1982 May 26

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.

KISSONERGA DEVELOPMENT CO. LTD.
AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE COUNCIL OF MINISTERS
2. CYPRUS TOURISM ORGANIZATION (KOT),

Respondents.

(*Case No.* 153/81).

Hotels and Tourist Establishments Laws 1969-1974—*Imposition by Council of Ministers of percentage of* 3% *to be added to bills for sleeping accommodation or entertainment of clients of hotel and tourist establishments and places of entertainment, with the exception of those on mountain resorts—Council of Ministers had no power to exempt mountain hotels from imposition of such tax—Exemption ultra vires to the law—Sub judice decision invalid as far as said exemption is concerned—Remaining part of the decision valid because it is divisible from the rest.* 5

Administrative Law—Administrative acts or decision—Severability —Severing the legal part from the illegal. 10

Constitutional Law—Equality—Principle of equality under Article 28 *of the Constitution—Entails the equal or similar treatment of all those who are found to be in the same situation—And it safeguards only against arbitrary differentiations and does not exclude reasonable distinctions—Imposition of percentage of* 3% *on bills of hotels and other tourist establishments and exempting mountain hotels from such imposition—Differentiation not an arbitrary one and not contrary to Article* 28 *of the Constitution in view of the low occupancy of mountain hotels compared to similar establishments in the rest of Cyprus.* 15 20

Tourist Places of Entertainment Law, 1979 (*Law* 91/79)—*Imposition by Council of Ministers of percentage of* 3% *to be added to the bills for sleeping accommodation or entertainment of clients of hotels and tourist establishments and places of entertainment— Was within the powers of the Council under section* 12(1) *of the Law.*

Cyprus Tourism Organization Law, 1969 (*Law* 54/69)—*Percentage of* 3% *to be added to the bills for sleeping accommodation or entertainment of clients of hotels and tourist establishments—Could be collected by the Cyprus Tourism Organization—Section* 13(3) *of the Law as amended by section* 2 *of Law* 63/81.

The Council of Ministers, in exercise of its powers under section 10(7)(a) of the Hotels and Tourist Establishments Laws 1969-1979 and section 12 of the Tourist Places of Entertainment Law, 1979 (Law 91/79) decided to approve the imposition of a percentage of 3% to be added on any bills for sleeping accommodation or entertainment of clients of hotels and tourist establishments, with the exception of those on mountain resorts, as from the 1st April, 1981, payable to the Cyprus Tourism Organization, respondent 2. The applicants who were owners of hotels and other tourist establishments contested the validity and/or legality of the imposition of the above charge contending:

(a) That the Council of Ministers in imposing the 3 per cent percentage on sleeping accommodation in hotels and other tourist establishments with the exception of those on mountain resorts, acted in excess of its powers under section 2 of Law 34/74.

(b) That the decision of the Council of Ministers to exclude mountain hotels from the application of section 2 of Law 34/74 infringes Article 28 of the Constitution which provides for equality of treatment.

(c) That there was no legal basis for imposing the 3 per cent on hotel services as section 12* of Law 91/79 does not give such power to the Council of Ministers.

(d) That there was no power vested in the Cyprus Tourism Organization under section 13** of Law 54/69 to

* Section 12 is quoted at pp. 491-2 post.
** Section 13 is quoted at pp. 472-4 post.

collect this revenue, especially as regards the 3 per cent on all hotel services apart from sleeping accommodation.

Counsel for the respondents called evidence to prove that the differentiation concerning tourist establishments on mountain resorts was reasonable taking into consideration the financial difficulties and the small percentage of business transacted in the mountain hotels. According to this evidence the percentage of average occupancy in mountain hotels was very low compared to that in other parts of the Island.

Held, (1) that section 2 of Law 34/74 expressly provides that the Council of Ministers can impose a percentage of 3 per cent on the sleeping accommodation of "all hotels and other tourist establishments" allowing no discretion as to the class of hotels on which such charge should be imposed; that where the intention of the legislature was to allow such discretion to the Council of Ministers, express provision in that respect was made in the respective law, as it happened under section 12(1) of Law 91/79; that, therefore, the Council of Ministers had no power to exempt the mountain hotels from the imposition of such tax and its decision in so far as it refers to the exclusion of the mountain hotels is ultra vires to section 2 of Law 34/74; that if a regulation or by-law can be divided and part of it only is tainted by illegality, that part may be rejected as bad, while the rest may be held to be good; that by excluding such part which is divisible from the rest, the remaining part of the decision retains its meaning and it is within the powers granted to the Council of Ministers under section 2 of Law 34/74 to impose such charge; that the case of the applicant falls within the powers safeguarded after such divisibility and in consequence they cannot rely on the ultra vires part of the decision which is divisible from the rest.

(2) That the principle of equality entails the equal or similar treatment of all those who are found to be in the same situation; that Article 28 of the Constitution safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things; that in the light of the arguments advanced and the evidence adduced, it is apparent that the condition of hotels and tourist places of entertainment in the mountains is strikingly

different from that in the towns and seaside places in Cyprus; that the hotels and tourist places of entertainment in the mountains, according to the evidence adduced by the respondents, are facing financial problems due to the low average occupancy, compared to similar establishments in the rest of Cyprus and furthermore, such occupancy is restricted to a seasonal period of the three summer months and depends wholly on the internal tourism; that, therefore, the differentiation is not an arbitrary one and that a reasonable distinction does exist between the two categories of hotels and other establishments and places of entertainment justifying the distinction in classification as mentioned in the sub judice decision and section 12 of Law 91/79, which classification is a real and not an illusory one; accordingly contention (b) should fail.

(3) That the meaning of sections 2 and 12 of Law 91/79 is quite clear and leaves no room for doubt or any ambiguity at all; that tourist place, where services such as the ones set out in section 2 of Law 91/79 are rendered is a "tourist centre" (τουριστικὸν κέντρον) upon which the 3 per cent percentage may be imposed under section 12(1) of Law 91/79 and includes those operating in a "hotel" or "hotel unit" or "hotel shop" ("ξενοδοχεῖον", "ξενοδοχειακὴ μονὰς" ἤ "ξενοδοχειακὸν κατάστημα") as defined in section 2 of The Hotels and Tourist Establishments Laws, 1969–1974 (Laws 40/69–34/74) (Περὶ Ξενοδοχείων καὶ Τουριστικῶν Καταλυμάτων Νόμοι 1969–1974); that services such as those defined in section 2 of Law 91/79 can be provided either by hotels and tourist establishments in addition to sleeping accommodation and also by other tourist places without sleeping accommodation; that it is not an additional charge imposed on hotels and other tourist establishments with sleeping accommodation on top of the 3 per cent charge imposed for sleeping accommodation under section 10(7) of the Hotel and Tourist Establishments Laws 40/69–34/74; that section 12 of Law 91/79 provides for the imposition of a percentage on hotel establishments and other tourist places of entertainment for such services as defined under section 2 of Law 91/79 and not for sleeping accommodation; that, therefore, the 3 per cent percentage which was imposed by the Council of Ministers was within its powers under section 12(1) of Law 91/79.

(4) That section 13 is one of the sections that fall within Part V of Law 54/69 under the heading "Fiscal Provisions"; that paragraph (3) of section 13 refers to payment to the Organization of any "fines or other monetary punishments imposed and collected; that it is clear that this section authorises the payment to respondent 2 of any money collected from any criminal sanction for the contravention of any of the laws or regulations set out therein; that till the amendment of paragraph (5) by section 2 of Law 63/81 on the 20th November, 1981, there was no power to pay to respondent 2 any fines so collected; that, however, the 3 per cent which is in issue in the present case, is not a "fine" under paragraph (5) but is a charge which is imposed on clients' bill, it has to be paid by clients and has to be refunded by the hotels and tourist places of entertainment to respondent 2 for whose account such collection is made; that it is a source of income for respondent 2 which can be collected by it under paragraph (n) of section 13; accordingly the contention of counsel for applicants to the contrary, should fail.

Application dismissed.

Cases referred to:

Strickland v. *Hayes* [1896] 1 Q.B. 290 at p. 292;

Burnett v. *Berry* [1896] 1 Q.B. 641;

Thomas v. *Sutters* [1900] 1 Ch. 10 at p. 14;

Gentel v. *Rapps* [1902] 1 K.B. 160 at p. 163;

Dyson v. *The London and North Western Railway Company* [1881] 7 Q.B.D. 32;

Malachtou v. *Attorney-General of the Republic* (1981) 1 C.L.R. 543 at p. 550;

Republic v. *Arakian and Others* (1972) 3 C.L.R. 294 at p. 299;

Antoniades and Others v. *The Republic* (1979) 3 C.L.R. 641;

Arkansas Natural Gas Co. v. *Arkansas Railroad Commission*, 67 L. Ed. 705 at p. 710;

Frost v. *Corporation Commission of the State of Oklahoma* 73 L. Ed. 483 at p. 488;

Bayside Fish Flour Company v. *Gentry*, 80 L.Ed. 772 at p. 777;

Ameeroonissa v. *Mahboob* (1953) S.C. R. 404 at p. 414;

State of W.B. v. *Anwar Ali* (1952) S.C.R. 284 at p. 335;

Dominion Hotel v. *Arizona* (1919) 249 U.S. 265 (268);

Ramkrishna v. *Tendolkar*, A 1958 S.C. 538 (547);
Srikishan v. *State of Rajansthan* (1955) 2 S.C.R. 531 at p. 536;
Magoun v. *Illinois Trust Bank* (1898) 170 U.S. 283;
Connolly v. *Union Sewer Pipe Co.* (1902) 184 U.S. 540 at p. 566;
5 *Jefferson* v. *Hackney*, 32 L.Ed. 2d 285 at p. 296;
Lehnhauser v. *Lake Shore Auto Parts Co.* 35 L. Ed. 2d 351 at pp. 354–355;
Royster Guano Co. v. *Commonwealth of Virginia*, 64 Law. Ed. 989 at pp. 990–991;
10 *Mikrommatis* v. *The Republic*, 2 R.S.C.C. 125 at p. 131;
Panayides v. *The Republic* (1965) 3 C.L.R. 107;
Louca v. *The Republic* (1965) 3 C.L.R. 393;
Impalex Agencies v. *The Republic* (1970) 3 C.L.R. 361;
Republic v. *Demetriades* (1977) 3 C.L.R. 213;
15 *Anastassiou* v. *The Republic* (1977) 3 C.L.R. 91 at p. 127;

Recourse.

Recourse against the decision of the respondents whereby an obligation was imposed on the applicants to pay to respondents an amount representing the 3 per cent of any bill and/or charge
20 collected by them from their customers.

Chr. Triantafyllides, for the applicants.

Cl. Antoniades, Senior Counsel of the Republic, for respondent 1.

M. Eliades, for respondent 2.

25 *Cur. adv. vult.*

SAVVIDES J. read the following judgment. The 29 applicants who are owners of hotels and other tourist establishments, by the present recourse which was filed on the 23rd April, 1981, contest the validity of the decision of the respondents
30 to impose upon them the obligation to pay to the respondents 3 per cent on any bill and/or charge collected by them. The relief prayed for as set out in the application, reads as follows:

"A declaration that the decision of the respondents indicated and/or contained in para. 2 of exhibit 1 attached hereto
35 imposing on the applicants an obligation to pay to the respondents an amount representing the 3 per cent of any

bill and/or charge, is null and void and of no effect whatsoever".

Exhibit 1 which is attached to the application and is referred to in the prayer is a letter dated 13th February, 1981, sent to the applicants by the Director-General of respondent 2 Organisation and its contents read as follows: 5

"Θέμα: Καταβολή ποσοστοῦ ἐκ 3% ἐπὶ παντὸς λογαριασμοῦ πελατῶν.

Συμφώνως πρὸς ἀπόφασιν τοῦ Ὑπουργικοῦ Συμβουλίου καταργεῖται ἀπὸ 1ης Ἀπριλίου 1981 ὁ ὑφιστάμενος θεσμὸς 10 περὶ καταβολῆς πρὸς τὸν ΚΟΤ σταθεροῦ ποσοῦ κατὰ διανυκτέρευσιν πελάτου εἰς Ξενοδοχεῖα 5-1 ἀστέρος καὶ εἰς Ὠργανωμένα Διαμερίσματα.

2. Ἀντ' αὐτοῦ θὰ ἐφαρμοσθῆ ἀπὸ τῆς ὡς ἄνω ἡμερομηνίας σύστημα καταβολῆς ποσοστοῦ ἐκ 3% ἐπὶ παντὸς λογα- 15 ριασμοῦ πελατῶν ἐξαιρουμένων φόρων καὶ δικαιώματος Ὑπηρεσίας, ἤτοι θὰ καλύπτη τὰς τιμὰς ὕπνου, γευμάτων, ποτῶν καὶ ἐκδηλώσεων οἱασδήποτε μορφῆς.

3. Ἐσωκλείεται πρὸς ὑμετέραν ἐνημέρωσιν σχετικὴ ἐγκύκλιος καὶ παρακαλεῖσθε ὅπως συμμορφωθῆται πρὸς τὰς 20 ἐν αὐτῇ περιεχομένας ὁδηγίας.

4. Παρακαλῶ σημειώσατε ὅτι διὰ τῆς ἐφαρμογῆς τοῦ νέου συστήματος καταβολῆς ποσοστοῦ ὑπὲρ τοῦ ΚΟΤ δὲν καταργεῖται τὸ σύστημα συμπληρώσεως καὶ ἀποστολῆς πρὸς τὸν ΚΟΤ δελτίων ἀφίξεων-ἀναχωρήσεων πελατῶν, 25 τὸ ὁποῖον θὰ συνεχίση διὰ καθαρῶς στατιστικοὺς σκοπούς.

5. Ὡς γνωρίζετε εἰς τὰς ἐγκριθείσας τιμὰς ξενοδοχειακῶν ἐπιχειρήσεων διὰ τὴν περίοδον 1.4.1981 μέχρι 31.3.1982 περιλαμβάνεται καὶ τὸ ποσοστὸν 3% ἐπὶ παντὸς λογαριασμοῦ πελατῶν. Βλέπετε ἐν προκειμένῳ σημείωσιν (3) τοῦ Παραρτή- 30 ματος 'Β' τοῦ ἀποσταλέντος πρὸς ὑμᾶς διὰ τῆς ἐπιστολῆς μου ὑπ' ἀρ. φακ. 122 καὶ ἡμερ. 19.5.1980.

6. Εἴμεθα εἰς τὴν διάθεσίν σας πρὸς παροχὴν οἱωνδήποτε συμπληρωματικῶν πληροφοριῶν καὶ ἐπεξηγήσεων.

Μετὰ τιμῆς, 35
διὰ Γενικὸν Διευθυντὴν".

("Subject: *Payment of a percentage of 3% on all bills of customers*

According a decision of the Council of Ministers the existing practice for the payment to C.T.O. of a fixed sum in respect of overnight stay at 5–1 star hotels and organized appartments will be discontinued as from the 1st April, 1981.

2. In its place there will be implemented as from the above date a plan for the payment of a percentage of 3% on all bills of service charges, i.e. it will cover drinks and activities of any kind.

3. A relevant circular is enclosed for your information and you are requested to comply with the directions contained therein.

4. Please note that by the implementation of the new plan for the payment of a percentage to C.T.O. the system of completing and forwarding to C.T.O. reports of arrivals, departures of customers is not dispensed with, which will continue for purely statistical purposes.

5. As you know the percentage of 3% on every bill of customers is included in the approved rates of hotel businesses for the period 1.4.1981–31.3.1982. In this respect please see note (3) of schedule 'B' sent to you by my letter under File No. 122 dated 19.5.1980.

6. We are at your disposal to supply any other additional information or explanation.

With respect
for Director-General").

The decision of the Council of Ministers referred to in the above letter, which bears No. 19811, was taken on the 11th December, 1980, and was published in Supplement No. 4 of the official Gazette of the Republic No. 1683 of the 23rd April, 1981, that is on the same day when this recourse was filed. The material part of such decision reads as follows:

"Τὸ Συμβούλιον ἀπεφάσισεν ὅπως–

(α) ἀκυρώση ἀπὸ τῆς 1ης 'Απριλίου, 1981 τὰς ἀποφάσεις του ὑπ' 'Αρ. 15.766 καὶ 16.348, ἡμερομηνίας 21ης 'Απριλίου,

1977 καὶ 17ης Νοεμβρίου, 1977, ἀντιστοίχως, αἵτινες προβλέπουν διὰ τὴν πρὸς τὸν Κυπριακὸν 'Οργανισμὸν Τουρισμοῦ μεταβολὴν σταθεροῦ ποσοῦ κατὰ διανυκτέρευσιν πελάτου ἡλικίας ἄνω τῶν 10 ἐτῶν.

(β) ἐγκρίνῃ τὴν ἐφαρμογὴν ἀπὸ τῆς 1ης 'Απριλίου, 1981 ποσοστοῦ ὕψους 3% ἐπὶ τῶν τιμῶν ὕπνου ξενοδοχείων 5 μέχρις 1 ἀστέρος, συμπεριλαμβανομένων καὶ οἰκοτροφείων Α–Γ κατηγορίας καὶ ὠργανωμένων διαμερισμάτων καὶ τουριστικῶν ἐπαύλεων Α' καὶ Β' κατηγορίας πλὴν τῶν καταλυμάτων τούτων εἰς τὰ ὀρεινὰ θέρετρα.

(γ) ---

(δ) ἐγκρίνῃ τὴν ἐφαρμογὴν ποσοστοῦ ὕψους 3% ἀπὸ τῆς 1ης 'Ιανουαρίου, 1981, ἐπὶ παντὸς λογαριασμοῦ πελατῶν Τουριστικῶν Κέντρων, ἐξαιρουμένων φόρων καὶ δικαιώματος 'Υπηρεσίας, πλὴν τῶν εἰς τὰ 'Ορεινὰ Θέρετρα λειτουργούντων τοιούτων.

Νοεῖται ὅτι τὸ ὡς ἄνω ποσοστὸν 3% θὰ ἐφαρμόζηται ἀπὸ τῆς 1ης 'Απριλίου, 1981, εἰς ὅ,τι ἀφορᾷ τουριστικὰ κέντρα λειτουργοῦντα ἐντὸς ξενοδοχείων ἢ ἄλλων τουριστικῶν καταλυμάτων"

("The Council has decided to–

(a) Cancel as from 1st April, 1981 its decisions No 15.766 and 16.348, dated 21st April, 1977 and 17th November, 1977 respectively which provide for the payment to the Cyprus Tourism Organization of a fixed amount for overnight stay of a customer over 10 years of age.

(b) Approve the implementation as from 1st April, 1981 of a percentage of 3% on the rates of sleeping accommodation of hotels of 5–1 stars, including boarding houses A–C category and organised flats and touristic pavilions A and B category excluding lodgings in mountain resorts.

(c)---

(d) Approve the implementation of the percentage of 3% as from 1st January, 1981 on all bills of customers of tourist places of entertainment, excluding taxes and service charges, except those operating on the mountain resorts:

Provided that the above percentage of 3% will be imple-

mented as from 1st April, 1981, in respect of touristic places of entertainment operating in hotels or other tourist lodgings").

The facts of the case are not contested and as they appear in the letter attached to the application as exhibit 1 they are briefly as follows:

The Council of Ministers in the exercise of the powers vested in it by section 10(7)(a) of the Hotels and Tourist Establishments Laws, 1969–1974 and section 12 of the Tourist Places of Entertainment Law, 1979 (Law 91/79), decided to approve the imposition of a percentage of 3% to be added on any bills for sleeping accommodation or entertainment of clients of hotels and tourist establishments and places of entertainment as from the 1st April, 1981 payable to respondent 2. The applicants contest the validity and/or legality of the imposition of such charge.

The grounds of law on which the application is based, as set out therein, are as follows:

"1. There is no Law or Regulation authorizing Respondents to reach the decision contained in exhibit 1 and the said decision lacks completely legal basis and/or the Law and/or section of the Law and/or Regulation on which it is based is contrary to the Constitution.

2. The decision contained in exhibit 1, is not duly reasoned and/or its reasoning is contrary to the Constitution, to Law and to the principles of proper administration.

3. The decision complained of has been taken in excess and/or in abuse of powers in that it is arbitrary and unreasonable, having regard to the relevant facts pertaining to the matter.

4. The decision complained of is contrary to:

(a) Article 23 of the Constitution inasmuch as it constitutes a prohibition and/or restriction and/or limitation on the Applicant's property which is not warranted under the said article.

(b) Article 24 of the Constitution inasmuch as it consti-

tutes a violation of the Applicant's rights as warranted and/or safeguarded in the said article.

(c) Article 25 of the Constitution inasmuch as it constitutes a violation of the Applicant's rights as warranted and/or safeguarded in the said article. 5

(d) Article 26 of the Constitution inasmuch as it constitutes a violation of the Applicant's rights as warranted and/or safeguarded in the said article.

(e) Article 28 of the Constitution inasmuch as it constitutes a violation of the Applicant's rights as warranted 10 and/or safeguarded in the said article.

5. The Respondents reached their decision complained of without any and/or adequate inquiry as to all the relevant facts and/or without affording the applicants the opportunity of being heard". 15

The respondents by their opposition allege that the sub judice act and/or decision was taken legally and in accordance with the provisions of The Hotels and Tourist Establishments Laws 1969–1974 and The Tourist Places of Entertainment Laws 1979–1981 and the regulations made thereunder and in the proper 20 exercise of their discretion after all material facts and circumstances were taken into consideration. Also, that the sub judice act and/or decision does not violate any provision of the Constitution.

Before embarking on the merits of the case, I shall deal first 25 with the respective provisions in the legislation related to the present case.

Respondent 2, the Cyprus Tourism Organisation (KOT) is a semi-governmental organisation established by Law 54/69 and managed by a Board appointed by the Council of Ministers. 30 Its powers and functions are set out in the Cyprus Tourism Organisation Laws, 1969–1981 (Laws 54/69–63/81).

As to the resources of respondent 2, section 13(1) of the Law, provides as follows:

"13.–(1) Ὁ Ὀργανισμὸς ἔχει χωριστὸν ταμεῖον εἰς τὸ ὁποῖον 35 κατατίθενται–

(α) αἱ ἐπιχορηγήσεις τοῦ Κράτους.

(β) τὰ κέρδη ἐκ τῆς ὑπ' αὐτοῦ ἀναπτύξεως ἐπιχειρηματικῆς δραστηριότητος, κατὰ τὸ ἄρθρον 11 τοῦ παρόντος Νόμου.

5 (γ) αἱ πρόσοδοι ἐκ τῆς διαχειρίσεως τῶν περιουσιακῶν αὐτοῦ στοιχείων.

(δ) αἱ πρὸς τὸν 'Οργανισμὸν συνιστώμεναι δωρεαί.

(ε) τὰ ἐκ τῆς χορηγήσεως ἀδειῶν εἰσπραττόμενα τέλη.

(στ) τὸ προϊὸν οἱουδήποτε δανείου συναπτομένου ὑπὸ
10 τοῦ 'Οργανισμοῦ.

(ζ) τὰ πρόστιμα ἢ ἄλλαι χρηματικαὶ ποιναὶ ἐπιβαλλόμεναι καὶ εἰσπραττόμεναι δυνάμει τῶν περὶ Ξενοδοχείων καὶ Τουριστικῶν Καταλυμμάτων Νόμων καὶ Κανονισμῶν, τοῦ περὶ Τουριστικῶν 'Επαγγελμάτων καὶ Σωματείων
15 Νόμου καὶ τῶν δυνάμει τούτου ἐκδοθέντων Κανονισμῶν, τοῦ περὶ Ρυθμίσεως Μαρίνων Νόμου καὶ τῶν δυνάμει τούτου ἐκδοθέντων Κανονισμῶν, τῶν περὶ Τουριστικῶν Κέντρων Νόμων καὶ τῶν δυνάμει τούτων ἐκδοθέντων Κανονισμῶν ὡς καὶ τῶν περὶ Κυπριακοῦ 'Οργανισμοῦ
20 Νόμων καὶ τῶν δυνάμει τούτων Κανονισμῶν.

(η) οἱαδήποτε ἑτέρα πρόσοδος, ἡ ὁποία ἤθελε διατεθῆ ὑπὲρ τοῦ 'Οργανισμοῦ ἢ εἰσπραχθῆ παρ' αὐτοῦ ἢ οἱουδήποτε μέλους τοῦ προσωπικοῦ αὐτοῦ".

("13.—(1) The Organisation shall have a separate fund
25 in which there shall be paid—

(a) the grants by the State;

(b) the profits realized from its business activities pursuant to section 11 of this Law;

(c) the earnings from the management of its assets;

30 (d) the donations made to the Organisation;

(e) the fees to be collected from the granting of licences;

(f) the amount of any loan raised by the Organisation;

(g) the fines or other monetary punishments imposed

and collected by virtue of the Hotels and Tourist Establishment Laws and Regulations, of the Tourist Occupations and Associations Law and the Regulations made thereunder, the Marinas Regulation Law and the Regulations made thereunder, the Tourist Places of Entertainment Law and the Regulations made thereunder as well as by the Cyprus Tourism Organisation and the Regulations made thereunder.

(h) any other income which may be disposed in favour of the Organisation or collected by it or by any member of its staff").

At the hearing of this recourse counsel for applicants abandened most of the legal grounds set out in the application and relied on the following grounds of law:

(1) The Council of Ministers in imposing the 3 per cent percentage on sleeping accommodation in hotels and other tourist establishments with the exception of those in mountain resorts, acted in excess of its powers under section 2 of Law 34/74.

(2) The decision of the Council of Ministers to exclude mountain hotels from the application of section 2 of Law 34/74 infringes Article 28 of the Constitution which provides for equality of treatment.

(3) There is no legal basis for imposing the 3 per cent on hotel services as section 12 of Law 91/79 does not give such power to the Council of Ministers.

(4) There was no power vested in the Cyprus Tourism Organisation under section 13 of Law 54/69 to collect this revenue, especially as regards the 3 per cent on all hotel services apart from sleeping accommodation.

Counsel for respondents in support of their argument called evidence to prove that such differentiation was reasonable taking into consideration the financial difficulties and the small percentage of business transacted in the mountain hotels. Such evidence, coming from R.W.1, an employee in the Department of Planning Bureau of respondent 2 who was responsible for keeping the statistical data of the operation of hotels, was to

the effect that the percentage of everage occupancy in mountain hotels was very low compared to that in other parts of the Island and that such hotels are faced with financial problems due to the low tourist movement in the mountain resorts. The witness gave figures based on the official statistics kept at her Department according to which the actual average occupancy of the hotels during the years 1978, 1979 and 1980 was as follows:

1978: Mountain resorts, 23.6% as against 42.2% in Nicosia and 63.2% up to 74.9% in the seaside areas.

1979: Mountain resorts, 22.9% as compared to 46.4% in Nicosia and 64.7% up to 73.5% in the seaside areas.

1980: Mountain resorts, 24.7%, in Nicosia, 40.7% and at the seaside places 64.6% in the area of Limassol and 74.9% in the area of Famagusta.

In cross-examination she gave similar data for the years 1971 to 1973 which were the three years immediately preceding the year during which the Turkish invasion took place. In 1971 the figure was 16.4% for mountain hotels, 38% in Nicosia, 47.6% in Famagusta and in the other seaside towns, that is, Limassol, Kyrenia, Larnaca and Paphos ranging from 35.7% to 48.5%. In 1972 for mountain hotels the average occupancy was 19.8%, in Nicosia, 38.3% and in the other towns was ranging from 26.4% to 49.4%. In 1973 the average occupancy in the mountain hotels was 21.4%, in Nicosia 38.3% and in the other towns was ranging from 16.4% at Larnaca which was very low that year and 48.5% in other seaside places.

According to the evidence of this witness, whereas the average occupancy for the mountain hotels was calculated by taking into consideration the three summer months which was the period that there was tourist movement in the mountain hotels, in the towns the percentage was calculated on the basis of the yearly operation of the hotels. The witness said that in the case of the mountain hotels if the average occupancy was calculated on the basis of 12 months and not the three summer months, the percentage of the average occupancy already given in respect of each year in the mountain hotels would have been less than half.

The applicants also called one witness, A.W.1, Costakis

Loizou, hotel Manager of the new Ledra Hotel, Nicosia and co-ordinator of the Cyprus Hotels Ltd., which operate Apollonia Beach Hotel in Limassol, who gave some figures as to the average occupancy, prior to the Turkish invasion, of the hotels he was in charge, which, in respect of the Ledra Palace hotel 5 was in 1971, 64.1%, in 1972 67.6%, in 1973 61.3% and 1974 61% up to the date it closed down as a result of the Turkish invasion due to the situation of this hotel near the Turkish occupied area. The new Ledra Hotel which opened recently after the Turkish invasion had an average occupancy of 35% 10 during 1981. His evidence was to the effect that though the costs of running expenses of a hotel have gone up by nearly 40% as from 1974 to 1980, the average occupancy has not increased in the Nicosia hotels and remained the same.

I am now coming to consider the various grounds argued 15 by counsel for applicants.

Ground (1): *Ultra vires.* In advancing his argument on this ground, counsel contended that there was no power vested in the Council of Ministers under the provisions of section 2 of Law 34/74 to exclude mountain hotels from the imposition 20 of the 3 per cent charge. In cases where the legislator intended that such power would exist, made express provision in the Law, as it did in the case of bills of hotels or other places of entertainment for other services, under section 12 of Law 91/79. Therefore, the Council of Ministers by its decision whereby it exempted 25 mountain hotels from such charge acted ultra vires the enabling law.

There is no doubt that from a simple reading of section 2 of Law 34-74 and by comparison of this section to section 12 of Law 91/79, it is apparent that whereas under section 12 of 30 Law 91/79 express power is given to the Council of Ministers to exclude hotels and other places of entertainment situated on the mountains, there is no such provision in section 2 of Law 34/74.

Section 2 of Law 34/74 expressly provides that the Council 35 of Ministers can impose a percentage of 3 per cent on the sleeping accommodation of "all hotels and other tourist establishments" allowing no discretion as to the class of hotels on which such charge should be imposed. Where the intention of the

legislature was to allow such discretion to the Council of Ministers, express provision in that respect was made in the respective law, as it happened under section 12(1) of Law 91/79. Therefore, I have come to the conclusion that the Council of Ministers
5 had no power to exempt the mountain hotels from the imposition of such tax.

It is well established and there is ample authority that if a regulation or by-law can be divided and part of it only is tainted by illegality, that part may be rejected as bad, while the rest
10 may be held to be good. Thus, in *Strickland* v. *Hayes* [1896] 1 Q.B. 290 at p. 292, Lindley, L.J. had this to say:

> "Of course, by-laws must do more than merely reiterate the provisions of Acts of Parliament, otherwise they would be nugatory; but it is important to see that they are strictly
> 15 within the authority under which they were made ... ...
>
> ---
>
> There is plenty of authority for saying that if a by-law can be divided, and part may be rejected as bad while the rest may be held to be good. In the present case there is, I think, no difficulty whatever in severing the by-law. If
> 20 the words 'on any land adjacent thereto' are omitted, the rest of the by-law reads quite grammatically. The by-law is, therefore, distinctly severable".

This case has been distinguished and doubted on other points not affecting the above dictum (see *Burnett* v. *Berry* [1896] 1
25 Q.B. 641; *Thomas* v. *Sutters* [1900] 1 Ch. 10, 14, Lindley M.R.; *Gentel* v. *Rapps* [1902] 1 K.B. 160, 163, Lord Alverstone C.J.).

In *Dyson* v. *The London and North-Western Railway Company* [1881] 7 Q.B.D. 32, Lindley and Mathew, JJ. treated the By-Law there in question as severable and that after the said severa-
30 bility the part which was material to the case was bad as being in direct contravention of the Law.

The question of severability came up before this Court in a recent appeal in the case of *Malachtou* v. *The Attorney-General of the Republic* (1981) 1 C.L.R. 543 where, at p. 550, it was said
35 (per Pikis, J.):

> "It is well settled that the provisions of a law tainted in

part by unconstitutionality may be sustained, the valid provisions, provided the unconstitutional provisions are severable from the remaining body of the law (see, inter alia, *Fekkas* v. *The Electricity Authority of Cyprus* (1968) 1 C.L.R. 173). Several tests have been propounded for determining severability in this area, that boil down to this. Severance is permissible whenever the dissection does not destroy the fabric of the law. The fabric of the law remains intact whenever the remaining part of the law retains its compactness and gives effect to the dominant intention of the legislature. There is authority supporting the proposition that similar considerations affect the fate of subsidiary legislation after dismemberment (see, inter alia, *Newberry D.C.* v. *Secretary of State* [1980] 1 All E.R. 731 (H.L.))".

Coming back to the case under consideration, I find that the decision of the Council of Ministers in so far as it refers to the exclusion of the mountain hotels is ultra vires to section 2 of Law 34/74 as no such power is contained in the Law. If such exclusion is deemed necessary, then an amendment to that effect of the legislation is necessary. I do find, however, that by excluding such part which is divisible from the rest, the remaining part of the decision retains its meaning and it is within the powers granted to the Council of Ministers under section 2 of Law 34/74 to impose such charge. The case of the applicant falls within the powers safeguarded after such divisibility and in consequence they cannot rely on the ultra vires part of the decision which, as I have already found, is divisible from the rest, in contrast with the appellant in *Malachtou* case (supra) where, after severability, the appellant's case fell within the part of the decision which was found bad as being ultra vires.

Ground 2: *Violation of Article* 28 *of the Constitution.* Counsel for applicant contended in this respect that there is absolutely no difference between hotels on the mountains and hotels in the rest of Cyprus, therefore, the decision of the Council of Ministers to make such differentiation in respect of sleeping accommodation infringes Article 28 of the Constitution in that there is no reasonable relationship between the classification created and the purpose of the legislation. He further contended that the decision to impose the 3 per cent charge on all

the bills of tourist places of entertainment, including those operating within the hotels, excluding those in mountain resorts, is also repugnant to Article 28 of the Constitution. In respect of the latter, counsel submitted that though a difference of treatment does exist on the face of the law, for such difference to be justified, it must be indicated that the circumstances attached to these two categories are different, because, if they are not different, then no difference in treatment is justified, and in the present case the difference in treatment is unreasonable and the classification an arbitrary one. Counsel, however, admitted in his address that the financial position of hotels at seaside resorts as compared to those in Nicosia and the mountains is flourising. In concluding his address on this point, counsel for applicants made the following submission:

"My submission is that there is no reasonable distinction between the hotels in Nicosia and those on the mountains as regards the financial aspect, but my humble submission is that they are both in the same boat which is a sinking one, and this is in contrast with the hotels in the seaside resorts which are *flourishing* financially".

Article 28.1 of our Constitution, reads as follows:

"1. Πάντες εἶναι ἴσοι ἐνώπιον τοῦ νόμου, τῆς διοικήσεως καὶ τῆς δικαιοσύνης καὶ δικαιοῦνται νὰ τύχωσι ἴσης προστασίας καὶ μεταχειρίσεως".

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

It corresponds to Article 3 of the Constitution of Greece of 1952 (see *The Republic* v. *Arakian and others* (1972) 3 C.L.R. 294 at p. 299 and *Antoniades and Others* v. *The Republic* (1979) 3 C.L.R. 641). It is also similar to the corresponding provision of the Constitution of India under Article 14 which reads as follows:

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". (See Basu's Commentary on the Constitution of India, 5th ed., vol. 1, p. 287).

The above provision is quite similar to the relevant part

of section 1 of the 14th Amendment to the Constitution of the United States (see Basu's Commentary on the Constitution of India, 5th Edition, vol. 1 at pp. 440, 444).

As to the application of the principle of equality under the Greek Constitution, valuable guidance can be derived from the decisions of the Greek Council of State. A number of these decisions was reviewed by our Supreme Court in *The Republic v. Nishan Arakian and Others* (supra) at p. 299 as follows:

"Valuable guidance can be derived in this respect from decisions of the Greek Council of State ("Συμβούλιον 'Επικρατείας"). In addition to the decision in Case 2080/50, which is mentioned in the judgment appealed from, the following decisions may be also referred to:-

In Case 1273/65 it was stated that the principle of equality entails the equal or similar treatment of all those who are found to be in the same situation ("ἡ συνταγματικὴ ἀρχὴ τῆς ἰσότητος, ὑπὸ τὴν ἔννοιαν τῆς ἴσης ἢ ὁμοιομόρφου μεταχειρίσεως πάντων τῶν ὑπὸ τὰς αὐτὰς συνθήκας τελούντων").

In Case 1247/67 it was held that the principle of equality safeguarded by Article 3 of the Greek Constitution of 1952 —which corresponds to Article 28.1 of our Constitution— excludes only the making of differentiations which are arbitrary and totally unjustifiable ("Διότι τὸ ἄρθρον τοῦτο, ὁρίζον ὅτι οἱ Ἕλληνες εἶναι ἴσοι ἐνώπιον τοῦ Νόμου, ἀποκλείει μόνον τὴν ὑπὸ τοῦ νομοθέτου θέσπισιν διακρίσεων αὐθαιρέτων καὶ ὅλως ἀδικαιολογήτων"); and exactly the same was held in Case 1870/67.

In Case 2063/68 it was held that the principle of equality was not contravened by regulating diffrently matters which were different from each other ("οὐδόλως προκύπτει παραβίασις τῆς ἀρχῆς τῆς ἰσότητος καὶ ὡς ἐκ τούτου ἀκυρότης τῶν προσβαλλομένων πράξεων, ἐφ' ὅσον πρόκειται περὶ ρυθμίσεων σχέσεων τελουσῶν ὑπὸ διαφόρους πραγματικὰς συνθήκας, αἵτινες δὲν ἀποκλείουν ἀνομοιομορφίας ἐν τῷ διακανονισμῷ αὐτῶν").

In Case 1215/69 it was held that the principle of equality

is applicable to situations which are of the same nature ("τὴν ἀρχὴν τῆς ἰσότητος ἐφαρμοστέαν ἐπὶ περιπτώσεων τελουσῶν ὑπὰ τὰς αὐτὰς ἐν γένει συνθήκας")".

In addition to the above, in Sgouritsa on Constitutional Law
5 (1966 edition), Vol. B, Part b, we read the following at p. 185:

" ____ ἔχει δὲ υἱοθετηθῆ παγίως ἀπὸ τοῦ 1947 ὑπὸ τῆς νομολογίας, τῶν δικαστηρίων δεχομένων ὅτι 'ἡ διάταξις τοῦ ἄρθρου 3 τοῦ Συντάγματος ἐπιβάλλει ἰσότητα δικαίου, ἤτοι ἀπαγορεύει οὐ μόνον τὴν ἄνισον ἐφαρμογὴν τῶν νόμων, ἀλλὰ
10 καὶ τὴν ὑπὸ τοῦ νομοθέτου οὐσιαστικῶς ἄνισον ρύθμισιν τοῦ δικαίου'. Δὲν ἀποκλείονται καὶ κατὰ τὴν ἄποψιν ταύτην παρεκκλίσεις ἐκ τοῦ γενικοῦ κανόνος, ἀλλ' αὗται, ἀφ' ἑνὸς μὲν δὲν εἶναι δυνατὸν νὰ ὑπερβαίνουν ὡρισμένα ἀκραία ὅρια εἰς ἑκάστην δεδομένην περίπτωσιν, ἀφ' ἑτέρου δὲ ἐπιτρέ-
15 πονται μόνον ἐφ' ὅσον συντρέχουν ἐπαρκεῖς λόγοι δικαιολογοῦντες αὐτὰς ἐξ ἀντικειμένου".

("____ has been adopted by case-law constantly since 1947, the Courts having accepted that 'the provision of Article 3 of the Constitution requires equality of the law, in other
20 words it prohibits not only inequality in applying the laws, but also prohibits substantial inequality in the course of laying down the law'. In accordance with this view, too, there are not excluded deviations from a general rule, but these cannot, on the one hand, exceed certain extreme
25 limits in every particular case, and, on the other hand, are permitted only so long as they can be justified from the objective point of view on the basis of adequate grounds").

As to the position in India in Basu (supra) at p. 447 we read:

"Mere production of inequality is not enough to hold
30 that equal protection has been denied. For, every selection of persons for regulation produces inequality, in some degree".

And further down,

"The inequality produced, in order to encounter the chal-
35 lenge of the Constitution, must be 'actually and palpably unreasonable and arbitrary'."

In this respect, reference is made by Basu to the decision of

the U.S.A. Supreme Court in *Arkansas Natural Gas. Co.* v. *Arkansas Railroad Commission*, 67 L. Ed. 705, at p. 710, which has been followed in *Frost* v. *Corporation Commission of the State of Oklahoma*, 73 L. Ed. 483, at p. 488, and in *Bayside Fish Flour Company* v. *Gentry*, 80 L. Ed. 772, at p. 777. 5

As to the meaning of equal protection at pp. 444-450 the following opinion is expressed in Basu based on the principles enunciated by decisions of the Supreme Court of India and of the Supreme Court of the United States of America:

"I. Article 14 has been taken verbatim from the American Constitution. Hence, in interpreting this clause, it is permissible to refer to the decisions of the American Supreme Court upon the Equal Protection Clause of the American Constitution. 10

II. Equal protection means the right to equal treatment in *similar circumstances*, both in the privileges conferred and in the liabilities imposed by the laws. 15

.. ..

III. Thus, the entire problem under the equal protection clause is one of classification or of drawing lines.

.. ..

VI. A classification is reasonable when it is not an arbitrary selection but rests on 'differences pertinent to the subject in respect of which classification is made'; thus a particular business may be subjected to a special burden if there is a reasonable relation between the burden imposed and the peculiar character of the business. Thus, railways may be made a special class for taxation or for legislation to secure safety to the public. Similarly, certain professions may be limited to persons having particular qualifications. 20 25

.. ..

V. The difference which will warrant a reasonable classification need not be great. What is required is that it must be real and substantial and must bear some just and reasonable relation to the object of the legislation. 30

.. ..

VI. Mere production of inequality is not enough to hold that equal protection has been denied. For, every selection of persons for regulation produces inequality, in some degree. The inequality produced, in order to encounter the challenge of the Constitution, must be 'actually and palpably unreasonable and arbitrary'.

VII.(a) 'Equal protection' does not insist that legislative classification should be scientifically perfect or logically complete.

It is no requirement of equal protection that all evils of the same genus be eradicated or none at all.

(b) Art. 14 does not, accordingly, prevent the Legislature from introducing a reform gradually, that is to say, at first applying the legislation to some of the institutions or objects having common characteristics or to particular areas only, according to the exigencies of the situation. Nor is the Article violated where the Legislature itself selects certain objects to which the law should, in the first instance, apply, and then empowers the Executive to add other like objects according to the exigencies calling for application of the law.

(c) It follows that the guarantee of equal protection does not require that a law should cover the entire field of proper legislation in a single enactment. If it is not discriminatory with its sphere of operation, the law does not become invalid because it is not all-embracing and that it is limited as to the territory, persons, or objects to which it is to be applied or the evils to be remedied.

VIII. Lack of equal protection is to be found in the exercise of an invidious discrimination, not in the mere possibility that there will be like or similar cases which will be treated more leniently, by an abuse of the power. The Legislature is entitled to hit the evil that exists and is not bound to take account of new and hypothetical inequalities, that may come into 'existence' as time passes or as conditions change".

In explaining the proposition under II above, reference is made by Basu to *Ameeroonissa* v. *Mahboob* (1953) S.C.R. 404 in which it was held by the Supreme Court of India at p. 414:

"A Legislature which has to deal with diverse problems arising out of an infinite variety of human relations must, of necessity, have the power of making special laws to attain particular objects; and for that purpose it must have large powers of selection or classification of persons and things upon which such laws are to operate".

Amongst other judicial pronouncements referred to in support of the proposition under Part IV, reference is made to *State of W.B.* v. *Anwar Ali* (1952) S.C.R. 284 in which Das J. had this to say at p. 335:

"The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act.

The differentia which is the basis of classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them".

In respect of the proposition under VIII(a), reference is made to the following extract from the decision of the U.S. Supreme Court in *Dominion Hotel* v. *Arizona* (1919) 249 U.S. 265 (268).

"The equal protection of the laws does not mean that all occupations that are called by the same names must be treated in the same way. The power of the State may be determined by degrees of evil or exercised in cases where detriment is specially experienced".

And, also, to the decision of the Supreme Court of India in

Ramkrishna v. *Tendolkar*, A. 1958 S.C. 538 (547) where it was held:

"The Legislature is free to recognised degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest".

The following tests are set out in Basu (supra) at pp. 450, 451 determining the reasonableness of a classification:

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

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

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

(a) Is the classification rational and based on an intelligible differentia which distinguishes persons or things that are grouped together from others that are left out of the group;

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

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

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.

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

VI. (a) The reasonableness of the classification is

to be tested with reference to the circumstances existing at the time of enactment of the impugned law.

But—

In the case of pre-Constitution laws, the circumstances existing at the time of commencement of the Constitution become material. 5

(b) A law which was non-discriminatory at its inception may be rendered discriminatory by reason of external circumstances which take away the reasonable basis of classification". 10

In dealing with the reasonable basis of classification, the following is stated in Basu (supra) at page 452:

"It is not possible to exhaust the circumstances or criteria which may afford a reasonable basis for classification in all cases. As the American Supreme Court has observed– 15

'The constitutional formula 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.'(1)

On the same principle, our Supreme Court has laid down only two broad tests for determining whether a classification is reasonable: 20

(i) The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and 25

(ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question.

It depends on the object of the legislation in view and whatever has a reasonable relation to the object or purpose of the legislation is a reasonable basis for classification of the objects coming under the purview of the enactment. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. 30

(1) *Kotch* v. *Port Pilot Commrs.*, (1947) 330 U.S. 552.

Thus,—

(a) The basis of classification may be geographical.

The guarantee of equal protection does not prevent the State from applying different laws or different systems of judicature to different parts or local sub-divisions of the country according to local circumstances, for the clause does not secure to all persons the benefit of the same laws and same remedies. Equal protection of the laws is a pledge of the protection of equal laws".

In support of his assertion of "geographical" classification, Basu makes reference to the case of the Supreme Court of India, *Srikishan* v. *State of Rajansthan*, (1955) 2 S.C.R. 531 where, at page 536, it was held that:

"In view of the fact that conditions of tenants vary from locality to locality, the mere fact that a tenancy legislation is extended to only a portion of the territory of a State does not make the law void for contravention of Article 14".

And he proceeds to explain how the classification may also be justified on *historical reasons*, or, according to difference in time.

In the Constitutional Law of India by H.M. Seervai, 2nd Edition, Vol. 1 at p. 222 in dealing with the principle of equality, 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".

As to the exposition of the principle of equality under the U.S.A. Constitution there are numerous decisions of the Supreme Court of the United States to some of which useful reference may be made in the present case.

In *Magoun* v. *Illinois Trust Bank* (1898) 170 U.S. 283, it was said: 5

"The rule of equality permits many practical inequalities. And necessarily so. In a classification for governmental purposes, there cannot be any exact exclusion or inclusion of persons and things". 10

In *Connolly* v. *Union Sewer Pipe Co.* (1902) 184 U.S. 540 at p. 566, it was held:

"Government is not a simple thing. It encounters and must deal with the problems which come from persons in an infinite variety of relations. Classification is the 15 recognition of those relations, and, in making it a Legislature must be allowed a wide latitude of discretion and judgment".

In *Bayside Fish Flour Company* (supra) at p. 777, Mr. Justice Sutherland said: 20

"It never has been found possible to lay down any infallible or all-inclusive test by the application of which it may be determined whether a given difference between the subjects of legislation is enough to justify the subjection of one and not the other to a particular form of disadvantage. A 25 very large number of decisions have dealt with the matter; and the nearest approach to a definite rule which can be extracted from them is that, while the difference need not be great, the classification must not be arbitrary or capricious, but must bear some just and reasonable relation 30 to the object of the legislation. A particular classification is not invalidated by the Fourteenth Amendment merely because inequality actually results. Every classification of persons or things for regulation by law produces inequality in some degree; but the law is not thereby rendered 35 invalid (*Atchison, T. & S.F.R. Co.* v. *Matthews*, 43 L. Ed. 909), unless the inequality produced be actually and palpably unreasonable and arbitrary. *Arkansas Natural Gas Co.*

v. *Arkansas R. Commission*, 67 L.Ed. 705, 710 and cases cited)."

In *Jefferson* v. *Hackney*, 32 L. Ed. 2d 285, Mr. Justice *Rehnquist* said (at p. 296):-

5 "This Court emphasized only recently, in *Dandridge* v. *Williams*, 25 L. Ed. 2d 491, 501, that in 'the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect'."

10 In *Lehnhausen* v. *Lake Shore Auto Parts Co.*, 35 L.E. 2d 351, Mr. Justice Douglas said (at pp. 354-355):-

"The Equal Protection Clause does not mean that a State may not draw lines that treat one class of individuals or entities differently from the others. The test is whether 15 the difference in treatment is an invidious discrimination. *Harper* v. *Virginia Board of Elections*, 16 L. Ed. 2d 169. Where taxation is concerned and no specific federal right, apart from equal protection, is imperilled, the States have large leeway in making classifications and drawing lines 20 which in their judgment produce reasonable systems of taxation".

In *Royster Guano Co.* v. *Commonwealth of Virginia* (64 Law. Ed. 989), Mr. Justice Pitney had this to say at pp. 990-991:-

"It is unnecessary to say that 'equal protection of the laws' 25 required by the 14th Amendment does not prevent the states from resorting to classification for the purposes of legislation. Numerous and familiar decisions of this Court establish that they have a wide range of discretion in that regard. But the classification must be reasonable, 30 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. The latitude of discretion is notably wide in the classification of property for purposes of taxa- 35 tion and the granting of partial or total exemptions upon grounds of policy ——— Nevertheless, a discriminatory tax law cannot be sustained against the complaint of a party aggrieved if the classification appear to be altogether illusory".

The application of the "principle of equality" has been considered in a number of cases by our Supreme Court.

In *Micrommatis and The Republic*, 2 R.S.C.C. 125 (at p. 131) it is stated:

> "........ 'equal before the law' in paragraph 1 of Article 28 does not convey the notion of exact arithmetical equality but it safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things". 5

The *Micrommatis* case was followed in, inter alia, *Panayides* v. *The Republic* (1965) 3 C.L.R. 107, *Louca* v. *The Republic* (1965) 3 C.L.R. 393, *Impalex Agencies Ltd.* v. *The Republic* (1970) 3 C.L.R. 361, *The Republic* v. *Arakian and Others* (supra), *The Republic* v. *Demetriades* (1977) 3 C.L.R. 213 and *Anastassiou* v. *The Republic* (1977) 3 C.L.R. 91. 10 15

In *Anastassiou* v. *The Republic* (supra) (at p. 127) Hadjianastassiou, J., had this to say:

> "Finally, the last complaint of counsel was that even if the applicant was found to be liable to pay contribution, that would offend against the principle of discrimination and unequal treatment enunciated under the constitutional provision of Article 28. 20
>
> It seems to me that the approach of this Court regarding this complaint has been clearly stated in a number of authorities dealing with taxation, starting with the case of *Mikrommatis and The Republic*, 2 R.S.C.C. 125 and *Matsis* v. *The Republic* (1969) 3 C.L.R. 245, which was decided by the Full Court. These authorities show that the principle enunciated is that Article 28 safeguards only against arbitrary differentiation and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things, both as far as equality before the law is concerned and discrimination thereof. Because this principle has ever since been reiterated in a line of other cases, I do not think it is necessary to quote other authorities to substantiate this point further". 25 30 53

It is clear from all the above authorities that Article 28 safe-

guards only against arbitrary differentiations and does not exlude *reasonable distinctions which have to be made in view* of the intrinsic nature of things.

In the present case, in the light of the arguments advanced and the evidence adduced, it is apparent that the condition of hotels and tourist places of entertainment in the mountains is strikingly different from that in the towns and seaside places in Cyprus. The hotels and tourist places of entertainment in the mountains, according to the evidence adduced by the respondents, are facing financial problems due to the low average occupancy, compared to similar establishments in the rest of Cyprus and furthermore, such occupancy is restricted to a seasonal period of the three summer months and depends wholly on the internal tourism.

I, therefore, find that the differentiation is not an arbitrary one and that a reasonable distinction does exist between the two categories of hotels and other establishments and places of entertainment justifying the distinction in classification as mentioned in the sub judice decision and section 12 of Law 91/79, which *classification is a real and not an illusory one.*

Legal ground 3.

Having dealt with grounds 1 and 2, I am now coming to consider counsel's contention that Law 91/79 and in particular section 12, does not give power to the respondents to impose the percentage of 3 per cent on other hotel services, as such services cannot be considered as falling within the meaning of "services" rendered by a shop (κατάστημα) as defined under section 2 of Law 91/79. Section 12 of Law 91/79 provides as follows:

"12.-(1) Δι' ἀποφάσεως τοῦ Ὑπουργικοῦ Συμβουλίου δύναται νὰ ὁρίζηται ποσοστὸν μέχρις ὕψους δέκα ἐπὶ τοῖς ἑκατὸν ἐπὶ παντὸς λογαριασμοῦ τῶν πελατῶν τουριστικῶν κέντρων, ἐξαιρουμένων φόρων καὶ δικαιώματος ὑπηρεσίας:

Νοεῖται ὅτι τὸ Ὑπουργικὸν Συμβούλιον δύναται δι' ἀποφάσεώς του νὰ ἐξαιρέση ἐν ὅλῳ ἢ ἐν μέρει, ἐκ τοῦ ὡς προείρηται ποσοστοῦ οἱαδήποτε τουριστικὰ κέντρα εὑρισκόμενα εἰς ὀρεινὰ θέρετρα, ὡς ἤθελε καθορισθῇ ἐν τῇ τοιαύτῃ ἀποφάσει.

(3) Τὸ οὕτω ὁριζόμενον ποσοστὸν ἐπιβαρύνει τὸν πελάτην

καὶ εἰσπράττεται ὑπὸ τοῦ ἐπιχειρηματίου καὶ ἀποδίδεται τῇ εὐθύνῃ τούτου εἰς τὸν 'Οργανισμὸν οὐχὶ ἀργότερον τῆς 15ης τοῦ ἐπομένου μηνὸς συμφώνως πρὸς ἐγκυκλίους ὁδηγίας τοῦ 'Οργανισμοῦ.

(3) Ἕκαστος ἐπιχειρηματίας δέον ὅπως τηρῇ στοιχεῖα δεικνύοντα τὰς ὑπὸ τοῦ τουριστικοῦ κέντρου γενομένας ἡμερησίας εἰσπράξεις συμφώνως πρὸς ἐγκυκλίους ὁδηγίας τοῦ 'Οργανισμοῦ". 5

("12—(1) By a decision of the Council of Ministers a percentage up to 10% may be fixed on all bills of customers of tourist places of entertainment, excluding taxes and service charges. 10

Provided that the Council of Ministers may by its decision exclude, in whole or in part, from the above percentage any tourist places of entertainment found in mountain resorts as might be determined in such decision. 15

2. The thus determined percentage shall be payable by the customer and shall be collected by the businessman and paid by him on his own responsibility to the Organisation not later than the 15th of the next month according to the circular directions of the Organisation. 20

3. Every businessman must keep accounts showing the daily collections of the tourist place of entertainment according to the circular direction of the Organisation").

As to the type of the tourist place to which the above provision is applicable, section 2 of Law 91/79 defines same as follows: 25

" 'τουριστικὸν κέντρον' σημαίνει κατάστημα—

(α) λειτουργοῦν ἐντὸς ξενοδοχείου τῆς τάξεως 5 μέχρι 1 ἀστέρος ἢ τουριστικοῦ καταλύματος συμφώνως πρὸς τὰς διατάξεις τῶν περὶ Ξενοδοχείων καὶ Τουριστικῶν Καταλυμάτων Νόμων τοῦ 1969 ἕως 1974· ἢ 30

(β) λειτουργοῦν ἐντὸς περιοχῆς ἀρχαιολογικῶν χώρων ἢ ἐντὸς περιοχῆς ἀερολιμένων, λιμένων μαρινῶν· ἢ

(γ) λειτουργοῦν ἐντὸς τουριστικῶν ζωνῶν καθοριζομένων

συμφώνως πρὸς τὰς διατάξεις οἱουδήποτε ἑκάστοτε ἐν ἰσχύι νόμου· ἢ

(δ) τὸ ὁποῖον ὁ ὀργανισμὸς θέλει κατόπιν ἐγκρίσεως τοῦ Ὑπουργοῦ ὁρίσει ὀνομαστικῶς λόγῳ τῆς μορφῆς τῶν 5 ὑπ' αὐτοῦ προσφερομένων ὑπερεσιῶν ἢ λόγῳ τοποθεσίας, συγκεντρώσεως ἢ κινήσεως πελατῶν, ταξιδιωτῶν, περιηγητῶν ἢ παραθεριστῶν,

ἐν τῷ ὁποίῳ παρέχεται ὑπηρεσία κατ' ἐπάγγελμα καὶ ἔναντι ἀμοιβῆς".

10 ("'tourist place of entrainment' means a shop–

(a) operating in a hotel of the class of 5–1 stars or tourist lodging in accordance with the provisions of the Hotels and Tourist Establishments Laws, 1969–1970; or

(b) operating within the area of archaeological places 15 or within the area of airports, ports or marinas; or

(c) operating in touristic zones fixed according to the provisions of any law in force from time to time;

(d) which the Organisation may, on the approval of the Minister, fix by name due to the kind of services 20 rendered or location, concentration or movement of customers, travellers, tourists or summer tourists

in which service is offered professionally and on reward.").

As to the nature of the services contemplated by section 2 there is further definition of such service in the same section as 25 follows:

" 'ὑπηρεσία' σημαίνει–

(α) παροχὴν ἑστιάσεως ἢ πάσης φύσεως φαγητῶν, ποτῶν ἢ γλυκισμάτων, ἀνεξαρτήτως τοῦ ἐὰν παραλλήλως παρέχεται ἀναψυχὴ καὶ ψυχαγωγία· ἢ

30 (β) διοργάνωσιν χοροεσπερίδων, δεξιώσεων, συνεστιάσεων συγχαρητηρίων ἐπισκέψεων ἢ ἄλλων ἐκδηλώσεων παρομοίας φύσεως".

(" 'service' means—

(a) offering entertainment or every kind of food, drinks

or pastry irrespective of whether recreation and amusement are also given;

(b) organising of dances, receptions, gatherings for feasting or other activities of a similar nature.").

The meaning of sections 2 and 12 is quite clear and leaves no room for doubt or any ambiguity at all. A tourist place, where services such as the ones set out in section 2 of Law 91/79 are rendered, is a "tourist centre" ("τουριστικὸν κέντρον") upon which the 3 per cent percentage may be imposed under section 12(1) of Law 91/79 and includes those operating in a "hotel" or "hotel unit" or "hotel shop" ("ξενοδοχεῖον", "ξενοδοχειακὴ μονὰς" ἤ "ξενοδοχειακὸν κατάστημα") as defined in section 2 of The Hotels and Tourist Establishments Laws, 1969-1974 (Laws 40/69-34/74) (Περὶ Ξενοδοχείων καὶ Τουριστικῶν Καταλυμάτων Νόμοι 1969-1974)

Services such as those defined in section 2 of Law 91/79 can be provided either by hotels and tourist establishments in addition to sleeping accommodation and also by other tourist places without sleeping accommodation. It is not an additional charge imposed on hotels and other tourist establishments with sleeping accommodation on top of the 3 per cent charge imposed for sleeping accommodation under section 10(7) of the Hotel and Tourist Establishments Laws 40/69-34/74. Section 12 of Law 91/79 provides for the imposition of a percentage on hotel establishments and other tourist places of entertainment for such services as defined under section 2 of Law 91/79 and not for sleeping accommodation. Therefore, the 3 per cent percentage which was imposed by the Council of Ministers was within its powers under section 12(1) of Law 91/79.

Legal ground 4.

I come now to the last ground of law, in that there was no power vested in the Cyprus Tourism Organisation under section 13 of Law 54/69 to collect the 3 per cent percentage imposed on hotels and other tourist establishments and on tourist places of entertainment under section 12(1) of Law 91/79.

Section 13 is one of the sections that fall within Part V of Law 54/69 under the heading, "Fiscal Provisions".

Paragraph (ζ) of section 13 refers to payment to the Organisation of any "πρόστιμα ἢ ἄλλαι χρηματικαὶ ποιναὶ ἐπιβαλλόμεναι καὶ εἰσπραττόμεναι". It is clear that this section authorises the payment to respondent 2 of any money
5 collected from any criminal sanction for the contravention of any of the laws or regulations set out therein. I agree with coursel for the applicants that till the amendment of paragraph (ζ) by section 2 of Law 63/81 on the 20th November, 1981, there was no power to pay to respondent 2 any fines so collected.
10 However, the 3 per cent which is in issue in the present case, is not a "fine" under paragraph (ζ) but is a charge which is imposed on clients' bills, it has to be paid by clients and has to be refunded by the hotels and tourist places of entertainment to respondent 2 for whose account such collection is made.
15 It is a source of income for respondent 2 which can be collected by it under paragraph (η) of section 13. The contention, therefore, of counsel for applicants to the contrary, fails.

Before concluding in this case, I wish to make the following observations on a matter which came to my knowledge whilst
20 considering this judgment and which has not been raised or argued by counsel in these proceedings. From what appears on the face of the application and the grounds of law set out therein, the applicants by the present recourse contest the validity of the decision of the Council of Ministers as mentioned in the
25 letter sent by the General Manager of respondent 2, attached to the application. As I have already mentioned, the decision of the Council of Ministers referred to in the above letter, though taken on 11.12.1980, was published in the official Gazette of the Republic on 23.4.1981 and, according to Article 57 of the
3 Constitution, a decision of the Council of Ministers takes effect when it is promulgated by publication in the Cyprus Gazette unless under paragraph 4 of Article 57, the Council of Ministers otherwise decides for the reasons stated in such decision.

In view of the above, the letter of the General Manager may
35 be taken as being of an informatory character only about a decision which was taken by the Council of Ministers and which, by the time of such communication, had not been published in the Gazette. Such matter might have been detrimental to this recourse, but as I have not heard any argument on this
40 point, I leave it at that without expressing any opinion especially

in view of the fact that in any event this recourse fails on the substance.

In the result, this recourse is dismissed but in the circumstances I make no order for costs.

Application dismissed. No order as to costs. 5