

1987 July 23

(TRIANTAFYLIDIS P. A LOIZOU, MALACHTOS, SAVVIDES,  
LORIS STYLIANIDES, KOURRIS, JJ)

THE REPUBLIC OF CYPRUS, THROUGH  
THE PUBLIC SERVICE COMMISSION,

*Appellant,*

v

KYRIACOS KYRIACOU,

*Respondent*

*(Revisional Jurisdiction Appeal No 733)*

*Revisional jurisdiction appeal — Quorum of Supreme Court — More than half the number of Judges of the Supreme Court holding office at any given time*

*Revisional jurisdiction appeal — A Judge of this Court from whose judgment the appeal is made is legally incapacitated from participating in the hearing of the appeal — It cannot be otherwise merely because a constitutional issue has to be pronounced*

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The question raised in the course of the hearing of this appeal is whether, when the Court is dealing with an issue of constitutionality, all the Judges of the Court including the Judge, from whose judgment the appeal was made, should be invited to sit

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Held, (1) The quorum of the Supreme Court for the purpose of hearing a revisional jurisdiction appeal under the proviso to section 11(2) of Law 33/64 is more than half the number of the Judges of the Court holding office at any given time

(2) Moreover, according to the case law a Judge of this Court from whose judgment the appeal is made, is legally incapacitated from participating in the hearing of the appeal It cannot be otherwise merely because this Court has to pronounce on a constitutional issue

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*Order accordingly,*

*Cases referred to*

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*The Republic v Vassihades* (1967) 3 C L R 82.

*Rodosthenous v The Republic*, 1 R S C C 127.

*The Attorney-General of the Republic v. Ibrahim*, 1964 C.L.R. 195;

*Georghiou v. The Republic* (1987) 3 C.L.R. 980.

### Preliminary point.

5 Preliminary point raised by counsel for the respondent as to whether when the Supreme Court is dealing with an issue of constitutionality all Judges of the Supreme Court are entitled to sit and, therefore, the trial Judge against whose judgment the appeal was made should have been invited to sit, if he so wished.

10 *N. Charalambous, Senior Counsel of the Republic*, for the appellant.

*K. Talarides*, for the respondent.

*Cur. adv. vult.*

15 *TRIANTAFYLLIDES P.* read the following decision of the Court. This is an appeal by the Public Service Commission against the first instance judgment of a Judge of this Court by means of which there were annulled two appointments made by the respondent to the post of Conservator of Forests.

20 The said judgment was given in determining a recourse made, under Article 146 of the Constitution, by the respondent to this appeal, who was the applicant before the trial Judge; and to such recourse the now appellant Public Service Commission was the respondent.

25 The reason for annulling the appointments in question was that the Public Service Commission had acted without competence in the matter because, as was found by the trial Judge, it was constituted in a manner contrary to the Constitution.

30 At the start of the hearing of this appeal counsel for the respondent has raised the issue that when the Supreme Court is dealing with an issue of constitutionality, such as the one which arises in the present case, all the Judges of the Supreme Court are entitled to sit and, therefore, the trial Judge against whose judgment this appeal was made should have been invited to sit, too, if he so wished.

35 In accordance with the case of *The Republic v. Vassiliades*, (1967) 3 C.L.R. 82, which has been followed and applied consistently over many years, the quorum of the Supreme Court

for the purpose of hearing a revisional jurisdiction appeal, such as the present one, under the proviso to section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64), is more than half the number of the Judges of the Court holding office at any given time; and there are sitting now to hear this appeal seven out of the nine Judges of our Supreme Court. 5

Moreover, according to case-law as *Rodosthenous v. The Republic*, 1 R.S.C.C. 127, and the *Vassiliades* case, supra, the Judge of the Supreme Court from whose judgment an appeal is being heard is legally incapacitated from participating in the hearing of the appeal from his own judgment; and this cannot be otherwise merely because a constitutional issue has to be pronounced on in determining the appeal. 10

It must be borne in mind that a most basic issue of our constitutional law, namely the validity of the legislation by virtue of which our Supreme Court functions, was decided by an appellate bench of three, out of the then five Judges, of our Supreme Court (see *The Attorney-General of the Republic v. Ibrahim*, 1964 C.L.R. 195). 15 20

It is clear, of course, that when the Full Bench of the Supreme Court sits to hear directly a case (see, inter alia, in this respect *Georgiou v. The Republic*, cases 36/86 etc., decision dated 4 June 1987, not reported yet\*) any Judge of the Court may sit if he so wishes. 25

In the light of all the foregoing we hold that this Bench is properly constituted to hear this appeal and determine any issue of constitutionality arising in it.

*Order accordingly.*

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\* Reported in (1987) 3 C.L.R. 980.