

1987 June 30

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS CHRISTODOULIDES,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
1. THE MINISTER OF FINANCE,  
2. THE COMMISSIONER OF INCOME TAX,

*Respondents.*

*(Case No. 475/83).*

5 *Constitutional Law — Equality — Constitution, Art. 28 — Income Tax — The allowance of £250.- granted to married men «living with» their wives (The Income Tax Laws 1961-1981, section 23) — The distinction between married men living with their wives, and those who, though do not live with their wives, still provide for their wives' maintenance, is not justified and constitutes unequal treatment.*

*Words and Phrases: «Living with» in section 23 of the Income Tax Laws, 1961-1981 — Means «Lives together», «cohabits».*

10 In assessing applicant's liability to income tax for the year 1981 the respondent Commissioner refused to allow a deduction of £250 from applicant's taxable income in respect of his wife, on the ground that during the material period the applicant was not living with her.

Hence the present recourse.

15 Held, *annulling the sub judice decision*: (A) The words «living with him» (συμβιοί μετ' αὐτοῦ) in section 23\* of the Income Tax Laws 1961-1981 should be given their ordinary meaning, that is «live together», «cohabit». In the light of the above it is clear that a husband, who is not living with his wife, is not entitled to the allowance of £250.

20 (b) (1) The question now is whether section 23 leads to unequal treatment contrary to Art. 28 of the Constitution, between husbands, who, though do not live with their wives, still provide for her, and husbands, who live with their wives.

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\* Quoted at p. 1041 post.

(2) In matters of taxation reasonable differentiations and distinctions may be made because of the intrinsic nature of things. It follows that what has to be examined is whether or not there exist factors justifying the aforesaid differentiation.

(3) In the opinion of this Court no such factors exist. The burden, however, is on the applicant to satisfy the Commissioner that he is paying for the maintenance of his wife. 5

(4) In the light of the above the sub judice decision has to be annulled and the matter re-examined.

*Sub judice decision annulled.* 10  
*No order as to costs.*

*Cases referred to:*

*Sherdley v. Sherdley*, The Times, 9.4.87.

**Recourse.**

Recourse against the income tax assessment raised on applicant for the year 1981. 15

*C. Myrianthis*, for the applicant.

*M. Photiou*, for the respondent.

*Cur. adv. vult.*

DEMETRIADES J. read the following judgment. By means of this recourse the applicant challenges the assessment of his income by the second respondent (to be referred hereinafter as the «Commissioner») for the year of assessment 1981. 20

At the material time the applicant was an employee of the Cyprus Telecommunications Authority and was deriving his income from his employment. He was married but he lived separately from his wife. 25

On the 21st March, 1982, the applicant submitted to the Commissioner his returns of income for the year 1981 declaring, amongst others, that during 1981, although he was married, he was not living with his wife, and he claimed to be allowed a deduction of £250.- allowance in respect of her. 30

In raising the assessment for the income of the applicant for the year 1981 the Commissioner, on the 8th October, 1982, refused

to allow the deduction claimed, on the ground that the wife was not living with the applicant.

By a letter dated the 9th November, 1982, the applicant, through his tax consultants Messrs Phanos G. Ionides Ltd.  
 5 objected to the assessment of his income raised by the Commissioner who, on the 3rd September, 1983, after determining the applicant's objection, informed him that as he was not living with his wife, he was not entitled to the deduction of the sum of £250.- His decision the Commissioner based on section 23  
 10 of the Income Tax Laws 1961-1981 which provides that the wife must live with the husband («συμβιοί μετ' αυτού», in English «living with him»)

Section 23 of the Income Tax Laws 1961-1981 reads:

«23. Κατά την εξακρίβωσιν του φορολογητέου  
 15 εισοδήματος οιοδήποτε φυσικού προσώπου το οποίον είναι έγγαμον και του οποίου η σύζυγος συμβιοί μετ' αυτού, χορηγείται έκπτωσης διακοσίων πενήκοντα λιρών δια την σύζυγον:

20 Νοείται ότι η τοιαύτη έκπτωσης δύναται να χορηγείται εις την σύζυγον οσάκις ο συμβιών μετ' αυτής σύζυγος δεν κέκτηται οιοδήποτε εισόδημα.»

(« In ascertaining the chargeable income of any individual who is married and whose wife is living with him, a deduction of two hundred and fifty pounds shall be allowed in respect of  
 25 his wife:

Provided that such deduction may be allowed to the wife if the husband living with her derives no income»).

It is an admitted fact that at the material time the applicant was not living with his wife as a result of marital disputes. This fact, as  
 30 I have earlier mentioned, was revealed by the applicant in his returns of income for the year 1981.

Counsel for the applicant submitted that the words «living with him» must not be interpreted as meaning that a husband is entitled to the deduction only when the couple live under the same roof,  
 35 but that a wider interpretation should be given to these words when he provides his wife with necessaries for her maintenance, medical treatment and generally for her welfare.

He further argued that if we were to accept that section 23 of the Income Tax Laws should be interpreted as meaning that for a husband to be entitled to the deduction of £250.- he must live with his wife, then such interpretation leads to discrimination contrary to Article 28 of the Constitution, in that the husband, who is fully providing for his estranged wife, is treated for income tax purposes differently from other married men who live under the same roof with their wives and to whom the deduction provided by section 23 is allowed. 5

Although there is no definition in the Income Tax Laws of the words «living with him», I have no doubt that its meaning is clear and unambiguous and that such words should be given their ordinary and natural meaning, namely «live together», «cohabit». (In this respect see Divry's Modern English Greek and Greek English Dictionary, as to the meaning of the word «συμβιώω», Stroud's Judicial Dictionary, third Edition, «cohabitation», and the Advanced Learner's Dictionary of Current English, second Edition, as to the meaning of the word «cohabit»). 10 15

Having in mind the wording of section 23, it is clear that the Law's intention is that a husband who is not living with his wife is not entitled to the deduction of £250.-. 20

Having reached this conclusion, the next issue that poses for decision is whether the provisions of section 23 create discrimination vis a vis husbands who live with their wives and those who, for one reason or another, they do not; and further, whether its provisions lead to unequal treatment. 25

In matters of taxation reasonable differentiations and distinctions may be made because of the intrinsic nature of things and only arbitrary differentiations constitute discrimination contrary to Article 28 of the Constitution. 30

In the present case what has to be examined is whether or not there exist such factors justifying the differentiation as regards the treatment for purposes of deduction from the taxable income of married men living with their wives and of married men not living with their wives. 35

Having given the matter due consideration, I have come to the conclusion that no factors exist justifying the different treatment of the applicant in the present case. In my opinion, the object of the Law is to make an allowance to married men for the expenses they incur for the maintenance of their wives, notwithstanding the fact 40

that the husband is not living with his wife under the same roof, and that so long as he is providing for her maintenance, he should be entitled to such a deduction, otherwise a husband would be subjected to discriminatory treatment contrary to Article 28 of the  
5 Constitution.

It is to be noted that there might be instances in which, not due to marital disputes but for various other reasons, a couple may not live under the same roof, but husbands are still entitled to the deduction provided by the law because it is presumed that they are  
10 maintaining their wives.

Relevant to the issue of discrimination raised in this case may be the recent decision of the House of Lords in the case of *Sherdley v. Sherdley* (reported in the Issue of the TIMES of the 9th April, 1987) in which it was held, allowing an appeal from the order of  
15 the Court of Appeal (see [1986] 1 W.L.R. 732), that:

«A divorced father having custody, care and control of the children of the marriage could obtain an order against himself for the payment by him of the children's school fees direct to the schools concerned as agents for them, notwithstanding  
20 that the sole purpose of the father applying for the order was to obtain tax advantages».

As, however, the full report of this case is not at present available, I am not prepared to say whether it is useful for guiding me in reaching the views that I have expressed.

25 In the present case, of course, the burden is on the applicant to satisfy the Commissioner of Income Tax that he is actually paying for the maintenance of his wife and that, therefore, he is entitled to the deduction concerned.

Therefore, the sub judice assessment is annulled and the case of  
30 the applicant has to be re-examined.

In the result, the present recourse succeeds but with no order as to its costs.

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*Sub judice decision  
annulled. No order  
as to costs.*