

## V.—Continuity of States

[See also below, E.]

**States as international persons—In general—Continuity of States—Armed rebellion and insurrection—Assertion of authority and control by insurgents over areas of State territory—Presence of UN forces—Non-functioning of courts established by constitution—Whether “doctrine of necessity” justifies departure from provisions of constitution—The law of Cyprus**

THE ATTORNEY-GENERAL OF THE REPUBLIC *v.* MUSTAFA IBRAHIM AND OTHERS

*Cyprus, Supreme Court. 10 November 1964*

(Vassiliades J., Triantafyllides J. and Josephides J.)

**SUMMARY:** *The facts.*—During the period of civil strife between the Greek and Turkish communities in Cyprus, the respondents (who were Turkish Cypriots) were arrested in April 1964 and charged with carrying on a warlike undertaking against a section of the people in Cyprus, with endeavouring to overthrow the Government by armed force, and with carrying rifles and ammunition, contrary to various provisions of the law of Cyprus. At the preliminary inquiry held by a District Judge in the District Court of Kyrenia the respondents were, on 1 August 1964, committed for trial at the next Assizes, due to be held in October 1964, and were granted bail (on certain conditions). The Attorney-General appealed against the order for bail.

The appeal was made to the Supreme Court set up under the Administration of Justice (Miscellaneous Provisions) Law 1964 (Law No. 33 of 1964). This Law had been passed when the Supreme Constitutional Court (established under Article 133 of the Constitution of Cyprus) and the High Court of Justice (established under Article 153 of the Constitution) ceased to function in, respectively, August 1963 and June 1964.

At the material times, namely in July 1964 (when Law No. 33 of 1964 was passed) and on 1 August 1964 (when the order for bail now under appeal was made) there was in Cyprus an armed rebellion and insurrection against the established Government of the Republic.

For the respondents it was argued (a) that, even if the Administration of Justice (Miscellaneous Provisions) Law 1964 was constitutionally valid, a quorum of three judges had no jurisdiction to deal with constitutional questions, and (b) that the Law was unconstitutional in matters going to its root and was, therefore, a complete nullity.

*Held:* The appeal was upheld. Notwithstanding the provisions of the Constitution of Cyprus, the ‘doctrine of necessity’ applied in order to enable essential services of the State, in particular the administration of justice, to continue to function and to validate the Administration of Justice (Miscellaneous Provisions) Law 1964. The quorum of three judges had jurisdiction to deal with constitutional questions, which were now to be treated by the courts as questions of law as and when they arose in legal proceedings.

The judgments delivered by the members of the Court relate to the constitutional law of Cyprus with the exception of the passage in the judgment of Triantafyllides J. set out below concerning the continued existence of Cyprus as an independent State. The nature

of the emergency in Cyprus at the material time was described in the following passage in the judgment of Vassiliades J:

There existed within the territory of the Republic of Cyprus, the following conditions:

(a) a state of revolt; *i.e.* armed rebellion and insurrection against the established Government of the Republic;

(b) armed clashes between organized groups resisting the authority of the State, and the forces authorized by the Government to assert the authority of its organs;

(c) loss of life; damage to property; interruption of communications; and upsetting of law and order in the affected areas, with all the consequent repercussions on life in general, within the territory of the State;

(d) assertion of authority and actual physical control, over areas of State territory, by the insurgents and their political leaders and commanders, to the exclusion of the authority of the established Government of the Republic;

(e) presence, with the consent of the Government, of international troops within the State territory, under a Commander acting for, and upon orders from an authority outside the State *i.e.* the Secretary-General of the United Nations and the Security Council thereof, for the declared purpose, *inter alia*, of preventing armed clashes between combatants, with a view to the maintenance of peace and the prevention of bloodshed; without, however, exercising government authority, or assuming in any way government responsibility;

(f) inability of the State-Government, pending a political settlement in international circles, to combat the insurgents in order to re-establish its authority and resume its responsibilities in the affected areas, owing to the presence and intervention of the said foreign troops; and corresponding uncertainty, as to when the one or the other of the combating forces may eventually prevail, so as to assume the responsibility of government in the maintenance of law and order in the territory of the Republic; and

(g) duration of such conditions over a period of several months.

Whether these assumed conditions constitute present reality in the Republic of Cyprus, may, for the purposes of this case, remain a matter of proof; but they are conditions material in considering the legal issues arising in the appeal. And although I am inclined to think that, having lived in Cyprus during this period, I can take judicial notice of the existence of such conditions, as suggested by the Attorney-General, I prefer to act upon them as assumptions, in view of the pending trial.

Triantafyllides J. said (in part):

It cannot, of course, be argued that, because of such an emergency, constitutional deadlock or other internal difficulties, it is possible to question the existence of Cyprus as an independent State. The existence of a State cannot be deemed to be dependent on the fate or operation of its constitution; otherwise, every time that any constitution were upset in a country then such State would have ceased to exist, and this is not so. The existence of a State is a matter governed by accepted criteria of international law and in particular it is related to the application of the principle of recognition by other States. In the particular case of Cyprus there can be no question in this respect, because in spite of the current internal anomalous situation, the existence, not only of Cyprus as a State, but also of its Government, has been emphatically affirmed, also for purposes of international law, by the Security Council of the United Nations, of which Cyprus became a member after it had become independent. In this respect judicial notice may be taken of the contents of the resolution of the United Nations Security Council of 4 March 1964, and also of its subsequent resolutions.

[Report: Cyprus Law Reports, 1964, p. 195.]

## B—COMPOSITE AND DEPENDENT STATES AND TERRITORIES

### III.—Protected States and Protectorates. Dependent States

**States as international persons—Composite and dependent States and territories—Dependent States—Status of former Belgian Congo—Whether Belgium liable for debts—Belgian Act of 1908 (Colonial Charter)—Separation of assets and liabilities between Belgium and Belgian Congo—Scope of Act—Repeal on accession of Congo to independence—Status of Belgian civil servants in Belgian Congo—The law of Belgium**

#### (1) *ÉTAT BELGE v. DUMONT*

*Belgium, Court of Appeal of Brussels. 4 December 1963*

#### (2) *ÉTAT BELGE v. DUMONT; PITTACOS v. ÉTAT BELGE*<sup>1</sup>

*Court of Cassation. 26 May 1966*

#### (1) *État belge v. Dumont (Court of Appeal of Brussels)*

**SUMMARY:** *The facts.*—In June 1960 the plaintiff, a Belgian citizen, retired from his position as Attorney-General in the Leopoldville Court of Appeal in

<sup>1</sup> These two decisions are reported together because they raise essentially the same legal issue, namely the liability, if any, of the Belgian State for debts or claims due