1979 November 27

[TRIANTAFYLLIDES, P., L. LOIZOU, A. LOIZOU, MALACHTOS, DEMETRIADES, SAVVIDES, JJ.]

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

Appellants,

v.

GEORGE PAVLIDES AND OTHERS,

Respondents.

(*Revisional Jurisdiction Appeal No.* 201).

Statutes—Temporary act—Expiration—Whether it can be revived by an amending Law—Special Contribution (Temporary Provisions) Law, 1976 (15/76) *validly revived by an amending Law (Law* 22/77).

Special Contribution—Taxation—Special Contribution (Temporary Provisions) Law, 1976 (15/76)*—Expiration—Once liability to pay special contribution accrued during the period the Law was still in force, such liability not extinguished upon the expiration of the Law—Subsequent assessment of exact amount payable authorised by the Taxes (Quantifying and Recovery) Law,* 1963 (*Law* 53/63 *as amended by Law* 61/69).

Statutes—Repeal—Re-enactment—Special Contribution (Temporary Provisions) Law, 1976 (15/76)*—Expiration—Revival—Section* 6 *thereof, providing for the application of the Income Tax Laws and the Taxes (Quantifying and Recovery) Laws has not expired with rest of the Law—Because of the combined effect of section* 10(2)(*e*) *of the Interpretation Law, Cap.* 1 *and the Expiry of Laws (Removal of Doubts) Law,* 1962 (42/62)*—Therefore, the Taxes (Quantifying and Recovery) Law,* 1963 (53/63) *applicable to a case of assessment of contribution under Law* 15/76*—Word "remedy" in the said section* 10(2)(*e*) *of Cap.* 1 *wide enough to cover the case of an assessment.*

On June 10, 1977, the appellant Commissioner, in exercise

of his powers under the Special Contribution (Temporary Provisions) Law, 1976 (Law 15/76 as amended by Law 22/77), and the Taxes (Quantifying and Recovery) Law, 1963 (Law 53/63 as amended by Law 61/69) levied special contribution on the income of the respondents in respect of the quarter ended on March 31st, 1977.

Law 15/76 (*supra*) came into force on the 1st April, 1976 and was due to expire on the 31st March, 1977. On May 20, 1977, and after the expiry of Law 15/76, there was enacted an amending Law (22/77) which extended the expired Law 15/76 up to the 31st March, 1978 and, also, gave it retrospective effect as from the 1st January, 1977.

Upon a recourse by the respondents the trial Judge annulled* the *sub judice* special contributions having held that once Law 15/76 expired on the 31st March, 1977 it ceased to have any effect thereafter and that a dead Law could not have been prolonged or extended on the 20th May, 1977 by Law 22/77 by a mere amendment but only by a re-enactment of the Law itself; and hence this appeal.

Held, per A. Loizou J., L. Loizou, Malachtos, Demetriades and Savvides, JJ. concurring and Triantafyllides P. dissenting:

(I) *On the question whether the expired Law* 15/76 *could be revived by the amending Law* 22/77:

(1) That the argument that an expired Law could not be revived by an amending Law, has to be examined in the light of the situation that it was intended to be resolved and the wording of the two Laws which one is asked to read together; that what was intended thereby was in fact the enactment of a law for the imposition of special contribution; and that instead of following the usual course of having Law No. 15 of 1976 with the necessary adaptations to its text printed and reproduced as a new law and enacted as such, it was thought easier to adopt the course of having Law No. 22 of 1977 enacted and provide by section 1 thereof that that Law would be read together with the Special Contribution (Temporary Provisions) Law, 1976 (Law 15 of 1976) and that the latter Law and Law No. 22 of

* See (1978) 3 C.L.R. 331.

1977 would be referred together as the Special Contribution (Temporary Provisions) Laws of 1976 and 1977.

(2) That the House of Representatives by enacting Law No. 22/77 was not merely amending an expired law for the sake of amending same as there would be no sense in doing so; that what it intended to achieve thereby and in fact did achieve and this is obvious from the wording of section 1 of Law No. 22/77, was the correction of the text of the old law, the bringing it up-to-date and its re-enactment so that a new legislative text in the form of the combination of the two laws would come into force upon its publication in the official Gazette, hence the expression that these Laws should be read together; and that upon that happening, there came into existence a complete text by reference from the one text to the other text, with the date of expiry of the new law reading "the 31st March, 1978".

(3) That any other approach by this Court would have given no effect to the intention of the legislature; that there is no law or constitutional provision nor any other authority against this mode of legislation; that so long as the wording of an enactment is clear, either by itself or by reference to another text, and by applying the proper rules of construction effect can be given to it, this Court whose task is indeed the construction of statutes and their constitutionality, should not examine their validity merely from the manner of drafting of laws however unusual or undesirable such drafting may be; that what was done in the instant case is a mode of re-enactment in a new context by reference to an old text, though not the best of legislative methods or one to be frequently resorted to for more than one reasons, and particularly so for the sake of avoiding confusion as clarity in legislation serves better the principle that ignorance of law is not permitted; that, therefore, the expired Law 15/76 could be revived by the amending Law 22/77; and that, accordingly, the conclusion of the trial Judge on this issue must be set aside.

(II) *On the question whether the liability of the respondents to pay special contribution was extinguished on the expiration of Law 15/76:*

That as the liability to pay special contribution accrued during the quarter when Law 15/76 was in force the special contribution should be deemed to have been imposed then; that, moreover,

the subsequent levying and collection of the exact amount payable was made on the basis of section 20(5) of the Taxes (Quantifying and Recovery) Law, 1963 (Law 53/63 as amended by Law 61/69); and that, therefore, the liability has not been extinguished with the expiry of Law 15/76 (see, also, *Kyriakides* v. *The Republic*, 4 R.S.C.C. 109).

(III) *On the question whether the Taxes (Quantifying and Recovery) Law, 1963 (Law 53/63) is applicable to this case*:

That section 6 of Law 15/76 provides that the Income Tax Laws and the Taxes (Quantifying and Recovery) Laws in force at the time are applicable mutatis mutandis; that the said section 6 did not expire with the rest of the Law by virtue of the combined effect of sections 10(2)(e)* of the Interpretation Law, Cap. 1 and the Expiry of Laws (Removal of Doubts) Law,** 1962 (42/62); that the word "remedy" in the said section 10(2)(e) of Cap. 1 is wide enough to cover the case of an assessment; and that, accordingly, Law 53/63 is applicable to this case.

Appeal allowed.

Cases referred to:

Anastassiou v. *Republic* (1977) 6 J.S.C. 971 at p. 991 (to be reported in (1977) 3 C.L.R. 91);

Mayor of Famagusta v. *Petrides and Others*, 4 R.S.C.C. 71;

Nicosia Techalemit Co. and Another v. *Municipality of Nicosia* (1971) 3 C.L.R. 357;

Wicks v. *Director of Public Prosecutions* [1947] A.C. 362;

Kyriakides v. *Republic*, 4 R.S.C.C. 109;

Christou v. *Republic* (1965) 3 C.L.R. 214;

Frangou v. *Republic* (1965) 3 C.L.R. 641;

Antoniades and Others v. *Republic* (reported in this Part at p. 641 *post*);

Decision of the Greek Council of State in case 1484/1950.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Hadjianastassiou, J.) given on the 11th December, 1978 (Revisional Jurisdiction cases Nos. 218/77,

* Quoted at p. 616 *post*.

** Quoted at p. 617 *post*.

230/77 and 231/77) whereby appellants' decision to impose special contribution on respondents income under the provisions of section 7 of the Special Contribution (Temporary Provisions) Law, 1976 (Law 15/76 as amended) was declared null and void.

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

A. Triantafyllides, for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P.: The first judgment will be delivered by Mr. Justice Andreas Loizou.

A. LOIZOU J.: This is an appeal by the Minister of Finance and the Commissioner of Income Tax under section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33 of 1964) from the judgment* of a Judge of this Court, who dealt in the first instance with three recourses made under Article 146 of the Constitution, and which were heard together because of the common issues raised therein.

By the said judgment the learned trial Judge declared as null and void and of no effect whatsoever the decisions of the Commissioner of Income Tax by which special contribution was levied on the three applicants, respondents in this appeal, for the quarter ending on the 31st March, 1977, on the ground that there was no valid law in force at the time.

The grounds of appeal and the reasons therefor are the following:

"1. The Honourable Court wrongly decided that the special contribution imposed and the assessments made on the Applicants for the quarter ending on 31.3.1977 were null and void and of no effect whatsoever once there was no valid Law in force. The Court erred in that it did not take into account the following:

(a) that the liability to pay special contribution accrued during the quarter 1.1.77-31.3.77 when the Special Contribution (Temporary Provisions) Law No. 15 of 1976 was still in force irrespective of whether a notice of assessment had been served on Applicants or not; and

(b) that the liability which had already accrued prior to

* Reported in (1978) 3 C.L.R. 331.

the expiry of the aforesaid Law 15 of 1976 was not extinguished at 31.3.1977 when the aforesaid Law expired; and

(c) that inasmuch as the aforesaid Law 15 of 1976 was in force at the time the relevant income accrued the special contribution would be deemed to have been imposed then and the subsequent assessment of the exact amount of the special contribution payable was at the time authorised by the provisions of the Taxes (Quantifying and Recovery) Law 53 of 1963 as subsequently amended.

2. The Honourable Court erred in deciding that once the Special Contribution (Temporary Provisions) Law, 15 of 1976 expired on 31.3.1977, it could not have been prolonged or extended by Law 22 of 1977, in that:

(a) though the aforesaid Law 15 of 1976 expired on 31.3.1977 its force and operation was extended by Law 22 of 1977 which was enacted on 20.5.77 and which was given retrospective effect as from 1.1.1977 to cover the period that had already elapsed; and

(b) the enactment of Law 22 of 1977 is not contrary to Article 24.3 of the Constitution because it is not retrospective taxation to tax in any year a person on the basis of his income in that particular year by means of legislation enacted during that same year".

The salient facts for which there is no dispute are as follows:

On the 10th June, 1977, the Commissioner of Income Tax levied on the three respondents, namely, George Pavlides, Spyros Pavlides and Athenoulla Pavlidou, special contribution on their incomes under the provisions of section 7 of the Special Contribution (Temporary Provisions) Law, 1976 (Law No. 15 of 1976), as amended, for the amounts of C£262.—, C£28.500 mils and C£6.— respectively, for the quarter ended 31st March, 1977.

The three respondents had in fact failed or refused to submit a return of income in accordance with Form I.R. 265 and which was asked for by the Commissioner of Income Tax in accordance with the provisions laid down under regulation 2 of the Special Contribution (Temporary Provisions) Regulations, 1975.

The respondents through their advocates by identical letters, dated the 18th June, 1977, objected to the imposition of the aforesaid special contribution levied on them on the following grounds:

A. That Law No. 15 of 1976 as amended by the Special Contribution (Temporary Provisions) (Amendment) Law, 1977 (Law No. 22 of 1977) was unconstitutional as it imposed a personal contribution only on a certain class of citizens and excluded the incomes from "emoluments".

B. That the personal contribution levied for the aforesaid quarter was excessive as the respective income of the respondents was less than the one assessed.

The Commissioner of Income Tax determined the said objections on the 21st July, 1977, and informed the respondents that he was not prepared to accept the allegations that the Laws under which the assessments were made were unconstitutional or that the relevant Regulations were either unconstitutional or ultra vires the Law. He reiterated that the said assessments were made under Law No. 15 of 1976 as amended by Law No. 22 of 1977 and that he had decided on the basis of section 20(5) of the Taxes (Quantifying and Recovery) Law, 1963 (Law No. 53 of 1963), as amended by the Taxes (Quantifying and Recovery) (Amendment) Law, 1969, (Law No. 61 of 1969) to quantify the income of each respondent which is subject to payment of special contribution for the quarter ended on the 31st March, 1977, at the aforementioned amounts respectively.

The social and economic conditions prevailing in Cyprus at the time of the enactment of the relevant legislation is aptly described by the learned trial Judge in his judgment as follows:

> "I think it is necessary to state, in order to complete the picture, that in view of the Turkish invasion of July 20, 1974, the Republic of Cyprus was forced to take socioeconomic measures in order to alleviate the suffering of thousands of refugees who were forced to leave their homes. The legislative power continued to be exercised by the House of Representatives, and a number of laws were enacted dealing with the various questions created thereby and providing for adequate remedies in the particular circum-

stances. All such laws were of a temporary nature and all expired on December 31, 1975, unless before such expiration the period of their operation was extended by an ad hoc law. One of such laws was the Special Contribution (Temporary Provisions) Law 1974, No. 55/74, whereby in order to meet the financial repercussions of the abnormal situation created by the Turkish invasion, an extraordinary contribution of 20% on any income of any person was imposed in accordance with the specified rates in the schedule to the law, other than income derived from emoluments from services or in respect of any office".

Before examining the various grounds of Law, it is useful to refer also to the history of the legislation involved in this case.

The Special Contribution (Temporary Provisions) Law, 1974 (Law No. 55 of 1974) came into force as from the quarter commencing the 1st October, 1974, and imposed special contribution on the income of any person other than income from emoluments; this Law was amended by the Special Contribution (Temporary Provisions) (Amendment) Law, 1975 (Law No. 43 of 1975) with which amendment we are not concerned, and its operation was extended up to the quarter ending on the 31st March, 1976, by the Temporary Legislation (Continuation) Law, 1975 (Law No. 67 of 1975). Then the Special Contribution (Temporary Provisions) Law, 1976 (Law No. 15 of 1976) was enacted which codified, amended and consolidated in effect the previous legislation which had expired. This Law, under section 12 thereof came into force as from the 1st April, 1976, and was to remain in force during the abnormal situation and in any case not later than the 31st March, 1977, when it would expire.

The levying of contribution is governed by section 3 of the Law which reads:

" For the quarter beginning as from the 1st April, 1976, and for every subsequent quarter during the period when this Law shall be in force, there shall be levied and collected a contribution at the rates and in accordance with the provisions set forth in the Schedule, on the income of any person which is derived from any source other than emoluments in respect of which a provision for reduction has been made under the Emoluments (Temporary Reduction) Law, 1976".

On the 20th May, 1977, the Special Contribution (Temporary Provisions) (Amendment) Law, 1977 (Law No. 22 of 1977) was enacted. By section 8 thereof it was given retrospective effect as from the quarter commencing on the 1st January, 1977, but its section 4 by which section 6 of the basic Law was amended and was given more retrospective effect by coming into force as from the quarter commencing the 1st April, 1976, but we are not concerned in this appeal with this provision. Section 8 was of a beneficial nature to the tax payer as it gave more allowable deductions and therefore its retrospective effect prior to the 1st April could not be considered as inconsistent with Article 24, paragraph 3, of the Constitution, which prohibits only the retrospective imposition of taxes and not the retrospective granting of reliefs.

Before going any further it is pertinent to state that the aforesaid laws are in essence taxing laws. They have been so described in the case of *Anastassiou* v. *The Republic* (1977)* 6 J.S.C. 971 at p. 991. In fact counsel for the respondents has also considered them to be such as he invited this Court to look upon this case as an ordinary income tax case and nothing more. It is for that reason that the principles governing the imposition of taxation and the authorities in which such principles have been expounded have been invoked by both sides in support of their respective arguments.

The learned trial Judge in annulling the *sub judice* decisions examined by agreement of the parties only the ground that at the material period when the special contributions complained of were levied there was no law in force, as Law No. 15 of 1976 expired on the 31st March, 1977, it ceased to have any effect thereafter, and that a dead law could not have been prolonged or extended on the 20th May, 1977, by Law No. 22 of 1977 by a mere amendment but only by a re-enactment of the Law itself.

The learned trial Judge in his elaborate judgment distinguished the cases of *The Mayor of Famagusta and Nearchos Petrides and two others*, 4 R.S.C.C., p. 71, and the *Nicosia Techalemit Co. and another* v. *The Municipality of Nicosia* (1971) 3 C.L.R., p. 357, and referred to the legal position in England regarding

* To be reported in (1977) 3 C.L.R. 91.

the expiry of an Act and the effect of its operation as regards things previously done or omitted to be done. He then reached the conclusion that the position in England was different from that in Cyprus and accepted the argument of learned counsel for the present respondents (applicants before him) that section 10(2)(e) of the Interpretation Law Cap. 1, does not apply to the case of a statute which expires by effluxion of time, as same refers to laws which have been repealed and not to laws which expired owing to their purely temporary validity. Among other authorities he referred also to the case of *Wicks* v. *Director of Public Prosecutions* [1947] A.C. 362, where it was held that words such as "with respect to things previously done or omitted to be done" were held wide enough to cover the case of prosecuting for an offence omitted under an already expired Law.

In the case of *The Mayor of Famagusta and Nearchos Petrides and others*, (*supra*), Forsthoff, P., in dealing with the expiration of the Municipal Laws (Continuation) Law, 1961 (Law No. 10 of 1961), considered the method of legislation, used as a mode of continuing in force, Cap. 240, not as a mere prolongation of Cap. 240 but in effect as being a re-enactment thereof in a new context, and went on to say that there was nothing in paragraph 2 of Article 188 precluding the inclusion in a new Law, like 10 of 1961, all provisions to be found in The Municipal Corporations Law, Cap. 240, subject of course to such provisions not being otherwise contrary to, or inconsistent with the Constitution.

In *Nicosia Techalemit Co. & another* v. *The Municipality of Nicosia*, (1971) 3 C.L.R. 357, with regard to the 1952 Municipal Bye-Laws, Triantafyllides, P., said at p. 365:-

> " Another argument of counsel for the applicants is that there could not be 'revived', by reference in the 1965 Bye-Laws, the 1952 Bye-Laws, which had ceased to be in force together with Cap. 240, and that new Bye-Laws ought to have been made in respect of the matters governed by the 1952 Bye-Laws, the full text of which would then have been published in the Official Gazette. In my opinion the 1952 Bye-Laws were not 'revived', but they were re-enacted by reference as new legislation and, therefore, I cannot agree with counsel for the applicants on this point.
>
> It is, indeed, correct that to legislate by means of referring

extensively to the texts of other enactments is not, as a rule, a desirable course (see, also, what is stated regarding legislation by reference in Craies on Statute Law, 6th edn., pp. 29–32); but on the other hand, bearing in mind that the 1965 Bye-Laws were, obviously, made under the pressure of the events which led to the enactment of Law 64/64 and that in legislating by reference to the 1952 Bye-Laws, in relation to the regulation of traffic, there were re-enacted legislative provisions well known to all concerned for many years past, in all affected areas, and in view, too, of the judgment of the full bench of the Supreme Court in the case of *Andreas Koullapides Ltd. & Others* v. *The Municipality of Nicosia*, (1970) 2 C.L.R. 22, I have no difficulty in holding that the 1952 Bye-Laws, including the relevant to this case Bye-Law 11(1)(a), were validly and properly re-enacted as part of the 1965 Bye-Laws".

The aggregate effect of the aforesaid two decisions with regard to legislation by reference to the texts of other enactments is that this is not a method of legislation which offends any known principle of law. The accession to Independence with all that such a major constitutional change entails in the field of the Succession of State and the continuation of the validity of laws, and the shortness of time, during which legislation had to be enacted, has made us accustomed to the adoption of a variety of legislative methods which from time to time were invoked in order to face the difficulties and keep abreast with the needs and the pressure of time that this and other abnormal situations brought about in the country.

The argument that an expired Law could not be revived by an amending Law, has to be examined in the light of the situation that it was intended to be resolved and the wording of the two Laws which one is asked to read together. What was intended thereby was in fact the enactment of a law for the imposition of special contribution. Instead, however, of following the usual course of having Law No. 15 of 1976 with the necessary adaptations to its text printed and reproduced as a new Law and enacted as such, it was thought easier to adopt the course of having Law No. 22 of 1977 enacted and provide by section 1 thereof that that Law would be read together with the Special Contribution (Temporary Provisions) Law, 1976, (Law 15 of 1976) and that the latter Law and Law No. 22 of

1977 would be referred together as the Special Contribution (Temporary Provisions) Laws of 1976 and 1977. There were effected also certain amendments or changes to the text of the expired Law, by sections 2, 3, 4, 5, 6, 7, and 8 of the Law. Section 6 amends section 12 of the basic Law now section 11 (as renumbered by section 5 of the new Law) by substituting the words "31st March, 1977" that were to be found in the old Law with the words "31st March, 1978". Law No. 22 of 1977 was duly enacted and promulgated by publication in the official Gazette of the Republic.

The House of Reprosentatives by enacting Law No. 22/77 was not merely amending an expired law for the sake of amending same as there would be no sense in doing so. What it intended to achieve thereby and in fact did achieve and this is obvious from the wording of section 1 of Law No. 22/77, was the correction of the text of the old law, the bringing it up-to-date and its re-enactment so that a new legislative text in the form of the combination of the two laws would come into force upon its publication in the official Gazette, hence the expression that these laws should be read together. Upon that happening, there came into existence a complete text by reference from the one text to the other text, with the date of expiry of the new law reading "the 31st March, 1978".

Any other approach by this Court would have given no effect to the intention of the legislature. In my view there is no law or constitutional provision nor any other authority against this mode of legislation. So long as the wording of an enactment is clear, either by itself or by reference to another text, and by applying the proper rules of construction effect can be given to it, this Court whose task is indeed the construction of statutes and their constitutionality, should not examine their validity merely from the manner of drafting of laws however unusual or undesirable such drafting may be. What was done in the instant case is, in my view, a mode of re-enactment in a new context by reference to an old text, though not the best of legislative methods or one to be frequently resorted to for more than one reasons, and particularly so for the sake of avoiding confusion as clarity in legislation serves better the principle that ignorance of law is not permitted.

Having reached this conclusion the judgment of the learned

trial Judge has to be set aside but the matter does not rest here. We have to and so we shall proceed to examine the other grounds of Law raised by the recourses as they are material for the determination of the legality of the special contribution imposed on the applicants with respect to the quarter ending on the 31st March, 1977.

It has been the case for the appellants that the liability of the respondents to pay special contribution accrued during that quarter, when Law No. 15 of 1976 was still in force irrespective of whether a notice of assessment had been served on them or not; that that liability was not extinguished on the expiration of the said Law; that the special contribution should be deemed to have been imposed then; and that the subsequent levying and collection of the exact amount payable, was authorized by the Taxes (Quantifying and Recovery) Law, 1963 (Law No. 53 of 1963 as amended by Law No. 61 of 1969).

In the first assessments (*exhibit* 1) no reference is made to the Law by virtue of which the assessments were made, except that this special contribution was imposed by virtue of the Special Contribution (Temporary Provisions) Laws as stated at the top of the assessment. But in the letter of the Commissioner of Income Tax (*exhibit* 3) by which this determination of the objections of the respondents was communicated to them, it is stated that the assessments were made under Law No. 15 of 1976, which needless to say is the law under which the liability to pay special contribution accrued, as amended by Law No. 22 of 1977 and in paragraph 3 of the said letter it is made clear that, for the reasons given therein, the Commissioner of Income Tax decided on the basis of section 20(5) of the Taxes (Quantifying and Recovery) Law, 1963 (Law No. 53 of 1963) as amended by Law No. 61 of 1969 to quantify the income of each respondent at the figure shown therein and that that liability had not been extinguished with the expiry of the Law.

The aforesaid two points have been dealt with and adjudicated upon in a number of cases. In *Kyriakides* v. *The Republic*, 4 R.S.C.C., 109, it was held that inasmuch as The Income Tax Law, Cap. 323, was in force at the time the relevant income accrued, the taxation should be deemed to have been imposed then and any subsequent assessment of the exact amount of taxation payable, provided such assessment was at the time

authorized by valid legislation according to Article 24.2 of the Constitution, would not amount to imposition of tax with retrospective effect contrary to Article 24.3 irrespective of the time when the assessment was made.

The Taxes (Quantifying and Recovery) Law, 1963, which is a Law to provide for the machinery of quantifying and recovery of taxes and for matters connected therewith, was enacted shortly afterwards. In *Christou* v. *The Republic* (1965) 3 C.L.R. p. 214, the approach of the Supreme Constitutional Court was approved and followed. Also in the case of *Frangou* v. *The Republic* (1965) 3 C.L.R. 641, the same principle was reiterated, and I see no reason to depart from these well established principles.

The further question, however, which arises is whether Law No. 53 of 1963 is applicable to the present case. Learned counsel for the appellant has submitted that it is applicable as section 6 of Law No. 15 of 1976 provides that the Income Tax Laws and the Taxes (Quantifying and Recovery) Laws in force at the time are applicable mutatis mutandis and the said section did not expire with the rest of the Law, by virtue of the combined effects of sections 10(2)(e) of the Interpretation Law, Cap. 1 and the Expiry of Laws (Removal of Doubts) Law, 1962 (Law No. 42 of 1962). Section 10 which until the enactment of Law No. 42 of 1962 made provision for the effect of the repeal of laws has been made applicable also to the expiry of laws.

Section 10(2)(e) in so far as material reads:

> " Where a Law repeals and re-enacts, with or without modification, any provision of a former Law, references in any other Law to the provision so repealed, shall, unless the contrary intention appears, be construed as references to the provision so re-enacted.
>
> .....
>
> (e) affect any investigation, legal proceedings, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid,
>
> and any such investigation, legal proceedings, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Law had not been passed".

Law No. 42 of 1962 which consists of only two sections, provides:

"1. This Law may be cited as the Expiry of Laws (Removal of Doubts) Law, 1962.

2. For the avoidance of doubts in the construction of section 10 of the Interpretation Law and its applicability to expiry of Laws it is hereby declared that references therein to repeal of a Law include reference to expiry of a Law, by effluxion of time or otherwise, and that the expiry of a Law, whether before or after the commencement of this Law, shall not affect the operation thereof as respects things previously done or omitted to be done thereunder".

In my view the word "remedy" in section 10(2)(e) of Cap. 1 hereinabove set out, is wide enough to cover the case of an assessment.

On the issue of whether by virtue of what Law the assessments complained of were made, we have been referred to the fifth paragraph of *exhibit* 1, which is identical to the other assessments whereby it is made clear that the assessments were made by virtue of the provisions of the Taxes (Quantifying and Recovery) Law, 1963 (Law No. 53 of 1963). They were made as a result of the failure or refusal of the respondents to submit reports and that the wording of section 20 of Law No. 53 of 1963 as amended by section 8 of Law 61 of 1969 is used. It is this Law that provides for the procedure of assessments, objections and determination thereof. Section 51(4) of Law 53 of 1963 as amended by Law No. 61 of 1969 lends also support to the view that the Commissioner of Income Tax made the assessments in respect of the liabilities which already accrued by virtue of this Law, and this is in addition to what was decided in the *Christou* case (*supra*) and with reference to section 10(2)(e) and Law No. 42 of 1962.

No doubt there was sufficient authority for the Commissioner of Income Tax to make the assessments complained of. Law No. 22 of 1977 was obviously invoked for the benefit of the respondents in so far as their non-taxable income was concerned. (See section 7 of Law No. 22 of 1977 as compared with the schedule to Law No. 15 of 1976).

This concludes the issues that had to be decided for the determination of the recourses of the three applicants on appeal. The question of unconstitutionality was not argued either before the trial Court or this Court, as it was agreed to be left to be argued in Cases No. 273, 299 etc., which have been heard together by this Court in the first instance and for which judgment will now be given.*

For all the above reasons the appeal should be allowed, the judgment of the learned trial Judge be set aside and the *sub judice* decisions confirmed in whole.

Considering, however, the importance of the points raised there should be no order as to costs.

L. LOIZOU J.: I agree with the judgment just delivered which I had the advantage of reading in advance although, I must say, not without considerable difficulty and reluctance in so far as the mode of re-enactment of the expired Law No. 15 of 1976 by Law 22 of 1977 is concerned. I was inclined to the view that once Law 15 of 1976, the duration of the validity of which was expressly stated in the Law itself to be not later than the 31st March, 1977, had expired without any steps having been taken to have such validity extended prior to its expiration, the Law could not have been revived simply by the amendment of the date of its expiry. However, after discussing at length the matter with the other members of this Court and after anxious consideration I am not now prepared to go to the extent of dissenting from the conclusion reached by the majority.

MALACHTOS J.: In this case I have had the opportunity of reading in advance the judgment just delivered by my brother A. Loizou J. and I agree with it and I have nothing to add.

DEMETRIADES J.: I agree with the judgment just delivered by my brother A. Loizou J. and I have nothing to add.

SAVVIDES J.: I had the opportunity of discussing this case with my brother A. Loizou J. and reading in advance the judgment just delivered by him. I am in agreement and I have nothing to add.

TRIANTAFYLLIDES P.: I regret that it is not possible for me

* See p. 641 *post*.

to agree with my learned brother Judges that this appeal should be allowed and that, consequently, the *sub judice* administrative decisions should be confirmed.

In my opinion, the validity of the said decisions cannot be upheld because, even assuming that all the other issues which have been raised in the present proceedings are to be determined in favour of the appellants, the relevant legislative provisions, namely those in the Special Contribution (Temporary Provisions) Law, 1976 (Law 15/76), as amended by the Special Contribution (Temporary Provisions) (Amendment) Law, 1977 (Law 22/77), on which such decisions were based, are unconstitutional, as contravening Articles 24 and 28 of the Constitution, for the reasons which are set out in the judgment which I am about to deliver today in the related to the present appeal recourses of *Antoniades and others* v. *The Republic** (cases Nos. 273/78 etc.).

It is correct that the issue of the constitutionality of the aforementioned legislative provisions was not argued during the hearing of the present appeal, and has not been pronounced upon in the first instance judgment of a Judge of this Court against which this appeal was made.

Such issue had been raised, however, by the respondents in the Applications in their three recourses which were determined by means of the said first instance judgment; and the reason for which it has not been argued before us, in the present appeal, is that it was left to be argued in relation to the recourses of *Antoniades and others, supra.*

In revisional jurisdiction proceedings, under Article 146 of the Constitution, this Court, as an administrative Court, is entitled to examine ex proprio motu the issue of constitutionality of relevant legislative provisions, even if such issue has not been raised by any party before it (see, in this respect, Πορίσματα Νομολογίας τοῦ Συμβουλίου τῆς Ἐπικρατείας—"Conclusions from the Case-Law of the Council of State"—in Greece, 1929-1959, p. 226, and the decision of the Council of State in Greece in case 1484/1950).

I have, therefore, decided that it was proper and necessary for me to take, in this appeal, cognizance of the issue of constitu-

* See p. 641 *post.*

tionality of the legislative provisions involved in the present proceedings, especially as such issue has been argued in relation to the aforesaid related recourses of *Antoniades and others*, *supra*; and once I have reached the decision that such provisions are unconstitutional, I have to declare the *sub judice* administrative decisions to be null and void and of no effect whatsoever.

In view of my above conclusion, I do not have to pronounce upon any other matter which has been raised in the present appeal (see decision of the Council of State in Greece 1484/1950, *supra*).

I agree that there should be made no order as to the costs of this appeal.

TRIANTAFYLLIDES P.: In the result this appeal is allowed, by majority, without any order as to its costs.

Appeal allowed. No order as to costs.