

1987 January 27

(TRIANAFYLLIDES, P., MALACHTOS, LORIS, STYLIANIDES,  
PIKIS, KOURRIS, JJ.)

PAVLOS PAVLOU,

Petitioner,

v.

1. THE CHIEF RETURNING OFFICER  
2. THE MAYOR OF NICOSIA,

Respondents.  
(Election Petition No. 3/86).

ANDREAS HJIANDREAS,

Petitioner,

v.

1. THE CHIEF RETURNING OFFICER,  
2. THE MAYOR OF AGLANDJIA,

Respondents.  
(Election Petition No. 4/86).

Constitutional Law — Equality — Constitution, Art. 28 — *Ambit* — Whether section 16(2)(b) of the Municipalities Law 111/85 violates Art. 28 — Question answered in the negative.

5 Constitutional Law — Right to exercise a profession — Constitution, Art. 25 — Protects the rights safeguarded thereunder from direct, and not indirect, interferences — Section 16(2)(b) of the Municipalities Law 111/85 — Entails an indirect interference with such rights and, therefore, it does not violate Art. 25.

Constitutional Law — International agreement — Art. 169.3 of the Constitution — *Ambit of*.

10 The United Nations Covenant on Civil and Political Rights 1966 ratified by Law 14/69 — Article 25 — Whether section 16(2)(b) of the Municipalities Law 111/85 infringes Art. 25 — Question answered in the negative.

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This is an English translation of the Greek text appearing at pp. 252-276 *infra*.

*The Convention on Discrimination (Employment and Profession) No 111/58 ratified by Law 3/68 — Whether section 16(2)(b) of the Municipalities Law 111/85 violates its provisions — Question answered in the negative*

*Municipalities — Section 16(2)(b) of the Municipalities Law 111/85 — It does not infringe Articles 25 and 28 of the Constitution or Art 25 of the United Nations Covenant on Civil and Political Rights 1966 ratified by Law 14/69 or the Convention on Discrimination (Employment and Profession) No 111/58 ratified by Law 3/68*

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The petitioners were candidates for the office of Municipal Councillor at the Municipal Elections held on the 25th May 1986

**10**

The petitioner in petition 3/86 has been at all material times an employee of the Cyprus Broadcasting Corporation and was elected as Municipal Councillor of the Municipality of Nicosia

The petitioner in petition 4/86 has been at all material times a public officer and was elected as Municipal Councillor of the Municipality of Aglandjia

**15**

Both petitioners were not allowed to take up the office of Municipal Councillor because of the provisions of section 16(2)(b) of the Municipalities Law, 1985 (Law 111/85), as amended, in particular by section 6 of the Municipalities (Amendment) (No 3) Law, 1986 (Law 25/86)

These legislative provisions did not prevent the petitioners from being candidates for election as Municipal Councillors but prevented them from taking up the office of Municipal Councillor to which they have been elected since both of them receive salaries in respect of their aforementioned employments

**20**

Counsel for applicants (the petitioners) in support of his case made the following three submissions

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His first submission is that the relevant provision of section 16 2(b) of the Law is unconstitutional as offending the principle of equality safeguarded by Article 28 of our Constitution

His second submission is that the aforesaid provision of section 16(2)(b) contravenes Article 25 of the Constitution in that the petitioners are forced to abandon their employment if they wish to take up the office of Municipal Councillor

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His third submission is that the said provision contravenes Article 25 of the United Nations Covenant on Civil and Political Rights of 1966 (Ratified by Law 14/69) and the Convention on Discrimination (Employment and Profession) No 111/58 (Ratified by Law 3/68) In this respect counsel argued that both the Covenant and the aforementioned Convention are vested in virtue of Art 169 3 of the Constitution with superior force

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Held *dismissing the petitions* (1) *On the first submission*

5 (A) *Per Triantafyllides, P Malachos and Lons JJ* concerning In the light of the case law the conclusion is that the relevant legislative provision does not result in unequal treatment contrary to Art 28 because it makes a classification and a differentiation which was reasonably open to the legislature in view of the nature of the posts held by the petitioners and the nature of the office of Municipal Councillor

10 (B) *Per Stylianides J* (1) Article 28 does not prohibit distinctions in treatment which are founded on an objective assessment of essentially different factual circumstances and which being based on the public interest, strike a fair balance between the protection of the interests of the community and respect for the rights and freedoms of the individual Article 28 is violated only when the differentiation is not based on objective and reasonable justification

15 (2) The principle of equality in the election is not at all interfered with Section 16(2)(b) only prohibits the taking up of the office if the person concerned continues to hold one of the said posts therein referred to

20 (3) Bearing in mind the duties and responsibilities of civil servants and employees of public corporations and the nature of the office of municipal councillor the conclusion should be reached that the difference in treatment is a distinction that has objective and reasonable justification

25 (C) *Per Pikiis J* (1) The Constitution of Cyprus provides for strict separation between political and administrative authority Political is every office that entails the exercise of State power at a primary level The competence of municipalities entails the exercise of executive power and, subject to approval by the Council of Ministers, of legislative power

(2) The assimilation of civil servants and employees of public corporations is consonant with Art 122 of the Constitution Consequently, the distinction between public servants and other categories of employees made by section 16(2)(b) is in accord with the spirit of the Cyprus Constitution

30 (3) Art 28 institutionalized the Aristotelian concept of equality that correlates equality to substantive homogeneity among objects and situations in contrast to their numerical equation Legislative discretion is very wide The distinction made in s 16(2)(b) not only does not offend the principle of equality entrenched in Art 28, but on the contrary is in conformity with the spirit of the Constitution and the division adopted therein between the political side of government and the Administration

35 (D) *Per Kourms, J* The provision of section 16(2)(b) does not infringe Art 28 for the reasons indicated by the other judgments delivered in this case

40 Suffice it to say that members of municipal committees take sides in politics and they exercise political powers and their duties as civil servants may come

into conflict with their duties as members of municipal committees which is contrary to the principle of proper administration

*(II) On the second submission*

(A) *Per Tnantafyllides P, Malachtos and Lons JJ* concerning Article 25 of the Constitution is not violated because if the petitioners decide to abandon their posts in order to take up the office of Municipal Councillor this entails an indirect and not a direct interference with the right protected by Art 25 Such indirect interference is not excluded by Art 25

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(B) *Per Stylianides J* Article 25 of the Constitution protects from direct and not indirect interference with the right safeguarded thereunder The challenged provision does not directly infringe such right

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*(III) On third submission*

*(A) Per Tnantafyllides, P, Lons, J* concerning

The challenged provisions are not excluded by either Art 25 of the Covenant or by Convention 111/58 It follows that it is not necessary to pronounce on the issue whether the Covenant and the Convention are self-executing international agreements, which, because of their ratification, have become part of the Law of Cyprus with superior force to legislation such as Law 111/85

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(B) *Per Malachtos J* (1) Art 169 3 of the Constitution in view of its proviso has limited application It applies only on condition that such treaties, conventions and agreements are applied also by the other party thereto This «other party thereto» is referred to in the Greek text as «αντισημβαλλομενος»

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(2) In the case of the Covenant of the United Nations there is no contracting party on the other side Art 169 3 does not apply in this case The Covenant is not self-executing

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(3) Even if we accept that Art 25 of the Covenant has superior force as against any municipal law of the Republic the challenged provisions do not infringe Art 25 as the restrictions they entail are not unreasonable

(C) *Per Stylianides, J* (1) The condition of reciprocity having regard to the nature and provisions of the Covenant cannot be invoked This is a multilateral convention Its nature, objective and function in the international relations and the internal legal order exclude the condition of reciprocity Its object is not to create any subjective or reciprocal rights for the State parties themselves but its objective and intent is the promotion of values and the protection of human rights Furthermore, another ground why reciprocity is not essential in this case, is that the Covenant provides for a mechanism of control

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(2) The Covenant is self-executing because its provisions are not pious declarations, but they may be applied by Organs of the State and enforced by the Courts They create rights for the individuals and they govern and affect directly relations of the internal life between individuals, and the individuals and

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the State, or the public authorities.

(3) Art. 25(e) of the Covenant refers to the right «to vote» and «to be elected». Such right is not infringed by the statutory provision in question. It is only the right to take up the duties of the municipal councillor that is affected but if such right is covered by the right «to be elected», then the restriction envisaged in section 16(2)(b) is not unreasonable.

(D) *Per Pikiis, J.* The implications deriving from the ratification of the covenants on internal law were not comprehensively discussed to make feasible the expression of a concluded opinion as to the degree and extent of their application, now was the content of the specific provisions of the covenants explored in order to decide whether they are self-executing. The only Article to which specific reference was made was Art. 25 that prohibits excessive limitations to the right to be elected to an office involving management of public affairs. Suffice it to observe that the relevant restrictions imposed by s 16(2)(b) of Law 111/85 do not amount to an excessive limitation of the right to be elected to public office.

(E) *Per Kouris, J.* As at present advised and without stating a considered opinion as this Court had not had the advantage of a full argument on these points the two laws (Law 14/69 and Law 3/68) do not help the applicants in any way.

*Petitions dismissed. No order as to costs.*

*Cases referred to:*

- Mikrommatis v. The Republic*, 2 R.S.C.C. 125;
- The Republic v. Arakian* (1972) 3 C.L.R. 294;
- The Board for Registration of Architects and Civil Engineers v Kynakides* (1966) 3 C.L.R. 640;
- Chimonides v. Manglis* (1967) 1 C.L.R. 125;
- Tsanganides and Others (No 2) v. The Republic* (1975) 3 C.L.R. 290,
- Anastasiou v. The Republic* (1977) 3 C.L.R. 91;
- The Republic v Demetriades* (1977) 3 C.L.R. 213;
- Ioannides v The Republic* (1979) 3 C.L.R. 295;
- Antoniades v. The Republic* (1979) 3 C.L.R. 641.
- Angelides v. The Republic* (1982) 3 C.L.R. 774,
- Hjiloannou v. The Republic* (1983) 3 C.L.R. 1041;
- Apostolides v. The Republic* (1984) 3 C.L.R. 233;
- The Police v. Liveras*, 3 R.S.C.C. 65;

*Psaras v The Republic* (1968) 3 C L R 353.  
*Apostolou v The Republic* (1984) 3 C L R 509.  
*Ambrosia Oils v The Republic* (1984) 3 C L R 943.  
*Malachtou v Arneftis and Another* (1987) 1 C L R 207.  
*Attorney-General v Georghiou* (1984) 3 C L R 251,  
*Frangoulides (No 2) v The Republic* (1966) 3 C L R 676

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**Election petitions.**

Election petitions against the decisions of the respondents whereby the petitioners were not allowed to take up the office of Municipal Councillor because of the provisions of section 16(2)(b) of the Municipalities Law, 1985 (Law No. 111 of 1985).

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*E. Efstathiou with M. Tsangarides*, for the petitioners.

*G. Frangou (Mrs.)*, for respondent 1 in both petitions.

*K. Michaelides*, for respondent 2 in Petition No. 3/86.

*M. Papapetrou*, for respondent 2 in Petition No. 4/86.

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*Cur. adv. vult.*

The following judgments were read:

**TRIANTAFYLLIDES P.**: These two election petitions were heard together in view of their practically identical nature and they are, therefore, being determined both by this judgment.

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The petitioners were candidates for the office of Municipal Councillor at the Municipal Elections held on the 25th May 1986.

The petitioner in petition 3/86 has been at all material times an employee of the Cyprus Broadcasting Corporation and was elected as Municipal Councillor of the Municipality of Nicosia.

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The petitioner in petition 4/86 has been at all material times a public officer and was elected as Municipal Councillor of the Municipality of Aglantzia.

Both petitioners were not allowed to take up the office of Municipal Councillor because of the provisions of section 16(2)(b) of the Municipalities Law, 1985 (Law 111/85), as amended, in particular, by section 6 of the Municipalities (Amendment) (No. 3) Law, 1986 (Law 25/86).

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These legislative provisions did not prevent the petitioners from being candidates for election as Municipal councillors but prevented them from taking up the office of Municipal Councillor to

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which they have been elected since both of them receive salaries in respect of their aforementioned employments. It has been submitted by counsel for the petitioners that the aforesaid legislative provisions result in unequal treatment of the petitioners contrary to Article 28 of the Constitution; and counsel referred us, in this respect, to *Mikrommatis v. The Republic*, 2 R.S.C.C. 125, 131, and *The Republic v. Arakian*, (1972) 3 C.L.R. 294, 298-301.

Counsel for the petitioners submitted, also, that there is being infringed, because of application of the legislation in question, Article 25 of the Constitution, in that the petitioners are being forced to abandon their employment in order to take up the office of Municipal Councillor; and, also, that there is violated Article 25 of the United Nations Covenant of Civil and Political Rights of 1966, ratified by the Republic of Cyprus by the International Covenants (Economic, Social and Political Rights, and Civil and Political Rights) (Ratification) Law, 1969 (Law 14/69).

Furthermore, counsel for the petitioners contended that there is being violated the Convention on Discrimination (Employment and Profession) No. 111/58, which safeguards the right to work and which was ratified by the Convention on Discrimination (Employment and Profession) No. 111/58 (Ratification) Law, 1968 (Law 3/68).

Counsel for the petitioners conceded that in accordance with well established principles of constitutional law he had to satisfy this Court beyond reasonable doubt that the legislative provisions concerned are unconstitutional and he referred, in this respect, quite rightly, to *The Board for Registration of Architects and Civil Engineers v. Kyriakides*, (1966) 3 C.L.R. 640, 654, 655, and *Chimonides v. Manglis*, (1967) 1 C.L.R. 125, 156.

In the light of case-law such as *Mikrommatis* and *Arakian*, supra, *Tsangarides and others (No.2) v. The Republic*, (1975) 3 C.L.R. 290, *Anastasiou v. The Republic*, (1977) 3 C.L.R. 91, *The Republic v. Demetriades*, (1977) 3 C.L.R. 213, *Ioannides v. The Republic*, (1979) 3 C.L.R. 295, *Antoniades v. The Republic*, (1979) 3 C.L.R. 641, *Angelides v. The Republic*, (1982) 3 C.L.R. 774, *Hjiloannou v. The Republic*, (1983) 3 C.L.R. 1041 and *Apostolides v. The Republic*, (1984) 3 C.L.R. 233, I have reached the conclusion that the relevant legislative provisions are not

unconstitutional as resulting in unequal treatment of the petitioners contrary to Article 28, because, in my opinion, they make a differentiation and classification which was reasonably open to the Legislature in view of the nature of the posts held by the petitioners and the nature of the office of Municipal Councillor.

Moreover, Article 25 of the Constitution is not violated inasmuch as the said legislative provisions do not interfere directly with the right safeguarded under such Article, because if the petitioners decide to abandon their posts in order to take up the office of Municipal Councillor this entails in only an indirect interference with the said right which is not excluded by Article 25 (see, in this respect, inter alia, *The Police v. Liveras*, 3 R.S.C.C. 65, 67, *Psaras v. The Republic*, (1968) 3 C.L.R. 353, 364, *Antoniades*, supra, 659, *Apostolou v. The Republic*, (1984) 3 C.L.R. 509, 524, and *Ambrosia Oils v. The Republic*, (1984) 3 C.L.R. 943, 948).

It is not really necessary to pronounce on this occasion on whether either Article 25 of the aforementioned United Nations Covenant or the relevant provisions of Convention No. 111/58 are self-executing international agreements, which, because of their ratification, have become part of the Law of Cyprus with superior force to legislation such as Law 111/85, because I am of the view that the provisions in question of Law 111/85 are not excluded by either Article 25 of the said United Nations Covenant or by Convention 111/58.

For all the foregoing reasons these petitions fail and have to be dismissed accordingly; and it seems to me that if the petitioners do not take up the office of Municipal Councillor in accordance with section 16(2) of Law 111/85 then the matter will have to be dealt with in accordance with subsection (3) of the said section 16.

In view of the nature of the issues raised in these cases I am of the view that there should not be made any order as to their costs.

*MALACHTOS J.*: In these two Election Petitions, which were heard together as they present a common question of law, the applicants challenge the constitutionality of section 16(2)(b) of the Municipal Corporations Law of 1985, Law 111/85, as amended by section 6 of Law 25/86.

The facts in both petitions are sufficiently stated in the Judgment just delivered by the President of this Court and so I consider it unnecessary to repeat them.



Counsel for applicants (the petitioners), in support of his case made the following three submissions. His first submission is that the relevant provision of section 16.2(b) of the Law is unconstitutional as offending the principle of equality safeguarded by Article 28 of our Constitution.

His second submission is that the legislation in question contravenes Article 25 of the Constitution in that the petitioners are forced to abandon their employment if they wish to take up the office of Municipal Councillor.

I must say straight away that as regards these submissions of counsel for the petitioners, I agree with the reasons given and the conclusions reached by His Honour the President of the Court in the Judgment just delivered by him and there is nothing that I wish to add.

The third submission of counsel for the petitioners is that the above section 16.2(b) of the Law contravenes Article 25 of the International Covenant on Civil and Political Rights, which has been ratified by Law 14/69 by virtue of which, according always to his allegations, has a superior force in the Republic of Cyprus in view of Article 169.3 of the Constitution.

Article 169 of our Constitution, as well as Article 25 of the International Covenant on Civil and Political Rights, read as follows:

Article 169. 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 »

Article 25 of the Covenant

«Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions 5

(a) To take part in the conduct of public affairs directly or through freely chosen representatives,

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; 10

(c) To have access, on general terms of equality, to public service in his country » 15

Article 2 of the Covenant mentioned above reads as follows

«Article 2

1 Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status 20

2 Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the present Covenant 25

(3) Each State Party to the present Covenant undertakes; 30

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy notwithstanding that the violation has been committed by persons acting in an official capacity,

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative 35

or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

- 5 (c) To ensure that the competent authorities shall enforce such remedies when granted.»

According to the submission of counsel for the petitioners, since Article 25 of the International Covenant speaks about every citizen shall have the right and the opportunity without any of the distinctions mentioned in Article 2 and without unreasonable  
10 restrictions take part in the conduct of public affairs, he could see no reason for which the petitioners, who were lawfully elected, to be forced to abandon their employment if they wish to take up the office of Municipal Councillor.

To my mind, Article 169.3 of the Constitution in view of its  
15 proviso, has limited application. It applies only on condition that such treaties, conventions and agreements are applied also by the other party thereto. This other party thereto is referred to as «antisymvallomenos» in the Greek text of our Constitution. It follows from the above that para. 3 of Article 169 of the  
20 Constitution is applicable only for treaties, conventions and agreements based on reciprocity which when ratified and published in the official Gazette of the Republic, shall have superior force over the Municipal Law, as for example, the  
25 European Convention on the International Validity of Criminal Judgments, the European Convention on Extradition, the agreement on the abolition of visas and the like. In the case in hand, there is no contracting party on the other side.

A country ratifying the International Covenant on Civil and Political Rights, undertakes to protect its people by law against  
30 cruel, inhuman or degrading treatment. It recognises the right of every human being to life, liberty, security and privacy of person. The covenant prohibits slavery, guarantees the right to a fair trial and protects persons against arbitrary arrest or detention. It recognises freedom of thought, conscience and religion, freedom  
35 of opinion and expression, the right of peaceful assembly and emigration and freedom of association.

It is clear from the above that Article 169.3 of the Constitution, does not apply in the present case. By the ratification of the Covenant, the Republic undertook the obligation which is  
40 described in Article 2 thereof and in particular paragraph 2.

In the case of *The Republic v. Demetriades* (1977) 3 C.L.R. 213, at page 245, I made reference to the said Covenant just to emphasise this obligation undertaken by its ratification by the Republic.

Finally, irrespective of the fact that in my view the said Covenant is not self executing, even if we accept, for the sake of argument, that Article 25 thereof, has superior force as against any Municipal Law of the Republic, section 16.2(b) of Law 111 of 1985, as amended by Law 25 of 1986, does not contravene any provisions thereof as the restrictions imposed by it are in my opinion not unreasonable. 5 10

For the reasons stated above, I would dismiss both petitions with no Order as to costs.

*LORIS J.*: I agree with the judgment just delivered by the President of the Court and I do not wish to add anything. 15

*STYLIANIDES J.*: I agree that these election petitions fail.

Learned counsel for the petitioners vigorously submitted that Section 16(2)(b) of the Municipalities Law, 1985 (No. 111 of 1985), as amended by Section 6 of the Municipalities (Amendment) (No. 3) Law 1986, (No. 25 of 1986) violates the principle of equality safeguarded by Article 28 of the Constitution and is repugnant to and inconsistent with Article 25 of the Constitution. Furthermore it violates Article 25.2 of the International Covenants on Civil and Political Rights adopted by the General Assembly Resolution 2200 A (XXI) of 16th December, 1966, which was ratified by the Republic of Cyprus by Law No. 14/69. 20 25

Article 28 of the Constitution safeguards the right of equality and embodies the principle of non-discrimination. The principle of equality is a fundamental principle in a democratic society and applies to the preformation of the political will of the people, the constitution and function of the organs of the political power. The principle of equality governs the function of a democratic regime at the level of election, constitution and function of the organs expressing the will of the people. 30

Article 28 does not prohibit distinctions in treatment, which are founded on an objective assessment of essentially different factual circumstances and which, being based on the public interest, strike a fair balance between the protection of the interests of the community and respect for the rights and freedoms of the 35

individual. Article 28 is violated only when the differentiation is not based on objective and reasonable justification.

5 The Court in considering a distinction cannot disregard the legal and factual features which characterize the life of the society. The task of the Court is not to examine the propriety or wisdom of the legislature but only to decide if the differentiation is objective and reasonably open.

10 *The principle of equality in the election is not at all interfered with.* The election, according to the Municipalities Law, and the basis of the presentation of the electorate has as its basis for the representation of the electorate the political parties which represent the electoral body; the parties are proportionally represented on the Municipal Councils and those of the candidates of the parties who are favoured by the electorate are successful. The right to be  
15 elected is neither prohibited nor restricted by the Municipalities Law.

Section 16(2)(b) only prohibits their taking up the office of the municipal councillor if they continue to hold the post of paid civil servant and employee of a public corporation, respectively. In  
20 effect it provides that the exercise of the duties of municipal councillor is inconsistent with the post of a paid civil servant or employee of a public corporation.

Taking into consideration the duties and responsibilities of civil servants and employees of public corporations and the nature of  
25 the office of the municipal councillor, I am of the view the provisions of Section 16(2)(b) of the Municipalities Law do not violate the principle of equality as the difference in treatment is a distinction that has objective and reasonable justification.

30 Article 25 of the Constitution protects from direct and not indirect interference with the rights safeguarded thereunder, i.e. the right to practise any profession or to carry on any occupation, trade or business. This right is not directly infringed by the challenged statutory provision.

35 The International Covenant on Civil and Political Rights was adopted and open for signature, ratification and accession on 16th December, 1966. It was signed by virtue of a decision of the Council of Ministers dated 16.2.67 and was ratified by the International Covenants (Economic, Social and Cultural Rights and Civil and Political Rights) (Ratification) Law, 1969 (No. 14 of

1969), published in the Official Gazette on 28.2.69. It entered into force three months after the date of the deposit with the Secretary-General of the United Nations of the 35th Instrument of Ratification - (See Article 49) - 3rd March, 1976. The ratification by Law No. 14/69 was made under Article 169, paragraph 3, of the Constitution, the effect and application of which, and the position of conventions ratified in conformity therewith, were recently considered by this Court in Civil Appeal No. 6616 - (*Toulla Malachtou v. Christodoulos Costa Arneftis & Another*).\*

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The covenant has superior force over any municipal law, both anterior and posterior, as from the date that it comes into force under international law, provided the requirements of Article 169 are satisfied.

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Article 169.3 reads:-

«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».

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The conditions of the coming into force under Article 169.3 of this Covenant have not been argued before us.

The condition of reciprocity, having regard to the nature and provisions of the Covenant, cannot be invoked. This is a multilateral convention. Its nature, objective and function in the international relations and the internal legal order exclude the condition of reciprocity. Its object is not to create any subjective or reciprocal rights for the States parties themselves but its objective and intent is the promotion of values and the protection of human rights.

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In *Malachtou* case above it was said:-

«It would be incomprehensible for a State not to secure the rights and freedoms defined in Section 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».

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Furthermore the Covenant provides for a mechanism of control, the establishment of a Human Rights Committee. The fac.

\* Reported in (1987) 1 C.L.R. 207.

that Cyprus has not as yet recognized the competence of that Committee for interstate applications under Article 41 and has not ratified the optional protocol for individual petitions, does not influence the exclusion of the condition of reciprocity; similarly the  
5 non-acceptance of Article 25 of the European Convention on Human Rights for individual petition has not made the latter convention non-applicable in the domestic order of the Republic.

Is the Covenant self-executing? Its provisions are not pious declarations. They may be applied by the organs of the State and  
10 can be enforced by the Courts. They create rights for the individuals and they govern and affect directly relations of the internal life between the individuals, and the individuals and the State, or the public authorities. Its provisions create rights and interests which can be justiciable. Each State party undertakes to  
15 respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant. Such rights are set out therein as in the regional European Convention - the European Convention on Human Rights - which, having been ratified by Law No. 39/62, is applied by the  
20 Courts of this country with superior force for over two decades.

As regards the effect of the ratification of the said Covenant in relation to the application of the Covenant, useful reference may be made to the case of *Ioannides and Others v. The Republic*, (1979) 3 C.L.R. 295, 304, 305, 306, 334, 335 and 338.

25 In *Attorney-General v. Georghiou*, (1984) 2 C.L.R. 251, the President of this Court said at p.287:-

«It must be borne in mind that even though it was initially held that Articles 30 and 155.1 of our Constitution, as well as Article 6 of the European Convention on Human Rights, do not create a right to the availability of a remedy by way of appeal, the existence of such remedy in criminal cases has been rendered mandatory ever since the Republic of Cyprus has ratified, by means of the International Covenants (Economic, Social and Cultural Rights and Civil and Political Rights) (Ratification) Law, 1969 (Law 14/69), the United Nations International Covenant on Civil and Political Rights, Article 14(5) of which provides that 'Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law'».

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(See also the judgment of Loris, J., at p. 294, and my judgment at pp. 302-303).

In view of the aforesaid the Covenant is self-executing and applicable in the domestic legal order of the Republic of Cyprus.

Article 25(b) provides that-

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«Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

(a) .....

(b) To vote and *to be elected* at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the expression of the will of the electors».

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The right “*to vote*” and “*to be elected*” is not infringed by the statutory provision in question. It is only the right to take up the duties of the municipal councillor that is affected but if such right is covered by the right «*to be elected*», then the restriction envisaged in Section 16(2)(b) is not unreasonable.

15

For the aforesaid reasons these petitions are dismissed but in all the circumstances there shall be no order as to costs.

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*PIKIS J.*: The applicants seek a declaration that section 16(2)(b) of the Municipalities Law (Law 111/85) is unconstitutional, thereby removing the impediment posed by the law to the assumption of the duties of Municipal Councillors by public servants. Pavlos Pavlou, the first applicant, is an employee of the Cyprus Broadcasting Corporation and Andreas Hadjiandreou, the second, is a Government Officer in the Department of Civil Aviation. In the municipal elections of 1985 they were returned as councillors to the municipalities of Nicosia and Aglandjia respectively. They sought election to the office under the party ticket of the Socialist Party EDEK.

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Section 16(2)(b), the constitutionality of which is impugned, while it permits the election of civil servants and employees of public corporations to the office of municipal councillor, it renders the holding of the two offices incompatible and makes the assumption of the office of a municipal councillor dependent on prior relinquishment of the post in the public service.

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5 The constitutionality of section 16(2)(b) is challenged solely by  
reference to Art. 28 of the Constitution that safeguards, inter alia,  
equality before the law. In the course of argument, Mr. Efstathiou  
advanced a second reason that makes, in his submission, the  
provisions of section 16(2)(b) inoperative. The relevant provisions  
10 of section 16(2)(b), he submitted, also conflict with Art. 25 of the  
United Nations Covenant on Civil and Political Rights, of 16th  
December, 1966, ratified, together with the Covenant on  
Economic, Social and Political Rights of the same date, by Law  
14/69. Consequently, they became inoperative in view of the  
provisions of para. 3 of Art. 169 that confer superior force on the  
provisions of international agreements ratified by law and  
supersede municipal laws. The fact that the Municipalities Law  
15 was enacted on a date subsequent to the ratification of the  
aforementioned covenants and the implications arising therefrom,  
viewed in conjunction with the provisions of Art. 169.3, were not  
touched upon.

20 The implications deriving from the ratification of the  
aforementioned covenants on internal law were not  
comprehensively discussed to make feasible the expression of a  
concluded opinion as to the degree and extent of their application;  
nor was the content of the specific provisions of the covenants  
explored in order to decide whether they are self-executing. The  
only article of the covenant to which reference was made was Art.  
25 25 that prohibits the imposition of "excessive" limitations to the  
right to be elected to an office involving management of public  
affairs. Suffice it to observe that the relevant restrictions imposed  
by s.16(2)(b) of Law 111/85 do not amount to an excessive  
limitation of the right to be elected to public office. The only issue  
30 properly arising for decision, in accordance with the election  
petitions, is whether the provisions of s.16(2)(b) conflict with or are  
contrary to the fundamental right of equality safeguarded by Art.  
28 of the Constitution.

35 Before attempting to interpret Art. 28 in conjunction with  
s.16(2)(b) of Law 111/85, it is pertinent to refer to the structure of  
the Constitution of Cyprus that provides the context in which Art.  
28, as well as any other article of the Constitution must be  
interpreted. The Constitution of Cyprus provides for strict  
separation between political and administrative authority, a  
40 division that permeates every aspect of government at every level.  
The distinction between the political and administrative branch of

government was noticed by the Full Bench in *Frangoulides (No.2) v. Republic* (1966) 3 C.L.R. 676, and characterized as an important aspect of the Constitution.

Mr. Efstathiou submitted the distinction between political and administrative authority is in this case irrelevant because the office of municipal councillor does not entail the exercise of political authority. Counsel for the Attorney-General, as well as Mr. Michaelides and Mr. Papapetrou, counsel for the mayors of Nicosia and Aglandjia respectively, disagreed, with this submission. 5

In my judgment, political is every office that entails the exercise of State power at a primary level. The competences of municipalities, organs of local self-government, entail the exercise of executive power (see Part VII) and legislative power subject to approval by the Council of Ministers (section 87, Law 111/85). The political character of the office is made more prominent still by the provisions of the law governing the election of councillors adopting the proportional electoral system primarily based on party representation (see s. 30(1) of Law 111/85). 10 15

The assimilation of civil servants and employees of public corporations made in s.16(2)(b) is consonant with the provisions of Art.122 of the Constitution that provides that both categories of public employees are members of the public service. Consequently, the distinction made in s.16(2)(b) between public servants, on the one hand, and other categories of employees on the other, for purposes of exercise of political power, is in accord with the spirit and principle underlying the Cyprus constitution. 20 25

What must be decided is whether the provisions of s.16(2)(b) of Law 111/85 conflict with or are in any sense inconsistent with the provisions of Art. 28 of the Constitution. Art. 28 was the subject of interpretation in numerous decisions of the Supreme Court. The ambit of Art. 28 has been so well defined as to render superfluous identification of it by reference to particular judicial decisions. 30

Art. 28 institutionalizes the Aristotelian concept of equality that correlates equality to substantive homogeneity among objects and situations in contradistinction to their numerical equation. In the absence of substantive homogeneity Art. 28 places no constraint on legislative pursuits and regulatory action. Legislative discretion is very wide, co-extensive with the breadth of political responsibility of the legislature for the content of the law. Room for judicial intervention under Art. 28 exists only where legislative 35 40

classification transgresses the outer limits of differences in the position or situation of persons dissimilarly circumstanced.

5 The political objectives sought to be achieved by legislation or the wisdom of the law as such are not subject to control by the Courts. The task of the judicial power of the State is the identification and definition of principles of law and their clarification in face of disagreement. In the area here under consideration, the Constitution leaves the regulation of matters referable to the assumption and exercise of the political office of  
10 municipal councillor to the legislative power of the State. The distinction made in s.16(2)(b) not only it does not offend the principle of equality entrenched in Art. 28, but on the contrary is in conformity with the spirit of the Constitution and the division adopted therein between the political side of government and the  
15 Administration, a secondary branch of the executive tier of executive power.

I conclude that the relevant provisions of the Municipalities Law - s.16(2)(b) - are constitutional and in consequence the applicants have rightly been precluded from assuming duties of municipal  
20 councillor.

The applications are dismissed.

*KOURRIS J.*: I also agree that the petitions must be dismissed. These two petitions were heard together as they presented common questions of facts and law.

25 The sole issue before us is the constitutionality of s. 16(2)(a)(b) as amended of the Municipal Corporations Law 111/85 which provides, inter alia, that a civil servant or an employee of a public corporation cannot be elected as a mayor or having been elected a member of a municipal committee he cannot exercise his duties.

30 Applicant in Election Petition No. 3/86 is an employee of the Cyprus Broadcasting Corporation, which is a public corporation and applicant in Election Petition No. 4/86 is a civil servant and they were elected as members of the municipal committees of Nicosia and Aglandjia respectively, at the elections held on 25th  
35 May, 1986.

Their counsel contended that s. 16(2)(b) (as amended) of Law No. 111/85 contravenes Article 28.1 of the Constitution which makes provision about "equality" and reads that "all persons are equal before the law, the administration and justice and are  
40 entitled to equal protection and treatment thereby.

The principle laid down in the *Mikrommatis* case (supra) was followed by the Court in several cases since and the question which poses for consideration is whether s.16(2)(a)(b)(as amended) of Law No. 111/85 which excluded, inter alia, civil servants or employees of public corporations from being elected as mayors or members of municipal committees are arbitrary differentiations or reasonable distinctions which have to be made in view of the intrinsic nature of things. 5

I have also reached the conclusion that s.16(2)(a)(b) as amended of the Law, does not contravene Article 28.1 of the Constitution for the reasons given by my learned brother Judges. Suffice it to say that members of municipal committees take sides in politics and they exercise political powers and their duties as civil servants may come into conflict with their duties as members of municipal committees which is contrary to the principle of proper administration. 10 15

During the hearing of these petitions counsel for the applicants raised another point which was not included in his Application which is this: That s. 16(2)(a)(b) of the law is contrary to s.25 of Law 14 of 1969 and to the Convention on Discrimination (Employment and Profession) No. 111 of 1958 (Ratification) Law 1968, Law 3 of 1968. We had not the benefit of argument of other counsel as they were unaware that this point would be raised. 20

As at present advised and without stating my considered opinion as I had not had the advantage of a full argument on these points these two laws do not help the applicants in any way. For these reasons the petitions fail with no order for costs. 25

*TRIANTAFYLLIDES P.:* In the result these petitions are dismissed unanimously but with no order as to their costs. 30

*Petitions dismissed  
with no order as to costs.*