

1986 January 14

[A LOIZOU, DEMETRIADES, PIKIS, JJ.]

ATHANASSIOS POYIATZIS,

*Appellant-Respondent,*

1 CONSTANTINOS PILAVAKIS,  
2. MASTELLO LIMITED,

*Respondents-Applicants.*

*(Case Stated No. 219).*

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Constitutional Law—Constitution, Articles 30.1 and 157.2—  
The Rent Control Law 23/83, s. 4—The Rent Control  
Court established by the said Law—It is neither a Judicial  
Committee nor an Exceptional Court, but a Court of Law  
5 —Therefore, the provisions for its establishment do not  
contravene Article 30.1 of the Constitution—Further, its  
composition is not unconstitutional—The manner provided  
by s. 4(4) of Law 23/83 for the appointment of the lay  
members of the Rent Control Court does not violate the  
10 provisions of Article 157.2 of the Constitution nor does  
it violate the principle of separation of powers.

Constitutional Law—The Principle of Separation of State Powers  
—A central feature in the Constitution of Cyprus.

15 The Rent Control Court established by the Rent Control Law  
23/83—It is a Court of Law having powers to adjudicate  
disputes as provided by the said law.

The Rent Control Law 23/83—Sections 4, 11, and 12.

This appeal taken by way of Case Stated raises the  
issue of the constitutionality of the Rent Control Court.  
20 The specific grounds upon which the constitutionality of  
the Court was challenged are: (a) Lack of Power to ad-  
judicate which renders the Court an exceptional Court or  
Judicial Committee contrary to Article 30.1 of the Con-  
stitution and (b) Defective composition of the Court arising

from alleged impermissible involvement of the Executive branch in the appointment of lay members of the Court.

As regards question (a) it should be noted that the word "trial" is not mentioned in s. 4(1) of the Rent Control Law 23/83, but only the phrase "for the purpose of determining with all reasonable speed, the disputes referred to them....". 5

As regards question (b) it should be noted that s. 4(4) of the same law provides that the lay members of the Court are appointed by the Supreme Council of Judicature from a list prepared by the Minister of Justice. 10

*Held, dismissing the appeal:*

A) As regards question (a): I. Per Pikiis, J. Demetriadis, J. concurring: The power to resolve a dispute by reference to and in accordance with the rights of the parties under the Law is a fundamental attribute of Judicial process. The submission that the Rent Control Court lacks such power is unsound. Not only s. 4(1) of the Rent Control Law 23/83 providing for the establishment of the Court, but other sections of the same law (e.g. 11 and 12) make it abundantly clear that the Court is empowered to adjudicate upon a dispute referred to it in accordance and subject to the provisions of the said Law. 15 20

II. Per A. Loizou J.: The phrase in s. 4(1) of Law 23/83 "for the purpose of determining with all reasonable speed, the disputes referred to them..." must be completed by adding thereto the remaining phrase of the subsection which reads: "... arising with regard to any matter raised in the application of this Law including any incidental or supplementary matter". There is no merit in the allegation that the Law does not empower the Court to adjudicate. The power to order recovery of possession of premises, to determine the increase or decrease of rent or the determination of other incidental or supplementary matters are all disputes and adjudication upon them amounts to a resolution or determination of a dispute. The absence of the word "to try" from s. 4(1) of Law 23/83 does not render the Court a Judicial Committee or Exceptional Court. 25 30 35

5 B) As regards question (b): I. Per Pikis J.: The principle of separation of state powers, namely the Legislative, Executive and Judicial, is a central feature of the Constitution of Cyprus. Separateness and independence rule out direct as well as indirect subordination of one power to another as well as assumption or exercise of competence outside a power's sphere of Jurisdiction. Consistently with the said doctrine the appointment and promotion of Judges, as well as matters incidental thereto, were entrusted by 10 the Constitution to the Supreme Council of Judicature, a judicial body exercising judicial power. If the status of the lay members of the Rent Control Court is judicial then on the authorities of *Keramourgia* and *Pastellopoulos* (infra) the answer must necessarily be that the provisions of s. 4(4) of Law 23/83 are unconstitutional, whereas if 15 their status is purely advisory the answer must be that such provisions are not unconstitutional. Sub-section (5) of s. 4 of Law 23/83 makes it abundantly clear that their status is purely advisory. The decision making is solely the responsibility of the President of the Court, i.e. a Judge appointed in the manner provided by the Constitution. There is nothing inherently offensive to the doctrine of separation of powers to improvising ways of strengthening the amenity of the Court to bring judgment to bear on factual situations with a degree of hindsight as to particular areas of 25 social activities.

30 II. Per A. Loizou, J.: The resting of the power of selection of the lay members of the Court in the Supreme Council of Judicature makes the persons so entrusted with the performance of Judicial function independent and appointed to such office by a process in accordance with the relevant Constitutional provisions and in due observance of the principle of separation of powers.

35 The Minister of Justice in preparing the lists facilitates in the first place the Supreme Council of Judicature to make its selection which is neither restricted or in any way interfered with by extraneous sources, of representatives of the numerous landlords and tenants and this function of the Minister does not amount to either a say in 40 or an interference, of the Executive, with the functions of the Judiciary and the judicial process as such.

II. Per Demetriades, J.: As the appointment of lay members of the Court is made by the Supreme Council of Judicature, the relevant law does not violate any provisions of the Constitution or the principle of separation of powers.

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**Cases referred to:**

*Papaphilippou and the Republic*, 1 R.S.C.C. 62;

*Kourris v. Supreme Council of Judicature* (1972) 3 C.L.R. 390;

*Keramourgia AIAS Ltd. v. Yiannakis Christoforou* (1975) 10  
1 C.L.R. 38;

*Police v Hondrou and Another*, 3 R.S.C.C. 82;

*Pastellopoulos v. The Republic* (1985) 2 C.L.R. 165;

*Hinds v. The Queen* [1976] 1 All E.R. 353;

*Diagoras Development Ltd. v. National Bank of Greece* 15  
(1985) 1 C.L.R. 581;

*The Republic v. Zacharia*, 2 R.S.C.C. 1;

*Malachtou v. Attorney-General* (1981) 1 C.L.R. 513.

**Case stated.**

Case stated by the Chairman of the Rent Control Court 20  
of Limassol relative to his decision of the 10th April, 1985  
in proceedings under section 11 (1) (f) of the Rent Control  
Law, 1975 (Law No. 36/75) instituted by Constantinos  
Pilavakis and another against Athanassios Poyatzis where-  
by the preliminary objection raised by the tenants to the 25  
effect that the Rent Control Court is unconstitutional was  
dismissed.

*Fr. Saveriades*, for the appellant.

*S. Papakyriacou*, for the respondents.

*Cur. adv. vult.* 30

A. LOIZOU J.: The first judgment of the Court will be delivered by Pikis, J.

5      PİKIS J.: The present appeal, taken by way of Case Stated under s. 7 of the Rent Control Law (Law 23/83) raises the issue of Constitutionality of the Rent Control Court impugned as unconstitutional because of its allegedly defective composition and, secondly lack of adjudicative powers.

The specific grounds upon which the constitutionality of the Court is challenged are:

10      (a) lack of power to adjudicate, a central feature of a Court of Law that renders the Rent Control Court an exceptional court or tribunal in defiance to the provisions of Article 30.1;

15      (b) defective composition of the Court arising from alleged impermissible involvement of the Executive branch of Government in the appointment of lay members (πάρεδροι) of the Court.

Under the Law, s. 4(4), they are appointed from a list of candidates submitted to the Supreme Council of Judicature by the Minister of Justice.

20      The power to resolve a dispute by reference to and in accordance with the rights of the parties under the law is a fundamental attribute of the judicial process. The submission is that the Rent Control Court lacks power, its competence being confined to "resolution of disputes".  
25      The submission has only to be stated in order to be dismissed as unsound, considering the power vested in the Court to resolve a dispute in accordance with the provisions of the Rent Control Law. The identification of the powers of the Court is not a matter of semantics but a substantial  
30      question dependent on the powers actually bestowed to the Court. Not only s. 4(1), providing for the establishment of the court, but other sections of the law too<sup>(1)</sup> make it abundantly clear that the Rent Control Court is a Court of  
35      Law in the sense of Article 30.1 of the Constitution, empowered to adjudicate upon a dispute referred to it in accordance with and subject to the provisions of the law.

<sup>(1)</sup> See, inter alia, ss.11 & 12.

The submission, therefore, that the Rent Control Court is an exceptional court fails.

The principle of separation of State powers is a central feature of the Constitution of Cyprus<sup>(1)</sup>. The application of the doctrine requires, subject to express exceptions laid down in the Constitution, that each of the three coordinate powers of the State, namely, the Legislative, Executive and Judicial, should operate separately and independently the one from the other. Separateness and independence rule out direct as well as indirect subordination of one power to another as well as the assumption or exercise of competence outside a power's sphere of jurisdiction.

Consistently with the doctrine of separation of powers, as understood above, the Constitution entrusted the appointment and promotion of Judges, as well as matters incidental thereto, to the Supreme Council of Judicature, a judicial body exercising judicial power as acknowledged in the case of *Kourris v. Supreme Council of Judicature*<sup>(2)</sup>. Article 157.2 of the Constitution makes judicial appointments the sole responsibility of the Supreme Council of Judicature; thereby institutionally safeguarding the independence of the Judiciary.

The implications of the doctrine of separation of powers in so far as they affect judicial appointments, were explained in *Keramourgia "AIAS" Ltd. v. Yiannakis Christoforou*<sup>(3)</sup>. The decision of the Supreme Court in the above case exemplifies the application of the doctrine in practice. It was held that the provisions of s. 12 of the Annual Holidays with Pay Law, 1967, (Law 8/67) and the Arbitration Tribunal Regulations<sup>(4)</sup> pertinent to the appointment of the Chairman of the Arbitration Tribunal were unconstitutional for violation of the principle of separation of powers. The law was offensive to the Doctrine of separation of Powers to the extent that it authorised the involvement of the Executive in the appointment of a judicial officer, namely the Chairman of the Tribunal. The Law provided for the appointment of a Chairman from a list of candidates sub-

(1) *Papaphilippou and the Republic*, 1 R.S.C.C. 62.

(2) (1972) 3 C.L.R. 390.

(3) (1975) 1 C.L.R. 38.

(4) See Official Gazette Supplement 3 No. 637—28.2.68.

mitted by the Minister of Labour, an officer of the Executive branch of Government. The Supreme Court pointed out that the separation of State powers constitutes under our Constitution "the basis of our Constitutional structure" 5 acknowledged as such in the decisions of the Supreme Constitutional Court in *Papaphilippou and the Republic*(<sup>1</sup>), and *Police and Hondrou and Another*(<sup>2</sup>). It is implicit in the judgment of the Court that the selection of Judges and the choice of the custodians of the judicial power of the State 10 is the exclusive responsibility of the judicial authorities of the State.

The principles adopted in *Keramourgia* (supra), were reaffirmed in a recent decision of the Supreme Court, notably *Pastellopoulos v. The Republic*,(<sup>3</sup>) leading to a 15 pronouncement that the composition of the Military Court was defective because the appointment of the Judges of the Court was not the exclusive responsibility of the Supreme Council of Judicature. A similar approach to the application of the doctrine of Separation of Powers in connection 20 with the appointment of judges was favoured by the Privy Council in the case of *Hinds v. The Queen*(<sup>4</sup>). They were concerned to decide the compatibility of the Review Board set up under the Gun Court Act 1974 with the provisions of the Constitution of Jamaica founded on the doctrine of 25 separation of powers. The Review Board was charged with the responsibility to advise the Governor-General on the length of detention of persons convicted for carrying arms. The members of the Board were not appointed in the manner ordained by the Constitution for the appointment of 30 members of the judiciary. They held that the Review Board was an unconstitutional body because it was vested with judicial powers whereas it was composed in a manner other than that laid down in the Constitution for the appointment of Judges, a part of the Constitution designed to entrench 35 the separateness of the Judiciary.

The separation between the powers of the State entails not only formal separation, i.e. separation between offices

(<sup>1</sup>) 1 R.S.C.C. 82.

(<sup>2</sup>) 3 R.S.C.C. 82.

(<sup>3</sup>) (1985) 2 C.L.R. 165.

(<sup>4</sup>) [1976] 1 All E.R. 353.

and officers, but also substantive separation involving separation of competence. In *Diagoras Development Ltd. v. National Bank of Greece*,<sup>(1)</sup> it was decided that the interpretation of the Constitution and laws made thereunder, a judicial function, falls exclusively in the jurisdiction of the Courts<sup>(2)</sup>. 5

Guided by the above principles, we must determine whether the manner of appointment of lay members of the Rent Control Court offends the separation between the powers of the State and infringes the provisions of Article 157.2 of the Constitution. Section 4(4) of Law 23/83 provides that lay members are appointed from a panel submitted to the Supreme Council of Judicature by the Minister of Justice. If their status is judicial the answer must necessarily be on the authorities of *Keramourgia* and *Pastellopoullou* that the relevant provisions of the law are unconstitutional and the composition of a Court set up thereunder defective; but not otherwise if their status is purely advisory intended to enrich the practical knowledge of the Court in the area of its jurisdiction. In *Hinds* (supra)<sup>(3)</sup> it was stressed that what was offensive was the assignment of judicial decision-making to a body other than one established in accordance with constitutional provisions for the appointment of Judges. Subsection 5 of s.4<sup>(4)</sup> makes it abundantly clear that lay members empanelled to sit in any one case act in a purely advisory capacity. Decision-making is solely in the discretion of the Chairman of the Rent Control Court. 10 15 20 25

There is nothing inherently offensive to the doctrine of separation of powers to improvising ways of strengthening the amenity of the Court to bring judgment to bear on factual situations with a degree of hindsight as to particular areas of social activity; provided always there are objective reasons for the reinforcement of the practical knowledge of the Court in the particular area; as indeed there are in the field of landlord and tenant. 30 35

<sup>(1)</sup> (1985) 1 C.L.R. 581.

<sup>(2)</sup> See also *The Republic and Charalambos Zacharia*, 2 R.S.C.C. 1, 5; and *Malachtou v. Attorney-General*, (1981) 1 C.L.R. 543, 547.

<sup>(3)</sup> p. 350 letter B.

<sup>(4)</sup> Law 23/83.



5 The presence of lay members in no way absolves the President of the judicial duty to decide the case according to law and reason in the manner envisaged by Article 30.2 of the Constitution. Decision-making is solely the responsibility of a Judge appointed in the manner prescribed by the Constitution.

Therefore, the presence of lay members and the manner of their appointment cannot be considered repugnant to the Constitution.

10 There are two more things to note before leaving this judgment. First, ultimate discretion for the appointment of lay members lies with the Supreme Council of Judicature albeit from a list submitted by the Minister of Justice. It is in the discretion of the Supreme Council of Judicature to  
15 refuse to appoint anyone of those suggested by the Minister for appointment. Secondly, the Minister of Justice merely acts as a conduit pipe to apprise the Supreme Council of Judicature of representatives of the Landlords and Tenants Associations respectively considered suitable to serve as  
20 lay members of the Court(1). The participation of the Minister in the process of their appointment is not intended to promote any view point of the Executive in the judicial process.

25 The appeal fails. It is dismissed. However, in view of the importance and novelty of the point we shall make no order as to costs.

A. LOIZOU J.: This is an appeal by way of Case Stated from the judgment of the Rent Control Court of Limassol which determined as a preliminary legal point the question  
30 of the alleged unconstitutionality of the Rent Control Court.

The legal points referred to this Court for determination are the following:

(1) Whether the Rent Control Court is a Court established  
35 in accordance with the Constitution or it is a Judicial Committee or Exceptional Court, contrary to Articles 28, 30(1) and 170 of the Constitution, taking into consideration the fact that the two lay members (νόρεδροι)

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(1) Second proviso of subsection 4 of s. 4.

are appointed by the Supreme Council of Judicature from a list prepared by the Minister of Justice (section 4(4) of the Rent Control Law 1983 (Law No. 23 of 1983).

- (2) Whether the Rent Control Court functions legally and whether there exists a conflict of the executive and judicial powers between section 33 of Law No. 23 of 1983 and Articles 30(1), 54(1), 158(1), 163(1) (2), and 179(1) (2), of the Constitution. 5
- (3) Whether the Rent Control Court has power to try the cases within its jurisdiction in spite of the fact that in section 4(1) of Law No. 23 of 1983, the word "trial" (εκδίκασις) is not mentioned but only the phrase "for the purpose of determining, with all reasonable speed, the disputes referred to them..." ("επί σκοπώ επιλύσεως, μεθ' όλης της λογικής ταχύτητος, των εις αυτά αναφερομένων διαφορών...") is mentioned. 10  
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Before proceeding any further I feel that the second question which was in fact not pursued before this Court by counsel for the appellant, could summarily be disposed of on the ground that, it is only of academic interest,—if at all,—as the whole procedure before the Court did not relate in any way to any Regulations made by the Council of Ministers under section 33(1) of the Law. It may, incidentally be mentioned here that such Regulations have not as yet been made and therefore the Court need not answer this point. Reference of a legal point should be made only if it is necessary for the determination of an issue in the case. 20  
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There remain therefore for determination the two other legal points set out in paragraphs 1 and 3, hereinabove. I shall deal first with the third question as I find it more convenient to do so. 30

The Rent Control Court has been established by virtue of section 4 of the Rent Control Law, 1983, (Law No. 23 of 1983). Sub-section 2 thereof provides that "Every Court is composed of a President (hereinafter to be referred to as 'the President') and two other members, (νόρεδροι) all appointed by the Supreme Council of Judicature as in this 35

section provided.” No doubt this is a Court established by Law. Power is given to it to adjudicate upon disputes brought to it in accordance with the prescribed procedure in the area of the Law defined thereby, namely for the regulation of the relations between landlords and tenants in respect of those premises which are defined in section 2 of the Law and subject to its control. The phrase from section 4(1) quoted above must be completed by adding thereto the remaining of the subsection which reads: “... arising with regard to any matter raised in the application of this Law including any incidental or supplementary matter.”

«... των αναφευομένων επί οιουδήποτε θέματος εγειρομένου κατά την εφαρμογήν του παρόντος Νόμου συμπεριλαμβανομένου παντός παρεμπιπτόντως ή συμπληρωματικού θέματος.»

I do not consider it essential to embark on a detailed analysis as to what is a dispute as to my mind there is no merit in the allegation that the Law does not empower the Court to adjudicate hence the contention that it is a judicial committee or exceptional court. The power to order the recovery of possession of premises, to determine the increase or decrease of rent or the determination of other incidental or supplementary matters, are all disputes between the parties and adjudication upon them amounts to a resolution or determination of a dispute (επιλυσις διαφοράς), as an exercise of judicial function. Indeed the nature of judicial function is not determined by the words used in an enactment but by its essential characteristics. The answer therefore to the third point raised above is that the Rent Control Court has power to try the cases within its jurisdiction, and the fact that there is no mention of the word “to try” does not make it either a judicial committee or an exceptional court, contrary to Article 30(1) of the Constitution.

Their remains therefore for determination the first point referred to us, namely whether there is an interference by the executive in the establishment of the Rent Control Court and its composition, so as to offend the principle of the separation of power, which is, it may right away be

said, the basis of our constitutional structure and finds expression in several provisions of the Constitution.

The relevant to this issue provisions of the Law are section 4 subsection 2 thereof to which I have already referred and subsections 3, 4, and 5. Subsection 3, prescribes the essential qualifications for appointment as a President. Subsection 4 deals with the composition of the Court and the selection of the two lay members by the President from a list which is approved for each District by the Supreme Council of Judicature. For that purpose the Minister of Justice submits for every district a list of thirty suitable persons of the highest moral standing from which the Supreme Council of Judicature selects twenty persons which are for two years on the list for the district. From them the President selects the two members which will constitute with him the Court for every concrete case. Provision is further made, so that both during the preparation of the lists and the appointment of members for constituting the Court, care must be taken that the interests of the owners and the tenants be equally represented. Furthermore, under subsection 4, of section 4, for the determination of any dispute submitted to the Court as provided by subsection 1, thereof, the President decides after having obtained the views of the two lay members of the Court who have simply an advisory opinion.

Under Article 157(2) of the Constitution "the appointment, promotion, transfer, termination of appointment, dismissal and disciplinary matters of judicial officers are exclusively within the competence of the Supreme Council of Judicature. Its composition, however, is now prescribed by the Administration of Justice (Miscellaneous Provisions) Law, 1964, (Law No. 33 of 1964) the basic provisions of which were found to be Constitutional on the doctrine of necessity.

The vesting therefore of the power to select the persons that will be placed on the lists in the Supreme Council of Judicature makes the persons so entrusted with the performance of judicial functions, independent and appointed to such office by a process in accordance with the relevant Constitutional provisions and in due observance of the principle of the separation of power.

The Minister of Justice in preparing the lists facilitates in the first place the Supreme Council of Judicature to make its selection which is neither restricted or in any way interfered with the extraneous sources, of representatives of the numerous landlords and tenants and this function of the Minister does not amount to either a say in or an interference, of the Executive, with the functions of the Judiciary and the judicial process as such.

There is, therefore, no violation of any of the provisions of the Constitution invoked by counsel for the appellant or of the principle of the separation of power as safeguarded thereunder by its various Articles, and this is my answer to the first question referred to this Court for determination.

In view of the aforesaid answers to the legal points referred to, the appeal fails and should be dismissed but in the circumstances I would make no order as to costs.

DEMETRIADES J.: The facts and the issues in the present appeal appear in the judgment of Mr. Justice Pikis and I find no purpose in repeating them.

Having considered the issues I am in full agreement with that part of his judgment that deals with the jurisdiction of the Rent Control Court.

As regards, now, the issue of the constitutionality of the Court, what I would like to say is that as the appointment of its lay members is made by the Supreme Council of Judicature, a body established by the Constitution, which has exclusive competence for the appointment of Judges in the Republic, I find that the relevant Law does not violate any provisions of the Constitution or the principle of the separation of powers.

A. LOIZOU J.: In the result, the appeal is dismissed with no order as to its costs.

*Appeal dismissed with no order as to costs.*