

[ZEKIA, P., VASSILIADES, TRIANTAFYLIDIS, MUNIR,
JOSEPHIDES, JJ.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

SOFOCLES DEMETRIADES,

Applicant,

and

1. THE GREEK COMMUNAL CHAMBER,
2. THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE,

Respondents.

(Case No. 100/63).

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*Administrative Law—Revenue—Income Tax—Assessments—Re-
course against assessment of income tax on Applicant under
the provisions of the Imposition of Personal Contributions on
Members of the Greek Community for the year 1962 Law,
(Law 18 of 1962 of the Greek Communal Chamber)—
Assessment valid.*

*Constitutional Law—Law 18 of 1962 of the Greek Communal
Chamber (supra)—Law not unconstitutional vis-a-vis Arti-
cles 87.1(f) and 88.1, Articles 24.1 and 28 and Article 24.3—
Decision in In re. Tax Collection Law No. 31 of 1962 and
Hji Kyriacos & Sons Ltd., 5 R.S.C.C. 22, applicable to
the present case.*

By assessment No. G608/AD/63 (1962), which was made under the provisions of the Imposition of Personal Contributions on Members of the Greek Community for the Year 1962 Law, (No. 18 of 1962 of the Greek Communal Chamber), the Applicant was assessed to pay the sum of £1,067.185, for the year of assessment 1962. In accordance with the provisions of Law 18/62 this assessment was based on the Applicant's income for the year 1961.

Applicant filed the present recourse, under Article 146 of the Constitution, seeking the following declarations:

- (a) "that assessment No. G608/AD/63 (1962) is null and void and of no effect whatsoever and/or"
- (b) "that the decision of the Respondents to impose in-

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come tax on Applicant for the 1962 year of assessment amounting to £1,067.185 mils is *null* and *void* and of no effect whatsoever”.

After hearing the respective arguments of counsel for the Applicant and counsel for the two Respondents on the 26th and 27th January, 1965, when judgment had been reserved, the Court, by directions given on the 30th June, 1965, directed the reopening of the Case “for the purpose of receiving evidence regarding the proportion in which members of the Greek community paying tax under the enactment in question in this Case stand in comparison with the total number of members of such community who could contribute towards the relevant deficit of the Greek Communal Chamber in accordance with their means taking into consideration not only their income but also all their property—movable and immovable”. The hearing of the case was resumed on the 12th and 20th October, 1965, when evidence was adduced by Respondent No. 1 as directed by the Court. At the resumed hearing assistance was also given to the Court by the Attorney-General of the Republic, who appeared personally and addressed the Court. The submission of counsel for Applicant was to the effect that the assessment in question was unconstitutional and, therefore, invalid because Law 18/62, under which such assessment had been made, was in itself unconstitutional.

Applicant’s counsel stated at the outset that there is no dispute in this Case as regards the actual amount with which the Applicant has been assessed but only as regards the constitutionality of the legislative provisions under which such assessment has been made.

Held, 1. As to the constitutionality of Law 18/62.

(a) Law 18/62 is not unconstitutional vis-a-vis Articles 87.1(f) and 88.1, Articles 24.1 and 28, and Article 24.3. This being so it follows that the assessment which is the subject-matter of this recourse and which has been made under Law 18/62 is also not unconstitutional. *In re. Tax Collection Law No. 31 of 1962 and Hji Kyriacos & Sons Ltd.*, 5 R.S.C.C. 22, applied.

(b) This Application cannot, therefore, succeed and is dismissed accordingly.

II. *As regards costs:*

There will be no order as to costs.

Application dismissed.

Cases referred to:

In re. Tax Collection Law No. 31 of 1962 and Hji Kyriacos and Sons Ltd., 5 R.S.C.C. 22 at pp. 27, 28, 29 and 30.

Decision No. 597 of the Greek Council of State, reported in volume 1951 of Svolo and Vlachos, volume 1, p. 224.

Recourse.

Recourse against the decision of the respondents to impose on applicant the amount of £1,067.185 mils as income tax for the year of assessment 1962.

A. Triantafyllides for the applicant.

G. Tornaritis, for respondent No. 1.

Cr. Tornaritis, Attorney-General of the Republic with L.G. Loucaides, Counsel of the Republic, for respondent No. 2.

Cur. adv. vult.

ZEKIA, P.: The judgment of the Court will be delivered by Mr. Justice Munir.

MUNIR, J.: By this recourse, which is made under Article 146 of the Constitution, the Applicant seeks the following declarations:—

- (a) "that assessment No.G608/AD/63 (1962) is *null* and *void* and of no effect whatsoever and/or"
- (b) "that the decision of the Respondents to impose income tax on Applicant for the 1962 year of assessment amounting to £1,067.185 mils is *null* and *void* and of no effect whatsoever".

The Applicant is a partner in the firm of Sofocles Demetriades & Son, who import pharmaceutical products. By assessment No. G608/AD/63 (1962), which was made under

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the provisions of the Imposition of Personal Contributions on Members of the Greek Community for the Year 1962 Law, (No. 18 of 1962 of the Greek Communal Chamber, hereinafter referred to as "Law 18/62"), the Applicant was assessed to pay the sum of £1,067.185, for the year of assessment 1962. In accordance with the provisions of Law 18/62 this assessment was based on the Applicant's income for the year 1961.

After hearing the respective arguments of counsel for the Applicant and counsel for the two Respondents on the 26th and 27th January, 1965, when judgment had been reserved, the Court, by directions given on the 30th June, 1965, directed the re-opening of the Case "for the purpose of receiving evidence regarding the proportion in which members of the Greek community paying tax under the enactment in question in this Case stand in comparison with the total number of members of such community who could contribute towards the relevant deficit of the Greek Communal Chamber in accordance with their means taking into consideration not only their income but also all their property—movable and immovable". The hearing of the case was duly resumed on the 12th and 20th October, 1965, when evidence was adduced by Respondent No. 1 as directed by the Court. The two witnesses called for this purpose were Mr. Nicos Ionides, the Director of the Office of Inland Revenue and Mr. Panos Adamides, who was at all material times the Administrative Secretary of the Greek Communal Chamber. At the resumed hearing assistance was also given to the Court by the Attorney-General of the Republic, who appeared personally and addressed the Court.

The submission of counsel for Applicant was to the effect that the assessment in question was unconstitutional and, therefore, invalid because Law 18/62, under which such assessment had been made, was in itself unconstitutional on the following grounds:—

- (i) that Law 18/62 is in essence an enactment imposing not "personal taxes" (in the sense of Article 87.1 (f) of the Constitution) but income tax, and that such mode of taxation, therefore, being outside the competence of a Communal Chamber under Article 87.1(f) is unconstitutional;
- (ii) that paragraph 1 of Article 24 and Article 28 of

the Constitution have been contravened in that under Law 18/62 the contributions towards meeting part of the expenditure in question in the 1962 Budget of the Greek Communal Chamber are made, not in accordance with the total means of each of the members of the Greek community, but only on the basis of one aspect of such means, namely, income and that a discrimination (in the sense of Article 28) has thus been made between persons who earn "income" (as defined in Law 18/62) and those who do not earn such "income";

- (iii) that Law 18/62, in effect, amounts to the imposition of taxation retrospectively, contrary to paragraph 3 of Article 24, in that during 1962 some of the members of the Greek Community are taxed with reference to their income, from emoluments in 1962 and their income, from other sources, back to 1961.

Counsel for Applicant also submitted that the provisions in paragraph 5 of the Second Schedule to Law 18/62, whereby co-operative societies were placed in a privileged position regarding the payment of the tax in question under Law 18/62 also contravened the principle of equality laid down in Article 28 of the Constitution and, in contravention of that Article, discriminated in favour of co-operative societies. This point does not, however, appear to have been pressed by counsel for Applicant and it is not, therefore, considered necessary to deal with this specific point in this judgment.

As, to the amount of the assessment itself, counsel for Applicant has stated at the outset, and in the circumstances quite rightly so in our opinion, that there is no dispute in this Case as regards the actual amount with which the Applicant has been assessed but only as regards the constitutionality of the legislative provisions under which such assessment has been made.

Before dealing specifically with the above-mentioned three grounds on which counsel for Applicant has submitted that Law 18/62 is unconstitutional, the Court will first deal with a general submission which has been made by counsel for Applicant and which appears to be common to all the above mentioned three specific grounds, namely, that the facts and circumstances of this Case, which concerns Law 18/62,

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should be distinguished from the facts and circumstances of the case of *In re. Tax Collection Law No. 31 of 1962 and Hji Kyriacos & Sons Ltd.*, 5 R.S.C.C. 22 (hereinafter referred to as "*the Hji Kyriacos Case*") which concerned Law 16 of 1961 of the Greek Communal Chamber. The Court has given careful consideration to this submission and has come to the conclusion that, although it is true that Law 18/62 may differ in form and detail from the said Law 16 of 1961, the two Laws are so similar in substance and in all material particulars as regards the method and type of tax imposed as to make the principles and statements of law contained in the Decision of the Supreme Constitutional Court in the *Hji Kyriacos Case* also applicable to the Case now under consideration. The Court has considered the said Decision of the Supreme Constitutional Court and, to the extent to which the issues of constitutionality which have been raised in this Case are the same as those raised and decided in the *Hji Kyriacos Case*, the Court sees no reason for differing from the opinions expressed and conclusions reached in the *Hji Kyriacos Case*. Further reference will be made in this judgment to specific opinions which have been expressed in the *Hji Kyriacos Case* when the particular points of constitutionality raised in this Case are dealt with specifically.

The Court will now deal with the above-mentioned specific grounds on which counsel for Applicant has submitted that Law 18/62 contravenes the Constitution, and with the counter submissions which have been made in reply thereto by counsel for both Respondents. These specific issues may be dealt with as follows:—

- (i) *Alleged contravention of Articles 87.1(f) and 88.1 of the Constitution by Law 18/62:—*

The relevant part of Article 87 reads as follows:—

"1. The Communal Chambers shall, in relation to their respective Community, have competence to exercise within the limits of this Constitution and subject to paragraph 3 of this Article, legislative power solely with regard to the following matters:—

.....

- (f) imposition of personal taxes and fees on members of their respective Community in order to provide for their respective needs and for the needs of

bodies and institutions under their control as in Article 88 provided;

.....”.

The relevant part of Article 88 reads as follows:—

“1. The power of imposing taxes under sub-paragraph (f) of paragraph 1 of Article 87 of a Communal Chamber shall be exercised for the purposes of meeting the part of its expenditure provided in its budget in each financial year which is not met by the payment made to such Communal Chamber in respect of such financial year by the Republic out of its Budget as provided in paragraph 2 of this Article or by any other revenue which such Chamber may have in that financial year”.

The Court must now consider the precise meaning to be given to the term “personal taxes” which occurs in the English text of paragraph 1(f) of Article 87 of the Constitution. In *Hji Kyriacos Case* the Court held, for the reasons given by it in its Decision (p. 27), that “the expression ‘προσωπικῶν εἰσφορῶν’ in the Greek text should be understood in a wide sense, as corresponding to the expression ‘personal taxes’ and not in the sense in which the expression ‘εἰσφορά’ is used in Article 24.2 as denoting ‘rate’”, and this Court sees no reason to differ from that conclusion or from the reasoning on which it is based.

Having thus decided that the term used in Article 87. 1(f) of the Constitution does in fact mean “personal taxes” the question which next falls for determination is whether the particular form of taxation which has been imposed by Law 18/62 amounts to the imposition of “personal taxes”, in the sense of Article 87.1 (f) of the Constitution, or whether it amounts to some form of taxation other than the imposition of “personal taxes” in the said sense.

In this connection the Court agrees with the submission made on behalf of the Republic that both income tax, and the method of taxation, based on income, which has been adopted by Law 18/62, are “personal taxes” in the sense that they are not taxes imposed on property or things (e.g. immovable property tax) but are taxes imposed on person directly. Also, as has been pointed out, income tax and the form of taxation, based on income, imposed by Law 18/62, are also personal taxes in the sense that they are “direct taxation” as distinct

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from “indirect taxation” (e.g. tax or excise imposed on commodities such as cigarettes, beer, etc.). In support of this argument the Court has been referred to various authorities, including the book on “Principles of Public Finance” by Hugh Dalton (a former Chancellor of the Exchequer of Great Britain), 4th Edition, pp. 26-27 and a Decision (No. 597) of the Greek Council of State, which is reported in the 1951 volume of *Svolos and Vlachos*, volume 1 p. 224.

This same issue was considered and decided by the Supreme Constitutional Court in *Hji Kyriacos Case* with regard to the form of tax, which was likewise based on income, which had been imposed by Law 16/1961 of the Greek Communal Chamber. In that case (at p. 27) the Court expressed the following opinion:—

“It is, indeed, clear from the whole of the provisions of the Annex to Law 16/61 that the ‘tax’ referred to in section 3 of such Law is a tax imposed on the basis of income. Such tax, however, by its very nature is a personal tax and is one of the most usual and universally recognized modes of personal taxation and the Court is, therefore, of the opinion that it is not contrary to, or inconsistent with, the provisions of paragraph 1(f) of Article 87”.

This Court agrees with the above opinion and is of the view that it applies equally to the tax imposed by Law 18/62 as it does to the tax imposed by its predecessor, Law 16 of 1961.

As regards the requirements of Article 87.1(f) that the imposition of such personal taxes and fees must be for the purpose of providing for the respective *needs* of the Communal Chamber and for the *needs* of the bodies and institutions under the control of the Communal Chamber, and the question of whether or not such “needs”, as budgeted for by the Communal Chamber in respect of the year in question, are reasonable, this point has not been fully argued before the Court in this Case and the Court does not consider it necessary, for the purpose of this judgment, to dwell upon this point.

Likewise, with regard to the alleged contravention by Law 18/62 of Article 88.1, the Supreme Constitutional Court also considered a similar issue, which had been raised in the *Hji Kyriacos Case* in connection with Law 16 of 1961 of the

Greek Communal Chamber, and came to the conclusion (vide page 28, letter G) that what was done in that case was "both within the letter and spirit of paragraph 1 of Article 88". The reasoning on which this conclusion was based, and which need not be repeated here, is set out in full in the passages of the Court's Decision which commence between letters F and G on page 27 and which end at letter G on p. 28. Here again this Court agrees with this conclusion, and the reasoning on which it is based, and considers that it applies equally to the facts and circumstances of Law 18/62.

It follows, therefore, that Law 18/62 is not contrary to, or inconsistent with, Articles 87.1(f) and 88.1

(ii) *Alleged contravention of Articles 24.1 and 28 of the Constitution by Law 18/62:—*

On this issue the gist of the argument of counsel for Applicant appears to be to the effect that the contributions towards meeting part of the expenditure in the budget of the Greek Communal Chamber have been made, not in accordance with the total means of each of the members of the Greek Community, but only on the basis of one aspect of such means, namely, income.

He submitted, furthermore, that in this way the burden of the tax was not evenly distributed amongst all the members of the Greek Community but only amongst those who earned income, with the result that those who had to pay the tax in question, such as Applicant, had to pay a greater amount than they would otherwise have had to pay if every member of the Community had been made liable to contribute. By leaving out non-income-earners from the scope of Law 18/62, and by thus discriminating between them and income-earners, the said Law, counsel for Applicant submitted, also contravened the principles of equality laid down in Article 28, as well as the requirements of paragraph 1 of Article 24 which provides that "Every person is bound to contribute according to his means towards the public burdens".

In reply to this argument the Attorney-General of the Republic, after going into the history of provisions such as those contained in paragraph 1 of Article 24 of the Constitution, submitted that it is clear from the Greek and Turkish texts of paragraph 1 of Article 24 that the principle embodied in the said paragraph is not that everybody should actually

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contribute according to his means in the strict sense but according to his capacity to contribute. In this connection reference was also made, *inter alia*, to Article 53 of the Italian Constitution which, it was stated, was to the effect that it required all persons to assist in meeting public expenses “in proportion to their capacity to contribute”. In support of this argument the Court was also referred to the book “An Expenditure Tax” by Nicholas Kaldor (1959), pp. 22-23, where it is stated that “Income is generally looked upon as an overall measure of the individual taxpayer’s capacity to pay”, as well as to other authorities from other countries.

But here also, as in the case of the issues concerning Articles 87.1(f) and 88.1, we have a decided case on this very point in our own Law Reports. This issue, concerning Articles 24.1 and 28 of the Constitution, was also dealt with in *Hji Kyriacos Case* (at p. 29) and it might again be useful to set out in full the relevant portion of the Court’s Decision on this point, which is as follows:—

“the Court may usefully reiterate what it has already stated in its judgment in *Argiris Mikrommatis and The Republic (Minister of Finance & another)*, 2 R.S.C.C. p. 125 at p. 131, to the effect that paragraph 1 of Article 24 is an aspect, in the sphere of taxation, of the principle of equality enshrined in Article 28 of the Constitution. In the opinion of the Court the said paragraph 1 in providing that ‘Every person is bound to contribute according to his means towards the public burdens’ does not lay down that every person should contribute in accordance with the totality of his means towards every and each particular head of public burdens, one of which is the relevant part of the expenditure in the budget of a Communal Chamber. Contribution towards one head of the public burdens may be based on one particular criterion of means, such as income, and will still be a contribution according to the means of every person in the sense of paragraph 1 of Article 24; income as basis for taxation on a large scale is a sufficiently reasonable and equitable criterion so as to ensure that the principle of equality is not infringed. Thus the Court is of the opinion that paragraph 1 of Article 24 has not been contravened”.

The above interpretation of Article 24.1, which this Court

adopts, is, in the Court's view, in accordance with the trend of modern theories and doctrines on the interpretation and application of such constitutional provisions, as the authorities cited to the Court would appear to indicate.

The Court is satisfied from the evidence of Mr. Nicos Ionides and Mr. Panos Adamides that the form of "personal tax" adopted by Law 18/62, namely, a tax based on income, was not, in the light of the history of previous attempts to impose other forms of taxation and in all the circumstances, an unjust or unreasonable method of taxation to adopt. It was in the discretion of the Communal Chamber to adopt the form of "personal tax" which it considered to be the most equitable and reasonable to adopt and once the legislature has properly exercised such discretion, the Court should not interfere with it.

It follows, therefore, that Law 18/62 is not contrary to, or inconsistent with, Articles 24.1 and 28.

(iii) *Alleged contravention of Article 24.3 of the Constitution by Law 18/62:—*

The same importance does not appear to have been attached to this issue by counsel as to the previous two issues considered in this judgment. Here again, this issue was fully considered by the Supreme Constitutional Court in *Hji Kyriacos Case* and this Court, after considering the respective submissions made by counsel on this issue, and in particular the submission of counsel for Applicant that this Case should be distinguished on this issue also from the *Hji Kyriacos Case*, is of the opinion that the reasoning of the Supreme Constitutional Court for holding that the imposition of the tax in question under the aforesaid Law 16 of 1961 of the Greek Communal Chamber did not amount to the imposition of retrospective taxation in cotravention of paragraph 3 of Article 24 of the Constitution, applies, *mutatis mutandis* equally to the facts of the case now before the Court and to the facts and circumstances pertaining to Law 18/62. The relevant passage of the Decision of the Supreme Constitutional Court in *Hji Kyriacos Case* commences at letter H on page 29 and ends at letter E on page 30, and need not be repeated here.

It follows, therefore, that Law 18/62 is not contrary to, or inconsistent with, Article 24.3.

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Thus, for all the reasons given above, the Court is of the opinion that Law 18/62 is not unconstitutional *vis-a-vis* Articles 87.1(f) and 88.1, Articles 24.1 and 28, and Article 24.3. This being so it follows that the assessment which is the subject-matter of this recourse and which has been made under Law 18/62 is also not unconstitutional.

This Application cannot, therefore, succeed and is dismissed accordingly. Having regard to all the circumstances there will be no order as to costs.

*Application dismissed. No
order as to costs.*