1979 November 27

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

SERGHIOS ANTONIADES AND OTHERS,

*Applicants,*

*v.*

THE REPUBLIC OF CYPRUS, THROUGH THE DIRECTOR OF INLAND REVENUE DEPARTMENT,

*Respondent.*

(*Cases Nos.* 273/78, 299/78, 408/78, 410/78, 421/78, 442/78, 449/78, 450/78, 484/78, 490/78, 15/79, 20/79, 48/79, 53/79).

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*Statutes—Temporary act—Expiration—Whether it can be revived by an amending Law—Special Contribution (Temporary Provisions) Law, 1976 (Law 15/76) validly revived by an amending Law (Law 22/77)*—Republic *v.* Pavlides (*p.* 603 ante) *followed.*

*Special Contribution—Taxation—Special Contribution (Temporary Provisions) Law, 1976 (Law 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)*—Republic *v.* Pavlides (supra) *applied.*

*Constitutional Law—Constitutionality of legislation—Taxation—Retrospective taxation—Special Contribution (Temporary Provisions) (Amendment) Law, 1977 (Law 22/77)—Does not offend Article 24.3 of the Constitution which prohibits retrospective taxation.*

*Administrative Law—Policy—Cannot be the subject of judicial control.*

*Special Contribution (Temporary Provisions) (Amendment) Law, 1977 (Law 22/77)—Does not offend Articles 24(1) and (3), 25 and 28(1) and (2) of the Constitution.*

*Constitutional Law—Constitutionality of legislation—Taxation legislation—Attacked as infringing the principle of equality—Principles applicable—Legislative discretion allowed great latitude—Absolute equality cannot be obtained in taxation and is not required by principle of equality—Special Contribution (Temporary Provisions) Law, 1976 (Law 15/76 as amended by Law 22/77)—Imposition, thereunder, of special contribution on all incomes except those from remuneration—No differentiation between classes of persons but only between sources of income—Articles 24(1) and 28(1) and (2) of the Constitution not contravened.*

*Special Contribution—Special Contribution (Temporary Provisions) Law, 1976 (Law 15/76 as amended by Law 22/77)—Absence of differentiation between displaced and other persons—And fact that Fund for Relief of Displaced and Stricken Persons, to which the said contribution is deposited, is not included in the Budget does not render it contrary to the Constitution or to any principles of Law.*

*Constitutional Law—Right to practise any profession or to carry on any occupation, trade or business—Article 25 of the Constitution—Imposition of Special Contribution, under the special Contribution (Temporary Provisions) Law, 1976 (Law 15/76 as amended by Law 22/77) on a particular class of income—Not contrary to the above Article.*

The applicants in these recourses challenged the imposition of special contribution on their income, derived from sources other than emoluments, in respect of the quarters ended 31st March, 30th June, 30th September and 31st December, 1977. The *sub judice* imposition was made under the Special Contribution (Temporary Provisions Law, 1976 (Law 15/76) as amended by Law 22/77; and the contribution was deposited in the fund* for the Relief of Displaced and stricken persons.

Counsel for the applicants contended:

(a) That the assessments and the special contribution levied for the income derived during the quarter ending

* The Fund has been set up by Decision No. 13660 of the Council of Ministers dated the 23rd December, 1974; it was under the control and administration of the Accountant-General of the Republic and its declared purpose was the payment of benefits to displaced and distressed persons, including Turkish Cypriots, and the reactivation of the labour force.

31st March, 1977 are null and void as Law 15/76 was a temporary act which expired on the 31st March, 1977 and did not contain any provision for the preservation of accrued liability after its expiration.

(b) That the assessments and the special contribution levied for the remaining three quarters of 1977 are null and void as there was no valid law in force authorising the imposition of such special contribution because the operation and force of Law 15/76, which expired on the 31st March, 1977 could not have been extended by Law 22/77, as an amending Law, enacted on the 20th May, 1977.

(c) That, in respect of the imposition relating to the second quarter of 1977, Law 22/77 offended Article 24.3* of the Constitution as imposing taxation retrospectively.

(d) That as Law 15/76 (as amended by Law 22/77) imposed special contribution on all incomes except those derived from remuneration** and as the persons who were excluded from the provisions of the above Law were not taxed by any other Law and paid no special contribution whatsoever, there was discrimination between the two classes of persons which contravened Articles 24.1*** and 28(1) and (2)*** of the Constitution.

(e) That the relevant Laws imposing special contribution should have made a differentiation between displaced

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* Article 24.3 provides as follows:

"24.3 No tax, duty or rate of any kind whatsoever shall be imposed with retrospective effect:.....
....."

** "Remuneration", as defined by section 2 of Law 22/77, includes "salary and allowances from every source and from every office, post or salaried services".

*** Articles 24.1 and 28(1) and (2) provide as follows:

"24.1. Every person is bound to contribute according to his means towards the public burdens.

28(1) All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby.

(2) Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class, or on any ground whatsoever, unless there is express provision to the contrary in this Constitution".

persons and other persons inasmuch as the declared purpose for which the special contribution was imposed was for the purpose of alleviating the plight of displaced and distressed persons.

(f) That Article 24.1 of the Constitution, which requires every person to contribute according to his means towards the public burdens, impliedly gives the right to every person not to contribute to non-public burdens; and that, consequently, Law 15/76 offends this Article because (a) the Fund for the relief of Displaced and Distressed Persons is not a public burden within the meaning of this Article, as it is not included in the Budget and (b) this Law requires only a section of the public, namely the self-employed, to contribute to this Fund and by excluding other categories of persons who may have the means, there is brought about unequal treatment in the matter of taxation and (c) since only a section of the public benefits therefrom, the purpose of the Fund does not amount to a public burden.

(g) That the Laws in question offended Article 25.1* of the Constitution.

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

(1) That Law 15/76 was validly re-enacted by Law 22/77 (*Republic* v. *Pavlides and Others*, reported in this Part at p. 603 *ante* followed); that the liability to pay special contribution accrued during the quarter 1st January, 1977—31st March, 1977 when Law 15/76 was still in force; that the liability which had accrued prior to the expiry of Law 15/76 was not extinguished on the 31st March and the special contribution for that quarter should be deemed to have been imposed then; that the subsequent assessment of the exact amount payable was at the time authorised by the provisions of the Taxes (Quantifying and Recovery) Law, 1963 (53/63) as amended (see, also section 10(3) of Law 34/78); and that, accordingly, contentions (a) and (b) must fail.

* Article 25.1 provides as follows:

"25.1. Every person has the right to practise any profession or to carry on any occupation, trade or business".

(2) That Law 22/77 does not offend Article 24.3 of the Constitution as the taxation in any one year of a person on the basis of his income by means of legislation enacted during the same year is determined on his net income at the end of the year; that the same principle applies with equal force when taxation is imposed in respect of a quarter and the tax so imposed is measured by reference to the income finally determined at the end of the quarter as in the case in hand; that, therefore, the constitutional principle embodied in the said Article 24.3 of the Constitution is not offended with regard to the second quarter of 1977; and that, accordingly, contention (c) must fail (see *HadjiKyriacos & Sons Ltd.*, 5 R.S.C.C. 22 at p. 29 and *Aristidou* v. *Improvement Board of Ayia Phyla* (1965) 3 C.L.R. 686 at pp. 690, 698, 699).

(3) That when the constitutionality of a law imposing taxation is attacked on the ground that it infringes the principle of equality, the legislative discretion is allowed a great latitude in view of the complexity of fiscal adjustment and that in taxation matters there is a broader power of classification by the legislation than in the exercise of legislative power in other fields; that, moreover, absolute equality in taxation cannot be obtained, and it is not really required by the principle of equality; that in matters of taxation the state is allowed to pick and choose districts, objects, persons, methods and even rates of taxation; that a state does not have to tax everything in order to tax something; that the laws complained of do not make differentiation between classes of persons but only between sources of income; that there was a sound basis for differentiation between these sources of income because salaries and income from other sources have always been differently treated in general, and also, particularly so since the economic problems arose after the 1974 events; and that, accordingly, contention (d) must fail.

(4) That it is the source of income that is being taxed and not persons; that if a displaced person like any other person has such an income that falls within the margins of taxation his paying the appropriate tax does not offend any principle of Law or of the Constitution; that this is a matter of policy and as such it cannot be the subject of judicial control; and that, accordingly, contention (e) must fail.

(5) That the fact that a particular form of accounting has for more than one reasons been adopted does not change the nature

of the obligation of the State to alleviate the consequences of the great calamity that has befallen on such vast number of persons and its efforts to reactivate the labour force of the country, both of which amount, unquestionably, to a public burden; that a law requiring every person who has a particular source of income to contribute according to his means in relation to that source towards such a Fund, is not unconstitutional nor the use of the proceeds of such taxation for the benefit of those in need change the character of the obligation of the State, as it would not be a public burden if other than those in need were to benefit therefrom; and that, accordingly, contention (f) must fail.

(6) That the fact that taxation is imposed on a particular source of income does not amount to a contravention of Article 25; that there cannot be an infringement of this Article by what may be considered as indirect restrictions; and that, accordingly, contention (g) must fail.

*Applications dismissed.*

Cases referred to:

*Republic* v. *Pavlides and Others* (reported in this Part at p. 603 *ante*);

*United States* v. *Hudson*, 299 U.S. 498, 57 S. Ct. 309, 81 L. Ed. 370 (1937);

*Welch* v. *Henry*, 305 U.S. 134, 59 S. Ct. 121, 83 L. Ed. 87(1938);

*In re HadjiKyriacos & Sons Ltd.*, 5 R.S.C.C. 22;

*Aristidou* v. *Improvement Board of Ayia Phyla* (1965) 3 C.L.R. 686;

*Royster Guano Co.* v. *Commonwealth of Virginia*, 64 L. Ed. 989;

*Quaker City Cab Company* v. *Commonwealth of Pensylvania*, 72 L. Ed. 927;

*Colgate* v. *Harvey*, 80 L. Ed. 299 at p. 307;

*Frank Walters* v. *The City of St. Louis*, 98 L. Ed. 660;

*Allied Stores of Ohio* v. *Bowers*, 3 L. Ed. 2d 480;

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

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

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

*Matsis* v. *The Republic* (1969) 3 C.L.R. 245;

*Republic* v. *Demetriades* (1977) 12 J.S.C. 2102 (to be reported in (1977) 3 C.L.R. 213);

*Ioannides* v. *The Republic* (1979) 3 C.L.R. 295;
*Ved Vyas* v. *I.T.O.* (1965) A.A. 37;
*Fekkas* v. *The Electricity Authority of Cyprus* (1968) 1 C.L.R. 173;
*Republic* v. *Arakian and Others* (1972) 3 C.L.R. 294;
*Decisions of the Council of State in Greece Nos.* 139/1956, 194/1956, 2113/1963, 1090/1971;
*Connolly and Another* v. *Union Sewer Pipe Company*, 46 L. Ed. 679 at p. 690;
*Kotch* v. *Board of River Port Pilot Commissioners for the Port of New Orleans*, 91 L. Ed. 1093 at pp. 1096-1097;
*Bullock and Others* v. *Carter and Others*, 31 L. Ed. 2d. 92;
*Idaho Department of Employment* v. *Smith*, 54 L. Ed. 2d. 324;
*Williams and Others* v. *Rhodes and Others, Socialist Labor Party and Others* v. *Rhodes and Others*, 21 L. Ed. 2d. 24;
*Shapiro* v. *Thompson, Washington and Others* v. *Legrant and Others, Reynolds and Others* v. *Smith and Others*, 22 L. Ed. 2d 600;
*Massachusetts Board of Retirement and Others* v. *Murgia*, 49 L. Ed. 2d. 520;
*Trimble and Another* v. *Gordon and Others*, 52 L. Ed. 2d. 31;
*Zablocki* v. *Redhail*, 54 L. Ed. 2d. 618.

**Recourses.**

Recourses against the decision of the respondent to impose special contribution on the applicants under the provisions of the Special Contribution (Temporary Provisions) Law, 1976 (Law 15/76 as amended).

*K. Chrysostomides* for the applicants in cases Nos. 273/78, 299/78, 484/78 and 20/79.

*A. Triantafyllides* for the applicants in cases Nos. 408/78, 450/78 and 490/78.

*C. Velaris* for the applicants in cases Nos. 410/78 and 15/79.

*G. Michaelides* for the applicant in case No. 421/78.

*Chr. Chrysanthou* for the applicant in case No. 442/78.

*Z. Mylonas* for the applicant in case No. 449/78.

*A. HadjiIoannou* with *C. HadjiIoannou* for the applicant in case No. 48/79.

*A. Papacharalambous* for the applicant in case No. 53/79.

*A. Evangelou*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

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

A. LOIZOU J.: These recourses have been heard together in the first instance by the Full Bench of this Court in the exercise of its revisional jurisdiction under Article 146 of the Constitution as there was a great number of other pending cases awaiting the determination of the issues raised herein and as they present common legal issues. They are also related to the Revisional Jurisdiction Appeal No. 201,* in which judgment has just been delivered and by which we disposed of a number of issues which were raised also in these cases. This course was followed in order to avoid both multiduplicity of proceedings in their determination and the delay it entails to have a case heard in two stages.

The facts relevant to the determination of the legal and constitutional issues raised by these recourses are that for the income of the various applicants derived from sources other than emoluments, special contribution was levied for the quarters ended 31st March, 30th June, 30 September and 31st December 1977. Of course not all applicants were assessed in respect of all the aforesaid quarters. Moreover in respect of recourses Nos. 273/78, 421/78, 484/78, and 53/79, special contribution was levied for the quarters referred to therein, prior to the 1st January 1977. In fact in recourse No. 421/78 there is a further fact namely that these three applicants were displaced persons. Assessments were raised and notices of special contribution were sent to all applicants who duly objected against the special contribution so levied. Their objections were examined and dismissed as the respondent-Director of the Department of Inland Revenue, who comes under the respondent Minister of Finance, did not agree with the grounds of law relied upon by these applicants and his decisions were communicated to them, together with the relevant notices of special contribution attached thereto.

From these decisions the applicants filed the present recourses seeking a declaration that the assessments raised on them are null and void and of no effect whatsoever and or the decision to impose special contribution on each of them or any other sum, or at all, in the quarters mentioned in the respective assessments, is null and void and of no effect whatsoever.

The grounds of law relied upon by the applicants represented

* See p. 603 *ante*.

by Mr. Triantafyllides, are common in all recourses and his address has been adopted by all counsel with the exception of Mr. Hadjiloannou who had a different approach and whose argument will be answered in due course and Mr. G. Michaelides who urged that the case of his clients should in addition be examined from a different angle because of their being displaced persons.

The first ground of law argued, was that the assessments raised and the special contribution levied for the income derived during the quarter ending on the 31st March, 1977, are null and void as the Special Contribution (Temporary Provisions) Law, 1976 (Law No. 15 of 1976) was a temporary Law which expired on the 31st March, 1977 and did not contain any provision for the preservation of accrued liability after its expiration.

This ground applies mutatis mutandis with regard to the assessments raised and the special contribution levied for the quarters ending before the 1st January, 1977 in respect of the relevant Laws under which they were so raised.

The second ground connected with the first was that the assessments raised and the special contribution levied for the remaining three quarters of 1977 are null and void as there was no valid Law in force authorising the imposition of such special contribution for the reason that the operation and force of Law No. 15 of 1976, which expired on the 31st March, could not have been extended by the Special Contribution (Temporary Provisions) (Amendment) Law, 1977, (Law No. 22 of 1977), enacted on the 20th May, 1977.

Moreover in respect of the second quarter of 1977 it was argued that Law No. 22 of 1977 offended Article 24, para. 3 of the Constitution as imposing, in respect of that quarter commencing on the 1st April, taxation retrospectively.

In my judgment in Revisional Jurisdiction Appeal No. 201* I have already pronounced on the nature and legal effect of the enactment or re-enactment of Law No. 15 of 1976 by Law No. 22 of 1977. I also held that the liability to pay special contribution accrued during the quarter 1st January, 1977-31st March, 1977, when Law 15 of 1976 was still in force, and that the liability which had already accrued prior to its expiry was not extinguished on the 31st March and the special contribution for

* See p. 603 *ante*.

that quarter should be deemed to have been imposed then and that the subsequent assessment of the exact amount payable was at the time authorised by the provisions of the Taxes (Quantifying and Recovery) Law, 1963, (Law No. 53 of 1963) as amended. It has, however, to be added that for the assessments made after the enactment of the Special Contribution (Temporary Provisions) Law, 1978 (Law No. 34 of 1978), its section 10(3) is applicable. It provides that if there is any liability for the payment of contribution under the provisions of any Law imposing that contribution which is not in force on the date of the coming into force of that Law, and that contribution was not assessed and or concluded on the said date, the contribution could be levied and or concluded under the provisions of this Law, but according to the tables and on such terms as they were fixed by the provisions of the previous Law in force at the time. In other words all outstanding liabilities under the Laws in force from 1974 to 1977 could in addition by quantified and recovered under the aforesaid section.

What remains to examine in respect of the aforesaid two grounds is the contention that Law No. 22 of 1977 offends Article 24 para. 3 which prohibits the imposition of taxation retrospectively.

In my view such legislation does not offend Article 24, para. 3, of the Constitution, as the taxation in any one year of a person on the basis of his income by means of legislation enacted during the same year is determined on his net income at the end of the year (see in this respect Constitutional Law—Cases and Materials by Kauper—Third Edition, pages 991–992, and the following authorities referred to therein: *United States* v. *Hudson*, 299 U.S. 498, 57 S. Ct. 309, 81 L. Ed. 370 (1937), and cases there cited and *Welch* v. *Henry*, 305 U.S. 134, 59 S. Ct. 121, 83 L. Ed. 87 (1938).

The same principle applies with equal force when taxation is imposed in respect of a quarter and the tax so imposed is measured by reference to the income finally determined at the end of the quarter as in the case in hand. The constitutional principle embodied in Article 24, para. 3, of the Constitution against the retrospective imposition of taxation is not, therefore, offended with regard to the second quarter.

This principle has been expounded in two Cyprus cases as well from which I see no reason to depart.

In the case of *HadjiKyriacos* 5 R.S.C.C., p. 22, at p. 29, it is stated, concerning submission (b) which is as follows:-

"(b) that Law 16/61 amounts to the imposition of taxation retrospectively, contrary to paragraph 3 of Article 24, in that at the very end of 1961 some of the members of the Greek Community are taxed back with reference to their income, from emoluments, in 1961 and their income, from other sources, in 1960.

.....

Concerning submission (b) above, the Court has come to the conclusion that no question of retrospectivity, contrary to paragraph 3 of Article 24, arises. As it is also apparent from the provisions of section 3(1) of Law 16/61 and Clause 4 of Annex to such Law, the personal tax imposed under the said Law is a tax imposed during the currency of a particular year, i.e. 1961, in respect of expenditure in the Communal Chamber budget, as under Article 88.1 provided, for that very same year. 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, because tax on income is imposed on an annual basis and, therefore, the relevant legislation may be enacted at any time during the currency of the year concerned. The mere fact that, under clause 5 of the Annex to Law 16/61, (the text of which is set out hereinafter) the tax in question is charged, as far as income from sources other than emoluments is concerned, on the taxable income derived in the year immediately preceding the year of assessment, does not render such tax a retrospective taxation on the income of the preceding year, i.e. 1960; it still remains a tax imposed, in all respects, on the basis of the income in 1961, the year of assessment, and simply because the taxable income in 1961, from sources other than emoluments, is not readily ascertainable in the year of assessment, such income is computed, subject always to the application of the appropriate legal principles, on the basis of the taxable income from the said sources in 1960. That this is the proper construction to be placed upon a provision such as the said clause 5 is borne out by the construction given to practically identical provisions in the income tax legislation of other countries including England, on the income tax legislation of which the corresponding legislation in Cyprus happens

to have been modelled for years and from which Cyprus legislation the formula in clause 5 appears to have been adopted. It is for the legislature to choose the proper method of the computation of income in respect of the year of assessment."

This principle was approved by the Full Bench in the case of *Sofia Christou Aristidou* v. *The Improvement Board of Ayia Phyla* (1965) 3 C.L.R., p. 686 where at p. 690 Vassiliades J., said about the approach of Munir J., who heard the case in the first instance the following:

"He dealt separately with each of them in his well considered judgment; and decided them all in favour of the Board. As already intimated, after hearing learned counsel on both sides in this appeal, we are unanimously of the opinion that the trial Judge's decision on the first three headings, has not been successfully challenged."

The first of the three headings was retrospectivity and on that point I would like to quote from the judgment of Munir J., which is reported in the same volume p. 694, at pp. 698 and 699 the following:

"Dealing first with the question of retrospectivity, it is true that the fee in question was introduced and imposed for the first time during December, 1962. It was, therefore, submitted by counsel for Applicant that, as the fee which was in respect of the year 1962 was only imposed shortly before the end of that year, such imposition amounted to the imposition of retrospective taxation inasmuch as being imposed in December, 1962, it related to the whole of the period commencing with the 1st January, 1962, and ending with the 31st December, 1962. This being so, counsel for Applicant contended that such imposition was unconstitutional as being contrary to paragraph 3 of Article 24 of the Constitution, which provided that 'No tax, duty or rate of any kind whatsoever shall be imposed with retrospective effect'. Counsel for Respondent, relying on the Judgment of the Supreme Constitutional Court in the case of *In Re-Tax Collection Law No.* 31 *of* 1962 *and Hji Kyriacos & Sons Ltd.*, 5 R.S.C.C., p. 22, at p. 30, submitted that as the legislation in question had been introduced before the

expiration of the year in respect of which the fee had been imposed and, likewise, as the fee in question itself had been imposed before the expiration of that year, then such imposition was not retrospective in the sense of paragraph 3 of Article 24.

In its judgment in the above-cited case of *Hadji Kyriacos & Sons Ltd.*, the Supreme Constitutional Court (at p. 30) stated as follows:-

'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, because tax on income is imposed on an annual basis, and, therefore, the relevant legislation may be enacted at any time during the currency of the year concerned.'

Although in this case the subject-matter is not tax imposed on the basis of a person's income but is a fee imposed under bye-law 180 in respect of premises which had been let, in my opinion the above-quoted principle laid down in the case of *Hji Kyriacos & Sons Ltd.*, applies equally to the facts of this case as it did to the facts of that case. The fee, which is the subject-matter of this case is also imposed on an annual basis, as is clear from the definition of 'annual value' in bye-law 184. I am, therefore, of the opinion that in view of the fact that the relevant bye-laws have actually been made, and the fee in question has actually been imposed, during the currency of the year concerned, namely during the year 1962, the imposition of the fee in question is not retrospective in the sense of paragraph 3 of Article 24 and is not, therefore, contrary to the provisions of that Article."

Before examining the ground of constitutionality of the laws in issue in these recourses, it is necessary to complete the history of the relevant legislation to which reference has been made in my judgment in Revisional Jurisdiction Appeal No. 201. The Emoluments (Temporary Reduction) Law of 1976 (Law No. 14 of 1976) was enacted on the 30th March, 1976, that is to say, on the same day as Law No. 15 of 1976, and both were to remain in force until the 31st March, 1977. The first law hereinabove referred to imposed special contribution on emoluments, whereas the second one imposed special contribution on income from

sources other than emoluments. On the 11th February, 1977 the Emoluments (Temporary Reduction) (Repeal) Law, 1977 (Law No. 5 of 1977) was enacted and Law No. 14 of 1976 was thereby repealed retrospectively as from the 1st January, 1977. So, as from the 1st January 1977 there was in force only Law No. 15 of 1976 which imposed special contribution on the income of every person derived from any source other than emoluments. On the 30th June, 1978, the Special Contribution (Temporary Provisions) Law, 1978 (Law No. 34 of 1978) was enacted. Its provisions are similar to Law No. 15 of 1976, with, however, certain amendments. This law has nothing to do with the creation of liability in issue in the present cases, except as far as its section 10 is concerned to which reference has already been made.

Mr. Triantafyllides argued that Law No. 15 of 1976 as amended, imposes special contribution on all incomes excluding income from remuneration which according to the definition of the word "remuneration" in section 2 of Law No. 22 of 1977 includes "salary and allowances from every source and from every office, post or salaried services". Consequently, there is discrimination between those persons who derive their income from sources other than remuneration and persons who derive their income from salaries and allowances. The said differentiation, it was urged, is entirely arbitrary and unreasonable, it has no rational or any other connection with the means of the tax-payer, because a person's income by way of salary may be far bigger than other persons' income from sources other than salary. The persons who are excluded from the provisions of Law No. 15 of 1976 as amended by Law No. 22 of 1977, are not taxed by any other law and consequently they pay no special contribution whatsoever in view of the repeal of Law No. 14 of 1976 by Law No. 5 of 1977. In view of all this, it was argued that the decisions complained of contravene Articles 24.1 and 28(1) and (2) of the Constitution.

The argument advanced is that the applicants do not complain because one group has a better treatment than another, but because one group is left out of the net completely and because of that the burden on the others is heavier.

We have been referred to a number of American decisions which turn on the due process provision of the American Consti-

tution. They are the cases of *Royster Guano Co.* v. *Commonwealth of Virginia*, 64 L. Ed., p. 989; *Quaker City Cab Company* v. *Commonwealth of Pensylvania*, 72 L. Ed., p. 927; *Colgate* v. *Harvey*, 80 L. Ed., p. 299; of *Frank Walters* v. *The City of St. Louis*, 98 L. Ed., p. 660; *Allied Stores of Ohio* v. *Bowers*, 3 L. Ed. 2d 480.

Reference has also been made to the leading Cyprus cases on the subject, *Mikrommatis* v. *The Republic*, 2 R.S.C.C., p. 125; *Xinari* v. *The Republic*, 3 R.S.C.C., p. 98; *Panayides* v. *The Republic* (1965) 3 C.L.R., p. 107; *Matsis* v. *The Republic* (1969) 3 C.L.R., p. 245; *Republic* v. *Demetriades* (1977)* 12 J.S.C. p. 2102; and *Ioannides* v. *The Republic* (1979) 3 C.L.R. p. 295.

The basic principles that can be deduced from them are that when the constitutionality of a law imposing taxation is attacked on the ground that it infringes the principle of equality, the legislative discretion is allowed a great latitude in view of the complexity of fiscal adjustment and that in taxation matters there is a broader power of classification by the legislation than in the exercise of legislative power in other fields. Moreover, absolute equality in taxation cannot be obtained, it is not required by the principle of equality and that in matters of taxation the State is allowed to pick and choose districts, objects, persons, methods and even rates of taxation. This latter principle is fully discussed in Basu's Commentary on the Constitution of India, 5th Ed. Vol. 1, at pp. 463-465.

Article 24.1 provides that every person is bound to contribute according to his means towards the public burdens, and Article 28(1) and (2) lays down the equality before the law, the administration of justice and the entitlement to equal protection and also protects from discrimination.

It has been argued on behalf of the respondent that the laws complained of do not make a differentiation between classes of persons but only between sources of income. This is obviously so from the very wording of the charging sections and the definition of emoluments in the laws complained of and by the very fact that a salaried person, who has also income from other sources than emoluments, is bound to pay special contribution for those other means.

* To be reported in (1977) 3 C.L.R. 213.

We have referred to the case of *HadjiKyriacos* (*supra*) in relation to another point raised in these recourses. We may usefully quote now a passage from page 29 where the following has been said:-

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

In the case of *Frank Walters* v. *The City of St. Louis* (*supra*), at p. 665, it is stated:-

> " On its face, the ordinance classifies incomes for taxation according to their sources, one category consisting of salary and wage income and the other of profits from self-employment or business enterprise. Classification of earned income as against profits is not uncommon, sometimes to the advantage of the wage earner and sometimes to his disadvantage. It is a classification employed extensively in federal taxation, which under appropriate circumstances allows deductions to the self-employed not allowed to employees, discriminates sharply between earned income and capital gains, and sets apart certain types of wage earning for social security tax and for benefits. We cannot say that a difference in treatment of the tax-payers deriving

income from these different sources is per se a prohibited discrimination. There is not so much similarity between them that they must be placed in precisely the same classification for tax purposes."

And further down it is stated:

" The power of the State to classify according to occupation for the purpose of taxation is broad. Equal protection does not require identity of treatment. It only requires that classification rest on real and not feigned differences that the distinction have some relevance to the purpose for which the classification is made, and that the different treatments be not so disparate, relative to the difference in classification, as to be wholly arbitrary."

In my view there was a sound basis for differentiation between these sources of income. Salaries and income from other sources have always been differently treated in general; and also particulary so since the economic problems arose after the 1974 events.

In the Constitutional Law of India by H.M. Seervai, 2nd Vol. 1, p. 225, reference is made to an Indian case, namely, *Ved Vyas* v. *I.T.O.* (1965) A. A. 37, in which the provisions of the Finance Act 1963 which excluded the salaried class of persons from the levy of a surcharge were upheld as constitutional and was decided that differentiation in matters of taxation between income from salaries and income from all other sources does not offend the principle of equality. Moreover at p. 222 of the same text-book it is stated:

" However, it was held in *East India Tobacco Co.* v. *A.P.* that the wide latitude given by our Constitution to the legislature in classification for taxation was correctly described in the following words:

' A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably ... The (U.S.) Supreme Court has been practical and has permitted a very wide latitude in classification for taxation '.

The *Tobacco* Case was cited with approval in *Khyerbari*

*Tea Co. Ltd.* v. *Assam*, and these decisions have been followed in other cases."

No doubt absolute equality in taxation cannot be obtained and is not really required by the principle of equality. In matters of taxation the State is allowed considerable latitude in choosing objects, methods, persons, and rates. Nor does a State have to tax everything in order to tax something.

Mr. Michaelides argued that the relevant Laws imposing special contribution should have made a differentiation between displaced persons and other persons inasmuch as the declared purpose for which the special contribution was imposed was for the purpose of alleviating the plight of displaced and distressed persons. I do not think that this is a valid point as it is the sources of income that are being taxed and not persons. If a displaced person like any other person has such an income that falls within the margins of taxation his paying the appropriate tax does not offend any principle of Law or of the Constitution. This is a matter of policy and as such it cannot be the subject of judicial control.

Before examining the arguments advanced by Mr. Hadjiloannou it may be mentioned here that this Special Fund for the Relief of the Displaced and Distressed Persons has been set up by Decision No. 13660 of the Council of Ministers dated the 23rd December, 1974. It is under the control and administration of the Accountant-General of the Republic and its declared purpose is the payment of benefits to displaced and distressed persons including Turkish Cypriots, and for the reactivation of the labour force. Mr. Hadjiloannou has argued that Article 24.1 of the Constitution, which requires every person to contribute according to his means towards the public burdens, impliedly gives the right to every person not to contribute to non-public burdens. Consequently, Law No. 15 of 1976 offends this article (a) as the Fund in question is not a public burden within its meaning, because the Fund is not included in the Budget, (b) this law requires only a section of the public, namely, the self-employed, as he put it, to contribute to this Fund and by excluding other categories of persons who may have the means, unequal treatment in a matter of taxation is brought about, and (c) as only a section of the public benefits

therefrom, the purpose of the Fund does not amount to a public burden.

I have no difficulty in dismissing these contentions. The fact that a particular form of accounting has for more than one reasons been adopted does not change the nature of the obligation of the State to alleviate the consequences of the great calamity that has befallen on such vast number of persons and its efforts to reactivate the labour force of the country, both of which amount, unquestionably, to a public burden. A law requiring every person who has a particular source of income to contribute according to his means in relation to that source towards such a Fund, is not unconstitutional nor the use of the proceeds of such taxation for the benefit of those in need change the character of the obligation of the State, as it would not be a public burden if other than those in need were to benefit therefrom.

The last point to be considered is whether the Laws in question offend Article 25 of the Constitution. It may be briefly said with regard to this Article that the fact that taxation is imposed on a particular source of income, does not amount to a contravention of Article 25. In my view there cannot be an infringement of this Article by what may be considered as indirect restrictions.

For all the above reasons, the recourses, where the only points raised are those determined in this judgment, should be dismissed, and those in which other points are raised, should now be proceeded with, in the normal course, as regards those other issues arising for determination in each one of them.

In the circumstances and in view of the very interesting points raised, I would make no order as to costs.

In conclusion I would like to say that this judgment and the judgment in Revisional Jurisdiction Appeal No. 201 would be incomplete if I omitted to express my great appreciation for the able presentation of the respective cases by the learned counsel who appeared and argued same.

L. Loizou J.: One of the grounds of law which falls for decision in the present cases is the validity of the re-enactment of Law 15 of 1976, which was the issue in Revisional Appeal

No. 201 and in which judgment has just been delivered. Although in that judgment I did not dissent from the majority decision I expressed certain reservations regarding the mode of re-enactment of the Law, the duration of the validity of which had, by express provision in the Law itself, expired on the 31st March, 1977, by Law 22 of 1977, which was enacted on the 20th May, 1977. Subject to those reservations I agree with the judgment just delivered which I had the advantage of reading in advance, and there is nothing that I wish to add.

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.: In determining these cases I find myself, unfortunately, in disagreement with my learned brother Judges as regards the issue of the constitutionality of the relevant provisions of the Special Contribution (Temporary Provisions) Law, 1976 (Law 15/76), as amended by the Special Contribution (Temporary Provisions) (Amendment) Law, 1977 (Law 22/77).

In my opinion, the said provisions contravene paragraph (1) of Article 24 and paragraphs (1) and (2) of Article 28 of the Constitution.

Article 24.1 reads as follows:-

"1. Every person is bound to contribute according to his means towards the public burdens."

Article 28(1)(2) reads as follows:-

"1. All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby.

2. Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or

indirect discrimination against any person on the ground of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class, or on any ground whatsoever, unless there is express provision to the contrary in this Constitution."

In my view, the aforementioned legislative provisions infringe the principle of equality which is safeguarded by the above Articles of the Constitution.

It is pertinent, at this stage, to refer to the history of the legislation concerned:

Law 15/76 was enacted on March 30, 1976, with effect as from April 1, 1976, and it was due to expire on March 31, 1977.

Section 3 of Law 15/76 read as follows:-

"Διά τήν τριμηνίαν τήν άρχομένην άπό τῆς 1ης 'Απριλίου, 1976 καί δι' ἑκάστην ἑπομένην τριμηνίαν, διαρκούσης τῆς ἰσχύος τοῦ παρόντος Νόμου, ἐπιβάλλεται καί εἰσπράττεται εἰσφορά, κατά τούς συντελεστάς καί συμφώνως πρός τάς διατάξεις τάς ἐν τῷ Πίνακι ἀναγραφομένας, ἐπί τοῦ εἰσοδήματος παντός προσώπου προερχομένου ἐξ οἱασδήποτε πηγῆς ἑτέρας ἤ ἀμοιβῆς διά τήν ὁποίαν ἐγένετο πρόνοια μειώσεως δυνάμει τοῦ περί 'Αμοιβῶν (Προσωρινή Μείωσις) Νόμου τοῦ 1976."

'Επιβολή εἰσφορᾶς

Πίνακ

14 τοῦ 1976

("3. 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.")

Levying of contribution

Schedule

14 of 1976

The Emoluments (Temporary Reduction) Law, 1976 (Law 14/76), to which reference was made in section 3 of Law 15/76, was enacted, also, on March 30, 1976, with effect, again, as from April 1, 1976, and it was due to expire on March 31, 1977.

Then, on February 11, 1977, there was enacted the Emolu-

ments (Temporary Reduction) (Repeal) Law, 1977 (Law 5/77), which, with effect as from January 1, 1977, repealed Law 14/76.

In section 2 of Law 14/76 the term "ἀμοιβή" ("emoluments") is defined as follows:-

"'ἀμοιβή' σημαίνει χρηματικὴν ἀντιμισθίαν ὁπωσδήποτε καταβαλλομένην δι' οἱονδήποτε ἀξίωμα ἢ μισθωτὰς ὑπηρεσίας, ὁπουδήποτε ἀσκούμενον ἢ παρεχομένας καὶ περιλαμβάνει οἱονδήποτε ἐπίδομα, χρηματικῆς ἢ ἄλλης μορφῆς, καταβαλλόμενον συνεπείᾳ τοῦ ἀξιώματος ἢ τῶν ὑπηρεσιῶν τούτων καθὼς ἐπίσης καὶ συντάξεις ἀλλὰ δὲν περιλαμβάνει οἱονδήποτε ἕτερον χορήγημα ἢ φιλοδώρημα ἀφυπηρετήσεως ἢ οἱαδήποτε ποσὰ καταβαλλόμενα ὑπὸ ἐγκεκριμένου Ταμείου Προνοίας ἢ ἀμοιβὴν κτωμένην ὑπὸ προσώπων ἐργοδοτουμένων ὑπὸ ξένων Κυβερνήσεων ἢ Διεθνῶν 'Οργανισμῶν.".

("'emoluments' means remuneration in money paid in any manner whatsoever in respect of any office or salaried services, wherever exercised or rendered and includes any allowance, of a monetary or other kind, paid in consideration for such office or services, as well as pensions, but does not include any other retirement grant or gratuity or any sums paid by an approved Provident Fund or emoluments earned by persons employed by foreign Governments or International Organizations;").

The net effect of the repeal of Law 14/76, by means of Law 5/77, was to exempt from the obligation to pay special contribution, with effect as from January 1, 1977, all employees to the extent to which their income consisted of emoluments as defined in section 2 of Law 14/76.

On May 20, 1977, there was enacted Law 22/77 which, *inter alia*, amended Law 15/76, so as to continue it in force up to March 31, 1978. It, also, amended section 3 of Law 15/76, by deleting the concluding part of it which reads "διὰ τὴν ὁποίαν ἐγένετο πρόνοια μειώσεως δυνάμει τοῦ περὶ 'Αμοιβῶν (Προσωρινὴ Μείωσις) Νόμου τοῦ 1976." ("in respect of which a provision for reduction has been made under the Emoluments (Temporary Reduction) Law, 1976").

Thus, the basic differentiation between salaried and self-employed persons as regards the obligation to pay special

contribution was confirmed, with the result that the former are exempted from such obligation unless they happen to have income from any source other than emoluments, whilst the latter are not.

It is this differentiation which, in my opinion, results in contravention of Articles 24.1 and 28(1) and (2) of the Constitution.

The application of the constitutionally safeguarded principle of equality has been considered in, *inter alia*, *Mikrommaris* v. *The Republic*, 2 R.S.C.C. 125, *Xinari* v. *The Republic*, 3 R.S.C.C. 98, *Panayides* v. *The Republic*, (1965) 3 C.L.R. 107, *Fekkas* v. *The Electricity Authority of Cyprus*, (1968) 1 C.L.R. 173, *Matsis* v. *The Republic*, (1969) 3 C.L.R. 245, *The Republic* v. *Arakian and others*, (1972) 3 C.L.R. 294, *The Republic* v. *Demetriades*, (1977) 12 J.S.C. 2102* and *Ioannides and others* v. *The Republic*, (1979) 3 C.L.R. 295.

In all the above cases there was adopted the approach laid down originally in the *Mikrommatis* case, *supra* (at p. 131) to the effect that the principle of equality "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."

Our Article 28.1 of the Constitution corresponds to Article 3 of the Constitution of Greece of 1952 (see the *Arakian* case, *supra*, at p. 299) and to Article 4(1) of the Constitution of Greece of 1975. Also, Article 24.1 of our Constitution corresponds to Article 3 of the Constitution of Greece of 1952 and to Article 4(5) of the Constitution of Greece of 1975.

As has been pointed out in, *inter alia*, the *Mikrommatis* case, *supra* (at p. 131), the provision in Article 24.1 of our Constitution is "an aspect of the general principle of equality safeguarded by Article 28".

The same view is taken as regards the corresponding provision in Article 3 of the Constitution of Greece of 1952 by Svolos and Vlahos on The Constitution of Greece—"Τὸ Σύνταγμα τῆς Ἑλλάδος"—1954, vol. A, Part I, pp. 220–222, where it is pointed out that from the said provision there has to be derived, also, the principle of the universality of taxation, subject, of course,

* To be reported in (1977) 3 C.L.R. 213.

to such distinctions as are made necessary by differences relating to the means of the taxpayers (see, also, in this respect, Totsis on The Interpretation of the Legislation for the Taxation of Income of Natural and Legal Persons—"Διαρκὴς Ἑρμηνεία Φορολογίας Εἰσοδήματος Φυσικῶν καὶ Νομικῶν Προσώπων" —1959, Part A, pp. 18, 19, 25, as well as the decision of the Council of State in Greece in case 2113/1963, which is reported in the Review of Public Law and Administrative Law—'Επιθεώρησις Δημοσίου Δικαίου καὶ Διοικητικοῦ Δικαίου—1964, vol. 8, p. 79).

In the decision of the said Council in case 1090/1971 there are stated the following (at pp. 1453-1454):-

" 'Επειδὴ τὸ ἄρθρον 3 τοῦ Συντάγματος τοῦ 1952, ὁρίζον ὅτι οἱ Ἕλληνες πολῖται συνεισφέρουν ἀδιακρίτως εἰς τὰ δημόσια βάρη ἀναλόγως τῶν δυνάμεών των, ἀποκλείει μὲν τὴν κατὰ τὴν θέσπισιν τῶν φορολογικῶν νόμων δημιουργίαν ἀδικαιολογήτως φορολογικῶν ἐξαιρέσεων καὶ ἀπαλλαγῶν, παρέχει ὅμως κατὰ τὰ λοιπὰ εὐρεῖαν εὐχέρειαν εἰς τὸν νομοθέτην ὅπως διαμορφώνῃ ἑκάστοτε φορολογικὸν σύστημα, ἐν προκειμένῳ δὲ ὁ ὑπὸ τοῦ ἄρθρου 7 τοῦ Ν.Δ/τος 4444) 1964 προβλεπόμενος εἰδικὸς τρόπος προσδιορισμοῦ τοῦ φόρου εἰσοδήματος τῶν εἰς τὰς διατάξεις αὐτοῦ ὑπαγομένων ἐργοληπτῶν δημοσίων ἔργων, συνιστάμενος εἰς τὴν ἐφαρμογὴν χαμηλοῦ συντελεστοῦ ἐπὶ εὐρυτέρας φορολογητέας ὕλης, δυναμένης εὐχερῶς καὶ ἀσφαλῶς νὰ καθορισθῇ καὶ περιεχούσης καὶ τὸ καθαρὸν κέρδος τοῦ ἐργολήπτου, δὲν ὑπερβαίνει τὰ ὅρια ἐντὸς τῶν ὁποίων εἶναι, κατὰ τὴν προεκτεθεῖσαν συντακτικὴν διάταξιν, ἐπιτρεπτὴ ἡ διαμόρφωσις τῆς φορολογίας τοῦ εἰσοδήματος τῆς περὶ ἧς πρόκειται κατηγορίας φορολογουμένων, τελούσης, κατὰ τὰ ἐν τῇ προηγουμένῃ σκέψει, ὑπὸ εἰδικὰς συνθήκας,....."

( "Since article 3 of the Constitution of 1952, by defining that the Greek citizens contribute without exceptions towards the public burdens according to their means, though it excludes the creation, at the time of the enactment of taxing laws, of unreasonable taxation exemptions and reliefs, it otherwise affords to the legislator a wide discretion in shaping from time to time a system of taxation, and, in this connection, the special mode of assessment of income tax, provided by section 7 of Legislative Ordinance 4444/

1964, in respect of contractors of public works who are subject to its provisions, consisting of the application of a low rate of tax on a larger taxable amount, which may easily and safely be ascertained and which includes, also, the net profit of the contractor, does not exceed the limits within which, in accordance with the aforesaid constitutional provision, is permitted the shaping of the mode of taxation of the income of the relevant category of taxpayers, which is found to be, according to the above reasoning, in special circumstances,.....").

In cases 139/1956 and 194/1956 it was held by the Council of State in Greece that the exemption from taxation of building contractors in the Dodecanese did not violate the provision of the Greek Constitution safeguarding the principle of equality, because the taxation legislation generally, which was in force in the rest of Greece, was not applicable to the Dodecanese. These cases are, in my opinion, obviously distinguishable from the cases which are to be determined now by our Supreme Court, because in the said cases in Greece an area of the country, the Dodecanese, had been exempted from the applicability of taxation legislation in general, due, apparently, to reasonable grounds particularly relevant to such area.

From the case-law of the Supreme Court of the United States there clearly emerges the principle that the constitutionally safeguarded principle of equality does not exclude a classification which is based upon some reasonable ground and which is not arbitrary.

In *Connolly and another* v. *Union Sewer Pipe Company*, 46 L. Ed. 679, Mr. Justice Harlan said (at p. 690):-

"For this Court has held that classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis..... But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the 14th Amendment forbids this.....No duty rests more imperatively upon the Courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government..... It is apparent that the mere fact

of classification is not sufficient to relieve a statute from the reach of the equality clause of the 14th Amendment, and that in all cases it must appear, not only that a classification has been made, but also that it is one based upon some reasonable ground,—some difference which bears a just and proper relation to the attempted classification,—and is not a mere arbitrary selection.' *Gulf, C. & S. F.R. Co.* v. *Ellis*, 165 U.S. 150, 155, 159, 160, 165, 41 L. ed. 666, 668, 670, 671, 17 Sup. Ct. Rep. 255, 257–259, 261."

In *Colgate* v. *Harvey*, 80 L. Ed. 299, Mr. Justice Sutherland stated the following (at p. 307):–

"It is settled beyond the admissibility of further inquiry that the equal protection clause of the Fourteenth Amendment does not preclude the states from resorting to classification for the purposes of legislation. *F. S. Royster Guano Co.* v. *Virginia*, 253 U.S. 412, 415, 64 L. ed. 989, 990, 40 S. Ct. 560. And 'the power of the state to classify for purposes of taxation is of wide range and flexibility ....' *Louisville Gas & E. Co.* v. *Coleman*, 277 U.S. 32, 37, 72 L. ed. 770, 773, 48 S. Ct. 423. But the classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike'. *F.S. Royster Guano Co.* v. *Virginia*, 253 U.S. 412, 64 L. ed. 989, 40 S. Ct. 560, *supra*; *Air-way Electric Appliance Corp.* v. *Day*, 266 U. S. 71, 85, 69 L. ed. 169, 177, 45 S. Ct. 12; *Schlesinger* v. *Wisconsin*, 270 U.S. 230, 240, 70 L. ed. 557, 564, 46 S. Ct. 260, 43 A.L.R. 1224. The classification, in order to avoid the constitutional prohibition, must be founded upon pertinent and real differences, as distinguished from irrelevant and artificial ones. The test to be applied in such cases as the present one is—does the statute arbitrarily and without genuine reason impose a burden upon one group of taxpayers from which it exempts another group, both of them occupying substantially the same relation toward the subject matter of the legislation? '*Mere* difference is not enough...' *Louisville Gas & E. Co.* v. *Coleman*, 277 U.S. 32, 72 L. ed. 770, 48 S. Ct. 423, *supra*; *Frost* v. *Corporation Commission*, 278 U.S. 515, 522, 73 L. ed. 483, 488, 49 S. Ct. 235".

In *Kotch* v. *Board of River Port Pilot Commissioners for the Port of New Orleans*, 91 L. Ed. 1093, Mr. Justice Black said (at pp. 1096–1097):–

> "The constitutional command for a state to afford 'equal protection of the laws' sets a goal not attainable by the invention and application of a precise formula. This Court has never attempted that impossible task. A law which affects the activities of some groups differently from the way in which it affects the activities of other groups is not necessarily banned by the Fourteenth Amendment. See e.g. *Tigner* v. *Texas*, 310 US 141, 147, 84 L ed 1124, 1128, 60 S Ct 879, 130 ALR 1321. Otherwise, effective regulation in the public interest could not be provided, however essential that regulation might be. For it is axiomatic that the consequence of regulating by setting apart a classified group is that those in it will be subject to some restrictions or receive certain advantages that do not apply to other groups or to all the public. *Atchison, T. & S. F. R. Co.* v. *Matthews* 174 US 96, 106 43 L ed 909, 913, 19 S Ct 609. This selective application of a regulation is discrimination in the broad sense, but it may or may not deny equal protection of the laws. Clearly, it might offend that constitutional safeguard if it rested on grounds wholly irrelevant to achievement of the regulation's objectives."

In *Allied Stores of Ohio* v. *Bowers*, 3 L. Ed. 2d. 480, Mr. Justice Whittaker said (at p. 485):–

> "But there is a point beyond which the State cannot go without violating the Equal Protection Clause. The State must proceed upon a rational basis and may not resort to a classification that is palpably arbitrary. The rule often has been stated to be that the classification 'must rest upon some ground of difference having a fair and substantial relation to the object of the legislation' ".

*In Bullock and others* v. *Carter and others*, 31 L. Ed. 2d–92, Chief Justice Burger said (at p. 101):–

> "However, even under conventional standards of review, a State cannot achieve its objectives by totally arbitrary means; the criterion for differing treatment must bear

some relevance to the object of the legislation. *Morey* v. *Doud*, 354 US 457, 465, 1 L Ed 2d 1485, 1491, 77 S Ct 1344 (1957); *Smith* v. *Cahoon*, 283 US 553, 567, 75 L Ed 1264, 1274, 51 S Ct 582 (1931)."

In *Idaho Department of Employment* v. *Smith*, 54 L. Ed. 2d. 324, it was held (at p. 327) that:–

"This Court has consistently deferred to legislative determinations concerning the desirability of statutory classifications affecting the regulation of economic activity and the distribution of economic benefits. 'If the classification has some 'reasonable basis', it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality,' *Dandridge* v. *Williams*, 397 US 471, 485, 25 L Ed 2d 491, 90 S Ct 1153 (1970) quoting *Lindsley* v. *Natural Carbonic Gas Co.* 220 US 61, 78, 55 L Ed 369, 31 S Ct 337 (1911). See also *Massachusetts Board of Retirement* v. *Murgia*, 427 US 307, 49 L Ed 2d 520, 96 S Ct 2562 (1976); *Mathews* v. *De Castro*, 429 US 181, 50 L Ed 2d 389, 97 S Ct 431 (1976); *Jefferson* v. *Hackney*, 406 US 535, 32 L Ed 2d 285, 92 S Ct 1724 (1972)."

The U.S.A. Supreme Court has taken the view, with which I am in agreement, that strict scrutiny of a legislative classification is necessary when such classification interferes with the exercise of a fundamental right; and, moreover, that only a compelling state interest can justify interference with such a right.

In *Williams and others* v. *Rhodes and others, Socialist Labor Party and others* v. *Rhodes and others*, 21 L. Ed. 2d. 24, Mr. Justice Black stated the following (at pp. 31–32):–

"We turn then to the question whether the Court below properly held that the Ohio laws before us result in a denial of equal protection of the laws. It is true that this Court has firmly established the principle that the Equal Protection Clause does not make every minor difference in the application of laws to different groups a violation of our Constitution. But we have also held many times that 'invidious' distinctions cannot be enacted without a violation of the Equal Protection Clause. In determining whether or not a state law violates the Equal Protection Clause, we must

consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification. In the present situation the state laws place burdens on two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights of course, rank among our most precious freedoms. We have repeatedly held that freedom of association is protected by the First Amendment. And of course this freedom protected against federal encroachment by the First Amendment is entitled under the Fourteenth Amendment to the same protection from infringement by the States. Similarly we have said with reference to the right to vote: 'No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as goods citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.

No extended discussion is required to establish that the Ohio laws before us give the two old, established parties a decided advantage over any new parties struggling for existence and thus place substantially unequal burdens on both the right to vote and the right to associate. The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes. So also, the right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot. In determining whether the State has power to place such unequal burdens on minority groups where rights of this kind are at stake, the decisions of this Court have consistently held that 'only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms.' *NAACP* v. *Button*, 371 US 415, 438, 9 L Ed 2d 405, 421, 83 S Ct 328 (1963).

The State has here failed to show any 'compelling interest' which justifies imposing such heavy burdens on the right to vote and to associate."

In *Shapiro* v. *Thompson, Washington and others* v. *Legrant and others, Reynolds and others* v. *Smith and others*, 22 L. Ed. 2d. 600, Mr. Justice Brennan said (at p. 617):-

> " A state purpose to encourage employment provides no rational basis for imposing a one-year waiting-period restriction on new residents only.
>
> We conclude therefore that appellants in these cases do not use and have no need to use the one-year requirement for the governmental purposes suggested. Thus, even under traditional equal protection tests a classification of welfare applicants according to whether they have lived in the State for one year would seem irrational and unconstitutional. But, of course, the traditional criteria do not apply in these cases. Since the classification here touches on the fundamental right of interstate movement, its constitutionality must be judged by the stricter standard of whether it promotes a compelling state interest. Under this standard, the waiting-period requirement clearly violates the Equal Protection Clause."

In *Massachusetts Board of Retirement and others v. Murgia*, 49 L. Ed. 2d. 520, it was stated (at. p. 524):-

> " We need state only briefly our reasons for agreeing that strict scrutiny is not the proper test for determining whether the mandatory retirement provision denies appellee equal protection. *San Antonio School District* v. *Rodriguez*, 411 US 1, 16, 36 L Ed 2d 16, 93 S Ct 1278 (1973), reaffirmed that equal protection analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class. Mandatory retirement at age 50 under the Massachusetts statute involves neither situation."

In *Trimble and another* v. *Gordon and others*, 52 L. Ed. 2d 31, Mr. Justice Powell stated the following (at p. 37):-

> " In weighing the constitutional sufficiency of these justifications, we are guided by our previous decisions involving equal protection challenges to laws discriminating on the basis of illegitimacy. 'This Court requires, at a minimum, that a statutory classification bear some rational relationship to a legitimate state purpose.' *Weber* v. *Aetna Casualty &*

*Surety Co.* 406 US 164, 172, 31 L Ed 2d 768, 92 S Ct 1400 (1972). In this context, the standard just stated is a minimum; the Court sometimes requires more. 'Though the latitude given state economic and social regulation is necessarily broad, when state statutory classifications approach sensitive and fundamental personal rights, this Court exercises a stricter scrutiny ....' Ibid."

In *Zablocki* v. *Redhail*, 54 L. Ed. 2d. 618, Mr. Justice Marshall said (at pp. 631–632):–

" When a statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests. See, e.g., *Carey* v. *Population Services International*, 431 US 686, 52 L Ed 2d 675, 97 S Ct 2010; *Memorial Hospital* v. *Maricopa County*, 415 US, at 262-263, 39 L Ed 2d 306, 94 S Ct 1076; *San Antonio Independent School Dist.* v. *Rodriquez*, 411 US, at 16–17, 36 L Ed 2d 16, 93 S Ct 1278; *Bullock* v. *Carter*, 405 US 134, 144, 31 L Ed 2d 92, 92 S Ct 849 (1972)."

In the cases at present before this Court there is no doubt that the complained of differentiation between the incomes of salaried employees and self-employed persons involves interference with the fundamental right "to practise any profession or to carry on any occupation, trade or business", which is protected by Article 25.1 of our Constitution; and in order to mention only one example illustrating this interference it may be pointed out that the income of an advocate employed in the public service is exempted from the liability to pay special contribution whereas the income of an advocate who practises his profession as a self-employed person is not exempted from such liability. Consequently, strict scrutiny is required in order to ascertain whether the aforementioned differentiation entails an infringement of the principle of equality and it has to be examined whether it has been shown that a compelling state interest justifies such differentiation; and, in this respect, it is useful to bear in mind the following dictum of Mr. Justice Marshall in the *Zablocki* case, *supra* (at p. 628), regarding the burden of justification of a differentiation:–

" In evaluating §§ 245.10(1), (4), (5) under the Equal Prote-

ction Clause, 'we must first determine what burden of justification the classification created thereby must meet, by looking to the nature of the classification and the individual interests affected.' *Memorial Hospital* v. *Maricopa County*, 415 US 250, 253, 39 L Ed 2d 306, 94 S Ct 1076 (1974). Since our past decisions make clear that the right to marry is of fundamental importance, and since the classification at issue here significantly interferes with the exercise of that right, we believe that 'critical examination' of the state interests advanced in support of the classification is required. *Massachusetts Board of Retirement* v. *Murgia*, 427 US 307, 312, 314, 49 L Ed 2d 520, 96 S Ct 2562 (1976); see e.g., *San Antonio Independent School Dist.* v. *Rodriguez*, 411 US 1, 17, 36 L Ed 16, 93 S Ct 1278 (1973)."

Before concluding the part of this judgment in which reference is being made to U.S.A. case-law, it is useful to cite the case of *Walters and another* v. *City of St. Louis and others*, 98 L. Ed. 660, where the following were stated in his judgment by Mr. Justice Jackson (at pp. 663-666):-

" This appeal challenges a municipal income tax ordinance which excises gross salary and wages of the employed but only net profits of the self-employed, of corporations and of business enterprises. Appellants, who are wage earners, sued in the state Courts for a declaratory judgment and injunction to prevent their employer from withholding the tax and the City from collecting it. Their contention is that the discrimination between wages and profits which results from allowing certain deductions only to profits violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment. It has been overruled by the state Courts and is brought here for determination.

.....

.....

On its face, the ordinance classifies incomes for taxation according to their sources, one category consisting of salary and wage income and the other of profits from self-employment or business enterprise. Classification of earned income as against profits is not uncommon, sometimes to the advantage of the wage earner and sometimes to his disadvantage. It is a classification employed extensively

in federal taxation, which under appropriate circumstances allows deductions to the self-employed not allowed to employees, discriminates sharply between earned income and capital gains, and sets apart certain types of wage earning for social security tax and for benefits. We cannot say that a difference in treatment of the tax-payers deriving income from these different sources is per se a prohibited discrimination. There is not so much similarity between them that they must be placed in precisely the same classification for tax purposes.

The assertion is made that wage earners and self-employed persons are in competition on the same level of endeavor, and reliance is placed on such cases as *Quaker City Cab Co.* v. *Pensylvania*, 277 US 389, 72 L ed 927, 48 S Ct 553. There the Court found discrimination between identical sources of revenue depending only on the incorporated or unincorporated character of the taxpayer. But here, varying taxes are not laid upon taxpayers engaged in precisely the same form of activity. Instead, this is a broad tax on income, and the income springs from many activities carried on by many types of business entities. Here the classification rests on the State's view that wage or salary income is relatively fixed, predictable and certain, while profits of business are fluctuating and unstable. In view of widespread taxing practices, we cannot say that this difference is insignificant or fanciful.

The power of the State to classify according to occupation for the purpose of taxation is broad. Equal protection does not require identity of treatment. It only requires that classification rest on real and not feigned differences, that the distinction have some relevance to the purpose for which the classification is made, and that the different treatments be not so disparate, relative to the difference in classification, as to be wholly arbitrary. Cf. *Dominion Hotel, Inc.* v. *Arizona*, 249 US 265, 63 L ed 597, 39 S Ct 273; *Great Atlantic & P. Tea Co.* v. *Grosjean*, 301 US 412, 81 L ed 1193, 57 S Ct 772; *New York Rapid Transit Corp.* v. *New York*, 303 US 573, 82 L ed 1024, 58 S Ct 721; *Skinner* v. *Oklahoma*, 316 US 535, 86 L ed 1655, 62 S Ct 1110; 'in its discretion it may tax all, or it may tax one or some, taking care to accord to all *in the same class*

equality of rights'. *Southwestern Oil Co.* v. *Texas*, 217 US 114, 121, 54 L ed 688, 692, 30 S Ct 496. It may even tax wholesalers of specified articles on account of their occupation without exacting a similar tax on the occupations of wholesale dealers in other articles. Our disapproval of the wisdom or fairness of so doing is not a ground for interference. Ibid. 'When a state legislature acts within the scope of its authority it is responsible to the people, and their right to change the agents to whom they have entrusted the power is ordinarily deemed a sufficient check upon its abuse. When the constituted authority of the State undertakes to exert the taxing power, and the question of the validity of its action is brought before this Court, every presumption in its favor is indulged, and only clear and demonstrated usurpation of power will authorize judicial interference with legislative action.' *Green* v. *Frazier*, 253 US 233, 239, 64 L ed 878, 881, 40 S Ct 499."

The basic distinction between the present recourses and the *Walters* case, *supra*, is that the legislation, which was then found by the U.S.A. Supreme Court not to offend against the principle of equality, did not tax only self-employed persons whilst exluding from such taxation completely wage earners, but it taxed both such categories in different ways and this course was found to bear a relevance to the purpose for which the classification was made, whereas in the present cases all emoluments, as defined in section 2 Law 14/76, have been completely excluded from the liability to pay special contribution.

In India the Article of the Constitution of the country which corresponds to our Article 28.1 is Article 14, which reads as follows (see Basu's Commentary on the Constitution of India, 5th ed., vol. 1, p. 287):-

"14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

It is to be noted that in both the above Article 14 of the Constitution of India and in our own Article 28.1 there is to be found not only the notion of the equality before the law, but, also, the notion of the equal protection. In Basu, *supra*, there are set out the following propositions (at pp. 450–451) as regards

how to determine the reasonableness of a classification in ascertaining whether it offends against the provisions of Article 14, above:-

"I. When a law is challenged as violative of Art. 14, it is necessary for the Court first to ascertain the *policy* underlying the statute and the *object* intended to be achieved by it.[20]

II. The purpose or object of the Act is to be ascertained from an examination of its '*title*, *preamble* and *provision*'.[21]

III. Having ascertained the policy and the object of the Act, the Court should apply the dual test in examining its validity:[20-23]

(a) Is the classification rational and based on an intelligible differentia[20] which distinguishes persons or things that are grouped together from others that are left out of the group; [22, 24-2]

(b) Has the basis of differentiation any rational nexus or relation with its avowed policy and object?[24-25]

IV. If both the tests just mentioned are satisfied, the statute must be held to be valid.[20]

In such a case, the consideration as to whether the same result could not have been better achieved by adopting a different classification would be foreign to the scope of the judicial inquiry.[20]

.....

V. If either of the two tests of intelligible differentia and nexus is not satisfied, the statute must be struck down as violative of Art. 14.[8]

.....

VI. (a) The reasonableness of the classification is to be tested

20. *Kangshari* v. *State of W.B.*, A. 1960 S.C. 457 (464).
21. *Kedar Nath* v. *State of W.B.*, (1953) S.C.R. 835.
22. *Budhan* v. *State of Bihar*, (1955) 1 S.C.R. 1045 (1049).
23. *Hanif* v. *State of Bihar*, A. 1958 S.C. 731.
24. *Ram Krishna* v. *Tendolkar*, (1959) S.C.R. 279.
25. *Pandurangarao* v. *A.P.P.S.C.*, (1963) 1 S.C.R. 707 (714).
1. *Babulal v. Collector of Customs*, (1957) S.C.R. 1110 (1122).
2. *Krishna* v. *State of Madras*, (1957) S.C.R. 399 (414).
8. *Kangshari* v. *State of W.B.*, A. 1960 S.C. 457 (460).

with reference to the circumstances existing at the time of enactment of the impugned law.[13]

But—

In the case of pre–Constitution laws, the circumstances existing at the time of commencement of the Constitution become material.[14]

(b) A law which was non–discriminatory at its inception may be rendered dicriminatory by reason of external circumstances which take away the reasonable basis of classification."

In relation to the application of Article 14 of the Constitution of India, this Court has been referred to the case of *Ved Vyas* v. *I.T.O.* ('65) A.A. 37 (cited in Seervai on The Constitutional Law of India, 2nd ed., vol. 1, p. 225), where there were upheld, as valid, the provisions of the Finance Act, 1963, which excluded the salaried class of persons from the levy of surcharge.

In my opinion, the above case of *Vyas* is not an instance like the present one, where salaried persons have been altogether relieved from the obligation to pay a particular tax, but only an example of taxing, for the same purpose, different categories of persons in ways proportionate to their intrinsic nature.

The same observation applies to the differentiation between the mode of taxing, for purposes of income tax, income from emoluments and income from all other sources, which has been upheld in our own case of *In the Matter of the Tax Collection Law No.* 31 *of* 1962, *and Hji Kyriacos and Sons Ltd.*, 5 R.S.C.C. 22, 29, 31.

In the light of all the foregoing, I have reached, with the degree of certainty required for the purpose of finding that legislation is unconstitutional, the conclusion that as from January 1, 1977, when Law 15/76, as amended by Law 22/77, became applicable only to income other than from emoluments as defined in section 2 of Law 14/76, and there ceased to be in force any legislation providing for the payment of special contribution in relation to such emoluments, even on a different,

13. *Ramkrishna* v. *Tendolkar*, A. 1958 S.C. 538.

14. *State of Rajasthan* v. *Manohar*, A. 1954 S.C. 297.
(See also *Jialal* v. *Delhi Administration*, A. 1962 S.C. 1781 (1784)).

more favourable for salaried persons, basis, Law 15/76, as amended by Law 22/77, is unconstitutional, as contravening Articles 24.1 and 28(1) (2) of the Constitution.

There does not exist any justification, having reasonable relationship to the object of the relevant legislation (Laws 15/76 and 22/77)—which is to secure urgently needed funds in order to meet the consequences of the Turkish invasion of our country in 1974 (and, in this respect, see the long titles of Laws 14/76 and 15/76)—for the exemption from the obligation to pay special contribution of a vast category of persons, to the extent to which their income consists of emoluments, with the result that there arises, thus, a discrimination against all those receiving income from any other source; and such justification is especially necessary as the complained of differentiation interferes with the enjoyment of a fundamental right, such as that which is safeguarded under Article 25 of the Constitution.

It is a totally unwarranted infringement of the principle of the universality of taxation resulting in unequal treatment contrary to the aforementioned Articles 24 and 28 of our Constitution.

I would, therefore, annul all those *sub judice* in the present cases assessments which were made under the aforesaid Laws 15/76 and 22/77, the application of which is, for the reasons set out in this judgment, unconstitutional as contravening Articles 24 and 28, above.

I have not found it necessary to pronounce upon the issue of whether or not Law 15/76 has been validly amended, and continued in force, by means of Law 22/77, since I have found in this judgment that the application of these two Laws is unconstitutional.

As regards other *sub judice* assessments for special contribution which were made before the total abolition of the obligation to pay special contribution in relation to income from emoluments, I find myself in agreement with my brother Judges that there has not been established any ground on the basis of which such assessments could be annulled.

I do agree that there should be made no order as to the costs of the present proceedings.

TRIANTAFYLLIDES P.: In the result, those of the above

recourses where the only points raised are those determined in the judgment delivered by A. Loizou J. are dismissed by majority without any orders as to costs, and the remaining recourses will be proceeded with, in the normal course, as regards any other issues arising for determination in each one of them.

*Order accordingly.*