

1984 December 20

[A. LOIZOU, DEMETRIADES AND STYLIANIDES, JJ.]

MÓDESTOS PÍTASILLOS,

Appellant-Plaintiff.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE ATTORNEY-GENERAL OF THE REPUBLIC,

Respondent-Defendant.

(Civil Appeal No. 6603).

Constitutional Law—Liability of the Republic under Article 172 of the Constitution—Principles applicable—Falsification of Register of Elections by Officers of the Republic for the purpose of preventing appellant from nomination as a candidate in a by-election for the Presidency of the Republic—Appellant entitled to damages under the above Article—Violation of his right to be nominated as a candidate not amenable to the revisional jurisdiction of the Supreme Court under Article 146 of the Constitution and his claim for damages is not subject to the prerequisite of an annulling decision of the act complained of—Measure of damages. 5
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Damages—Violation of the right to be nominated as a candidate in the by-election for the Presidency of the Republic—Damages under Article 172 of the Constitution payable—Measure of damages.

Constitutional Law—Human rights—Right to be nominated as a candidate in any election—Violation of. 15

The appellant was the leader of an organization with a very negligible following called the Justice Party. As he intended to contest the by-election for the Presidency he checked the copy of the register of electors posted at the offices of the Improvement Board of Ayios Dhometios and he ascertained that his identity card, his name and surname as well as his address were duly and correctly recorded. He, also, attended the District Officer's office where he again verified that all his particulars 20

were correctly recorded in the register of electors. Thereafter he started a pre-election campaign; but when he attended the office of the returning officer for the purpose of obtaining the necessary nomination papers he was informed that his name was not included in the register of electors. As a result appellant was prevented from being a candidate in the above election. The trial Court dismissed his action for damages having held that no action could lie under Article 146.6 of the Constitution as the prerequisite of annulment by the Supreme Court of an administrative executory act was not established.

Hence this appeal.

After finding that the register was interfered with by officers of the Republic for the purpose of preventing the appellant from nomination as a candidate in the by-election for the President:

Held, (1) that the liability of the state under Article 172 of the Constitution is not co-extensive or co-incidental with the liability of a master for the wrongs of his servants under Cap. 148; that liability under Cap. 148 is not a prerequisite for liability under Article 172; that the liability of the State under Article 172 is pre-eminently a species of public law liability; that liability attaches not only when the wrongful act or omission occurs in the discharge of the duties of officers or authorities of the Republic but also when the officer or authority deviates, exceeds or abuses his authority while carrying out his duties; that the falsification of the register of electors and/or its alteration so as to change the surname and identity card number of the appellant is a wrongful act; that the appellant was prevented from exercising a right safeguarded to him by the Constitution, the International Covenant on Civil and Political Rights and the relevant electoral laws; and that, therefore, he is entitled to damages payable by the Republic under Article 172 of the Constitution; accordingly the trial Court misdirected itself as to the Law; that the violation on this right of the appellant is not amenable to the revisional jurisdiction of the Supreme Court under Article 146 of the Constitution and the claim for damages is not subject to the prerequisite of an annulling decision of the act complained of.

(2) That the appellant is entitled to recover as damages the amount of £2,000 he spent for the election campaign and

he is further awarded £1,000 general damages.

Appeal allowed.

Cases referred to:

Kyriakides v. Republic, 1 R.S.C.C. 66 at p. 74;

Vrahimi and Another v. Republic, 4 R.S.C.C. 121; 5

Georghiou v. Attorney-General of the Republic (1982) 1 C.L.R. 938;

Alexandrou v. Attorney-General (1983) 1 C.L.R. 41;

Rookes v. Barnard [1964] 1 All E.R. 367 at pp. 408, 410.

Appeal. 10

Appeal by plaintiff against the judgment of the District Court of Nicosia (Kourris, P.D.C. and S. Nicolaides, D.J.) dated the 27th June, 1983 (Action No. 2184/82) whereby his claim for general and special damages for irreparable moral and social harm and incalculable financial loss which the plaintiff sustained due to unlawful acts of the defendants was dismissed. 15

Appellant appeared in person.

M. Kyprianou, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult. 20

A. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Stylianides.

STYLIANIDES J.: This appeal is directed against the judgment of the District Court of Nicosia whereby the claim of the appellant was dismissed on the ground that the District Court had no jurisdiction to entertain this action. 25

The claim of the appellant, as it appears in the indorsement to the writ of summons, is as follows:-

“Αποζημιώσεις γενικής και ειδικάς δια ανεπανόρθωτον ηθικήν και κοινωνικήν προσβολήν και ανυπολόγιστες οικονομικές ζημιές, τις οποίες υπέστη ο ενάγων συνεπεία των παρανόμων ενεργειών των εναγομένων, υπηρετών και/ή υπαλλήλων των, 30

οίτινες καθ' υπέρβασιν εξουσίας συνωμώτησαν με τους υπευθύνους του Προεδρικού Μεγάρου και τροποποίησαν το όνομα του ενάγοντος ως και την ταυτότητα αυτού στερώντας του ούτω το πολιτικό δικαίωμα να κατέλθη στις προεδρικές εκλογές για την περίοδο 10.9.1977 μέχρι και του Φεβρουαρίου 1978".

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("General and special damages for irreparable moral and social harm and incalculable financial loss which the plaintiff sustained due to the unlawful acts of the defendants, their servants and/or officers who in excess of power conspired with those in charge at the Presidential Palace and changed the name as well as the identity card number of the plaintiff thereby depriving him of his political right to be a candidate at the presidential elections for the period 10.9.1977 to February, 1978").

The appellant gave evidence before the trial Court and called four witnesses. No evidence was adduced by the respondent.

The uncontested facts, as found by the trial Court, are:-

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After the death of the President of the Republic, the late Archbishop Makarios III, on 3rd August, 1977, within the time prescribed by Article 44.4 of the Constitution a writ of by-election to fill the vacancy of the office of the President was issued for the 10th September, 1977. The Registrar—the District Officer—for the administrative district of Nicosia prepared a register of electors. Copies of the register were placed at conspicuous places, as provided by law.

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The appellant is the leader of an organization with a very negligible following in the country, called the Justice Party. In the past he was an unsuccessful candidate in elections for Members of the House of Representatives. As he intended to contest the by-election for the presidency, he checked the copy of the register of electors posted at the offices of the Improvement Board of Ayios Dhometios and he ascertained that his identity card, his name and surname as well as his address were duly and correctly recorded.

On 10.8.1977 he attended the District Officer's—Registrar's—office where he again verified that all his particulars were correctly recorded in the register of electors. At his request

a photocopy of the page in which his name appeared was given to him—(See exhibit No. 4).

He and his small party commenced a pre-election campaign. They issued pamphlets and delivered speeches at various villages, especially in the Nicosia District. 5

On 20.8.1977 a notice of election of the President of the Republic was published pursuant to s.9(6) of Laws 37/59—57/77. The nomination date was the 31st August, 1977. Nomination papers could be obtained from the office of the Returning Officer at any time between 8.00 a.m.—1.00 p.m. 10
daily except Sundays—(See exhibit No. 3).

The appellant, being a person qualified to be a candidate for election as President in accordance with the provisions of Article 40 of the Constitution and the Law, attended the office of the Returning Officer with members of the political bureau of his party on 24th August, 1977, to obtain the necessary forms. 15
There he was told by the Returning Officer that no by-election would be held as the other parties agreed that no election should be held, meaning that there would be only one candidate and thus save the Republic from the expense of the by-election. 20
Anastassiou, the Returning Officer, further asked the appellant to revert to his office on the following day.

On 25th August, 1977, the appellant attended the office of the Returning Officer alone. The Returning Officer refused to give him the necessary forms. 25

On 26 August, 1977, at 11.00 a.m., the appellant, accompanied by five members of his election committee, visited the office of the Returning Officer and insisted that the necessary forms be given to him. After some discussion the Returning Officer told him: "Let's look in the register to see if your name is O.K.". The appellant retorted that he himself had checked the register of electors both at the offices of the Improvement Board and at the office of the District Officer and all his particulars were correctly recorded therein. The Returning Officer informed him there and then that neither the name of the appellant nor his identity card were in the register, saying that a name of Modestos *Pirillos* instead of *Pitsillos* and another number 30
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than his identity card were in the register. It is noteworthy that, according to the schedule, the identity card the full name and address of an elector should be in the register.

5 The appellant protested and added: "Who did this?" Anastassiou then advised the appellant to resort to Mr. Phylachtou who was the Registrar for the Nicosia District. Thereupon the appellant said to the Returning Officer: "Why
10 you did not say such a thing to me on the 24th and 25th August, 1977, when I attended your office for the forms?" The appellant rushed to the office of the District Officer. The time, however, was over. The 26th day of August was the last day for the correction of the register of electors.

15 The trial Court made the following finding on p. 52 of the record:-

"From the aforesaid evidence we are satisfied that the name of the plaintiff (appellant) and his identity card were correctly recorded in the register of electors which was posted at the offices of the Improvement Board of Ayios
20 Dhometios and in the register of electors which was kept at the office of the District Officer. It appears that for reasons not known to us, his name was altered to Modestos Pirillos with an erroneous number of identity card at a time when he could not take measures for its correction
25 to enable him to be nominated as a candidate for the by-election of the President of the Republic of Cyprus".

30 The trial Court further said that they were not satisfied that there was a conspiracy between servants and officers of the Republic and persons responsible at the Presidential Palace for the preclusion of the appellant to be nominated as a candidate for the office of the President.

35 On 3rd September, 1977, the appellant filed Recourse under No. 247/77 in the registry of the Supreme Court seeking a declaration that he had the right to vote and be elected and that the register of electors by mistake or purposely was interfered with as to record not the actual name of the appellant, and annulment of the decision to preclude him and/or prohibiting him and/or depriving him of the right to be nominated as candidate for the office of the President of the Republic.

The President of the Court dismissed the recourse as the act or decision complained of was not justiciable under Article 146 of the Constitution because of the mutually exclusive nature of the jurisdictions under Articles 145 and 146 of the Constitution—((1982) 3 C.L.R. 676). The judgment of the President was confirmed by the Full Bench of the Court in Revisional Appeal No. 268—(See exhibit No. 1). The Supreme Court held that the appellant could invoke the jurisdiction of the Supreme Court under Art. 145 of the Constitution by an election petition.

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The trial Court held that no action could lie under Article 146.6 of the Constitution as the prerequisite of annulment by the Supreme Court of an administrative executory act was not established, and dismissed appellant's action.

The State prior to Independence could not be sued before the Courts as the medieval maxim of the English Constitution "The King does no wrong" was applicable. The Constitution of the Republic opened new avenues for the aggrieved citizen for the vindication of his rights against the State.

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Article 172 of the Constitution provides:-

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“Η Δημοκρατία ευθύνεται δια πάσαν ζημιογόνον άδικον πράξιν ή παράλειψιν των υπαλλήλων ή αρχών της Δημοκρατίας εν τη ασκήσει των καθηκόντων αυτών ή κατ' επίκλησιν ασκήσεως των καθηκόντων αυτών. Ο Νόμος θέλει καθορίσει τα περί ευθύνης της Δημοκρατίας”.

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("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. A law shall regulate such liability").

This Article clearly aimed at remedying the situation existing before the coming into force of the Constitution. The principle embodied in Article 172 has been given effect, inter alia, in the Constitution by means of paragraph 6 of Article 146 in respect of all matters coming within the scope of such Article 146.

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In respect of all wrongful acts or omissions referred to in Article 172 and which acts or omissions come within the scope

of Article 146 an action for damages lies in a civil Court only under paragraph 6 of such Article, consequent upon a judgment of this Court under paragraph 4 of the same Article, and in such cases an action does not lie direct in a civil Court by virtue of the provisions of Article 172—(*Phedias Kyriakides v. The Republic (Minister of Interior)*, 1 R.S.C.C. 66, at p. 74).

Article 172 of the Constitution was judicially considered by the Supreme Constitutional Court in *Eleni Vrahimi & Another v. The Republic (Attorney-General)*, 4 R.S.C.C. 121.

10 Liability of the Republic under Article 172 for injurious acts of its officers or authorities came up recently for consideration before the Supreme Court in *Symeon Georghiou v. The Attorney-General of the Republic*, (1982) 1 C.L.R. 938, and *Alexandrou v. The Attorney-General*, (1983) 1 C.L.R. 41, before two
15 differently constituted benches.

Article 172 defines the prerequisites for liability of the State for acts or omissions of its servants as well as the ambit of such liability.

The liability of the State under Article 172 is not co-extensive
20 or co-incidental with the liability of a master for the wrongs of his servants under Cap. 148. Liability under Cap. 148 is not a prerequisite for liability under Article 172. The liability of the State under Article 172 is pre-eminently a species of
25 public law liability. Liability attaches not only when the wrongful act or omission occurs in the discharge of the duties of officers or authorities of the Republic but also when the officer or authority deviates, exceeds or abuses his authority while carrying out his duties.

The falsification of the register of electors and/or its alteration
30 so as to change the surname and identity card number of the appellant is a wrongful act. No law authorises such an act. This act, according to the presumption of regularity, was committed by the servants or authorities of the Republic either in the exercise or the purported exercise of their duties. The
35 register of electors, photocopy of which is exhibit No. 4, records correctly all the particulars of the appellant. The only inescapable and reasonable inference is that the register was interfered with by officers of the Republic at a date or time prior to 11.00 a.m. of the 26th August, 1977. This change coupled

with the uncontradicted conversation between the appellant and the Returning Officer leads to the sole inference that this was done for the purpose of preventing the appellant from nomination as a candidate in the by-election for the presidency.

The appellant was prevented from exercising a right safeguarded to him by the Constitution, the International Covenant on Civil and Political Rights, Article 25(b), which was ratified by Law 14/69, and the relevant electoral laws. In a democracy this is a fundamental right. The principle of "Government by the people for the people" safeguards the right of the citizen to be a member of the electoral body and to be nominated as a candidate in any election, subject to the limitation that he possesses the prescribed qualifications. An infringement of such a right, irrespective of special or pecuniary damage, results always in general damages. The citizen who by act or omission of any officer or authority of the State is deprived of his right is, to say the least, entitled to just compensation.

The appellant is entitled to damages payable by the Republic under Article 172 of the Constitution. The trial Court misdirected itself as to the Law. The violation of this right of the appellant is not amenable to the revisional jurisdiction of the Supreme Court under Article 146 of the Constitution and the claim for damages is not subject to the prerequisite of an annulling decision of the act complained of. This appeal shall be allowed.

All the material relating to damages is before us and, therefore, we see no reason to send the case back to the trial Court for assessment of the damages.

The question of the measure of damages gave us some concern. "Damages", Pratt, C.J., said two centuries ago, "are designed not only as a satisfaction to the injured person, but likewise as a punishment to the guilty, to deter from any such proceeding for the future, and as a proof of the detestation of the jury to the action itself".

In *Rookes v. Barnard*, [1964] 1 All E.R. 367, it was held that exemplary damages are awarded when the constitutional right of a citizen is violated.

Lord Devlin commenting on this at p. 408 in *Barnard* case said:-

“For my part I should not wish, even if I felt at liberty to do so, to diminish its use in this type of case where it serves a valuable purpose in restraining the arbitrary and outrageous use of executive power”.

5 And at p. 410 he said in enumerating the categories where exemplary damages are awarded:—

10 “The first category is oppressive, arbitrary or unconstitutional action by the servants of the government. I should not extend this category,—I say this with particular reference to the facts of this case.—to oppressive action by private corporations or individuals. Where one man is more powerful than another, it is inevitable that he will try to use his power to gain his ends.....

15 The servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service”.

The chance of success of the applicant in the by-election was non-existent. The Justice Party has a negligible following.

20 According to the evidence of the appellant, this act or omission, for which this action, was done in order to save the Republic some hundred thousand pounds, the cost of holding a by-election. The motive, however, cannot exonerate the State from liability and is not a factor to be taken into consideration in the assessment of damages in this case.

25 Further to the general damages for the violation of the appellant’s right, the trial Court at p. 52 said:—

30 “From the evidence before us we are satisfied that £1,500.— were expended for the purchase of paper and printing, and £500.— were expended for petrol, food and other incidental expenses for the election campaign of the appellant but how much was spent by the appellant and how much by his party we cannot ascertain on the evidence before us”.

35 The trial Court found that £2,000.— were spent for the election campaign of the appellant until the date of the wrongful act. He was deprived of the right to take part in the elections as a candidate. The people in a modern society are organized

in political parties. The Constitution in a number of Articles recognizes the existence of political parties. They are either corporate or unincorporate bodies. They express the will and the political convictions of various groups in society. This is not only permissible but in a pluralistic society they are necessary institutions.

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He is entitled to recover as damages the amount found by the trial Court as spent, as aforesaid. We further award to the appellant in all the circumstances of this case £1,000.- general damages.

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In the result the judgment of the trial Court is set aside and judgment is given for the appellant against the respondent for £3,000.-.

With regard to costs, as the appellant—a layman—conducted his case both before the trial Court and before us in person, we award him £50.- costs for his actual expenses and loss of time.

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Appeal allowed with £50.- costs.