

1987 June 4

(TRIANTAFYLIDIS, P., MALACHTOS SAWIDES STYLIANIDES,  
LORIS, KOURRIS PIKIS, JJ)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION,

ANDREAS GEORGHIOU AND OTHERS,

*Applicants,*

v

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Respondent*

*(Cases Nos 36/86, 123/86, 158/86)*

*Revisional Jurisdiction — Recourse for annulment — The Full Bench of this Court is never divested of the Junsdiction to deal directly and finally with a recourse — Question whether the Full Bench can, upon being moved by the Judge to whom a recourse had been assigned, take over the proceedings for continuation determined in the affirmative — The Administration of Justice (Miscellaneous Provisions) Law 33/64, section 11(1) and (2)* 5

Mr Justice Kourms, before whom the proceedings in these recourses have been taking place, proposed to the Supreme Court that, in view of a serious constitutional issue, which arose for determination, the proceedings should be taken over from now onwards by the Full Bench of this Court 10

As a result the Court fixed a hearing of the preliminary issue regarding the possibility of such cases being taken up, at this stage, by the Full Bench for further proceedings leading up to their determination

Held, *Pikis, J dissenting* (1) In the light of the wording of subsections (1) and (2) of section 11 of Law 33/64 and the case law the Full Bench of this Court is never divested of the Junsdiction to deal directly and finally with a recourse for annulment, if it so decides. If a particular recourse is taken in the first instance by a Judge of this Court, the Full Bench can, on being moved by him, take over the proceedings, because the jurisdiction under Art 146 remains vested always in the Full Bench 20

(2) The decision, which the Supreme Court, as a collective administrative organ, took on 6 8 64, that any Judge of the Supreme Court sitting alone may exercise original or revisional Junsdiction, can be departed from by a new decision of the Full Bench in relation to a particular case

(3) *Panayiotides v The Republic* (1984) 3 C L R 1271 is distinguishable 25

from this case; however, its reasoning in so far as it excludes the Full Bench from deciding to take over for continuation the proceedings in any recourse cannot be endorsed.

5 (4) It follows that the Full Bench is entitled to decide to take over the proceedings in these recourses.

*Order accordingly.*

*Cases referred to:*

- Republic v. Vassiliades* (1967) 3 C.L.R. 82;
- Stokkos v. The Republic* (1982) 3 C.L.R. 1110;
- 10 *The President of the Republic v. Louca* (1984) 3 C.L.R. 241;
- Papaleontiou v. Karageorghis* (1986) 3 C.L.R. 1238;
- Panayiotides v. The Republic* (1984) 3 C.L.R. 1271;
- The Board for Registration of Architects and Civil Engineers v. Kyriakides* (1966) 3 C.L.R. 640;
- 15 *Josephin v. Republic* (1986) 3 C.L.R. 111;
- Attorney-General v. Ibrahim and Others*, 1964 C.L.R. 195;
- Aloupas v. National Bank of Greece* (1983) 1 C.L.R. 55;
- Apostolides and Others v. Republic* (1982) 3 C.L.R. 928;
- Republic v. Vassiliades* (1967) 3 C.L.R. 82;
- 20 *Roussos and Another v. The Republic* (1985) 3 C.L.R. 119;
- Branco Salvage Ltd. v. The Republic* (1967) 3 C.L.R. 213;
- Georghiou v. Republic* (1968) 1 C.L.R. 411;
- 25 *HadjiSavvas v. The Republic* (1986) 2 C.L.R. 154.

**Preliminary issue.**

Preliminary issue as to whether these recourses, against the appointment of the interested party to the post of Chief Land Officer and his acting appointment to the post of Director of the  
 30 Department of Lands and Surveys, can be heard from now

onwards by the Full Bench of the Court instead of by the Judge before whom the proceedings have been taking place until now.

*K. Talarides*, for applicant in Case No. 36/86.

*N. Zomenis*, for applicant in Case No. 123/86.

*C. Loizou*, for applicant in Case No. 158/86. 5

*N. Charalambous*, Senior Counsel of the Republic with *P. HadjiDemetriou*, for the respondent.

*A. S. Angelides*, for the interested party.

*Cur. adv. vult.*

The following decisions were read: 10

*TRIANTAFYLLIDES P.*: In relation to the present three recourses, under Article 146 of the Constitution, counsel for the parties have been heard on the preliminary issue of whether these cases can be heard from now onwards by the Full Bench of the Court, instead of by the Judge of the Court before whom the proceedings have been taking place until now. 15

By means of all these recourses there is challenged the appointment, by the respondent Public Service Commission, of the interested party *A. Kotsonis* to the post of Chief Land Officer; and by recourses 38/86 and 158/86 there is challenged also his acting appointment to the post of Director of the Department of Lands and Surveys. These three cases were, initially, in accordance with existing arrangements, placed before Mr. Justice Kourris and written addresses of counsel were prepared and filed in all of them pursuant to directions given by him. 20  
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Then, Mr. Justice Kourris, in view of a serious constitutional issue having been raised in these cases, namely the validity of the constitution of the respondent Public Service Commission, proposed to the Supreme Court that they should be taken from now onwards by the Full Bench of the Court; and it was decided to fix them for hearing on the preliminary legal issue regarding the possibility of such cases being taken up, at this stage, by the Full Court for further proceedings leading up to their determination. 30

By section 9(a) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64), the competence of the Supreme Constitutional Court, including the jurisdiction under Article 146 of the Constitution, was vested in this Supreme Court; 35

and by virtue of section 11(1) of the same Law the jurisdiction under Article 146 of the Constitution is to be exercised by the Full Bench of the Court subject to the provisions of subsections (2) and (3) of section 11 and of any Rules of Court to be made by the Supreme Court. Subsection (2) of section 11 provides, in effect that the first instance jurisdiction of the Supreme Court in a recourse may be exercised («δύνονται να ασκηθεί») by a Judge or Judges of the Court as the Court may decide («ως ήθελε το Δικαστήριο αποφασίσει») and that the first instance judgment is subject to appeal.

The nature of these two-tier jurisdiction created by virtue of subsection (2) of Section 11 of Law 33/64 has been explained in, inter alia, *The Republic v. Vassiliades*, (1967) 3 C.L.R. 82, 87, 100, 101, *Stokkos v. The Republic*, (1982) 3 C.L.R. 1110, 1116, 1117, *The President of the Republic v. Louca*, (1984) 3 C.L.R. 241, 263, 264 and *Papaleontiou v. Karageorghis* (1986) 3 C.L.R. 1238, 1240, 1241.

In the light of the wording of subsections (1) and (2) of section 11 of Law 33/64 and of the aforementioned case-law we are of the opinion that the Full Bench of the Court is never divested of the jurisdiction to deal directly and finally with a recourse under Article 146 of the Constitution, if it so decides; and that if a particular recourse is taken in the first instance by a Judge of the Court the Full Bench of the Court can, on being moved by him, take it up for further proceedings, because the jurisdiction under Article 146 of the Constitution remains vested always in the Full Bench of the Court and a recourse is taken in the first instance by a Judge only if assigned to him by the Court.

It is correct that by means of a decision, on 6 August 1964, of the Supreme Court, as a collective administrative organ, there has been decided that any one Judge of the Court sitting alone may exercise original or revisional jurisdiction, but this is a decision which can be departed from by a new decision of the Full Bench of the Court in relation to any particular case or cases; and this has, actually, been done in the past, by way of established practice, on more than one occasion when cases in which similar legal issues were raised, and the determination of which by the Full bench without the intervention of a first instance judgment seemed to be appropriate, were taken up by the Full Bench at stages prior to their hearing and final determination.

Our attention was drawn to the judgment of our brother Judge Mr. Justice Pikis in *Panayiotides v. The Republic*, (1984) 3 C.L.R. 1271, by which he refused to divest himself of first instance jurisdiction in recourse under Article 146 of the Constitution and remit it to the Full Bench of the Court for further proceedings. We do think that the present cases and the *Panayiotides* case are distinguishable as they involved different juridical situations; but we cannot endorse the reasoning of the judgment in the *Panayiotides* case to the extent to which it excludes the Full Bench of the Court from deciding to take over, at an appropriate stage, for further continuation and determination any recourse pending before a Judge of the Court.

For all the foregoing reasons we find that the Full Bench of the Court is entitled to decide to take up the proceedings in these three recourses and pursue them to their determination; and we order accordingly.

*PIKIS J.*: The competence of the plenum of the Supreme Court to assume the exercise of original jurisdiction and try an application for judicial review assigned to one of its members (Kourris, J.), pursuant to the provisions of s. 11(2) of the Administration of Justice (Miscellaneous Provisions) Law 1964 (33/64), is the pertinent issue before us. Specifically, we are required to decide whether jurisdiction vests in the Full Bench, the forum of plenary jurisdiction of the Supreme Court, to assume ab initio the trial and resolution of three recourses referred to Kourris, J., under and in accordance with the provisions of s. 11(2). This is the broader question that was canvassed before us, though the immediate one that must necessarily be answered is whether it is at all competent for the Full Bench to take over the hearing of the three recourses from the Judge to whom the cases were assigned after he embarked on an inquiry into the sub judice decision; in fact, after the Court was addressed on the merits and legal issues arising in the case. At that stage the learned Judge referred the matter to the Supreme Court and we, in turn, invited submissions from all parties in order to decide whether jurisdiction resides with the Full Bench to assume ab initio the trial of the three recourses after the commencement of the hearing before a single member of the Court as indicated above. Our brother Judge thought fit to raise the matter in view of the importance of the constitutional issue raised in the addresses of counsel pertaining to the constitutionality of the provisions of Public Service Law (Law

33/67) governing the composition and terms of service of the Public Service Commission. On the other hand, the constitutionality of Law 33/67 is not the only ground upon which the validity of the decision to promote the interested party, Andreas Kotsonis, to the post of First Lands Officer in the Department of Lands and Surveys is challenged. The validity of the decision is questioned on a variety of grounds affecting the merits and qualifications of the candidates eligible for promotion. Therefore, it is not inevitable that the Court will have to go into the question of constitutionality of the pertinent provisions of Law 33/67 for it is settled on authority that questions of constitutionality should not be gone into unless necessary as a matter of logical sequence for the determination of matters in issue\*. Though it can be argued that where, as in this case, the issue of constitutionality goes to the root of the decision, the Court may proceed to pronounce upon it in the interest of legality thereby defining the framework within which the administration may operate.

Determination of the competence of the Full Bench to exercise original jurisdiction in respect of the causes specified in subsection 2 of s. 11, turns solely on the interpretation of the provisions of s. 11, particularly those of subsections 1 and 2. In the *Attorney-General of the Republic v. Mustafa Ibrahim and Others*\*\* the Supreme Court found Law 33/64 and the establishment of the Supreme Court envisaged thereby, a measure justified by the necessity to fill the constitutional gap left by the collapse of the two superior Courts set up under the Constitution resulting from the departure of the two non-Cypriot members of the superior Courts. In subsequent decision, *Aloupas v. National Bank of Greece*,\*\*\* it was emphasized that the law of necessity is not intended to supplant constitutional order but to underpin it when threatened with collapse and thereby save the edifice of the law and ultimately constitutional order\*\*\*\*. Preliminary to answering the immediate question before us, we must cite *Republic v. Christakis Vassiliades*\*\*\*\*\* that directly upholds the proposition, echoed earlier in the case of Ibrahim (supra), that though the Supreme Court became the repository of the jurisdiction formerly

\* *The Board for Registration of Architects and Civil Engineers v. Christodoulos Kyriakides* (1966) 3 C.L.R. 640. *Josephin v. Republic* (1986) 3 C.L.R. 111.

\*\* 1964 C.L.R. 195.

\*\*\* (1983) 1 C.L.R. 55.

\*\*\*\* See, also *Apostolides & Others v. Republic* (1982) 3 C.L.R. 928, 945.

\*\*\*\*\* (1967) 3 C.L.R. 82 (FB).

vested in the Supreme Constitutional Court and the High Court, its exercise is regulated by the provisions of the law that made provision for its establishment, that is, Law 33/64. The immediate question before us, I repeat, is whether it is competent for the Full Bench of the Supreme Court to assume the exercise of original revisional jurisdiction after the assignment of a case to a member of it under s. 11(2) and the commencement of the hearing before that Bench of the Supreme Court. A similar question was raised before me and decided in *Panayiotides v. The Republic\**. Jurisprudentially the decision is not binding on the Full Bench of the Supreme Court, nor does it fetter the Judge who issued it if he happens to be a member of the Full Bench, from holding otherwise if persuaded that the premise founding it is, for any reason, unsound. In this case not only I remain unpersuaded that the decision was wrong, but having reflected anew on the reasons supporting it, I feel convinced that it is well founded. More importantly I feel bound, as a matter of authority too, to subscribe to the ratio of *Panayiotides* (supra) in view of the subsequent decision of the Full Bench in *Roussos and Another v. Republic\*\**. In *Panayiotides* (supra) the Court ruled there is no competence on the part of a single Judge who has embarked upon the hearing of a recourse raised under Art. 146 to relinquish jurisdiction, being the only Court that can validly exercise thereafter jurisdiction in the matter. The same proposition was affirmed in *Roussos* (supra); in fact, from a wider perspective, deciding that once proceedings commence under s. 11(2) before a single Judge, they become extant judicial proceedings that cannot be reviewed by the Full Bench except on appeal. No jurisdiction resides with the Full Bench to take over the trial of extant judicial proceedings referable to the exercise of the original jurisdiction of the Supreme Court.

Contrary to submissions made, s. 11(1) does not vest in the plenum of the Supreme Court unlimited original jurisdiction. In accordance with the plain provisions of subsection 1 of s. 11, the original jurisdiction of the plenum of the Supreme Court is limited to causes other than those specifically dealt with by subsections 2 and 3.

Section 11(1), translated in English, reads:

«The jurisdiction, the competence or powers vested in the Court under s.9 are exercised subject to the provisions of

\* (1984) 3 C.L.R. 1271.

\*\* (1985) 3 C.L.R. 119, 125.

subsections 2 and 3 and every rule of Court, by the plenum of the Court».

«Court» is defined by s.2(1) as the Supreme Court set up under s.3 and the jurisdiction, competence and powers vested by s. 9, are those formerly possessed by the Supreme Constitutional Court and the High Court. Unquestionably, judicial causes regulated by subsections 2 and 3 are left out of the ambit of subsection 1. The assumption and exercise of jurisdiction in relation to those matters is purely a matter of interpretation of the provisions of subsections 2 and 3 and application of relevant rules of Court regulating the exercise of such jurisdiction.

Section 11(2) entrusts without distinction the original jurisdiction formerly vested in the High Court and the Supreme Constitutional Court, including applications for judicial review under Art. 146, to one or more members of the Supreme Court as the Supreme Court may determine. And the Supreme Court did decide at the first meeting held after its establishment on 6th August, 1964, that such jurisdiction be exercised by a single member of the Court. It is pursuant to the provisions of s. 11(2) and the decision of the Supreme Court of 1964 that the three recourses here under consideration were referred to H.H. Justice Kourris. In the case of *Panayiotides* (supra), I debated at length the implications of subsection 2 of s. 11 and the two-tier system of administration of justice created thereby. The provisions of subsection 2 of s. 11 are qualified by the proviso thereto laying down that from every decision of the Supreme Court in the exercise of its original jurisdiction, an appeal lies before the Supreme Court. In the case of *Vassiliades* (supra) it was decided that the Court competent to take cognizance of such an appeal is the Full Bench of the Supreme Court. Therefore, the jurisdiction of the Supreme Court in relation to judicial causes specified in subsection 2 of s. 11 is purely appellate. Assumption of original jurisdiction by the Supreme Court in relation to any of those causes is not only impermissible by the plain provisions of subsection 2 and the proviso thereto, but would, in my judgment, clearly defeat the manifest intention of the legislature to establish in relation to those causes a two-tier system of justice. Evidently, in improvising a uniform scheme for the exercise of the original jurisdiction formerly vested in the two superior courts, the legislature adopted the constitutional scheme applicable to the High Court, whereby an appeal lied to the plenum of the Court



from every decision of the High Court in the exercise of its original jurisdiction — second proviso to Art. 155.2 of the Constitution.

Not only the legislature signified in unqualified terms its purpose to establish a two-tier system of justice respecting the trial of causes amenable to the original jurisdiction of the Supreme Court, but Rules of Court made after the enactment of Law 33/64 were fashioned to that reality. By virtue of the provisions of the Rules of Court made on 14th November, 1964\*, the Civil Procedure Rules applicable to appeals, the subject of Ord. 35, are made applicable to appeals taken from decisions of the Supreme Court in the exercise of its original jurisdiction under s. 11(2). The decision of the Full Bench in *Branco Salvage Ltd. v. Republic*\*\* and *Niki Chr. Georghiou v. Republic*\*\*\* indicate that the provisions of Ord. 35 should apply to appeals taken under the proviso to subsection 2, s. 11, in much the same way as they do in civil appeals. The importance of the two-tier system of justice established by s. 11(2) was also the subject of comment by A. Loizou, J. in *Republic v. Louca and Others*\*\*\*\*. The following passage from the judgment of the learned Judge is suggestive of this:

«Provided that subject to any Rules of Court there was given the right of an appeal to the Full Bench from his or their decision»\*\*\*\*\*.

The only case where a contrary view of s. 11 was taken is that of *Stokkos v. Republic*\*\*\*\*\*. Triantafyllides, P., expressed the opinion that it is competent for the Full Bench of the Supreme Court to assume the exercise of the original jurisdiction vested in the Supreme Court by s. 11(2). The observations were not meant to and had no bearing on the outcome of the decision and on that account they cannot be classified except as obiter dicta. In any event, they do not support the existence of jurisdiction on the part of the Full Bench to take over the trial of commenced judicial proceedings before another member of the Court, a thesis specifically refuted in the case of *Roussos* (supra).

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\* Official Gazette 362, Part II - 19th November, 1964

\*\* (1967) 3 C L R 213

\*\*\*(1968) 1 C L R 411

\*\*\*\*(1984) 3 C L R 241.

\*\*\*\*\* Page 249, lines 20-25

\*\*\*\*\* (1982) 3 C L R 1110, 1116

In my judgment not only s. 11(2) precludes the Full Bench of the Supreme Court from taking over the hearing of judicial proceedings commenced before a Bench of the Court but it lacks, under any circumstances, competence to exercise original jurisdiction in respect of any of the judicial causes specified in subsection 2 of s. 11. Assumption of jurisdiction outside the framework of the law would not only entail departure from its provisions but would upset another fundamental attribute of justice, the a priori determination of the Court vested with competence to try a Judicial cause. To the far reaching implications of lack of certainty in the determination of the Court competent to try the case, I made explicit reference in the case of *Hadjisavvas v. The Republic*\*. The decision of the majority of the Court of Appeal in that case does not, to my comprehension, derogate from this position. In accordance with their judgment, the relevant decision of the Supreme Court determining the composition of the Appellate Bench under subsection 3 of s. 11, conferred power to enlarge the Bench in an appropriate case. We may note that subsequently the application for enlargement of the Bench was abandoned.

For all the above reasons I hold that the Full Bench lacks competence to try the three recourses here under consideration.

COURT: These cases are, by majority, fixed before the Full Bench for further oral addresses and for the production of relevant documentary evidence on the 23rd July 1987, at 10.00 a.m., to be continued on the 24th, if necessary.

*Order accordingly.*

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\* (1986) 2 C.L.R. 154.