1978 November 6

[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU, HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CONSTANTINOS IOANNIDES AND OTHERS,

Applicants.

v.

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

Respondents.

(*Case Nos.* 327/77, 369/77, 68/78)

Income Tax Law, 1961 (*Law* 58 *of* 1961)—*Old section* 21 *and new section* 22 *of the Law unconstitutional as being contrary to Articles* 24.1 *and* 28.1 *of the Constitution.*

Income tax—Husband and wife—Wife's income—Old section 21 *and new section* 22 *of the Income Tax Law*, 1961 (*Law* 58/61)—*Taxing, thereunder, husband on the combined total of his and his wife's income derived from sources other than from her own labour—Unconstitutional as being contrary to Articles* 24.1 *and* 28.1 *of the Constitution.*

Equality—Principle of equality—Fiscal equality—Articles 24.1 *and* 28 *of the Constitution—Old section* 21 *of the Income Tax Law*, 1961 (*Law* 58/61) *and new section* 22—*Aggregating thereunder, wife's income, from sources other than from her own labour, with that of her husband, for income tax purposes, unconstitutional as being contrary to the above Articles.*

Decided cases—Mikrommatis *v.* The Republic, 2 *R.S.C.C.* 125, *to the effect that the aggregation of the income of a wife, from sources other than from her own labour, with that of her husband, for income tax purposes, was not unconstitutional—Wrongly decided—Reversed.*

The applicants in these recourses challenged the decision of the Commissioner of Income Tax, who decided that the income

of their wives, not derived from their own labour, but from other sources, should be aggregated, for taxation purposes, on their income. The assessments of income tax complained of covered the years of assessment 1966 to 1975, both inclusive.

In making the assessments with regard to the years of assessment 1966 to 1968 the respondent Commissioner relied on the old section 21* of the Income Tax Law, 1961 (Law 58/61); and with regard to the years of assessment 1969 to 1975 he relied on the new section 22** of Law 58/61, which replaced the old section 21 of Law 58/61 when such Law was amended in this respect by means of section 15 of the Income Tax (Amendment) Law, 1969 (Law 60/69).

The issue for determination was whether the said sections 21 and 22 were unconstitutional as being contrary to, or inconsistent with, the Constitution and in particular Articles 24 and 28 thereof, in so far as the said sections provide for the aggregation of the income of spouses for income tax purposes.

Section 21 of Law 58/61 was enacted as a result of the decision of the then Supreme Constitutional Court in *Mikrommatis* v. *The Republic*, 2 R.S.C.C. 125 whereby a distinction was drawn between the wife's income from labour and the wife's income from property and it was held that the addition of the former income to that of the husband was unconstitutional whereas the addition of the latter income to that of the husband was not unconstitutional.

Held, (*Triantafyllides P.* and *A. Loizou, J. dissenting*) (1) that the old section 21 of the Income Tax Law, 1961 (Law 58/61) and the new section 22 of Law 58/61 are unconstitutional as being contrary to Articles 24.1 and 28.1 of the Constitution (reasoning of the judgment of Malachtos J. in *Republic* v. *Demetriades* (1977) 1 2 J.S.C. 2102 and of the judgment of the Italian Constitutional Court in Case No. 179/76 *adopted*).

(2) That the decision of the Supreme Constitutional Court in the case of *Mikrommatis* v. *The Republic*, 2 R.S.C.C. 125, to the effect that the aggregation of the income of a wife, from sources other than from her own labour, with that of her husband, for

* Quoted in full at p. 317 *post*.

** Quoted in full at p. 318 *post*.

income tax purposes, was not unconstitutional, should be considered as wrongly decided and should be reversed.

(3) That, therefore, not only the income of a married woman, living with her husband, derived from practising any profession or carrying on any occupation, trade or business, but also the income derived from any source such as dividends, interest and rents should, for income tax purposes, be considered as separate income of the married woman and should not be added to the income of her husband as provided by the relevant legislative provisions; and that, accordingly, the *sub judice* assessments must be declared null and void.

Sub judice assessments annulled.

Cases referred to:

Republic v. *Demetriades*, (1977) 12 J.S.C. 2102 (to be reported in (1977) 3 C.L.R.);

Mikrommatis v. *The Republic*, 2 R.S.C.C. 125;

Demetriades v. *Republic* (1974) 3 C.L.R. 246;

Hoeper v. *Tax Commission of Wisconsin*, 76 Law. Ed. U.S. 248;

Derry v. *Commissioners of Inland Revenue*, 13 T.C. 30;

Xinari v. *Republic*, 3 R.S.C.C. 98;

Panayides v. *Republic* (1965) 3 C.L.R. 107;

Fitzleet Estates Ltd. v. *Cherry* (*Inspector of Taxes*) [1977] 3 All E.R. 966 at pp. 999, 1000, 1001–1003;

Constantinides v. *Republic* (1967) 3 C.L.R. 483 at p. 492; (1969) 3 C.L.R. 523 at p. 553;

Loizides and Others v. *Republic*, 1 R.S.C.C. 107;

Burnet v. *Coronado Oil and Gas Co.*, 76 L. Ed. 815;

Genesee Chief v. *Fitzhugh*, 13 L. Ed. 1058;

Smith v. *Allwright*, 88 L. Ed. 987;

Glidden Co. v. *Zdanok*, 8 L. Ed. 2d 671;

Paul v. *Virginia*, 19 L. Ed. 357;

Prudential Ins. Co. v. *Benjamin*, 90 L. Ed. 1342;

Decision of the Constitutional Court of Italy in Case No. 179/76;

Decision of the Federal Constitutional Court of the Federal Republic of Germany in Case No. 9/57;

Califano, JR., Secretary of Health, Education, and Welfare v. *Goldfarb*, 51 L. Ed. 2d 270 at pp. 278–279;

Trimble v. *Gordon*, 52 L. Ed. 2d 31;

Ohio Bureau of Employment Services v. *Hodory*, 52 L. Ed. 2d 513;

Lindsley v. *Natural Carbonic Gas Co.*, 55 L. Ed. 369;

Dandridge v. *Williams*, 25 L. Ed. 2d 491.

Recourses.

Recourses against the decision of the respondent Commissioner of Income Tax to the effect that the income of applicants' wives, not derived from their own labour, but from other sources, should be aggregated, for taxation purposes, with the income of the applicants.

A. Triantafyllides, for the applicants in cases Nos. 327/77 and 369/77.

A. Pandelides, for the applicant in case No. 68/78.

A. Evangelou, Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgments were read:

L. Loizou J.: The issue in these consolidated recourses was dealt with by this Court in its Appellate Jurisdiction in Revisional Jurisdiction Appeal No 141, *The Republic* v. *Demetriades*, reported in (1977) 12 J.S.C. at p. 2102*.

In the judgment delivered in that appeal I subscribed to the view, in agreement with Malachtos, J., that the relevant sections of the Income Tax Law (section 21 of Law 58 of 1961 as amended, which since the enactment of Law 60 of 1969 has been replaced by section 22) under the provisions of which the income of a married woman living with her husband derived from sources other than her profession, occupation, trade or business was added to that of her husband for assessment for income tax purposes were unconstitutional as offending the provisions of Articles 24 and 28 of the Constitution and that, therefore, that part of the judgment in the case of *Argyris Mikrommatis and The Republic* (2 R.S.C.C. p. 125) which held to the contrary and indeed on the basis of which the relative legislative provisions were enacted, was wrongly decided by the then Supreme Constitutional Court.

Having heard the arguments advanced by both sides in the

* To be reported in (1977) 3 C.L.R.

present cases I have not been persuaded that I should depart from the view I formed in the *Demetriades* case. If anything this view has been strengthened by the decisions in the Italian case, on a similar issue, cited in the present cases.

In my view, therefore, these recourses must succeed and the assessments of income tax made in the case of the Applicants should be declared null and void and of no effect.

In all the circumstances I am of the view that there should be no order as to costs.

HADJIANASTASSIOU J.: On April 27, 1974, I have issued a long judgment in *Demetriades* v. *The Republic*, (1974) 3 C.L.R. 246, and having considered the contentions of both counsel regarding the constitutionality of the relevant provisions of the Income Tax Laws, 1961–1969, I had this to say at pp. 278–279:–

" For the reasons advanced, I have reached the view that the addition of the unearned income of the wife to that of the applicant brings about the inequality safe-guarded by Article 28 and results in a discriminatory treatment between married men who enjoy their income to a lesser extent depending on the wife's income over which, as I said earlier, they have no legal right. Similarly, a discrimination results between married men whose wives derive income from their labour on the one hand and those whose wives derive income from their property on the other hand. In my opinion, therefore, subsection 2 of s.22 and all other similar income tax enactments between 1961-1969, as applied to the applicant, do not justify such differentiation based on the intrinsic nature of marriage, because a married man is placed in a disadvantageous position vis-a-vis any other man with the same profession, occupation, trade or business whose wife earns an income through her labour once such differentiation is not a reasonable distinction based on the intrinsic nature of the marriage, nor is it otherwise justified, because the exaction of tax is arbitrary. Moreover once our law is a revenue measure and not one imposing regulatory taxes—I think that I can do no better than quote the words of Mr. Justice Roberts in Hoeper's case, that 'It is obvious that the act does not purport to regulate the status or relationships of any person, natural or

artificial. Arbitrary and discriminatory provisions contained in it cannot be justified by calling them special regulations of the persons or relationships which are the object of the discrimination'. Those words seem to me to apply also to the case in hand. I would, therefore, uphold counsel's contention and declare that the enactments between 1961–1969, are unconstitutional beyond reasonable doubt and as a result I find that the decision of the respondents is null and void and of no effect whatsoever because the wife of the applicant ought to have been taxed separately whether the income is derived through the exercise of her labour or through income from property."

Turning now to the present three cases which were heard together by the Full Bench of this Court, the applicants challenge the validity of income tax assessments. The applicant in case No. 327/77 challenged the assessments made in respect of the years of assessment 1966–1967 and 1968; the applicant in case No. 369/77 challenged the assessments for the years of assessment 1972–1975; and the applicant in case No. 68/77 challenged the assessments in respect of the years of assessment 1973, 1974, 1975 and 1976.

The question raised by counsel for the applicants regarding the constitutional issue was whether the old section 21 of the Income Tax Law, 1961 (Law 58/61), and the new section 22 of Law 58/61 when such law was amended by means of section 15 of the Income Tax (Amendment) Law (Law 60/69), are unconstitutional as being contrary to or inconsistent with the Constitution, and in particular Articles 24 and 28, in so far as the said sections provide for the aggregation of the income of spouses for income tax purposes.

Sitting today as a member of the Full Bench in delivering a separate judgment, I am delivering in effect the very same judgment I delivered in 1974. In adopting the same stand, I have relied and followed the reasoning of the majority of the Court in *Hoeper* v. *The Tax Commission of Wisconsin*, U.S. Supreme Court Reports 76 Law. Ed. U.S. 248, a case which was and is still on all fours with the present cases. The question before the Supreme Court of the United States was whether the said law, dealing with tax matters, as interpreted and applied, deprived the tax payer of due process and of the equal protection

of the law. The appellant in that case stated that what the State has done was to tax him on the combined total of his and his wife's income and that such taxation was arbitrary and discriminatory and consequently violative of the constitutional guarantees.

On the contrary, the Attorney-General submitted on behalf of the appellees that practical considerations upon which the legislature may well have relied are sufficient to sustain the law in question; and that under Wisconsin laws, the husband still had substantial pecuniary advantages from the property and income of his wife, which are not possessed by other persons; and the fact that, evasion of just income taxation (higher rates for higher income) would be easier if the incomes of husband and wife were not combined and tax assessed on this basis is a further consideration supporting the law.

Mr. Justice Roberts, speaking for the majority of the Court, reversed the Judgment of the Supreme Court of Wisconsin and had this to say at pp. 251-252:-

> " Since, then in law and in fact, the wife's income is in the fullest degree her separate property and in no sense that of her husband, the question presented is whether the state has power by an income-tax law to measure his tax, not by his own income but, in part, by that of another. To the problem thus stated, what was said in *Knowlton* v. *Moore*, 178 U.S. 41, 77, 44 Law. Ed. 969, 984, 20 S. Ct. 747, is apposite:
>
> > ' It may be doubted by some, aside from express constitutional restrictions, whether the taxation by Congress of the property of one person, accompanied with an arbitrary provision that the rate of tax shall be fixed with reference to the sum of the property of another, thus bringing about the profound inequality which we have noticed, would not transcend the limitations arising from those fundamental conceptions of free government which underlie all constitutional systems'.
>
> We have no doubt that, because of the fundamental conceptions which underlie our system, any attempt by a state to measure the tax on one person's property or income

by reference to the property or income of another is contrary to due process of law as guaranteed by the 14th Amendment. That which is not in fact the taxpayer's income cannot be made such by calling it income. (Compare *Nichols* v. *Coolidge*, 274 U.S. 531, 540, 71 Law. Ed. 1184, 1192, 52 A.L.R. 1081, 47 S. Ct. 710).

It is incorrect to say that the provision of the Wisconsin income tax statute retains or re-establishes what was formerly an incident of the marriage relation. Wisconsin has not made the property of the wife that of her husband nor has it made the income from her property the income of her husband. Nor has it established joint ownership. The effort to tax B for A's property or income, does not make B the owner of that property or income, and whether the state has power to effect such a change of ownership in a particular case is wholly irrelevant when no such effort has been made. Under the law of Wisconsin the income of the wife does not at any moment or to any extent become the property of the husband. He never has any title to it, or controls any part of it. That income remains hers until the tax is paid, and what is left continues to be hers after that payment. The state merely levies a tax upon it. What Wisconsin has done is to tax as a joint income that which under its law is owned separately and thus to secure a higher tax than would be the sum of the taxes on the separate incomes."

Then the learned Justice, dealing with the question of the regulation of marriage said at pp. 252, 253:-

" The second reason assigned as a justification for the imposition of the tax is that it is a regulation of marriage. It is said that the marital relation has always been a matter of concern to the state, and has properly been the subject of legislation which classified it as a distinct subject of regulation. It is suggested that a difference of treatment of married as compared with single persons in the amount of tax imposed may be due to the greater and different privileges enjoyed by the former, and, if so, the discrimination would have a reasonable basis, and constitute permissible classification. This view overlooks several important considerations. In the first place, as is pointed

out above, the state has, except in its purely social aspects, taken from the marriage status all the elements which differentiate it from that of the single person. In property, business and economic relations they are the same. It can hardly be claimed that a mere difference in social relations so alters the taxable status of one receiving income as to justify a different measure for the tax.

Again, it is clear that the law is a revenue measure, and not one imposing regulatory taxes. It levies a tax on 'every person residing within the state' and defines the word 'person' as including 'natural persons, fiduciaries and corporations', and 'corporations' as including 'corporations, joint stock companies, associations or common law trusts'. It lays graduated taxes on the incomes of natural persons and corporations at different rates. It is comprehensive in its provisions regarding gross income and allowable deductions and exemptions, and is in most respects the analogue of the federal income tax acts in force since 1916. It is obvious that the act does not purport to regulate the status or relationships of any person, natural or artificial. Arbitrary and discriminatory provisions contained in it cannot be justified by calling them special regulations of the persons or relationships which are the object of the discrimination. The present case does not fall within the principle that where the legislature, in prohibiting a traffic or transaction as being against the policy of the state, makes a classification, reasonable in itself, its power so to do is not to be denied simply because some innocent article comes within the prescribed class. Purity Extract Co. *v.* Lynch, 226 U.S. 192, 204, 57 Law. Ed. 184, 188, 33 S. Ct. 44. Taxing one person for the property of another is a different matter. There is no room for the suggestion that qua the appellant and those similarly situated the act is a reasonable regulation, rather than a tax law.

Neither of the reasons advanced in support of the validity of the statute as applied to the appellant justifies the resulting discrimination. The exaction is arbitrary and is a denial of due process."

On the contrary, Mr. Justice Holmes echoed in his dissenting

Judgment almost the same line of thinking as that taken by Lord Sands in *Derry* v. *Commissioners of Inland Revenue*, 13 T.C. 30, and had this to say, inter alia, at p. 253:–

> "The statutes are the outcome of a thousand years of history. They must be viewed against the background of the earlier rules that husband and wife are one, and that one, the husband; and that as the husband took the wife's chattels he was liable for her debts. They form a system which echoes of different moments none of which is entitled to prevail over the other. The emphasis in other sections on separation of interests cannot make us deaf to the assumption in the sections quoted of community when two spouses live together and when usually each would get the benefit of the income of each without inquiry into the source."

Having had also the advantage of reading this time, the full text of the decision of the Federal Constitutional Court of the Federal Republic of Germany in Case No. 9 of 1957 regarding the joining of the income of husband and wife, I have reached the conclusion that this case has introduced the principle of fiscal equality whereby every person, male or female, who is having an income, is bound to contribute according to his or her means towards the fiscal burdens of the state, and the aggregation of the incomes of the spouses is not permitted, unless the aggregation works in their favour.

That there was an evolutionary process after *Mikrommatis* v. *The Republic*, 2 R.S.C.C. 125 was decided on December 11, 1961, clearly appears both from the trend of the decisions of the Supreme Court, and of the legislature, when Cyprus ratified on February 28, 1969, by means of the International Covenants (E onomic Social and Cultural Rights and Civil and Political Rights) (Ratification) Law 1969 (Law 14/69) the two United Nations International Covenants on human rights, which had been adopted by the United Nations General Assembly on December 16, 1966.

It is true that in the said two Covenants there are express provisions (see Article 3 of each Covenant respectively) regarding the equal right of men and women to the enjoyment of the rights set forth in the Covenants, and there are also provisions

such as Article 10(1) of the Covenants on economic, social and cultural rights and Article 23(1)(2) of the Covenants of Civil and Political Rights, regarding the protection of the family and the right to marry.

Having gone also through the decision of the Constitutional Court of Italy in Case No. 179/76, delivered on July 17, 1976, which had dealt clearly and thoroughly with a number of issues, I think with respect, that I am fortified in my conclusion of the stand I have taken in 1974 and today that *Mikrommatis* v. *The Republic*, (*supra*) was wrongly decided as from that date, for the reasons I have given at length earlier, and which I adopt in the present cases. In any event, I would like to add that I disagree with the statement made that the two sections of the law of Income Tax were justified and that they must be viewed against the back-ground of the earlier rules that husband and wife are one, and that is to be found in the community of life existing between spouses; and that the said community of life justifies treating the spouses, when living together, as one financial unit in this connection.

With respect, I repeat once again, that the decision taken was unconstitutional and was wrongly decided since December 11, 1961. With that in mind, I have formed the conclusion beyond reasonable doubt, that *Mikrommatis* case is contrary to the provisions of our Constitution, and in particular, Articles 24 and 28 the eof, and to apply as from the years of assessment of 1966, 1967, 1968, 1972, 1973, 1974, 1975 and 1976 any legislative provision which would result in the income of a wife from any source being deemed to be the income of her husband so that it could be aggregated with it, and taxed together with it for purpose of income tax is wrong.

I find it convenient to express my indebtedness to all counsel appearing in these cases for their labours, and because they have tried to show that there was an evolutionary process soon after the *Mikrommatis* case was decided by the decisions of the Supreme Court; and also by the Legislature when Cyprus ratified on February 28, 1969, by means of International Covenants (Economic, Social and Culture Rights, and Civil and Political Rights) (Ratification) Law, 1969 (Law 14/69) the two United Nations International Covenants on Human Rights,

which had been adopted by the United Nations General Assembly on December 16, 1966.

With that in mind, I think that the evolutionary process has started in *Xinari* v. *The Republic*, 3 R.S.C.C. 98; and *Panayides* v. *The Republic* (1965) 3 C.L.R., 107. In the latter case the Full Bench of the Supreme Court decided that legislation rendering an unmarried person liable to pay income tax of 20% in excess of what he would have otherwise paid had he not been unmarried was unconstitutional as contravening the principle of equality: See also *Demetriades* case (*supra*). There is no doubt that the trend of these decisions show that the Supreme Court was aware of the difficulties created by the decision in *Mikrommatis* case and has tried to minimize its harshness for the persons called to pay income tax for the income of their wives, which in law and in substance was never their own income. There cannot be any doubt that this liberal trend, if I may use these words, has received attention. The Covenants referred to earlier, although they were ratified by Cyprus in 1969, they did not come into force as Instruments of International Law, until 1976 when they were ratified by the requisite number of member States of the United Nations. Indeed I agree that the ratification by Cyprus in 1969 of these Covenants shows an acceptance by the Republic of Cyprus of the principles embodied therein, and an affirmation of the existence of a political and socioeconomic state of affairs, compatible with their provisions, and particularly with the provisions relating to the principle of equality, the protection of the family and the right to marry. But, in fairness to everyone, in reaching the conclusion that the legal provisions of our Income Tax Laws are unconstitutional—being contrary to the provisions of the Constitution, and in particular, of Articles 24 and 28, I have not relied on the Covenants in question.

Before concluding this judgment I find it necessary to dwell once again with the question of the judicial precedent, which was given a lot of prominence in some of the judgments delivered in the *Republic of Cyprus* v. *Demetriades* (1977) 12 J.S.C. 2102*; and in the present case where the Supreme Court had exercised its original jurisdiction, under the provisions of a law of necessity, viz., "The Administration of Justice (Miscellaneous Provisions) Law, 1964" (No. 33 of 1964). In Part III of the

* To be reported in (1977) 3 C.L.R.

said law, the jurisdiction and powers of the Court are, according to s. 9(a):

"The jurisdiction and powers, which have been hitherto vested in, or capable of being exercised by, the Supreme Constitutional Court and the High Court".

With regard to the manner of the exercise of the jurisdiction by the Court, s. 11(1) says that:-

"Any jurisdiction, competence or powers vested in the Court under section 9 shall, subject to subsections (2) and (3) and to any Rules of Court, be exercised by the Full Court...

(2) Any original jurisdiction vested in the Court under any law in force and any revisional jurisdiction, including jurisdiction on the adjudication of a recourse made against an act or omission of any organ, authority or person exercising executive or administrative authority as being contrary to the law in force of in excess or abuse of power, may be exercised, subject to any Rules of Court, by such Judge or Judges as the Court shall determine:

Provided that, subject to any Rules of Court, there shall be an appeal to the Court from his or their decision."

In delivering my judgment in the *Demetriades* case in 1974 sitting alone, I have accepted that in Cyprus judicial precedent may properly be regarded as a source of law, and that its binding effect is inherited from the English judicial system, and the Courts are bound to follow the ratio decidendi of the decided cases. English Courts made a habit of following their previous decisions within more or less well-defined limits; and the part of the case that is said to possess authority is the ratio decidendi viz., the rule of law upon which the decision is founded. English Courts as well as Cyprus Courts are bound to follow their previous decisions, and my purpose today in referring to that topic again is to distinguish the judic al precedent, as understood in England and in Cyprus, from the Continental system when dealing with Administrative Court cases, and to show clearly that the precedent has a persuasive guide only, and cannot be considered as a binding precedent.

In a recent case in *Fitzleet Estates Ltd.*, v. *Cherry* (Inspector of

Taxes) [1977] 3 All E.R. 996, H.L., Lord Wilberforce dealing with judicial precedent said at p. 999:

> " Nothing could be more undesirable, in fact, than to permit litigants, after a decision has been given by this House with all appearance of finality, to return to this House in the hope that a differently constituted committee might be persuaded to take the view which its predecessors rejected. True that the earlier decision was by majority: I say nothing as to its correctness or as to the validity of the reasoning by which it was supported. That there were two eminently possible views is shown by the support for each by at any rate two members of the House. But doubtful issues have to be resolved and the law knows no better way of resolving them than by the considered majority opinion of the ultimate tribunal. It requires much more than doubts as to the correctness of such opinion to justify departing from it."

Then Lord Diplock speaking at a Commonwealth meeting of Judges and lawyers at Edinburgh in 1977 on the "Judicial Functions" viz., that of determining disputes about man's duty to his fellow man or what is becoming more and more important, his remedies against abuse of governmental power said:-

> " It is this function which makes it inescapable that Judges should accept the responsibility of making new law not only in those fields which the legislature has been content to leave to be governed by Judge-made law, but also in those fields in which legal rights and duties have their sole origin in statute as, for example, fiscal legislation. A case arising out of circumstances that in some respect are novel falls to be decided by the Judge. If it is in the field of Judge-made law, he will have to decide it upon analogy to previous cases and to exercise a choice as to whether and how far to extend a principle that he thinks he can discern in them. If it is in the field of statute law the Judge may still have a similar choice if the statute is drafted in terms that are restricted to laying down broad principles, as in the Sale of Goods Act, 1893, or the Occupier's Liability Act, 1957: but even in the most detailed legislation the draftsman of it will not have foreseen all possible circumstances to which it may be necessary to decide whether or not the

words that he has used are applicable; and the Judge may have to choose between alternative meanings of which those words are capable of bearing. Call it construing the statute if you like; call it ascertaining the intention of the legislature; but recognise that by the way he exercises that choice the Judge makes new law.

There is, I think, a tendency to believe that the Judges play a larger role in law-making in those countries which have inherited or adopted the common law of England as the basis of their unwritten private law than the role played by Judges in those countries, represented in the Commonwealth by Sri Lanka and the Province of Quebec, whose substantive private law is derived from systems which have their origin in the civil law of the later Roman Empire, or those Commonwealth countries in Asia and in Africa which have followed the example set by India a hundred years and more ago, of embodying important branches of the inherited common law of England in statutory codes. But as respects the countries of the Commonwealth this just is not so. Codes in the field of private law that state principles upon which are based man's duties to his fellow man must needs be drafted in such broad terms as will leave to the Judge a large measure of appreciation as to their proper application to the circumstances of the particular case which he has to decide.....

Outside those fields of private law which in many other countries have been dealt with by codification, the general practice in drafting modern legislation in the United Kingdom has been to incorporate provisions regulating the subject-matter of the enactment in meticulous detail so as to limit to a minimum the possibility that circumstances may occur for which unequivocal provision cannot be found in the express words of the statute itself. My experience in the Privy Council suggests that most other Commonwealth countries have adopted a similar technique....

So in dealing with rights and duties which result from legislation the Judges of the other member states of the European Communities may well have more frequent opportunities of acting as if they were the legislators than their counter-parts in the United Kingdom and elsewhere

in the Commonwealth. What really distinguishes their influence in the development of the law from that of our judiciaries is the outstanding role played by judicial precedent in the legal systems of the Commonwealth countries.

Of course judicial precedent plays a part in the development of the law in what I may call compendiously the civil law systems. The need for legal certainty demands that there be limits to the discretion of the individual Judge to apply the law to the facts of the particular case as he himself thinks most appropriate; and in setting those limits case-law or 'jurisprudence' as it is called in the civil law systems plays an influential though not an over-riding part, for 'doctrine' that is the opinions expressed by academic writers on the law, is, at any rate in theory, an equally persuasive guide. So judicial precedent is merely one persuasive factor in the decision of a case. It need not be the determining factor in the law to be applied. Again, the precedent-making function in the civil law countries is in general limited to the highest rank in the judicial hierarchy, the Court of ultimate appeal upon questions of law. So the Judges of Courts inferior to this when they may act as legislators are legislating only for the parties to the particular case. Their decisions have no wider effect upon other persons.

In contrast to this in the Commonwealth countries, judicial precedent as a source of law over-rides all other sources except legislation. Academic critics may be unanimous that the reasoning of the Court was wrong, but this does not detract fro ı its binding character—though unanimity among academic writers is not in my experience a common occurrence. But an even more significant difference lies in the fact that the precedent-making power is not confined to the final appellate Court. It extends down the judicial hierarchy through intermediate appellate Courts to the high Court Judge trying a case along.

True it is that at the bottom of the judicial hierarchy the single Judge sitting at first instance is not strictly bound by the ratio decidendi of previous decisions by his peers, though in practice he hesitates long before departing from

such precedents particularly if the decision is one on which people may have relied in arranging their affairs. True it is that at the top of the judicial hierarchy in the United Kingdom, since 1966 the House of Lords has ceased to treat itself as inexorably bound by its own previous decisions; but it still remains extremely reluctant to depart from them. So whatever theoretical limitations there may be upon the binding effect of precedent in the United Kingdom, in practice Judges become potential law makers from the moment they take their seats on the judicial bench; and this is also true of Judges in the other Commonwealth jurisdictions."

With the introduction of the Constitution of Cyprus, we had introduced in our own system, apart from the High Court, which was the highest appellate Court in the Republic with a jurisdiction to hear and determine, subject to the provisions of the Constitution and of any rules of Court, all appeals from any Court other than the Supreme Constitutional Court, (see Article 155) the Supreme Constitutional Court which was created and which has exclusive jurisdiction under Article 146, to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority, is contrary to any of the provisions of this Constitution or any law or is made in excess or in abuse of powers vested in such organ or authority or person.

The first President of that Court was Professor Forsthoff, and no doubt in the decisions of the Court one may easily see that such decisions were based on the continental administrative system and some of the principles enunciated in those Courts, viz., the Conseil d' Etat of Greece, the Conseil d' Etat of France and the Constitutional Court of Germany were introduced in our case law. With this in mind, it is by now accepted that in the continental countries, as well as in Cyprus, the precedent created by that Court is a persuasive guide only and cannot be considered as a judicially binding precedent. That this was so and that when the Court was sitting under Article 146, in trying administrative cases was feeling free to depart from a previous case, which I repeat, had a persuasive guide only, appears lucidly in *Constantinides* v. *The Republic*, (1967) 3 C.L.R. 483. Triantafyllides, J. (as he then was) sitting alone, said at p. 492:-

" I am quite well aware that this point was to a certain extent left open in the case of *Boyiatzis and the Republic* (1964 C.L.R. 367). I was a member of the Courts which decided both the *Loizides* and the *Boyiadjis* cases. But I have, in this Case, considered the validity of the relevant reasoning in the Loizides case independently of my past participation in its determination. My sole purpose was to decide correctly the Present Case, irrespective of past views, but, of course, with due regard to the principle that precedent should not be disturbed unless there are good reasons for doing so. I have, in the end, reached the conclusion that the *Loizides* case was correctly decided."

In *George Constantinides* v. *The Republic* (*Minister of Finance*), (1969) 3 C.L.R. 523, on appeal from the former judgment, when dealing with the question of precedent, I have said this at p. 553:-

" ... I also recognize that too rigid adherence to precedent may lead to injustice in this particular case, and also unduly restrict the proper development of the law. I propose, therefore, to depart from the previous decision of the Supreme Constitutional Court, because it appears to me the right thing to do. Indeed, I am further of the view that the Supreme Court of Cyprus should not shrink from overruling a decision, or series of decisions, which establish a doctrine plainly outside the Constitutional Law, the law of the land, or for any other good reason which appears to the Court right to do so."

Then, having considered more fully the reasoning behind the judgment in *Loizides and Others* v. *The Republic*, 1 R.S.C.C. 107, I have concluded as follows:-

" For the reasons I have endeavoured to advance, I feel I am bound to overrule the decision in the *Loizides* case. I would, therefore, allow the appeal and declare the decision of the Respondent as null and void and of no effect whatsoever."

Adopting what I have said earlier in *Demetriades* case, I would reiterate that I still hold the same opinion that the judicial precedent enunciated in *Mikrommatis* case was a persuasive guide only for the reasons I have given, and because I was

exercising the jurisdiction vested in a Judge, under s. 11(2) of Law 33/64, viz., on the adjudication of a recourse made against an act or omission of any organ exercising executive or administrative authority, as being contrary to the law in force or in excess or abuse of powers.

Because, with respect, I was exercising those powers, it would have been unthinkable even if the judicial precedent created by our Constitutional Court would be binding on me, once a single Judge of the new Supreme Court has power to declare the laws unconstitutional. But even if I would be prepared to accept for a moment that *Mikrommatis* case had a binding force, then again with respect to any opposite view, the true principle is to be found in the words of Lord Diplock who made it quite clear that the single Judge sitting at first instance, is not strictly bound by the ratio decidendi of previous decisions by his peers, though in practice he would hesitate long before departing from such precedents, particularly if the decision is one on which people may have relied in arranging their affairs.

In Cyprus particularly, the words of Lord Diplock have a more important significance because that power is given by our law and because we have to deal with a written Constitution and our Supreme Court is vested with the power of pronouncing a statute unconstitutional; in my view, one should not hesitate to depart from the precedent, as I have said earlier, in a number of cases, to do justice in the particular case before it. This power, I would conclude, of pronouncing a statute to be unconstitutional, forms one of the most powerful barriers which has ever been devised to keep law and order and to support the democratic principles and the human rights of all the citizens in the state.

Turning now to the judicial precedent, it is equally true to say that in the United States, precedents and the doctrine of stare decisis play large roles in constitutional adjudication. *Burnet* v. *Coronado Oil and Gas Co.*, 76 L. ed. 815. However, it has been also said in a number of cases that precedents hinder the growth of the law less in constitutional law than in any other area, and this is quite proper. In a number of cases in the period between 1810 and 1957, the U.S. Supreme Court overruled former decisions in 90 cases, in 60 of which constitutional issues were present. Justices have always admitted that

precedent should not prevent a changed ruling. Chief Justice Taney observed in *Genesee Chief* v. *Fitzhugh*, 13 L. ed. 1058, "and as we are convinced that the former decision was founded in error, and that the error, if not corrected, must produce serious public as well as private inconvenience and loss, it becomes our duty not to perpetuate it."

In 1944, the Court readily acknowledged that "when convinced of former error, this Court has never felt constrained to follow precedent." (See *Smith* v. *Allwright*, 88 L. ed. 987).

Indeed, Justice Douglas, dealing with the principle of stare decisis, wrote in 1949 in 49 Col. L. Rev. 735, 736:

> "The place of stare decisis in constitutional law is even more tenuous. A Judge looking at a constitutional decision may have compulsions to revere past history and accept what was once written. But he remembers above all else that it is the Constitution which he swore to support and defend, not the gloss which his predecessors may have put upon it. So he comes to formulate his own views, rejecting some earlier ones as false and embracing others. He cannot do otherwise unless he lets men long dead and unaware of the problems of the age in which he lives do his thinking for him."

In 1962 Justice Harlan noted that "the Supreme Court has a considered practice not to apply stare decisis as rigidly in constitutional as in non-constitutional cases. (See *Glidden Co.* v. *Zdanok*, 8 L. ed. 2d 671). But the Supreme Court went even further and said that at times the use of precedent can, indeed, stifle the growth of constitutional law. Justice Jackson once remarked "Precedents... in constitutional law ... are the most powerful influence in forming and supporting reactionary opinions." (See Jackson, Struggle for Judicial Supremacy (1941) p. 295).

According to Modern Constitutional Law by Antieau, the unsoundness of constitutional decisions by the United States Supreme Court cannot readily be rectified by other agencies of government. Unlike England, where Parliament can undo inadequate judicial responses of a constitutional nature, Congress cannot overrule constitutional decisions of the Supreme Court, and the process of amending the Constitution

has not been overly successful in correcting the Court's mistakes. There are many sound reasons why in constitutional law precedents should not be slavishly followed. First, constitutional decisions are mostly responses to factual conditions prevailing at the time, and facts change. It might have been, for instance, that the insurance business of 1869 was not intimately involved in interstate commerce, (see *Paul* v. *Virginia*, 19 L. ed. 357), while the same business as conducted in 1946, continually utilized the channels of interstate commerce (see *Prudential Ins. C.* v. *Benjamin*, 90 L. ed. 1342.....)

Fourth, values have changed within the American community and it would be naive to imagine that the Supreme Court has not shared in the major changes in values. Indeed, its repudiation of earlier precedent represents very often its reflection of the community's changes in values.

In *Burnet* v. *Coronado Oil and Gas Co.* (*supra*), Mr. Justice Brandeis said that the doctrine of stare decisis should not deter them from overruling that case and those which follow it, and said at pp. 823–826:–

> " Stare decisis is not, like the rule of res judicata, a universal, inexorable command. 'The rule of stare decisis, though one tending to consistency and uniformity of decision, is not inflexible. Whether it shall be followed or departed from is a question entirely within the discretion of the Court, which is again called upon to consider a question once decided.' *Hertz* v. *Woodman*, 218 U.S. 205, 212, 54 L. ed. 1001, 1005, 30 S. Ct. 621. Stare decisis is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than that it be settled right. Compare *National Bank* v. *Whitney*, 103 U.S. 99, 102, 26 L. ed. 443, 444. This is commonly true even where the error is a matter of serious concern, provided correction can be had by legislation. But in cases involving the Federal Constitution, where correction through legislative action is practically impossible, this Court has often overruled its earlier decisions. The Court bows to the lessons of experience and the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in

the judicial function. Compare *Brinkerhoff-Faris Trust & Sav. Co.* v. *Hill*, 281 U.S. 673, 681, 74 L. ed. 1107, 1114, 50 S. Ct. 451. Recently, it overruled several leading cases, when it concluded that the States should not have been permitted to exercise powers of taxation which it had theretofore repeatedly sanctioned. In cases involving the Federal Constitution the position of this Court is unlike that of the highest Court of England, where the policy of stare decisis was formulated and is strictly applied to all classes of cases. Parliament is free to correct any judicial error; and the remedy may be promptly invoked. The reasons why this Court should refuse to follow an earlier constitutional decision which it deems erroneous are particularly strong where the question presented is one of applying, as distinguished from what may accurately be called interpreting, the Constitution."

With that in mind, and accepting that concern for human values is increasing, the doctrine of stare decisis should not deter us from overruling a case and those which follow it, particularly because the *Mikrommatis* case was a recent one and has not been acquiesced in. It has not created a rule of property around which vested interests have clustered. It affects solely matters relating to a transitory nature.

For the reasons I have given, I have reached the conclusion once again that the *Mikrommatis* case is beyond reasonable doubt contrary to the provisions of the Constitution and, in particular, of Articles 24 and 28 thereof and any legislative provision which would result in the income of a wife from any source being deemed to be the income of her husband, and be aggregated with it, and taxed together with it, for purposes of income tax is unconstitutional as from the date that judgment was delivered. Consequently, in so far as the three present cases relating to assessments of income tax are concerned, these recourses have to succeed and the assessments concerned must be declared to be null and void and of no effect whatsoever as from the years of assessment 1967, 1968, 1972, 1973, 1974, 1975 and 1976.

MALACHTOS J.: In these recourses, which were heard together by the Full Bench of this Court, as they present

a common question of law of great importance, the applicants attack the decision of the Commissioner of Income Tax who decided that the income of their wives, not derived from their own labour, but from other sources, should be aggregated, for taxation purposes, on the income of the applicants.

The assessments of income tax imposed on the applicants cover the years of assessment 1966 to 1975, both inclusive.

As regards the years of assessment 1966 to 1968 the relevant legislative provision is section 21(1)(2) of the Income Tax (Foreign Persons) Law, 58/61 as amended by Laws 4/63 and 21/66.

Law 21/66 rendered Law 58/61, which applied until then to foreign persons only, applicable to all persons. This section 21 of Law 58/61 is as follows:-

"21.(1) The income of a married woman living with her husband shall, for the purposes of this Law, be deemed to be the income of the husband and shall be charged in the name of the husband:

Provided that the wife may be required to pay that part of the total tax charged upon the husband which bears the same proportion to that total tax as the income of the wife bears to the total income of the husband and wife notwithstanding that assessment has not been made upon her.

(2) For the purposes of sub-section (1) of this section, the expression 'income of a married woman' shall include any income other than income derived by a married woman from the exercise of the right safeguarded under Article 25 of the Constitution.

(3) Nothing in this section contained shall prevent a woman living with her husband from being assessed in her own name in respect of income received in her own right but chargeable on her husband where the husband is absent from the Republic."

With regard to the years of assessment 1969 to 1975 section 21 of Law 58/61 has been replaced by section 15 of Law 60/69. It now appears as section 22 of the Income Tax Laws 1961 to 1969. This section reads as follows:

" 22(1) The earned income of a married woman living with her husband shall, for the purposes of this Law, be assessed separately on her.

(2) Any income other than earned income derived by a married woman living with her husband shall, for the purposes of this Law, be deemed to be the income of the husband and shall be charged in the name of the husband:

Provided that the wife may be required to pay that part of the total tax charged upon the husband which bears the same proportion to that total tax as the income of the wife charged in the name of the husband bears to the total income of the husband and wife charged on the husband notwithstanding that assessment has not been made upon her.

(3) Nothing in this section contained shall prevent a woman living with her husband from being assessed in her own name in respect of income received in her own right but chargeable on her husband where the husband is absent from the Republic."

Section 21 of Law 58/61 was enacted as a result of the decision in *Argyris Mikrommatis* v. *The Republic*, 2 R.S.C.C. 125 whereby the then Supreme Constitutional Court drew the distinction between the wife's income from labour and the wife's income from property and held that the addition of the former income to that of the husband is unconstitutional whereas the addition of the latter income to that of the husband is not unconstitutional.

Before the above decision in *Mikrommatis* case all the income of the wife, from any source whatsoever, was added to that of the husband for income tax purposes under section 19 of the Income Tax Law, Cap. 323. This section reads as follows:

" 19(1) The income of a married woman living with her husband shall, for the purposes of this Law, be deemed to be the income of the husband and shall be charged in the name of the husband:

Provided that the wife may be required to pay that part of the total tax charged upon the husband which bears the same proportion to that total tax as the income of the wife

bears to the total income of the husband and wife notwithstanding that assessment has not been made upon her.

(2) If either a husband or a wife makes written application to that intent to the Commissioner before the 31st January in the year of assessment, returns of income shall be required to be rendered by the husband and wife separately in the year of assessment and in subsequent years until the application is revoked and the amount of the tax chargeable on the husband pursuant to subsection (1) shall be apportioned between the spouses in such manner as to the Commissioner appears reasonable and the amounts so apportioned shall be assessed and charged on each spouse separately.

(3) Nothing in this section contained shall prevent a woman living with her husband from being assessed in her own name in respect of income received in her own right where the husband is absent from the Colony."

In *Mikronmatis* case the applicant, who was a farmer residing at Astromeritis on the 2nd March, 1961, after some correspondence with, and meetings at, the Income Tax Office, was informed that the income tax payable by him in respect of the years 1954-1960, both inclusive, amounted to £74.- odd. It was the allegation of the applicant that the assessment of his income and the resulting tax were made arbitrarily as, during those years, he did not earn any taxable income. The applicant subsequently alleged, by leave of the Court, that section 19 of the Income Tax Law, Cap. 323, was unconstitutional as contravening Articles 6, 24 and 28 of the Constitution. The reasons for judgment of the Court appear at pages 130 to 132 of the report and the relevant part reads as follows:

"In the opinion of the Court the term 'equal before the law' in paragraph 1 of Article 28 does not convey the notion of exact arithmetical equality but it safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things. Likewise, the term 'discrimination' in paragraph 2 of Article 28 does not exclude reasonable distinctions as aforesaid.

The above view regarding the application of the principle

of equality applies also to the interpretation of paragraph 1 of Article 24.

The Court has examined section 19 of CAP 323 in the whole context of CAP 323 (including provisions such as allowances in respect of children and increased taxation on the income of unmarried persons) as well as against the background of the status of marriage as existing in Cyprus at present and it has come to the conclusion that, although the application of section 19 of CAP 323 may result in the making of a reasonable distinction between married and unmarried persons, it does not discriminate against married persons, as such, and it is not, therefore, unconstitutional on such ground.

Coming now to the question whether the application of section 19 of CAP 323 involves any discrimination on the ground of sex.

There is no doubt that a married woman whose income is added to that of her husband and is thereby taxed to a greater extent than if it were to be taxed separately, enjoys the income from her property or from her own labour to a lesser degree than any married man taxed separately in respect of similar income.

In the opinion of the Court the reason for such a differentiation between a married woman and any married man regarding income from property, as results from the application of section 19 of CAP 323, is to be found in the community of life existing between spouses. The said community of life justifies treating the spouses, when living together, as one financial unit in this connection. Such differentiation, therefore, is nothing more than the making by taxation legislation of a reasonable distinction based on the intrinsic nature of the marriage and does not amount to a discrimination on the ground of sex.

In the case, however, of a married woman not being able, through the application of section 19 of CAP 323, to enjoy, to the same extent as any married man, the income from her own labour, the position is quite different. In such a case a married woman is placed in a disadvantageous position vis-a-vis any married man in the same profession,

occupation, trade or business. Such a differentiation is not a reasonable distinction based on the intrinsic nature of the marriage nor is it otherwise justified. It, therefore, amounts to a discrimination on the ground of sex contrary to Article 28.

In this Judgment the Court has used the expression 'income from her own labour' as meaning income derived from the exercise of the right safeguarded by Article 25 of the Constitution and 'income from property' as meaning income from all other sources."

The legal point involved in these proceedings was raised and discussed on appeal by the Full Bench of this Court in the case of *The Republic* v. *Demetrios Demetriades* (1977) 12 J.S.C. 2102*.

In support of their respective cases counsel for the parties in the present case submitted the same arguments which they put forward in the *Demetriades* case.

In addition, counsel for applicants referred us to the Decision of the Italian Constitutional Court No. 179/76.

In that case the Italian Constitutional Court considered legislative provisions similar to those under consideration in the present case and decided that Articles 131 and 139 d.P.R. 29th January, 1958 no. 645, limited to the provisions: "the income of the wife is aggregated with that of the husband" (contained in subsection 2 of Art. 131) are constitutionally unlawful as conflicting with Articles 3, 29, 31 and 53 of the Constitution, that is to say "in so far as it is established that the income of the wife, who is not legally and actually separated, is joined with that of the husband to form a joint income (Art. 131), to which income tax (Art. 139) is applied at a progressive rate".

Article 3 of the Italian Constitution, as it appears in Peaslee Constitutions of Nations, Revised Third Edition, Volume 3, Part 1, page 500, corresponds to Article 28.1 of our Constitution and reads as follows: "All citizens are invested with equal social status and are equal before the law, without distinction as to sex, race, language, religion, political opinions and personal or social conditions."

Article 53 of the Italian Constitution corresponds to Article

* To be reported in (1977) 3 C.L.R.

24.1 of our Constitution and provides that "Everyone shall contribute to public expenditure in proportion to his resources."

In deciding the present recourses I have to repeat in short my decision in the *Demetriades* case, *supra*, which decision is supported, in addition to the authorities cited therein, by Case No. 179/76 of the Italian Constitutional Court, the reasoning of which I fully adopt.

In *Demetriades* case I decided that:-

(a) Section 21 of the Income Tax Law 59/61, and section 22 of the Income Tax Law 1961 to 1969 are unconstitutional as being contrary to Articles 24.1 and 28.1 of our Constitution.

(i) they contravene Article 24.1 of our Constitution which provides that every person is bound to contribute according to his means towards the public burdens by imposing on a married man the liability to contribute, in addition to his own means, for the means of somebody else. The argument that a husband and wife are considered as one financial unit and that the object of the Law is to make the husband a channel through which the collection of tax in respect of the income of his wife is effected, cannot stand. The situation would certainly be different in the past when the wife's property owned at the date of marriage, or in any manner acquired thereafter, was the property of her husband. Her earnings and income were his, and he might dispose of them at will. This anachronistic system has been abolished in all civilised and modern communities. Women are declared to have the same rights as men, including property rights of married women and these rights in the Republic of Cyprus are guaranteed by the Constitution.

(ii) Section 21 of the Income Tax Law 1961 and section 22 of the Income Tax Law 1961-1969 contravene Article 28.1 of our Constitution which provides that all persons are equal before the law, the administration and justice and are entitled

to equal protection thereof and treatment thereby. The addition of the income of the wife from other sources other than from her own labour, to the income of her husband, results to unequal treatment between married men depending on whether their wives derive their income from their own labour or from their own property. Furthermore, a married man, whose wife derives income from her own property, since the reduction of the scales for bachelors, as a result of the case of *Panayides* v. *The Republic* (1965) 3 C.L.R. 107, enjoys his income to a lesser extent than an unmarried man. Likewise, it results to unequal treatment between married and unmarried women.

(b) The decision of the Supreme Constitutional Court in the case of *Mikrommatis*, should be considered as wrongly decided and should be reversed. In that case the Supreme Constitutional Court wrongly decided that the addition of the income from property of a married woman, resulting from the application of section 19 of the Income Tax Law, Cap. 323, to that of her husband, was a reasonable distinction based on the intrinsic nature of the community of life existing between spouses and do not amount to discrimination on the ground of sex. Section 19 of Cap. 323 ought to be declared as unconstitutional.

It follows from the above that not only the income of a married woman, living with her husband, derived from practising any profession or carrying on any occupation, trade or business, but also the income derived from any source such as dividends, interest and rents should, for income tax purposes, be considered as separate income of the married woman and should not be added to the income of her husband as provided by the relevant legislative provisions.

Therefore, the assessments under consideration made by the Commissioner of Income Tax in these Recourses are declared null and void.

There will be no Order as to costs.

STAVRINIDES J.: In *Republic* v. *Demetriades*, (1977) 12 J.S.C. 2102*, in which the matters in issue in these cases were also in dispute, I expressed agreement "with the judgment of His Honour the President" of this Court. As many cases in the reports of decisions of English Courts show, the expression of such agreement does not necessarily entail agreement with every part of the judgment involved in the decision to which the agreement refers; and that applies to what I said in that case, but since the President's ratio decidendi was that the Commissioner of Inland Revenue had applied the wrong section of the Income Tax Law it was not necessary for me to say more then.

In these cases the question of constitutionality of the subject assessments has to be answered. However, the reasoning of the judgment of Malachtos, J., in the case referred to is applicable here, and as I am in full agreement with it I think it sufficient for me to say so without unnecessarily expatiating on the matter.

The question then is whether the decision of the Supreme Court in *Mikrommatis* v. *Republic*, 2 R.S.C.C. 125, precludes us from giving effect to what in our view is the true constitutional position. The doctrine of precedent is an integral and, in my view, a valuable, and indeed an essential, part of our legal system. However, since the issue in this case turns on the interpretation of the Constitution, which, unlike statutes, cannot be altered by a simple majority of the House of Representatives, I think that the doctrine cannot be applied here in its full vigour. Citing United States cases Professor Antieau in his book on Modern Constitutional Law, Vol. II, pp. 707–708, says:

> " Justices have always admitted that precedent should not prevent a changed ruling. Chief Justice Taney remarked in 1851: ' And as we are convinced that the former decision was founded in error, and that the error, if not corrected, must produce serious public as well as private inconvenience and loss, it becomes our duty not to perpetuate it'. In 1932 Justice Brandeis urged that stare decisis should have a lesser role in constitutional law cases here than in Great Britain, since Parliament can easily correct judicial mistakes there while constitutional amendment here is a laborious undertaking. Four years later Justices Stone and Cardozo aptly noted that 'The doctrine

* To be reported in (1977) 3 C.L.R.

of stare decisis ... has only a limited application in the field of constitutional law'. In 1944 the Court readily acknowledged that 'when convinced of former error, this Court has never felt constrained to follow precedent'. Justice Douglas wrote in 1949:

> 'The place of stare decisis in constitutional law is even more tenuous. A Judge looking at a constitutional decision may have compulsions to revere past history and accept what was once written. But he remembers above all else that it is the Constitution which he swore to support and defend, not the gloss which his predecessors may have put upon it. So he comes to formulate his own views, rejecting some earlier ones as false and embracing others. He cannot do otherwise unless he lets men long dead and unaware of the problems of the age in which he lives do his thinking for him'.

The Supreme Court, Justice Harlan noted in 1962, has a 'considered practice not to apply stare decisis as rigidly in constitutional as in non-constitutional cases'.

At times the use of precedent can, indeed, stifle the growth of constitutional law. Justice Jackson once remarked: 'Precedents ... in constitutional law ... are the most powerful influence in forming and supporting reactionary opinions'.

The unsoundness of constitutional decisions by the United States Supreme Court cannot readily be rectified by other agencies of government. Unlike England, where Parliament can undo inadequate judicial responses of a constitutional nature, Congress cannot overrule constitutional decisions of the Supreme Court, and the process of amending the Constitution has not been overly successful in correcting the Court's mistakes. The Court's decision in *Chisholm* v. *Georgia* was set aside by the Eleventh Amendment. The Dred Scott decision was buried by the Fourteenth Amendment. And the Pollack decision was set at naught by the Sixteenth Amendment. Beyond this, the amending process has not been particularly useful in undoing the Court's inept constitutional law rulings. It therefore especially behooves the Supreme Court itself to overrule earlier decisions when convinced of error".

In my judgment the principles thus expounded are as applicable in this country as they are in the United States. I therefore adopt them; and having, on consideration of the arguments put forward by counsel on either side, been persuaded that a wife's income, even if unearned, cannot, consistently with the Constitution, be taxed as one with that of her husband, I feel free to depart from the *Mikrommatis* decision and accordingly I would annul the subject assessments.

TRIANTAFYLLIDES P.: In these three cases, which were heard together, the applicants challenge the validity of assessments of income tax as follows:-

The applicant in case No. 327/77 challenges assessments in respect of the years of assessment 1966, 1967 and 1968.

The applicant in case No. 369/77 challenges assessments in respect of the years of assessment 1972 and 1975.

The applicant in case No. 68/78 challenges assessments in respect of the years of assessment 1973, 1974, 1975 and 1976.

The common constitutional issue, in relation to which these three cases were heard together, is whether the old section 21 of the Income Tax Law, 1961 (Law 58/61), and the new section 22 of Law 58/61, which replaced the old section 21 of Law 58/61 when such Law was amended in this respect by means of section 15 of the Income Tax (Amendment) Law, 1969 (Law 60/69), are unconstitutional as being contrary to, or inconsistent with, the Constitution, and in particular Articles 24 and 28 thereof, in so far as the said sections provide for the aggregation of the income of spouses for income tax purposes.

In delivering this judgment I adopt, and I need not therefore repeat, all that I have said in my judgment in the similar case of *The Republic* v. *Demetriades*, (1977) 12 J.S.C. 2102, 2188-2321*.

I would like, however, to refer further, briefly, to two matters with which I have already dealt at length in the *Demetriades* case, *supra*:

The first is the rule of judicial precedent as it has come up, again, before the House of Lords in England in *Fitzleet Estates Ltd* v. *Cherry* (*Inspector of Taxes*), [1977] 3 All E.R. 996, after

* To be reported in (1977) 3 C.L.R.

the *Demetriades* case. In that case Lord Wilberforce said (at p. 999):-

" Nothing could be more undesirable, in fact, than to permit litigants, after a decision has been given by this House with all appearance of finality, to return to this House in the hope that a differently constituted committee might be persuaded to take the view which its predecessors rejected. True that the earlier decision was by majority: I say nothing as to its correctness or as to the validity of the reasoning by which it was supported. That there were two eminently possible views is shown by the support for each by at any rate two members of the House. But doubtful issues have to be resolved and the law knows no better way of resolving them than by the considered majority opinion of the ultimate tribunal. It requires much more than doubts as to the correctness of such opinion to justify departing from it."

Viscount Dilhorne stated (at p. 1000):-

" I need not, however, consider the facts of this case further, for counsel for the taxpayer frankly admitted his inability to put forward any argument not advanced on behalf of the taxpayer in the *Chancery Lane* case[1]. He sought to persuade this House not to follow that decision. Even if I thought that the decision in that case was wrong, which I do not, I would not think it right now to depart from it. The Practice Statement[2] of this House of July 1966, to which my noble and learned friend, Lord Wilberforce, and I were parties, stresses the importance of the use of precedent as providing a degree of certainty on which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules. That certainty would in my view be impaired if, where there had been a decision by a majority, the House permitted the matter to be re-opened and re-argued before a differently constituted House with the possibility that a majority in that House preferred the view of the minority in the decided case. If this House acceded to such an application it would open the door to a similar application in years to

1. [1966] 1 All E. R. 1.
2. Note [1966] 3 All E. R. 77.

come to restore the view of the majority in the first decision on the ground that the majority, when the question had been reargued, had erred.

If the decision in the *Chancery Lane* case[1] was wrong, it certainly was not so clearly wrong and productive of injustice as to make it right for the House to depart from it."

Also, Lord Edmund-Davies said (at pp. 1001-1003):-

" My Lords, when this House is asked to apply the 1966 Practice Statement[2] and thereby to depart from one of its earlier decisions, competing considerations invariably arise. In the present case the taxpayer seeks the complete reversal of a decision delivered only 11 years ago in *Chancery Lane Safe Deposit and Offices Co. Ltd* v. *Inland Revenue Comrs*[1] on facts indistinguishable from those of the instant case, and this it seeks on no grounds other than that, in its submission, it was wrong. It has not, for example, urged that, although the *Chancery Lane* decision[1] may have been sound when delivered, circumstances have so altered even during the short period since it was delivered that a new and juster approach to the tax problem giving rise to this appeal should now be evolved and adopted. On the contrary, learned counsel has submitted that it was wrong when delivered and that nothing has since happened to make right today what was wrong in 1966. The situation is therefore quite unlike that which arose when in *Miliangos* v. *George Frank (Textiles) Ltd*[3] this House concluded that, consonant with the Practice Statement[2], it could and should depart from the decision it had delivered only 15 years earlier in *Re United Railways of the Havana and Regla Warehouses Ltd*[4] because of the instability which had meanwhile overtaken sterling and other major currencies and the procedures which had consequently been evolved by Courts and arbitrators in this country to secure payment of foreign currency debts in foreign currency.

1. [1966] 1 All E. R. 1.
2. Note [1966] 3 All E. R. 77.
3. [1975] 3 All E. R. 801.
4. [1960] 2 All E. R. 332.

That is not to say, however, that material changes in circumstances must always have supervened before your Lordships may properly decline to follow an earlier decision of this House.

. . . . . .

The instant case has nothing to do with the criminal law, which is singled out in the Practice Statement[1] for special consideration: see *Knuller (Publishing, Printing and Promotions) Ltd* v. *Director of Public Prosecutions*[2] where this House declined to depart from a decision given six years earlier even if it had been wrong. Nor does it relate to fiscal arrangements made by the taxpayer on the basis of any earlier decision of your Lordships' House, for its fiscal actions in 1961–62 and 1962–63 can have had no possible relation to the speeches delivered by their Lordships on 15th December 1965 in *Chancery Lane Safe Deposit and Offices Co. Ltd.* v. *Inland Revenue Comrs*[3]. Not only does the taxpayer recognise that the two cases are indistinguishable on their facts but its counsel have been unable to advance any fresh arguments in law or to suggest any approach to the facts which were not urged in the earlier case. Nor, my Lords, is this a case where it can be seriously urged that manifest 'injustice' flowed from the majority decision in the *Chancery Lane* case[3] and that only by departing from it can justice now be done to the taxpayer. The most that could be properly urged on its behalf is that the 3:2 division of opinion of their Lordships' House in the *Chancery Lane* case[3] showed that it was a 'near thing', that the decision might well have gone the other way, and that the time has now come when it should.

My Lords, I respectfully share your views that the *Chancery Lane* decision[3] was correct. But even had I come to the opposite conclusion, the circumstances adverted to are such that I should not have thought it 'right' to depart from it now. To do so would have been to open the floodgates to similar appeals and thereby to impair that reasonable certainty in the law which the Practice State-

1. Note [1966] 3 All E. R. 77.
2. [1972] 2 All E. R. 898.
3. [1966] 1 All E. R. 1.

ment[1] itself declared to be 'an indispensable foundation upon which to decide what is the law and its application to individual cases'. I therefore concur in holding that this appeal should be dismissed."

The Practice Statement which is referred to in the above quoted passages from the judgments in the *Fitzleet* case, *supra*, is the one which has been referred to, and reproduced, in my judgment in the *Demetriades* case, *supra* (at pp. 2225–2226).

Secondly, as regards the principle of equality it should be noted that in *Califano, JR., Secretary of Health, Education, and Welfare* v. *Goldfarb*, 51 L. Ed. 2d 270, Mr. Justice Brennan said (at pp. 278–279):–

" We accept as settled the proposition argued by appellant that Congress has wide latitude to create classifications that allocate noncontractual benefits under a social welfare program. *Weinberger* v. *Salfi*, 422 US 749, 776–777, 45 L Ed 2d 522, 95 S Ct 2457 (1975); *Flemming* v. *Nestor*, 363 US 603, 609–610, 4 L Ed 2d 1435, 80 S Ct 1367 (1960). It is generally the case, as said, id., at 611, 4 L Ed 2d 1435, 80 S Ct 1367:

> 'Particularly when we deal with a withholding of a noncontractual benefit under a social welfare program such as (Social Security), we must recognize that the Due Process Clause can be thought to interpose a bar only if the statute manifests a patently arbitrary classification, utterly lacking in rational justification.'

See also *Weinberger* v. *Salfi*, *supra*, at 768-770, 45 L Ed 2d 522, 95 S Ct 2457; *Richardson* v. *Belcher*, 404 US 78, 81, 84, 30 L Ed 2d 231, 92 S Ct 254 (1971); *Dandridge* v. *Williams* 397 US 471, 485–486, 25 L Ed 2d 491, 90 S Ct 1153 (1970).

But this 'does not, of course, immunize (social welfare legislation) from scrutiny under the Fifth Amendment.' *Richardson* v. *Belcher*, *supra*, at 81, 30 L Ed 2d 231, 92 S Ct 254. The Social Security Act is permeated with provisions that draw lines in classifying those who are to receive benefits. Congressional decisions in this regard are en-

1. Note [1966] 3 All ER 77.

titled to deference as those of the institution charged under our scheme of government with the primary responsibility for making such judgments in light of competing policies and interests. But 'to withstand constitutional challenge,... classifications by gender must serve important governmental objectives and must be substantially related to the achievement of those objectives.' *Craig* v. *Boren*, 429 US 190, 197, 50 L Ed 2d 397, 97 S Ct 451 (1976). Such classifications, however, have frequently been revealed on analysis to rest only upon 'old notions' and 'archaic and overbroad' generalizations, *Stanton* v. *Stanton*, 421 US, at 14, 43 L Ed 2d 688, 95 S Ct 1373; *Schlesinger* v. *Ballard*, 419 US, at 508, 42 L Ed 2d 610, 95 S Ct 572; cf. *Mathews* v. *Lucas*, 427 US 495, 512, 49 L Ed 2d 651, 96 S Ct 2755 (1976), and so have been found to offend the prohibitions against denial of equal protection of the law. *Reed* v. *Reed*, 404 US 71, 30 L Ed 2d 225, 92 S Ct 251 (1971); *Frontiero* v. *Richardson*, 411 US 677, 36 L Ed 2d 583, 93 S Ct 1764 (1973); *Weinberger* v. *Wiesenfeld*, 420 US 636, 43 L Ed 2d 514, 95 S Ct 1225 (1975); *Stanton* v. *Stanton*, *supra*; *Craig* v. *Boren*, *supra*. See also *Stanley* v. *Illinois*, 405 US 645, 31 L Ed 2d 551, 92 S Ct 1208 (1972); *Taylor* v. *Louisiana*, 419 US 522, 42 L Ed 2d 690, 95 S Ct 692 (1975)."

Also, useful reference, as regards the principle of equality, may be made to, *inter alia*, *Trimble* v. *Gordon*, 52 L. Ed. 2d 31, and *Ohio Bureau of Employment Services* v. *Hodory*, 52 L. Ed. 2d 513.

In the latter case Mr. Justice Blackmun, in delivering the opinion of the USA Supreme Court, reaffirmed (at p. 528) the approach laid down in, *inter alia*, *Lindsley* v. *Natural Carbonic Gas Co.*, 55 L. Ed. 369, and *Dandridge* v. *Williams*, 25 L. Ed. 2d 491, namely that "if the classification has some 'reasonable basis', is does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality' ".

I revert, next, to the issues arising in the three recourses now before the Full Bench of our Supreme Court:

I am, still, of the view, which I have expressed in the *Demetriades* case, *supra*, that the case of *Mikrommatis* v. *The Republic*,

2 R.S.C.C. 125, 132—(in which it was decided that it was unconstitutional, as amounting to discrimination on the ground of sex contrary to Article 28 of the Constitution, to aggregate for income tax purposes the income of a wife from her own labour with that of her husband, but that it was not unconstitutional to aggregate, for such purposes, the income of a wife from any other source with that of her husband)—was rightly decided at the time when it was determined.

In the *Demetriades* case I had to leave entirely open, for the time being, and for the reasons which I have explained in my judgment in that case, the issue of whether or not, because of supervening factual and legal developments, the decision given in the *Mikrommatis* case, and embodied in legislation based on it, had to be treated as being no longer valid; and I, likewise, left entirely open the issue of the validity of the aforementioned new section 22 of Law 58/61.

In view of the further arguments which have been advanced during the hearing, before the Full Bench of this Court, of the present recourses, as well as in the light of the reasoning set out in a relevant judgment which was delivered on July 14, 1976, by the Constitutional Court of Italy in case No. 179/1976, I have reached the conclusion that the new section 22 of Law 58/61, which provides that any earned income derived by a married woman living with her husband shall, for purposes of income tax, be deemed to be the income of the husband and shall be charged in the name of the husband, is unconstitutional as being contrary to, and inconsistent with, the provisions of our Constitution and, in particular, its Articles 24 and 28.

I should point out, in this respect, that in substituting, by means of section 15 of Law 60/69, the new section 22 in the place of the old section 21 of Law 58/61 the Legislature departed radically from the ratio decidendi of the *Mikrommatis* case, *supra*, because the much wider notion of the income "derived by a married woman from the exercise of the right safeguarded under Article 25 of the Constitution", which was to be found in the old section 21, was replaced by the much narrower concept of the "earned income" of a married woman, which was introduced by means of the new section 22.

Also, even irrespective of the aforementioned legislative

change by means of Law 60/69, I should state that I am now of the view that as from the year of assessment 1969 onwards it would be unconstitutional, as being contrary to Articles 24 and 28 of the Constitution, to apply either section 19 of the Income Tax Law, Cap. 323, or section 21 of the Imposition of Personal Contributions on Members of the Greek Community for the Year 1962 Communal Law, 1962 (Gr. C. Ch. Law 18/62), or section 21 of the Imposition of Personal Contributions on Members of the Greek Community for the Year 1963 Communal Law, 1963 (Gr. C. Ch. Law 9/63), or the old section 21 of Law 58/61, or the new section 22 of Law 58/61, in order to treat the income from any source of a married woman living with her husband as income of her husband so that it would be charged in his name for income tax purposes. My reasons for forming this view are, in addition to those indicated earlier in this judgment, the following:-

Soon after the *Mikronmatis* case was decided, on December 11, 1961, there commenced an evolutionary process altering gradually, but steadily, the legal and factual framework within which it was held in the said case that it was not contrary to the principle of equality to aggregate, for income tax purposes, the income of a husband with that of his wife from any source other than from the exercise of her right under Article 25 of the Constitution "to practise any profession or to carry on any occupation, trade or business".

As I have already pointed out in my judgment in the *Demetriades* case, *supra*, the principle of equal pay for equal work, which did not receive particular attention in the *Mikrommatis* case, was brought specifically to the foreground, as regards married and unmarried persons, in the case of *Xinari* v. *The Republic*, 3 R.S.C.C. 98, which was decided by the Supreme Constitutional Court on April 19, 1962.

Then, on March 2, 1965, the Full Bench of the Supreme Court decided in *Panayides* v. *The Republic*, (1965) 3 C.L.R. 107, that legislation rendering an unmarried person—in that case a bachelor—liable to pay income tax which was twenty per cent in excess of what he would have otherwise paid had he not been unmarried was unconstitutional as contravening the principle of equality; and, as I have pointed out in my judgment, in the *Demetriades* case, the surcharge imposed, as above, on un-

married persons for purposes of income tax was apparently one of the main considerations which led the Supreme Constitutional Court to decide the *Mikrommatis* case in the way in which it has determined it, because the increased taxation on the income of unmarried persons is expressly mentioned in the judgment in *Mikrommatis* case as part of its ratio decidendi.

Later on, on February 28, 1969, Cyprus ratified by means of the International Covenants (Economic, Social and Cultural Rights, and Civil and Political Rights) (Ratification) Law, 1969 (Law 14/69) the two United Nations International Covenants on Human Rights, which had been adopted by the United Nations General Assembly on December 16, 1966.

In the said two Covenants there are express provisions (Article 3 of each Covenant respectively) regarding "the equal right of men and women to the enjoyment" of the rights set forth in the Covenants and there are, also, provisions, such as Article 10(1) of the Covenant on Economic, Social and Cultural Rights and Article 23(1)(2) of the Covenant on Civil and Political Rights regarding the protection of the family and the right to marry.

I do not disregard the fact that though the Covenants in question were ratified by Cyprus in 1969, as stated above, they did not come into force as instruments of International Law until 1976 when they were ratified by the requisite number of member States of the United Nations. On the other hand, however, I do regard the ratification by Cyprus in 1969 of these Covenants as an acceptance by our Republic of the principles embodied therein and as an affirmation of the existence of a political and socioeconomic state of affairs in Cyprus—of which this Court can, also, take judicial notice—compatible with their provisions, and, particularly, in so far as the present recourses are concerned, with their provisions relating to the principle of equality, the protection of the family and the right to marry.

I have, therefore, reached the conclusion that during the period from 1961, when the *Mikrommatis* case was decided, till 1969, when the aforementioned Covenants were ratified by our Legislature, there was such a radical change, as already explained in this judgment, of the legal and factual framework in relation to the matters considered and pronounced on by the judgment in the *Mikrommatis* case, which has, in the light of the further

arguments that have been heard during the hearing of these three recourses now before this Court, enabled me to form the conclusion, with the required certainty, that is beyond reasonable doubt, that it would be contrary to the provisions of our Constitution, and, in particular, of Articles 24 and 28 thereof, to apply, as from the year of assessment 1969 onwards, any legislative provision which would result in the income of a wife from any source being deemed to be the income of her husband, so that it could be aggregated with it, and taxed together with it, for purposes of income tax.

Consequently, in so far as the, in the three present cases, *sub judice* assessments of income tax are assessments which relate to years of assessment from 1969 onwards these recourses have to succeed and the assessments concerned must be declared to be null and void and of no effect whatsoever; on the other hand, the recourses ought to be dismissed in so far as they are aimed at assessments relating to years of assessment prior to the year of assessment 1969.

A. Loizou, J.: The issue for determination in these three recourses, which have been heard together in the first instance by the Full Bench, is whether the aggregation of the income of a husband with that of his wife when the latter's income comprises of either dividends, interest or rent or is what is generally described non-earned income, as provided by section 21 of the Income Tax Law 1961 (Law 58/61), and the new section 22, which amended and replaced the old section 21 by section 15 of the Income Tax (Amendment) Law 1969, (Law 60/69), are unconstitutional as being contrary to or inconsistent with the Constitution and in particular Articles 24 and 28 thereof.

This very point, but in respect only of the old section 21, came up for determination by the Full Bench again on appeal from the judgment of a Judge of this Court in the case of *The Republic* v. *Demetriades*, (1977) 12 J.S.C., p. 2102*, when I had the opportunity to deal extensively with the constitutionality of that provision (pages 2142-2188 of the report) and at which I regretfully found myself in disagreement with the majority of the Court. I fully adopt the reasons I gave in that judgment, which are in my view applicable to the present case as well and in respect of both the old section 21 and the new section 22.

* To be reported in (1977) 3 C.L.R.

The essence of my decision in that case was that the case of *Mikrommatis* v. *The Republic*, 2 R.S.C.C., p. 125, was rightly decided by the then Supreme Constitutional Court of the Republic and that there had been no such changes in the social and economic structure of our society to justify a departure from that precedent. I said at pages 2175–2178:–

> " In my view, there is nothing to prevent such a law imposing a tax, from defining the means of a person as including the income of the wife living with him from other sources than that derived from the wife's own labour. As pointed out 'means' contains the notion of taxable capacity and the technical device of the aggregation of the income of spouses living together is not inconsistent with it. If the drafters of the Constitution wanted to permit taxation only on the basis of one's own income and preclude any aggregation, the word 'income' would have been preferred as against the word 'means' ('dynamis' in the Greek text) which has a wider connotation. A further justification for such device of taxation is also its tendency to prevent tax evasion by defeating the objectives of progressive taxation.
>
> I should revert, however, to the *Mikrommatis* case where the Supreme Constitutional Court in arriving at its decision, bore in mind 'the intrinsic nature of the status of marriage and the relationship it creates between spouses'; it also examined section 19 (the corresponding provision to section 21) 'as against the background of the status of marriage as existing in Cyprus at the time'. It further found that the aggregation of the income of the spouses might result in the making of a reasonable differentiation between married and unmarried persons but that it did not discriminate against married persons as such and explained that the reason for such a differentiation between a married woman and a married man regarding income from property was to be found 'in the community of life existing between spouses which justified treating the spouses when living together as one financial unit in that connection'.
>
> It has been said that decisions reflect a judicial purpose and policy of adapting constitutional language by a process of construction to fit correct political economic and social

developments. It is obvious from the reasoning of the Supreme Constitutional Court in the *Mikrommatis* case that it did take into consideration the social and economic circumstances of the country at the time and it was natural to interpret and apply the Constitution guided by these fundamental factors. After all a Constitution sets down the basic rules which regulate the behaviour of the State towards the citizens, of the citizens towards the State, as well as of the citizens among themselves not in abstracto, but bearing in mind the social and economic conditions and circumstances of their every-day-life at a particular time in their own country, and there has been no suggestion that these characteristics of the social and economic life of this country have changed so radically as to call for a new judicial approach to the interpretation and the application of this constitutional notion of equality to the question regarding this matter of fiscal policy.

It is because the principles enunciated in the *Mikrommatis* case take cognizance of such fundamental factors that between this unanimous decision of the Supreme Constitutional Court and a majority decision of the Court of another country with different social and economic background, particularly so when that other country is a developed country with unlimited resources as against our country with developing economy and limited resources and with limited resources of revenue for the State, I unhesitatingly prefer the first. I have also reached this conclusion not only as a matter of adhering to a precedent which in fact has been adopted by the elected legislature and embodied in the definition of earned income, as it appears in section 2 of the Law, but also because the interpretation of Article 28 of the Constitution to the effect that the term 'equal before the law' in paragraph 1 thereof, does not convey the notion of exact arithmetical equality, but it safeguards only against arbitrary differentiations and does not exclude reasonable differentiations which have to be made, in view of the intrinsic nature of things, and because the term 'discrimination' in paragraph 2 thereof, does not exclude reasonable differentiations as aforesaid, is a principle that has been followed in every case where questions of discrimination were raised ever since 1961 when the *Mikrommatis* case was decided.

I have no difficulty in saying that in the circumstances and for the reasons given in the *Mikrommatis* case and which are still holding good, the differentiation made between married and unmarried persons and at that between married persons with wives having income arising out of sources other than from the wife's labour, is a reasonable differentiation in respect of a wide class and impersonal in character. Therefore, the decision in question cannot be said that it is erroneous.

Furthermore, it has not been claimed, and in fact there have not been such changes in the social and economic circumstances, particularly the intrinsic nature of marriage and the community of life between spouses, as recognized in the *Mikrommatis* case, that would justify a departure from the principles in that case as part of our power to re-examine the basis of such constitutional decision.

Before leaving this point, I would like to point out that in the *Hoeper's* case the wife's income was composed of a salary, interest and dividends and a share of the profits of a partnership with which her husband had no connection. Though, therefore, it was income mixed in character in the sense of partly being derived from her own labour and partly from other sources, the distinction made between these different characters of income was never argued and examined as it was done in the *Mikrommatis case*".

Since the case of *Demetriades* (*supra*), which covered the years until 1969, there have not been for the period under review either any changes in the structure of the society or other developments to justify a different approach on my part on this subject. The amendment of the original section 21 and the introduction of the new section 22, does not in any way change the situation nor does the new wording constitute an adverse departure from the notion of earned income as defined in the *Mikrommatis* case (*supra*). The fact that the International Covenants (Economic, Social and Cultural Rights and Civil and Political Rights) (Ratification) Law 1969, (Law No. 14/69) was enacted as a result of the signing by the Republic of Cyprus of the two United Nations International Covenants on Human Rights, adopted by the United Nations General Assembly in December 1966, does not change the situation as in any event

these Covenants came into force in 1976 when they were ratified after the lapse of the prescribed period for signing by the 35th country.

For all the above reasons, I regretfully find myself in the position to disagree with the approach of my brother Judges, once more.

TRIANTAFYLLIDES P.: In the result the *sub judice* income tax assessments are declared, by majority, to be null and void and of no effect whatsoever.

There shall be no order for the costs of the present proceedings.

Sub judice decisions annulled. No order as to costs.