



JUDICIARY OF SEYCHELLES

PRESS STATEMENT

From: The Judiciary
Date: 4th April 2017
To: All media

Delorie v Government of Seychelles & Ano.

CP8/2014

[2017] SCCC 4

The Petitioner brought a case to the Constitutional Court challenging the constitutionality of an amendment to the National Assembly Members Emoluments Act (hereafter ‘the Act’) which did away with ‘allowances’ paid to National Assembly Members and introduced ‘a monthly pension’. The Petitioner argued that this was not permitted by the wording of the Constitution, specifically, Article 105(1) which provides that the members of the National Assembly are entitled to the “salary, allowances and gratuity as may be provided by an Act” and that this may be a charge on the Consolidated Fund.

On the main issue before this Court, the Petitioner argued that the 2008 Amendment was ultra vires and a violation of the terms of the Constitution because it provided a pension for National Assembly Members as a payment against the Consolidated Fund when the Constitution in Article 105 had authorised only “salary, allowances and gratuity”.

The Court held that the Constitution contains an enumeration of the powers specifically conferred upon the National Assembly and grants the National Assembly a general power to legislate under Article 85 which is only subject to the Constitution. Part of this power includes the power to make Acts which authorize payments out of the Consolidated Fund or any other public fund (Article 152). The court held further that the Constitution itself authorises certain withdrawals from the

Consolidated Fund. Many of these specific authorisations have to do with emoluments payable to persons who have been appointed to perform constitutional functions. For persons performing constitutional functions, the Constitution provides specifically for Acts to be passed to make pensions payable for three Constitutional appointees: the President, the Auditor-General and the Attorney-General. Whilst the wording for all three of these persons is different, the provisions all specifically provide that the provision of salary, allowances, gratuity and pension shall be a charge on the Consolidated Fund. However, for other persons appointed to constitutional positions, including National Assembly Members, the wording of the Constitution is limited to ‘salary, allowances and gratuity’ which may be provided by an Act and shall be a charge on the Consolidated Fund.

The Court held that there is no apparent reason why the Constitution drafters provided for a pension for three specific constitutional functions, and not for the other ten types of appointees, however, the language of the Constitution clearly distinguishes on this ground. The Court held that it was bound to give extra credence to the language choices made in the drafting of the Constitution given the nature of the drafting of the Constitution; the specific environment created to enable negotiations and enhanced scrutiny; and the fact that the final document was adopted by the Constitutional Assembly before being put to the people of Seychelles who also adopted the Constitution by referendum. The Court could not, therefore, assume that it was an unintended choice to provide for specific authorization for pensions for only three constitutional functionaries.

Therefore, the Court applied the principle that what is not specifically included in a list is excluded. (the *expressio uni usest exceptio alterius* maxim) and held that there was a clear intention to exclude pensions from the payments which the National Assembly could authorize as withdrawals from the Consolidated Fund.

In the present situation, Articles 58, 76, 158, 105, 66, 69, 82, 84, 115C, 133, 142, 144, and 150 all specifically state what types of emoluments Acts the National Assembly may provide for the respective constitutional functionaries as withdrawals from the Consolidated Fund: Acts pursuant to Articles 58, 76 and 158 may withdraw from the Consolidated Fund to provide salary, allowances, gratuity and pensions. Acts pursuant to Articles 105, 66, 69, 82, 84, 115C, 133, 142, 144 and 150 may only draw from the Consolidated Fund to provide salary, allowance and gratuity.

The word 'pension' would need to be present in this latter group of Articles in order for it to be authorised by the Constitution.

The question remained whether the 2008 Amendment may be saved by virtue of the general legislative powers to authorize withdrawals from the Consolidated Fund granted to the National Assembly under Article 152(1)(a) read with Article 85? The Court held in this regard that this cannot be so, as the rule of implied exception must apply. The rule of implied exception (or *generalia specialibus non derogant*) is that when there are two provisions of a statute, or statutes which are in apparent conflict with each other, and one of them is more specifically dealing with the matter while the other is more general in application, the conflict is resolved by applying the specific provision to the exclusion of the general one. Therefore the specific wording of Article 105 excludes providing for withdrawals from the Consolidated Fund for all payments to constitutional appointees except those provided by the Constitution.

Therefore, the Court held that the 2008 Amendment was ultra vires the powers of the National Assembly and therefore falls to be declared unconstitutional and void.

The court made the following order:

- a. The provisions of sections 2(1)(c), 2(2)(d), 3(1)(c), 3A(1)(d) and 4(d) of the National Assembly Members Emoluments Act are unconstitutional and void.
- b. This order will have prospective effect. No order is made with regard to payments already made under the Act.
- c. Notice of this finding of unconstitutionality is to be served on the President of the Republic of Seychelles and the Speaker of the National Assembly in terms of Article 130(5) of the Constitution.