1988 December 22

(DEMETRIADES, SAVVIDES, STYLIANIDES, JJ.)

GARBIS KAZANDJIAN AND ANOTHER

Appellants-Defendants,

v.

ANDREAS ELLINIDES AND ANOTHER,

Respondents-Plaintiffs.

(Civil Appeal No. 7349).

Civil Procedure — Language in Judicial proceedings and of documents to be served in respect thereto — The Civil Procedure Rules, 0.58 r.1 — Writ of summons drafted in Greek served on the defendants, who are Armenians and know the Greek, but not the English language — Whether the language used was the proper one — Question answered in the affirmative — The rule speaks of «Greek speaking» and «Turkish speaking» persons, not of «Greeks» and «Turks».

Constitutional Law — Language in Judicial proceedings and of documents served in respect thereto — Constitution, Articles 1, 3.1 and 3.2, 188 and 189 — The Laws and Courts (Text and Procedure) Law, 1965 (Law 51/65) — Law 67/88.

Law of necessity — Language in Judicial proceedings and of documents served in respect thereto — The Laws and Courts (Text and Procedure) Law, 1965 (Law 51/65) — Koumi v. Kortari (1983) 1 C.L.R. 856.

Civil Procedure — Language in Judicial proceedings and of documents served in respect thereto — History and practice.

The appellants, who are Armenians, applied to set aside the writ of summons served upon them on the ground that the same was drafted in the Greek language, whereas, in virtue of 0.58 of the Civil Procedure Rules, it should have been drafted in English.

It must be noted that the appellants know the Greek language, whereas they do not know the English language.

The trial court dismissed the application. Hence this appeal.

0 58 of the Civil Procedure Rules deals with the language used in Court Rule 1 provides as follows

> «1 Subject to rule 3 of this Order, any document served in Cyprus shall, if served on a Greek speaking person, be in Greek and and if servec on a Turkish speaking person, be in Turkish, and in all other cases be in English»

Held, *dismissing the appeal* (A) Per Savvides, J , Demetriades, J concurring

(1) The appellants were «Greek speaking» and capable of understanding Greek and therefore in the light of provisions of 0 58, r 1 which expressly refers to «Greek speaking» and «Turkish speaking» litigants, and not «Greeks» and «Turks», we have reached the conclusion that the writ of summons was properly served on them

(2) This case is distinguishable from the case of *Typographiki Ekdotiki Etena Proodos Ltd v Pavlou* and Another (1987) 1 C L R 529 in that in the said case the defendant on whom the writ of summons was served was neither a Greek speaking or a Turkish speaking person but only an English speaking person

(B) Per Stylianides, J The transitional provisions of Article 189 of the Constitution and Law 51/65 and the *Koumi* case simply allowed on the basis of the doctrine of necessity, the use of English - a foreign language The non use, however, of that language in any documents to be served in the Republic, is neither contrary to Article 189, nor to Law 51/65

(3) Order 58 should be read subject to Articles 1, 3 1 and 3 4 and 189 of the Constitution and Law 51/65 has to be given effect in the light of the practice* during the five years' transitional period from Independence

Appeal dismissed with costs

Cases referred to

Typographiki Ekdotiki Etena Proodos Ltd v Pavlou and Another (1987) 1 C L R 529,

Koumi v Kortan (1983) 1 C L R 856

Appeal.

Appeal by defendants against the decision of the District Court of Nicosia (S Nicolaides, D J) dated the 10th March, 1987 (Action

* *See reference to such practice at p 756*

No. 11550/85) whereby their application to set aside the service upon them of the writ of summons on the ground that it was in Greek and not in English was dismissed.

A. Devledian with N. Andreou, for the appellants.

A. Magos with A. Paschalides, for the respondents.

Cur. adv. vult.

DEMETRIADES J.: The judgment of the Court (Demetriades, J. and Savvides, J.) will be delivered by Mr. Justice Savvides. Mr. Justice Stylianides will deliver a separate judgment.

SAVVIDES J: This is an appeal against the decision of the District Court of Nicosia (S. Nicolaides, D.J.) dismissing an application on behalf of the appellants for an order of the Court setting aside the service upon the appellants of the writ of summons in the above action for irregularity and/or irregularity in the issue of the writ of summons on the ground that the said writ was in Greek whereas in accordance with the Civil Procedure Rules it should have been in English.

The facts of the case are briefly as follows:

The respondents issued a writ of summons against the appellants in Action No. 11550/85 of the District Court of Nicosia claiming £16,000.- as damages for breach by the appellants of a contract dated 17th January, 1985 and/or as a sum due by the appellants to respondents by virtue of an agreement and/or as damages for breach by the appellants of the terms of a written agreement dated 17th January, 1985.

The appellants and the respondents were partners in a partnership operating under the business name «Renata shoes». On or about January, 1982, the respondents brought against appellants action No.200/82 claiming the dissolution of the partnership and its winding up, the taking of accounts and damages.

In the course of the hearing of the action the parties reached an agreement which was produced in Court and on the basis of such agreement the terms of which had been agreed the action was withdrawn.

It is the allegation of the respondents that the appellants failed to comply with the said agreement and as a result they instituted action No.11550/85 against the appellants. Copy of the writ of summons in Greek was served on both appellants.

Counsel for the appellants by application dated 3rd March, 1986, moved the Court to set aside the service of the writ of summons on the appellants on the ground that the said writ was in Greek, a language foreign to the appellants, who were Armenians, whereas in accordance with the Civil Procedure Rules it had to be in English.

The learned trial Judge having heard extensive argument on both sides and having gone through the contents of the affidavits sworn by both parties and the various documents attached to them came to the conclusion that the writ of summons had been properly served on the appellants in the Greek language. According to his judgment he reached his conclusion for the following reasons:

> «In any case the argument of the learned counsel for applicants is as regards the words in 0.58 Greek speaking and Turkish speaking as persons belonging to the Greek or Turkish community. It is made clear and can be deduced from the affidavit in support of the application that defendants-applicants are Armenians members of that religious group and who by virtue of Article 2(3) of the Constitution and law 7/1960 poll elected to belong to the Greek community.
>
> Having considered all the above and bearing in mind that the purpose of the service of writ of summons on the defendants is to bring to their knowledge the reason for which they are required to appear and this being in one of the official languages of the Republic the one which is being used by the community to which the defendants as part of a religious group elected to belong, I find that the writ of summons has properly been served on the defendants-applicants in the Greek language. 0.58 should be viewed as modified in view of the provisions of article 3 of the constitution.»

Counsel for appellants argued that the trial Court misdirected itself as to the true nature of 0.58, r.1, of the Civil Procedure Rules and wrongly decided that the writ of summons in the Greek language has been properly served on the appellants-defendants

who are Armenians or members of the Armenian Religious Group and who in any case are neither «Greek speaking» nor «Turkish speaking» persons. Also that the trial Court erred in holding that the appellants, members of the Armenian Religious Group, could in all respects and for the purposes of 0.58, r.1 be considered as members of the Greek community since the Armenian Religious Group has opted to belong to the Greek community. He further submitted that the trial Court wrongly interpreted the contents of paragraphs 1 and 2 of Article 2 of the Constitution.

Counsel went at length to deal with the history and rights of the Armenian community, upon which, however, we find it unnecessary to embark as we are not sitting here to pronounce on the rights and privileges of the various religious groups or communities recognized under the Constitution, but with a simple question as to whether the service of the writ of summons on the appellants was a proper one in the circumstances of the present case.

In a recent decision delivered by this court in *Typographiki Ekdotiki Eteria «Proodos» Ltd. v. Pavlos Pavlou and Another* (1987) 1 C.L.R. 529 and in which two of the members of this Bench namely Mr. Demetriades and myself were sitting, we had the opportunity of expounding on the provisions of 0.58 of the Civil Procedure Rules concerning service of the writ of summons on persons who are neither «Greek speaking» nor «Turkish speaking» and we concluded in that case in the light of the evidence before us that in view of the fact that defendant 2 in that case was neither a «Greek speaking» nor a «Turkish speaking» person, service of the writ of summons in Greek on her was not proper service under 0.58, r.1 and ordered the setting aside of the service of the writ of summons on defendant 2, an English speaking person.

0.58 of the Civil Procedure Rules deals with the language used in Court. Rule 1 provides as follows:

> «1. Subject to rule 3 of this Order, any document served in Cyprus shall, if served on a Greek speaking person, be in Greek and if served on a Turkish - speaking person, be in Turkish, and in all other cases be in England.»

In the case of *Typographiki Ekdotiki Eteria Ltd.* (supra) in dealing with 0.58, r.1, it was found as follows:

«The Civil Procedure Rules, 1954 previously cited as The Rules of Court, 1938, were in force long before the declaration of the Independence of Cyprus and embodied the rules to be followed in all matters concerning the practice and civil procedure of the Court.

The introduction of Order 58 was obviously necessitated by the recognition during the British Rule of the fact of the existence of the two main languages prevailing in Cyprus and used by the majority of the population which consisted of members of either of the two communities of the Island, Greeks and Turks. The English language was to be used in cases where service was to be effected on parties who were neither Greek-speaking nor Turkish-speaking Cypriots but belonged to any other class of people speaking a foreign language. English was at the time a language which was mostly spoken by all foreigners and which was the official language. This was the reason for the provision in the rules that service of documents on defendants who were neither Greek-speaking nor Turkish speaking should be in English.

The said Rules of Court remained in force by virtue of the Rules of Court (Transitional Provisions) 1960, issued by the High Court at the time, under Article 163 of the Constitution.»

Rule 3 of the 1960 Rules, reads as follows:-

'3. Τηρουμένων των διατάξεων του Συντάγματος, πας κατά την προηγουμένην της ημέρας ανεξαρτησίας ισχύων διαδικαστικός κανονισμός, πίναξ δικαστικών τελών και η εν τοις δικαστηρίοις ακολουθουμένη και νόμω καθοριζομένη πρακτική και δικονομία (Practice and procedure) θα εξακολουθούν να ισχύουν μέχρις ου τροποποιηθούν διά μεταβολής, προσθήκης ή καταργήσεως, δυνάμει διαδικαστικού κανονισμού και θα ερμηνεύωνται και θα εφαρμόζωνται μετά τοιούτων μετατροπών καθ' ο μέτρον είναι τούτο αναγκαίον προς συμμόρφωσιν προς τας διατάξεις του Συντάγματος.

(Subject to the provisions of the Constitution any rule of court, schedule of court fees and the practice and procedure

defined by law and followed in the courts which were in force on the day preceding the day of independence will continue to apply until they are amended by alteration, addition or repeal, on the basis of a rule of court and will be interpreted and applied with such changes as far as this is necessary for compliance with the provisions of the Constitution').

Paragraphs 1 and 4 of Article 3 of the Constitution, read as follows:

'1. The official languages of the Republic are Greek and Turkish.

4. Judicial proceedings shall be conducted or made and judgments shall be drawn up in the Greek language if the parties are Greek, in the Turkish language if the parties are Turkish, and in both the Greek and Turkish if the parties are Greek and Turkish. The official language or languages to be used for such purposes in all other cases shall be specified by the Rules of Court made by the High Court under Article 163.'

Under Article 189 the following provision is made:-

'Notwithstanding anything in Article 3 contained, for a period of five years after the date of the coming into operation of this Constitution-

(a) all laws which under Article 188 will continue to be in force may continue to be in the English language;

(b) the English language may be used in any proceedings before any Court in the Republic.'

On 9th September, 1965, a law entitled The Laws and Courts (Text and Proceedings) Law, 1965, Law No.51 of 1965 was enacted, the preamble of which reads as follows:-

'Whereas the translation of the text of all the Laws in force has not become possible until today:

And whereas in the circumstances the temporary legislative regulation on certain matters relating to the procedure before the Courts has become necessary:

Therefore the House of Representatives enacts as follows:'

Under section 3 of the said Law, provision is made authorizing the Attorney-General of the Republic to look into

and supervise the translation of the English text of the laws in force at the coming into operation of the law and the said laws remained in force until their translation became possible. Furthermore, under section 4, the following provision was made:

'Ανεξαρτήτως της διατάξεως οιουδήποτε νόμου και μέχρις ου γίνη επί του προκειμένου άλλη νομοθετική πρόνοια πάσα ενώπιον οιουδήποτε δικαστηρίου διαδικασία θα εξακολουθήση να διεξάγηται εις οιανδήποτε μέχρι τούδε εν χρήσει εν τοις δικαστηρίοις γλώσσαν.»

(Notwithstanding the provision of any law and until the enactment of any other law on the matter, any procedure before any court will continue to be conducted in any of the languages used in the courts until today').

The object of the introduction of Article 189 and the further reasons which led to the need of the enactment of Law 51/65, have been expounded by the Full Bench of the Supreme Court in the case of *Koumi v. Kortari* (1983) 1 C.L.R. 856, at pp. 859, 860 where we read the following:

Law 51/65 has now been repealed by Law 67/88 (a law to provide about the official language of the Republic) with effect as from 16th August, 1989 after which all Court proceedings shall be conducted in the official languages of the Republic, that is, Greek and Turkish. As from 16th August, 1989, it is pertinent that as a result of the enactment of Law 67/88, 0.58 of the Rules of Court should be amended accordingly. We wish, however, to observe that the present appeal has to be determined on the basis of the law as it stood at the material time.

It has been the contention of counsel for the respondents, in the present case, that the appellants, though Armenians, were, nevertheless, «Greek speaking» carrying on their business transactions in Greek. He drew our attention to the fact that the partnership agreement concluded between the parties was in Greek as well as the lease agreement which was signed by the parties and all pages of which were initialled; the premises where the partnership carried its business and which belonged to respondent 2 was drawn up in Greek and was signed by appellant 2 as tenant with his wife, appellant 1, as guarantor. Also to the fact that the writ of summons issued in Action 200/82 for the

dissolution of the partnership and which was served on the appellants was in Greek, the settlement which was reached and the terms of such settlement which were stated to the Court were recorded in Greek and the appellants never raised any objection that they did not understand Greek.

Though we do not agree with the reasons given by the learned trial Judge in reaching his decision to dismiss appellants' application nevertheless we agree with the result reached but with different reasoning. From the material before us, which appears in the file of the case and was produced at the trial, and to which our attention has been drawn by counsel for the respondents, we are satisfied that the appellants were «Greek speaking» and capable of understanding Greek and therefore in the light of the provisions of 0.58, r.1 which expessly refers to «Greek speaking» and «Turkish speaking» litigants and not «Greeks» and «Turks», we have reached the conclusion that the writ of summons was properly served on them.

Before concluding we wish to point out that *Typographiki Ekdotiki Eteria «Proodos» Ltd.* (supra) is distinguishable from the present case in that in the said case the defendant on whom the writ of summons was served was neither a Greek speaking nor a Turkish speaking person but only an English speaking person.

In the result the appeal fails and is hereby dismissed with costs.

STYLIANIDES J.: This appeal is directed against a Decision of a Judge of the District Court of Nicosia, whereby he dismissed an application of the appellants for an order of the Court setting aside the service upon the defendants of the writ of summons, on the ground that the said writ of summons was in Greek and not in English.

There is no dispute as to the facts.

The appellants are of Armenian origin, citizens of the Republic.

Appellants and respondents were members of a partnership, operating under the business name «Renata Shoes». The written agreements of the parties were written in the Greek language and signed by them. Disputes arose and Action No. 200/82 of the District Court of Nicosia, claiming the dissolution of the partnership, accounts and damages, was instituted. The writ of summons on the defendants - appellants was in Greek language.

A settlement was reached, which was written again in Greek and signed by the parties to the action.

The respondents filed the present action (Action No. 11550/85), claiming damages for breach by the appellants of the agreement, dated 17th January, 1985.

A copy of the writ of summons in the Greek language was served on the appellants. For the first time they applied to the Court to set aside the service upon them of the writ, on the ground that the said writ was in Greek, whereas, in accordance with the Civil Procedure Rules it had to be in English. The application was based on Order 58 of the Civil Procedure Rules.

In a well considered Ruling the trial Judge held that the writ of summons had properly been served on the defendants in the Greek language.

Counsel for the appellants very strenuously argued that the matter is governed by Order 58 of the Civil Procedure Rules; that as his clients are Armenians, who know Greek, though their mother tongue is not Greek, copy of the writ of summons in English should have been served on them, though they do not know English. He has endeavoured to make a differentiation between the communities - Greek and Turkish communities - recognized under the Constitution, and the small groups: Armenians, Maronites and Latins. He relied on a Judgment in *Typografiki Ekdotiki Eteria «PROODOS» Ltd. v. Pavlos Pavlou and Another*, (1987) 1 C.L.R. 529. Finally, he submitted that the trial Court wrongly construed Article 3 of the Constitution, which provides for the official languages in the Republic.

I consider pertinent to refer in wide strides to the history of language - the official language and the language in judicial proceedings in this country since the English occupation.

The Island of Cyprus was part of the Ottoman Empire. Its inhabitants were mainly a Greek majority and a Turkish minority.

By a Convention concluded at Constantinople on the 4th of June, 1878, the Imperial Majesty the Sultan of Turkey assigned the Island to be occupied and administered by England.

By a supplementary Convention, concluded at Constantinople on the 14th of August, 1878, it was, amongst other things, declared that in assigning the Island of Cyprus to be occupied and administered by England, His Imperial Majesty the Sultan had

thereby transferred to and vested in Her Majesty the Queen for the term of the occupation and no longer, full power of making laws for the Government of the Island in Her Majesty's name free from the Porte's control In the exercise of such power by Order in Council, the Cyprus Courts of Justice Orders were made

By reason of the outbreak of World War I between His Majesty and His Imperial Majesty the Sultan the said Convention Annex and Agreement became annulled and were no longer of any force or effect

The English Sovereign thought expedient that the Island should be annexed to and should form part of His Majesty's Dominions, in order that proper provision may be made for the government and protection of the said Island

And by the Cyprus (Annexation) Order in Council 1914 as from the 5th November, 1914, the Island of Cyprus became part of the Dominions of Great Britain by Annexation

This Annexation Order was confirmed by a further Order in Council, The Cyprus (Annexation) Amendment Order in Council, 1917.

Thus this Island became a colony which as from 1925 was governed pursuant to Letters Patent of May, of 1925

On 16th of August, 1960, as a result of the London and Zurich Agreements and the Cyprus Act of Parliament of the United Kingdom, a new State - the Republic of Cyprus - emerged from the status of dependency by succession from a metropolitan country On the said date by the emancipation of the former British Colony of Cyprus the independent Republic of Cyprus came into being

The Rules of Court, 1886, as amended on 27th July, 1898 (Order XXIX) provided that the copy of any writ of summons or other document giving any person notice of any proceeding to be taken in any Court shall, where it is to be served in Cyprus upon any native of Cyprus, be drawn up in the language of the person on whom it is to be served. In all other cases it may be drawn up in the English language only, and every judgment or order of any Court required to be drawn up and entered shall be drawn up and entered in the English language. Where a copy of any judgment or order is required by any Law, Order in Council or Rule of Court to be served in Cyprus upon any native of Cyprus it shall be translated by the Registrar into the language of the person upon whom is to be served.

Identical provision was made by order XXIX of the Rules of Court 1927, made under the Cyprus Courts of Justice Order, 1927.

The Civil Procedure Rules of 1938, which continued in force until Independence, provided as follows:

«ORDER 58.
LANGUAGE.

1 Subject to rule 3 of this Order, any document served in Cyprus, shall, if served on a Greek-speaking person, be in Greek, and if served on a Turkish-speaking person, be in Turkish, and in all other cases be in English.

2. Judgment and order shall be entered in English. If a Greek or Turkish translation of a judgment or order is required for service in Cyprus, it shall be made by the Registrar of the Court

3 Documents for the use of the Court presented by advocates who are barristers shall be in English. And documents intended for any such advocates may, even where the client for whom he is acting is Greek or Turkish-speaking, be in English. Advocates other than barristers may bring themselves under this rule by giving notice to that effect to the Registrar of the Court before which they appear, who shall post it up in the registry for public information.»

Upon change of sovereignty there is a community of Law between the former colony and the new State. The bulk of the legal system of the predecessor State is left unaffected by the change So much only of the Law of the predecessor State as is repugnant to, or inconsistent with, that of the successor State does not survive the change of sovereignty and so much as is not repugnant does.

Article 188 of the Constitution embodied the principle of continuity of the legal system upon the change of sovereignty. Subject to the provisions of the Constitution and to certain transitional provisions, to which I shall refer, all Laws in force on the date of the coming into operation of the Constitution, until amended whether by way of variation, addition or repeal, by any Law made under the Constitution, continued in force on or after the establishment of the Republic and are construed from that date

and applied with such modification as may be necessary to bring them into conformity with the Constitution «Law» includes any public instrument made before the date of the coming into operation by virtue of such Law

Article 163 of the Constitution empowered the High Court (the predecessor of the present Supreme Court) to make Rules of Court for regulating the practice and procedure of the High Court and of any other Court established by or under the Constitution

Transitional Provisions were made in the Constitution

Article 190 provided that subject to certain provisions any Court - meaning subordinate Court - existing immediately before the date of the coming into operation of the Constitution shall, as from that date and until a new law is made regarding the constitution of the courts of the Republic and in any event not later than four months from that date, continue to function as hitherto

Article 189 provided

«Notwithstanding anything in Article 3 contained for a period of five years after the date of the coming into operation of this Constitution

(a) all laws which under Article 188 will continue to be in force may continue to be in the English language

(b) the English language may be used in any proceedings before any court in the Republic »

Article 3 of the Constitution provides for the languages of the new State The material paragraphs of this Article for the present case are paragraphs 1 and 4 The controlling paragraph of the whole section is paragraph 1, which reads

«1 The official languages of the Republic are Greek and Turkish »

Paragraph 4

«4 Judicial proceedings shall be conducted or made and judgments shall be drawn up in the Greek language if the parties are Greek, in the Turkish language if the parties are Turkish, and in both the Greek and the Turkish languages if the parties are Greek and Turkish The official language or languages to be used for such purposes in all other cases shall

be specified by the Rules of Court made by the High Court under Article 163 »

The provisions of these paragraphs had to be read subject to the Transitional Provision of Article 189 whereby the English language might be used It is not obligatory to be used during the five years transitional period It is simply a permissive provision It permits to be used but it cannot be used to the exclusion of the official languages

The High Court on 12th December 1960, in virtue of the power vested in it by Article 163 of the Constitution, issued the Rules of Court (Transitional Provisions) 1960 the material part of which is Order 3 which reads as follows

«Τηρουμένων των διατάξεων του Συντάγματος, πας κατα την αμεσως προηγουμένην της ημέρας ανεξαρτησιας ημεραν ισχυων διαδικαστικος κανονισμος, πινακ δικαστικων τελων και η εν τοις δικαστηριοις ακολουθουμένη και νόμω καθοριζομένη πρακτικη και δικονομια (practice and procedure) θα εξακολουθουν να ισχυουν μέχρις ου τροποποιηθούν δια μεταβολής, προσθήκης ή καταργήσεως, δυνάμει διαδικαστικού κανονισμού και θα ερμηνεύωνται και θα εφαρμόζωνται μετά τοιούτων μετατροπών καθ' ο μερον ειναι τουτο αναγκαιον προς συμμόρφωσιν προς τας διαταξεις του Συντάγματος »

(«3 Subject to the provisions of the Constitution, every Rule of Court, table of Court fees and the practice and procedure followed by the Courts and prescribed by law in force on the day immediately before the day of Independence will continue to be in force until amended whether by variation, addition or repeal, by Rules of Court and shall be interpreted and applied with such modifications that are necessry for compliance with the provisions of the Constitution »)

Consonant to the provisions of Article 158 of the Constitution, the Courts of Justice Law, 1960 (Law No 14/60) was enacted and came into operation on 17th December, 1960 That Law repealed the Courts of Justice Law, Cap 8, of the 1959 edition of the Laws of Cyprus, the Courts of Justice (Extension of Jurisdiction) Law (No 6/60) and section 11 of the Civil Procedure Law, Cap 6 By this new Law the Distnct Courts and other Courts of the Republic

were established with jurisdiction and powers on civil and criminal jurisdiction.

Section 69 of the Courts of Justice Law No. 14/60 provides:-

«The High Court may make Rules (in this Law referred to as 'Rules of Court') to be published in the official gazette of the Republic for the better carrying out of this Law into effect.»

The power and jurisdiction of the High Court were conferred by Law No. 33/64 on the Supreme Court of Cyprus. No new Civil Procedure Rules of Court were made either by the High Court or by the Supreme Court.

The Rules of Court in force on the date before Independence are subject to the provisions of the Constitution in force and continue to be applied by the Courts, under the Rules of Court (Transitional Provisions) of 1960 made by the High Court as aforesaid.

I have referred to the history of the language in judicial proceedings and of the documents to be served in this country.

As from the commencement of the British occupation the official language was that of the Imperial Government administering the Island - English. The Cyprus Gazette was published in English (Number 1 was issued on 5th November, 1878). The Bills were published in English and were only translated for the use of the native elected members of the Legislative Council during the existence of the Body. All Laws were published in English. All Orders, Ordinances and Rules of Court were published in English.

There was a distinction in the Rules between the natives and the others.

In 1927 the natives were separated into Greek-speaking and Turkish-speaking and in all other cases the English language, as the official language of the Metropolis, was applied peremptorily.

In 1933 the Advocates Law was radically change by Law No. 20/33 and only barristers and solicitors of the United Kingdom and Ireland were permitted to practice as advocates in the colony of Cyprus. This was one of the harsh and suppressive measures, the aftermath of the events that shook the Island in October, 1931, commonly known in this country as «Octovriana». The main object

of the Law was to serve the political ends of the Colonial Government.

In 1938 the new Rules of Court repeated the 1927 provision about the language of documents to be served and paragraph 3 of Order 58 provided further that documents for the use of the Court, presented by advocates who are barristers, shall be in English and advocates other than barristers might bring themselves under this Rule.

It may be stated, however, that from 1928 until 1938 the English Common Law was introduced en mass into this country - (the Criminal Code 1928, the Contract Law 1930, the Civil Wrongs Law 1st January, 1933).

The colonial status of Cyprus came to an end on 16th August, 1960. A new state internationally recognized, a member of the United Nations with sovereignty and supremacy came into being. The official languages are by express constitutional provision the Greek and Turkish.

By constitutional command judicial proceedings shall be conducted or made and judgments shall be drawn in the Greek and Turkish languages. And the last part of paragraph 4 of Article 3 is significant for the determination of this case; the official language, or languages to be used for such purposes in all other cases shall be specified by the Rules of Court, made by the High Court, under Article 163.

The English language is not any of the official languages. Official language or languages refer to the controlling paragraph 1, which sets out the official languages: Greek and Turkish.

As from Independence Day, the advocates in this country are graduates of various Law schools of a number of countries. The Legal Board has recognized a plethora of Law Degrees. The practice followed during the five years of the transitional period by the advocates, barristers, or graduates of Law schools of whatever country did not adhere to the provision of Order 58 of the preexisting Rules of Court. Greek, Turkish and English were invariably used without distinction. Writs of summonses were served in Greek or Turkish and occasionally on English-speaking persons in English. No more the documents for the use of the Court, presented by advocates who are barristers, were invariably in English. Most of them were either in Greek or Turkish.

On 9th September, 1965, the Laws and Courts (Text and Procedure) Law; 1965, (Law No. 51/65) was enacted. It is a temporary legislation. In its preamble the following is recited:-

«Whereas it has not become possible until today the translation of the next of all the laws in force:

And whereas as from the circumstances it has become necessary the temporary legislative regulation of certain matters relating to the procedure before the Courts:

Now, therefore, the House of Representatives enacts as follows:»

In section 3 the Attorney-General of the Republic is authorized to take care and supervise the translation of the English text of the Laws in force.

The material part for this case is section 4, which reads as follows:-

«4. Ανεξαρτήτως της διατάξεως οιουδήποτε νόμου και μέχρις ου γίνη επί του προκειμένου άλλη νομοθετική **πρόνοια πάσα ενώπιον οιουδήποτε δικαστηρίου** διαδικασία θα εξακολουθήση να διεξάγηται εις οιανδήποτε μέχρι τούδε εν χρήσει εν τοις δικαστηρίοις γλώσσαν.»

(«4. Notwithstanding the provision of any law and until the enactment of other law on the matter all proceedings before **any Court will continue to be conducted in any language used** in the Courts hitherto.»)

In Civil Action No. 1564/79, before the District Court of Limassol, a barrister filed the statement of claim in English. Application was made for the dismissal of the action, on the ground that the English language could not be used. The District Court of Limassol struck out the statement of claim and directed that the plaintiffs should file and deliver a new statement of claim in the correct language. Appeal was taken and the Court of Appeal in *Koumi v. Kortari* (1983) 3 C.L.R. 856, came to the conclusion that Law No. 51/65 is valid on the basis of the doctrine of necessity, in view of the temporary nature of the Law and the necessity which it has been enacted to meet. It held that the English language could be used on the basis of Law No. 51/65, as

the English language was one of the languages used in the proceedings in the Courts of the Republic

It concluded, however with the following -

> «It may also be pointed out that this Law does not in any way exclude the use of the Greek or Turkish languages in Court proceedings and matters relevant thereto and which have in practice been extensively used. It was, therefore, in view of its provisions wrong to find as irregular the filing of the Statement of Claim in English »

It was not said in *Koumi* case that the English language shall be used. They did not say that, as counsel for the plaintiffs was a barrister documents presented by him should be in English as provided in Rule 3 of Order 58 of the Rules preexisting the 12th December, 1960, when the Transitional (Rules of Court) came into operation The ratio decidendi is that the English language may be used and no more

The authority and mandate given to the Attorney-General for the translation of the English text of the Laws was not performed until today After the lapse of 23 years, the House of Representatives enacted Law 67/88 The preamble of this Law reads -

> «ΕΠΕΙΔΗ σύμφωνα με το Άρθρο 3 του Συντάγματος της Κυπριακης Δημοκρατιας οι επισημες γλωσσες της Δημοκρατιας είναι η ελληνική και η τουρκική.
>
> ΚΑΙ ΕΠΕΙΔΗ η μεταβατική περίοδος των πέντε χρόνων με βαση το Άρθρο 189(β) του Συντάγματος της Κυπριακης Δημοκρατίας έχει από εικοσαετίας και πλέον ληξει και δεν είναι επιθυμητό να συνεχιστεί η καταστάση που δημιούργησε ο περί Νόμων και Δικαστηρίων (Κείμενον και Διαδικασία) Νόμος του 1965 »

The material parts of the Law are sections 2 and 3 -

> «2. Οι επίσημες γλώσσες της Δημοκρατίας είναι η ελληνική και η τουρκική.
>
> 3. Ο περί Νόμων και Δικαστηρίων (Κείμενον και Διαδικασία) Νόμος του 1965 καταργείται από τη 16η Αυγούστου, 1989.»

(«2 The official languages of the Republic are Greek and Turkish

3 The Laws and Courts (Text and Procedure) Law of 1965 is repealed as from 16th August 1989 »)

Section 2 is no more than a repetition of paragraph 1 of Article 3 of the Constitution

In *Typografiki Ekdotiki Eteria «PROODOS» Ltd v Pavlos Pavlou and Another,* (1987) 1 C L R 529, three Judges of this Court duly constituting the Appeal Court in civil cases upheld a Decision of an Acting District Judge of Nicosia whereby service of the writ of summons of defendant 2, an English-speaking Irish was set aside on the ground that the writ of summons served on him in the Republic in Action No 5519/85 of the District Court of Nicosia was in Greek In that Judgment reference was made to Rule 3 of the Rules of Court (Transitional Provisions) 1960 the constitutional provision on languages in Article 3 and Law 51/65 and to the Judgment in *Koumi v Kortari* case (supra) and concluded -

«Bearing in mind the legal position as above and the fact that Order 58 rule 1 still continues to be in force we find that the trial Judge was right in reaching his decision and ordering the setting aside of the service of the writ of summons in Greek on defendant 2 an English-speaking person »

The transitional provisions of Article 189 and Law 51/65 and the *Koumi* case simply allowed on the basis of the doctrine of necessity the use of English a foreign language The non use however, of that language in any documents to be served in the Republic, is neither contrary to Article 189 nor to Law 51/65

The reasoning behind the Judgment *Typografiki Ekdotiki Eteria «PROODOS» Ltd* , is that the defendant No 2 in that action was an English-speaking person

In this country, which has become a place of tourism and to which people of various nationalities and various languages come who may commit torts and may enter into contracts and in other acts, which may lead to civil proceedings how can the English language - foreign to most of them and not official language of the

country - be of obligatory use? We have many persons from various countries, Arab-speaking, French-speaking, German-speaking, Italian speaking, etc.

The appellants in this case are of Armenian origin, citizens of the Republic, who, pursuant to constitutional provision and under Law 7 of 1960, elected to be members of the Greek community of the Republic. They do not know English, but they know Greek. The argument advanced that service on them of the copy of the writ should be in English, a language other than the official languages, is absurd. The object of service of copy of the writ is to make known to a defendant that judicial proceedings have commenced against him, and command him to appear before the Court; to bring to his knowledge the claim of his adversary in order to enable him to admit or desist the claim. The English language does not serve any of these purposes, let alone that it is beyong the object of the Constitution.

Under the Transitional Provisions of Article 189(b) the use of the English language by a willing plaintiff was allowed. This was the effect, also of Law 51/65.

It should not be forgotten that the main and principal Article of the Constitution is Article 1, that the State of Cyprus is an Independent and Sovereign Republic.

I do not pronounce at this stage, as it was not raised and not argued, whether 28 years after the establishment of the Republic the existence of Law 51/65 satisfies the prerequisites of the doctrine of necessity, as is set out in *The Attorney-General of the Republic v. Mustafa Ibrahim and Others,* 1964 C.L.R. 195, at pp. 265, 234.

Order 58 has to be read and applied subject to the above quoted constitutional provisions and Law 51/65 has to be given effect in the light of the practice during the five years transitional period from Independence.

Service of documents in the Republic in Greek, unless served on a Turkish-speaking, is valid and unimpeachable.

In view of the foregoing, the appeal is dismissed with costs here and in the Court below.

DEMETRIADES, J.: In the result the appeal is dismissed with costs.

Appeal dismissed with costs.