1986 December 18

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

MICHAEL PAPORIS,

Appellant-Defendant,

v

NATIONAL BANK OF GREECE, S. A.

Respondents-Plaintiffs.

(Civil Appeal 6897).

Constitutional Law—Civil rights and obligations, determination of—Right to hearing within a "reasonable time"—Constitution, Article 30.2—The expression "reasonable time" refers to the duration of the proceedings—Its starting point is the institution of proceedings and its ending point their final determination—Therefore, the Limitation of Actions (Suspension) Law 57/64, suspending the period of limitation of actions, does not offend against Article 30.2.

Civil Procedure—Pleadings—Points of law—The Civil Procedure Rules, Ord. 19, r. 4 and Ord. 27, r. 1—Difference between pleading law and raising a point of law—Desirability of raising specifically a point of law in the pleadings.

Practice—Constitutionality of Statutes—Manner of raising such a question—Need not be specifically pleaded—The opinion in Improvement Board of Eylenja v. Constantinou (1967) 1 C.L.R. 167 at p. 183 *is in the nature of a directive—Desirability of following what is indicated by such opinion.*

The sole issue in this appeal is whether the Limitation of Actions (Suspension) Law 57/64 offends the provisions of Article 30.2 of the Constitution regarding in particular the right of every person to a hearing "within a reasonable time".

Article 30.2 in so far as material to the question in issue provides that "In the determination of his civil rights and obligations or of any criminal charge against him every person is entitled to.... hearing within a reasonable time....".

The question of unconstitutionality was not expressly raised in the pleadings, but it is to be found in paragraph 7 of the affidavit in support of the opposition to the plaintiffs' application for summary judgment in the following terms, namely "...the action is time barred by virtue of section 94 of Cap. 262 and Article 30.2 of the Constitution of the Republic".

The trial Judge concluded "that the determination of the civil rights and obligations should be made within a reasonable time, yet from a perusal of the said paragraph as a whole that means from the commencement of the litigation before the Court and not from the date when the cause of action arose".

Held, dismissing the appeal: (A) Per A. Loizou, J.: (1) The aforesaid provision of the Constitution is identical to Article 6.1 of the European Convention of Human Rights. It is, therefore, natural to turn to the Case Law of the Court and the Commission of Human Rights for guidance in the interpretation of what "reasonable time" means, between what points does the period run and in the last analysis what facts must be taken into account in the determination of what is reasonable.

(2) In support of his case counsel for the appellant referred to a passage fom F. G. Jacobs "The European Convention of Human Rights" (1975) at p. 109, where it is stated, inter alia, that a potential defendant should also, it would seem, have the right that proceedings would be instituted within a reasonable period from the date of the alleged wrong*. Jacobs, however, makes no reference in support of his proposition which obviously leaves it as being his own personal opinion. Indeed, in no judgment

* The whole passage referred to by counsel is quoted at p. 585.

of the Court or the Commission of Human Rights the question of the length of the period of limitation or its suspension was raised.

(3) As it was held in *Fekkas* v. *E.A.C.* (1968) 1 C.L.R. 173 "the laying down of periods of limitations is obviously a matter primarily within the sphere of competence of the legislature". It should be noted that the suspension of the periods of limitation of actions by Law 57/64 was rendered necessary by the abnormal situation prevailing since 21.12.63 in Cyprus.

(4) "Reasonable time" in Article 30 in so far as civil proceedings are concerned refers to the duration of the proceedings. Its starting point is the filing of the proceedings and its ending point their conclusion. It does not refer to the notion of prescribing or not by Law reasonable periods of limitation after the lapse of which the cause of action is not extinguished but only becomes statute-barred. It follows that Law 57/64 cannot be held to offend the said provision of the Constitution.

(5) The opinion expressed in the *Improvement Board of Eylendja* v. *Constantinou* (1967) 1 C.L.R. 167 at p. 183 as to the proper manner in raising a question concerning a constitutionality of a statute was more of a directive rather than laying down hard and fast rules, but there is no need to deal with the matter any further as such matter was dealt with in *Instambouli Bros.* v. *The Director of Customs and Excise (1986)* 1 *C.L.R. 465.*

(B) Per Savvides, J.: (1) As regards the issue of constitutionality of Law 57/64 I agree and adopt the opinion expressed by A. Loizou, J. in the judgment he just delivered. A question, however, that has to be examined is whether the issue of constitutionality was properly raised before the trial Court to enable it to adjudicate on it as he did.

(2) In this case the question was raised by paragraph 7 of the affidavit in support of the opposition to the application for summary judgment. Furthermore, in his written address counsel for the appellant argued that le-

gislation suspending indefinitely the period of limitation in cases where the parties have not been affected by the Turkish occupation as far as their rights in the action are concerned is unconstitutional and counsel for the respondents, plaintiffs in the action, by his written address dealt with such matter, arguing why in his submission such legislation is not unconstitutional. Therefore, once the issue was raised and argued the trial Court was bound to adjudicate upon it.

(3) The opinion expressed in the *Improvement Board of Eylendja* v. *Constantinou* (1967) 1 C.L.R. 167 is merely directive *(Instambouli Bros.* v. *The Director of the Department of Customs and Excise* (1986) 1 C.L.R. 465 adopted), but the correctness and usefulness of such opinion as a directive in proper cases cannot be doubted for it is worth while to raise on the pleadings any point of law, which will substantially dispose of the whole action or render the trial unnecessary, thus expediting the determination of the action. Raising a point of law in the pleadings makes it possible of bringing it up to be heard and determined as a preliminary point with a view to avoiding having to incur the costs of preparing for the full trial of the action before that point is disposed of. Also, the determination of such point may expedite the determination of the action.

(C) Per Pikis, J.: (1) Article 30.2 of the Constitution refers indistinguishably to the determination of obligations under Civil and Criminal Law, providing for the application of similar judicial standards of fairness and efficiency in both fields. If, therefore, the arguments of counsel for the appellant were accepted, then and by the same reasoning it would have to be acknowledged that periods of limitation apply to criminal offences as well and Article 30.2 should be construed as tying the element of "reasonableness" to the date of the commission of the offence. That cannot have been the intention of the makers of the Constitution, nor can such intention be attributed to them having regard to the wording of Article 30.2.

(2) Jacob's view as to the ambit of Article 6.1 of the

European Convention of Human Rights is not supported by any decision of the European Court of Human Rights or opinion of the European Commission. In the *Neumeister case* the word "charge" was construed in the opinion that preceded its reference to the Court as encompassing charging by the investigating or police authorities thus tying the time element to events immediately antecedent to the preferment of a charge before a Court, whereas in the judgment of the Court in the same case the "reasonableness" of time taken for the determination of the charge was judged by reference to the commencement of the criminal proceedings. What is significant is that whichever of the said two views is adopted the "reasonableness" should be judged by reference to judicial proceedings or steps preliminary thereto.

(3) The accrual and regulations of rights is beyond the scope of Article 30.2. The reasonableness of the length of time taken for the conduct of judicial proceedings is measured in cases of civil actions from the date of their institution.

(4) The summary formulation and adjudication upon questions of constitutionality must be discouraged. Unless such questions are formally raised in the manner indicated in the *Eylendja case*, supra, Courts must not embark upon their examination. However, in this case the Court could not have omitted to heed the question on appeal as it had been dealt with and adjudicated upon by the trial Court.

Appeal dismissed with costs.

Cases referred to:

Improvement Boad of Eylendja v. *Constantinou* (1967) 1 C.L.R. 167;

Instanbouli Bros. v. *The Director of the Department of Customs and Excise* (1982) 1 C.L.R. 465;

Fekkas v. *Electricity Authority of Cyprus* (1968) 1 C.L.R. 173;

Independent Automatic Sales Ltd., v. *Knowless and Foster* [1962] 3 All E.R. 27;

Köning case, Digest of Strasburg Case-Law, Vol. 2 p. 502;

Neumeister case (Theory and Practice of the European Convention on Human Rights by P. Van Dijk and G.J.H. Van Hoof).

Huber case, Yearbook XVIII (1978) 324 (356).

Digest of Strasburg Case-Law, Vol. 2 (Article 6) p. 502.

Appeal.

Appeal by defendants against the judgment of the District Court of Nicosia (Laoutas, S.D.J.) dated the 23rd February, 1985 (Action No. 938/84) whereby the defendant was adjudged, on an application for summary judgment, to pay to the plaintiffs the sum of £1,117.50 in respect of a claim under a bill of exchange.

Ch. Ierides with *Chr. Clerides*, for the appellant.

A. Dikigoropoullos, for the respondents.

Cur. adv. vult.

The following judgments were read.

A. LOIZOU J.: At the conclusion of the hearing of this appeal, in which the sole issue raised was the unconstitutionality of the Limitation of Actions (Suspension) Law, 1964 (Law No. 57 of 1964) as offending the provisions of Article 30 paragraph 2, of the Constitution regarding in particular the right of every person to a hearing "within a reasonable time", we dismissed same concluding that the ground in question failed. We said then that we would give our reasons to-day, having followed that course as we wanted some time to formulate them.

Article 30, paragraph 2, of the Constitution in so far as material to the question raised reads as follows:

"2. In the determination of his civil rights and obligations or of any criminal charge against him

every person is entitled to... hearing within a reasonable time...."

This provision is identical to Article 6, paragraph 1, of the European Convention on Human Rights which has been ratified by Law No. 39 of 1962. It was therefore natural to turn to the Case Law of the Court and the Commission of Human Rights, entrusted as they are, with the control of the application of the Convention, for guidance in the interpretation of what "reasonable time" means, between what points does the period run and in the last analysis, what facts must be taken into account in the determination of what is reasonable.

The learned trial Judge dealt with the matter and concluded that though in agreement with counsel for the appellant "that the determination of the civil rights and obligations should be made within a reasonable time, yet from a perusal of the said paragraph as a whole that means from the date of the commencement of the litigation before the Court and not from the date the cause of action arose. He then went on, said that he "did not think that Article 30 paragraph 2, of the Constitution was applicable to the case in hand. The defendant was not denied his right to claim his rights before the Court and the time that elapsed until the hearing of the case could not be considered long."

The question of unconstitutionality was not expressly and clearly raised in the pleadings but it is to be found in the following terms in paragraph 7 of the affidavit filed in support of the notice of opposition to the application for judgment based on Order 18, rules 1 and 2 of the Civil Procedure Rules. Paragraph 7. reads:

"In any event and/or on the alternative if the cause of action arose in the date of maturity of the bill I am advised and verily believe that the action is time barred by virtue of Section 94 of CAP. 262 and Article 30(2) of the Constitution of the Republic."

On appeal counsel confined, as we have already said, the issue to this one,and we heard him on that issue.

I hold the view that what was said in the *Improvement Board of Eylendja* v. *Constantinou* (1967) 1 C.L.R. 167 at p. 183 was more of a directive rather than laying down hard and fast rules to be followed by a litigant or else to be denied the right to raise such issue. I need not, however, deal with the matter any further as this Court dealt with it in the case of *Instambouli Bros.* v. *The Director of the Department of Customs and Excise,* Civil Appeal 6300, judgment delivered on the 17th December 1986, (as yet unreported),* at some length.

In arguing the appeal before us, learned counsel relied on what is said in F. G. Jacobs the European Convention of Human Rights (1975) page 109. It reads:

> "The right to be protected against undue delay applies also in civil cases. In such cases, it would seem that the period to be considered normally runs from the date of the institution of proceedings.
>
> The parties have the right to a final decision within a reasonable time. But a party who has himself caused or contributed to the delay cannot complain. A potential defendant should also, it would seem, have the right that proceedings be instituted within a reasonabe period from the date of the alleged wrong. Thus, reasonable periods of limitation, after which the right of action will be statute-barred, may be necessary to protect a potential defendant. On the other hand, if a would-be plaintiff is debarred from instituting proceedings in the first place, it is not sufficient to satisfy Article 6(1) that he is subsequently enabled to bring proceedings before such a period of limitation has expired."

He makes, however, no reference in support of his aforesaid proposition which obviously leaves it as being his own personal opinion.

In Theory and Practice of the European Convention on Human Rights by P. van Dijk and G.J.H. Van Hoof at page 256 the following is said:-

> "With respect to the proceedings for the determination of civil rights and obligations, in general the be-

* Now reported in (1986) 1 C.L.R. 465.

gining of the period may be taken to be the moment at which the action concerned is initiated or at which, within the framework of another action, such a right or obligation is advanced in a defence. If prior to the judicial proceedings first another action—for instance an administrative appeal—must have been instituted, the beginning is shifted to the moment at which such an action was brought. A legislation or a judicial practice placing obstacles in the way of a plaintiff for a prompt institution of his action, as well as legislation enabling him to leave the other party for a long time in uncertainty as to whether or not an action will be brought, without a reasonably short term of limitation being applied, does not satisfy Article 6(1).

The above-mentioned rationale entails that the end of the period to be taken into consideration is the moment at which the Court has put an end to the uncertainty concerning the legal position of the person in question. This is not therefore the moment at which the hearing in Court starts, but the moment at which the decision in civil proceedings is taken, or conviction, acquittal, or dismissal of the charge is pronounced in criminal proceedings.

As the Court held in its Wemhoff judgment:

> 'there is.... no reason why the protection given to the persons concerned against the delays of the courts should end at the first hearing in a trial unwarranted adjournments or excessive delays on the part of trial courts are also to be feared'.

The uncertainty comes to an end only when the verdict on the charge against the accused has been pronounced, or the determination of the civil rights and/or obligations has taken place at highest instance, or has become final through the expiration of the time-limit for appeal, or when further prosecution is defrained from."

In support of the aforesaid extract regarding the question of laws relating to periods of limitation, the only re-

ference cited in foot-note (422) is to Jacobs p. 109 hereinabove referred to.

As pointed in the Digest of Strasbourg Case-Law, Vol. 2 (Article 6) at p. 502, by reference to the judgment of the Court in *Köning* Case "For although the requirements of Article 6 as regards cases ('contestations') concerning *civil rights are less onerous than they are for criminal* charges this difference is of no consequence here. All proceedings covered by Artice 6 are subject to the requirement of 'reasonable time'....".

At p. 503 the following is stated from one of the few decided civil cases:

> "In the Federal Republic of Germany, as in many other States Members of the Council of Europe, a Criminal or Administrative Court is, it is true, responsible for the investigation and the conduct of the trial of an action (see the above-mentioned Neumeister Judgment of 27 June 1968, pp. 42-43, para 21, and the above-mentioned König Judgment of 28 June 1978 pp. 34-39, paras. 102-105, 107 and 109). In *contrast so the Government submitted, in the Federal* Republic of Germany proceedings before the Labour Courts, as before all Civil Courts, are governed by the principle of the conduct of the litigation by the parties (Parteimaxime). In addition, German legislation encourages the friendly settlement of cases concerning employment (Sections 54, 57, 64 and 72 of the Labour Courts Act, Arbeitsgerichtsgesetz). This factor was rightly adverted to by the Government.
>
> Without minimising the importance of these differences, the Court considers, as did the Commission, that they do not dispense the judicial authorities from ensuring the trial of the action expeditiously as required by Article 6. The Court notes, moreover, that under the terms of Section 9 of the Labour Courts Act the German Labour Courts at all levels of jurisdiction must expedite the proceedings.

Assuming that failure to try an action within a

reasonable time can on occasions have repercussions as regards respect for some other right guaranteed by the Convention (see, mutatis mutandis, the Judgment of 23 July 1968 on the merits of the Belgian Linguistic Case, Series A, Vol. 6, p. 33, para. 7), the Court would recall that in the present case there was no breach of the requirements of Article 6(1). Apart from this consideration, the Court finds that no issue arises under Articles 8, 3 or 12 taken on their own.

Judg. Court, 6 May 1981, Buchholz Case § § 50, 63, Pbl. Court A. Vol. 42 pp. 16, 22."

This is not the only case that turned on the delays after the filing of the proceedings, including adjournments and delays in the delivery of reserved judgments (see Digest Supra. p. 507 et seq.). I have only referred to it as indicative of their approach. In no judgment of the Court or the Commission, however, the question of the length of the period of limitation or its suspension was raised.

The question therefore that arose in that respect was the period that elapsed from the institution of the proceedings to the final determination.

In *Fekkas* v. *The Electricity Authority of Cyprus* (1968) 1 C.L.R. 173 in which the unconstitutionality of Section 11(2) of the Public Officers Protection Law. Cap. 313 prescribing a period of limitation of three months for actions against public corporations was successfully raised. It was, however, stated at p. 184 that "The laying down of periods of limitation is obviously a matter primarily within the sphere of competence of the legislature."

It may be mentioned here that the legislative regulation of the suspension of the periods of limitation prescribed by the Limitation of Actions Law, Cap. 15 was rendered necessary by the prevailing conditions connected with the abnormal situation prevailing since the 21st December 1963 in Cyprus, as its title says.

In my view the "reasonable time" prescribed in paragraph 2 of Article 30, in so far as civil proceedings are concerned, refers to the duration of proceedings. It has as

a starting point the filing of the proceedings and as an ending point their final conclusion. It does not refer to the generally accepted notion of prescribing or not by Law, reasonable periods of limitation after the lapse of which the cause of action is not extinguished but only becomes statute-barred. In no way the suspension of such laws or even the nonenactment of laws for the Limitation of Actions can be held to offend this provision of the Constitution as the regulation of the question of limitation of actions is outside the ambit of the term "hearing... within reasonable time" prescribed in Article 30(2) of the Constitution.

It was for all the aforesaid reasons that I concluded that this appeal should be dismissed with costs.

SAVVIDES J.: This is an appeal from the judgment of the District Court of Nicosia given against the appellant on an application for summary judgment in respect of a claim under a bill of exchange dated 28.3.74 payable on 25.6.74 which was accepted by the appellant.

At the conclusion of the hearing of this appeal we dismissed the appeal and said that we would give our reasons today, as we wanted some time to formulate them.

A number of grounds of appeal were raised by counsel for the appellant in his notice of appeal, all of which, save ground 3, were abandoned at the hearing of the appeal. Ground 3 which was the only ground argued, was that "the decision of the Court below that Law No. 57/64 as to the suspension of prescription is constitutional and/or that it does not contravene the Constitution, is wrong." The appeal was thus confined to the question as to whether the provisions of the Limitation of Actions (Suspension) Law, 1964, (Law No. 57/64) offend the provisions of Article 30, paragraph 2 of the Constitution. I agree with the opinion expressed by my brother Judge A. Loizou in his judgment just delivered, as to the constitutionality of Law 57/64 and I adopt what he said in this respect.

A question, however, which has to be examined is, whether the issue on constitutionality was properly raised

before the trial Court to enable the trial Judge adjudicate on it as he did. In *The Improvement Board of Eylendja* v. *Constantinou* (1967) 1 C.L.R. 167 certain observations were made by the Court as to the procedure to be followed when a question of unconstitutionality of Law is raised and the view was expressed that where a party in a civil proceeding wishes to raise the question of constitutionality of any law, he should follow one of two courses that is either raise it specifically with full particulars in his pleadings or if he wishes to raise such a question at a later stage of the proceedings (which was recognized as something in respect of which he had a right to do under Article 144(1) of the Constitution) then he should do so in writing, formulating the question raised in detail, as to give the opportunity to the other side of being heard on the point. It was further added that if such a question were raised in the course of the hearing, the trial Court might have to exercise its discretion of granting an adjournment to the other side to enable it to prepare its case.

The proceedings in the present case which led to the judgment were for summary judgment as per claim which was specially indorsed on the writ of summons. No pleadings were filed by the defendant-appellant, as he was not entitled to file a defence on an application for summary judgment without leave of the Court. Therefore, a question of raising it in his pleadings could not arise.

In paragraph 7 of the affidavit in support of the opposition the question of unconstitutionality was raised by a statement to the effect that "The action is time barred by virtue of Section 94 of Cap. 262 and Article 30(2) of the Constitution of the Republic." Furthermore, by his written address counsel for appellant raised and argued that legislation to the extent that it suspends indefinitely the period of limitation in cases where the parties have not been affected by the Turkish occupation as far as their rights in the action are concerned is unconstitutional. Counsel for respondent, plaintiff in the action, by his written address dealt with such matter and advanced his arguments why in his submission there is no violation of the Constitution. Therefore, once this issue was raised and argued

before the trial Court. the Court was bound to adjudicate on it as it, in fact, did.

By the unanimous decision of this Court which was delivered yesterday, in Civil Appeal 6300, *Istambouli Bros.* v. *The Director of The Department of Customs and Excise,* in which I was a member of the Bench that dealt with such appeal, and in which though the trial Court did not examine the question of unconstitutionality of the relevant law, on the ground that it had not been raised in the pleadings before it, the appellate Court alllowed such question to be raised and argued before it. After making reference to the opinion expressed in *Eylendja* case (supra) as to how the question of unconstitutionality of any law should be formulated in civil proceedings it concluded as follows:

> "From the above we have reached the conclusion that the question of the constitutionality of the relevant provisions of the Customs and Excise Law, 1967 in relation to Article 12.3, being a legal issue in a broad sense, need not have been specifically pleaded; all facts which were essential for its determination were pleaded, such as the seizure, the notice etc. And such issue of constitutionality had to be resolved only by comparing and weighing the provisions of the Law as regards the articles of the Constitution claimed to have been offended.
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> We have taken notice of the aforesaid *Eylendja* case (supra) and would consider that it is more of a directive rather than laying down hard and fast rules to be followed at all times.
>
> In the circumstances we feel that it was open to the trial Court to consider such question of constitutionality. However, in view of the fact that leave was given to the appellants to argue such matter before us, we would consider that this ground of appeal to be more of an academic importance rather than affecting the outcome of this appeal."

In arriving at such conclusion the Court dealt at some

length with the provisions of Order 19 rule 4 of the Civil Procedure Rules which provide that -

> "Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved..."

in conjunction with Order 27, rule 1 which provides that -

> "Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the Court at any stage that may appear to it convenient."

Reference was also made to the corresponding Rules of the Supreme Court in England and the relevant notes in the Supreme Court Practice dealing with such rules with particular reference to the case of *Independent Automatic Sales Ltd.* v. *Knowles and Foster* [1962] 3 All E. R. 27.

In the *Independent Automatic Sales Ltd. etc.* case (supra) it was held at pp. 29, 30:

> "The defendants have not raised this point specifically in their pleading. It is, it is true, a pure point of Law. Nevertheless, it is a point taken by the defendants which, in substance, is a demurrer to the action, and I have had to consider R.S.C., Ord. 25, rr. 1, 2 and 3, which are the rules which now apply in cases where, under the old procedure, a defendant would have demurred to the plaintiff's action. Rule 1 provides that no demurrer shall be allowed. Rule 2 provides that:
>
> > 'Any party shall be entitled to raise by his pleading any point of Law, and, unless the Court or a Judge otherwise orders, any point so raised shall be disposed of by the Judge who tries the cause at or after the trial.'
>
> Rule 3 is:
>
> > 'If, in the opinion of the Court or a Judge, the decision of such point of Law substantially dis-

poses of the whole action, or of any distinct cause of action, ground of defence, set off, counter-claim or reply therein, the Court or Judge may thereupon dismiss the action or make such other order therein as may be just.'

One knows that in practice, where a defendant demurs to a plaintiff's action, one course open to him is to raise the ground of demurrer in the pleading and bring that point of Law on to be heard and determined as a preliminary point with a view to avoiding having to incur the costs of preparing for the full trial of the action before that point is disposed of. Nevertheless, counsel for the defendants here says that at the trial the defendants are not precluded by these rules from raising a pure point of Law which disposes of the action, or may dispose of the action, notwithstanding that it is not mentioned at all in the pleading.

At first glance it appears to me that r. 2 of R.S.C., Ord. 25, is somewhat against the submission of counsel for the defendants; but we have to bear in mind the terms of R.S.C., Ord. 19, r. 4, which provides that

'Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies'

and undoubtedly, a party is not bound, and indeed normally ought not, to plead points of Law but to plead the facts on which he relies. In the notes to R.S.C., Order 25, r. 3, I find, under the heading 'Objection in point of law', the following note:

'If a party intends to apply for determination of a point of law he must raise it on his pleading. But at the trial itself he may raise a point of law open to him even though not pleaded.' "

In addition to what was said in *Istambouli* case (supra) I wish to make reference to the following authorities on the matter:

In Odger's Principles of Pleading and Practice, 22nd Edition at p. 94 under the heading "Every Pleading must state Facts and not Law" we read:

> "Conclusions of law, or of mixed law and fact, are no longer to be pleaded. It is for the Court to declare the Law arising upon the facts proved before it."

and at p. 111, under the heading "Illustrations":

> "Neither party should set out the provisions of public Acts of Parliament; or of private Acts passed since 1850, unless the Act itself makes it necessary to be cited. Nor should he state in his pleading the propositions of Law which he proposes to urge upon the Court."

Also, at p. 144:

> "You should always bear in mind the good advice which that great judge, Sir Edward Coke, deduced as a moral from 'the first cause that he ever moved in the King's Bench':
>
> 'When the matter in fact will clearly serve for your client although your opinion is that the plaintiff has no cause of action, yet take heed you do not hazard the matter upon a demurrer, in which, upon the pleading and otherwise, more perhaps will arise than you thought of; but first take advantage of the matters of fact, and leave matters in law, which always arise upon the matters in fact, ad ultimum, and never at first demur in law, when, after trial of the matters in fact, the matters in law (as in this case it was) will be saved to you.' This advice, though now four hundred years old, is as sound now as it was in the days of Queen Elizabeth I; in fact, owing to the liberal powers of amendment given by the Judicature Acts, its value has increased rather than diminished. Lindley J. laid down the same rule in *Stokes* v. *Grant*. 'If the defendant wants to avail himself of his point of law in a summary way, he must demur; but if he does not demur, he does not waive the objection, and may say at the trial that the claim

is bad on the fact of it.' If then the facts are likely to prove in your favour, you should not, as a rule, apply for a preliminary hearing of the point of law. But if at the trial you will be compelled to admit that you have no case on the merits, then by all means take advantage of any point of law you can.

No one is bound to take an objection in point of law: Order 18, r. 11, merely says that a party may raise it by his pleading. At the trial he may argue any point of law he likes, whether raised on the pleadings or not. This was decided on June 10, 1886, by a Divisional Court (Day and Wills JJ.) in the case of *MacDougall* v. *Knight* (not reported on this point). And it was also the law under the former system. The provisions of Order 18, r. 8(1) should, however, be borne in mind. Even in cases not within the four corners of that rule the modern tendency in pleading is to avoid taking an opponent by surprise—a course which may cause embarrassment and inconvenience at the trial.

But if either party desires to have any point of law set down for hearing, and disposed of before the trial, he should raise it in his pleading by an objection in point of law. Indeed, where the point of law amounts to a plea in bar such as res judicata, it would be the correct procedure, And having regard to the words of Order 33, r. 7 it is clearly worth while to raise on the pleadings any point of law which will substantially dispose of the whole action or render the trial unnecessary."

In Bullen & Leake and Jacob's Precedents of Pleadings, 12th Edition, under the heading "Point of Law" at p. 49, we read:

"

If a party does not raise a point of law in his pleading, he may nevertheless at the trial raise any point of law open to him."

On the distinction between pleading law and raising a point of law, we read the following at p. 48 of the above:

> "While it is a principal rule of pleading that a party must plead material facts only and not law, yet every party is permitted by his pleading to raise a point of law. The distinction between pleading law which is not permitted and raising a point of law which is permitted, is that by pleading law a party would in effect be pleading conclusions of law, which would obscure or conceal, or at any rate fail to reveal, the facts of the case; whereas by raising a point of law a party would help to define or isolate an issue or question of law on the facts as pleaded."

Bearing in mind the above, as well as the contents of the opinion expressed in Eylendja case, I reiterate what was said in *Istambouli* case that the opinion expressed in *Eylendja* case is merely a directive. I do not, however, for a moment hesitate to indorse the correctness and usefulness of such opinion as a directive in proper cases for it is worth while to raise on the pleadings any point of law which will substantially dispose of the whole action or render the trial unnecessary thus expediting the determination of the action. Raising a point of law in the pleadings makes it possible of bringing it up to be heard and determined as a preliminary point with a view to avoiding having to incur the costs of preparing for the full trial of the action before that point is disposed of. (See *Independent Automatic Sales Ltd.* v. *Knowles and Foster,* supra). Also, the determination of such point of law may expedite the determination of the action. The desirability of raising an objection on a point of law in the pleadings is stressed in Halsbury's Laws of England, 4th Edition, Vol. 36 under the heading *"pleading facts, not law"*, in paragraph 13 where it is stated that "it may be useful on occasion to state the legal conclusion sought to be drawn from the facts, or the nature of the legal provision on which the party pleading intends to rely, either by way of emphasis or to prevent any doubt in the mind of the other party as to the nature of the case alleged against him."

Also in Odger's Principles of Pleading, and Practice (supra) at p. 143 it is stated that:

"..... But it was desirable, and indeed necessary to preserve some form of objection in point of law, otherwise parties might incur great expense in trying issues of fact which, when decided, would not determine their rights. So it was provided that any party should be entitled to raise by his pleading any point of law (Order 18. r. 11).

. . . . . .

When the matter is one of first impression, or when for any other reason the law on the point is not clear, it may be very desirable to argue an objection and settle the point of law before incurring the expense of a trial with witnesses."

Finally in Bullen & Leake and Jacob's "Precedents of Pleadings" supra, at p. 49 it is mentioned that: "To raise a substantial point of law on the facts as pleaded is a convenient course, especially where it may dispose of the whole action, since it may enable the point to be tried as a preliminary issue."

Notwithstanding the usefulness and desirability of raising a point of law in the pleadings a party is not prevented from raising at the trial any point of law not raised in the pleadings.

It was for all the aforesaid reasons that I concluded that this appeal should be dismissed with costs.

PIKIS J.: The appeal was confined to the constitutionality of the Suspension of the Limitation of Actions Law (57/64), other grounds of appeal having been abandoned. Mr. Clerides argued before us, as he had earlier done before the trial Court that Law 57/64 is unconstitutional because it breaches the provisions of paragraph 2 of Article 30 and in particular is inconsistent with the duty cast on the authorities to ensure that in the determination of his civil obligations, the litigant is entitled to judgment within a reasonable time. Consequently, the action of the respondents for the recovery of bills of exchange that became payable in 1974 ought not to have been sustained, as the time that elapsed between the accrual of the liability in 1974

and the time judgment was given—April, 1984—was inordinately long, and as such not reasonable. Had the limitation period applicable to the recovery of bills of exchange not been suspended, the claim would have been prescribed.

Notwithstanding the failure of the appellant (defendant) to raise the issue of constitutionality before the trial Court, in the manner indicated in the *Improvement Board of Eylenja* v. *Andreas Constantinou*(1) the trial Court heeded and answered the question of constitutionality. The directions given in the above case reflect the approach of the Supreme Court to the proper elicitation of issues of constitutionality and must be heeded in every case. The solemnity of such issues makes necessary strict adherence to the aforementioned practice direction of the Supreme Court. The summary formulation and adjudication upon questions of constitutionality must be discouraged. Unless questions of constitutionality are formally raised in the manner indicated in the above case, Courts must not embark on the examination of questions of constitutionality.

Nonetheless, we cannot in this case omit to heed this question on appeal as it was dealt with and adjudicated upon by the trial Court. In the opinion of the trial Court, the ambit of para. 2 Article 30 is confined to the time gap between the initiation of proceedings and their conclusion.

The submission of unconstitutionality is solely founded on a passage in Jacobs in his work on the European Convention on Human Rights(2) reflecting the author's view on the compass of Article 6(1) of the European Convention on Civil Rights, upon which para. 2 Article 30 is modelled. The passage is the following:

> "A potential defendant should also, it would seem, have the right that proceedings be instituted within a reasonable time from the date of the alleged wrong. Thus, reasonable periods of limitation after which a

(1) (1967) 1 C.L.R. 167, 183.
(2) Clarendon Press — Oxford 1975.

right of action will be statutebarred, may be necessary to protect a potential defendant."

Jacob's view of the ambit of Article 6(1) is not supported by any Decision of the European Court of Human Rights or opinion of the European Commission. In the *Neumeister case,* (1) the reasonableness of time taken for the determination of a charge was judged by reference to the commencement of criminal proceedings. In the opinion of the Commission, in the above case that preceded reference to the Court, the view is expressed that the word "charge" should be construed as encompassing charging by the investigating or police authorities, thus tying the time element to events immediately antecedent to the preferment of a charge before the Court. Whichever of the two views is adopted, what is significant is that both bodies inclined to the view that reasonableness should be judged by reference to judicial proceedings or steps preliminary thereto.

Paragraph 2 of Article 30, like Article 6(1), envisages the observance of similar standards in the determination of obligations under civil Law and criminal charges. If anything, a stricter standard might be warranted for the determination of criminal liability. However, there is no differentiation between the two. Article 30.2 refers indistinguishably to the determination of obligations under Civil and Criminal Law providing for the application of similar judicial standards of fairness and efficiency in both fields.

Now, if the argument of counsel for the appellant were accepted, we would by the same reasoning have to acknowledge that periods of limitation apply to criminal offences as well and that the relevant provisions of para. 2 of Article 30 must be construed as tying the element of reasonableness envisaged therein to the date of commission of the offence too. That cannot have been the intention of the makers of the Constitution. nor can such intention

(1) For a discussion of this case and other cases bearing on the interpretation of Article 6(1) see Theory and Practice of the European Convention of Human Rights by P. van Dijk and G.J.H. van Hoof. See also Huber care Yearbook XVIII (1978) 324 (356).

be attributed to them having regard to the wording of para. 2 Article 30.

The theme of Article 30 is the entrenchment of the right of access to the Law Courts and the establishment of proper standards for the due administration of justice. They incorporate the rules of natural justice as an integral part of the judicial process, and make provision for the expeditious transaction of judicial proceedings in the interest of the efficacy of the judicial process.

The accrual and regulations of rights vested by law is wholely beyond the scope of Article 30. The reasonableness of the length of time taken for the conduct of judicial proceedings is measured in the case of civil actions from the date of their institution. No complaint is made here that the time taken for the purpose was in any way unreasonably long.

By way of epilogue to this Judgment, we may mention that the establishment and adjustment of periods of limitation is, as the Supreme Court acknowledged in the case of *Yiannis Fekkas* v. *The Electricity Authority of Cyprus* (1), a matter of legislative discretion; whereas it would be difficult for anyone acquainted with the sad events of 1963-1964 and the tragic events of 1974 to suggest that the enactment of Law 57/64 was an unjustified measure.

For all the above reasons, the appeal was dismissed with costs.

A. Loizou J.: In the result the appeal is dismissed with costs.

Appeal dismissed with costs.

(1) (1968) 1 C.L.R 173.