1987 January 20

[TRIANTAFYLLIDES P., A. LOIZOU, LORIS, STYLIANIDES, PIKIS, JJ.]

TOULLA Y. MALACHTOU,
AS ADMINISTRATRIX OF THE ESTATE OF
DECEASED COSTAS ARMEFTI,

Appellant (Defendant),

v.

1. CHRISTODOULOS K. ARMEFTI,
2. MARIA K. ARMEFTI,

Respondents (Plaintiffs).

(Civil Appeal No. 6616).

Constitutional Law — International agreements — Constitution, Art. 169 — Effect, ambit and application of — The status of a Convention in the legal order of Cyprus — Para. 3 of Art. 169 — A Convention ratified in accordance with para. 1 or para. 2 of Art. 169 is vested with superior force in that it supersedes the statute law, whether anterior or posterior — The Convention supersedes, but does not repeal or amend the statute law.

International agreements — Interpretation of — Principles applicable.

Constitutional Law — International agreements — Constitution, Art. 169.3 — Reciprocity — When the condition of reciprocity is excluded — The Convention on the Legal Status of Children Born Out of Wedlock — Condition of reciprocity excluded.

Constitutional Law — International agreements — Constitution, Art. 169.3 — For a treaty to be applicable, it must be self executing — Principles governing the question whether a treaty is self-executing — The Convention on the Legal Status of Children Born Out of Wedlock — Article 9 — It is self-executing — Section 4 of Law 50/79, whereby the aforesaid Convention was ratified.

Children — Born out of wedlock — The Convention on the Legal Status of Children Born Out of Wedlock — Ratified by Law 50/79 — Right of succession of such children to their father's estate — The Wills and Succession Law, Cap. 195, sections 44 and 46 and the First Schedule thereto — The Illegitimate Children Law, Cap. 278, Section 3 — Said provisions incompatible with Art. 9 of the said Convention — As the Convention had been ratified in accordance with Art. 169.2 of the Constitution, Art. 9 supersedes in virtue of Art. 169.3 the aforesaid statutory provisions.

Wills and Succession — Children born out of wedlock — See Children, supra

Constitutional Law — Equality — Constitution, Art 28 — Article 9 of the Convention on the Legal Status of Children Born Out of Wedlock — Not inconsistent with Art 28

This appeal is directed against the decision of the District Court of Limassol, whereby it was held that the Convention on the Legal Status of Children Born Out of Wedlock, ratified by Law 50/79, validly concluded under Art 169* of the Constitution, acquired superior force to any municipal law and, therefore, under Article 9 of the Convention a child born out of wedlock has the same right of succession in the estate of his father and his father's family, as if he had been born in wedlock, provided that a paternal affiliation is established, pursuant to Articles 3-5 of the Convention

Article 9 of the Convention reads as follows «A child born out of wedlock shall have the same right of succession in the estate of its father and its mother and of a member of its father's or mother's family as if it had been born in wedlock»

Counsel for the appellant argued that the provisions of the Convention are not enforceable law in Cyprus as Article 169 3 does not apply to treaties regulating private civil law rights amongst citizens but only applies to treaties affecting rights and obligations of the State, that the Convention is not self-executing but only provides guidelines and directives to the legislature, that the element of reciprocity, provided in Article 169 3, is not satisfied, and finally that its provisions are unreasonable and are contrary to the principles of equality enshrined in the Constitution in the sense that the rights of succession granted to the illegitimate children are not granted also to the father of an illegitimate child

It must be noted that section 4 of the ratifying Law 50/79 empowers the Supreme Court to make rules regulating the procedure in any case coming within such law The proviso to the section provides that until such rules are issued all matters, the procedure and the payment of fees will be governed mutatis mutandis by the Rules in force theretofore

Held, dismissing the appeal (A) Per Triantafyllides, P (1) In view of section 4 of Law 50/79 the conclusion is that in so far as Article 9 of the Convention is concerned, the legislature has proceeded to ratify the Convention on the basis that it is self-executing

(2) It follows that by virtue of its ratification Art 9 has been vested with «superior force to any municipal Law» in the sense of Art 169 3 of the Constitution Consequently, it supersedes the relevant provisions of Cap 195 and Cap 278, which are incompatible with it

(3) It must be stressed that Law 50/79 did not amend or repeal the

* *Quoted at pp 214-215 post*

aforementioned provisions of Cap 195 and Cap 278 but vested Art 9 with superior force enabling it to supersede such provisions

B) Per A Loizou J (1) The measures which a contracting State had to take in order to ensure conformity of its laws with the Convention were left to each State to decide upon The only limitation that was imposed on a State was that it should convert the rights under the Convention to individual rights This is so stated in the Explanatory Report of the Convention which is an aid to its interpretation

(2) It appears that the course adopted by our State was that of introducing into the provisions of the ratifying law section 4 thereof

(3) The position being so Article 9 of the Convention should be treated alongside with the rest of its provisions as self executing and for all intents and purposes Law No 50 of 1979 has rendered it applicable to the individual rights superseding all other provisions in our laws as are contrary to the *provisions of the Convention by virtue of Article 169 3 of the Constitution*

C) Per Loris J (1) The House of Representatives by enacting Law 50/79 ratified the Convention in question turning same or at least so much of it as is self executing, into part and parcel of our domestic law From its wording it is abundantly clear that Article 9 of the Convention is self executing

(2) In accordance with Art 169 3 of the Constitution Art 9 has superior force and supersedes provisions to the contrary in the domestic Law under consideration

D) Per Stylianides J (1) This case raises points of considerable importance The effect and application of Article 169 of the Constitution and the position of Conventions ratified in conformity with Article 169 of the Constitution in our domestic legal order

2) In the Republic of Cyprus a convention negotiated or signed under a decision of the Council of Ministers and ratified by a law made by the House of Representatives and published in the Official Gazette of the Republic acquires superior force to any municipal law A ratifying law comes into operation on the date of its publication in the gazette unless otherwise provided A convention, however, becomes effective under international law after ratification according to the provisions of the convention or at any time thereafter specified therein The convention has superior force over any municipal law not on the principle of lex posterior derogat priori but rather on the principle of lex superior derogat inferiori Thus it has superior force to any ordinary domestic legislation The convention has superior force not in the sense of repealing the inconsistent domestic law but in the sense of having superiority and precedence in its application A convention in the legal order of Cyprus, as set out in the Constitution, is of a status superior to any other law either prior or subsequent but is inferior to the Constitution

Another difference between a ratified convention and the ordinary municipal legislation is that the convention is not interpreted on the basis of the rules and principles of interpretation of the ordinary statutes but its

interpretation is governed by international law and particularly by the Vienna Convention on Treaties - (See Section 3 Arts 31 38)

(3) Article 169 does not apply only to treaties affecting rights and obligations of the State as submitted by counsel for the appellant but it governs all treaties conventions and agreements ratified and concluded in conformity with paragraph 2 thereof provided that all other requirements are satisfied

(4) Conventions may be bilateral or multilateral In bilateral conventions where objective rights are created or obligations by one State towards the other or the nationals of the other State are undertaken reciprocity is essential though according to Article 60 of the Vienna Convention on the Law of Treaties only a material breach of a multilateral treaty by one of the parties entitles the other parties to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part

There are however treaties whose nature objective and function in the international relations and the internal legal order exclude the condition of reciprocity Such are multilateral conventions the object of which is not to create any subjective or reciprocal rights for the contracting parties themselves but their objective and their intent is to promote certain *principles of law moral and legal values and which a contracting party signs* and ratifies only for the realization of this objective Indeed it would be incomprehensible for a State not to secure the rights and freedoms defined in s 1 of the Convention of Human Rights on the ground that another party to the Convention violates the Convention even against a national of the first State Moreover where there is any international mechanism of control or supervision the condition of reciprocity again cannot validly be raised

(5) For a treaty to be applicable it must be self-executing Only such provisions of a convention are self executing which may be applied by the organs of the State and which can be enforced by the Courts and which create rights for the individuals, they govern or affect directly relations of the internal life between the individuals and the individuals and the State or the public authorities

The question whether or not treaties are self-executing is influenced by the wording of the convention, its provisions and the relevant constitutional law in a given country

(6) In the light of the preamble* to the Convention in question in this case, the provisions of Art 14** and the fact that Cyprus made no reservation whatsoever, the provisions of Art 1***, the Explanatory Report**** which is

---

* *The relevant part is quoted at p 226*
** *Quoted at p 226*
*** *Quoted at p 227*
**** *The relevant part is quoted at p 227*

a supplementary means of interpretation the steps taken by our State namely the ratification of the Convention by Law under Art 169 2 of the Constitution and the enactment of section 4 of Law 50/79, and the operative parts of the Convention, namely Articles 2-10 which create objective rules of general application and regulate the rights and responsibilities of all individuals governed by the Laws of Cyprus, the conclusion is that the Convention is self-executing

(7) In view of what was explained earlier on and bearing in mind its objective the condition of reciprocity is not applicable to the Convention in question This is so for additional reason that there exists an international mechanism of control of the application of the Convention

(8) There is so ment in the submission that the provision of the Convention is unreasonable or that it is repugnant to the principle of equality enshrined in Article 28 of our Constitution On the contrary it tends to apply the principle of equality between children born either in or out of wedlock and to ensure and protect the human rights of those born out of wedlock

(9) Our domestic law relating to the rights of succession of children born out of wedlock (The Wills and Succession Law, Cap 195 ss 44 and 46 and the First Schedule thereto and The Illegitimate Children Law Cap 278 s 3) are inconsistent with the Convention The Law applicable is that set out by the Convention Subject to the establishment of paternal affiliation a child has the right of succession ensured by Art 9 thereof

(10) The aforesaid provisions of our statute law may have constituted a violation of Articles 8 and 14 of the European Convention for the Protection of Human Rights and, if challenged, may be declared repugnant to Art 28 of the Constitution This however, does not arise in this case, but it constitutes a complete answer to the submission that Art 9 of the Convention in question is inconsistent with the principle of equality

---

E) Per Pikis, J (1) Ratification by the legislature incorporates the treaty or convention, as the case may be, into domestic law by virtue of the legislative power vested in the House of Representatives (Article 61), and if its provisions are self-executing they acquire the force of law quite independently of para 3 of article 169 or its impact on domestic legislation

(2) This aspect of legislative ratification must be stressed, because if the conclusion is that the provisions of Art 9 of the Convention ratified by Law 50/79 are self-executing and became in virtue of this enactment part of our internal legislation, it may be unnecessary to examine the status of the legislation and determine whether it acquired superior force in virtue of Art 169 3 of the Constitution

(3) A provision of a treaty or convention is self-executing if the rights vested or the obligation imposed thereby are comprehensively defined to the extent of making them, without further addition or modification, enforceable before

a court of law. The wording of Article 9 has those attributes What is missing in the Convention is machinery for the assertion of these rights before judicial authorities where denied The legislature aimed to fill this gap by the enactment of s. 4 of Law 50/79 The enactment of s 4 reinforces the view that it was in the contemplation of the legislature to give immediate effect to the rights embodied in the convention

(4) That being the case it can be safely inferred that the legislature intended by the enactment of Law 50/79 to repeal those provisions of the Wills and Succession Law, Cap. 195, that conflicted with and were repugnant to the rights conferred by Article 9 of the Convention. Disinclined though courts of law are to find repeal by necessary implication, this is unavoidable when the provisions of the two enactments are irreconcilable, in which case the provisions of the earlier enactment must yield to those of the latter

Appeal dismissed
Costs of both parties to be paid out of the estate.

Cases referred to:

In re Susanne Annander (1983) 1 C.L R 619;

James Buchanan and Co. Ltd v. Babco Forwarding and Shipping (U.K.) Ltd. [1977] 3 All E.R. 1048;

Stag Line Ltd. v Foscolo, Margo and Co Ltd [1931] All E R Rep. 666

Foster v. Neilson, 7 Law Ed. U.S. 26-29 p. 252 ;

Marckx case (Series A. No. 31 p. 15 paras. 31 and 45-48) — *European* Court of Human Rights.

Johnston and Others v. Ireland, Judgment dated 18 12.86 - European Court of Human Rights.

O'B v.S. (1984) Irish Reports 316;

Re Khou (American Journal of International Law) Vol. 77 No 1 p. 16

Cheney v. Conn [1968] 1 All E.R. 779;

Mizrahi v. The Republic (1968) 3 C.L R. 404;

Kannas v. The Police (1968) 2 C.L.R. 35;

Stavrou and Others v. The Republic (1986) 3 C.L.R. 361.,

Judgment of Court of Appeal of Aix (J.C P. 1948 11.4, 150).

Cafe's Jacques Vabre et S.A.R.L J. Weigel et Cie Chambre Mixte, Cour de Cassation, 23.5.75);

In Re Rekhou, Conseil d' Etat, 29.5.81;

Austria v. Italy (App. 788/60) European Commission of Human Rights.

Appeal.

Appeal by plaintiffs against the judgment of the District Court of Limassol (Chrysostomis, P.D.C. and Stavrinides, D.J.) dated the 26th September, 1983 (Action No. 3107/82), whereby it was decided that when paternal affiliation is established, a child born out of wedlock has the same right of succession in the estate of his father and of any member of his father's family as if it had been born in wedlock.

A. Triantafyllides with R. Michaelides, for the appellant.

C. Melas, for the respondent.

Cur. adv. vult.

The following judgments were read:

STYLIANIDES J.: This appeal is directed against the decision of the District Court of Limassol whereby it was decided that when a paternal affiliation is established, a child born out of wedlock has the same right of succession in the estate of his father and of a member of his father's family as if it had been born in wedlock.

Costas Christodoulou Armeftis, late of Limassol, passed away on 29th July, 1980, leaving a lawful wife. By will dated 2.4.70 he left and bequeathed part of his property to two persons, namely, Christodoulos Costa Armeftis and Maria Costa Armefti, the plaintiffs in this action. The defendant in Probate Application No. 223/80 was granted letters of administration of the estate of the late Costas Christodoulou Armeftis with the will annexed.

The plaintiffs by this action claim that they are lawful heirs of the said deceased as being his children born out of wedlock and that they and the surviving wife of the deceased are his only heirs.

After the closing of the pleadings, on the application of the defendant under 0.27(1) and (2) of the Civil Procedure Rules with the consent of the plaintiffs, the following was set down for hearing as a preliminary point of law: whether illegitimate children succeed as lawful heirs to the estate of their deceased father.

The Full District Court of Limassol, after hearing argument from counsel of both parties, decided that the Convention on the Legal Status of Children Born out of Wedlock, ratified by our Law No. 50/79, validly concluded under Article 169 of the Constitution, acquired superior force to any municipal law and, therefore, under Article 9 of the Convention a child born out of wedlock has the same right of succession in the estate of his father and his father's

family as if he had been born in wedlock, provided that a paternal affiliation is established, pursuant to Article 3-5 of the Convention

Learned counsel for the appellant argued that the provisions of the Convention are not enforceable law in Cyprus as Article 169 3 does not apply to treaties regulating private civil law rights amongst citizens but only applies to treaties affecting rights and obligations of the State, that the Convention is not self-executing but only provides guidelines and directives to the legislature, that the element of reciprocity, provided in Article 169 3, is not satisfied, and finally that its provisions are unreasonable and are contrary to the principles of equality enshrined in the constitution in the sense that the rights of succession granted to the illegitimate children are not granted also to the father of the illegitimate children

Counsel for the respondents, on the other hand, supported the judgment of the trial Court on the grounds on which the first instance Court relied

This case raises points of considerable importance The effect and application of Article 169 of the Constitution and the position of Conventions ratified in conformity with Article 169 of the Constitution in our domestic legal order

Though in a number of cases the Courts of this country referred to and applied provisions of the European Convention on Human Rights ratified by Law No 39/62 as having superior force to any municipal law, the issues raised in this appeal have not been dealt with in the past

Article 169 of our Constitution reads as follows -

«Subject to the provisions of Article 50 and paragraph 3 of Article 57-

(1) every international agreement with a foreign State or any International Organisation relating to commercial matters, economic co-operation (including payments and credit) and modus vivendi shall be concluded under a decision of the Council of Ministers,

(2) any other treaty, convention or international agreement shall be negotiated and signed under a decision of the Council of Ministers and shall only be operative and binding on the Republic when approved by a law made by the House of Representatives whereupon it shall be concluded,

(3) treaties, conventions and agreements concluded in accordance with the foregoing provisions of this Article shall have, as from their publication in the official Gazette of the Republic, superior force to any municipal law on condition that such treaties, conventions and agreements are applied by the other party thereto»

The provision of paragraph 3 is similar though not identical, to Article 55 of the French Constitution of 4 10 58 that runs -

«Les traités ou accords regulièrement ratifiés ou approuvés ont, dés leur publication une autorité supérieure á celle des lois, sous réserve, pour chaque accord ou traité de son application par l' autre partie»

(«Treaties or agreements duly ratified or approved shall upon their publication, have an authority superior to that of laws subject for each agreement or treaty to its application by the other party»)

Article 55 stemmed from Articles 26 and 28 of the Constitution of 27 10 46 which established expressly in a general way the principle of the superiority of the international conventions over the internal laws Article 26 concerned laws anterior to a convention and Article 28 laws posterior to a convention

We may refer also to Article 28 1 of the Constitution of Greece of 1975 and Article 66 of the Netherlands' Constitution

In England the organs who ratify, the mode of ratification and the effect of ratification of a treaty are completely different and a ratified treaty («treaty» is used to denote treaty, convention or agreement) is neither part of nor applicable in England unless its contents are incorporated in a statute of the national legislation No guidance therefore, may be obtained from that direction

In the Republic of Cyprus a convention negotiated or signed under a decision of the Council of Ministers and ratified by a law made by the House of Representatives and published in the Official Gazette of the Republic acquires superior force to any municipal law A ratifying law comes into operation on the date of its publication in the gazette unless otherwise provided A convention, however, becomes effective under international law after ratification, according to the provisions of the convention or at any time thereafter specified therein

In France the Courts in applying both the provisions of Articles 26 and 28 of the Constitution of 1946 and of Article 55 of the Constitution of 1958 held that an international convention prevails over an inconsistent law even if the law is posterior The Court of Appeal of Dijon (D , 1952, p 801) held that an international convention of 7th January, 1862, prevailed over a decree-law of 12th November, 1938 In a judgment of 10th November, 1947 (J C P , 1948 11 4,150) the Court of Appeal of Aix said

> «Provided that these considerations lead the Judge to give from now on precedence to the unequivocal diplomatic conventions over contrary legislative provisions even posterior»

Similarly the Chambre d' Accusation de la Court d'Appel de Paris on 8th June, 1971 (Gaz Pal 1971 2 793) pronounced that internal legislation even posterior does not render an international convention null and void or inapplicable

Procureur Général Touffait in the *«Cafés Jacques Vabre» et S A R L J Weigel et Cie,* (Chambre Mixte, Cour de Cassation, of 23 5 75) in his opinion («Conclusions») on the effect of the provisions of Article 55 of the 1958 Constitution on posterior legislation said (page 350 of the report) -

> «The target of Article 55 is not the laws anterior to a treaty Had it been so, it would be sufficient to provide 'the treaty has the force of law' since it is an absolute principle that a posterior law prevails over anterior law
>
> The analysis of the text is in conformity with the international ethic which the drafters of the Constitutions of 1946 and 1958 followed and leads us inescapably to conclude that the notion of the superiority of the treaty over the law has a meaning only if it refers to laws posterior to the treaty, as with regard to laws anterior the answer is evident The international legal order cannot be realized and developed unless the States apply with loyalty the conventions which they sign, ratify and publish»

The Courts in France, having regard to the strict separation of powers and their competence, gave the following solution to the application of the treaty which has superior force -

> «This limitation of powers of the Judge led him in the cases of conflict between two judicial norms of different hierarchical

value to a technical solution which is well known: that which consists in the ensuring of respect to the superior norm not certainly by the annulment of the inferior rule but simply by the non-application (én écartant l' application») in the case of inferior law in favour of the superior «(afés Jucques Vabre case (supra)).

The convention has superior force over any municipal law not on the principle of lex posterior derogat priori but rather on the principle of lex superior derogat inferiori. Thus it has superior force to any ordinary domestic legislation - (Vegleris - Syntagma. 1977, pp.215, 220, 222; Kypreou - Ricos Constitutional Law, 8th edition, 1980, p.62, «Cafés Jacques Vabre» (supra)) The convention has superior force not in the sense of repealing the inconsistent domestic law but in the sense of having superiority and precedence in its application. (Arnaoutoglou, President of the Greek Council of State: Is a Law Repugnant to International Convention Unconstitutional, Syntagma, 1982, p.562; Kypreou - Judicial Control of the Constitutionality of the Laws, Honorary Volume of the Greek Council of State, 1929-1979, p.201, at pp.222, 228, 229).

A convention in the legal order of Cyprus, as set out in the Constitution, is of a status superior to any other law either prior or subsequent. «Law», when used in relation to the period after the coming into operation of the Constitution means a law of the Republic - (Article 186.1). The Constitution under Article 179.1 is the supreme law of the Republic and is not, therefore, within the ambit of the definition of «law». A convention is inferior to the Constitution and is subject to judicial review in the sense that the constitutional provisions prevail in case of any inconsistency between them and the provisions of the convention. Thus the hierarchy in our legal order is (a) the Constitution, (b) the conventions, and (c) the ordinary laws. A convention does not stricto sensu repeal the municipal law but has only superior force to it in the sense that it has precedence in its application. It retains its nature as part of the international law. Having regard to its nature, however, and its connection with the international obligations of the State, it cannot be amended or repealed by any posterior law contrary to the provisions of the convention or the provisions of the Vienna Convention on the Law of Treaties that was ratified under Article 169 by Law No. 62/76.

Such ratified convention delineates not only the international obligations of the State, as defined by the Convention but also the internal law until the day that under the provisions of the convention or the Vienna Convention on Treaties it ceases to be operative - (Vegleris op cit , p 212)

Another difference between a ratified convention and the ordinary municipal legislation is that the convention is not interpreted on the basis of the rules and principles of interpretation of the ordinary statutes but its interpretation is governed by international law and particularly by the Vienna Convention on Treaties - (See Section 3, Arts 31-38)

Even in England in *Buchanan & Co Ltd v Babco Forwarding and Shipping (U K) Ltd* [1977] 3 All E R 1048 Lord Wilberforce said at p 1052 -

> « given the expressed objective of the convention to produce uniformity in all contracting states I think that the correct approach is to interpret the English text which after all is likely to be used by many others than British businessmen in a normal manner, appropriate for the interpretation of an international convention, unconstrained by technical rules of English law, or by English legal precedent but on broad principles of general acceptation» (See, also, *Stag Line Ltd v Foscolo, Mango & Co Ltd* , [1931] All E R Rep 666, at 677, per Lord Macmillan)

Article 169 does not apply only to treaties affecting rights and obligations of the State, as submitted by counsel for the appellant, but it covers all treaties, conventions and agreements ratified and concluded in conformity with paragraph 2 thereof, provided that all other requirements are satisfied

Paragraph 3 of Article 169 introduces the condition of reciprocity The wording is «on condition that such treaties are applied by the other party thereto»

In the Greek Constitution of 1975 the condition of reciprocity is limited to the application of a convention to foreign nationals only In the French Constitution the wording is almost identical to our Constitution

Learned counsel for the appellant argued that reciprocity has to

be proved by certification of the Ministry of Foreign Affairs before any convention is applied in the internal legal order. He cited the decision of the Conseil d' Etat (en banc), May 29, 1981, *In Re Rekhou*.

In *Rekhou's* case a controversy arose in respect of the application of the so-called Accords of Evian of March 19, 1962, establishing new relations between Algeria and France. Algeria in the past was part of the French Union. By those Accords it was declared an independent State. The Accords were approved by popular referendum on April 8, 1962, and their implementation was authorised by a statute of April 13, 1962. Article 15 of the Declaration on the Principles Concerning Economic and Financial Cooperation between Algeria and France, guaranteed on the part of France the rights to retirement and disability pensions acquired in the service of French governmental agencies and on the part of Algeria such rights acquired in the service of Algerian governmental agencies prior to the exercise of self-determination, i.e. July 3, 1962. The Conseil d' Etat considered reciprocity to be crucial to deciding the issue, but held that an administrative judge lacked the power to determine «whether and to what extent the mode of execution of a treaty or accord by the other party is such as to divest the provisions of that treaty or accord of the authority which is conferred upon them by the constitution».

Rekhou's case has two peculiarities: Firstly, Algeria and France undertook bilateral obligations, the one in favour of the nationals of the other; secondly, the Conseil d' Etat, contrary to the practice and decisions of the ordinary courts of justice in France, sought to establish the exclusive jurisdiction of the Minister of Foreign Affairs in order to make a finding on reciprocity whereas the ordinary courts of justice have asserted these powers themselves.

In the *«Cafés Jacques Vabre»* case (supra) the opinion of M. Touffait, Procureur Général, on reciprocity was as follows:-

> «Le troisiéme moyen reproche á l' arret de la Cour d' appel de Paris d' avoir appliqué l' article 55 de la Constitution sans avoir examiné si la condition de réciprocité exigée par cet article se trouvait réalisée. Ce moyen pourrait appeler une discussion de principe: Celle de savoir si l' exigence de réciprocité que formule l' article 55 de notre Constitution vise non seulement les traités bilatéraux pour lesquels elle se comprend mais aussi les traités multilatéraux auxquels elle

serait difficilement applicable et celle de savoir plus précisément si cette exigence vaut pour les traités instituant la Communauté économique européenne Mais e ı ce qui concerne ceux-ci, selon la Cour de Justice des Communautés le fait que dans l'ordre juridique communautaire tout Etat membre victime d'un manquement d'un autre Etat membre á ses obligations peut en saisir la Cour de Justice (art 170 du Traité de Rome) pour que' elle mette fin á ce manquement, interdit á l' Etat dont il s' agit de se faire justice á lui-meme au nom d' une quelconque réciprocité (arret du 13 nov 1964, aff 90 et 91/63, Commission contre Luxembourg et Belgique)

Le moyen ne peut done etre accueilli puisque l exception tirée du defaut de réciprocité ne peut etre invoquee devant les juridictions nationales»

(«The third ground reproaches the decision of the Court of Appeal of Paris to have applied Art 55 of the Constitution without examining if the condition of reciprocity required by this article has been realized This ground could raise a discussion of principle that of knowing if the requirement of reciprocity which formulates Art 55 of our Constitution, is directed not only to bilateral treaties for which it is understandable but also to multilateral treaties to which it would have been with difficulty applicable, and the other principle of knowing more precisely if this requirement applies to treaties establishing the European Economic Community But with regard to the latter, according to the Court of the Communities, the fact that in the juridical order of the Communities each member State victim of the failure of the obligations by another member State may resort to the Court (Article 170 of the Treaty of Rome) to put an end to such failure, it prohibits the State concerned to take justice in its hands in the name of any reciprocity - (Decision of 13th November, 1964, 90 and 91/63, *Commission v Luxembourg and Belgium)*

This ground cannot be accepted since the objection which is drawn from the lack of reciprocity cannot be invoked before the national jurisdiction»)

The Mixed Chamber of Cour de Cassation, having heard the opinion of the Procureur Général, in its judgment said (pp. 335-356):-

«*Sur le troisiéme moyen:* Attendu qu'il est au surplus reproché á l' arret d' avoir fait application de l' article 95 du Traité du 25 mars 1957, alors, salon le pourvoi, que l' article 55 de la Constitution subordonne expressément l' autorité qu' il confere au Traités ratifiés par la France á la condition exigeant leur application par l' autre partie; que le juge du fond n' a pu, dés lors, valablement appliquer ce texte constitutionnel sans rechercher si l' Etat (Pays-Bas) d' oú a été importé le produit litigieux a satisfait á la condition de réciprocité.

Mais attendu que, dans l' ordre juridique communautaire, les manquements d' un Etat membre de la Communauté économique européenne aux obligations qui lui incombent en vertu du Traité du 25 mars 1957 étant soumis au recours prévu par l' article 170 du dit Traité, l' exception tirée du défaut de réciprocité ne peut etre invoquée devant les juridictions nationales.

D' oú il suit que le moyen ne peut etre accueilli».

(«*On the third ground:* Having regard that the judgment is further impeached on that it has applied Article 95 of the Treaty of 25th March, 1958, whereas, according to the provision, Article 55 of the Constitution expressly subjects the authority that confers on treaties ratified by France to the condition which requires their application by the other party; and that the judge of substance could not, therefore, validly apply this constitutional text without inquiring if the State (the Netherlands) from which the subject product was imported, has satisfied this condition of reciprocity.

But taking into consideration that in the juridical order of the Community the failures of a member State of the European Economic Community of its obligations which are incumbent on it by virtue of the Treaty of 25th March, 1957, are amenable to a recourse as provided by Article 170 of the said Treaty, the objection drawn from the failure of reciprocity

cannot be invoked before the national jurisdictions.

Therefore, from this it follows that this ground cannot be accepted»).

Thus the Cour de Cassation held that the condition of reciprocity was not necessary in view of the existence of an international organ to which a State victim might resort for any breach of the obligations of another State party to the Treaty of Rome.

The conventions may be bilateral or multilateral. In bilateral conventions, where objective rights are created or obligations by one State towards the other or the nationals of the other State are undertaken, reciprocity is essential, though, according to Article 60 of the Vienna Convention on the Law of Treaties, only a material breach of a multilateral treaty by one of the parties entitles the other parties to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.

A material breach of a treaty under Article 60.3 consists in (a) a repudiation of the treaty not sanctioned by the Vienna Convention or (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

There are, however, treaties whose nature, objective and function in the international relations and the internal legal order exclude the condition of reciprocity. Such are multilateral conventions the object of which is not to create any subjective or reciprocal rights for the contracting parties themselves but their objective and their intent is to promote certain principles of law, moral and legal values and which a contracting party signs and ratifies only for the realization of this objective. Examples are: Conventions for the protection of human rights and the improvements and formulation of common rules and the achievement of social justice.

It would be incomprehensible for a State not to secure the rights and freedoms defined in s.1 of the Convention of Human Rights on the ground that another party to the Convention violates the Convention even against a national of the first State - (See, also, Koukouli & Spiliotopoulou - Obligations of the State Members of

the International Convention 100 of the International Labour Organisation in Syntagma, 1981, pp 634-635; Vegleris, op. cit., p.241, Arnaoutoglou, op. cit p 559)

Where there is any international mechanism of control or supervision, the condition of reciprocity again cannot validly be raised

In Application 788/60 - *Austria v. Italy* - before the European Commission of Human Rights objection was raised regarding the Commission's competence ratione temporis in the sense that the accession of a State to a multilateral convention became immediately effective only with regard to other States which had already at that time acceded The Italian Government had, therefore, on 26th October, 1955, assumed obligations only in regard to States which at that time were Contracting Parties; these did not include Austria Italy and Austria had assumed mutual obligations only on 3rd September, 1958 The European Commission of Human Rights in its report on 31.3.63 had this to say at paragraph 58:-

«It clearly appears from these pronouncements that the purpose of the High Contracting Parties in concluding the Convention was not to concede to each other reciprocal rights and obligations in pursuance of their individual national interests but to realise the aims and ideals of the Council of Europe, as expressed in its Statute, and to establish a common public order of the free democracies of Europe with the object of safeguarding their common heritage of political traditions, ideals, freedom and the rule of law:

To achieve this purpose the High Contracting Parties, by the express terms of Article 1 of the Convention, undertake to secure the rights and freedoms defined in Section 1 of the Convention to everyone within their jurisdiction without any exception.

In becoming a Party to the Convention, a State undertakes, vis-á-vis the other High Contracting Parties, to secure the rights and freedoms defined in section 1 to every person within its jurisdiction, regardless of his or her nationality or status.

In short it undertakes to secure these rights and freedoms not only to its own nationals and those of other High Contracting Parties but also to nationals of States not parties to the Convention and to stateless persons as the Commission itself has expressly recognised in previous decisions

It follows that the obligations undertaken by the High Contracting Parties in the Convention are essentially of an objective character being designed rather to protect the fundamental rights of individual human beings from infringement by any of the High Contracting Parties than to create subjective and reciprocal rights for the High Contracting Parties themselves»

We agree with counsel for the appellant that for a treaty to be applicable it must be self-executing We need not in this case attempt to give a general definition of the term «self-executing treaty» Pious declarations and provisions relating to political and international relations in a convention are not self-executing provisions Only such provisions of a Convention are self-executing which may be applied by the organs of the State and which can be enforced by the Courts and which create rights for the individuals, they govern or affect directly relations of the internal life between the individuals, and the individuals and the State or the public authorities Provisions which do not create by themselves rights or obligations of persons or interests and which cannot be justiciable or do not refer to acts or omissions of State organs are not self-executing - (Veglenis, op cit , pp 202-206)

International law is primarily a law between States and normally treaties have effect upon States only As it has been pointed out by the Permanent Court of International Justice (Series B, No 15), this rule can be altered by the express or implied terms of the treaty, in which case its provisions become self-executing If treaties contain provisions with regard to rights and duties of the subjects of the contracting States, their courts, officials, and the like, these States must take such steps as are necessary, according to their Municipal Law, to make these provisions binding upon their subjects, courts, officials, and the like - (Oppenheim's International Law, 8th Edition, Volume 1, page 924)

The question whether or not treaties are self-executing is influenced by the wording of the convention, its provisions and the relevant constitutional law in a given country

The statement of the law in McNair - Law of Treaties, 1961 Edition, is heavily influenced by the constitutional system of the United Kingdom which, as we have said in the beginning of the judgment, is completely different from our own. At pp. 79-80 with reference to the position of treaties in the constitutional system of the United States, where the Constitution, the laws made in pursuance thereof and treaties of the United States are the supreme law of the Land, he states that although treaties become 'the supreme Law of the Land', some treaties require legislative action before they can receive any effect in American courts. After citing a passage from the judgment of Chief Justice Marshall in *Foster v. Neilson*, 7 Law. Ed. U.S. 26-29, at. p. 252, he notes:-

> «Those treaties which do not require any legislation to make them operative are sometimes referred to as 'self-executing'. It seems that Congress has been so prompt to pass legislation for the implementation of treaties that there have been very few opportunities of judicial determination of the question which treaties actually require legislation, and which do not, and it does not follow that, because legislation was passed to implement a treaty, the legislation was essential».

With the aforesaid principles in mind we proceed to consider the European Convention on the Legal Status of Children Born out of Wedlock. This Convention was done at Strasbourg on the 15th day of October, 1975. It was signed on behalf of the Republic of Cyprus on 1.12.78, subject to ratification pursuant to a decision of the Council of Ministers No. 17.257 of 28.9.78 in accordance with Article 11.1 of the Convention and by virtue of Article 169, paragraph 2, of the Constitution of the Republic of Cyprus.

It was ratified by the Convention on the Legal Status of Children Born out of Wedlock (Ratification) Law, 1979 (No. 50 of 1979).

According to Article 11 the instruments of ratification, acceptance or approval are deposited with the Secretary-General of the Council of Europe. The Convention entered into force three months after the date of the deposit of the 3rd instrument of ratification, acceptance or approval, i.e. on 11.8.78. The instrument of ratification of the Republic of Cyprus was deposited with the Secretary-General of the Council of Europe on the 11th day of July, 1979- (See Chart Showing Signatures and

Ratifications of Council of Europe Conventions and Agreements, issued by the Legal Affairs Department of the Council of Europe, ISSN 0252-9122) and pursuant to paragraph 3 of Article 11, the Convention came into force three months after the date of the deposit of the instrument of ratification in respect of Cyprus, i e 11 10 79

It is recorded in the preamble to the Convention -

«Considering that the aim of the Council of Europe is to achieve a greater unity between its Members in particular by the adoption of common rules in the field of law,

Noting that in a great number of member states efforts have been, or are being, made to improve the legal status of children born out of wedlock by reducing the differences between their legal status and that of children born in wedlock which are to the legal or social disadvantage of the former,

Recognising that wide disparities in the laws of member states in this field still exist,

Believing that the situation of children born out of wedlock should be improved and that the formulation of certain common rules concerning their legal status would assist this objective and at the same time would contribute to a harmonisation of the laws of the member states in this field,

Considering however that it is necessary to allow progressive stages for those states which consider themselves unable to adopt immediately certain rules of this Convention,

Have agreed as follows

»

Article 14 provides that -

«Any state may, at the time of signature, or when depositing its instrument of ratification, acceptance, approval or accession or when making a declaration in accordance with paragraph 2 of Article 13 of this Convention, make not more than three reservations in respect of the provisions of Articles 2 to 10 of the Convention»

Cyprus made no reservation whatsoever

Article 1 reads:-

«Each Contracting Party undertakes to ensure the conformity of its law with the provisions of this Convention and to notify the Secretary-General of the Council of Europe of the measures taken for that purpose».

The Explanatory Report is a supplementary means of interpretation. In the Explanatory Report, Chapter «Commentaries on the Provisions of the Convention», in respect of Article 1 it is recorded:-

«The measures referred to in this article will usually take the form of legal or administrative texts. These measures should be taken not later than the entry into force of the Convention in relation to the Contracting Party concerned. A Contracting Party will, however, be considered to have brought its law into line with the provisions of the Convention if a firm and constant practice implementing those provisions exists. Thus the term 'law' used in the English text is to be taken, throughout the Convention, to mean legal rules of general application, including a firm and constant practice».

Our State took the following steps: (a) It ratified the Convention by a Law under Article 169.2 (Law No. 50/79), and (b) enacted by s.4 of the said Law that the Supreme Court issues Rules of Court governing the practice and procedure of the Courts by virtue of this Law and especially for the procedure to be followed in any case under this Law and the Court fees payable. This section provided further that until the issue of such Rules of Court all matters, *procedure and payment of fees are governed, mutatis mutandis*, by the Rules of Court in force heretofore.

The operative parts of the Convention are Articles 2-10. All of them create objective rules of general application. They regulate the rights and responsibilities of all individuals governed by the Law of Cyprus.

In view of the above the legislative authorities treated this Convention as self-executing and rendered it enforceable and applicable in Cyprus.

In view of what was explained earlier on, the condition of reciprocity is not applicable as the Convention does not create subjective and reciprocal rights for the Contracting Parties themselves; its objective is to improve the situation of children born of wedlock, the formulation of common rules concerning

their status and the harmonisation of the laws of the member States of the Council of Europe in this field. Its object is not the reciprocal interests of the States.

The condition of reciprocity cannot be validly raised for the further ground that by Article 1 each contracting party is obliged to notify the Secretary-General of the Council of Europe of the measures taken for the purpose of ensuring the conformity of its law with the provisions of the Convention at the time set out in the Explanatory Report to which reference was made hereinabove. This is in effect an international mechanism of control of the application of the Convention.

We find no merit in the submission that the provisions of the Convention is unreasonable or that it is repugnant to the principle of equality enshrined in Article 28 of our Constitution. On the contrary, it tends to apply the principle of equality between children born either in or out of wedlock and to ensure and protect the human rights of those born out of wedlock.

Article 9 of the Convention provides:-

> «A child born out of wedlock shall have the same right of succession in the estate of its father and its mother and of a member of its father's or mother's family, as if it had been born in wedlock».

The domestic law on the right of succession is regulated by the Wills & Succession Law, Cap. 195, ss.44 and 46, and the First Schedule thereto. Only the legitimate children of a deceased and their descendants could lawfully inherit a deceased.

The Illegitimate Children Law, Cap. 278, under s.3, provides that an illegitimate child shall have the legal status of a legitimate child in respect of his mother and her relatives by blood only. We need not refer for the purpose of this judgment to other provisions, such as s.6 of Cap. 278. It suffices to say that under the municipal Laws of Cyprus in operation the rights of succession of the children born out of wedlock were limited to their maternal side only.

These provisions are not in conformity with the Convention; they are inconsistent and directly incompatible therewith. As the Convention has superior force, the provisions of the municipal Law are not applicable. The Law applicable is that set out in the Convention: Subject to the establishment of paternal affiliation a

child has the right of succession ensured by Article 9 aforesaid.

Before concluding this judgment, we would like to put on record that in *Marckx* case (Series A, No. 31, p.15, paragraphs 31 and 45-48) the European Court of Human Rights pronounced that the State has positive obligations concerning the situation between an unmarried mother and her child and the near relatives of the mother and the rights of such child, and that the right of succession is one of such rights. Such relations should be not different from those of a legitimate child. At page 15 we read:-

> «As envisaged by Article 8, respect for family life implies in particular, in the Court's view, the existence in domestic law of legal safeguards that render possible as from the moment of birth the child's integration in his family. In this connection, the State has a choice of various means, but a law that fails to satisfy this requirement violates paragraph 1 of Article 8 without there being any call to examine it under paragraph 2».

Relevant is the judgment of the European Court of Human Rights in the case of *Johnston and Others v. Ireland*, (6/1985/92/139), delivered on 18.12.86. The devolution of estates on intestacy was governed in Ireland by the Succession Act, 1965, which provides, basically, that the estate is to be distributed in specified proportions between any spouse or «issue» who may survive the deceased.

In *O'B v.S*, (1984) Irish Reports 316, the Supreme Court held that the word «issue» did not include children who were not the issue of a lawful marriage and that accordingly an illegitimate child had, under the Act, no right to inheritance on the intestacy of his natural father. The Supreme Court whilst holding that the resultant discrimination in favour of legitimate children was justifiable by reason of sections 1 and 3 of Article 41 of the Irish Constitution, it stated that the decision to change the existing rules of intestate succession and the extent to which they were to be changed were primarily matters for the legislature.

The third applicant, a daughter born out of wedlock (an adulterous union) complained that her succession rights vis-á-vis her parents constituted a violation of Article 8 of the European Convention of Human Rights, there being an interference with her family life under Irish Law - (See paragraph 70 of the judgment). The Court said on the matter:-

«As the Government emphasised, the Marckx case related solely to the relations between mother and child. However, the Court considers that its observations on the integration of a child within his family are equally applicable to a case such as the present, concerning as it does parents who have lived, with their daughter, in a family relationship over many years».

After referring to the preamble to the European Convention on the Legal Status of Children Born out of Wedlock, which was not ratified and is not part of the Law of Ireland, it said:-

«In its consideration of this part of the present case, the Court cannot but be influenced by these developments. As it observed in its above-mentioned Marchx judgment, 'respect' for family life, understood as including the ties between near relatives, implies an obligation for the State to act in a manner calculated to allow these ties to develop normally (Series A. No. 31, p.21, §45). And in the present case the normal development of the natural family ties between the first and second applicants and their daughter requires, in the Court's opinion, that she should be placed, legally and socially, in a position akin to that of a legitimate child.

Examination of the third applicant's present legal situation, seen as a whole, reveals, however, that it differs considerably from that of a legitimate child; in addition, it has not been shown that there are any means available to her or her parents to eliminate or reduce the differences. Having regard to the particular circumstances of this case and notwithstanding the wide margin of appreciation enjoyed by Ireland in this area (see paragraph 55 (c) above), the absence of an appropriate legal regime reflecting the third applicant's natural family ties amounts to a failure to respect her family life.

There is accordingly, as regards all three applicants, a breach or Article 8 under this head».

At paragraph 78 with regard to violation of Article 14 (Principle of Equality) it said:-

«The third applicant alleged that, by reason of the distinctions existing under Irish law between legitimate and illegitimate children in the matter of succession rights over the estates of their parents, she was the victim of discrimination

contrary to Article 14, taken in conjuction with Article 8».

At paragraph 79 it is said:-

«Since succession rights were included amongst the aspects of Irish law which were taken into consideration in the examination of the general complaint concerning the third applicant's legal situation, the Court, like the Commission, does not consider it necessary to give a separate ruling on this allegation».

It is to be noted that in Ireland during the pendency of the *Johnston* case, on 9th May, 1986, the Status of Children Bill, 1986, was introduced into the Seanad. This is a comprehensive legislation governing the status of children in the Republic of Ireland. If enacted in its present form, which is the stated purpose of removing as far as possible provisions in existing laws which discriminate against children born outside marriage - would have, inter alia, the effect that for succession purposes no discrimination would be made between persons based on whether or not their parents were married to each other. Thus, a child born outside marriage would be entitled to a share on the intestacy of either parent and would have the same rights in relation to the estate of a parent who died leaving a will as would a child of a family based on marriage.

It is apparent from the above that our statute Law of Succession with regard to children born out of wedlock may have constituted a violation of Article 8 of the Convention and Article 14. The provisions of our statute law relating to children born out of wedlock with regard to succession, if challenged before a competent Court, might be declared unconstitutional as they are repugnant and inconsistent with the provisions of Article 28 of the Constitution. This, however, does not arise in this case. The aforesaid are a complete answer to the allegation that the provisions of the Convention are inconsistent with the principle of equality enshrined in the Constitution as there is no provision in the Convention entitling the father to succeed his child born outside marriage.

For these reasons this appeal fails.

Having regard to the circumstances of the case, including the novelty of the points raised, costs of both sides before this Court and the District Court to be paid out of the estate.

PIKIS J.: The subject of this appeal are the implications of Law

50/79 ratifying the European Convention on the legal status of children born out of wedlock with particular reference to the rights of succession of illegitimate children to the estate of their father The Full District Court of Limassol decided by way of a preliminary point that, by virtue of the provisions of the above law, article 9 of the Convention safeguarding rights of succession, became part of our law superseding or repealing by necessary implication pre-existing municipal legislation, namely The Wills and Succession Law - Cap 195 The question arose in the context of an action of the plaintiffs, claiming to be illegitimate children of the deceased, against the administratrix of the estate for the recovery of their share from the estate of the deceased

In a well reasoned judgment the trial Court held that Law 50/79 amended by necessary implication pre-existing domestic law on the status and succession rights of illegitimate children*, paving the way for success of their action in the event of proving that they were children of the deceased born out of wedlock The trial Court based its decision on two grounds, the following -

(a) The provisions of the Convention had superior force to those of any domestic legislation conflicting therewith in virtue of para 3 of article 169

(b) Irrespective of article 169 3 the legislature intended by the provisions of Law 50/79 to incorporate the Convention into domestic law, an intention derived from the introductory provisions to the ratification of the law, particularly those of s 4 Section 4 empowered the Supreme Court to make rules governing the practice and procedure of the Courts in proceedings raised under the Convention, an authority compatible only, as the trial Court found, with an intention to make the provisions of the Convention part of the substantive law

For the administratrix it was argued that Law 50/79 did not go beyond ratifying the Convention, the provisions of which did not of themselves purport to change the law Construed in their proper perspective the provisions of the Convention go no further than provide guidelines for streamlining domestic legislation along the declarations made therein on to the status and succession rights that children born out of wedlock ought to enjoy It was

* *(See, Illegitimate Children Law Cap 278, and The Wills and Succession Law - Cap 195)*

difficult to contemplate, counsel argued, the legislature intending to repeal or amend a host of provisions of domestic legislation bearing on the status and rights of "illegitimate children" merely by reference to the provisions of the Convention. Nor does, counsel suggested, s.4 reveal such an unequivocal intention on the part of the legislature as to justify the introduction of the sweeping changes in domestic legislation the trial Court noticed to have been introduced by Law 50/79. Further counsel submitted the rights acknowledged by the Convention are broadly defined, lacking the definitive character necessary to classify them as statutory rights. In short, he argued, the provisions of the Convention are not self-executing and that in itself is a valid reason for denying them statutory force.

A big part of the address of counsel for the appellant was devoted to the interpretation and application of para.3, article 169, and the circumstances under which a ratified treaty or convention may acquire superior force to conflicting domestic legislation. Superior force is, he argued, dependent on proof of reciprocity - a position supported by the French case of *Re Khou**, cited on the interpretation of analogous provisions of the French Constitution of 1958, notably article 58. Respecting reciprocity counsel raised a twofold argument:-

That the ambit of para. 3 of article 169 is confined to treaties or conventions founded on reciprocal rights and obligations, adding that the Convention here under consideration is not modelled on mutuality.

If contrary to his submission the Court found that the element of reciprocity is present by reference to the provisions of article 11(2) stipulating for the lodgment of a minimum number of instruments as a prerequisite for the convention coming into force, there was no evidence this requirement was satisfied; that could only be supplied by the Ministry of Foreign Affairs, the mouthpiece of government for the applicability of treaties, conventions and international agreements.

In sum, the position of appellant is that Law 50/79 merely laid the framework for changes in domestic legislation on the status and succession rights of illegitimate children without seeking to change the law itself. Counsel did not omit to bring to our notice dicta of

* *((1982) - cited and discussed in American Journal of International Law, Vol. 77, No.1, p.161).*

Triantafyllides, P , in *Re Susanne Annander** that go against his submission The learned president stated at p 631

> «In Cyprus the status of a father of an illegitimate child has been afforded recognition due to the ratification of the European Convention on the legal status of the children born out of wedlock by means of Law 50/79»

We were invited not to follow the above appreciation of the effect of Law 50/79 or follow the decision in any respect not being bound by it.

Counsel for the respondents supported the decision of the trial Court warranted by the intention of the legislature as evinced by s 4, and the superiority of the provisions of ratified conventions under para 3, article 169 He laid emphasis, as the trial Court had done, on the reasoning of the decision of *Ungoed-Thomas, J* , in *Cheney v Conn***, and the effect of ratification when it derives from a legislative act *Self-executing provisions of a convention ratified* by Act of Parliament, become part of domestic law like any other enactment of the legislature By the same process of reasoning the provisions of article 9, self-executing in the submission of counsel, became, by their incorporation into an Act of the House, part of domestic legislation and should be heeded as such

On no previous occasion was the effect of ratification examined by the Full Bench of the Supreme Court Nor were the implications of the several provisions of article 169 explored Article 169 deals with both, the means of ratification of treaties, conventions and international agreements and their effect on internal law International law does not specify the State authority competent to ratify international agreements It is a matter of domestic law. And the practice of States differs For example, in the United Kingdom the power to ratify belongs to the Crown recognised as an aspect of its prerogative In the United States the power vests cojointly in the President and the Senate (approval requires two thirds majority) The subject of ratification is discussed at length in *McNair - The Law of Treaties**** Under English law ratification, though it binds the State in its international relations, has no noticeable effects on internal law, unless it is made part of it by adoption in an Act of Parliament

---

* *(1983) 1 C L R 619*
** *[1968] 1 All E R 779*
*** *1961, at p 129 et seq*

The Constitution of Cyprus vests the power to ratify in different Authorities of the State, depending on the subject matter of the treaty, convention or international agreement. International agreements relating to commercial and matters of economic co-operation (including payments and credit), are ratifiable by the Council of Ministers in virtue of para. 1 of article 169. Whereas every other treaty, convention or international agreement is subject to ratification by the House of Representatives. Agreements duly ratified in accordance with either para. 1 or para. 2, have superior force to municipal law from the date of their publication in the official gazette «on condition that such treaties, conventions and agreements are applied by the other party thereto». It will be noticed that unlike English law, international agreements duly ratified by the Executive acquire, from the date of their publication in the official gazette, enhanced legal effect in domestic law provided the condition of reciprocity is satisfied. The difference between treaties, conventions and international agreements ratified by an Act of the House, and those ratified by the Council of Ministers, is the following:

Ratification by the legislature incorporates the treaty or convention, as the case may be, into domestic law by virtue of the legislative power vested in the House of Representatives (article 61); and if its provisions are self-executing they acquire the force of law quite independently of para. 3 of article 169 or its impact on domestic legislation.

The point is exemplified by the decisions of the Supreme Court in *Mizrahi v. Republic** and *Kannas v. The Police*** in which the Court referred to the European Convention on Human Rights ratified by Law 39/62 as an integral part of our domestic legislation without at all inquiring into the question of reciprocity. We stress this aspect of legislative ratification for if we conclude that the relevant provisions of the Convention ratified by Law 50/79, namely article 9, are self-executing and became in virtue of this enactment part of our internal legislation, it may be unnecessary to examine the status of the legislation and determine whether it acquired superior force in virtue of para. 3 of article 169. A provision of a treaty or convention is self-executing if the rights

---

* *(1968) 3 C.L.R. 404.*
** *(1968) 2 C.L.R. 35*

vested or the obligations imposed thereby are comprehensively defined to the extent of making them, without further addition or modification, enforceable before a court of law. The wording of article 9 has, in my judgment, those attributes. It defines succinctly, with all necessary detail, the rights given thereunder in a manner fledging them into statutory rights. In clear and unambiguous language it lays down that a child born out of wedlock shall have the same rights of succession to the estate of his father and mother as a child born in wedlock. It makes succession to the estate of one's parents dependent on a natural link as opposed to association through marriage. What is missing in the Convention is machinery for the assertion of these rights before judicial authorities were denied. The legislature aimed to fill this gap by the enactment of s. 4 conferring rule-making power on the Supreme Court to regulate the formalities necessary for claiming enforcement of the right before a competent Court of law. And in order to avoid a vacuum until the enactment of subsidiary legislation, they laid down that existing regulations shall apply, no doubt with the necessary modifications, to make possible the vindication of the rights conferred by the Convention. The enactment of s. 4 reinforces the view that it was in the contemplation of the legislature to give immediate effect to the rights embodied in the Convention.

That being the case it can be safely inferred that the legislature intended by the enactment of Law 50/79 to repeal those provisions of the Wills and Succession Law - Cap. 195, that conflicted with and were repugnant to the rights conferred by article 9 of the Convention. Disinclined, though Courts of law are, to find repeal by necessary implication, this is unavoidable when the provisions of the two enactments are irreconcilable, in which case the provisions of the earlier enactment must yield to those of the latter. Repeal by necessary implication was recently examined by the Full Bench in *Stavrou & Others v. Republic**, and no useful purpose would be served by repeating the principles approved in that case. It is sufficient to notice that the provisions of article 9 are wholly irreconcilable with those of the Wills and Succession Law - Cap. 195, governing the rights of succession of children born out of wedlock. The two cannot be matched within the same legislative framework. Necessarily, we must infer the legislature

* *(1986) 3 C.L.R. 361 (FB).*

intended to replace the relevant statutory provisions of Cap. 195 with those of article 9.

For the reasons given above, the appeal fails. It is dismissed with costs.

TRIANTAFYLLIDES P.: I have had the privilege and the benefit of perusing in advance the judgments of my learned brother Judges dismissing this appeal and broadly speaking I am in agreement with such outcome.

I shall not repeat all over again the facts of this case which are adequately stated in the aforementioned judgments.

I wish to put on record that in view of the preamble to, and Article 1 of, the "European Convention on the Legal Status of the Children Born out of Wedlock", which was ratified by the Convention on the Legal Status of the Children Born out of Wedlock (Ratification) Law, 1979 (Law 50/79). I was, at first, inclined to think that the said Convention is not self-executing and, consequently, its ratification by means of Law 50/79 did not result in vesting it with «superior force to any municipal law» as envisaged by Article 169.3 of the Constitution, because, in my opinion, the said Article 169.3 should not be treated as being applicable to treaties, conventions or international agreements which are not self-executing.

In view, however, of section 4 of Law 50/79, which provides that the Supreme Court makes Rules of Court regulating the procedure in any case coming within such Law - and, of course, coming within the Convention ratified by it - I have eventually, and with admittedly considerable reluctance, reached the conclusion that in so far, at least, as is concerned Article 9 of the Convention, which is applicable in the present case, the Legislature has proceeded to ratify the Convention on the basis that it is self-executing; and my reasons for treating Article 9 of the Convention as not being self-executing are not so strong as to prevent me from agreeing with the Legislature that it is self-executing (and see, also, *In re Susanne Annander*, (1983) 1 C.L.R. 619, 631).

I have to hold, therefore, that Article 9 of the Convention in question has, by virtue of its ratification, been vested with "superior force to any municipal law", in the sense of Article 169.3 of the Constitution, and, consequently, it supersedes, inter alia, any provisions in the Wills and Succession Law, Cap. 195 and in the Illegitimate Children Law, Cap. 278, which are incompatible with it.

I would like to stress that Law 50/79 did not amend or repeal, expressly or impliedly, the aforementioned provisions of Cap. 195 and Cap. 278, but by ratifying the Convention in question it has vested, inter alia, Article 9 of the Convention with superior force enabling it to supersede such provisions in so far as they are incompatible with the said Article 9.

For the foregoing reasons I have reached the conclusion that this appeal should be dismissed; and it is fair that all the costs of the parties at the trial and in this appeal should be borne out of the estate of which the appellant is the administratrix.

A LOIZOU J.: The factual background and the relevant provisions of the European Convention on the Legal Status of Children Born out of Wedlock as introduced in our Legislation by ratifying Law No. 50 of 1979, have been extensively covered by and set out in full in the judgment of Stylianides J., just delivered and I consider it superfluous to repeat them here myself.

On the whole I also agree with his approach and with that of the President of this Court, both as to the result arrived at as well as the order as to costs to be made in these proceedings.

I would like, however, to add a word or two as I feel compelled by reason on having myself chaired the Commission set up by Government to examine and advise as to the desirability of the ratification or not of this Convention. I must say that the conclusions arrived at by the said Commission were unanimous though there existed at the time a divergence of opinion as to the mode by which its provisions could be given effect and render individual rights actionable at the instance of the individual. It appears that the course adopted was that of introducing into the

provisions of the Ratifying Law, Section 4 thereof so as to convert the international obligations undertaken by the State into self-executive rights and give effect to its provisions. Indeed the measures which a State had to take in order to ensure conformity of its Laws with the provisions of the Convention were left to each State to decide upon and to notify the Secretary General of the Council of Europe of such measures taken for that purpose (Article 1). The only limitation that was imposed on a Contracting State was that it should convert these rights into individual rights. This is so stated in the Explanatory Report of the Convention which is an aid to its interpretation.

Cyprus has chosen to include Section 4 of the Ratifying Law empowering the Supreme Court to issue rules governing the practice and procedure of the Courts under the provisions of that Law and in particular the procedure to be followed before them in any case by virtue of the said law and the payment of fees. Section 4, goes further and by its proviso provides that until such rules of procedure are issued all matters, the procedure and the payment of fees will be governed mutatis mutandis by the Rules in force theretofore.

The position being so, in my judgment Article 9 of the Convention with which we are concerned in this appeal is treated alongside with the rest of its provisions as self-executing and for all intents and purposes Law No. 50 of 1979 has rendered it applicable to the individual rights superseding all other provisions in our Laws which are to the contrary by virtue of Article 169, paragraph 3 of the Constitution.

Before concluding, I would like to observe that where legislative provisions in domestic legislation are affected by a Convention, it will be very helpful to have, such provisions thereby affected, amended and brought into line with the Convention for anyone to find upon looking up the relevant heading of the Law rather than to have every time to go through the numerous Conventions ratified in order to ascertain whether and to what extent any particular statutory provision has been affected by such ratification.

LORIS J.: The present appeal is directed against the ruling of the Full District Court of Limassol on a preliminary point raised in Limassol Action No. 3107/82 whereby it was held that a child born out of wedlock has the same rights of succession on the estate of his father and or member of his father's family, as if it had been born in wedlock, pursuant to the provisions of Article 9 of the European Convention on the legal status of the children born out of wedlock, ratified by our Law 50/79.

Having considered the elaborate ruling of the learned President of the Court below, in the light of the submissions before us by learned counsel on both sides, I hold the view that the ruling of the Court of first instance should be upheld and the present appeal should be dismissed for the following reasons:

The House of Representatives by enacting Law 50/79 ratified the Convention in question turning same, or at least so much of it as it is self-executing, into part and parcel of our domestic Law.

It is abundantly clear to my mind that Article 9 of the Convention, which is the subject-matter of the present proceedings is self-executing; in clear and unequivocal words states that:

> «A child born out of wedlock shall have the same right of succession in the estate of its father and its mother and of a member of its father's or mother's family as if it had been born in wedlock.»

The Convention aforesaid, concluded in accordance with the provisions of Article 169 of our Constitution, was ratified by our Law 50/79 which was promulgated in the Official Gazette of the Republic on 1.6.1979.

As envisaged by Article 169.3 of our Constitution conventions concluded in accordance with the provisions of Article 169 shall have, as from their publication in the Official Gazette of the Republic, superior force to any Municipal Law.

Therefore, Article 9 of the Convention has superior force to and

supersedes provisions to the contrary in the domestic Law under consideration, notably the Wills and Succession Law, Cap. 195.

For all the above reasons I would dismiss the present appeal; costs to be paid out of the estate.

TRIANTAFYLLIDES P.: In the result the appeal is dismissed unanimously for the various different reasons given in the judgments just delivered and the costs of all parties both at the trial and on appeal are to be paid out of the estate.

Appeal dismissed.
Costs to be paid
out of the estate.