

1982 February 26

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MODESTOS PITSILLOS,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE DISTRICT OFFICER NICOSIA,
2. THE MINISTER OF INTERIOR,

Respondents.

(Case No. 247/77).

Elections—Presidential Elections—Recourse under Article 146 of the Constitution, against refusal to allow applicant to be nominated as a candidate—Jurisdictions under Articles 145 and 146 of the Constitution mutually exclusive—Validity of sub judice refusal so closely interconnected with the validity of the relevant Presidential Elections that it cannot be separated therefrom and cannot be brought within the jurisdiction created by Article 146—Only remedy was an election petition under Article 145—Recourse dismissed for lack of jurisdiction—Section 13 of the Elections (President and Vice-President of the Republic) Law, 1959 (Law 37/59) and sections 13, 15, 16 and 17 of the Elections (President and Vice-President of the Republic) (Supplementary Provisions) Law, 1959 (Law 42/59).

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The applicant in this recourse, under Article 146 of the Constitution, complained that he was not allowed by the respondent Minister of Interior to be nominated as a candidate in respect of the Presidential Elections of September 10, 1977.

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On the question whether in respect of the aforementioned complaint of the applicant the present recourse could have been made under Article 146 of the Constitution or whether the proper remedy was an election petition within the ambit of the jurisdiction which was created by means of Article 145 of the Constitution:

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Held, that because of the mutually exclusive nature of the

jurisdictions under Articles 145 and 146 of the Constitution and in view of the provisions of, inter alia, section 13 of Law 37/59 and sections 13, 15, 16 and 17 of Law 42/59, as well as in the light of the judgments of the Supreme Court in *Sepos v. The Presidential Election Returning Officer* (1968) 3 C.L.R. 82, *Pitsillos v. Ministry of Interior* (1971) 3 C.L.R. 137, and on appeal (1971) 3 C.L.R. 397, and *Zachariades v. Liveras* (Election Petition No. 4/81, in which judgment was given on February 12, 1982, and which is not reported yet), the Court is of the view that the matter of the validity of the refusal to afford to the applicant the opportunity to be nominated as a candidate is so closely interconnected with the validity of the relevant Presidential Elections that it cannot be separated therefrom and cannot be brought within the jurisdiction created by Article 146 of the Constitution; and that the only remedy, in the present instance, was an election petition within the jurisdiction created by Article 145 of the Constitution; accordingly, this recourse has to be dismissed for lack of jurisdiction of this Court to deal with it under Article 146.

Application dismissed.

Cases referred to:

Sepos v. The Presidential Election Returning Officer (1968) 3 C.L.R. 82;

Pitsillos v. Ministry of Interior (1971) 3 C.L.R. 137; (1971) 3 C.L.R. 397;

Zachariades v. Liveras (Election Petition No. 4/81, dated February 12, 1982, not reported yet);

In re Asdjian (1981) 1 C.L.R. 470.

Recourse.

Recourse against the decision of the respondent Minister of Interior whereby applicant was not allowed to be nominated as a candidate of the Presidential Elections of September 10, 1977.

A. *Eftychiou*, for the applicant.

R. *Gavrielides*, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

TRIANTAFYLIDIS P. read the following judgment. In the present case the applicant complains, in effect, that he was not

allowed by the respondent Minister of Interior to be nominated as a candidate in respect of the Presidential Elections of September 10, 1977.

From the material before me it appears that towards the end of August 1977, when the applicant had gone to the Ministry of Interior in order to obtain the relevant nomination forms, the Returning Officer, who comes under the respondent Minister, refused to furnish him with the aforesaid forms in pursuance of the provisions of section 10(4) of the Elections (President and Vice-President of the Republic) Law, 1959 (Law 37/59), which has been continued in force by means of the Electoral (Temporary Provisions) Law, 1963 (Law 71/63) and, also, by means of the Bye-Election of the President of the Republic (Temporary Provisions) Law, 1977 (Law 57/77). Also, the relevant provisions of the Elections (President and Vice-President of the Republic) (Supplementary Provisions) Law, 1959 (Law 42/59) appear to have been continued in force by means of Laws 71/63 and 57/77. It is true that Law 42/59 is not expressly mentioned in either of the aforementioned two Laws 71/63 and 57/77, but, in my opinion, its said relevant provisions have remained operative in view of the continuance in force of, inter alia, the aforesaid Law 37/59 and of section 5 of the Elections (President and Vice-President of the Republic) (Amendment) Law, 1959 (Law 41/59), both of which were continued in force by means of Laws 71/63 and 57/77.

The ground on which the nomination forms were not supplied to the applicant was that, allegedly, his name did not appear in the Register of Electors and that, therefore, he was not entitled to become a candidate for the Office of the President of the Republic.

I have invited arguments from the parties on the issue of whether in respect of the aforementioned complaint of the applicant the present recourse could have been made under Article 146 of the Constitution or whether the proper remedy was an election petition within the ambit of the jurisdiction which was created by means of Article 145 of the Constitution.

Because of the mutually exclusive nature of the jurisdictions under Articles 145 and 146 of the Constitution and in view of the provisions of, inter alia, section 13 of Law 37/59 and sections

13, 15, 16 and 17 of Law 42/59, as well as in the light of the judgments of our Supreme Court in *Sepos v. The Presidential Election Returning Officer* (1968) 3 C.L.R. 82, *Pitsillos v. Ministry of Interior* (1971) 3 C.L.R. 137, and on appeal (1971) 5 3 C.L.R. 397, and *Zachariades v. Liveras* (Election Petition No. 4/81, in which judgment was given on February 12, 1982, and which is not reported yet), I am of the view that the matter of the validity of the refusal to afford to the applicant the opportunity to be nominated as a candidate is so closely inter-
10 connected with the validity of the relevant Presidential Elections that it cannot be separated therefrom and cannot be brought within the jurisdiction created by Articles 146 of the Constitution; and that the only remedy, in the present instance, was an election petition within the jurisdiction created by
15 Article 145 of the Constitution.

It is to be noted that in the aforementioned cases of *Pitsillos* and *Zachariades* the recourses were filed after an election had taken place and this makes it even more obvious why the remedy available to the applicants in the circumstances of those
20 particular cases was only by way of an election-petition. In the present case, and in the *Sepos* case, supra, the recourses were filed before the dates of the respective elections, but the relevant legislative provisions clearly indicate that an eventual election petition was the only available remedy in respect of
25 the situations complained of by the applicants; on the other hand the case of *In re Asdjian* (1981) 1 C.L.R. 470, belongs to a category which is altogether different from that to which the present case and the cases of *Sepos*, *Pitsillos* and *Zachariades* supra, belong.

30 In the light of all the foregoing this case has to be dismissed for lack of jurisdiction of this Court to deal with it under Article 146.

I shall not, however, make any order as to its costs.

35 *Application dismissed. No order as to costs.*