

1988 January 29

(TRIANAFYLLIDES, P., SAVVIDES, LORIS, STYLIANIDES, KOURRIS, JJ.)

ARCHANGELOS DOMAIN LTD.,

Appellants - Plaintiffs,

v.

VAN NIEVELT, CONDRIAN & CO'S,

Respondents - Defendants.

(Civil Appeal No. 6842).

*Constitutional Law — Reasoning of Judicial determinations —
Constitution, Art. 30.2 — What is considered as sufficient reasoning
depends on the circumstances of each particular case.*

5 *European Convention for the Protection of Human Rights — Art. 6.1 —
The notion of «fair hearing» requires reasons to be given by a Court
for its decision — Extent of such requirement.*

10 The plaintiffs-appellants claim an amount of C£4,147.- (four
thousand, one hundred and forty-seven Cyprus pounds) damages
for alleged breach of contract of affreightment by the defendants,
with interest thereon at the rate of 8.5% per annum from the date of
the handing over of the goods to the date of judgment and legal
interest thereafter.

The defendants desisted and denied the claim.

15 Two witnesses testified for the plaintiffs and one for the
defendants. The Bill of Lading and 16 other documents were
produced as Exhibits.

In his judgment the trial Judge quoted seriatim the petition and the
answer, mentioned the names of the witnesses and, then, in a brief
paragraph he said:

20 «I do not intend to go into a detailed analysis of the evidence, but
having seen the witnesses in the witness box in conjunction with the
documents produced, I have come to the conclusion that there has
been no breach of contract».

25 This is an appeal from the said judgment, whereby appellants'
action was dismissed.

Held, *allowing the appeal*: (1) Article 30, para. 2 of the Constitution provides that judgments determining the civil rights and obligations, or of any criminal charge against a person shall be reasoned.

The notion of «fair trial» requires reasons to be given by a Court for its decision and this applies to civil as well as criminal proceedings. What is considered as sufficient reasoning depends largely on the circumstances of each particular case. 5

(2) Article 6.1 of the European Convention on Human Rights, which, having been ratified by Law 39/62, has superior force to the domestic legislation made under the Constitution, secures to everyone the right to a fair hearing in the determination of his civil rights and obligations, or of any criminal charge against him. 10

The notion of «fair trial» requires reasons to be given by a Court for its decision. If a Court gives reasons, then *prima facie* the requirement is satisfied. This presumption is not upset merely because the Court failed to give reasons in respect of all points, which a party considered material, but if a fundamental defence is ignored, then the presumption is rebutted. The extent of the reasons to be given depends on the nature and complexity of the matter concerned. 15 20

(3) The judgment appealed from falls short of the requirement of a reasoned judicial determination.

Appeal allowed. New trial ordered. Costs of the appeal and of the first trial to be costs in the cause, but in any event not against the appellants. 25

Cases referred to:

Papaellina v. EPCO (Cyprus) Ltd. and Lion Products Ltd. (1967) 1 C.L.R. 338; 30

Panayi v. The Police (1968) 2 C.L.R. 124;

Ioannidou v. Dikeos (1969) 1 C.L.R. 235;

Pioneer Candy Ltd. and Another v. Stelios Tryfon and Sons Ltd. (1981) 1 C.L.R. 540;

Papageorghiou v. Hji pieras (1981) 1 C.L.R. 560; 35

1 C.L.R. Archangelos Domain v. Van Nievelt

Hambou and Others v. Michael and Another (1981) 1 C.L.R. 618;

Christou and Another v. Angelidou and Another (1984) 1 C.L.R. 492;

Re Eleftheria Charalambous (1987) 1 C.L.R. 427;

5 *Psaras and Another v. Republic* (1987) 2 C.L.R. 132.

Appeal.

Appeal by plaintiffs against the judgment of a Judge of the Supreme Court of Cyprus (Hadjianastassiou, J.) dated the 30th November, 1984 (Admiralty Action No. 42/71) whereby their
10 action for £4,147.- damages for alleged breach of contract of affreightment by defendants was dismissed.

L. Demetriades, for the appellants.

A. Markides, for the respondents.

Cur. adv. vult.

15 **TRIANTAFYLLIDES P.:** The Judgment of the Court will be delivered by Mr. Justice Stylianides.

STYLIANIDES J.: The plaintiffs-appellants claim an amount of C£4,147.- (four thousand, one hundred and forty-seven Cyprus pounds) damages for alleged breach of contract of affreightment
20 by the defendants, with interest thereon at the rate of 8.5% per annum from the date of the handing over of the goods to the date of judgment and legal interest thereafter.

The defendants desisted and denied the claim.

25 At the close of the pleadings it emerged that the issues between the parties were as to the terms and conditions of the contract of affreightment; whether it was embodied in a telex or it was incorporated in a Bill of Lading; whether the delivery of the goods to Société Marseillaise de Groupage was effected as per order or instructions of the plaintiffs; whether Société Marseillaise de
30 Groupage were acting as agents of the plaintiffs and finally, if the defendants were guilty of breach, what was the quantum of damages?

Periklis Manglis, one of the directors of the plaintiff company and Georghios Rocopos, one of their employees, testified for the

plaintiffs; Nikiforos Panayi, Manager of the Cyprus Shipping Co. Ltd., who were acting as agents of the defendants in Cyprus at the material time, gave evidence for the defence.

The Bill of Lading and no less than 16 other documents, mainly telexes, were produced.

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The trial Judge dismissed the action.

The plaintiffs appealed against the said Judgment; in the Notice of Appeal six grounds were raised. During the hearing, however, learned counsel for the appellants pursued only one ground: That the Judgment under appeal is not reasoned as required by Article 30.2 of the Constitution and the inherent attribute of the judicial process, and therefore must be set aside.

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Prior to the establishment of the Republic and the coming into force of the Constitution, in relation to criminal proceedings, s. 113(1) of the Criminal Procedure Law, Cap. 155 required the reasons for the decisions to be recorded in writing. In civil proceedings judgments had to be reasoned as a requirement of the very notion of proper determination of disputes by judicial process.

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Article 30, para. 2 of the Constitution provides that judgments determining the civil rights and obligations, or of any criminal charge against a person shall be reasoned.

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The notion of «fair trial» requires reasons to be given by a Court for its decision and this applies to civil as well as criminal proceedings.

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A party must know the reasons for the failure of his case. The reasons are further necessary to enable a party to decide whether and on what grounds an appeal should be lodged. As the administration of justice is a public function, the people in general are entitled to know the reasons of the judicial decisions. Adequate judicial reasoning and its soundness upholds faith in the Law and strengthens confidence in the judiciary.

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In *Papaellina v. EPCO (Cyprus) Ltd. and Lion Products Ltd.*, (1967) 1 C.L.R. 338, Stavrinides, J. observed that there is a need for a trial Judge to formulate clearly in his judgment the specific issue or issues of fact arising between the parties and to state his finding for such issue or each one of such issues, and that Judges trying civil disputes should unfailingly do so.

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The trial Court has to determine the issues which arise and to give its reasons for its determination.

The mandatory provision of para. 2 of Article 30 of the Constitution has been judicially considered by this Court in a number of cases. (See inter alia *Anastassis Panayi v. The Police* (1968) 2 C.L.R. 124; *Theodora Ioannidou v. Charilaos Dikeos* (1969) 1 C.L.R. 235; *Pioneer Candy Ltd. and Another v. Stelios Tryfon and Sons Ltd.* (1981) 1 C.L.R. 540; *Papageorghiou v. Hji pieras* (1981) 1 C.L.R. 560; *Androula Georghiou Hambou and Others v. Maria Charalambous Michael and Another* (1981) 1 C.L.R. 618; *Michael Christou and Another v. Maria Angelidou and Another* (1984) 1 C.L.R. 492; *In the matter of Eleftheria Charalambous of Nicosia*, Civil Appeal No. 6835, Judgment delivered on 22/7/87 not yet reported* and *Psaras and Another v. The Republic*, Criminal Appeals Nos. 4715 and 4718, Judgment delivered on 15/10/87 not yet reported.**

What is considered sufficient «reasoning» depends largely on the circumstances of each particular case.

Article 6.1 of the European Convention on Human Rights, which, having been ratified by Law 39/62, has superior force to the domestic legislation made under the Constitution, secures to everyone the right to a fair hearing in the determination of his civil rights and obligations, or of any criminal charge against him.

The notion of «fair trial» requires reasons to be given by a Court for its decision. However, if a Court gives reasons, then prima facie the requirements are satisfied, and this presumption is not upset simply because the judgment does not deal specifically with one point considered by an applicant to be material. It does not follow from Article 6 that reasons given by a Court should deal specifically with all points which may have been considered by one party to be essential to his case; a party does not have an absolute right to require reasons to be given for rejecting each of his arguments. If, however, the Court had ignored a fundamental defence, which had been clearly put before it and which, if successful, would have discharged him in whole or in part from the liability, then this could be sufficient to rebut the presumption of a fair hearing. The extent of the reasons to be given for a decision must depend on the

* Reported in (1987) 1 C.L.R. 427.

** Reported in (1987) 2 C.L.R. 132.

nature and the complexity of the matter concerned. (Digest of Strasbourg Case Law relating to the European Convention on Human Rights (1984), volume 2, pp. 424-427.)

In the present case the learned trial Judge, after stating the plaintiffs' claim, quoted seriatim the petition and the answer; he mentioned the names of the witnesses and, having disposed the question of jurisdiction, in a very brief paragraph he said:- 5

«The next issue for determination is the question of whether there has been a breach of the said contract of affreightment or not. I do not intend to go into a detailed analysis of the evidence, but having seen the witnesses in the witness box in conjunction with the documents produced, I have come to the conclusion that there has been no breach of contract. In consequence of this, the present case has to be dismissed and I need not deal with the issue of damages.» 10 15

We are of the opinion that in the circumstances of this case the Judgment under appeal is not reasoned; it falls short of the requirements of a reasoned judicial determination in the sense of Article 30.2 of the Constitution.

We, consequently, hold that, in view of the expressed mandatory provisions of Article 35 of the Constitution, which lays down, inter alia, that the judicial authorities of the Republic shall be bound to secure, within the limits of their respective competence, the efficient application of the provisions of Part II of the Constitution, which safeguards fundamental rights and liberties, one of such provisions being Article 30.2, the Judgment under appeal should be set aside. 20 25

The Judgment under appeal is hereby set aside. A new trial of the action is ordered before another Bench.

The costs of the first trial and the costs of this appeal to be costs in the cause in the new trial, but in any event not against the appellants. 30

Appeal allowed.
Retrial ordered.
Order for costs as above. 35