

1983 May 30

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.

LOIZOS PHILIPPOU SEPOS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE CHIEF RETURNING OFFICER FOR THE PRESI-  
DENTIAL ELECTIONS OF 13TH FEBRUARY, 1983,

*Respondent.*

(Case No. 87/83).

5 *Elections—Presidential elections—Declaration of nomination papers  
as invalid—Can be challenged by means of an election petition  
under Article 145 of the Constitution—Jurisdiction of the Court  
under Article 146 cannot be invoked—Section 58(στ) of the Elec-  
tion of Members of the House of Representatives Law, 1979  
(Law 92/79) (applicable to Presidential elections by virtue of  
section 41A(1) of Law 81/82).*

10 The applicant being desirous of contesting the Presidential Ele-  
ction which was to be held on 13.2.83 deposited the relevant  
nomination papers. Upon an objection in connection with  
the nomination papers the respondent declared same invalid and  
hence this recourse under Article 146 of the Constitution.

*On the preliminary objection that the subject-matter of the recou-  
rse is not within the ambit of Article 146 of the Constitution:*

15 *Held*, that an election may be declared void, on an election  
petition, under Article 145 of the Constitution, on the ground  
that a declaration of the invalidity of any nomination papers  
should not have been made (see section 58(στ) of the Election  
of Members of the House of Representatives Law, 1979 (Law  
20 72/79), which by virtue of s. 41A(1) of Law 81/82 applies to  
Presidential Elections); that since there exists a specific remedy

under Article 145 of the Constitution the subject matter of the recourse does not fall within the ambit of the jurisdiction under Article 146 of the Constitution and any complaint should have been pursued by means of an election petition under Article 145 of the Constitution. 5

*Application dismissed.*

**Cases referred to:**

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

*Pitsillos v. Minister of Interior* (1971) 3 C.L.R. 137; (1971) 10  
3 C.L.R. 397 (C.A.).

*Pitsillos v. The Republic* (1982) 3 C.L.R. 676; affirmed on appeal vide R.A. 268 decided on 29.4.83 not reported).

**Recourse.**

Recourse against the decision of the respondent whereby applicant's nomination papers for the Presidential Elections of the 13.2.1983 were declared invalid. 15

Applicant appeared in person.

*N. Charalambous*, Senior Counsel of the Republic, for the respondent. 20

*Cur. adv. vult.*

LORIS J. read the following decision. The undisputed facts of the present recourse are very briefly as follows:

The applicant, a Greek Cypriot, being desirous of contesting the Presidential Election which was to be held on 13.2.83, presented himself on 3.2.83 at 11.50 a.m. before the respondent Returning Officer of the elections in question and deposited with him, his (applicant's) nomination papers consisting of Form 3 and Form 4, as envisaged by subsections (2) and (3) of section 10 of the Elections (President and Vice-President of the Republic) Law of 1959 - Law No. 37/59 - which was re-enacted and amended by Law 81/82; the applicant submitted together with his nomination papers an official receipt for the amount of C£500 being the "deposit by candidate" envisaged by section 11(1) of Law 37/59 as amended by section 9 of Law 81/82. 25  
30  
35

It is apparent from the sub judge decision, which is in the file and the reasons of the respondent appended thereto, that an objection was taken under section 13 of Law 37/59, in connection with the nomination papers of the applicant, and the respondent acting pursuant to the provisions of section 13(3) of Law 37/59 "with the least possible delay", decided on the objection and allowing same declared invalid the nomination papers of the applicant informing the latter of his said decision by letter dated 3.2.83, which is the sub judge decision before me.

10 The applicant filed in person on 28.2.83 the present recourse impugning the aforesaid decision of the respondent praying, inter alia, for a declaration to the effect that the sub judge decision is null and void being "contrary to the Constitution and unlawful as it was taken in excess and/or abuse of power".

15 Applicant bases his present recourse on Articles 40 and 146 of the Constitution and in effect complains that the respondent Returning Officer acted in excess of power and under a misconception of law declaring invalid applicant's nomination papers for candidature in the aforesaid elections.

20 The respondent filed his opposition on 11.4.83 raising a preliminary objection to the effect that the subject matter of the present recourse is not within the ambit of Article 146 of the Constitution.

25 On 20.4.83 when the present case came before me for directions, I have fixed the preliminary legal issue, which goes to the jurisdiction of this Court, for hearing on 4.5.83, explaining at the same time to the applicant in simple language that it would be advisable to brief an advocate at least for the hearing of the preliminary legal issue. Applicant, who understood perfectly well the position, agreed but he preferred to fight his application in person "as the advocates cost much". He agreed that the legal issue be heard first and laid stress to the fact that he will place "everything in plain language before the Court" and he relies on the decision of the Court.

35 On 4.5.83 at the hearing of the preliminary legal issue, learned counsel for the respondent elaborated on his objection to the jurisdiction raised in the opposition, submitting in effect that the subject-matter of the present recourse was not within the

ambit of Article 146 of the Constitution but could only be raised by means of an election petition pursuant to Article 145 of the Constitution.

His submission was thus framed:

- (a) Law 81/82 re-enacted and amended the basic Electoral Law on Presidential Elections, Law No. 37/59. 5
- (b) The insertion of a new section in the old law, notably section 41A (by means of section 21 of Law 81/82) made the provisions of Law 72/79 regulating the Election of Members of the House of Representatives applicable mutatis mutandis in the case of Presidential Elections. 10
- (c) In particular, section 41A(1)(γ) extends the applicability of election petitions, envisaged by sections 57 and 58 of Law 72/79, to the case of presidential elections as well. 15
- (d) As there is specific remedy i.e. election petition envisaged by section 58 (στ) in cases of declaration of invalidity of nomination papers by the Returning Officer, which is the case in hand, 20

the complaint should be pursued by means of election petition under Article 145 and not by a recourse under Article 146 of the Constitution.

Counsel relied mainly on the case of *Sepos v. The Presidential Election Returning Officer*, (1968) 3 C.L.R. 82 and invited the Court to find that it had no competence to deal with the present case. 25

The applicant who was unassisted by counsel, argued vehemently that he possessed at all times the qualifications required by Article 40 of the Constitution and submitted that "no law could ever alter Article 40". 30

The applicant proceeded further making an extensive reference to the facts of the main recourse reverting on occasions to Article 40 when I was attempting to assist him by pointing out to him that at this stage we are not trying the merits of the case and that he should confine himself on the preliminary legal objection. 35

Article 40 of the Constitution reads as follows:

“A person shall be qualified to be a candidate for election as President or Vice-President of the Republic if at the time of election such person -

- 5 (a) is a citizen of the Republic;
- (b) has attained the age of thirty-five years;
- (c) has not been, on or after the date of the coming into operation of this Constitution, convicted of an offence involving dishonesty or moral turpitude or is not under  
10 any disqualification imposed by a competent court for any electoral offence;
- (d) is not suffering from a mental disease incapacitating such person from acting as President or Vice-President of the Republic.”

15 Section 6 of Law 81/82 which replaced section 5 of Law 37/59 provides that the qualifications of a candidate are those envisaged by Article 40 of the Constitution.

So, Article 40 of the Constitution provides for the qualifications of a candidate, and as the learned President of this Court  
20 observed in the case of *Sepos v. The Presidential Election Returning Officer*, supra, at p. 87, “it does not, itself, confer on this Court competence to deal with any issue concerning such requirements”.

Once Article 40 of the Constitution does not confer on this  
25 Court competence does Article 146 (the other leg on which the present recourse is based) confer such a competence?

In this connection it is necessary to examine the present state of the legislative provisions in force as regards Presidential Elections:

30 The law in force today is the Law Re-enacting and Amending the Elections (President and Vice-President of the Republic) Law of 1959, Law of 1982 (No. 81/82).

Under section 13(3) of Law 37/59 (as re-enacted) the Returning Officer may decide on every objection and “if allowing  
35 the objection may be reversed on any election petition questioning the election.”

Furthermore, under section 41A (1) of Law 81/82 the provisions of the law of Election of Members of the House of Representatives of 1979 (Law 72/79) are applicable mutatis mutandis in the case of Presidential elections and section 58 (στ) of Law 72/79 provides that an election may be declared void, on an election petition, on the ground that a declaration of the invalidity of any nomination papers should not have been made. 5

Thus it is clear that the Electoral Law in force provides a specific remedy - under Article 145 of the Constitution - against a declaration of invalidity of nomination papers by the Returning Officer, such as the one complained of by the applicant in the present recourse. 10

Once a specific remedy exists under Article 145 of the Constitution can the applicant invoke the general competence of Article 146? 15

This question was originally decided by the learned President of this Court in the case of *Sepos v. The Presidential Election Returning Officer*, supra, at p. 89, as follows:

“I am of the view that the matter of the validity of nomination of papers is intrinsically connected with the validity of an election as such, and it cannot be separated therefrom and be brought under a general competence - such as that by virtue of Article 146 - once for the validity of an election there exists a specific competence - that by virtue of Article 145. (See in this respect the Decision of the French Council of State given in the case of *Eigner* on the 4th June, 1954).” 20 25

The above principle was reiterated again by the learned President of this Court, on a similar occasion in connection with parliamentary elections, in the case of *Pitsillos v. The Minister of Interior*, (1971) 3 C.L.R. 137, where it was held (at p. 139) that “The applicant could attack the validity of the parliamentary elections only by means of an election petition under Article 145 of the Constitution and the appropriate legislation, and not by recourse under Article 146 of the Constitution.” 30 35

This latter case was affirmed on appeal (vide *Pitsillos v. The Minister of Interior*, (1971) 3 C.L.R. 397.

Very recently in the case of *Pitsillos v. The Republic*, (1982) 3 C.L.R. 676, the learned President of this Court had the opportunity to repeat (and his decision was affirmed on appeal - vide R.A. 268 decided on 29.4.83, which will not be reported) that

5 "Because of the mutually exclusive nature of the jurisdiction under Articles 145 and 146 of the Constitution ..... 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

10 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."

15 From the above it is abundantly clear that the subject-matter of the present recourse does not fall within the ambit of the jurisdiction under Article 146 of the Constitution and any complaint should be pursued by means of an election petition under Article 145 of the Constitution.

20 In the result the preliminary objection to the jurisdiction is sustained and the present recourse is hereby dismissed.

Applicant to pay £30 costs of the respondent.

*Recourse dismissed. Applicant to pay £30,- costs.*