1983 August 26

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

BORCHARD LINES LTD.,

Applicant,

v.

THE MUNICIPALITY OF LIMASSOL,

Respondent.

(*Case No.* 48/83).

CZECHSLOVAK DANUBE NAVIGATION,

Applicant,

v.

THE MUNICIPALITY OF LIMASSOL,

Respondent.

(*Case No.* 49/83).

Statutes—Construction—Departure from the ordinary literal meaning —When possible—Construction of para. (στ) *of Part I of the Tenth Schedule to the Municipal Corporations Law, Cap.* 240 (*as enacted by Law* 42/82).

Professional tax—Imposition under s. 158 *of the Municipal Corporations Law, Cap.* 240*—Decision of Municipality "final and conclusive"—Cannot be challenged by means of an "objection"—Decision taken on such objection, reducing the tax, taken without competence—Annulled.*

Administrative Law—Recourse to the organ which has taken the relevant decision—Possible if the Law allows such a recourse—But not where the Law forbids same by providing that the decision will be "final and conclusive"—Any decision taken upon such

a recourse is invalid as taken by an organ which has no competence —"Χαριστική Προσφυγή"—"Αίτησις θεραπείας".

Words and Phrases—"Χαριστική Προσφυγή"—"Αίτησις θεραπείας".

Municipal Corporations Law, Cap. 240—Construction of "registered in Cyprus" in para. (στ) of Part I of the Tenth Schedule to the Law.

Practice—Recourse for annulment—Amendment of the prayer in the recourse at stage of delivery of judgment.

The applicants were two different oversea companies which although not registered in Cyprus were carrying on shipping business in Limassol. Both of them did not apply to the Municipality of Limassol for a professional licence as envisaged by section 157(1) of the Municipal Corporations Law, Cap. 240. The respondent Municipality having imposed professional tax of £200.- to each one of the applicants informed them of such imposition by letter dated 20.7.1982.

Applicants did not challenge this decision by means of a recourse under Article 146.1 of the Constitution but they wrote to the respondent Municipality objecting to the above imposition of professional tax. The respondent by letter dated 25.11.1982 informed the applicants that the professional tax was reduced from £200.- to £175.-. Hence these recourses for a "declaration to the effect that the decision of the respondent to impose on the applicant professional tax amounting to £175.- for the year 1982, is void and devoid of any effect".

Counsel for the applicants mainly contended that both the applicants being oversea companies carrying on shipping business in Limassol but not registered in Cyprus, should not have been taxed under para. (στ) of the Tenth Schedule* Part I of Law 42/82, but instead should be taxed under para. (n) of the same Schedule of the Law, whereby the professional tax envisaged does not exceed £100.-.

The Companies Law, Cap. 113 provides, inter alia, that all

* Para. (στ) of the schedule provides that oversea companies registered in Cyprus.....shall pay an annual fee not exceeding £500; and para. (n) provides that other persons or corporate bodies not falling into any one of the above categories shall pay an annual fee not exceeding £100.

oversea Companies which establish a place of business within the Republic are required to deliver to the registrar of Companies certain documents for registration (vide s.347(1)); failure to comply entails a penalty (vide s.353); and the obligation of the oversea company concerned does not cease unless and until the respective company ceases to have a place of business in Cyprus (vide s.347(4)).

Under section 157* of Cap. 240 the Municipal Committee shall determine the fee payable in the case of persons applying for a licence to carry any trade or profession within the municipal limits but the person aggrieved may appeal to the District Officer whose decision shall be final and conclusive; and, under section 158**, in the case of those who fail to apply for a licence the Municipal Committee may determine the fee payable and its decision shall be final and conclusive.

Held, after directing amendment of the prayer for relief so as to insert the date of the sub judice decision:

(1) That if the words "registered in Cyprus" in para. (στ) to the Schedule of the Law are taken in their ordinary literal meaning are apt to lead to anomalous results because oversea companies carrying on shipping business in Cyprus, which failed to register in Cyprus in direct violation of the Law will find themselves in a better position than those law-abiding oversea companies which fulfilled this legal obligation for registration, as the former will not be liable to professional tax whilst the latter may be held liable to pay up to £500.- professional tax; that such a construction would not only be contrary to the intention of the Legislature, which could not have envisaged such anomaly, but would even destroy what the Legislature intended to establish; that this is the case where this Court is justified in departing from the plain words of the statute as it is satisfied that all the elements justifying such a departure exist (see *Stock v. Frank Jones (Tipton) Ltd.* [1978] 1 All E.R. at p. 954 (H.L.)); and that, therefore, the crucial words "registered in Cyprus" shall be construed to mean "under an obligation to be registered in Cyprus" thus obviating the anomaly without detriment to the legislative objective and

* Section 157 is quoted at p. 913 post.

** Section 158 is quoted at p. 913 post.

without substantially altering the language of the statute which is susceptible to this minor modification required to obviate the anomaly. Accordingly it was open to the respondent to impose, as he did, in the case of applicants in both recourses, professional tax pursuant to the provisions of para. (στ) of the Tenth Schedule Part I of Law 42/82.

(2) That since the professional tax in these recourses was imposed under s.158 of Cap.240 the decision of the Municipality is "final and conclusive" and (a) it cannot be impugned by means of a hierarchical recourse (as in the case of s.157) and (b) at the same time it cannot be challenged by what is described in the present recourses as "objection" to the Municipality for the taxation imposed, which is in effect what is termed as "χαριστική προσφυγή or αίτησις θεραπείας" in Greek Administrative Law; that such an application-recourse can be submitted to the same Administrative Organ, which has already given its decision on the matter, when the relevant Law allows such an application-recourse or where the Law is silent, but not where the Law forbids same by providing that the decision of the Municipality will be "final and conclusive"; that, therefore, the respondent had no competence under s.158 to re-examine the cases and take a new decision thereby reducing the professional tax originally imposed to £175; accordingly the sub judice decisions were taken in direct conflict of the relevant Law by an organ who had, thus, no competence. Therefore, they will be annulled on this ground, not for the reasons relied upon by the applicants.

(3) That despite the annulment of the sub judice decisions, the original decisions of the respondent Municipality communicated to the applicants on 20.7.82 stand; they were lawfully taken as above stated, and they were never challenged by a recourse under Article 146 of the Constitution; they are, therefore, valid and binding upon the applicants.

Sub judice decisions annulled.

Cases referred to:

Dafnides v. Republic, 1964 C.L.R. 180;

Holy See of Kitium v. Municipal Council of Limassol, 1 R.S.C.C 15;

Megalemou v. Republic (1968) 3 C.L.R. 581;

Christodoulou v. Republic, 1 R.S.C.C. 1;

Sotiropoulou v. Republic (1968) 3 C.L.R. 596;

Stock v. Frank Jones (Tipton) Ltd. [1978] 1 All E.R. 948 at p. 954.

Recourses.

Recourses against the decision of the respondent to tax applicants under para. (στ) of the 10th Schedule Part I of Law 42/82 instead of para (η) of the above law.

G. Michaelides, for applicants.

J. Potamitis, for respondents.

Cur. adv. vult.

LORIS J. read the following judgment. These two recourses, which present common factual and legal issues, were on the application of all concerned heard together.

Applicants in the above mentioned recourses, are two different oversea companies which were carrying on shipping business at the material time in Limassol, Cyprus; by virtue of the present recourses they impugn the relevant decisions of the Municipality of Limassol whereby professional tax amounting to £175.- was imposed on each one of the applicant companies separately for the year 1982.

The complaint of applicants in both cases is the same: They were taxed under para. (στ) of the 10th Schedule Part I of Law 42/82, both being oversea but unregistered companies, whilst they should be taxed under para (η) of the same Law whereby the professional tax could not exceed £100.-.

Pursuant to directions of this Court written addresses were filed by both sides in both recourses; after the filing of their reply by applicants in both cases, counsel on both sides stated that they were adducing no evidence and that they did not wish to add anything further, so judgment was reserved. On examination of both cases it was revealed that certain facts, which were touching the fundamental issue of time within which the relevant recourse ought to have been filed, were not stated clearly and unequivocally; I have directed the re-opening of both cases under rules 19 and 12 of the Supreme Constitutional Court Rules (vide *Dafnides* v. *The Republic*, 1964 C.L.R. 180)

with a view to ascertaining facts connected with the crucial issue of time the strict observance of which renders a recourse justiciable (*The Holy See of Kitium* v. *The Municipal Council of Limassol*, 1 R.S.C.C. 15) and has to be elucidated even by the Court acting ex proprio motu (*Megalemou* v. *The Republic* (1968) 3 C.L.R. 581).

At the re-opening of both cases on 26.7.1983 counsel for both applicants produced—counsel for the respondent Municipality consenting—ex. 1, 2 & 3 (Case No. 48/83) and ex. 1A, 2A, & 3A (Case No. 49/83) counsel for applicants made also certain statements which appear on record, on two of which emphasis has to be layed at this stage, being of utmost importance for the consideration by this Court of the nature and effect of the decision of the respondent, communicated to each one of the applicants separately by identical letters dated 25.11.1982 (ex. 3 and 3A respectively). The two statements made by counsel for applicants on which I lay stress are the following:

(i) Neither of the applicants ever applied to the Municipal Committee of Limassol for a licence with a view to carrying their shipping business in Limassol.

(ii) None of the applicants impugned by means of recourse under Article 146 the original decisions of the respondent dated 20.7.1982 (exhibits 1 and 1A respectively).

Counsel for respondent on 26.7.1983 confirmed the facts stated by counsel for both applicants and made several statements himself, which appear on record, the most significant being his statement to the effect that the second decision of the Municipality communicated to each one of the applicants on 25.11.1982 (exhibits 3 and 3A respectively) was ultra vires taken in direct conflict with the Municipality Laws.

The uncontested facts of both cases as now supplemented at the re-opening of these cases on 26.7.1983 are briefly as follows:

1. Applicants in both recourses were at the material time oversea companies which although not registered in Cyprus were carrying on shipping business in Limassol, Cyprus, through their agents "The Cyprus Shipping

Co.", formerly of Famagusta and now (as well as at all material times) of Limassol.

2. Both applicants did not apply to the Municipality of Limassol for a professional licence as envisaged by s. 157(1) of the Municipal Corporations Law, Cap. 240 (as incorporated by reference into the provisions of Law 64/64).

3. The respondent Municipality imposed professional tax of £200.- to each one of the applicants separately and informed each one by letter dated 20.7.82, accordingly (exh. 1 in case No. 48/83–Exh. 1A in case No. 49/83).

4. The agents of Applicants in Cyprus, in case No. 48/83 addressed to the respondent Municipality a letter dated 3.8.82 (exh. 2) and in respect of applicants in case No. 49/83 a letter dated 28.7.82 (exh. 2A) objecting to the aforesaid imposition of professional tax on 20.7.82.

It is significant to note that both applicants in their aforesaid objections (ex. 2 & ex. 2A), which are identical, they are simply complaining against the amount of taxation maintaining that they should be taxed "according to Law" with the amount of £100.- only.

5. By identical letters dated 25.11.82 the respondent informed each applicant separately (exh. 3 in case No. 48/83, exh. 3A in case No. 49/83) that "according to the decision of the Municipal Committee of Limassol taken on its last meeting, the professional tax, which was imposed on you in respect of the year 1982 is reduced from £200.- to £175.-....."

Both applicants obviously dissatisfied from the contents of exhibits 3 and 3A respectively, filed the present recourses praying for:

"Declaration to the effect that the decision of the respondent to impose on the applicant professional tax amounting to £175.- for the year 1982, is void and devoid of any effect".

The prayer in both recourses is identical; and at the same time somewhat vague; it does not say when the decision of the

respondent was taken or at least when same was communicated to the applicants. This was one of the reasons I have decided the re-opening of the cases as aforesaid; and the material facts relied upon by the applicants were not clear and unequivocal thus blurring the issue of time; furthermore, copies of all documents in the possession of the applicants referred to in the recourses were not originally accompanying the applications as envisaged by rule 4(2)(c) of the Supreme Constitutional Court Rules: such documents were only produced at the re-opening of these cases (they are now exhibits 1, 2, 3 in recourse 48/83 and exhs. 1A, 2A, 3A in recourse 49/83).

Even now after the filing of the documents in question and the recording of statements made by counsel, I feel that both prayers should be amended in order to contain the date at least of the communication of the aforesaid decisions of the respondent to the applicants in view of the fact that the professional tax in 1982 was imposed on 2 occasions; now that it is clear that the decision of the respondent dated 20.7.82 was not impugned by a recourse under Article 146 of the Constitution, now that we know that both applicants did not apply to the municipal committee of Limassol for a licence, and therefore they could not and in fact they were not taxed originally pursuant to the provisions of s. 157 (1), but according to the provisions of s. 158, - with all the consequences that follow when one submits an objection to taxation imposed under s. 158 - and we shall have the opportunity of examining at length the said consequences at a later stage of this judgment, I feel that both prayers should be amended so that they will succinctly indicate the date on which the second decision of the respondent (which is, in substance and in fact, being impugned by means of the present recourse) was communicated to the applicants; this date appears in exhibits 3 and 3A respectively and on both occasions is the same; it is the 25.11.82.

It is therefore hereby directed that prayers in both recourses as above, be amended by the insertion therein immediately after the words "the decision of the respondent" of the following words "communicated to the applicant by letter dated 25.11.82". There is authority for such an amendment (*Christodoulou v. The Republic*, 1 R.S.C.C. 1, *Sotiropoulou v. The Republic* (1968)

3 C.L.R. 596) at this late stage, which cannot anyway prejudice any party or the interests of justice.

Such amended prayers need not be served on the respondent and any other formalities that might have been required under ordinary circumstances are hereby dispensed with.

The grounds of Law on which both applicants rely are identical in both recourses; they read as follows:

"1. The taxation imposed contravenes the Municipality Laws 1964 to 1982 and in particular Law No. 42 of 1982 section 3, Tenth Schedule, Part I.

2. The taxation imposed is arbitrary, not based on the provisions of the Law and therefore void having been made in excess and/or abuse of power".

The respondent Municipality in its opposition filed in both recourses maintains that the said taxation was on both occasions lawfully imposed as both companies, being oversea companies carrying on shipping business at the material time in Limassol, were liable to professional tax, for the year 1982, on the scale envisaged by the provisions of para. (στ) of the 10th Schedule, Part I, of Law 42/82.

Before examining the substance of both recourses, I feel that I should refer briefly to the position in respect of the Municipality Laws and set out the specific sections relevant to the cases under consideration.

Most of the provisions of the Municipal Corporations Law, Cap. 240 (the force of which came to an end by expiration on 31.12.62) and in particular sections 136 to 181, both inclusive, together with the Schedules referred to therein, were incorporated by reference into the provisions of Law 64/64 (vide s. 8(2) of the Law).

Law 64/64 which was repeatedly amended (by Laws: 15/66, 9/70, 47/70, 89/70, 87/72, 73/79, 26/81 and 42/82) is now the basic Law regulating matters in connection with Municipalities; I shall be referring in the present judgment to the aforesaid Laws as the Municipalities Laws 1964 to 1982 noting at the same time that the 1983 amendment (Law No. 22/83) is inapplicable to the present recourses.

Section 156 of Cap. 240 reads as follows:

"156. No person shall, within any municipal limits, carry on, exercise or practice any business, trade, calling or profession for profit unless he has obtained a licence so to do in accordance with the provisions of this Law;

Provided that ——————————"

Section 157(1) of Cap. 240 reads as follows:

"157(1) Any person desiring to carry on, exercise or practice, for profit, any business, trade, calling or profession within any municipal limits shall apply to the (municipal committee) for a licence and the (committee) shall determine the fee payable therefor, not exceeding the appropriate fee set out in Part I of the Tenth Schedule of this Law:

Provided that–

(a) any person aggrieved may, within 20 days (vide s. 2 of Law 42/82) from the day of the notification to him of such determination, appeal to the District Officer of the district whose decision shall be final and conclusive;

——————————"

Section 158 of Cap. 240 reads:

"158. If any person fails to apply to the (municipal committee) for a licence, as in section 157 of this Law provided, within one month of his having commenced or recommenced to carry on, exercise or practice any business, trade, calling or profession, the (Committee) may determine the fee payable by such person, not exceeding the appropriate fee set out in Part I of the Tenth Schedule to this Law, and enter his name in the register of trade licences and the decision of the (committee) shall be final and conclusive".

Part I of the Tenth Schedule to the Law which provides for the appropriate fees payable for the year 1982 is set out in s. 3 of Law 42/82; paragraphs (στ) and (η) thereof - the relevant

paragraphs in connection with the cases under consideration - read as follows:

(The translation in English is mine)

TENTH SCHEDULE

PART I

(Sections 157 and 158)

"1. Annual Licences:

	Annual fee not exceeding £
(α)	
(β)	
(γ)	
(δ)	
(ε)	
(στ) Oversea companies registered in Cyprus and carrying on insurance, shipping, air-carriage, banking and other commercial business	£500.-
(ζ)	
(η) Other persons or corporate bodies not falling into anyone of the above categories	£100.-"

Having dealt with the basic Law regulating matters in connection with Municipalities with special reference to sections providing for the imposition of professional tax, I consider it convenient, at this stage, to deal as well with the relevant provisions of our Companies Law, Cap. 113, which regulate the position of companies incorporated outside the Republic which have established a place of business within the Republic.

Section 346 of Cap. 113 reads as follows:

"346. Sections 347 to 353, both inclusive, shall apply to all oversea Companies, that is to say, companies incorporated outside the (Republic) which, after the commencement of this Law, establish a place of business within the (Republic), and companies incorporated outside the (Republic) which have, before

the commencement of this Law, established a place of business within the (Republic) and continue to have an established place of business within the (Republic) at the commencement of this Law."

Section 347 of Cap. 113 reads:

"347 (1) Oversea companies which, after the commencement of this Law, establish a place of business within the (Republic) shall, within one month of the establishment of the place of business, deliver to the registrar of companies for registration -

(a)..... (b)..... (c).....

(2).....

(3) Oversea companies, other than those mentioned in sub-section (1), shall, if at the commencement of this Law they have not delivered to the registrar in the case of a company mentioned in sub-section (1) of section 146 of the Companies (Limited Liability) Law, the documents and particulars specified in sub-section (1) of that section continue subject to the obligation to deliver those documents and particulars in accordance with the said Laws.

(4) If any oversea company ceases to have a place of business in the (Republic), it shall, forthwith, give notice of the fact to the registrar of companies and, as from the date from which notice is given, the obligation of the company to deliver any document to the registrar shall cease."

Reverting now to the facts of both cases: As stated earlier on in the present judgment the complaint of the applicants in both cases is that they both being oversea companies carrying on shipping business in Limassol at the material time, but not registered in Cyprus, should not have been taxed under para. (στ) of the Tenth Schedule Part I of Law 42/82, but instead should be taxed under para (η) of the same Schedule of the Law, whereby the professional tax envisaged does not exceed £100.-.

This is the main issue, the substance in both recourses; but at the re-opened hearing of both cases another issue arose posing a crucial question indeed: Could the respondent examine the objections of both applicants and take a second de-

cision on the matter in view of the clear and unambiguous provisions of s.158 of Cap. 240 to the contrary?

My primary task in deciding the main issue is to examine the relevant legislation and pronounce in the first place whether the crucial words "registered in Cyprus" will be taken to bear only their ordinary literal meaning or whether they are susceptible to any other construction.

It must be borne in mind always that our Companies Law, Cap. 113 provides inter alia that all oversea Companies which establish a place of business within the Republic are required to deliver to the registrar of Companies certain documents for registration (vide s. 347(1)); failure to comply entails a penalty (vide s. 353); and the obligation of the oversea company concerned does not cease unless and until the respective company ceases to have a place of business in Cyprus (vide s. 347(4)).

Section 3 of Law 42/82 which has repealed and replaced the old Tenth Schedule Part I, was obviously enacted with a view to regulating professional tax to be collected from private individuals and corporate bodies by adjusting the scales of the tax payable to present financial realities in the Republic; paragraph (στ) thereof provides that companies incorporated outside the Republic and carrying on business within the Republic, are liable to pay up to £500.- professional tax. It is unfortunate that the Legislature inserted in the provisions of para. (στ) the words "registered in Cyprus" thereby treating the obligation for registration envisaged by Cap. 113 as already executed; but what happens if the oversea company concerned fails to register? I presume that such a registration cannot be specifically enforced although it is clear that the oversea company in default will suffer a penalty (envisaged by s. 353 of Cap. 113); nonetheless the penalty will not solve the problem of the Municipality if the words "registered in Cyprus" in para. (στ) of the Schedule to the Law are given their ordinary literal meaning. These oversea companies having an established place of business and carrying on business within the Republic, which failed to register in Cyprus in direct violation of the Law, will find themselves in a better position than those law-abiding oversea companies which fulfilled this legal obligation for registration, as the former will not be liable to pro-

fessional tax whilst the latter may be held liable to pay up to £500.- professional tax.

It is therefore clear that the words "registered in Cyprus" (in para. (στ) to the Schedule of the Law) taken in their ordinary literal meaning are apt to lead to anomalous results; thus two oversea companies carrying on shipping business in Cyprus, liable in all other respects to professional tax, cannot be so taxed if the words "registered in Cyprus" are given their ordinary literal meaning. Such a construction would not only be contrary to the intention of the Legislature, which could not have envisaged such anomaly, but would even destroy what the Legislature intended to establish.

Having given the matter anxious consideration I hold the view that this is a case where I am justified in departing from the plain words of the statute, as I am satisfied that all the elements stated by Lord Simon of Glaisdale in *Stock v. Frank Jones (Tipton) Ltd* [1978] 1 All E.R. 948 (H.L.) at p. 954 are present in this case:

"... A Court would only be justified in departing from the plain words of the Statute were it satisfied that

(1) there is clear and gross balance of anomaly;

(2) parliament, the legislative promoters and the draftsman, could not have envisaged such anomaly and could not have been prepared to accept it in the interest of a supervening legislative objective;

(3) the anomaly can be obviated without detriment to such legislative objective;

(4) the language of the statute is susceptible of the modification required to obviate the anomaly."

I have decided, therefore, to construe the crucial words "registered in Cyprus" to mean "under an obligation to be registered in Cyprus" thus obviating the anomaly without detriment to the legislative objective and without substantially altering the language of the statute which is susceptible to this minor modification required to obviate the anomaly.

In the circumstances it was open to the respondent to impose,

as he did; in the case of applicants in both recourses, professional tax pursuant to the provisions of para. (στ) of the Tenth Schedule Part I of Law 42/82.

As already stated the respondent communicated its decision to each one of the applicants on 20.7.82. This is the original decision of the respondent which was never impugned by either applicant by means of a recourse under Article 146 of the Constitution.

I shall now proceed to examine the nature and effect of the second decision of the respondent on the same subject-matter communicated to the applicants on 25.11.82 (the sub judice decision) given in reply to the "objection" of the applicants on the original decision.

As stated earlier on in the present judgment neither of the applicants in the present cases applied to the Municipality of Limassol for a professional licence envisaged by s.157(1) of Cap. 240, although they were both carrying on shipping business in Limassol; so the respondent Municipality imposed on each one of the applicants separately professional tax amounting to £200.- and informed by notice dated 20.7.82 each applicant accordingly (vide ex. 1 and ex. 1A respectively).

It was established positively before me and I am satisfied beyond any doubt that the said professional tax was imposed by the respondent pursuant to the provisions of sections 158 of Cap. 240.

It is abuntantly clear from the provisions of the aforesaid two sections, set out verbatim earlier on in the present judgment, that a decision of the Municipality imposing professional tax under s.157(1) of the Law can be impugned by means of "appeal" to the District Officer as envisaged by s. 157(1)(a), whilst a decision under s.158 "shall be final and conclusive."

In other words a taxation under s.157 can be impugned by a hierarchical recourse to the District Officer, a hierarchically superior organ, within 20 days from the day of the notification of the decision of the Municipality to the tax payer (such hierarchical recourse in the Greek Administrative Law is termed ἐνδικοφανὴς ἱεραρχικὴ προσφυγὴ) whilst in the case of taxation under s.158 the decision of the Municipality is "final and conclusive" i.e. (a) it cannot be impugned by

means of a hierarchical recourse (as in the case of s. 157) and (b) at the same time it cannot be challenged by what is described in the present recourses as "objection" to the Municipality for the taxation imposed, which is in effect what is termed as "χαριστική προσφυγή or αἴτησις θεραπείας" in Greek Administrative Law. Such an application-recourse can be submitted to the same Administrative Organ, which has already given its decision on the matter, when the relevant Law allows such an application-recourse or where the Law is silent, but not where the Law forbits same by providing that the decision of the Municipality will be "final and conclusive".

Professor Tsatsos in his work on "Application for Redress as Administrative Recourse" 2nd edition at p. 38 states the following:

> " 'Οπωσδήποτε ἀπαράδεκτος εἶναι ἡ χαριστικὴ προσφυγὴ τότε μόνον ὅταν ὑποβάλλεται ἕνεκα πράξεως ὁριστικῆς καὶ ἀνεκλήτου κατὰ νόμον".
>
> ("However the application-recourse is unacceptable only when it is submitted in respect of a definite and irrevocable act under the law").

Relevant in this respect is also the decision 537/37 of the Greek Council of State which states inter alia the following:

> " ... ἡ ἤδη προσβαλλομένη ἀπόφασις τῆς 'Επιτροπῆς ('Απαλλοτριώσεων) ταύτης εἶναι κατὰ τὸ ἄρθρον 67 παρ. 4 τοῦ 'Αγροτικοῦ Νόμου ὁριστικὴ καὶ ἀμετάκλητος, μὴ ὑποκειμένη οὐδ' εἰς ἀκύρωσιν ὑπὸ ἱεραρχικῶς προϊσταμένου διοικητικοῦ ὀργάνου, οὐδ' εἰς ἀνάκλησιν ὑπὸ τῆς ἐκδούσης ταύτην 'Επιτροπῆς, συνεπῶς ἡ ὑποβολὴ τῆς ἐν λόγῳ αἰτήσεως θεραπείας ἦν ματαία".
>
> ("... the already attacked decision of this Committee (Aquisitions) is by virtue of section 67 para. 4 of the Rural Law definite and irrevocable, not being subject either to annulment by the hierarchically superior administrative organ or to revocation by the issuing Committee, therefore the submission of the said application for redress is in vain").

Needless to add that the original administrative decision which is final and conclusive by the relevant Law, in the present

case the decision of the Municipality, although it cannot be challenged by means of an administrative application-recourse it can always be impugned before an administrative Court.

Thus the original decision (dated 20.7.82) of the respondent in both recourses in hand, could be impugned only by a recourse under Article 146 of the Constitution; both applicants refrained from taking such a course. Instead they submitted "objections" to the same Administrative Organ (which had given its original executory and valid decision) contrary to the provisions of s. 158 of Cap. 240: inspite of the fact that the respondent had no competence whatever anymore, it proceeded in re-examining both cases (after a new enquiry or without a new enquiry it is immaterial) and took a new decision thereby reducing the professional tax originally imposed to £175.-, communicating its said second decision to each one of the applicants on 25.11.82.

This second decision of the respondent is now being impugned by each one of the applicants separately; but these second decisions are void ab initio; they were taken in direct conflict of the relevant Law by an organ who had, thus, no competence. Therefore, both these decisions have to be annulled on this ground, not for the reasons relied upon by the applicants.

In the result both sub judice decisions communicated to each one of the applicants on 25.11.82 are hereby annulled for the reasons stated above.

I feel it my duty to point out though, that, despite the annulment of the sub judice decisions, the original decisions of the respondent Municipality communicated to the applicants on 20.7.82 stand; they were lawfully taken as above stated, and they were never challenged by a recourse under Article 146 of the Constitution; they are therefore valid and binding upon the applicants.

In view of the peculiar facts pertaining to both these recourses I shall refrain from making any order as to costs thereof.

Sub judice decisions annulled. No order as to costs.