

1981 November 30

[LORIS, STYLIANIDES, PIKIS, JJ.]

COSTAS SAVVA MALACHTOU,

Appellant-Plaintiff.

v.

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Respondent-Defendant.

(Civil Appeal No. 6064).

Suspension of Prescription Law, 1964 (Law 57/64)—Proviso to 1976 Order made under section 2 of the Law—Ultra vires the enabling section and invalid—Remaining part of the Order valid because proviso severable.

- 5 *Statutes—Interpretation—Interpretative enactments—Principles applicable—Whether the Suspension of Prescription Law, 1964 (Law 57/64) interpreted by the Power of the Council of Ministers to appoint the date of the termination of the period of Suspension of the Limitation of Actions (Interpretation) Law, 1971 (Law*
10 *25/71).*

The sole question in this appeal was whether the proviso to an Order* made by the Council of Ministers under section 2 of the Suspension of Prescription Law, 1964 (Law 57/64) was valid. The said section 2 of Law 57/64 provides as follows:

- 15 “ ‘Period of suspension’ means the period which commences on the 21st December 1963, and ends on a date to be prescribed by Order of the Council of Ministers published in the Official Gazette:

- 20 Provided that the period from the publication of the Order in the Official Gazette until the date thus prescribed will not be shorter than three months”.

* The Order was published in the Official Gazette of the Republic dated 18.6.1976, under Not. 105 of Supplement No. 3 and the proviso in question reads as follows:

“Provided that the said suspension does not apply in actions for the recovery of damages for personal injuries or loss of life or damage to property resulting from a road, industrial, nautical or other accident or fire, instituted after the 1st January, 1977”.

Counsel for the Republic submitted that a subsequent enactment, Law 25/71, extended the powers vested in the Council of Ministers to the extent of entrusting them with power to lay down different dates for the termination of suspension for different causes of action.

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Held, that the expedient of furnishing an interpretation to the provisions of a law already enacted, must be sparingly used, and then only in circumstances where the legislature failed in the first place to give a clear expression to its manifest intent; that, unless the wording of the interpretative enactment is reconcilable with the provisions of the law it purports to interpret, such subsequent legislation will be treated by the Courts as a piece of retroactive legislation, leaving intact rights that may have vested in the meantime; that no such conflict is discernible in this case for it was, in the first place, the manifest intention of the legislature to leave to the Council of Ministers the power of terminating the period of suspension as it might deem necessary in the light of the prevailing circumstances; that reading the two laws together, this Court concludes that the Council of Ministers was clothed with power to terminate the period of suspension, that is, the period prescribed by the several laws for the expiration of the right to sue; that right to sue accrues for the purpose of the period of limitation when there is in existence a person who can sue and another who can be sued, and the facts material for enabling the plaintiff to succeed have crystallised (see, *inter alia*, *Petrou v. Petrou* (1976) 1 C.L.R. 257); that the powers of the Council were strictly limited to terminating the period of suspension and the decisions of the Council prior to 1976 observed the limits set down by law; that there is no warranty in the law for distinguishing between different species of rights and the attempt made to introduce such a classification by means of the proviso in question was far beyond the powers vested in the Council of Ministers; and that, therefore, the proviso is ultra vires the law and consequently invalid.

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Held, further, with regard to the validity of the remaining part of the Order, that severance of the invalid provisions is permissible whenever the dissection does not destroy the fabric of the law; that after exclusion of the proviso the remaining part of the 1976 Order retains its meaning and by and large

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gives effect to the main object of the Council of Ministers which was generally to extend suspension for a further period of time.

Appeal allowed.

Cases referred to

- 5 *Laker Airways Ltd., v. The Department of Trade* [1967] 2 Q.B. 643;
 Chester v. Bateson [1920] 1 K.B. 829;
 Customs and Excise Commissioners v. Cure and Deeley Ltd.
 [1962] 1 Q.B. 340;
- 10 *Meade v. London Borough of Haringey* [1979] 2 All E.R. 1016;
 R. v. Kelt [1977] 3 All E.R. 1099;
 Petrou v. Petrou (1976) 1 C.L.R. 257;
 Fekkas v. The Electricity Authority of Cyprus (1968) 1 C.L.R. 173;
- 15 *Newberry D.C. v. Secretary of State* [1980] 1 All E.R. 731.

Appeal.

- 20 Appeal by plaintiff against the judgment of the District Court of Nicosia (Papadopoulos, S.D.J.) dated the 7th February, 1980 (Action No. 3217/77) whereby his claim for damages suffered by him as a result of a fire that erupted, or an explosion, at a camp of the National Guard where he served as a conscript was dismissed.

I. Avraamides, for the appellant.

- 25 *Cl. Antoniadis*, Senior Counsel of the Republic, for the respondent.

LORIS J.: The judgment of the Court will be delivered by Mr. Justice Pikiis.

- 30 PIKIS J.: 23.11.1974 Costas Savva Malachtou, plaintiff-appellant, suffered injuries as a result of a fire that erupted or an explosion at a camp of the National Guard where he served as a conscript. He puts the blame for this accident on his fellow servicemen, conscript, reservists or army men, and holds the Republic of Cyprus vicariously responsible for their allegedly negligent acts.

On 24.6.1977 he instituted an action before the Nicosia District Court for the recovery of damages. Defendants contended that the action was statute barred and raised the matter specifically in their defence. Thereafter, on a motion of the parties the viability of the proceedings was set down for preliminary determination. On 7.2.1980 Papadopoulos, S.D.J., as he then was, decided that the action was statute barred, and thereupon dismissed the case. He arrived at this decision on a consideration of the provisions of the decision of the Council of Ministers embodied in public instrument 105/76, published on 18.6.1976, read in conjunction with the provisions of the Suspension of Prescription Law 1964, 57/64, and s.68 of the Civil Wrongs Law, Cap. 148, specifying a two-year period of limitation for civil wrongs. The learned trial Judge does not spell out in his judgment the precise basis on which he found that the action is statute barred, and his judgment is susceptible to two interpretations: He either concluded that Order 105/76 prescribed, as from 1.1.1977, all actions that arose prior to that date or the date of publication of the instrument, or, alternatively, that Order 105/76 had the effect of prescribing civil wrongs that arose at a time prior to two years from the date set for the reactivation of prescription, notably 1.1.1977.

The Court manifestly rejected the submission advanced on behalf of the plaintiff, that the date from which time began to run was the 2nd July, 1976 and not earlier, that is, the day as from which the suspension of the period of limitation ceased to be operative by virtue of the 1975 Order that Order 105/76 replaced.

Before us, learned counsel for the appellant raised an additional argument in support of his submission, that the judgment is ill-founded. He submitted that the proviso to the 1976 Order, purporting to lay down different dates for the expiration of the suspension for different causes of action, is ultra-vires the parent law that empowered the Council of Ministers to bring suspension to an end.

I had occasion to examine the validity of the proviso to the 1976 Order in a judgment I delivered at the Larnaca District Court (Action No. 1678/78, delivered on 6.5.1980, to be published in (1981) 2 J.S.C.), and concluded that the proviso is ultra vires the law, notably s.2 of Law 57/64, in that the Council

of Ministers claimed powers that the legislature had not vested in them. Counsel for the appellant adopted, so it seems to me, the reasoning in the aforementioned judgment in toto, in support of his submission, that the proviso in question is ultra-vires
 5 the law.

Logically, the first question that arises for consideration is the validity of the proviso for, if invalid, its interpretation is irrelevant. It is appropriate to recite the proviso in order to examine the rival submissions we received, in their proper
 10 perspective:—

“Νοεῖται ὅτι ἡ ρηθεῖσα ἀναστολὴ δὲν ἐφαρμόζεται ἐπὶ ἀγωγῆς δι’ ἀπαίτησιν καταβολῆς ἀποζημιώσεως διὰ προσωπικὰς βλάβας ἢ ἀπώλειαν ζωῆς ἢ ζημίαν εἰς ἰδιοκτησίαν συντελεῖα ὁδικοῦ, ἐργατικοῦ, ναυτικοῦ ἢ ἐτέρου ἀτυχήματος ἢ πυρκαϊᾶς, ἐγειρομένης μετὰ τὴν 1ην Ἰανουαρίου, 1977”.

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(*English Translation*): “Provided that the said suspension does not apply in actions for the recovery of damages for personal injuries or loss of life or damage to property resulting from a road, industrial, nautical or other accident or fire, instituted after the 1st January, 1977.”

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The Suspension of Prescription Law, 1964 was enacted in the aftermath of the unsettling events of 1963–64, in order to safeguard the rights of the citizens that they might find difficult to pursue in the anomalous circumstances of the time. It was an all embracing enactment suspending the running of the period of limitation provided by every law whatsoever, for an indefinite period of time. Power was vested in the Council of Ministers by virtue of s.2, to bring the period of suspension to an end, signifying such intention by an advance notice of three months. On any view of the plain provisions of the law, the power vested in the Council of Ministers was limited to terminate the period of suspension, provided the public was duly forewarned by three months notice of the intended reactivation of the period of limitation. Clearly, the Council of
 25 Ministers lacked power to provide different dates for the termination of the period of suspension for different causes of action. Had the matter ended here, it would be difficult, if not impossible, to argue that the proviso to the 1976 Order had any lawful parentage. The power for the enactment of subsidiary legislation must, in the nature of things, emanate strictly from the
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provisions of the enabling law. Any other approach would constitute an encroachment on the legislative powers of the House of Representatives, the body exclusively entrusted with legislative powers, under our Constitution. Subsidiary legislation enacted without just cause will be declared ultra-vires (see, *inter alia*, *Laker Airways Ltd. v. The Department of Trade* [1967] 2 Q.B. 643 (C.A.); *Chester v. Bateson* [1920] 1 K.B. 829; *Customs & Excise Commissioners v. Cure and Deeley Ltd.* [1962] 1 Q.B. 340; *Meade v. London Borough of Haringey* [1979] 2 All E.R. 1016). A body to which power is delegated to legislate must derive authority from the provisions of the enabling enactment, and any attempt to by-pass or transgress the limits set thereto will be struck down as ultra-vires. They cannot infer the existence of any authority to legislate, other than that expressly conferred by law, and must, therefore, confine themselves to the four corners of the enabling enactment. Any relaxation of this approach would certainly undermine the system of separation of powers that pervades our system of law and finds expression in the Constitution.

It is the submission of learned counsel for the Republic, as we comprehended it, that a subsequent enactment, notably Law 25/71, extended the powers vested in the Council of Ministers to the extent of entrusting them with power to lay down different dates for the termination of suspension for different causes of action.

The marginal note to the relevant section of Law 25/71, notably s. 3, states that the pertinent statutory provision is aimed at supplying an interpretation of the powers vested in the Council of Ministers by Law 57/64. It is legitimate to consult the marginal note for the purpose of determining the scope of a particular section of the law but not its purpose that must be gathered from the wording of the law itself (see, *inter alia*, *R. v. Kelt* [1977] 3 All E.R. 1099 (C.A.)). Indeed, such appears to have been the intention of the legislature to furnish what is known as an authentic interpretation to the provisions of a law in the statute book. The wording of s. 3 makes it abundantly clear that the sole purpose of the Law is to remove any doubts that might arise as to its competence to cancel, suspend, amend or replace any order made pursuant to the powers vested in the Council by s. 2 of Law 57/64, terminating the period of suspension. Need arose for clarifying the powers

vested in the Council of Ministers as a result of the decision of the Council to amend a decision taken on 14.5.1970 published on 29.5.1970 under Instrument 401 purporting to terminate the period of suspension as from 1.7.1971.

5 The expedient of furnishing an interpretation to the provisions of a law already enacted, must be sparingly used, and then only in circumstances where the legislature failed in the first place to give a clear expression to its manifest intent. It is not the province of the legislature to interpret its laws but that of the
10 judiciary. Certainty in the law would be undermined if the legislature resorted to an ex post facto interpretation of its enactments whereas serious inroads would be created to the system of separation of powers, so essential for sustaining the rule of law. Therefore, unless the wording of the interpreta-
15 tive enactment is reconcilable with the provisions of the law it purports to interpret, such subsequent legislation will be treated by the Courts as a piece of retroactive legislation, leaving intact rights that may have vested in the meantime. No such conflict is discernible in this case for it was, in the first place,
20 the manifest intention of the legislature to leave to the Council of Ministers the power of terminating the period of suspension as it might deem necessary in the light of the prevailing circumstances. Reading the two laws together, we conclude that the Council of Ministers was clothed with power to terminate the
25 period of suspension, that is, the period prescribed by the several laws for the expiration of the right to sue. A right to sue accrues for the purpose of the period of limitation when there is in existence a person who can sue and another who can be sued, and the facts material for enabling the plaintiff to succeed
30 have crystallised (see, *inter alia*, *Petrou v. Petrou* (1976) 1 C.L.R. 257). The powers of the Council were strictly limited to terminating the period of suspension and the decisions of the Council prior to 1976 observed the limits set down by law. There is no warranty in the law for distinguishing between different
35 species of rights and the attempt made to introduce such a classification was far beyond the powers vested in the Council of Ministers. Therefore, it is ultra-vires the law and consequently invalid.

It is not strictly necessary to examine whether this invalidity
40 taints the 1976 Order in its entirety. But as the matter is one of great consequence to the public, we may endeavour to give

some guidance on the subject. It is well settled that the provisions of a law tainted in part by unconstitutionality may be sustained, the valid provisions, provided the unconstitutional provisions are severable from the remaining body of the law (see, *inter alia*, *Fekkas v. The Electricity Authority of Cyprus* (1968) 1 C.L.R. 173). Several tests have been propounded for determining severability in this area, that boil down to this. Severance is permissible whenever the dissection does not destroy the fabric of the law. The fabric of the law remains intact whenever the remaining part of the law retains its compactness and gives effect to the dominant intention of the legislature. There is authority supporting the proposition that similar considerations affect the fate of subsidiary legislation after dismemberment (see, *inter alia*, *Newberry D.C. v. Secretary of State* [1980] 1 All E.R. 731 (H.L.)). After exclusion of the proviso the remaining part of the 1976 Order retains its meaning and by and large gives effect to the main object of the Council of Ministers which was generally to extend suspension for a further period of time.

In the result, the appeal is allowed with costs here and in the Court below. The case is remitted to the District Court for trial.

Appeal allowed with costs here and in the Court below. Case remitted to District Court for trial.