metropolitan Casualty Insurance Company of New York* v. *Brownell* (294 US 580; 79 Law. ed. 1070), Mr. Justice Stone has said, *inter alia*, the following:-

> "The equal protection clause does not prohibit legislative classification and the imposition of statutory restraints on one class which are not imposed on another. But this Court has said that not every legislative discrimination between foreign and domestic corporations is permissible merely because they differ, and that with respect to some subjects of legislation the differences between them may afford no reasonable basis for the imposition of a statutory restriction upon foreign corporations, not applied to domestic corporations. The ultimate test of validity is not whether foreign corporations differ from domestic, but whether the differences between them are pertinent to the subject with respect to which the classification is made. If those differences have any rational relationship to the legislative command, the discrimination is not forbidden..........
> It is a salutary principle of judicial decision, long emphasized and followed by this Court, that the burden of establishing the unconstitutionality of a statute rests on him who assails it, and that courts may not declare a legislative discrimination invalid unless, viewed in the light of facts made known or generally assumed, it is of such a character as to preclude the assumption that the classification rests upon some rational basis within the knowledge and experience of the legislators. A statutory discrimination will not be set aside as the denial of equal protection of the laws if any state of facts reasonably may be conceived to justify it".

The laying down of periods of limitation is, obviously. a matter primarily within the sphere of competence of the Legislature; and different periods of limitation may be laid down in respect of different causes of action or different litigants; depending on the nature of things.

Mr. Justice Roberts in *Mattson* v. *Department of Labor*

and Industries of the State of Washington (293 US 151; 79 Law. ed. 251) had this to say on the point:-

> "That the State may impose reasonable conditions upon the assertion of the claim does not admit of argument. Considerations justifying a reasonable limitation of time within which further increase of compensation due to aggravation of condition may be claimed are so obvious as hardly to require statement".

In that case there was in issue the validity of a statute of the State of Washington prescribing a period of limitation of three years in respect of claims for readjustment of the rate of workmens' compensation.

That a reasonable differentiation between litigants may be made by a statute of limitations, without such differentiation amounting to unconstitutional discrimination, is illustrated by the case of *The Company of the Chemung Canal Bank* v. *Lowery* (93 US 72; 23 Law. ed. 806); in that case it was held that a statute of limitations of the State of Wisconsin, which provided that when the defendant was out of the State the statute did not run against the plaintiff if the plaintiff resided in the State, but it did run if the plaintiff resided outside the State, was not unjustly discriminatory, as there were found to exist valid juridical and equitable reasons for the differentiation made thereby between litigants.

Thus, the question to be resolved in this appeal is, essentially, whether or not section 11(2) of Cap. 171 differentiates, in a manner which may be found to be reasonably justified, as between the respondent as a defendant, on the one hand, and other defendants, on the other hand, regarding the question of the period of limitation in respect of an action for a civil wrong.

It is relevant, first, to examine the position as it existed immediately before the 16th August, 1960, when the Constitution came into effect:-

Under the legal system in force in the then Crown Colony of Cyprus, it was not possible to sue, in the ordinary course, for a civil wrong, the Government administering the Island in the name of the British Crown; but a public officer, who had committed, in the course of the discharge of his duties, a civil wrong, could be sued personally; and, eventually,

a judgment against such officer, might, in a proper case, be satisfied out of public funds, by way of established practice for the purpose.

The period of limitation provided for, in this respect, under the Public Officers Protection Law, Cap. 313, was three months only; whereas, in relation to civil wrongs in general, as between private litigants, the period of limitation was two years (see section 68 of the Civil Wrongs Law, Cap. 148); and, as already stated, by virtue of section 11(2) of Cap. 171, the period of limitation prescribed under Cap. 313 was applicable to, *inter alia*, actions against the respondent.

Since the 16th August, 1960, Article 172 of the Constitution provides that "The Republic shall be liable for any wrongful act or omission causing damage committed in the exercise or purported exercise of the duties of officers or authorities of the Republic", and that "A law shall regulate such liability".

No express provision was made in the Constitution regarding the period of limitation applicable to actions, under Article 172, against the Republic, in respect of civil wrongs or otherwise. As the Constitutional drafters must be presumed to have had in mind the provisions of section 68 of Cap. 148—the provisions of Cap. 313 not being applicable to the State, as such—it must be taken that they intended the period of limitation, in respect of actions for civil wrongs against the Republic under Article 172, to be two years, unless a Law regulating the Republic's liability would, otherwise, provide; and, actually, the position has remained so until this day, as no other provision has been made regarding the period of limitation in respect of actions for civil wrongs against the Republic.

So, in effect, in relation to actions for civil wrongs, section 11(2) of Cap. 171 differentiates, regarding the period of limitation, as between the respondent as a defendant, on the one hand, and other defendants *including the Republic*, on the other hand. In appreciating in full the nature of such distinction it is to be borne in mind, too, that the Respondent is a body corporate which is, indeed, a public undertaking, but, at the same time, like commercial or industrial corporations, which do not enjoy the benefit of a provision such as section 11(2) of Cap. 171, it does engage in business, also.

The learned Judges of the trial Court held that the distinc-

tion made through the special limitation period provided for in the case of an action against the respondent, namely, three months, is a reasonable one and cannot, therefore, be regarded as violating Article 28 of the Constitution; they had this to say, *inter alia*, in their judgment:-

"Employees and other witnesses which might be helpful to the Authority may change employment and evidence may be lost on account of the lapse of time. A Public Authority may easily be deprived of the advantage of the speedy inquiries that can be brought about by the institution within a short time of an action against it. The very impersonal character of a Public Authority justifies a short period of prescription for its acts which are not but the acts of its employees. In the view of the Court a short period of limitation in respect of Public Authorities and public officers is socially both necessary and desirable. Limitation of actions as such provided by the said laws establishes in a short period the finality of the acts of public officers and it leaves Public Authorities free to proceed unhampered with the performance of their duties without having the fear of proceedings hanging over their head for long periods, a fact that otherwise might prevent them from planning for the future and effectively carrying out their public duties".

We are unable to share the view of the trial Court. In so far as it relates to public authorities, such as the respondent, it is not in accordance with the correct approach to the question of periods of limitation applicable to such authorities; and in this respect it is very useful to quote from Constitutional and Administrative Law by Hood Phillips, 3rd ed. (1962) p. 683:

"The Public Authorities Protection Act, 1893, limited to six months the time within which proceedings could be brought against public authorites, i.e. persons exercising statutory or other public duties. The purpose was to discourage frivolous actions, and to prevent proceedings being delayed so long as to be vexatious. It was generally thought that this period was too short, and it was extended by the Limitation Act, 1939, s. 21, to twelve months, except for criminal proceedings. Apart from the difficulty of interpreting these Acts, and the injustice plaintiffs might suffer (especially in actions

for personal injuries) from the short time-limit when t
extent of the injury might not yet be discovered, the
seemed to be no good reason why special periods
limitation should apply to certain authorities. Sever
of the nationalisation Acts creating public corporatio
after the Second World War compromised between t
one-year period and the usual six-year period by fixi
three years as the time within which actions might
brought against such corporations. The Tucker Co
mittee on the Limitation of Actions, which reported
1949, pointed out that many large commercial a
industrial organisations had activities as multifario
as public authorities, but did not enjoy the benefit of t
Acts; while, on the other hand, public authorities we
now engaging in business in much the same way
private organisations, and did so for profit. The La
Reform (Limitation of Actions etc.) Act, 1954, bas
largely on this report, repealed section 21 of the Limit
tion Act, 1939, the remaining provisions of the Pub
Authorities Protection Act, 1893, and the special pr
visions contained in the nationalization Acts, so th
there is no longer any distinction between public auth
rities and private persons so far as the limitation
actions is concerned (s.1). The normal period f
personal (as opposed to real) actions is six years; but
actions for personal injuries the period is reduced
three years whether the defendant is a public authori
or not (s.2), and in actions under the Fatal Accider
Act, 1846, the period is extended from one year to thr
years (s.3)".

Of course, whatever is not in accordance with the legisl
tive policy adopted in another country, regarding the matt
in issue, would not, for that reason only, be regarded here
being unreasonable. But on the basis, especially, of t
views of the Tucker Committee—as quoted by Profess
Hood Phillips—which we do find most weighty and irrefu
able, we see no conceivable justification or rational basis f
the existence of a *striking* distinction in relation to perio
of limitation—(three months as against two years)—
between an action for civil wrong against a public utili
corporation, such as the respondent, and the same actio
against any other corporation. All corporations are of
impersonal character; so what the trial Court had to s

about the impersonal character of the respondent, as justifying a limitation period of three months, would apply also to all corporations.

Moreover, we find the period of limitation of three months, provided for under s. 11(2) of Cap. 171, to be totally deprived of any possible rational basis when it is compared to the period of limitation, for the same causes of action, in relation to the Republic, namely, two years. In this respect, we would observe, also, that what the trial Court has stated in its judgment about the need for finality of administrative acts applies with equal force to acts of officers of the respondent and to acts of public officers generally; and, that is taken care of, in its proper public law context, by the short period of limitation laid down for the making of a recourse under Article 146; the said need is not, however, really relevant to matters of private law liability of the respondent or of the Republic arising in relation to civil wrongs committed by their respective officers.

It is useful, at this stage, to refer to the case of the *Canadian Northern Railway Company* v. *Eggen* (252 US 553; 64 Law. ed. 713); it was held there that a statute of the State of Minnesota rendering applicable, in certain cases of causes of actions arising out of the State, the period of limitation laid down by the law of the place where the cause of action had arisen, *instead of the relevant period of limitation laid down* by the Minnesota legislation, was not unconstitutional, as violating the right to equality; in upholding the differentiation in question the U.S.A. Supreme Court took into account, *inter alia*, that the foreign period of limitation concerned—(one year)—though being shorter than the corresponding Minnesota one, was not "unduly short" but "reasonably sufficient and adequate".

On the contrary, in the present case the differentiation introduced by section 11(2) of Cap. 171 cannot be upheld—as not violating the right to equality—because, *inter alia*, the period of limitation laid down thereby is unduly short, unreasonably insufficient and inadequate, in so far, to say the least, as actions for civil wrongs against the respondent are concerned.

In the light of all the foregoing we have no hesitation in saying that we are satisfied that, viewed in the context of the constitutional order in force since the 16th August, 1960, the said section 11(2), in so far, at any rate, as it applies to

actions for civil wrongs against the respondent, is clearly arbitrary and unreasonable, and, thus, contrary to, and inconsistent with, Article 28 of the Constitution; therefore, it could not constitutionally be applied to the case before us.

Furthermore, we would observe that the period of limitation of three months, laid down by section 11(2) of Cap. 171, appears to us to be so arbitrary and unreasonably short, by present-day standards, that it amounts, in effect, to a most serious interference with the right of access to, and hearing by, a Court, which is safeguarded under Article 30 of the Constitution; such right coincides, in this connection, with the right to equality. As stated in *Barbier* v. *Connolly* (113 US 27; 28 Law. ed. 923), by Mr. Justice Field, the 14th Amendment of the U.S.A. Constitution by providing about due process of law and equal protection of the laws "undoubtedly intended....that all persons.... should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts......".

In finding a legislative provision to be contrary to the Constitution, as offending against the right to equality, this Court cannot substitute its own decision and fill the gap by specifying what should be the reasonable period of limitation in the circumstances (see Svolos & Vlahos on the Constitution of Greece, vol. A. p. 200); all that the Court can do is to leave the matter to be regulated by the general law, which in this case is section 68 of Cap. 148; and, thus, in the present case the period of limitation applicable is that provided for under section 68.

Before concluding, we would observe that it is, of course, open to the Legislature to provide, in future, and for good cause, periods of limitation, in respect of actions for civil wrongs against an Authority such as the respondent, or against the Republic itself, reasonably different than the one provided for, in general, under section 68 of Cap. 148.

For all the above reasons this appeal is allowed and the case is sent back to the trial Court so that it may proceed to a hearing on its merits. The costs of this appeal to be costs in the cause, in any case not against the appellant.

Appeal allowed.
Case sent back to trial Court for a hearing on its merits.
Order for costs as aforesaid.