[VASSILIADES; P., TRIANTAFYLLIDES, JOSEPHIDES, STAVRINIDES, LOIZOU AND HADJIANASTASSIOU, JJ.]

1966
Nov. 1, 16
1967
June 28
—
CONSTANTINOS CHIMONIDES
v.
EVANTHIA K. MANGLIS

CONSTANTINOS CHIMONIDES,

Appellant (Applicant),

v.

EVANTHIA K. MANGLIS THROUGH HER LAWFUL REPRESENTATIVE GEORGHIOS GLYKIS,

Respondent (Respondent).

(Civil Appeal No. 4569).

Constitutional Law—Constitutionality of legislation—The Depressed Tenants Relief Law, 1965 (Law No. 19 of 1965)—Not repugnant to, or inconsistent with, the Constitution Articles 23.1, 2 and 3, or 26.1. See Sections 2, 3 (1) (2) and (3), 4 (1) (5), 5 and 7 of the said Law of 1965—See also herebelow.

Constitutional Law—Safeguard of the right of ownership—Limitations or restrictions of such right—Article 23.1, 2 and 3 of the Constitution—Scope thereof—Article 23 is not applicable to legislation regulating merely the civil law rights in property inter partes—Therefore it does not apply to the provisions of the said law 19 of 1965 (supra)—Whereby restrictions or limitations are not effected in the interest of the state or a public body—But merely regulating rights in property between individuals.

Constitutional Law—Freedom of contract— "Τὸ δικαίωμα τοῦ συμβάλλεσθαι ἐλεύθερως"*—Safeguarded under paragraph 1 of Article 26 of the Constitution—Construction of the aforesaid expression in the context of the provisions in the said paragraph—Paragraph 1 of Article 26 of the Constitution—Meaning and effect—It only guarantees the right to enter into legal contracts, and not the rights created thereunder—Contra the minority of the Court; holding that the said paragraph conveys the notion of full freedom of contract, subject only "to such conditions, limitations or restrictions as are laid down by the general principles of the law of contract", the said paragraph guaranteeing such freedom from the time of entering into the contract to its final performance—It follows from the majority opinion that the said Law No. 19 of 1965 (supra) is not repugnant*

or inconsistent with Article 26, paragraph 1, of the Constitution—The same conclusion reached by the minority on the basis of the principle of the "reserved police power" of the State, especially in cases of emergency—See also herebelow.

Constitutional Law—Residual or reserved police powers of the state, especially in cases of emergency—Theory of such powers based mainly on American case law—Whether or not such theory, entailing by way of logical corollary regulatory powers of the State—In relation to rights or freedom safeguarded by Part II of our Constitution—Not expressly provided under the Constitution, can be applied in Cyprus, especially in view of the provisions of paragraph 1 of Article 33 of the Constitution.

Constitutional Law—Constitutionality of legislation—Judicial control of the constitutionality of statutes—General principles applicable.

Landlord and Tenant—The depressed Tenants Relief Law, 1965, (Law No. 19 of 1965)—Applicable to statutory and, also, to contractual tenancies—Sections 2, 3 and 4 (1) of the said law, and section 2 of the Rent Control (Business Premises) Law 1961 (Law 17 of 1961 as amended by Law 39 of 1961).

Contract—Freedom of contract—Article 26.1 of the Constitution—See above.

Property—Right of—Restrictions or limitations—Article 23.1, 2 and 3—Scope and extend—See above.

Tenants—Depressed Tenants—See above.

Depressed Tenants—See above.

Depressed area—See above.

"Business premises"—Meaning of the expression within section 2 (1) of Law 19 of 1965 (supra)—See above.

"Tenant"—Meaning of the word within section 4(1) of the said Law No. 19 of 1965 (supra)—See above.

"Δικαίωμα τοῦ συμβάλλεσθαι ἐλευθέρως"—Meaning of the expression within paragraph 1 of Article 26 of the Constitution—See above.

"Right to enter freely into any contract"—Meaning within paragraph 1 of Article 26 of the Constitution—See above.

"Relief"—Relief of depressed tenants—See above.

Residual or reserved police powers of the State—See above.

Emergency—Cases of emergency and the exercise of reserved police powers by the state—See above.

Police Powers—Police powers of the State—Residual or reserved police powers restrictive of the rights or freedoms guaranteed by the Constitution—Article 33 paragraph 1 of the Constitution—See above.

Rights and Freedoms—Fundamental rights and freedoms guaranteed by the Constitution—Restrictions or limitations thereof not allowed otherwise than it is provided in Part II of the Constitution—Subject to the provisions of the Constitution relating to a state of emergency—Article 33, paragraph 1, of the Constitution—See also above.

Fundamental rights and freedoms—Guaranteed by the Constitution—Limitations or restrictions thereof—See immediately above.

This appeal raises two questions : (a) whether the Depressed Tenants Relief Law, 1965 (Law No. 19 of 1965), applies to contractual tenants and (b) if it does, the constitutionality of the aforesaid law *i.e.* whether or not it is repugnant to the provisions of Articles 23.1, 2 and 3 and 26.1 of the Constitution.

The aforesaid Law was enacted on the 29th April, 1965, and the Council of Ministers by an order published in the Official *Gazette* on 19th August, 1965, and made under the provisions of Section 3 (1) of the Law, declared, *inter alia*, a certain part of the controlled area within the municipal limits of Nicosia, including Hermes Street (where the business premises of the appellant are situated), as a "depressed area" ("δυσπραγοῦσα περιοχή"). On the 30th September, 1965, the appellant, who was the contractual tenant of the business premises in question, applied under the provisions of section 4 (1) of the Law, for the determination of the rent of his business premises as from the 1st December, 1963, as provided in that section. Section 4 (1) gave the right to tenants of business premises within the depressed area to apply to the Court, within two months of the publication of the order under section 3 (1) (*supra*) to have the rent of the business premises occupied by them determined with the result that, as from the date of the Court order for the adjustment of the rent, the rent payable by the tenant shall be the rent so adjusted by the Court.

As it appears from the long title of the said Law of 1965, its object is "to provide for the taking of temporary measures for the relief of certain depressed tenants", and is made applicable

to business premises in "depressed areas", declared as such by the Council of Ministers, for the purpose of relieving tenants in whose business premises, because of proximity to dangerous places, the normal conduct of their business has in consequence of the "recent events" been adversely affected and substantially reduced so as to render the taking of measures for their relief imperative. It is a matter of common knowledge that the "recent events" referred to in the law are those events which began with the fighting which broke out in Nicosia on the 21st December, 1963, to which the Court had occasion to refer in the case of the *Attorney-General of the Republic* v. *Ibrahim*, 1964 C.L.R. 195. Hermes Street, in which the premises in question are situate, is on the boundary line, known as "Green Line", separating from the rest of Nicosia town that part thereof which is under the control of Turkish Cypriots who refuse access to Greek Cypriots by the force of arms.

The trial Judge held that the aforesaid Law No. 19 of 1965 did not apply to contractual tenants and, consequently, that the appellant, being a contractual tenant, was not entitled to apply for relief under section 4 (1) (*supra*); and his application was accordingly dismissed. The tenant appealed against this decision of the trial Judge. It was argued on behalf of the respondent-landlord that, even if the aforesaid law is applicable to contractual tenants, still it is repugnant to the constitution, namely, to the provisions of—

(1) Article 23, paragraphs 1, 2 and 3 of the Constitution, as it imposes a restriction or limitation on the right of the landlord's property without providing for the payment of just compensation; and of—

(2) Article 26, paragraph 1, as it interferes with the right of a person to enter freely into any contract.

The aforesaid paragraphs 1, 2 and 3 of Article 23 of the Constitution and paragraph 1 of Article 26, are fully set out in the judgment delivered by Josephides, J.

Section 4 (1) of the aforesaid Law No. 19 of 1965 reads as follows :

"4 (1). Notwithstanding the provisions of the Law, any tenant of premises within a depressed area may, within two months of the publication of the order referred to in sub-section (1) of section 3, by application to the Court seek that the rent payable as from the first day of December,

1963, in respect of the business premises occupied by him be determined, and thereupon the provisions of the Law relating to the adjustment of rents for business premises shall apply, *mutatis mutandis* to any such application".

It is common ground that the powers of adjustment in section 4 (1) include the power to reduce the rent payable.

So far as material, section 2 of the same law provides :—

"2 (1). In this law, unlesss the context otherwise requires 'business premises' means any premises let for any business, trade or professional purposes and used as such and situate within a depressed area; 'Law' means the Rent Control (Business Premises) Law, 1961 (Note : *viz.* Law No. 17 of 1961 as amended by Law No. 39 of 1961).

"(2) Any other terms not specifically defined in this Law shall, unless the context of this law otherwise requires, have the meaning assigned to them by the Law".

As the term "tenant" which occurs in section 4 (1) (*supra*) is not specifically defined in the said Law 19 of 1965, one has to refer to Law 17 of 1961 (as amended by Law 39 of 1961) for its definition. Section 2 of that Law provides :

"'Tenant' means the tenant of business premises in respect of which a tenancy exists and includes—

(a) a statutory tenant;

(b) .. ..

(c) .. .. ".

"'Tenancy' means any lease .....".

"'Business premises' ..... means any premises let for any business, trade or professional purposes and used as such and situate within a controlled area, *but does not include any such premises*—

(i) .. ..

(ii) in respect of which there is a valid and binding agreement between the tenant and the landlord thereof, so long as such agreement is i force".

The relevant provisions of section 3 of Law No. 19 of 1965 (*supra*), are set out in the judgment of Josephides, J., *post*.

Also, the relevant provisions of Articles 23 and 26 of the Constitution are fully set out in the judgment delivered by Josephides, J. (*post*).

Article 33, paragraph 1, of the constitution reads as follows :

> "1. Subject to the provisions of this Constitution relating to a state of emergency, the fundamental rights and liberties guaranteed by this part (note : it is Part II of the Constitution) shall not be subjected to any other limitations or restrictions than those in this Part provided".

The Court, in allowing unanimously the appeal (but for different reasons as regards certain aspects of the issue of constitutionality), setting aside the decision appealed from and remitting the case to the trial Court to be heard on the merits,—

Held, (I) as regards the issue whether or not Law 19 *of* 1965 (supra) *is applicable to contractual tenants*:

Per Josephides, J. (all other members of the Court *concurring*):

The comparison of the definition of the term "business premises" in the two Laws (*i.e.* in Law No. 19 of 1965 and Law 17 of 1961 (as amended) (*supra*)) makes it abundantly clear that it was the intention of the legislature to exclude contractual tenancies from the 1961 law and to include such contractual tenancies in the Law of 1965. For these reasons, we hold that Law 19 of 1965 (*supra*) applies not only to statutory tanancies but also to contractual tenancies.

Held, (II) as regards the issue whether the aforesaid Law No. 19 *of* 1965 (supra) *is unconstitutional*:

The Depressed Tenants Relief Law, 1965, (Law No. 19 of 1965) is not repugnant to any provisions of paragraphs 1, 2 and 3 of Article 23 of the Constitution or of paragraph 1 of Article 26 thereof.

Held, (III) consequently, the appeal must be allowed, the judgment of the trial Court set aside and the case is remitted to the trial Court to be heard on the merits.

Held, (IV) with regard to the constitutional aspect of the case in so far as Article 23, *paragraphs* 1, 2 *and* 3, *of the Constitution is concerned* :

Per Josephides, J. (*all other members of the Court concurring*):

On the principles laid lown in the cases of *Evlogimenos and the Republic* (1961) 2 R S C C 139, at pp 142-3 and *Ali Ratip and the Republic* (1962) 3 R S C C. 102, at p 104, which principles we affirm, it would seem that as the restriction or limitation in the present case is not effected in the interests of the State or any public body, the provisions of Article 23, paragraphs 1, 2 and 3, do not apply to the provision of the aforesaid Law No 19 of 1965, as this statute is legislation regulating the civil law rights in property *inter partes.*

Per Josephides, J (Hadjianastassiou, J. concurring) :

(1) In considering this matter we have also referred to the provisions of Article 17 of the Constitution of Greece, the rent restriction legislation in force there and to the decision of the Greek Council of State No. 1192/1955

(2) Considering that the aforesaid Law No 19 of 1965 (*supra*) does not provide for a complete deprivation or restriction of the right of property, that it is of a temporary nature to tide over an emergency or exceptional circumstance, as shown by the provisions of section 3 of the Law, that the restriction or limitation of the right of property is not effected in the interests of the state, and that it is legislation regulating civil law rights in property between private individuals, I am of the view that such law is not repugnant to the provisions of paragraphs 1, 2 and 3 of our Constitution.

Held, (V) as regards the question whether or not the provisions of the aforesaid Law No 19 of 1965 are repugnant to or inconsistent with the provisions of Article 26, paragraph 1, of the Constitution

Per Vassiliades, P. (Triantafyllides, Stavrinides and Loizou, JJ concurring)

As regards Article 26, paragraph 1, of the Constitution, I am inclined to the view that this Article guarantees the right to enter into legal contracts, subject to the conditions and qualifications therein, and does not refer to the rights created under such contracts The English version of the text expressly refers to "the right to enter freely into any contract.. " and I read the words "τὸ δικαίωμα τοῦ συμβάλλεσθαι ἐλευθέρως", in the Greek version, as referring to the time of entering into the contract; and not otherwise Therefore, Article 26 is not applicable to the matter in hand

Per Josephides, J. (*Hadjianastassiou, J. concurring*) :

After referring to the Greek and Turkish texts of paragraph 1 *of Article* 26 *of the Constitution* (*set out in full in his judgment,* post) *and to the English translation of that paragraph* (supra *and* infra) *the learned Justice went on* :

(1) The Greek words "τὸ δικαίωμα τοῦ συμβάλλεσθαι ἐλευθέρως" and, as I understand them, the corresponding Turkish words occurring in Article 26, Paragraph 1 of the Constitution (both texts being originals and authentic) convey the notion of full freedom of contract; and I am unable to subscribe to the view that this right refers only to the time of entering into the contract without guaranteeing or safeguarding the full freedom of contract from the time of entering to its final performance. subject only "to such conditions, limitations or restrictions as are laid down by the general principles of the law of contract" (see Article 26.1).

(2) (a) It was, however, submitted by the learned Attorney-General, supported by the tenant's counsel, and conceded by the landlord's (respondent's) counsel that the State possessed a reserved police power to protect the vital interests of the public during an emergency and that this would not violate the provisions of Article 26.1 of the Constitution; but the respondent's–landlord's counsel contended that the State has gone too far in this case in that no time has been fixed for such measures and the conditions laid down in the statute itself are not reasonable.

(b) No other Article of the Constitution was relied upon on the record or referred to by counsel and no other argument was advanced to this Court. Consequently, the question of the constitutionality of the Law No. 19 of 1965 (*supra*) is decided in this judgment on the basis of the submissions made before the Court and on Article 26.1 of the Constitution which was the only Article invoked by the tenant on this aspect of the case.

(c) Following judicial precedent in other jurisdictions (the United States of America and India), I take the view that in determining a question of constitutionality this Court has only one duty, that is, to lay the Article of the Constitution which is invoked beside the statute which is challenged and decide whether the latter is repugnant to or inconsistent with the former. The litigant who wants to have a statute declared

unconstitutional must refer to the specific provision of the Constitution which is alleged to have been violated by the impugned statute; and the Court will entertain only those constitutional questions which are specifically raised by the pleadings or other formal part of the record and properly presented.

(3) Sections 3, 4, 5 and 7 of the Law No. 19 of 1965 under consideration (*supra*), show that the Law in question is a temporary measure to tide over an economic emergency, subject to certain strict conditions. Considering the circumstances under which the aforesaid law came to be enacted, I am satisfied that severe economic conditions, arising out of the well-known "recent events" since December, 1963 (*supra*), created a public economic emergency, calling for the exercise of the State's police power. I am further satisfied that relief is justified by the economic emergency, that it is of an appropriate character and is granted upon reasonable conditions.

(4) I, therefore, hold that the aforesaid Law of 1965 is a reasonable and valid exercise of the State's reserved power to protect the vital interests of the public during the emergency and that it does not violate Article 26.1 of our Constitution.

Principles laid down in the decision of the Greek Council of State No. 1192/1955 *in the* "Αποφάσεις τοῦ Συμβουλίου Ἐπικρατείας" 1955 *B p.* 671, *at pp.* 672-3 (*regarding the constitutionality of the rent restrictions legislation in Greece*) *considered with approval. Building and Loan Association* v. *John H. Blaisdell* (1933) 290 U.S. 398 at p. 434 per Chief Justice Hughes; (78 Law. ed. 413, at p. 426) *reasoning adopted*; *Wood* v. *Lovett* (1941) 313 U.S. 362 at p. 383 per Justice Blacks *reasoning adopted.*

Per Triantafyllides, J. (*Stavrinides J. concurring*) :

(1) I am unable to agree with the determination of the issue of constitutionality—in relation to Article 26.1 of the Constitution (*supra*)—on the footing of the reserved "police powers" of the State.

(2) I would commence by observing that in determining an issue of constitutionality of legislation—raised by reference to a specific constitutional provision, such as Article 26.1 (*supra*)—this Court does not have its hands tied by the approach of the parties, but it is entitled, and bound, to examine such issue from all its necessary aspects.

(3) One such aspect, in the present case, is that paragraph 1 of Article 26 of the Constitution (*supra*) must be construed in conjunction with paragraph 1 of Article 33 of the Constitution, which reads :

> "1. Subject to the provisions of this Constitution relating to a state of emergency the fundamental rights and liberties guaranteed by this Part shall not be subjected to any other limitations or restrictions than those in this Part provided."

(4) Both Articles—26 and 33—are to be found in the same Part of the Constitution, Part II, which deals with fundamental rights and liberties. Article 26 (*supra*) is a substantive provision. Article 33.1 is not an independent substantive provision, but an ancillary, omnibus, one, governing the applications of all substantive provisions on Part II, such as Article 26. So, though Article 33.1 was not specifically referred to in argument, this Court, in applying Article 26.1 (*supra*) has to bear in mind Article 33.1, especially in view of the solemn obligation of the Court under Article 35 of the Constitution to secure within the limits of its competence "the efficient application of the provisions of Part II of the Constitution". Therefore, it cannot be said—in accordance with the relevant principle evolved in the United States (see, *inter alia, New York Central and Hudson River Railroad Company* v. *City of New York* 186 *U.S.* 269, 46 *Law. ed.* 1158)—that, once Article 33.1 was not relied upon by the parties, it must not, or cannot, be taken into consideration in determining the *sub judice* issue of constitutionality.

(5) Perhaps, one might be inclined to the view that this Court, in a case such as the present one, would have to bear in mind Article 33.1, even if it were a separate substantive provision, and notwithstanding any principle elsewhere to the contrary, because, but for the enactment of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64) and the case The *Attorney-General* v. *Ibrahim* 1964 C.L.R. 195 the *sub judice* issue of constitutionality would have been made the subject of a reference under Article 144 of the Constitution and in such a case the issue would have had to be determined in toto (see *Tyllirou and Tylliros* 3 R.S.C.C. 21).

(6) (a) Once an express provision such as paragraph 1 of Article 33 is to be found in Part II of our Constitution, it inevitably excludes in relation to the rights and freedoms guaranteed in Part II, the exercise by government of *any police powers not expressly provided for*, or the course of holding as

valid action taken apart from relevant constitutional provisions in case of necessity (as was the case in relation to other Parts of the Constitution, in the *Ibrahim's* case *supra.*

(b) The existence of an implied right of the State to exercise police powers in relation to the rights and liberties guaranteed in Part II, is neither needed nor possible, because such right is expressly provided in our Constitution, by appropriate exhaustive provisions in several Articles concerned, in Part II (See, for example, Articles 7.2 and 3, 10.3, 11.2 and 3, 13.1 and 2, 15.2, 16.2, 17.2, 18.6, 19.3, 20.1, 21.3 and 5, 23.3, 4, 7 and 8, 25.2 and 3, 26.1, 27.1 and 2, 30.2.)

(c) Also under Article 183 of the Constitution it is rendered possible, in case of emergency, to suspend the operation of certain of the Articles in Part II.

(7) (a) In the United States of America the notion regarding resort by government to an implied right to exercise police powers has developed in a constitutional context which, in this respect, is radically different from our own. In the U.S.A the Constitution guarantees certain rights and liberties without providing for, fully and expressly, in connection therewith, the instances of regulatory intervention by government, in the exercise of its police powers,—*as does the Cyprus Constitution;* thus, it became necessary in the United States to prescribe by judicial decision the limits of possible restriction of the rights and liberties concerned; and there is nothing in the Constitution of the United States to the same effect as our Article 33.1 (*supra*)—which is the logical corollary of the fact that the exercise of police powers in relation to the rights and liberties guaranteed in Part II of our Constitution has not been left to be propounded upon judicial decision but has been exhaustively, expressly and amply, provided for in the Constitution itself.

(b) The judicial concept behind governmental intervention in the United States, for the purpose of regulating rights and liberties, is well set out in the opinion of the United States Supreme Court delivered by Mr. Justice Holmes in the case of *Noble State Bank* v. *Haskell* 49 U.S. 104; 55 Law. ed. 112. Vide also the majority of opinion delivered by Mr. Justice Roberts, in *Nebbia* v. *People of the State of New York* 291 U.S 502; 78 Law. ed. 940.

(8) In my opinion, it is not possible to rely on the United States case law (quoted in the judgment of the learned Justice, post)—decided in a diffffferent constitutional context than our

own—in order to hold that, in case of emergency, resort may be had to police powers of government in order to restrict on grounds of public interest, in an emergency or otherwise, the right guaranteed under Article 26.1; and this in the teeth of an express provision to the contrary as Article 33.1 of our Constitution. *Dicta of Chief Justice Hughes delivering the majority opinion in the Blaisdell case* (supra) *in relation to emergency powers* viz-a-viz *existing constitutional provisions, considered.*

Per Hadjianastassiou, J.

(i) It is clear from the wording of section 4 (1) of Law No. 19 of 1965 (*supra*) "any tenant of premises within a depressed area" that the legislature intended to include contractual tenancies also within the ambit of the said Law; and in order to relieve a class of persons, that is the depressed tenants in a "depressed area" from the burden of high rent.

(2) I am of the view that the wording in paragraph 1 of Article 26 of the Constitution (*supra*) "the right to enter freely into a contract" is not limited only at the time of entering into such contract, but one should construe it to refer to the notion of the freedom of contract, subject of course to "such conditions, limitations or restrictions as are laid down by the general principles of the law of contract". *Adkins* v. *Children's Hospital* (1922) 261 U.S. 525; 67 Law. ed. 785, reasoning *adopted*; see, also, Svolos and Vlahos The Constitution of Greece (1954) Vol. A, pp. 325-326 and 333-334.

(3) Since the provisions of Law No. 19 of 1965 are of a temporary nature and considering the circumstances under which this Law came to be enacted, due to the fighting in Nicosia which created an economic emergency within the area of the "green line", it was the duty of the State in the exercise of its reserved police power under the provisions of Article 26.1 to give relief from the enforcement of such contracts. I am satisfied that the relief is justified on grounds of public necessity because of economic causes created and that the measures taken are reasonable and appropriate to that end.

Appeal allowed, judgment of trial Court set aside. Case remitted to trial court to be heard on its merits. No order as to costs in the appeal. Costs in the trial Court to be costs in cause.

Cases referred to :

The Attorney-General of the Republic v. *Ibrahim* 1964 C.L.R. 195;

Board for Registration of Architects and Civil Engineers v. *Kyriakides* (1966) 3 C.L.R. p. 640;

Evlogimenos and the Republic 2 R.S.C.C. 139, at pp. 142-3;

Ali Ratip and The Republic 3 R.S.C.C. 102, at p. 104;

Tyllirou and Tylliros 3 R.S.C.C. 21.

Greek Cases :

Decision of the Greek Council of State No. 1192/1955 in Decisions of the Council of State 1955 B. p. 671, and at pp. 672-3;

('Απόφασις Συμβουλίου 'Επικρατείας άριθ. 1192/1955 εἰς "'Αποφάσεις Συμβουλίου 'Επικρατείας", 1955 Β. σελ. 671 καὶ εἰς σελ. 672–3.)

American Cases:

New York Central and Hudson River Rly Co. v. City of New York 186 U.S. 269; 46 Law. ed. 1158;

Chapin v. Fye (1900) 179 U.S. 127;

United States v. Butler (1935) 297 U.S. 1 at p. 62;

Everson v. Board of Education (1947) 330 U.S.1;

Home Building and Loan Association v. John H. Blaisdell (1933) 290 U.S. 398; 78 Law. ed. 413;

Wood v. Lovett (1941) 313 U.S. 362, at p. 383;

Block v. Hirsh (1920) 256 U.S. 135;

Marcus Brown Holding Co. v. Feldman, 256 U.S. 170; 65 Law. ed. 877;

Wilson v. New 243 U.S. 332 at pp. 345-6;

Adkins v. Children's Hospital (1922) 261 U.S. 525 at pp. 546, 561; 67 Law. ed. 785;

Noble State Bank v. Haskell 49 U.S. 104; 55 Law. ed. 112,

Nebbia v. People of the State of New York 291 U.S. 502; 78 Law. ed. 940;

New York v. Miln 9 Law. ed. 648;

Thurlow v. Massachussetts 12 Law. ed. 256;

Allgever v. Louisiana 165 U.S. 578; 41 Law. ed. 832;

Lynch v. United States of America 292 U.S. 571; 78 Law. ed. 1434;

U.S. v. *Nudelman* (1939) 308 U.S. 589;

Aircraft Equipment Corporation v. Hirsch (1947) 331 U.S. 752.

Appeal.

Appeal against the judgment of the District Court of Nicosia (Georghiou D.J) dated the 11th January, 1966,(Application No. 5/65) dismissing an application, under s.3 (1) of the Depressed Tenants Relief Law, 1965 (Law 19/65), for the determination of the rent payable in respect of a shop.

A. Hadjiloannou, for the appellant.

X. Clerides, for the respondent.

C. G. Tornaritis, Attorney-General of the Republic, as *amicus curiae*.

Cur. adv. vult.

VASSILIADES, P. : I shall ask Mr. Justice Josephides, to deliver the first judgment.

JOSEPHIDES, J. : This appeal raises two questions : (a) whether the Depressed Tenants Relief Law, 1965, applies to contractual tenants and (b) if it does, the constitutionality of the aforesaid Law.

The trial Judge held that the above Law (to which I shall refer as "the Law of 1965") did not apply to contractual tenants and that the appellant, being a contractual tenant, was not entitled to apply for relief under section 4 (1) of the Law and his application was accordingly dismissed. The Depressed Tenants Relief Law, 1965 (Law 19 of 1965) ('Ο Περὶ 'Ανακουφίσεως Δυσπραγούντων 'Ενοικιαστῶν Νόμος τοῦ 1965) was enacted on the 29th April, 1965, and the Council of Ministers by an order published in the official *Gazette* on 19th August, 1965, and made under the provisions of section 3 (1) of the Law, declared, *inter alia*, a certain part of the controlled area within the municipal limits of Nicosia, including Hermes Street, as a "depressed area" (δυσπραγοῦσα περιοχή). On the 30th September, 1965, the appellant applied, within the prescribed

time limit under the provisions of section 4 (1) of the Law, for determination of the rent of his business premises as from the 1st December, 1963, as provided in that section.

As it appears from the long title of the Law of 1965, its object is "to provide for the taking of temporary measures for the relief of certain depressed tenants", and it is made applicable to business premises in depressed areas, declared as such by the Council of Ministers, for the purpose of relieving tenants in whose business premises, because of proximity to dangerous places, the normal conduct of their business has in consequence of the "recent events" been adversely affected and substantially reduced so as to render the taking of measures for their relief imperative. It is a matter of common knowledge that the "recent events" referred to in the Law are those events which began with the fighting which broke out in Nicosia on the 21st December, 1963, to which we had occasion to refer in our judgment in the case of the *Attorney-General of the Republic* v. *Ibrahim*, 1964 C.L.R. 195 at pages 246-249. Part of Nicosia town and certain other territory in the Republic have been under the control of Turkish Cypriots who refuse access to Greek Cypriots by the force of arms. Hermes Street in which the business premises in question are situate is on the boundary line, which is known as the "Green Line".

Section 4 (1) of the Law gave the right to tenants of premises within the depressed area to apply to the Court, within two months of the publication of the order under section 3 (1), to have the rent of the business premises occupied by them determined, with the result that, as from the date of the Court order for the adjustment of the rent, the rent payable by the tenant shall be the rent so adjusted by the Court.

It is common ground that the appellant has been the tenant of the premises at 11 and 13, Hermes Street, Nicosia, since the year 1932, that the original rent was £2.500 mils per month, that by a contract of lease dated 25th June, 1959, the rent was agreed at £384 per annum, that is, £32 per month, and that the appellant is a contractual tenant. The appellant uses these premises as a leather-shop and he alleges that since the events of December 1963 he has been unable to carry on any business during the first six months and that subsequently the volume of his business has been very restricted. The appellant submitted that the rent should be fixed at £96 per annum with effect form 1st December, 1963, but the respondent did not accept

this rent and he submitted that the Law of 1965 is unconstitutional.

Although the only issue before the learned trial Judge in this case was by consent of the parties the constitutionality of the Law of 1965, nevertheless, the trial Judge proceeded to determine the question whether that Law applied to contractual tenancies for the purpose of deciding the question of constitutionality; and, as he states in his judgment, this matter was not raised by counsel nor any argument heard on it by the Court.

In considering this matter I shall quote from the official English translation of the Law of 1965, as well as of Law 17 of 1961 (to which I shall presently refer), prepared at the Ministry of Justice, as I think it substantially reproduces the original Greek next of the Laws in question.

Section 4 (1) of the Law of 1965 reads as follows :

> "4.– (1) Notwithstanding the provisions of the Law, any tenant of premises within a depressed area may, within two months of the publication of the order referred to in sub-section (1) of section 3, by application to the Court seek that the rent payable as from the first day of December, 1963, in respect of the business premises occupied by him be determined, and thereupon the provisions of the Law relating to the adjustment of rents for business premises shall apply, *mutatis mutandis*, to any such application."

It will thus be seen that any "tenant of premises" within a depressed area may apply for the determination of the rent of "the business premises" occupied by him, and thereupon the provisions of the "Law" relating to the adjustment of rents for business premises shall apply. This would seem to include the power to reduce the rent payable.

So far as material, section 2 of the Law of 1965 provides as follows :

> "2.– (1) In this Law, unless the context otherwise requires-
> 'business premises' means any premises let for any business, trade or professional purposes and used as such and situate within a depressed area;"
>
> .....
>
> " 'Law' means the Rent Control (Business Premises) Law, 1961".

17 of 1961
39 of 1961

"(2) Any other terms not specifically defined in this Law shall, unless the context of this Law otherwise requires, have the meaning assigned to them by the Law".

As the term "tenant" which occurs in section 4(1) of the 1965 Law is not specifically defined in that Law, we have to refer to Law 17 of 1961 (as amended by Law 39 of 1961) for its definition. Section 2 of that Law provides as follows :

" 'Tenant' means the tenant of business premises in respect of which a tenancy exists and includes–

(a) a statutory tenant;

(b) any sub-tenant or any other person deriving a right from the original tenant or sub-tenant to possess the business premises;

(c) the widow of a tenant who was residing with him at the time of his death....."

" 'Tenancy' means any lease, demise, letting or holding of business premises whether in writing or otherwise by virtue whereof the relationship of landlord and tenant is created;"

" 'business premises' subject to the provisions of the Constitution, means any premises let for any business, trade or professional purposes and used as such and situate within a controlled area, but does not include any such premises–

(i) completed and let for the first time after the date of the coming into operation of this Law;

(ii) in respect of which there is a valid and binding agreement between the tenant and the landlord thereof, so long as such agreement is in force."

If one compares the definition of the term "business premises" in the Law of 1965 with that in the Law of 1961, he will observe that the legislature in the 1961 Law expressly excluded contractual tenancies in paragraph (ii) of the definition; while the expression "business premises" in the Law of 1965 is defined as meaning "any premises let for any business, trade or professional purposes and used as such and situate within a depressed area", without any exception whatsoever, that is, without the two exceptions expressly provided in the 1961 Law, namely premises completed and first let after the 1961

Law, and, premises in respect of which there is a valid contractual tenancy in force.

The comparison of the definition of the term "business premises" in the two Laws makes it abundantly clear that it was the intention of the legislature to exclude contractual tenancies from the 1961 Law and to include such contractual tenancies in the Law of 1965. For these reasons we hold that the Law of 1965 applies not only to statutory tenancies but also to contractual tenancies.

The next question which now arises is whether, in view of this construction, the Law of 1965 is unconstitutional.

It was submitted on behalf of the respondent that this Law is repugnant to the provisions of–

(1) Article 23, paragraphs 1, 2 and 3, of the Constitution, as it imposes a restriction or limitation on the right of a landlord's property without providing for the payment of just compensation; and of

(2) Article 26, paragraph 1, as it interferes with the right of a person to enter freely into any contract.

With regard to the first question, we think it would be convenient if we quoted the relevant provisions of Article 23 of our Constitution.

ARTICLE 23.

"1. Every person, alone or jointly with others, has the right to acquire, own, possess, enjoy or dispose of any movable or immovable property and has the right to respect for such right.

The right of the Republic to underground water, minerals and antiquities is reserved.

2. No deprivation or restriction or limitation of any such right shall be made except as provided in this Article.

3. Restrictions or limitations which are absolutely necessary in the interest of the public safety or the public health or the public morals or the town and country planning or the development and utilization of any property to the promotion of the public benefit or for the protection of the rights of others may be imposed by law on the exercise of such right.

Just compensation shall be promptly paid for any such restrictions or limitations which materially decrease the ecomomic value of such property; such compensation to be determined in case of disagreement by a civil Court."

In considering questions on the constitutionality of a statute we have adopted certain principles governing the exercise of judicial control of legislative enactments and we need not in this case refer to them in detail.Those principles are to be found in the case of the *Board for Registration of Architects and Civil Engineers* v. *Kyriakides* (1966) 3 C.L.R. 640.

The landlord's complaint in this case is that the rent agreed upon by the parties by virtue of a contract which is still valid and binding, may be reduced by an order of the Court under the provisions of section 4 of the Law of 1965, and that this amounts to a restriction or limitation of his right of property without the payment of any compensation, which would be repugnant to the provisions of paragraphs 1, 2 and 3 of Article 23.

There are two Cyprus cases on the effect of the aforesaid provisions of the Constitution. In the first case it was held by the Supreme Constitutional Court that paragraphs 1, 2 and 3 of Article 23 protect the right to property from deprivation, restriction or limitation "effected in the interests of the State or public bodies", but it does not apply to legislation regulating civil law rights in property : *Evlogimenos and The Republic* (1961) 2 R.S.C.C. 139 at pages 142-3. This was confirmed in the case of *Ali Ratip* (1962) 3 R.S.C.C. 102 at p. 104. The State may regulate by law civil law rights in property which are contained in the notion of "property"in Article 23,paragraph 1, (*Evlogimenos case*, at page 142). On these principles, which we affirm, it would seem that, as the restriction or limitation in the present case is not effected in the interests of the State or any public body, the provisions of Article 23, paragraphs 1, 2 and 3, do not apply to the provisions of the Law of 1965, as this statute is legislation regulating the civil law rights in property *inter partes*.

In considering this matter we have also referred to the provisions of the Constitution of Greece and the rent restriction legislation in force there.

Article 17 of the Greek Constitution provides that no person

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may be deprived of his property except for the public benefit and on payment of full compensation. The Conseil d' Etat in Greece in considering the question of the Constitutionality of the rent restriction law held that such legislation, which constitutes a limitation of the right of property of a general nature and is imposed for the common good, is not repugnant to the provisions of Article 17 of the Constitution, which precludes the complete deprivation or abolition of the right of property without the fulfilment of the requirements and prerequisites laid down in that Article. It further held that the restrictions of property, which had been imposed for a long time and would continue to be imposed for an indefinite period, were not unconstitutional, so long as the said restrictions of property did not actually amount to complete deprivation or abolition of property, as the duration of such legislative restrictions of property is within the province of the legislative authority and does not fall within the judicial control of legislative enactments. It should also be added that it appears from the report that the duration of the statute in question was a comparatively brief one which had been fixed in advance and that this followed previous rent restriction legislation which had been extended repeatedly. The following is an extract from the decision of the Conseil d' Etat in Greece in case No. 1192/1955, reported in the "'Αποφάσεις τοῦ Συμβουλίου 'Επικρατείας", 1955 "B." at page 671 :

«'Επειδὴ ὡς ἤδη ἔχει νομολογηθεῖ, ὁ θεσμὸς τοῦ ἐνοικιοστασίου ἀποτελῶν γενικῆς φύσεως περιορισμὸν τῆς ἰδιοκτησίας ἐπιβαλλόμενον χάριν γενικωτέρου κοινωνικοῦ συμφέροντος δὲν εὑρίσκεται εἰς ἀντίθεσιν πρὸς τὸ ἄρθρον 17 τοῦ Συντάγματος ὅπερ ἀποκλείει μόνον τὴν παντελῆ στέρησιν ἢ τὴν κατάργησιν τῆς ἰδιοκτησίας ἄνευ τῆς συνδρομῆς τῶν ἐν αὐτῷ ὅρων καὶ προϋποθέσεων. 'Απορριπτέος ὅθεν τυγχάνει ὡς νόμῳ ἀβάσιμος ὁ ἐπὶ τῆς ἀντιθέτου ἐκδοχῆς ἐρειδόμενος ἕτερος τῶν λόγων ἀκυρώσεως. 'Αλλὰ καὶ ἡ εἰδικωτέρα ἀμφισβήτησις τοῦ συνταγματικοῦ κύρους τοῦ ἐνοικιοστασίου λόγῳ τοῦ ὅτι διὰ τούτου ἀπὸ μακροῦ ἤδη χρόνου καὶ δι' ἀπροσδιόριστον εἰσέτι διάστημα ἐπιβάλλονται δεσμεύσεις τῆς ἰδιοκτησίας, εἶναι ἀπορριπτέα, καθόσον ἡ χρονικὴ διάρκεια τῶν ὑπὸ τοῦ νομοθέτου ἐπιβαλλομένων γενικῶν περιορισμῶν τῆς ἰδιοκτησίας ἐφ' ὅσον βεβαίως οὗτοι δὲν ἄγουν εἰς πράγματι στέρησιν παντελῆ ἢ κατάργησιν αὐτῆς, ἀνήκει εἰς τὴν κρίσιν τῆς νομοθετικῆς ἐξουσίας καὶ διαφεύγει τὸν δικαστικὸν ἔλεγχον, οὐδὲ καὶ δύναται νὰ λογισθῇ ὑπὸ τὴν ἐνεστῶσαν διαμόρφωσιν αὐτοῦ ὁ θεσμὸς τοῦ ἐνοικιοστασίου ὡς ἀποτελῶν τὴν ὑπὸ τοῦ ἄρθρου 17 τοῦ Συντάγματος ἀπαγορευμένην στέρησιν τῆς ἰδιοκτη-

σίας τοῦτο δὲ καὶ λόγῳ τῆς οὐσίας τῶν δι' αὐτοῦ ἐπιβαλλομένων δεσμεύσεων καὶ περιορισμῶν (ἀναγκαστικὴ δι' ὡρισμένον χρόνον παράτασις μισθώσεων—καθορισμὸς μισθωμάτων), ἀλλὰ καὶ διότι ἡ διάρκεια τῆς ἰσχύος αὐτοῦ ὁρίζεται ἐκ τῶν προτέρων διὰ βραχὺ σχετικῶς διάστημα, ὡς ἄλλως ἐγένετο καὶ διὰ τῶν προϊσχυσάντων *νομοθετημάτων περὶ ἐνοικιοστασίου*, δι' ὧν διαδοχικῶς καὶ ἀναλόγως τῶν ἑκάστοτε συνθηκῶν, κατὰ τὴν κρίσιν τοῦ νομοθέτου, ἐτέθησαν παρόμοιοι περιορισμοὶ διὰ βραχεῖαν χρονικὴν περίοδον ἐκ τῶν προτέρων ἑκάστοτε καθοριζομένην.»

Considering that the Law of 1965 does not provide for a complete deprivation or restriction of the right of property, that it is of a temporary nature to tide over an emergency or exceptional circumstance, as shown by the provisions of section 3 of the Law, that the restriction or limitation of the right of property is not effected in the interests of the State, and that it is legislation regulating civil law rights in property between private individuals, I am of the view that such Law is not repugnant to the provisions of paragraphs 1, 2 and 3 of Article 23, of our Constitution.

Now, the only question left for determination is whether the provisions of the Law of 1965 are repugnant to or inconsistent with the provisions of Article 26, paragraph 1, of the Constitution. The Greek and Turkish texts read as follows :

«ΑΡΘΡΟΝ 26.—1. Ἕκαστος ἔχει τὸ δικαίωμα τοῦ συμβάλλεσθαι ἐλευθέρως. Τοῦτο ὑπόκειται εἰς ὅρους, περιορισμοὺς ἢ δεσμεύσεις τιθεμένους ἐπὶ τῇ βάσει τῶν γενικῶν *ἀρχῶν τοῦ δικαίου τῶν συμβάσεων*. Νόμος θέλει προβλέψει διὰ τὴν πρόληψιν ἐκμεταλλεύσεως ὑπὸ προσώπων, ἅτινα διαθέτουσιν ἰδιάζουσαν οἰκονομικὴν ἰσχύν.»

"MADDE 26.—1. Her şahıs, mukavele hukukunun umuni prensiplerince Konulan şartlar, Kısıntılar veya tahditlere tabi olmak kaydıyle, serbestçe mukavele yapmak hakkına *sahiptir*, *Iktisaden kudretli şahıslar tarafından istismari* kanun önler."

The English translation reads as follows :

"ARTICLE 26. 1. Every person has the right to enter freely into any contract subject to such conditions, limitations or restrictions as are laid down by the general principles of the law of contract. A law shall provide for the prevention of exploitation by persons who are commanding economic power."

The Greek words "τὸ δικαίωμα τοῦ συμβάλλεσθαι ἐλευθέρως" and, as I understand them, the corresponding Turkish words "her şahıs ..... serbestçe mukavele yapmak hakkına sahiptir" occurring in Article 26, paragraph 1, (both texts being originals and authentic), convey the notton of full freedom of contract (cf. the position in Greece to which reference is made later in this judgment; Svolos & Vlahos "The Constitution of Greece" (1954), Volume A, pages 325-6 and 333-4); and I am unable to subscribe to the view that this right refers only to the time of entering into the contract without guaranteeing or safeguarding the full freedom of contract from the time of entering to its final performance, subject only "to such conditions, limitations or restrictions as are laid down by the general principles of the law of contract" (see Article 26.1).

It was, however, submitted by the learned Attorney-General of the Republic, supported by the tenant's counsel, and conceded by the landlord's (respondent's) counsel, that the State possesses a reserved power to protect the vital interests of the public during an emergency and that this would not violate the provisions of Article 26.1; but the landlord's counsel contended that the State has gone too far in this case in that no time limit has been fixed for such measures and the conditions laid down in the statute itself are not reasonable. No other Article of the Constitution was relied upon on the record or referred to by counsel in the case and no other argument was advanced to this Court. Consequently, the question of the constitutionality of the Law of 1965 is decided in this judgment on the basis of the submissions made before the Court and on Article 26.1 of the Constitution which was the only Article invoked by the tenant on this aspect of the case.

Following judicial precedent in other jurisdictions (the United States of America and India), I take the view that in determining a question of unconstitutionality this Court has only one duty, that is, to lay the Article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter is repugnant to, or inconsistent with, the former. The litigant who wants to have a statute declared unconstitutional must refer to the specific provision of the Constitution which is alleged to have been violated by the impugned statute; and the Court will entertain only those constitutional questions which are specifically raised by the pleadings or other formal part of the record and properly presented :

N.Y. Central & Hudson River Rly Co. v. *City of New York* (1902) 186 U.S. 269; *Chapin* v. *Fye* (1900) 179 U.S. 127; *United States* v. *Butler* (1935) 297 U.S. 1 at p. 62; *Everson* v. *Board of Education* (1947) 330 U.S. 1; and Basu's Commentary on the Constitution of India, 5th edition, volume 1, pages 192-3.

In the *Evlogimenos* case it was held that the right to enter freely into contract can be *limited* under civil law regarding the extent the right of ownership can be disposed of by sale to particular persons (at page 143). It was further held in the *Ali Ratip* case that the fundamental rights and liberties in Articles 25, 26 and 30 of the Constitution were safeguarded as against "interference by the State"; but they were subject to being regulated by the civil law relating to the capacity of persons in certain matters (at page 105).

Article 4 of the Constitution of Greece provides that personal liberty is inviolable, and it has been held that this includes economic freedom and the freedom of contract, in Greek "ἐλευθερία τῶν συμβάσεων ἢ τοῦ συμβάλλεσθαι" (Α.Ι. Σβώλου–Γ.Κ. Βλάχου, Τὸ Σύνταγμα τῆς Ἑλλάδος (1954), Τόμος "Α", σελ. 325-6 καὶ 333-4). In the case of the Greek Conseil d' Etat quoted earlier (No. 1192/1955, at page 673) it was held that a royal decree, imposing a limitation on economic freedom by the compulsory extension of leases, was not repugnant to the provisions of Article 4 of the Greek Constitution because limitations of freedom are not inconsistent with Article 4, so long as they were imposed by statute, or on the authority of a statute, in accordance with the criterion of the general public or social interest, which was manifestly the case with rent restriction legislation. It was further held that such measure was not repugnant to the principle of equality enshrined in Article 3 of the Greek Constitution which corresponds to Article 28.1 of our Constitution. The following is the relevant extract from Case No. 1192/1955, at pages 672-3, of the Greek Conseil d' Etat :

«Ἐπειδὴ ὁ λόγος ἀκυρώσεως, καθ' ὃν τὸ προσβαλλόμενον Β. Διάταγμα ἀντίκειται εἰς τὴν κατὰ τὸ ἄρθρον 3 τοῦ Συντάγματος ἀρχὴν τῆς ἰσότητος λόγῳ τῆς ἐπιβολῆς περιορισμῶν ἐπὶ μέρους μόνον τῶν πολιτῶν καὶ ἐπ' ὠφελείᾳ ὡρισμένων ἄλλων, ἀπορριπτέος τυγχάνει ὡς νόμῳ ἀβάσιμος, καθόσον ἀποκλείεται μὲν ἀληθῶς διὰ τῆς διατάξεως τοῦ ἄρθρου 3 τοῦ Συντάγματος ἡ ὑπὸ τοῦ νομοθέτου δημιουργία ἀνισοτήτων ἐν τῇ ρυθμίσει τῶν αὐτῶν πραγματικῶν ἢ νομικῶν καταστάσεων, ἐντεῦθεν ὅμως δὲν κωλύεται

ὁ νομοθέτης, ὅπως προβαίνῃ εἰς ρυθμίσεις κατὰ κατηγορίας σχέσεων, πραγμάτων ἢ προσώπων κατὰ λόγον τῶν εἰδικῶν συνθηκῶν (κοινωνικῶν, οἰκονομικῶν, τοπικῶν ἢ καὶ ἄλλων), αἵτινες συντρέχουσιν εἰς ἑκάστην περίπτωσιν. Ἐν προκειμένῳ δὲν ἡ ἐπιβολὴ τῶ ἐν λόγῳ περιορισμῶν, ἀναφερομένη εἰς κατηγορίας σχέσεων καὶ προσώπων, οὐδόλως ἀντιβαίνει εἰς τὴν ἀρχὴν τῆς ἰσότητος, ὅπως ἀντιστοίχως καὶ ἡ καθιέρωσις τῶν περιορισμῶν τούτων πρὸς ὄφελος τῶν μισθωτῶν, ἤτοι ὡρισμένης κατηγορίας προσώπων, δὲν ἐξέρχεται τῆς αὐτῆς ἀρχῆς.

Ἐπειδὴ ὁ λόγος ἀκυρώσεως, καθ' ὃν τὸ προσβαλλόμενον Β. Διάταγμα, ἐπιβάλλον περιορισμὸν τῆς οἰκονομικῆς ἐλευθερίας, διὰ τῆς ἀναγκαστικῆς παρατάσεως τῶν μισθώσεων ἀντίκειται εἰς τὸ ἄρθρον 4 τοῦ Συντάγματος, ἀπορριπτέος τυγχάνει ὡς νόμῳ ἀβάσιμος, καθόσον οἱ περιορισμοὶ τῆς ἐλευθερίας δὲν εἶναι ἀσυμβίβαστοι πρὸς τὸ ἄρθρον 4 τοῦ Συντάγματος, ἐφόσον ἐπιβάλλονται διὰ νόμων ἢ ἐπὶ τῇ βάσει νόμου συμφώνως πρὸς τὸ κριτήριον τοῦ γενικωτέρου δημοσίου ἢ κοινωνικοῦ συμφέροντος, τοὐθ' ὅπερ συντρέχει προδήλως εἰς τὴν περίπτωσιν τοῦ ἐνοικιοστασίου.»

In the United States of America, Article 1, section 10, paragraph 1, of the Constitution provides that—

> "No State shall .....pass any .....Law impairing the Obligation of Contracts ....."

The classical case on the interpretation of this clause of the United States Constitution is that of the *Home Building and Loan Association* v. *John H. Blaisdell* (1933) 290 U.S. 398; 78 Law. ed. 413, from which I have derived considerable help in interpreting Article 26.1 of our Constitution.

The *Blaisdell* case laid down that contracts are to be regarded as having been made subject to the future exercise of the constitutional power of the State, and the reservation of essential attributes of sovereign power is read into the contracts as a postulate of the legal order. In determining whether legislation violates the contract clause of the Constitution, the question is not whether the legislation affects contracts incidentally, or directly or indirectly, but whether it is addressed to a legitimate end and the measures taken are reasonable and appropriate to that end. A State, in the exercise of its police power, may give temporary relief from the enforcement of contracts when the urgent public need demanding such relief is produced by economic causes, as well as in the presence of disasters caused by fire, flood or earthquake. Whether the exigency still exists

upon which depends the continued operation of a law designed to relieve an economic emergency is always open to judicial enquiry.

In the *Blaisdell* case it was held that a Minnesota statute of 1933, authorising the District Court to extend the period for redemption from foreclosure sales for such additional time as the Court may deem just and equitable, but in no event beyond May 1935, and suspending during such period the right to maintain an action for a deficiency judgment, and, while leaving the mortgagor in possession during the period of extension, requiring him to pay all or a reasonable part of the income or rental value of the property, as fixed by the Court, towards the payment of the mortgage debt, interest, taxes, or insurance, at such time and in such manner as shall be determined by the Court, was a reasonable and valid exercise of the State's reserved power to protect the vital interests of the public during the emergency, and did not violate the contract clause of the Federal Constitution.

In delivering the opinion of the Supreme Court of the United States of America in the *Blaisdell* case, Chief Justice Hughes, *inter alia*, said (at page 434 of 290 U.S.; page 426 of 78 Law. ed.):

> "Not only is the constitutional provision qualified by the measure of control which the State retains over remedial processes, but the State also continues to possess authority to safeguard the vital interests of its people. It does not matter that legislation appropriate to that end "has the result of modifying or abrogating contracts already in effect, *Stephenson* v. *Binford*, 287 U.S. 251, 276, 77 L. ed. 288, 301, 53 S.Ct. 181, 87 A.L.R. 721. Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worth while—a government which retains adequate authority to secure the peace and good order of society. This principle of harmonizing the constitutional prohibition with the necessary residuum of state power has had progressive recognition in the decisions of this Court."

Justice Black in *Wood* v. *Lovett* (1941) 313 U.S. 362, at page 383, said that—

> "The *Blaisdell* decision represented a realistic appreciation of the fact that ours is an evolving society and that the general words of the contract clause were not intended to reduce the legislative branch of Government to helpless impotency."

With great respect, I adopt the reasoning of Chief Justice Hughes as well as of Justice Black in the above quoted cases, and I shall proceed to apply the principles enunciated above to the interpretation of our Constitution in the present case. But before I do so I would like to refer also to one or two other American cases.

In the Rent Cases of *Block* v. *Hirsh* (1920) 256 U.S. 135, 65 Law. ed. 865, and *Marcus Brown Holding Co.* v. *Feldman*, 256 U.S. 170, 65 Law. ed. 877, the Supreme Court of the U.S.A. sustained the legislative power to fix rents as between landlord and tenant upon the ground that the operation of the statutes was temporary, to tide over an emergency, and that the circumstances were such as to clothe "the letting of buildings .....with a public interest so great as to justify regulation by law". Mr. Justice Holmes in delivering the opinion of the Court in the *Block* case said (at page 157) :

> "The regulation is put and justified only as a temporary measure. See *Wilson* v. *New*, 243 U.S. 332, 345-6 ..... A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change."

In delivering the opinion of the U.S. Supreme Court in the leading case of *Adkins* v. *Children's Hospital* (1922) 261 U.S. 525 (67 Law. ed. 785), Mr. Justice Sutherland said (at page 546) :

> "There is, of course, no such thing as absolute freedom of contract. It is subject to a great variety of restraints. But freedom of contract is, nevertheless, the general rule and restraint the exception; and the exercise of legislative authority to abridge it can be justified only by the existence of exceptional circumstances. Whether these circumstances exist in the present case constitutes the question to be answered."

And he concluded as follows (at page 561) :

"It has been said that legislation of the kind now under review is required in the interest of social justice, for whose ends freedom of contract may lawfully be subjected to restraint. The liberty of the individual to do as he pleases, even in innocent matters, is not absolute. It must frequently yield to the common good, and the line beyond which the power of interference may not be pressed is neither definite nor unalterable, but may be made to move, within limits not well defined, with changing need and circumstance. Any attempt to fix a rigid boundary would be unwise as well as futile. But, nevertheless, there are limits to the power, and when these have been passed, it becomes the plain duty of the Courts, in the proper exercise of their authority, to so declare. To sustain the individual freedom of action contemplated by the Constitution is not to strike down the common good, but to exalt it; for surely the good of society as a whole cannot be better served than by the preservation against arbitrary restraint of the liberties of its constituent members."

I now turn to consider the provisions of our Law of 1965. I shall first state briefly the provisions of the Law, to some of which I had occasion to refer earlier in this judgment. The long title of the Law states that it is "a law to provide for the taking of temporary measures for the relief of certain depressed tenants" (δυσπραγούντων ἐνοικιαστῶν). The short title of the law is stated in section 1 to be "the Depressed Tenants Relief Law 1965" ('Ο Περὶ 'Ανακουφίσεως Δυσπραγούντων 'Ενοικιαστῶν Νόμος τοῦ 1965).

Section 2 gives the definition of certain terms to which I referred earlier.

Section 3 (1) provides that whenever it appears to the Council of Ministers—

(1) to be necessary or expedient,

(2) for the purpose of relieving tenants—

(a) whose premises are situate in a particular part of a controlled area, and

(b) in which premises—

(i) because of proximity to dangerous places, and

(ii) in consequence of the recent events,

(iii) the normal conduct of their business has been adversely affected and substantially reduced

so as to render the taking of measures for their relief imperative,

the Council of Ministers may, by order published in the official *Gazette*, declare such part to be a depressed area (δυσπραγοῦσα περιοχή) and thereupon the provisions of the Law shall apply to any business premises within such area. Such an order was published in the *Gazette* on the 19th August, 1965.

Section 3 (3) provides that the Council of Ministers may, if the circumstances which led to the making of an order under section 3 (1) have ceased to exist, revoke such order when the provisions of the law shall cease to apply.

Section 4 (1) lays down a time limit of two months, from the publication of the above order, within which any tenant of business premises may apply to the Court for the adjustment of his rent, in which case the provisions of the Rent Control (Business Premises) Law 1961 (as amended) shall apply, *mutatis mutandis*; and section 4 (5) provides that any order adjusting the rent, made under section 4, may be varied or set aside if the circumstances which led to the making of the order have materially altered. This may be done on the application of either the landlord or the tenant.

Section 5 restricts the ejectment of a tenant (a) for a period of two months from the publication of the aforesaid order under section 3 (1); (b) before final order of adjustment of the rent under section 4; or (c) so long as the tenant complies with the conditions of the Court order. Finally, section 7 stays proceedings in cases pending (a) for arrears of rent as from the 1st December, 1963, or (b) for recovery of possession on the ground of such arrears, until the Court adjusts the rent under the Law, whereupon the provisions of the Law shall apply.

These provisions show that the Law of 1965, under consideration, is a temporary measure to tide over an economic emergency, subject to certain strict conditions, namely, that (a) it applies only after the making of an order by the Council of Ministers under the provisions of section 3 (1) which lays down all the elaborate prerequisites for the making of such an order; (b) it applies only to those tenants who apply to the Court for relief within two months from the publication of the aforesaid order of the Council of Ministers, and to no other tenant. Even if he comes within the provisions of section 3 (1) a tenant cannot apply to the Court for relief after

the lapse of two months from the publication of the Ministerial order; (c) the tenant is protected from ejectment so long as he complies with the conditions of the order made by the Court under the provisions of section 4; (d) the order made by the Court under the provisions of section 4, adjusting the rent payable by the tenant, may, on the application either of the landlord or the tenant, be varied or even set aside if the circumstances have materially altered; and (e) the Council of Ministers may revoke their order under section 3 (1) if the circumstances which led to the making of such an order have ceased to exist, whereupon the provisions of the Law shall cease to apply (subject to any specified conditions).

Considering the circumstances under which the Law of 1965 came to be enacted, I am satisfied that severe economic conditions, arising out of the well-known recent events since December, 1963, created a public economic emergency, calling for the exercise of the State's police power. I am further satisfied that relief is justified by the economic emergency, that it is of an appropriate character and is granted upon reasonable conditions, I, therefore, hold that the aforesaid Law of 1965 is a reasonable and valid exercise of the State's reserved power to protect the vital interests of the public during the emergency and that it does not violate Article 26.1 of our Constitution. The State had both a duty and authority to safeguard the vital interests of a certain class of people; and, to adapt the words of the Chief Justice in the *Blaisdell* case (*supra*), the policy of protecting the freedom of contract presupposes the maintenance of a Government by virtue of which contractual relations are worth while a Government which retains adequate authority to secure the peace and good order of society.

For these reasons I would allow the appeal, set aside the judgment of the Court below and remit the case to the District Court to be heard on the merits. In the circumstances of this case I would not make any order as to the costs of appeal and would order that the costs in the Court below shall be costs in cause.

VASSILIADES, P. : I had the advantage of reading in advance the judgment of Mr. Justice Josephides; and of discussing the matter in conference with my brother Judges.

With respect, I find myself in full agreement with the approach of the learned Judge to the first two matters in issue; and with his conclusion that the Depressed Tenants Relief Law, 1965,

(Law 19 of 1965) is applicable to contractual tenancies, and therefore to the case in hand.

I also find myself in agreement with what has been stated in the judgment just read, regarding the Constitutional provisions in paragraphs 1, 2 and 3 of Article 23 of the Constitution; and the view that Law 19 of 1965 as far as applicable to this case, is not repugnant to the Constitutional provisions in question.

As regards the part of the Judgment which refers to Article 26 of the Constitution, I am inclined to the view that this Article guarantees the right to enter into legal contracts, subject to the conditions and qualifications therein; and does not refer to the rights created under such contracts. The English version of the text expressly refers to "the right to enter freely into any contract ....." and I read the words "τὸ δικαίωμα τοῦ συμβάλλεσθαι ἐλευθέρως ", in the Greek version, as referring to the time of entering into the contract; and not otherwise. Therefore, in my opinion, Article 26 is not applicable to the matter in hand.

I would decide the question of the Constitutionality of Law 19 of 1965, raised in this case, in favour of the appellant; and, agreeing with the result suggested in the judgment of Mr. Justice Josephides, I would allow the appeal and remit the case to the District Court for hearing on the merits, accordingly. I also agree with the proposed order regarding costs.

TRIANTAFYLLIDES, J.: In this case I have had the benefit of perusing in advance the just delivered judgments of the President of the Court, Mr. Justice Vassiliades, and of Mr. Justice Josephides.

I am in agreement with Mr. Justice Josephides that the Depressed Tenants Relief Law, 1965 (Law 19/65) does apply to contractual tenancies.

Also, on the issue of constitutionality—in relation to Article 23 of the Constitution—of the relevant provisions of Law 19/65, I am, again, in agreement with the conclusion reached by Mr. Justice Josephides, namely, that Article 23 is not relevant to the matter, because any restrictions or limitations that may be found to be imposed on property through Law 19/65 are not imposed in the interests of the State or of any public body; therefore, they are outside the ambit of any provision to the contrary to be found in Article 23.

Regarding, however, the issue of constitutionality of Law 19/65, in relation to Article 26 (1) of the Constitution, I take the view, together with the President of the Court, and in agreement with a relevant submission made by the Attorney-General of the Republic as *amicus curiae*, that Article 26 (1) guarantees only *the right of entering into contracts*, as distinct from *rights arising under contracts*. Such a distinction flows naturally from the very context of Article 26 (1) and, moreover, is one well-known in Constitutional Law; for example, it has been adopted in Indian Constitutional Law, even though such a course was not necessitated by the wording of any express constitutional provision—because in India the freedom of contract has been found to be safeguarded, by implication, under the constitutional provisions guaranteeing the right to property and the freedom of profession or business (see Basu's Commentary on the Constitution of India, 5th ed., vol. 1, p. 751). Also, Rottschaefer, an American writter, distinguishes, in his book on Constitutional Law, (1939) p.565, "the right to contract" from "the obligation of an agreement resulting from an exercise of that right".

As what is in issue in this case is the constitutionality of the application of Law 19/65 to rights arising under a contract of lease, and not to the right to enter into such a contract, it follows that Article 26 (1) is not relevant, either, to the constitutionality of the provisions concerned of Law 19/65; thus, Law 19/65 cannot be found to be unconstitutional as contravening Article 26 (1).

The parties to this appeal, in arguing the case before this Court, have placed the issue of constitutionality, in relation to Article 26 (1), on the footing of the "reserved powers" —or "police powers"—of Government; they seemed to assume that the Government—on this occasion the Legislative Branch thereof—could, in the exercise of such powers, interfere with the right guaranteed under Article 26 (1); counsel appeared to differ only on the point of whether or not Law 19/65 constitutes a proper, in the circumstances, use of the said powers.

The approach of the "police powers" has been adopted, also, in one of the learned judgments already delivered in this case.

As, with respect, I do find myself unable, as at present advised to agree with the determination, on such a footing, of the *sud judice* issue of constitutionality—in relation to Article 26 (1)—

I have felt dutybound, in view of the importance of the matter, to put on record at some length my views, for future reference, if need be :

I would commence by observing that in determining an issue of constitutionality of legislation–raised by reference to a specific constitutional provision, such as Article 26 (1)–this Court does not have its hands tied by the approach of the parties, but it is entitled, and bound, to examine such issue from all its necessary aspects.

One such aspect, in the present case, is that paragraph 1 of Article 26, which reads :

> "1. Every person has the right to enter freely into any contract subject to such conditions, limitations or restrictions as are laid down by the general principles of the law of contract. A law shall provide for the prevention of exploitation by persons who are commanding economic power".

must be construed in conjunction with paragraph 1 of Article 33, which reads :

> "1. Subject to the provisions of this Constitution relating to a state of emergency, the fundamental rights and liberties guaranteed by this Part shall not be subjected to any other limitations or restrictions than those in this Part provided".

Both Articles–26 and 33–are to be found in the same Part of the Constitution, Part II, which deals with Fundamental Rights and Liberties. Article 26 is a substantive provision. Article 33 (1) is not an independent substantive provision, but an ancillary, omnibus, one, governing the application of all substantive provisions in Part II, such as Article 26. So, though Article 33 (1) was not specifically referred to in argument, this Court, in applying Article 26 (1), has to bear in mind Article 33 (1).

Indeed, the solemn obligation of this Court, under Article 35 of the Constitution, to secure within the limits of its competence "the efficient application of the provisions" of Part II of the Constitution, leaves no room for doubt that Article 33 (1) –such as it is–has to be duly borne in mind in applying Article 26 (1), even though it was not referred to in argument by the parties.

As Article 33 (1) is not a separate independent substantive provision, against which the constitutionality of the relevant provisions of Law 19/65 is to be tested, but it is a provision which has to be read in conjunction with, and as part of, Article 26 (1), which is the provision relied upon by the Respondent in support of the contention of unconstitutionality, it cannot be said—in accordance with relevant Constitutional Law principle, as evolved in the United States (see, *inter alia*, *New York Central & Hudson River Railroad Company* v. *City of New York*, 186 U.S. 269, 46 Law.ed. 1158)—that, once Article 33 (1) was not relied upon by the parties, it must not, or cannot, be taken into consideration in determining the *sub judice* constitutionality issue.

Perhaps, even, one might be inclined to the view that this Court, in a case such as the present one, would have to bear in mind Article 33 (1), even if it were a separate substantive provision, and notwithstanding any principle elsewhere to the contrary, because, but for the enactment of the Administration of Justice (Miscellaneous Provisions) Law 1964 (Law 33/64) and the case of *The Attorney-General* v. *Ibrahim* (1964 C.L.R., 195), the *sub judice* issue of constitutionality would have been made the subject of a reference under Article 144 of the Constitution and in such a case such issue would have had to be determined in toto (see *Tyllirou and Tylliros*, 3 R.S.C.C. p. 21).

Article 33 (1), as quoted above, provides, in effect, that there can be no question of any restriction or limitation of the fundamental rights and liberties guaranteed in Part II (see Articles 6-31), *otherwise* than as provided for in Part II or, in relation to a state of emergency, as provided for under Article 183 of the Constitution.

Once an express provision such as Article 33 (1) is to be found in Part II of our Constitution it inevitably excludes, in relation to the rights and freedoms guaranteed in Part II, the exercise by Government of any police powers *not expressly provided for*, or the course of holding as valid action taken apart from relevant Constitutional provisions in case of necessity (as was done, in relation to other Parts of the Constitution, in *Attorney-General* v. *Ibrahim*, *supra*).

Let us take, by way of an obvious example, Article 7 of the Constitution, which safeguards the right to life and enumerates specifically the instances in which a Law may provide for the

death penalty. Is it proper to rely on the notions of Governmental police powers or necessity in order to hold that it is possible to provide by legislation for the death penalty in relation to crimes other than those expressly specified in Article 7 itself? In my view, the answer must, clearly, be in the negative; the more so as under Article 183 provision is expressly made, in case of a state of emergency, for the suspension of Article 7 "only in so far as it relates to death inflicted by a permissible act of war".

The existence of an *implied* right of the Government to exercise police powers, in relation to the rights and liberties guaranteed in Part II, is neither needed nor posible, because such right is *expressly* provided for in our Constitution, by appropriate exhaustive provisions in the several Articles concerned, in Part II (see, for example, Articles 7 (2) (3), 10 (3), 11 (2) (3), 13 (1) (2), 15 (2), 16 (2), 17 (2), 18 (6), 19 (3), 20 (1), 21 (3) (5), 23 (3) (4) (7) (8), 25 (2) (3), 26 (1), 27 (1) (2), 30 (2)).

Thus, we find, repeatedly, express provision being made, in the various Articles in Part II, enabling the exercise of police powers for the sake and protection, *inter alia*, of the security of the Republic, constitutional order, public safety, public order, public health, public morals and for the protection of the rights and liberties of others.

Also, under Article 183 of the Constitution, it is rendered possible, in case of emergency, to suspend the operation of certain of the Articles in Part II.

Moreover, the Articles in Part II are not basic Articles of the Constitution and, therefore, if found to be inimical to the interests of the country, they may be amended accordingly.

In the United States of America the notion regarding resort by Government to an implied right to exercise police powers has developed in a constitutional context which, in this respect, is radically different from our own. In the United States the Constitution guarantees certain rights and liberties without providing for, fully and expressly, in connection therewith, the instances of regulatory intervention by Government, in the exercise of its police powers—as does the Cyprus Constitution; thus, it became necessary in the United States to prescribe by judicial decision the limits of possible restriction of the rights and liberties concerned; and there is nothing in

the United States Constitution to the same effect as our Article 33 (1)—which is the logical corollary of the fact that the exercise of police powers in relation to the rights and liberties guaranteed in Part II of our Constitution has not been left to be propounded upon by judicial decision but has been exhaustively, expressly and amply, provided for in the Constitution itself.

The juridical concept behind Governmental intervention, in the United States, for the purpose of regulating rights and liberties, is well set out in the opinion of the United States Supreme Court delivered by Mr. Justice Holmes in the case of *Noble State Bank* v. *Haskell* (49 U.S. 104, 55 Law. ed. 112) wherein it is stated, *inter alia* :

> "It may be said in a general way that the police power extends to all the great public needs. *Camfield* v. *United States*, 167 U.S. 518, 42 Law. ed. 260. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare".

It is also useful to quote the following from the majority opinion of the United States Supreme Court, delivered by Mr. Justice Roberts, in *Nebbia* v. *People of the State of New York* (291 U.S. 502, 78 Law. ed. 940) :

> "Under our form of government the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest".

.....

> "Justice Barbour said"—*New York* v. *Miln* (9 L. Ed. 648)—"for this court :
>
> ".... it is not only the right, but the bounden and solemn duty of a state, to advance the safety, happiness and prosperity of its people, and to provide for its general

welfare, by any and every act of legislation, which it may deem to be conducive to these ends; where the power over the particular subject, or the manner of its exercise is not surrendered or restrained, in the manner just stated. That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not thus surrendered or restrained; and that, consequently, in relation to these, the authority of a state is complete, unqualified, and exclusive".

"And Chief Justice Taney said"—in *Thurlow* v. *Massachusetts* (12 Law. ed. 256)—"upon the same subject :

"But what are the police powers of a State? They are nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions. And whether a State passes a quarantine law, or a law to punish offences, or to establish courts of justice, or requiring certain instruments to be recorded, or to regulate commerce within its own limits, in every case it exercises the same power; that is to say, the power of sovereignty, the power to govern men and things within the limits of its dominion. It is by virtue of this power that it legislates; and its authority to make regulations of commerce is as absolute as its power to pass health laws, except in so far as it has been restricted by the Constitution of the United States".

Then the opinion in the *Nebbia* case proceeds to enumerate, by way of example, numerous instances in which the exercise of police powers was upheld judicially as being constitutionally valid; a mere perusal thereof will show at once that they correspond closely to instances of the exercise of police powers expressly provided for in Part II of our Constitution.

Coming now specifically to the freedom of contract, we find that in the United States Constitution the relevant express provision is the one protecting against interference therewith by means of the exercise of the legislative powers of the States, namely, section 10 of Article I, which reads, in its material part, as follows :

"No State shall.... pass any.... Law impairing the Obligation of Contracts....."—(and in this respect one should notice the difference between the wording of our own Article 26 (1), namely, "right to enter freely into any contract", and that of the above United States constitutional provision, namely, "obligation of Contracts").

Protection of the freedom of contract in the United States as against Federal action of any kind, or State action other than legislative one, has been held to exist, by implication, on the strength of the constitutional guarantees about due process, in the Fifth Amendment, and about due process and equal protection, in the Fourteenth Amendment of the United States Constitution (see Rottschaefer, *supra*, p. 537, 558; *Allgever* v. *Louisiana*, 165 U.S. 578, 41 Law. ed. 832; *Adkins* v. *Children's Hospital of the District of Columbia* 261 U.S. 525, 67 Law. ed. 785, and *Lynch* v. *United States of America*, 292 U.S. 571, 78 Law. ed. 1434).

As there exists no express constitutional provision at all in the United States Constitution regarding the imposition, in the public interest, of necessary restrictions on the freedom of contract, through the exercise of police powers, such imposition has been held to be possible by judicial decisions, such as in the *Nebbia* case (*supra*) and in the cases of *Block* v. *Hirsh* 256 U.S. 135, 65 Law. ed. 865 and *Home Building and Loan Association* v. *Blaisdell*, 290 U.S. 398, 78 Law. ed., 413; in this connection the same approach was followed, regarding the exercise of police powers, as in relation to other rights and liberties which are guaranteed under the United States Constitution in general terms and without any express qualifying clauses enabling the exercise of such police powers.

In my opinion it is not possible to rely on the aforementioned United States case-law—decided in a different constitutional context than our own—in order to hold that *although* Article 26 (1) does not provide expressly for the possibility of the exercise of police powers in order to restrict in the public interest, in case of emergency, the right guaranteed under it, and *although* Article 26 (1) is to be found in Part II of our Constitution in which the exercise of police powers, on several grounds of public interest, is specifically provided for in relation to each guaranteed therein right and liberty—(see, for example, the immediately preceding Article 25 and the immediately following Article 27)—*nevertheless* resort may be had to police powers of Government in order to restrict, on grounds of public interest, in an emergency or otherwise, the right guaranteed under Article 26 (1); and this in the teeth of an express provision to the contrary such as Article 33 (1) and in disregard of the fact that the fate of provisions in Part II in case of emergency is expressly provided for in Article 183 of our Constitution.

Chief Justice Hughes, in delivering the majority opinion of the United States Supreme Court in the *Blaisdell case* (*supra*),

had this to say in relation to emergency powers vis-a-vis existing constitutional provisions :

> "But even the war power does not remove constitutional limitations safeguarding essential liberties. When the provisions of the Constitution, in grant or restriction, are specific, so particularized as not to admit of construction, no question is presented. Thus, emergency would not permit a State to have more than two Senators in the Congress, or permit the election of President by a general popular vote without regard to the number of electors to which the States are respectively entitled, or permit the States to 'coin money' or to 'make anything but old and silver coin a tender in payment of debts'. But where constitutional grants and limitations of power are set forth in general clauses, which afford a broad outline, the process of construction is essential to fill in the details. That is true of the contract clause".

As already pointed out there exists no provision in Article 26 (1) enabling restriction in the public interest, in case of an emergency, of the right guaranteed thereunder; nor is it possible under Article 183 to suspend such right in case of an emergency. Is it then the position that the Constitution intends that the freedom of contract should be totally inviolable, even in case of a public emergency? The answer is, in my view, in the negative, because, as held earlier on in this judgment, the right under Article 26 (1) is not the freedom of contract in the wide sense of the term, but only the right to enter into a contract. Thus, there is no constitutional prohibition against regulating by legislation, in an emergency or otherwise, the obligations arising under contracts; furhermore, as the right to enter into a contract, guaranteed by Article 26 (1), is expressly made "subject to such.... restrictions as are laid down by the general principles of the law of contract", and as one of such general principles is that contracts which are contrary to law are invalid, it is open to Covernment to regulate, through legislation in force at the time, the manner in which the right to enter into a contract is to be exercised, provided that such legislation is not otherwise contrary to the Constitution—as, for example, by being contrary to Article 28 (2) of the Constitution.

Having set out as above my position in relation to the question of regulating the right guaranteed under Article 26 (1) through the exercise of police powers not expressly provided for therein,

I would conclude by stating, for the reasons set out earlier in this judgment, that I do regard Law 19/65 to be applicable to this case, that its relevant provisions are not unconstitutional as being contrary to Articles 23 or 26, and that, therefore, this appeal should be allowed and the case be remitted for trial on its merits.

STAVRINIDES, J. : I have had the advantage of reading the judgment of Triantafyllides, J., with which I concur.

LOIZOU, J. : I also agree with the result. I had the advantage of reading in advance the judgment of the President of the Court and I am in full agreement with the reasons given therein.

HADJIANASTASSIOU, J. : I had the advantage of reading in advance the judgment of Mr. Justice Josephides and I find myself in agreement, but in view of the nature of the case I venture to add a few words.

The first question in this case is whether the Depressed Tenants Relief Law 1965 (Law 19/65) applies also to the contractual tenants.

It is an accepted fact that the appellant has been the tenant of the premises situated at No. 11 and 13 Hermes Street, Nicosia, for a number of years and that the original rent was £2.500 mils per month; but by a contract of lease dated the 25th June, 1959 the rent was agreed between the parties at £384.– per annum, that is, £32.– per month. The appellant who is still a contractual tenant uses these business premises as a leather-shop; he now claims that since the fighting broke out between the Greek and Turkish Cypriots in December, 1963, Hermes Street had become what is known as a "green line" and, for the first six months was unable to carry on any business and that after that period his volume of business has been very limited. As a relief the appellant submitted that the rent of the shop should be reduced to £96.– per annum with effect from the 1st December, 1963; the respondent did not accept this rent and submitted that the Law 19 of 1965 is unconstitutional.

The learned trial Judge in his judgment had this to say at p. 13 :

> "Therefore, from a comparison of the two definitions, it emanates that in the definition given in Law 17/61 a 'contractual tenant' is expressly excluded from applying for

any relief under the provisions of Law 17/61 whereas it is not expressly provided in the definition of Law 19 of 1965, excluding a 'contractual tenant' from invoking the remedies of Law 19/65, the question still is whether the intention of the legislature was to entitle a 'contractual tenant' holding business premises within the distressed area to apply for relief under section 4 (1) of Law 19/65".

and further down in the middle of the same page he went on to say :

"Having in mind the good sense of the members of the House of Representatives to respect the provisions of the Constitution relating to the fundamental rights and liberties of the citizens of the Republic, the proper construction that it may be put on the definition of "ὑποστατικὰ ἐργασίας" (business premises) as given under section 2 (1) of Law 19 of 1965 was not wholly to substitute the definition of the same term in section 2 (1) of Law 17/61 and, therefore, it was not the intention of the legislature to include 'contractual tenants' among the tenants who may apply under section 4 (1) of Law 19 of 1965 for relief as therein provided".

With respect to the learned trial Judge, I take the view that although contractual tenancies were excluded from the Law of 1961, nevertheles it is clear from the wording of section 4 (1) of Law 19 of 1965 "any tenant of premises within a depressed area" that the legislature intended to include such contractual tenancies within the ambit of the Law 19 of 1965; and in order to relieve a class of persons that is the depressed tenants in a "depressed area" from the burden of high rent. As I am in full agreement with the reasons given by my learned brother Mr. Justice Josephides, I hold that the Law 19 of 1965 applies not only to statutory tenancies but also to contractual tenancies.

The next question is whether the provisions of Law 19 of 1965, as submitted by counsel for the Respondent, are repugnant to the provisions of Article 23, paragraphs 1, 2 and 3, of the Constitution as it is alleged that they impose a restriction or limitation on the right of a landlord's property without providing for the payment of just compensation; and of Article 26 paragraph 1 of our Constitution.

In the light of the authorities cited in the first judgment of Mr. Justice Josephides, which I need not repeat, I am of the opinion that as the restriction or limitation in the present case,

is not effected in the interests of the State or/any public body, the provisions of the Law 19 of 1965 which regulate the civil law rights in property between the parties, are not repugnant to the provisions of Article 23, paragraph 1, 2 and 3 of the Constitution.

In order to decide the question whether the provisions of the Law 19 of 1965 are repugnant to the provisions of Article 26 paragraph 1, I consider it convenient to quote Article 26, paragraph 1 of the Constitution :

> "26.(1)—Every person has the right to enter freely into any contract subject to such conditions, limitations or restrictions as are laid down by the general principles of the law of contract. A law shall provide for the prevention of exploitation by persons who are commanding economic power".

I am of the view that Articles 25 and 26 of the Constitution, are complementary to each other and both guarantee the fundamental rights and liberties of every citizen as against the interference by the State. I am of the opinion that the wording in paragraph 1 of Article 26 "the right to enter freely into a contract" is not limited only at the time of entering into such contract but one should construe it that it refers to the notion of the freedom of the contract, subject of course, to such conditions, limitations or restrictions as are laid down by the general principles of the Law of Contract. Vide on this point «Δικαίωμα τοῦ Συμβάλλεσθαι» Svolos & Vlahos The Constitution of Greece (1954) vol. A pages 325-326 and 333-334. See also the judgment of Mr. Justice Sutherland delivering the opinion of the U.S. Supreme Court in the case of *Adkins* v. *Children's Hospital*, (1922) 261 U.S. 525 (67 Law. ed. 785) the reasoning of which I adopt :

> "There is of course no such thing as absolute freedom of contract. It is subject to a great variety of restraints but freedom of contract, is nevertheless, the general rule and restraint the exception."

Since the provisions of the Law 19 of 1965 are of a temporary nature and considering the circumstances under which this Law came to be enacted, due to the fighting in Nicosia which created an economic emergency within the area of the "green line", it was the duty of the State in the exercise of its reserved police power under the provisions of Article 26 (1) to give relief from the enforcement of such contracts because of the

urgent public need demanding such relief as in the present case in order to safeguard the public interests and grant relief to the depressed tenants. I am satisfied that the relief is justified by the public necessity because of economic causes created and that the measures taken are reasonable and appropriate to that end.

I would like to point out however, that I have reached my conclusions that the State possess a recerved power under the provisions of Article 26 (1) to interfere with the freedom of contract in order to safeguard the vital interests of its people during an emergency, a point submitted also by all counsel appearing in this case, for the reasons I have given earlier and because I did not have the advantage of hearing argument, nor has it been specifically raised, whether or not Law 19 of 1965 violates Article 33 of our Constitution. I consider it constructive to point out that the Court has no general and inherent power to annul a statute on the ground of unconstitutionality and that, accordingly, the Court will not inquire into the constitutionality of a statute or of any of its provisions on its own motion. It will entertain only those constitutional questions which are specifically raised and properly presented by the parties.

In taking this stand I have derived valuable assistance from the reasoning of the American authorities, which I would adopt. Vide *Everson* v. *Board of Education* (1947) 330 U.S. 1, *U.S.* v. *Nudelman* (1939) 308 U.S. 589 and *Aircraft Equipment Corp.* v. *Hirsch* (1947) 331 U.S. 752.

For the reasons I have endeavoured to explain I have reached the opinion that the provisions of the Law 19 of 1965 are not repugnant to Article 26 (1) of our Constitution. I would, therefore, allow the appeal and the judgment of the trial Court is set aside. The case to be remitted to the District Court to be heard on the merits.

VASSILIADES, P. : In the result the appeal is allowed, the judgment of the trial Court is set aside and the case is remitted to the District Court of Nicosia to be heard on the merits. In the circumstances, we make no order as to costs in the appeal; and we order the costs in the trial Court to be costs in cause.

Appeal allowed. Judgment of trial Court set aside. Case remitted to trial Court to be heard on the merits. Order for costs as aforesaid.