1982 March 29, April 8, 9, 26, 27

[TRIANTAFYLLIDES, P., HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, LORIS, STYLIANIDES, PIKIS, JJ.]

POLICE

v.

EKDOTIKI ETERIA "INOMENI DIMOSIOGRAPHI DIAS LTD.," AND ANOTHER,

Accused.

(*Question of Law Reserved No.* 187).

Constitutional Law—Right to freedom of speech and expression in any form—Article 19(1)(2) *of the Constitution—Right safeguarded thereunder not limited by reference to the truth or falsity of a statement made in the exercise of such right—And it, therefore, extends to false as well as to true statements.*

Constitutional Law—Constitutionality of legislation—Section 50(1) *of the Criminal Code, Cap.* 154, *as amended by the Criminal Code (Amendment) Law,* 1965 (*Law* 70/65) *constitutional, in view of Article* 19(3) *of the Constitution, provided the expression "impairing public confidence in the State or its organs" is interpreted as referring to the organs of the State as institutions of Government.*

Criminal Procedure—Question of law arising during the trial—Appropriate stage of reservation for opinion of Supreme Court—Section 148(1) *of the Criminal Procedure Law, Cap.* 155.

The accused were charged before the District Court of Nicosia for contravention of the provisions of section 50(1)* of the

* Section 50(1) provides as follows:

"50(1) Any person who in any manner publishes in any form false news or information which may impair public order or the confidence of the public in the state or its organs or to cause fear or concern to the public or to disturb in any way public peace and order shall be guilty of an offence and shall be punishable with imprisonment for a term not exceeding two years or with a fine not exceeding five hundred pounds or with both such imprisonment and fine:

Provided that it shall be a good defence for the accused to prove to the satisfaction of the Court that the publication was made in good faith and on the basis of facts justifying such publication.

For the purposes of this sub-section, the provisions of paragraphs (a) and (b) of section 201 in relation to good faith shall apply".

Criminal Code, Cap. 154 (as amended by Law 70/65). On the oral application of the defence, made before arraignment, supported by the prosecution, the following questions of Law were reserved under section 148(1)* of the Criminal Procedure Law, Cap. 155, for the opinion of the Supreme Court:

"(1) Whether the provisions of s.50(1) of the Criminal Code, as amended by Law 70/65, are contrary to the provisions of Article 19 of the Constitution, and

(2) Whether the right to freedom of speech and expression in every way, as entrenched by paras. 1 & 2 of Article 19 of the Constitution, extends to the publication of false news and information".

Held, (1) that the right safeguarded by Article 19(1)(2) of the Constitution is not limited by reference to the truth or falsity of a statement made in the exercise of such right; therefore, it extends to false as well as to true statements.

(2) That section 50(1) of the Criminal Code, Cap. 154, as amended by the Criminal Code (Amendment) Law, 1965 (Law 70/65), is constitutional, in view of Article 19(3), provided the expression "impairing public confidence in the State or its organs" is interpreted as referring to the organs of the State as institutions of Government.

Observations with regard to the appropriate stage at which questions of law should be reserved under section 148(1) *of the Criminal Procedure Law, Cap.* 155.

Order accordingly.

Cases referred to:

In re Charalambous (1974) 2 C.L.R. 37;

Whitney v. *California* (1926) 274 U.S. 357 at p. 375;

Attorney-General v. *B.B.C.* [1980] 3 All E.R. 161 (H.L.);

Handyside case—Decision of the European Court of Human Rights—Vol. 24, Publications of the European Courts of Human Rights, p. 22;

* Section 148(1) provides as follows:

"148(1) Any Court exercising criminal jurisdiction may, and upon application by the Attorney-General shall, at any stage of the proceedings, reserve a question of law arising during the trial of any person for the opinion of the Supreme Court.

Schenck v. *U.S.* (1919) 249 U.S. 47(52);

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

Ionides v. *The Republic* (1980) 3 C.L.R. 1;

Hoppi v. *The Republic* (1972) 3 C.L.R. 269;

Demetriades v. *The Republic* (1971) 3 C.L.R. 218;

Sofroniou & Others v. *The Municipality of Nicosia & Others* (1976) 3 C.L.R. 124 at p. 159;

Fox v. *Washington*, 59 Law. ed., 573 at pp. 575, 576;

Papadopoulos v. *The Republic* (1980) 2 C.L.R. 10 at p. 51;

Republic v. *Sampson* (1977) 2 C.L.R. 1 at pp. 18 and 71;

Christou v. *Christou*, 1964 C.L.R. 336 at p. 346;

Kokkinos v. *The Police* (1967) 2 C.L.R. 217 at p. 226;

Kannas v. *The Police* (1968) 2 C.L.R. 29 at p. 35;

Mizrahi v. *The Republic* (1968) 3 C.L.R. 406 at pp. 408-409;

Georghiades v. *The Republic* (1969) 3 C.L.R. 396 at p. 403;

Chrysanthou v. *The Police* (1970) 2 C.L.R. 95 at pp. 103-104;

Charitonos v. *The Republic* (1971) 2 C.L.R. 40 at p. 70;

Georghadji v. *The Republic* (1971) 2 C.L.R. 229 at p. 238;

Kantara Shipping Limited v. *The Republic* (1971) 3 C.L.R. 176 at p. 183;

Papadopoullou v. *The Republic* (1971) 3 C.L.R. 317 at p. 332;

HjiSavva v. *The Republic* (1976) 2 C.L.R. 13 at p. 22;

HjiNicolaou v. *The Police* (1976) 2 C.L.R. 63 at p. 68;

Kouppis v. *The Republic* (1977) 2 C.L.R. 361 at p. 384;

The Republic v. *Demetriades* (1977) 3 C.L.R. 213 at pp. 344-345;

Fourri v. *The Republic* (1980) 2 C.L.R. 152 at p. 188;

Decisions of the European Commission of Human Rights:

X v. *Federal Republic of Germany—Decisions and Reports of the Commission*, Vol. 3, p. 159;

X. and Church of Scientology v. *Sweeden—Decisions and Reports of the Commission*, Vol. 16 at p. 68;

X. v. *United Kingdom—Decisions and Reports of the Commission*, Vol. 16, p. 101.

Question of Law Reserved.

Question of Law Reserved on 21.9.1981 by the District Court of Nicosia (Fr. Nicolaides, D.J.) for the opinion of the Supreme

Court under section 148(1) of the Criminal Procedure Law, Cap. 155, before the entering of a plea by the accused in Criminal Case No. 15071/81 instituted by the Police against the above respondents who were charged for publishing false information in contravention of section 50(1) of the Criminal Code, Cap. 154.

A. Evangelou, Senior Counsel of the Republic, for the *Attorney-General.*

A. Markides, for the accused.

Cur. adv. vult.

1982 March 29. The following judgments were read.

TRIANTAFYLLIDES P.: Mr. Justice Pikis will state the unanimous opinion of the Court regarding the two questions of law which have been reserved by the District Court of Nicosia in the present case.

PIKIS J.: The right safeguarded by Article 19(1)(2) of the Constitution is not limited by reference to the truth or falsity of a statement made in the exercise of such right; therefore, it extends to false as well as to true statements.

Section 50(1) of the Criminal Code, Cap. 154, as amended by the Criminal Code (Amendment) Law, 1965 (Law 70/65), is constitutional, in view of Article 19(3), provided the expression "impairing public confidence in the State or its organs" is interpreted as referring to the organs of the State as institutions of Government.

TRIANTAFYLLIDES P.: Mr. Justice Pikis will deliver the first judgment, giving his reasons for the opinion of the Court, and any one of the other Judges of the Court, including Mr. Justice Hadjianastassiou who is abroad on duty, may give in due course his own reasons for the unanimous opinion of the Court.

PIKIS J.: In Criminal Case No. 15071/81, raised before the Nicosia District Court, a number of charges were preferred against a publishing company and Zacharias Papanicolaou for contravention of the provisions of section 50(1) of the Criminal Code whereby it is made a crime to publish under certain circumstances false news and information. On the oral application of the defence made before arraignment, supported by the prosecution, two legal questions were reserved

under s. 148(1) of the Criminal Procedure Law, for the opinion of the Supreme Court. Section 148(1) empowers a court exercising criminal jurisdiction to reserve, for the opinion of the Supreme Court, at any stage of the proceedings, a question of law arising during the trial. Not every point emerging can be reserved. The verb "arising" signifies the points of law that may be reserved. Their determination must be crucial, either to the outcome of the case or disposal of an aspect of it that foreshadows such outcome.

In conferring on the outcome of the appeal, doubts were expressed about the correctness of the procedure followed, particularly the stage at which the questions were raised, as well as the desirability of reserving questions of law before immediate need arises for the solution of a given legal question. Notwithstanding the question-marks surrounding the propriety and timeliness of the reference of the sub-judice questions to the Supreme Court, we decided to proceed and deal with the matters raised in view of the absence of any objection to the procedure followed and argument on the subject. However, we must not be taken as sanctioning the procedure adopted. It is pertinent to remind of the observations of Triantafyllides, P., in *Re Charalambous* (1974) 2 C.L.R. 37, and draw attention to the need to refrain from reserving questions unless necessary for the outcome or progress of the case. Any lesser standard may result in the Supreme Court delivering opinions on quasi theoretical issues, something impermissible under our system of law. Although we shall proceed to dispose of the case, for the reasons indicated, note must be made of the doubts entertained by some members of the Court whether it is at all possible to reserve a question before plea. There is force in the argument that the issues arising in the case are, with few exceptions, defined after plea. Be that as it may we shall proceed to dispose of the issues raised for our opinion.

Having expressed these reservations, we shall proceed to deal with the substance of matters in issue, assuming for the purpose of these proceedings, that the questions were properly raised.

The questions reserved for the opinion of the Supreme Court are the following:-

(A) Κατὰ πόσον τὸ Ἄρθρο 50(1) τοῦ Ποινικοῦ Κώδικος, Κεφ.

154 ὅπως ἔχει τροποποιηθεῖ ἀπὸ τὸν Νόμο 70 τοῦ 1965 ἀντίκειται πρὸς τὸ Ἄρθρο 19 τοῦ Συντάγματος, καὶ

(*English translation:* Whether the provisions of s. 50(1) of the Criminal Code, as amended by Law 70/65, are contrary to the provisions of Article 19 of the Constitution), and

(Β) Κατὰ πόσον τὸ δικαίωμα τῆς ἐλευθερίας τοῦ λόγου καὶ τῆς καθ' οἱονδήποτε τρόπον ἔκφρασης ὅπως κατοχυρώνεται ἀπὸ τὰ ἐδάφια 1 καὶ 2 τοῦ Ἄρθρου 19 τοῦ Συντάγματος ἐπεκτείνεται καὶ στὴ δημοσίευση ψευδῶν εἰδήσεων καὶ πληροφοριῶν.

(*English translation:* Whether the right to freedom of speech and expression in every way, as entrenched by paras. 1 & 2 of Article 19 of the Constitution, extends to the publication of false news and information).

The first question concerns the constitutionality of s.50(1) of the Criminal Code, as amended by Law 70/65. The second mainly raises a question of interpretation of Article 19 itself with regard to its ambit. Logic and convenience dictate consideration of the second question as a prelude to the determination of the first inasmuch as interpretation of Article 19 is necessary before we juxtapose it with s. 50(1) in order to decide whether it is inconsistent with it.

DOES ARTICLE 19 OF THE CONSTITUTION DISTINGUISH BETWEEN TRUE AND FALSE NEWS AND INFORMATION?

To answer the question, we must first consult the wording of Article 19 and ascertain whether the right of freedom of speech and expression is in any way qualified by the content of the expression, particularly its truth and accuracy. The language of Article 19 warrants no differentiation between a true and a false statement whereas the nature of the right is such as would render obnoxious to its enjoyment even limitations dependent on the need for truth. Freedom of speech and expression is an aspect of freedom of man itself. It should never be subjected to restrictions other than those absolutely necessary for social preservation and harmony. The question was resolved the same way in the U.S.A. and the celebrated dictum of

Brandeis, J., "that unless it is free for error, it is not free for truth", serves to define the boundaries of the right (*Whitney* v. *California* (1926) 274 U.S. 357 at 375). Lord Salmon recently depicted freedom of speech and expression as the pillar of liberty not to be diminished except for a most compelling cause such as State security. (See *Attorney-General* v. *The B.B.C.* [1980] 3 All E.R. 161 (H.L.)). The safeguard of freedom of speech and expression is the hallmark of a humane and civilised society. A court of law pronouncing on the fundamental freedoms of the subject, cannot but give full expression to the right, extending it to the limits warranted by the Constitution.

OPINION OF THE SUPREME COURT ON THE SECOND QUESTION RESERVED:

The right safeguarded by paragraphs 1 and 2 of Article 19 of the Constitution is not limited by reference to the truth or falsity of a statement made in exercise of the right; therefore, it extends to false as well as to true statements.

False news or information may legitimately be taken into account in discerning whether need arises to legislate for the limitation of the right in the interests of one or more causes for which restrictions may be introduced in accordance with Article 19.3. Truth may be tolerated even where it appears to be damaging to, for example, State security. No justification exists for suffering falsity in similar circumstances. After all, truth is the most lasting material for laying durable social and national foundations. Consequently, intolerance to false news or information, damaging to the causes for which freedom of speech and expression may be limited, is not intrinsically derogatory to the exercise of the right.

CONSTITUTIONALITY OF SECTION 50(1) OF THE CRIMINAL CODE, CAP. 154:

The submission made on behalf of the accused is briefly that s. 50(1) is unconstitutional in two respects, that is, to the extent that it limits publications—

(a) impairing confidence of the public in the State or its organs, and

(b) publications causing fear or alarm to the public.

The unconstitutionality of some of the provisions of a section of the law vitiates, in the submission of Mr. Markides, the constitutional validity of the section in its entirety. Consequently, we were invited to rule that s.50(1) should be struck down as unconstitutional.

It was strenuously and ably argued by Mr. Markides that Article 19 confers no power for the limitations of freedom of expression for the sustainance of confidence of the public in the State simpliciter or any of its organs. Further, he argued that causing fear and alarm, irrespective of the repercussions of such conduct on State security or public order, is not a cause for which freedom of speech and expression may be legitimately restricted.

Extensive reference was made to the provisions of the Indian Constitution, notably Article 19, safeguarding freedom of speech and expression, and Indian case law on its interpretation and the validity of legislative provisions designed to limit the right, notably s.505(1) and 124-A of the Indian Penal Code. Less voluminous was the reference to U.S.A. and Greek case law on the subject of freedom of expression. Lastly, brief reference was made to decisions of the European Commission and European Court of Human Rights on the interpretation and ambit of Article 10.2 of the European Convention on Human Rights, the wording of which is in many respects similar to Article 19 of our Constitution.

For the Republic the case was again well argued by Mr. Evangelou who, like Mr. Markides, took pains to enlighten us on foreign jurisprudence on the approach to limitations of freedom of expression where constitutionally entrenched. The essence of his submission is that s.50(1) should be broadly viewed as a whole, its aims identified and then examine its constitutional validity. Viewed from the prism of its purposes, s.50(1) aims to protect State security, constitutional and public order, legitimate heads for the limitation of the right under Article 19.3.

I examined the rival submissions with keen awareness of the importance of the issues arising for consideration and the mission of the court as the guardian of human rights and fundamental liberties.

ARTICLE 19 OF THE CONSTITUTION:

Article 19.1 proclaims the right to freedom of speech and expression in every form. This is the basic norm, establishing the paramountcy of the right signifying the commitment of the State to the fullness of the right. Limitations are the exception and authority for their introduction must be sought in the Constitution itself and from no other source.

Article 19.2 is explanatory of Article 19.1, definitive of the breadth of the right. A right not to be interfered with by any public authority and one that should be enjoyed regardless of frontiers, the attribute of a universal right.

Article 19.3 defines the causes in the interests of which freedom of speech and expression may be limited and the prerequisites to legislative action. It provides:-

> "The exercise of the rights provided in paragraphs 1 and 2 of this Article may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the reputation or rights of others or for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary".

The causes in respect of which freedom of speech and expression may be limited can be grouped into three categories:-

Category 1—State security, constitutional order and—public order—the integrity of the State.

Category 2—Public health, public morals, the protection of the rights of others and preservation of confidential information—Social Harmony.

The concept of rights in the sense of Article 19.3 connotes rights known to the law. It must be stressed that the law acknowledges no right to any citizen for the enjoyment of the confidence of others. A vague attempt was made to peg

s.50(1) to this branch of Article 19.3, an effort that collapses on appreciation of the above reality.

Category 3—The authority and impartiality of the judiciary—Justice.

In India it was decided that the causes enumerated in Article 19 of the Indian Constitution, for which freedom of speech may be limited, are exhaustive. (See Basu's *Commentary of the Constitution of India*, 5th ed., Vol. 1, p. 550). Any attempt, it was held, to legitimize limitations beyond the scope of the Constitution should be struck down as an infringement of the Constitution. I accept this as a sound proposition of the constitutional law, that is, where a right is defined in absolute terms and the permissible exceptions to it are enumerated in the Constitution the introduction of further exceptions constitutes a violation of the right safeguarded. The constitutional premise is that for the effective exercise of the freedom guaranteed in Article 19 no exceptions are justified other than those in Article 19.3.

The decisions of the U.S.A. courts on the legitimacy of limitations to freedom of expression, are of limited assistance because unlike Article 19 of our Constitution, the limitations are not ingrained in the Constitution but are the product of case law evolved in the context of the judicial doctrine acknowledging residual powers to the State to legislate "police powers" as a concomitant of sovereignty. Also, decisions of the European Commission and European Court of Human Rights, though instructive, offer only indirect assistance to the solution of the problem in hand for they concentrate primarily on the definition of the outer limits of State power to enact restrictions not inconsistent with the Convention, leaving a wide margin of appreciation to member States as to need to limit the right guaranteed by Article 10.2 of the Convention. (See, inter alia, *The Handyside* case of the European Court of Human Rights—Vol. 24, Publications of the European Courts of Human Rights, p. 22).

In my opinion, Article 19.3 enumerates exhaustively the causes in respect of which freedom of speech and expression may be limited. Next, my task is to examine whether the limitations introduced by s.50(1) are permissible under Article 19.3 of the Constitution.

A useful test as to the necessary link between the impugned statute and the permissive clauses of the Constitution is that adopted in India. The relationship between the two must be rational or proximate. (See Basu's *Commentary of the Constitution of India*, 5th ed., Vol. 1, p. 551). Rationality is a matter of logic; proximity a question of fact and degree within the fabric of the society in which the statute will be applied. This is a salutary approach, necessitating a direct link between the exceptior and the constitutional clause to which it is associated. In my judgment, the relation between the two must be manifest. The limitation must serve exclusively one or more of the purposes for which Article 19.3 permits restrictions of freedom of speech and expression. Any lesser standard would weaken the constitutional guarantee of the right.

A study of s.50(1) is essential for an appreciation of the objects and identification of the purposes of the law. Section 50(1) reads:–

> "Any person who in any manner publishes in any form false news or information which may impair public order or the confidence of the public in the state or its organs or to cause fear or concern to the public or to disturb in any way public peace and order shall be guilty of an offence and shall be punishable with imprisonment for a term not exceeding two years or with a fine not exceeding five hundred pounds or with both such imprisonment and fine:
>
> Provided that it shall be a good defence for the accused to prove to the satisfaction of the Court that the publication was made in good faith and on the basis of facts justifying such publication.
>
> For the purposes of this sub–section, the provisions of paragraphs (a) and (b) of section 201 in relation to good faith shall apply".

A reading of the section as a whole reveals that uppermost in the mind of the legislatute was the protection of State security, constitutional order and public order from the publication of false news and information. The primary purpose of the law is protection of social tranquillity and public order from pernicious falsehood. A more loosely defined purpose is the protection of State authority from the same evils. Prima facie

the legislature purported to limit freedom of expression for legitimate constitutional purposes; whether the actual limitations are justifiable is a subject we shall discuss later. The next question I must grapple with is whether need arose for the limitation of freedom of expression in the interests of public and constitutional order and State security.

THE PREREQUISITES FOR THE LIMITATION OF THE RIGHT UNDER ARTICLE 19.3:

A series of decisions of the European Commission and Court of Human Rights establish that the initial appreciation of the need for legislation rests with the competent State authorities, the House of Representatives in Cyprus. (See the case of *Handyside*, supra, and Fawcett on the *Application of the European Convention of Human Rights*, p. 215, on the analysis of Case No. 753/60, 3 Yearbook, 318). But the final arbiter to pronounce on the existence of the necessity are the courts of each State, the permanent guardians of constitutional order. To ascertain whether it was necessary to introduce permissible limitations regard must be had to the national and social realities at the time of the enactment and subsequent thereto. For arguably limitative laws of fundamental rights are ipso facto of a temporary character. So, if the reasons that necessitated the enactment disappear, so must the law enacted in reaction thereto. Regrettably in 1965 and ever since, the State was threatened with internal and external subversion that threatened the very existence of the State in 1974 with the staging of the treacherous coup d' etat and the catastrophic Turkish invasion that followed. Consequently, the legislature rightly discerned threats to the integrity of the State and sought to shield it from false news and information. It is unnecessary to debate the several tests suggested in the course of argument for the definition of "necessary" or discuss differences between the Cyprus and Indian Constitution as to the prerequisites for valid limitations of freedom of expression. The Constitution of India postulates a less stringent test for the introduction of limitations "in the interests of", as compared to Cyprus. The notion of "necessary" does not import absolute necessity while it requires a lot more than mere desirability. "Necessary", in the context of Article 19.3, encompasses legislative action without which there is a serious though not inevitable risk that one or more of the causes defined therein will be imperilled.

In my judgment, it was perfectly legitimate for the House of Representatives, and I so hold, to legislate for the protection of State security, public and constitutional order threatened by subversion from many quarters. The winds of destruction blowing around the island and within it, were too serious to be ignored. In the face of such dangers freedom of expression could be limited in accordance with Article 19.3.

IMPAIRING CONFIDENCE OF THE PUBLIC IN THE STATE AND ITS ORGANS:

Mr. Markides primarily directed his attack on the constitutionality of s.50(1) to that part of the section that makes it an offence to impair (κλονίζει) confidence of the public in the State and its organs. The gist of his submission is that the State, its organs in particular, independently of the position they hold in the State hierarchy, have no right to the confidence of the public. Any attempt to acknowledge such right would, in his contention, defeat the democratic principle that freedom of speech aims to uphold. Extending to political figures, functionaries of the State, a right to the confidence of the public, it was submitted, would be antinomous to the basis precepts of democracy.

Lengthy reference was made to the definition of "government established by law" in the context of s.124A of the Indian Penal Code as a legitimate subject for the restriction of the right to freedom of speech and expression. Government, according to Indian decisions, is a proper subject for protection only if understood in an impersonal sense as the embodiment of State authority and constitutional order. The institution of government is distinguished from the persons holding office from time to time, symbolizing the authority but not embodying it. (See Basu's *Commentary of Indian Constitution*, 5th ed., p. 658, and the decision in *Kedermath*, cited therein). A clear distinction is made between the institution and its temporary representatives. A similar distinction was made in Greece, in interpreting "authority" in the context of s.181 of the Greek Penal Code, whereby it was made an offence to insult public authorities. (See *Criminal Chronicles* 1 (1963) pp. 228–229). Authority was defined impersonally as an institution of the State, in no way synonymous or identifiable with the holder of office from time to time. So, insults directed against the holder of public office,

do not necessarily constitute attacks on the authority he represents unless the authority itself is by necessary implication insulted and the insults are intended to smear the institution.

I regard the differentiation between the institution and the persons exercising State power as essential for the effective vindication of freedom of expression and democratic rule. In a democratic society the public has a salient interest in the preservation of State authority and the rule of law. Sustaining confidence in the institution of government, is essential for constitutional order. It is legitimate under Article 19.3 to sustain confidence in the institutions of government. On the other hand, the maintainance of constitutional order is not dependent on the confidence of the public in the holders of State offices. Any attempt to equate them with the institution they represent would stifle criticism and diminish the democratic principle.

"Constitutional order" under Article 19.3 refers to the order established by the Constitution and laws saved or enacted thereunder. The legislature had a right, in the light of the threats to constitutional order earlier outlined, to restrict freedom of speech and expression for the sake of its preservation.

Publications tending to undermine the institutions of the State, as the vehicle of government, can be restricted whenever necessary, as earlier expounded. The instruments of government, those representing or symbolizing State authority, such as ministers, are in their personal capacity outside the concept of constitutional order. Freedom of speech and expression cannot be limited for the protection of their personal status or authority, either in the government or society at large.

Before I finally pronounce whether impairment of public confidence in the State or its organs, in s.50(1), is reconcilable with the provisions of Article 19.3, it is convenient to deal briefly with the second submission, that is, the constitutionality of the provision "causing fear and alarm".

The submission is that stirring fear and alarm per se, poses no threat to State security or public order; therefore, it is incompatible with Article 19.3. Here, again, reference was made to Indian case law and a number of decisions of the U.S.A.

Federal Supreme Court on the theme of public order and the kind of threats from which it may justifiably be protected. In U.S.A. the prevalent trend of judicial opinion is that no limitations are permissible in the name of public order except in the face of a clear and present danger to public order. (See Basu's *Commentary*, supra, 5th ed., Vol. 1, p. 552). Such a danger arises only where immediate serious violence is either expected or advocated. But it need not actually occur and pre-emptive action is justified for the preservation of public order. Constitutional guarantees of liberty and freedom would be neutralized without public order. The dictum of Holmes, J. that "the most stringent protection of free speech would not protect a man falsely shouting fire in a theatre and causing panic", coupled with his reminder as to the elemental need for order without which the guarantee of civil rights would be a mockery, serves to indicate that public order may be threatened from a wide range of activities, including panic created by a false alarm. (*Schenck* v. *U.S.* (1919) 249 U.S. 47 (52)). The need for the effective preservation of public order has led to the prohibition of a multitude of activities inherently liable to disturb public order, such as the use, under certain circumstances, of sound amplifying instruments, the expulsion of hecklers from meetings and assemblies, as well as utterances tending to incite an immediate breach of the peace. (See Basu's supra, p. 625). In India, a less stringent test was adopted not requiring proof of an imminent danger to public order before limitations are introduced. (See Basu's supra, p. 553).

CONSTRUCTION AND INTERPRETATION OF STATUTES TO ASCERTAIN THEIR CONSTITUTIONALITY:

Every law is presumed to be constitutional unless the contrary is proved, beyond any reasonable doubt. (See *The Board for Registration of Architects and Civil Engineers* v. *Christodoulos Kyriakides* (1966) 3 C.L.R. 640; *Ionides* v. *The Republic* (1980) 3 C.L.R.; *Hoppi* v. *The Republic* (1972) 3 C.L.R. 269; *Demetriades* v. *The Republic* (1971) 3 C.L.R. 218). Any other rule would diminish the sovereignty of the legislature over the field of legislation and weaken the constitutional principle of separation of powers essential for the vindication of the rule of law. The judges are not the overlords of legislative action. They will not examine a statute minutely but broadly, starting

from the premise that the House of Representatives are the arbiters of legislation. Only where they transgress irretrievably the constitutional limitations to their legislative power is the Court entitled to intervene. A safe assumption in examining the constitutionality of a law, is that the legislature intended to legislate within the framework of the Constitution. In deciding upon the constitutionality of a statute it is axiomatic that if susceptible to an interpretation reconcilable with the provisions of the Constitution, a beneficial construction must be adopted saving the enactment. A beneficial construction may be adopted provided this can be achieved without thwarting the language of the Act. (See *Kyriakides*, supra; *Neophytos Sofroniou & Others* v. *The Municipality of Nicosia & Others* (1976) 3 C.L.R. 124 at 159; *Fox* v. *Washington*, 59 Law. ed., 573 at 575, 576; Tsatsos' *Interpretation of Statute in Constitutional Law*, 1970, pp. 26 and 27).

Where the purposes of a section of the law, as they emerge on a consideration of its provisions in their totality, are compatible with constitutional dictates, the Court may justifiably interpret linguistically inadequate provisions as merely falling short of giving effect to the objects of the legislature and save the Act.

That a section of the law must be evaluated as a whole before pronouncing on its constitutionality as a whole, is clear from the decision of the Supreme Court in *Papadopoulos* v. *The Republic* (1980) 2 C.L.R. 10, where the Full Bench of the Supreme Court had to resolve the constitutionality of s.51A of the Criminal Code, whereby it is made an offence to publish material calculated or likely to encourage violence or promote feelings of ill will among citizens or sections of the community. The Court upheld it as constitutional. The case of *Papadopoulos* supra, establishes two propositions relevant to our case: (a) It becomes "necessary" under Article 19.3 and, therefore, permissible for the legislature to limit freedom of speech penalising publications directly antagonistic to one or more of the causes enumerated in Article 19.3 and (b) the cause in the name of which the prohibition is enacted need not be specified in the law so long as the association between the two is manifest.

The State as a legal institution is synonymous with constitutional order itself. The maintenance of confidence in the State

tantamounts to supporting the foundations of constitutional order. Consequently, the protection of this institution from publications undermining public confidence in the substratum of constitutional order, the State, is a proper subject for limitation of the freedom guaranteed by Article 19.1. The limitation is directly referable to constitutional order. A more difficult question poses, respecting limitations about the organs of the State. In its literary connotation the wording of the law restricts the right for purposes outside the compass of Article 19.3. Organs of the State in the sense of the holders of office are not under Article 19.3 a legitimate cause for the limitation of the right safeguarded by Article 19.1. Enough was said earlier in the judgment to indicate why constitutional order has to do with the institutions of the State and not those who symbolize it. Can section 50(1) be saved in view of the rules of construction earlier referred to? Is it susceptible to an interpretation compatible with the provisions of Article 19.3? In my judgment the answer is in the affirmative for the following reasons. The organs envisaged by s.50(1) are portrayed in the alternative to the State, on indication that they should be understood in an institutional and not a personal sense. Further, the general objects of the law, one of them being constitutional order, are an additional consideration for a purposive interpretation, in this area, to legislate for the protection of constitutional order. In my judgment, it is possible, without doing violence to the language of the law, to construe "organs of the State" as referring to the institutions of government as distinct from the persons holding office. Consequently, this part of the law cannot be rejected as unconstitutional. Likewise, although engendering a fear and alarm, is not in itself a legitimate subject for limitations under Article 19.3; the context in which it is employed, clearly suggests that what is contemplated is conduct detrimental to State security and public order. And it should be thus construed. Read in this light, an interpretation that offers itself in view of the wording of the law in its entirety, the law imports legitimate limitations to the right guaranteed by Article 19.1.2.

Nothing that is said in this judgment should discourage the legislature from finding an early opportunity to streamline the wording of the law, in the interests of clarity and certainty, along the interpretation adopted in this judgment.

OPINION OF THE SUPREME COURT ON QUESTION 1:

Section 50(1) of the Criminal Code, Cap. 154, as amended by Law 70/65, is constitutional in view of the provisions of para. 3 of Article 19 provided the expression "impairing public confidence in the State or its organs" is interpreted as referring to the organs of the State as institutions of Government.

LORIS J.: I have had the advantage of reading in advance the judgment delivered by Mr. Justice Pikis in which there appear his reasons for the opinion of the Court. I agree with this judgment and have nothing useful to add.

April 8, 1982. TRIANTAFYLLIDES P.: On March 29, 1982, the unanimous opinion of the Supreme Court regarding two questions of law which were reserved, under section 148 of the Criminal Procedure Law, Cap. 155, by the District Court of Nicosia, was stated to be as follows:-

> "The right safeguarded by Article 19(1)(2) of the Constitution is not limited by reference to the truth or falsity of a statement made in the exercise of such right; therefore, it extends to false as well as to true statements.
>
> Section 50(1) of the Criminal Code, Cap. 154, as amended by the Criminal Code (Amendment) Law, 1965 (Law 70/65), is constitutional, in view of Article 19(3), provided the expression 'impairing public confidence in the State or its organs' is interpreted as referring to the organs of the State as institutions of Government".

On the same day Mr. Justice Pikis delivered a judgment giving his own reasons for the opinion of the Supreme Court and it was then stated, also, that "anyone of the other Judges of the Court, including Mr. Justice Hadjianastassiou who is abroad on duty, may give, in due course, his own reasons for the unanimous opinion of the Court". So, I shall now proceed to do this:

I have had, indeed, the privilege of studying the very erudite judgment of my brother Judge Mr. Justice Pikis and I am giving separately my own reasons, not because I minimize in any way his valuable contribution towards the formulation of the opinion

of the Supreme Court on the two questions of law which were reserved, but because, in some respects, my approach to the matter is not exactly the same as his.

I would like to begin by stating that I was strongly inclined to find, in view of the very premature, in my opinion, stage at which the two questions of law concerned were reserved for the opinion of the Supreme Court, that the said questions of law are not "questions of law" in the sense of section 148(1) of Cap. 155 and that, therefore, this Court, in the present proceedings, could not express its opinion thereon.

In *Re Charalambous*, (1974) 2 C.L.R. 37, the following were stated (at pp. 41–42) by the Supreme Court in relation to the construction of section 148(1), above:

> "In the course of considering the fate of this application, we felt that we had to examine the meaning of the expression 'a question of law arising during the trial' as used in subsection (1) of section 148. As this point was not argued, initially, by either side, we invited counsel to address us in relation thereto and we are, indeed, grateful to them for the assistance they have given us. We have come to the conclusion that subsection (1) of section 148 does not enable either side to a criminal proceeding to raise before the trial Court a question of law at a stage of its own choosing and to apply that such question should be reserved at such stage for our opinion; in our view 'a question of law arising during the trial' means only a question of law arising during the trial at a stage at which it has to be decided in order to enable the trial to proceed further in accordance with the law and rules of practice relating to criminal procedure; and within the ambit of such expression it is not included a question of law which was prematurely raised at a stage of the trial at which it does not have to be decided for the purposes of the trial at that particular stage; because, in our opinion, section 148 does not provide a procedural machinery by means of which a party to a criminal case can seek a ruling on a point of law, from the Supreme Court, in anticipation of the stage of the trial at which the state of the law in relation to such point may or will become actually material and of immediate importance for the further progress of the case; what is envisaged

under the said subsection (1) is a situation where a question of law is, so to speak, obtruding itself upon the trial Court and demanding an answer straightway".

The *Charalambous* case, supra, was referred to by this Court with approval in *The Republic* v. *Sampson*, (1977) 2 C.L.R. 1 (at, inter alia, pp. 18 and 71).

In the *Sampson* case, supra, Mr. Justice A. Loizou stated the following (at pp. 71–72) in relation to the proper application of section 148(1) of Cap. 155:

"The use of the word 'may' in this context signifies the existence of a discretion in such instance ———— Such discretion, however, should be exercised judicially and though as it was pointed out in the case of *Charalambous* (supra) an application should not be refused merely for the sake of avoiding an interruption of the trial, yet, undue interruptions are not conducive to the good administration of criminal justice. Furthermore, the notion of shortening proceedings by securing in advance a statement of the law by the Court that has the final word in the matter, cannot solely be the reason for exercising a Court's discretion in favour of reserving a question of law. It is a discretion to be exercised, when an application at the instance of the defence is made only for the sake of doing justice in a case and particularly for the sake of saving an accused person from embarrassment in the conduct of his defence and from the likelihood of the detrimental consequences which a ruling given against an accused may bring. If anything, it would only be proper that such a question should be reserved after the ruling of a trial Court is given, so that its reasoning, if persuasive enough, may render unnecessary an application for such a reservation or reveal their thinking in case they eventually refuse to reserve. It is in the province of trial Courts to determine points of law, whether novel or not, together with the determination of the factual issues that arise in the course of a criminal trial and if reservations of law are made for the opinion of the Supreme Court without the trial Court's pronouncement on the issues raised, the impression may be formed that for legal points trial Courts should seek in advance, the assistance of this Court. This is not the purpose of section 148

of the Criminal Procedure Law, the appellate jurisdiction of the Supreme Court being primarily to review the rulings and judgments for which complaint is made by way of appeal or other procedural means".

Also, in the same case, I had the opportunity to state the following (at p. 18):

"I should point out that it is highly desirable that in all cases in which a trial Court is faced with the possibility of having to resort to the procedure under subsection (1) of section 148, in circumstances in which subsection 3(b) of section 148 would be eventually applicable, the trial Court should express its own opinion on the particular question of law raised before it, prior to deciding whether or not to actually exercise its discretionary powers under subsection (1) of section 148; because, once the parties to the case know the decision of the trial Court on the question of law raised, they will be enabled to reconsider their position in the light of the reasoning contained in such decision; and, also, the trial Court will be assisted, in exercising its said discretionary powers, by any comments that may be made, by the parties, in relation to such reasoning.

I would not go, however, so far as to say that reserving a question of law under subsection (1) of section 148, without first having expressed its own opinion thereon, is a course which is never open to a trial Court, because, indeed, there do exist precedents when such a course was followed (see, for example, *Queen* v. *Erodotou*, 19 C.L.R. 144, and *The Republic* v. *Liassis*, (1973) 2 C.L.R. 283).

It has to be stressed, too, that the powers under section 148(1) should be exercised sparingly, and only in appropriate cases, so as to avoid interrupting the continuity of trials (see, inter alia, *The Republic* v. *Kalli* (*No.* 1), 1961 C.L.R. 266 and *In re Charalambous and another*, (1974) 2 C.L.R. 37); but, I do think that in the present case the relevant discretion of the Assize Court was exercised in a manner which was reasonably open to it in the circumstances of this very serious case".

The reason for which I have not, in the end, insisted that in

the present case the mode in which the questions of law concerned were reserved at a premature stage excluded them from the jurisdiction under section 148(1), above, is that on the present occasion, unlike what was done in the *Charalambous* case, supra, we did not invite arguments on this preliminary issue from counsel appearing before us.

In order to answer the aforementioned questions of law it is necessary to decide what is the proper construction and application of section 50(1) of the Criminal Code, Cap. 154, as amended by the Criminal Code (Amendment) Law, 1965 (Law 70/65), as well as of paragraphs 1, 2 and 3 of Article 19 of the Constitution.

Section 50(1), above, reads as follows:

"50.–(1) Πᾶς ὅστις καθ' οἱονδήποτε τρόπον δημοσιεύει ὑφ' οἱανδήποτε μορφὴν ψευδεῖς εἰδήσεις ἢ πληροφορίας δυναμένας νὰ κλονίσωσι τὴν δημοσίαν τάξιν ἢ τὴν ἐμπιστοσύνην τοῦ κοινοῦ πρὸς τὸ κράτος ἢ τὰ ὄργανα αὐτοῦ ἢ νὰ προκαλέσωσι φόβον ἢ ἀνησυχίαν εἰς τὸ κοινὸν ἢ νὰ παραβλάψωσι καθ' οἱονδήποτε τρόπον τὴν κοινὴν εἰρήνην καὶ εὐταξίαν εἶναι ἔνοχος πλημμελήματος καὶ τιμωρεῖται μὲ φυλάκισιν μὴ ὑπερβαίνουσαν τὰ δύο ἔτη ἢ μὲ χρηματικὴν ποινὴν μὴ ὑπερβαίνουσαν τὰς 500 λίρας ἢ μὲ ἀμφοτέρας τὰς ποινὰς ταύτας:

Νοεῖται ὅτι ἀποτελεῖ ὑπεράσπισιν διὰ τὸν κατηγορούμενον ἐὰν ἀποδείξῃ κατὰ τρόπον ἱκανοποιοῦντα τὸ δικαστήριον ὅτι ἡ δημοσίευσις ἐγένετο καλῇ τῇ πίστει καὶ ἐστηρίχθη ἐπὶ γεγονότων δικαιολογούντων τὴν τοιαύτην δημοσίευσιν.

Διὰ τοὺς σκοποὺς τοῦ παρόντος ἐδαφίου αἱ διατάξεις τῶν παραγράφων (α) καὶ (β) τοῦ ἄρθρου 201 ὅσον ἀφορᾷ τὴν καλὴν πίστιν ἐφαρμόζονται".

("50.–(1) Any person who in any manner publishes in any form false news or information which may impair public order or the confidence of the public in the state or its organs or to cause fear or concern to the public or to disturb in any way public peace and order shall be guilty of an offence and shall be punishable with imprisonment for a term not exceeding two years or with a fine not exceeding five hundred pounds or with both such imprisonment and fine:

Provided that it shall be a good defence for the accused to prove to the satisfaction of the Court that the publication was made in good faith and on the basis of facts justifying such publication.

For the purposes of this sub-section, the provisions of paragraphs (a) and (b) of section 201 in relation to good faith shall apply".)

Paragraphs (1), (2) and (3) of Article 19, above, read as follows:

"1. Έκαστος έχει τὸ δικαίωμα ἐλευθερίας τοῦ λόγου καὶ τῆς καθ' οἱονδήποτε τρόπον ἐκφράσεως.

2. Τὸ δικαίωμα τοῦτο περιλαμβάνει τὴν ἐλευθερίαν τῆς γνώμης, τῆς λήψεως καὶ μεταδόσεως πληροφοριῶν καὶ ἰδεῶν ἄνευ ἐπεμβάσεως οἱασδήποτε δημοσίας ἀρχῆς καὶ ἀνεξαρτήτως συνόρων.

3. Ἡ ἐνάσκησις τῶν δικαιωμάτων, περὶ ὧν ἡ πρώτη καὶ δευτέρα παράγραφος τοῦ παρόντος ἄρθρου, δύναται νὰ ὑποβληθῇ εἰς διατυπώσεις, ὅρους, περιορισμοὺς ἢ ποινὰς προδιαγεγραμμένους ὑπὸ τοῦ νόμου καὶ ἀναγκαίους μόνον πρὸς τὸ συμφέρον τῆς ἀσφαλείας τῆς Δημοκρατίας ἢ τῆς συνταγματικῆς τάξεως ἢ τῆς δημοσίας ἀσφαλείας ἢ τῆς δημοσίας τάξεως ἢ τῆς δημοσίας ὑγιείας ἢ τῶν δημοσίων ἠθῶν ἢ πρὸς προστασίαν τῆς ὑπολήψεως ἢ τῶν δικαιωμάτων ἄλλων ἢ πρὸς παρεμπόδισιν τῆς ἀποκαλύψεως πληροφοριῶν ληφθεισῶν ἐμπιστευτικῶς ἢ πρὸς διατήρησιν τοῦ κύρους καὶ τῆς ἀμεροληψίας τῆς δικαστικῆς ἐξουσίας".

("1. Every person has the right to freedom of speech and expression in any form.

2. This right includes freedom to hold opinions and receive and impart information and ideas without interference by any public authority and regardless of frontiers.

3. The exercise of the rights provided in paragraphs 1 and 2 of this Article may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary only in the interests of the security of the Republic or the constitutional order or the public

safety or the public order or the public health or the public morals or for the protection of the reputation or rights of others or for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary".)

Paragraphs (1)(2) and (3) of Article 19 of our Constitution correspond to paragraphs (1) and (2) of Article 10 of the European Convention on Human Rights, of 1950, which read as follows:-

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary".

The aforesaid Convention, due to its ratification by the European Convention on Human Rights (Ratification) Law, 1962 (Law 39/62), and in view of Article 169(3) of the Constitution, forms part of the law of Cyprus of superior force to other ordinary legislation in Cyprus, such as section 50(1) of Cap. 154 (see, in this respect, inter alia, *Christou* v. *Christou*, 1964 C.L.R. 336, 346, *Kokkinos* v. *The Police*, (1967) 2 C.L.R. 217, 226, *Kannas* v. *The Police*, (1968) 2 C.L.R. 29, 35, *Mizrahi* v. *The Republic*, (1968) 3 C.L.R. 406, 408-409, *Georghiades* v. *The Republic*, (1969) 3 C.L.R. 396, 403, *Chrysanthou* v. *The Police*, (1970) 2 C.L.R. 95, 103-104, *Charitonos* v. *The Republic*, (1971) 2 C.L.R. 40, 70, *Georghadji* v. *The Republic*, (1971) 2

C.L.R. 229, 238, *Kantara Shipping Limited* v. *The Republic*, (1971) 3 C.L.R. 176, 183, *Papadopoullou* v. *The Republic*, (1971) 3 C.L.R. 317, 332, *HjiSavva* v. *The Republic*, (1976) 2 C.L.R. 13, 22, *HjiNicolaou* v. *The Police*, (1976) 2 C.L.R. 63, 68, *Kouppis* v. *The Republic*, (1977) 2 C.L.R. 361, 384, *The Republic* v. *Demetriades*, (1977) 3 C.L.R. 213, 344-345, *Fourri* v. *The Republic*, (1980) 2 C.L.R. 152, 188, and *Papadopoullos* v. *The Republic*, (1980) 2 C.L.R. 10, 51).

Of course, in the present instance, it has not been argued that section 50(1) of Cap. 154 should be found to be invalid as being in conflict with the provisions of Article 10 of the European Convention on Human Rights and, therefore, we do not have to deal with this issue, but, nevertheless, the way in which Article 10 of the Convention has been applied and construed is, indeed, very helpful for determining how our own corresponding Article 19 should be construed and applied.

In its judgment in the *Handyside* case (which was given on December 7, 1976) the European Court of Human Rights stated the following (in paragraphs 48 and 49):

> "48. The Court points out that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (judgment of 23 July 1968 on the merits of the 'Belgian Linguistic' case, Series A no. 6, p. 35, § 10 in fine). The Convention leaves to each Contracting State, in the first place, the task of securing the rights and freedoms it enshrines. The institutions created by it make their own contribution to this task but they become involved only through contentious proceedings and once all domestic remedies have been exhausted (Article 26).
>
> These observations apply, notably, to Article 10 § 2. In particular, it is not possible to find in the domestic law of the various Contracting States a uniform European conception of morals. The view taken by their respective laws of the requirements of morals varies from time to time and from place to place, especially in our era which is characterised by a rapid and far reaching evolution of opinions on the subject. By reason of their direct and

continuous contact with the vital forces of their countries, State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements as well as on 'necessity' of a 'restriction' or 'penalty' intended to meet them. The Court notes at this juncture that, whilst the adjective 'necessary', within the meaning of Article 10 § 2, is not synonymous with 'indispensable' (cf., in Article 2 § 2 and 6 § 1, the words 'absolutely necessary' and 'strictly necessary' and, in Article 15 § 1, the phrase 'to the extent strictly required by the exigencies of the situation'), neither has it the flexibility of such expressions as 'admissible', 'ordinary', (cf. Article 4 § 3), 'useful' (cf. the French text of the first paragraph of Article 1 of Protocol No. 1), 'reasonable' (cf. Articles 5 § 3 and 6 § 1) or 'desirable'. Nevertheless, it is for the national authorities to make the initial assessment of the reality of the pressing social need implied by the notion of 'necessity' in this context.

Consequently, Article 10 § 2 leaves to the Contracting States a margin of appreciation. This margin is given both to the domestic legislator ('prescribed by law') and to the bodies, judicial amongst others, that are called upon to interpret and apply the law in force.

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49. Nevertheless, Article 10 § 2 does not give the Contracting States an unlimited power of appreciation. The Court, which, with the Commission, is responsible for ensuring the observance of those States' engagements (Article 19), is empowered to give the final ruling on whether a 'restriction' or 'penalty' is reconcilable with freedom of expression as protected by Article 10. The domestic margin of appreciation thus goes hand in hand with a European supervision. Such supervision concerns both the aim of the measure challenged and its 'necessity'; it covers not only the basic legislation but also the decision applying it, even one given by an independent court. In this respect, the Court refers to Article 50 of the Convention ('decision or ..... measure taken by a legal authority or any other authority') as well as to its own case-law (Engel and others judgment of 8 June 1976, Series A no. 22, pp. 41–42, § 100).

The Court's supervisory functions oblige it to pay the utmost attention to the principles characterising a 'democratic society'. Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'. This means, amongst other things, that every 'formality', 'condition', 'restriction' or 'penalty' imposed in this sphere must be proportionate to the legitimate aim pursued.

From another standpoint, whoever exercises his freedom of expression undertakes 'duties and responsibilities' the scope of which depends on his situation and the technical means he uses. The Court cannot overlook such a person's 'duties' and 'responsibilities' when it enquires, as in this case, whether 'restrictions' or 'penalties' were conducive to the 'protection of morals' which made them 'necessary' in a 'democratic society'."

It is useful to refer, too, to the following decisions of the European Commission of Human Rights:

In Application No. 6988/75, *X* v. *Federal Republic of Germany* (See Decisions and Reports of the Commission, Vol. 3, p. 159), the relevant facts were found to be as follows (at p. 160):

"Applicant convicted of defamation by the county court of L. and sentenced to a fine of 300DM.

He had in fact strongly criticised the Mayor of X. in a press article headed 'Tyranny and Democracy'. In particular, he had accused him of fraud and of handling stolen goods".

The Commission in its decision (of September 29, 1975) stated the following (at p. 161):

"The applicant finally complains of restrictions imposed on the exercise of his right to freedom of expression as envisaged in Article 10 of the Convention. This provision secures to everyone the right to freedom of expression.

In the present case the Commission is of the opinion that there has been an interference with the applicant's freedom of expression, in the meaning of Article 10(1). It considers however that in the circumstances of the case such an interference was fully justified under the terms of paragraph 2 of article 10 as being 'a measure necessary for the protection of the reputation of others'.

An examination of this complaint by the Commission leads therefore to the conclusion that Article 10 has not been violated. This part of the application must consequently be declared inadmissible as being also manifestly ill-founded in the meaning of Article 27(2) of the Convention".

In Application No. 7805/77, *X. and Church of Scientology* v. *Sweden* (see Decisions and Reports, Vol. 16, p. 68), the relevant facts were found to be as follows (at p. 69):

"The application was introduced by the 'Church of Scientology' in Sweden and by X., one of the ministers.

In 1973, the applicant church placed an advertisement in its periodical which is circulated amongst its members which read as follows:

'Scientology technology of today demands that you have your own E-meter. The E-meter (Hebbard Electrometer) is an electronic instrument for measuring the mental state of an individual and changes of the state. There exists no way to clear without an E-meter. Price: 850 CR. For international members 20% discount: 780CR.'

The applicants define the E-meter as follows 'A religious artifact used to measure the state of electrical characteristics of the 'static field' surrounding the body and believed to reflect or indicate whether or not the confessing person has been relieved of the spiritual impediment of his sins'.

Having received various complaints, the Consumer Ombudsman (Konsumentombudsmannen), basing himself on the 1970 Marketing Improper Practices Act (Lagen om otillbörlig marknadsföring) introduced an action before the Market Court (Marknadsomstolen) requesting an injunction against the applicants prohibiting the use of certain passages in the advertisement for the E-meter. After having heard expert witnesses, the Court granted the injunction. A petition for the re-opening of the case (Resning) was rejected by the Supreme Court."

The Commission in its decision (of May 5, 1979) stated the following (at p.p. 72-74):

"5. The restrictions imposed on the applicants' advertisements rather fall to be considered under Article 10. Article 10(1) secures to everyone the right to freedom of expression. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by a public authority.

In the Commission's view the applicants are not prevented from holding their opinion on the religious character of the E-meter. However, they were imparting ideas about that opinion and the Market Court prohibited them from continuing to use a certain wording. This was an interference with the applicants' freedom to impart ideas under Article 10(1).

Article 10(2) permits restrictions on the exercise of these freedoms as are prescribed by law and are necessary in a democratic society, inter alia, for the protection of health or morals and for the protection of the reputation or rights of others.

In assessing whether the requirements of Article 10(2) have been respected the Commission must have regard to the principles developed in the jurisprudence under the Convention (e.g.) Handyside Case, Judgment by the European Court of Human Rights, 7 December 1977, paras. 42–59). It observes first, therefore, that the basis in law for the injunction issued by the Market Court was the Marketing (Improper Practices) Act 1970. Consequently, the Commission finds that the restriction imposed on the applicants' freedom to impart ideas was prescribed by law within the meaning of Article 10(2) of the Convention.

The Marketing Act aimed at protecting the rights of consumers. This aim is a legitimate aim under Article 10(2), being for the protection of the rights of others in a democratic society.

The remaining question to be examined concerns the 'necessity' of the measure challenged by the applicants. It emerges from the case law of the Convention organs that the 'necessity' test cannot be applied in absolute terms, but required the assessment of various factors. Such factors include the nature of the right involved, the degree of interference, i.e. whether it was proportionate to the legitimate aim pursued, the nature of the public interest and the degree to which it requires protection in the circumstances of the case.

In considering this question the Commission again attaches significance to the fact that the 'ideas' were expressed in the context of a commercial advertisement. Although the Commission is not of the opinion that commercial 'speech' as such is outside the protection conferred by Article 10(1), it considers that the level of protection must be less than that accorded to the expression of 'political' ideas, in the broadest sense, with which the values underpinning the concept of freedom of expression in the Convention are chiefly concerned (see Handyside Case, supra cit, para. 49).

Moreover, the Commission has had regard to the fact that most European countries that have ratified the Convention have legislation which restricts the free flow of commercial 'ideas' in the interests of protecting consumers from misleading or deceptive practices. Taking both these observations into account the Commission considers that the test of 'necessity' in the second paragraph of Article 10 should therefore be a less strict one when applied to restraints imposed on commercial 'ideas'.

The Commission notes that the applicants' periodical in which the advertisement appeared was circulated in 300 copies to members of the Church. However the Market Court concluded that the advertisements were designed to stimulate the interests both of persons outside the Church as well as its own members in acquiring an E-meter and were thus designed to promote its sales. In arriving at this conclusion the Court had regard to the following factors:

1. that the magazine although distributed only to members might be spread by members to other persons who could be enticed to purchase an E-meter;

2. that the advertisement does not appear to limit sale of an E-meter to members only or priests only or those studying for the priesthood;

3. in the advertisements readers are encouraged to seek 'international membership' which has the advantage of entitling such members to lower prices for books, tape recordings and E-meters. Such statements were not limited either to priests or those studying for the priesthood.

Finally the Market Court deemed that the advertisements were misleading and that it was important to safeguard the interest of consumers in matters of marketing activities by religious communities and especially in the present

case where the consumer would be particularly susceptible to selling arguments.

The Commission considers that in principle it should attach considerable weight to the above analysis and findings of the Market Court.

The Commission further notes that the Market Court did not prohibit the applicants from advertising the E-meter and did not issue the injunction under penalty of a fine. The Court chose what would appear to be the least restrictive measure open to it, namely the prohibition of a certain wording in the advertisements. Consequently, the Commission cannot find that the injunction against the applicants was disproportionate to the aim of consumer protection pursued.

Having regard to the above, the Commission therefore accepts that the injunction granted by the Market Court was necessary in a democratic society for the protection of the rights of others, i.e. consumers".

In Application No. 8010/77, *X.* v. *United Kingdom* (see Decisions and Reports, Vol. 16, p. 101), the relevant facts were found to be as follows (at pp. 101-102):

"From 1971 to 1975 the applicant was a teacher in a public secondary school, in charge of English and mathematics.

He received warnings from the headmaster for having given religious education during class hours, having held 'evangelical clubs' on the school premises and for having worn stickers carrying religious and anti-abortion slogans on his clothes or brief case.

After numerous interviews and exchanges of notes with the headmaster in the course of which the applicant, setting out his strong beliefs, declared himself unwilling to change his behaviour, his dismissal was decided by the competent County authority. The applicant's appeals to the Employment tribunals were unsuccessful".

The Commission in its decision (of March 1, 1979) stated the following (at p.p. 102–103):

"Nevertheless the Commission notes that an important factor in the dispute between the applicant and the headmaster concerned the latter's instruction to the applicant not to advertise by posters or stickers on school premises his political, moral or religious beliefs.

The Commission considers that this instruction constitutes an interference with the applicant's freedom of expression. However the Commission is of the opinion that school teachers in non-denominational schools should have regard to the rights of parents so as to respect their religious and philosophical convictions in the education of their children. This requirement assumes particular importance in a non-denominational school where the governing legislation provides that parents can seek to have their children excused from attendance at religious instruction and further that any religious instruction given shall not include 'any catechism or formulary which is distinctive of any particular religious denomination' (see Education Act 1944, Sections 25 and 26).

In the present case the posters and 'stickers' objected to, reflected the applicant's strong Evangelical beliefs and his opposition to abortion. The Commission notes from the observations of the respondent Government that some of the 'stickers' worn on the applicant's lapel and on his briefcase were considered offensive to female members of staff and disturbing to children. Having regard to the particular circumstances of the case, the Commission considers that the interference with the applicant's freedom of expression is justified as being necessary in a democratic society for the protection of the rights of others within the meaning of Article 10, paragraph 2, of the Convention".

In the light of all the foregoing, and on the basis of a correct approach to the nature of the right safeguarded by means of paragraphs (1) and (2) of Article 19 of our Constitution—

and, correspondingly, by paragraph (1) of Article 10 of the European Convention on Human Rights—I have no difficulty in sharing the opinion of the Supreme Court that the right safeguarded by Article 19(1)(2) extends to false as well as to true statements. Had it been otherwise there could not ever arise the question of possible unconstitutionality of section 50(1) of Cap. 154, because it renders criminal, in certain circumstances, specified categories of false statements and if false statements are not protected by Article 19 then a provision such as the said section 50(1) could never be in conflict with the said Article 19.

As regards the opinion of the Supreme Court that section 50(1), above, is constitutional in view of Article 19(3), provided the expression "impairing public confidence in the State or its organs" is interpreted as referring to the organs of the State as institutions of Government, I think that the constitutionality of the said section 50(1), as above construed, is saved not only by the reference in paragraph 3 of Article 19 to "the security of the Republic", "the constitutional order" "the public safety" and the "public order", but, also, because of the reference therein to "the public morals" and to "the protection of the reputation or rights of others"; I have formed this view in the light, inter alia, of the judgment of the European Court of Human Rights in the *Handyside* case, supra, and of the decisions of the European Commission of Human Rights in the cases of *X. Federal Republic of Germany, X. and Church of Scientology* v. *Sweden* and *X.* v. *United Kingdom*, supra.

April 9, 1982. HADJIANASTASSIOU J.: I have had the advantage of reading the draft judgment of Mr. Justice Pikis. As I respectfully agree with the reasons given by him, I would only add that our legislature should find the opportunity to streamline the wording of our law in accordance with the interpretation adopted in this judgment.

April 26, 1982. A. LOIZOU J.: I have had the advantage of reading the elaborate judgments of Pikis, J., and Triantafyllides, P., containing their reasons in support of the unanimous opinion of the Supreme Court given on March 29th, 1982,

regarding the two questions of law which were reserved by the District Court of Nicosia and I find that the matter has been so adequately dealt with by my two brothers that there is nothing I can usefully add, except for some observations that I regard essential.

The first is that in view of the close similarity between paras. 1, 2 and 3 of Article 19 of our Constitution and paras. 1 and 2 of Article 10 of the European Convention on Human Rights of 1950, which is applicable in Cyprus since its ratification by the European Convention on Human Rights (Ratification) Law, 1962 (Law No. 39 of 1962), it is always advisable in interpreting the provisions of Article 19 to have regard to the caselaw of the appropriate bodies entrusted with its international application, namely the European Commission and the European Court, of Human Rights, in order to achieve, wherever there is room, the desired uniformity of the law among the European States bound by the said Treaty. Secondly, the expression referring to the organs of the State in section 50(1) of the Code covering the institutions of Government, as found by this Court, may be applicable in an appropriate case whenever an attack is made on the person of a holder of office tending to undermine or impair, there through, the institution he represents. This must be more so in the case of the Head of State and top functionaries, as it may be difficult or impossible to differentiate between the organ as an institution of Government and the person holding that office.

Moreover, the permissible restrictions to be found in para. 3 of Article 19, may also cover cases which come within the ambit of the protection of the reputation or the rights of others.

Ending I wish to reiterate that questions of law must be reserved with the utmost care and caution and if absolutely necessary for the determination of material points and at the appropriate stage of a trial.

April 26, 1982. STYLIANIDES J.: I have had the advantage of reading in advance the judgment delivered by Mr. Justice Pikis in which there appear his reasons for the opinion of the Court. I agree with this judgment and have nothing useful to add.

April 27, 1982. MALACHTOS J.: I agree with the reasons given in the judgment of Pikis, J., in support of the unanimous decision of this Court.

I am also in agreement with the observations made by A. Loizou, J., in his judgment and I have nothing else to add. 5

March 29, 1982. TRIANTAFYLLIDES P.: The case is now remitted to the District Court for further proceedings in the light of the opinion of the Court.

Order accordingly.