

1981 September 26

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF AN APPLICATION BY ANDRANIK ASDJIAN, FOR LEAVE TO APPLY FOR AN ORDER OF MANDAMUS,

and

IN THE MATTER OF THE DECISION OF THE MINISTER OF INTERIOR AND OF THE CHIEF RETURNING OFFICER TO REVOKE THE PROCLAMATION OF THE ELECTION IN RESPECT OF THE RELIGIOUS GROUP OF THE ARMENIANS.

(Application No. 16/81).

Mandamus—Article 155.4 of the Constitution—Jurisdiction—Order and Notice revoking and postponing election of representative, in the House of Representatives, of the Religious Group of the Armenians under the Religious Groups (Representation) Laws, 1970 to 1981—Are Administrative acts coming within the exclusive ambit of Article 146.1 of the Constitution—No jurisdiction to grant leave to apply for order of mandamus in relation to said Order and Notice in view of the mutual exclusivity of the jurisdictions under the said Articles 146.1 and 155.4.

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The applicant was a candidate for election as the representative, in the House of Representatives, of the religious group of the Armenians. The election was fixed to be held on September 27, 1981 but on September 23, 1981 the House of Representatives in special session by a unanimous decision proposed to the executive power to postpone to a future date the election in view of certain difficulties which arose in respect of the relevant electoral roll. As a result of this decision the Minister of Interior published on September 25, 1981, an Order (“the Order”) in the Official Gazette revoking the proclamation of the election and at the same time the Chief Returning Officer published a Notice (“the Notice”) by means of which the election was postponed to a date to be fixed later.

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5 Upon an application for leave to apply for an order of mandamus, under Article 155.4 of the Constitution, directing the Minister of Interior and the Chief Returning Officer to Perform their obligations under the Religious Groups (Representations) Laws, 1970 to 1981 and to carry out the said election on September 27, 1981 as such election has been fixed to be held:

10 Held, that the Order and Notice are administrative acts which appear to come within the exclusive ambit of Article 146.1 of the Constitution; that the remedy of mandamus, under Article 155.4 of the Constitution, is not available in a situation of this nature in view of the mutual exclusivity of the jurisdictions under Article 146.1 and Article 155.4 of the Constitution; that this Court has, therefore, no jurisdiction, irrespective of what may be the merits of the complaint of the applicant, to grant him leave to apply for an order of mandamus under the said Article 155.4; accordingly the application must be dismissed (see, *inter alia*, *Vassiliou v. Police Disciplinary Committees* (1979) 1 C.L.R. 46; pp. 473-4 *post*).

Application dismissed.

20 Cases referred to:

Ramadan v. The Electricity Authority of Cyprus, 1 R.S.C.C. 49;
Vassiliou v. Police Disciplinary Committees (1979) 1 C.L.R. 46;
Economides v. Military Disciplinary Board (1979) 1 C.L.R. 177.

Application.

25 Application for leave to apply for an order of mandamus, under Article 155.4 of the Constitution, directing the Minister of Interior and the Chief Returning Officer to carry out the election of the representative, in the House of Representatives, of the Religions Group of the Armenians.

30 *L. Papaphilippou* with *Cr. Papaloizou* and *Chr. Christofides*, for the applicant.

A. Evangelou, Senior Counsel of the Republic, for the Minister of Interior and the Chief Returning officer.

Cur. adv. vult.

35 TRIANTAFYLLIDES P. read the following decision: The applicant, who is a candidate for election as the representative, in

the House of Representatives, of the Religious Group of the Armenians, seeks, by the present application, which was filed yesterday, leave to apply for an order of mandamus, under Article 155.4 of the Constitution, directing the Minister of Interior and the Chief Returning Officer to perform their obligations under the Religious Groups (Representation) Laws, 1970 to 1981, and to carry out the election of the representative, in the House of Representatives, of the Religious Group of the Armenians on September 27, 1981, as such election has been fixed to be held.

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From the facts which have been placed before me it appears, indeed, that the said election was initially fixed to be held tomorrow and that the applicant put forward his candidature on September 17, 1981.

On September 23, 1981, the House of Representatives met in special session and by a unanimous Decision it proposed to the Executive Power to postpone to a future date the election fixed for September 27, 1981, in view of certain difficulties which arose in respect of the relevant electoral roll. This Decision of the House of Representatives has not, as far as I know, been published in the official Gazette of the Republic.

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As a result of the said Decision the Minister of Interior published on September 25, 1981, an Order (No. 1075 in the Third Supplement, Part II, to the Official Gazette of the Republic) revoking the proclamation of the election of the representative, in the House of Representatives, of the Religious Group of the Armenians, and at the same time there was, also, published in the Official Gazette (No. 1076 in the Third Supplement, Part II) a Notice by the Chief Returning Officer stating that the election in question, which was to be held on September 27, 1981, is being postponed to a date which will be fixed later.

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In the said Notice there is reference to a warrant of the Minister of Interior, dated September 24, 1981, which has not been produced before me and which, as far as I know, has not been published in the official Gazette.

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There is no reference in the aforementioned Order and Notice to any specific legislative provisions on the strength of which they have been published.

There is no doubt that the situation which has arisen as a result of the above developments is a novel situation the future implications of which I cannot duly evaluate at this stage; and it is quite possible that the applicant is right in contending
5 that there arise in relation thereto serious issues of law. In my opinion the applicant was, therefore, fully justified in bringing the matter before this Court for the protection of what he considers to be his own legitimate interests as a candidate, as well as those of the Religious Group to which he belongs.

10 I have now to consider whether I can grant to the applicant the applied for leave by him to file an application for an order of mandamus, under Article 155.4 of the Constitution:

The Order and Notice which were published, as aforesaid, in the official Gazette on September 25, 1981, are in my opinion
15 administrative acts which appear to come within the exclusive ambit of Article 146.1 of the Constitution.

According to case-law, such as *Ramadan v. The Electricity Authority of Cyprus*, 1 R.S.C.C. 49, *Vassiliou v. Police Disciplinary Committees*, (1979) 1 C.L.R. 46 and *Economides v. Military Disciplinary Board*, (1979) 1 C.L.R. 177, by which I
20 am bound, the remedy of mandamus, under Article 155.4 of the Constitution, is not available in a situation of this nature in view of the mutual exclusivity of the jurisdictions under Article 146.1 and Article 155.4 of the Constitution. I have,
25 therefore, no jurisdiction, irrespective of what may be the merits of the complaint of the applicant, to grant him leave to apply for an order of mandamus under the said Article 155.4.

It is to be observed, moreover, that by means of the present application, which is not a proceeding under Article 146 of the
30 Constitution, there cannot be annulled the acts in question of the Minister of Interior and of the Chief Returning Officer (Nos. 1075 and 1076); and so even if it were to be assumed that leave to apply for an order of mandamus could be granted this would not help at all the applicant because it would still
35 not be possible to hold tomorrow the election concerned in view of the operation of the said two acts.

I am not holding finally that in this exceptional situation the applicant is without any remedy at all. I, simply, cannot grant him today the remedy which is being sought by him by means

of the present application. I leave entirely open the question of what other remedy, if any, is available to the applicant; and, in particular, I express no opinion at all as to what may be the effect of the postponement of tomorrow's election on the legal validity of any future election in respect of the same matter. 5

In view of the novel and complex nature of this case I am not prepared to make against the applicant an order as to the costs in this application.

Application dismissed. No order as to costs. 10