1984 April 12

[A. LOIZOU, SAVVIDES, PIKIS, JJ.]

ANDREAS DEMETRI KARANIKKI,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 4496).

Constitutional Law—Marriage—Article 22 *of the Constitution—"Law of the Republic....." in Article* 22.2(*b*) *and* (*c*) *of the Constitution—Does not exclude the Civil Marriage Law, Cap.* 279 *which pre-existed the Constitution—Because such a law is a valid Law of the Republic under Article* 188 *of the Constitution and by virtue of section* 29(1)(*b*) *of the Courts of Justice Law,* 1960 (*Law* 14/60).

In 1968, the appellant who belonged to the Greek Orthodox Church, contracted a civil marriage with a witness of Jehovah, under the provisions of the Civil Marriage Law, Cap. 279. In 1981 he went through an ecclesiastical marriage with a woman of the Greek-Orthodox faith; and he was, on these facts, prosecuted and convicted for bigamy.

Upon appeal against conviction counsel for the appellant contended that the civil marriage which took place in 1968, was void as in order to go through a civil marriage in accordance with Article 22.2(c)* of the Constitution, such marriage had to be performed only under the provisions of a Law of the Republic which the House of Representatives would make after the coming into operation of the Constitution; that such a Law has never been enacted by the House of Representatives and that the Marriage Law, Cap. 279 was in substance repealed by the said Constitutional provision and could not be retained in force by the transitional provisions of Article 188 which

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* *Article 22 is quoted in full at pp. 147-148 post.*

are subject to the provisions of the Constitution, including those of Article 22.

Held, per A. Loizou J., Savvides J. concurring, that the argument that only under a Law of the Republic which the House of Representatives would make a marriage could only validly be gone through, cannot stand as for all intents and purposes the Marriage Law, Cap. 279, with all its subsequent amendments, is a valid Law of the Republic under Article 188 of the Constitution, by virtue of section 29(1)(b) of Law 14/60, adopted and treated as such by the House of Representatives; accordingly the appeal must fail.

Per Pikis, J., that, in view of Article 188 of the Constitution, reference in Article 22.2(c) of the Constitution to a law of the House of Representatives was not meant to cast the Civil Marriage Law, Cap. 279 into oblivion but designed to indicate the legislative body of the Republic with competence to legislate on the regulation of marriages between Greek-Orthodox and members of other religions, other than members of the Turkish Community.

Cases referred to:

Police v. *Constantinou*, 18 C.L.R. 84;

Christodoulou v. *Republic*, 1 R.S.C.C. 1;

Loizides and Others v. *Republic*, 4 R.S.C.C. 107;

Attorney-General of the Republic v. *Afamis*, 1 R.S.C.C. 212;

Aspris v. *Republic*, 2 R.S.C.C. 57;

Michael v. *Malkiel* (1976) 1 C.L.R. 272 at p. 275.

Appeal against conviction.

Appeal against conviction by Andreas Demetri Karanikki who was convicted on the 16th January, 1984 at the District Court of Famagusta (Criminal Case No. 428/83) on one count of the offence of bigamy contrary to section 179 of the Criminal Code, Cap. 154 and was sentenced by G. Nicolaou, D.J. to six months' imprisonment.

A. Poetis, for the appellant.

A.M. Angelides, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgments were read.

A. Loizou J.: The appellant was found guilty and sentenced to six months' imprisonment on a charge of bigamy contrary to section 179 of the Criminal Code, a section in respect of which it was held in the case of the *Police* v. *Manoli Constantinou*, 18 C.L.R., p. 84, that except for certain express provisions which this section contains, same is to be construed in the same way as section 57 of the Offences Against the Person Act 1861, notwithstanding the difference in wording between the two provisions.

The particulars of the offence were that the appellant on the 12th September, 1982, at Paralimni, in the district of Famagusta, being the husband of Paraskevou Nicou Christou, of Xylophagou and during the life-time of his said wife, married Eleni Georghiou Kamilari, of Paralimni. The facts of the case as found by the learned trial Judge are not in dispute.

On the 18th May, 1968, the appellant who belongs to the Greek Orthodox Church, married under the provisions of the Marriage Law, Cap. 279, Paraskevou Nicou Christou, who had since 1962 renounced the Greek Orthodox Church and became a Witness of Jehovah. They did go through this civil ceremony of marriage as the provisions of Article 111 of the Constitution were applicable only to one of the parties to the marriage, namely, the appellant, and the other party was not a member of the Turkish community (see Article 22.2(c) of the Constitution). Thereafter, they lived together and there were two issues of the said marriage. As a result, however, of certain friction between them, the appellant left his family in May 1980.

On the 29th October, 1981, the appellant applied to the proper Authority of the Greek Orthodox Church and secured a Certificate of Freedom for the purpose of marrying Eleni Georghiou Kamilari from Paralimni. He did not disclose the existence of his previous civil marriage through which he had gone in May 1968 and which had not and still has not been dissolved.

On the 12th September, 1982, having followed all the necessary formalities there took place in the Church of St. John at Paralimni a wedding ceremony between the appellant and

the said Eleni Georghiou Kamilari, in accordance with the rites of the Greek Orthodox Church. On the 15th September, 1983, Paraskevou Nicou Christou reported to the Police that the appellant had married for a second time and the investigations started

On the 7th October, 1982, in a voluntary statement made to the Police, which has been produced as an exhibit, the appellant claimed that Paraskevou Nicou Christou was never a Witness of Jehova and that before he went through the ecclesiastical wedding with Eleni Georghiou Kamilari, he sought the advice of a Police Sergeant, relative of his, whether a divorce had to be obtained before he went through the marriage and he was assured by that person that there was no such a necessity as his marriage to Paraskevou was void as a marriage between two Christian Orthodox Greeks. These allegations were not accepted by the trial Court which accepted in this respect the evidence of Paraskevou Nicou Christou to the effect that she was a Witness of Jehovah and the appellant knew very well that fact, hence they went through a civil marriage.

It was the case before the trial Judge and it was on this only ground that the case has been argued before us that the civil marriage which took place on the 18th May, 1968, was void as in order to go through a civil marriage in accordance with Article 22.2(c) of the Constitution, such marriage had to be performed only under the provisions of a Law of the Republic which the House of Representatives would make after the coming into operation of the Constitution; that such a Law has never been enacted by the House of Representatives and that the Marriage Law, Cap. 279 was in substance repealed by the said Constitutional provision and could not be retained in force by the transitional provisions of Article 188 which are subject to the provisions of the Constitution, including those of Article 22.

Article 22.1, 22.2 (a), (b) and (c) of the Constitution provides as follows:-

"22.1 Any person reaching nubile age is free to marry and to found a family according to the law relating to marriage, applicable to such person under the provisions of this Constitution.

2. The provisions of paragraph 1 of this Article shall, in the following cases, be applied as follows:

(a) if the law relating to marriage applicable to the parties as provided under Article 111 is not the same, the parties may elect to have their marriage governed by the law applicable to either of them under such Article;

(b) if the provisions of Article 111 are not applicable to any of the parties to the marriage and neither of such parties is a member of the Turkish Community, the marriage shall be governed by a law of the Republic which the House of Representatives shall make and which shall not contain any restrictions other than those relating to age, health, proximity of relationship and prohibition of polygamy;

(c) if the provisions of Article 111 are applicable only to one of the parties to the marriage and the other party is not a member of the Turkish Community, the marriage shall be governed by the law of the Republic as in sub-paragraph (b) of this paragraph provided:

Provided that the parties may elect to have their marriage governed by the law applicable, under Article 111, to one of such parties in so far as such law allows such marriage".

By virtue of Article 188.1 of the Constitution laws otherwise valid were saved and continued to be in force on the date of the coming into operation of the Constitution under and subject to the provisions of the said Article and to the extent to which these were not contrary to the provisions of the Constitution (see *Miltiades Christodoulou and The Republic*, 1 R.S.C.C. p. 1; *Loizides Others and The Republic*, 1 R.S.C.C. p. 107: *The Attorney-General of the Republic and Andreas Costa Afamis*, 1 R.S.C.C. p. 212; *Aspris and The Republic*, 4 R.S.C.C. p. 57).

The Marriage Law, Cap. 279 was one of the laws so saved under Article 188 of the Constitution and further adopted by the House of Representatives as a Law of the Republic by virtue of section 29(1)(b) of the Courts of Justice Law 1960, a Law passed by the House of Representatives and providing for the application of the Laws saved by Article 188.1 of the Consti-

tution which include Cap. 279 "subject to the conditions provided therein save in so far as other provision has been or shall be made by a Law made or becoming applicable under the Constitution". See *Michael* v. *Malkiel* (1976) 1 C.L.R. p. 272 at p. 275). Furthermore under section 29(2)(b) the High Court in exercise of the jurisdiction conferred by paragraph (b) of section 19 shall apply the Law relating to MatrimonialCauses which was applied by the Supreme Court of Cyprus on the day preceding Independence Day, as may be modified by any Law made under the Constitution.

Every civil marriage that has been gone through in the Republic was celebrated in accordance with its provisions as being the law prescribed by the aforesaid provisions of the Constitution. Furthermore it was so treated as being alive and that it continued to be in force in the Republic, and rightly so, by the House of Representative, by the enactment of four amending laws, namely The Marriage (Amendment) Law of 1962, 1966, 1969 and 1980 (Nos. 4/1962, 61/1966, 79/1969 and 2/1980). Characteristically it may be pointed out that the amending Law of 1962 and mutatis mutandis all subsequent amending laws. reads as follows:-

"A LAW TO AMEND THE MARRIAGE LAW:

The House of Representatives enacts as follows:

1. This Law may be cited as the Marriage (Amendment) Law, 1962, and shall be read as one with the Marriage Law (hereinafter referred to as 'the principal Law')".

It then proceeds to effect the intended amendments to which I need not refer.

The argument, therefore, that only under a Law of the Republic which the House of Representatives would make a marriage could only validly be gone through, cannot stand as for all intents and purposes the Marriage Law, Cap. 279, with all its subsequent amendments, is a valid Law of the Republic under Article 188 of the Constitution, by virtue of section 29(1)(b) of Law 14/60, adopted and treated as such by the House of Representatives.

For all the above reasons, I find the approach of the learned trial Judge on this issue to be a correct one and the conviction

of the appellant duly warranted in law and under the Constitution and therefore this appeal should be dismissed.

SAVVIDES J.: I had the opportunity of reading in advance the judgment of my brother Judge Loizou, J., and I am in agreement with the conclusions reached by him and also as to the fate of this appeal and I have nothing useful to add.

PIKIS J.: The appeal turns exclusively on the interpretation of the provisions of Article 22.2(e) of the Constitution, read in conjunction with the preceding paragraph of the same article. Such interpretation must be taken in order to resolve whether the Marriage Law - Cap. 279, providing for and regulating civil marriages, enacted in the days of colonial rule, survived the introduction of the Constitution. Article 188.1 of the Constitution saved laws in force before the inauguration of the Republic, unless provision to the contrary was made in the Constitution. The applicability of the provisions of this article of the Constitution is made expressly dependent on the remaining provisions of the Constitution, a fact signified by the words introducing this article, namely, "Subject to the provisions of the Constitution". Determination of the question is essential to pronounce on the validity of the conviction of the appellant for bigamy.

The facts that gave rise to the conviction of the appellant are briefly the following:

The appellant, a Greek-Orthodox, contracted, in 1968, a civil marriage with a witness of Jechova. As they belonged to different religious groups, they availed themselves of the provisions of Cap. 279. Thereafter, the appellant lived with his "wife" for a number of years and two children were born to them. When relations between them deteriorated, appellant felt free to marry again, unrestrained by the ties created by the marriage solemnized under the provisions of Cap. 279. So, he went through an ecclesiastical marriage with a woman of the Greek-Orthodox faith. On these facts, he was prosecuted and convicted for bigamy. His conviction rests on the base that his first marriage was valid and his second bigamous.

Counsel for the appellant argued before us, as he had done before the learned trial Judge, that Article 22.2(e) specifically

envisaged the enactment of a law by the House of Representatives for the regulation of a civil marriage and matters incidental thereto, between Greek-Cypriots, Cypriots members of the Orthodox Church and, non members of the Turkish community, belonging to a different religion. In consequence, the Marriage Law was rendered obsolete. It was not saved by the provisions of Article 188.1 because it was irreconcilable, in fact inconsistent with the provisions of Article 22.2(c) of the Constitution.

Nicolaou, D.J., dismissed the above submission as untenable. Construing the provisions of Article 22.2(b), made applicable by the provisions of the succeeding paragraph (c), he held that reference to a law of the House of Representatives was not meant to cast Cap. 279 into oblivion but designed to indicate the legislative body of the Republic with competence to legislate on the regulation of marriages between Greek-Orthodox and members of other religions, other than members of the Turkish community. I am of opinion this is a sound interpretation of Article 22.2(c) on a consideration of its objects and the constitutional scheme to save existing legislation and ensure legal continuity. Although it must be said that on a literal reading of the provisions of Article 22.2(c), the construction placed upon it by counsel for the appellant is neither unreasonable nor an impossible one. Below, I shall explain in more detail my reasons for agreeing with the interpretation favoured by the trial Court. They are the following:

(1) In enacting Article 188, the makers of the Constitution manifested unequivocally their intention to ensure legal continuity, by preserving legislation existing when the Constitution was introduced. It extended not only to legislation compatible with the express provisions of the Constitution, but every piece of legislation that could be saved by the powers vested in the Court to streamline legislation along the dictates and pattern of the Constitution. It is, therefore, improbable they intended to exclude legislation such as Cap. 279, perfectly reconcilable with the provisions of the Constitution.

(2) The application of many provisions of the Constitution necessitated either adjustment by judicial intervention under Article 188.1, or amendment of legislation. Yet

the constitutional legislator did not deem appropriate to provide for the enactment of a law by the legislative authorities of the Republic.

I shall mention but two of the Articles of the Constitution that necessitated sweeping changes in the Criminal Code—Cap. 154 and, the Criminal Procedure Law, notably. Article 11 and Article 12. Nevertheless, the enactment of a new law was not postulated for the implementation of the provisions of the Constitution.

(3) Article 87(c) conferred legislative power to Communal Chambers in relation to matters a personal status. This article of the Constitution does not, in terms, restrict the competence of legislative Chambers to cases where both parties, in the case of marriage, belong to the same community. Therefore, had it not been for the provisions of Article 22.2(c), legislative authority might be claimed by a Communal Chamber. To implement the intention of the makers of the Constitution to exclude regulation of matters bearing on the marriage, a matter of personal status, between persons belonging to different religions (other than members of the Turkish community) it was necessary to insert a specific provision in the Constitution to that end. This was accomplished by Article 22.2(c). Admittedly, constitutional intent in this area, could have been expressed in clearer language. The language used, though lacking in clarity, does not obscure or hide the intention of the constitutional makers, correctly identified by the trial Court.

For the reasons above given, and in agreement with Loizou J., I direct that the appeal be dismissed.

A. Loizou J.: In the result, this appeal is dismissed.

Appeal dismissed.