

1986 September 19

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

- 1. IRINI KAROLIDOU
- 2. KYPROS KAROLIDES IN THEIR CAPACITY
AS ADMINISTRATORS OF THE ESTATE OF
THE LATE ELEFThERIOS KAROLIDES,

Applicants,

v.

THE COMMISSIONER OF ESTATE DUTY,

Respondent.

(Case No. 600/84).

Estate Duty—The Estate Duty Laws 1962-1976 (Laws 67/62 to 3/76)—Section 42—Onus on taxpayer to prove a claim for exemption—Section 25—The kind of debts which are deductible—Administration expenses—Not deductible—Section 7(g)—Personal accident policy—Amount payable thereunder upon death of insured—Rightly included in the estate—In any event such amount would have fallen under the provisions of s. 7(h).

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The applicants challenge by means of this recourse the decision of the respondent Commissioner of Estate Duty to assess the estate of the deceased at £20,110.- and the estate duty payable on the basis of such assessment, complaining that the following deductions should have been allowed that is: (a) A sum of £2,995.- which was granted to the deceased by the Government under the scheme for selfhousing of refugees for the erection of a house (b) A sum of £10,000, which was paid to the estate of the deceased, who had died as a result of an accident in the course of his work, by virtue of a personal accident policy which the deceased had taken out during his life,

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and (c) A sum of £1,800 administration expenses paid by the administrators of the estate, i.e. the applicants, to their advocates.

5 Counsel for the applicant submitted that the said sum of £2,995 was paid in the form of a trust for the benefit of the deceased's family, that under section 7(g) of the Law only amounts payable to the estate under ordinary life policies are assessable, but not amounts payable to the estate on personal accident policies and that the ad-
10 ministration expenses are expenses necessary for ascertaining the value of the estate and as such are deductible expenses.

Held, dismissing the recourse: (1) The onus is on the taxpayer to support a claim for exemption or deduction from tax. Besides the judicial pronouncements on such
15 principle, in the case of a claim for deduction or allowance under the Estate Duty Laws, 1962 to 1976, a statutory burden is imposed by s. 42 of the said laws on the person claiming the deduction to prove the same.

20 (2) In the light of the decision in *Syrimis and Another v. The Republic* (1978) 3 C.L.R. 177 and of s. 25 of the said laws, which specifies what kind of debts are deductible, the Court reached the conclusion that the respondent rightly disallowed the claim relating to the Ad-
25 ministration expenses.

(3) The said sum of £2,995 was actually spent by the deceased towards the construction of a house, which was registered in the name of the deceased as his absolute ownership. His family could not have a legal claim while
30 he was alive and similarly his heirs cannot raise any claim in respect of such money as being money held in trust for their benefit.

(4) Section 7(g) of the said Laws does not make any distinction between amounts payable upon the death of
35 a person and in respect thereof under a personal accident policy and a general life insurance policy. What is clear is that any amount payable on a policy of insurance on death is included in the estate, irrespective of the nature of the policy.

Independently, however of the provisions of s. 7(g) the amount payable under the said personal accident policy would have fallen under the provisions of s. 7(h) of the said Laws.

Recourse dismissed. 5
£50 costs against applicants.

Cases referred to:

HjiYianni v. The Republic (1966) 3 C.L.R. 338;
Kittides v. The Republic (1973) 3 C.L.R. 123;
Syrimis and Another v. The Republic (1978) 3 C.L.R. 177; 10
Ionides v. The Republic (1983) 3 C.L.R. 369;
Attorney-General v. Quixley [1929] All E.R. (Rep.) 696;
Lilian Georghiades v. The Republic (1982) 3 C.L.R. 659.

Recourse.

Recourse against the assessment raised on the estate of the deceased Eleftherios Karolides. 15

A. Papacharalambous, for the applicants.

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

Cur. adv. vult. 20

SAVVIDES J. read the following judgment. By the present recourse, the applicants, as administrators of the estate of the deceased Eleftherios Karolides, challenge the decision of the respondent Commissioner of Estate Duty to assess the estate of the deceased at £20,110.- and the estate duty payable on the basis of such assessment, amounting to £1,027.50 cent. 25

The deceased Eleftherios Karolides died on 8th May, 1984, as a result of injuries suffered by him in the course of his work. Letters of administration of the estate of the deceased were granted to the applicants by the District Court of Nicosia in Probate Application No. 219/84. 30

5 On 6th August, 1984, applicants delivered to the respondent a simplified declaration of the estate of the deceased in which they declared, inter alia, a Life Policy, which the deceased had taken on his life in case of death caused by accident, as property of the deceased and also two claims for deduction from the value of the estate of the deceased, the one in respect of a grant given to him by the Government, as a refugee, for the erection of a house and the other in respect of administration expenses.

10 On 19th October, 1984, the respondent raised an assessment at £20,110.- on the basis of which the duty payable was £1,027.50 cent. Particulars of such assessment and of the statement of valuation appear in a copy of same annexed to the opposition as appendix "A" which briefly
15 is as follows:

The movable property of the deceased, which consisted of cash, a life policy, a personal accident policy for the sum of £10,000.-, and a motorcycle was assessed at £17,697.- and his immovable property at £20,000.-

20 After deducting from the above the allowances deductible under the law for the wife and children of the deceased, debts and funeral expenses, the net balance was assessed at £20,110.- and the tax payable on it at £1,027.50 cent.

25 On 24th October, 1984, an objection was made by applicant's advocate against the assessment raised which was rejected by the respondent and his decision to that effect was communicated to applicants by notice dated 30th October, 1984.

30 As a result applicants filed the present recourse praying for a declaration that the sub judice assessment is null and void and that certain deductions which were rejected by the respondent should have been allowed.

35 The deductions which in the submission of counsel for applicants should have been allowed are:

(a) A sum of £2,995.- which was granted to the deceased by the Government under the scheme for self-housing for the erection of a house;

(b) A sum of £10,000.- which was paid to the estate for the death of the deceased by virtue of a personal accident policy which the deceased had taken out during his life;

(c) A sum of £1,800.- administration expenses paid by the administrators to their advocates. 5

In support of the applicants' claim in respect of the above their counsel contended that: (a) The sum of £2,995.- which was paid to the deceased by the Government as a grant for self-housing accommodation, was paid in the form of trust for the benefit of his family and as such it should not have been treated as forming part of the estate of the deceased under the provisions of s. 12 of the Estate Duty Law of 1962. 10

(b) There is no provision in the law authorizing the Commissioner of Estate Duty to include in his assessment any amount payable on a policy for personal accidents. Under section 7(g) of the law only amounts payable to the estate under ordinary life policies are assessable but not amounts payable to the estate on personal accident policies. 15 20

(c) The administration expenses are expenses necessary for ascertaining the value of the estate and as such are deductible expenses. Furthermore there is no express provision in the law disallowing such expenses.

Counsel for the respondent by his written address advanced the following arguments: 25

(a) In view of the presumption of legality of administrative acts the burden is upon the applicants to prove the contrary and the applicants failed to discharge such burden. 30

(b) The amount of £2,995.- which was granted to the deceased as assistance was used by him in the construction of a house which was registered in his name and of which he was absolute owner at the time of his death and cannot be treated as property held in trust for his family. 35

(c) The sum of £10,000.- paid under a personal accident policy is an amount paid under a policy taken out by the

deceased, while in life, by which he insured his life, in case of accidental death for £10,000. There is no distinction in respect of any sum payable on death to the estate of a deceased person between ordinary life policies and personal accident policies. Counsel further submitted that assuming that the said policy does not fall under paragraph (g) of section 7, it definitely falls under paragraph (h) as an annuity or interest purchased or provided by the deceased to the extent of the beneficial interest accruing or arising on the death of the deceased.

(d) The claim in respect of administration expenses does not fall within the deductible expenses or debts specified by the Estate Duty Law.

In concluding his address counsel stressed that as regards claims (a) and (c) except for the general burden, a particular burden rests upon the applicants to show that they are entitled to such deductions.

It is a well setted principle under our case law that where the taxpayer claims any exemption or deduction from tax, the onus is on him to support such claim for exemption or deduction.

In *Andreas HadjiYianni v. The Republic of Cyprus* (1966) 3 C.L.R. 338 we read the following in the judgment of Munir, J. (at p. 350):

“It should be stated at the outset that it is a well-established principle of income tax law that, just as in a disputed case the onus to satisfy the Court as to liability to pay tax is on the taxing authority, so, where the tax-payer claims any exemption or deduction from tax, the onus is on him to support such claim for exemption or deduction. This principle is very clearly expressed in the following passage of the judgment of the Supreme Court in the case of *Charis Georgallides* (1958) 23 C.L.R. p. 249, at p. 256:-

‘One dealing with fiscal legislation should carefully examine first, whether the taxpayer is clearly within the words of the provisions by which he is charged with tax and, secondly, if he claims any exemption or deduction from tax—to which liability

is either admitted or established—whether such claim is clearly supported by the relevant provision of the Law. In a disputed case the onus to satisfy the Court as to liability to pay tax is on the Tax Authorities and the onus to support a claim for exemption or deduction allowance is on the taxpayer' ”. 5

The above principle was reiterated in *Kittides v. The Republic* (1973) 3 C.L.R. 123 in which at p. 133 Hadji-anastassiou, J. has this to say: 10

“I think I ought to reiterate what has been said in a number of cases, that in a disputed case, the onus to satisfy the Court as to the liability to pay tax is on the Commissioner, whereas the onus to establish a claim for deduction or allowance is on the tax payer.” 15

Besides the judicial pronouncements on such principle, in the case of claims for deductions or allowances under the Estate Duty Laws, 1962 to 1976 (Laws 67/62 to 3/76), a statutory burden is imposed on the person claiming a deduction to prove same. Section 42 of the law provides as follows: 20

«42—(1) Πάν πρόσωπον ούτινος προσβάλλονται τὰ νόμιμα συμφέροντα ὡς ἐκ τῆς ἐπὶ τῆς ἐνστάσεως αὐτοῦ ληφθείσης ἀποφάσεως δυνάμει τοῦ ἄρθρου 41, δύναται νὰ προσφύγῃ εἰς τὸ Συνταγματικὸν Δικαστήριον. 25

(2) Τὸ βᾶρος τῆς ἀποδείξεως ὅτι ἡ προσβληθεῖσα φορολογία εἶναι ὑπερβολικὴ φέρει τὸ ὑποβάλλον τὴν προσφυγὴν πρόσωπον.» 30

“(42—(1) Any person aggrieved by the determination of his objection under section 41 may make a recourse to the Supreme Constitutional Court.

(2) The onus of proving that the assessment complained of is excessive shall be on the person making the recourse.)” 35

Bearing in mind the above principle I now come to

consider whether the applicants have succeeded in shifting the burden cast upon them to establish their claims for deduction. I shall deal first with their claim for deduction of advocate's fees for administration expenses.

5 Administration expenses are sums of money payable after the time of the death of the deceased. They are in fact expenses for realisation of the estate. The question as to whether such expenses are deductible from the estate of the deceased has been considered by this Court in
10 *Syrimis & Another v. The Republic* (1978) 3 C.L.R. 177 in which A. Loizou, J., had this to say at p. 187:

"It was submitted by counsel for the respondent Commissioner that these expenses were rightly disallowed, as they did not qualify for deduction.

15 They were realisation expenses incurred in Cyprus, whereas, the respondent Commissioner allowed realisation expenses which were incurred for assets outside Cyprus.

I agree with the approach of the respondent Commissioner on the subject and the authority on this proposition is to be found in *Dymond's Death Duties*
20 14th Ed. pp. 569 and 1189. At page 569 it is stated:

25 'The principal value is defined as the price which, in the opinion of the Commissioners the property would fetch if sold in the open market at the time of the death of the deceased (Finance Act, 1894, s. 7(5)). The price which the property fetches is the gross sale price, without deduction for the costs of sale, except that, if the property is part of an
30 unadministered estate or a share of property subject to a trust already in operation which involves conversion, or if the property consists of certified chattels of national, etc., interest, allowance for costs may be made'.

35 And at page 1189,

'Where the property (not being stocks or shares) has actually been sold within a short time after the

death of the deceased under open, market conditions, the gross sum realised may generally be taken as the principal value, but no deduction may be made for expenses of sale, such as solicitors' or auctioneers' charges, printing or advertising.

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In other words, it is the gross value of the estate which is taken into consideration without taking into account any realisation expenses.

On these authorities and bearing in mind that the charging section 23 contains the same criteria as the corresponding English provisions, I have come to the conclusion that the respondent Commissioner's decision not to allow realisation expenses in Cyprus, is a correct one."

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Futhermore s. 25 of the Estate Duty Laws 1962 to 1976, on which the respondents relied, specifies what kinds of debts are deductible and the claim in respect of administration expenses does not fall within any category of exemption under such laws.

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In the result I have come to the conclusion that the respondent Commissioner's decision not to allow such expenses is a correct one.

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The next question which has to be answered is whether the sum of £2,995.- granted to the deceased by the Government under the scheme of self-housing for refugees for the erection of a house is deductible from the estate as claimed by applicants.

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I accept the submission of counsel for the respondent that since this amount was actually spent by the deceased towards the construction of a house the value of which was assessed, at his death, at £20,000.- which was registered in his name during his life time as his absolute ownership is not deductible. His family could not have a legal claim while he was alive; similarly his heirs could not raise any claim in respect thereof after his death as being money held in trust for their benefit. The property in question was property which the deceased was com-

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petent to dispose during his life and which on his death passed to his personal representatives.

5 The burden of proving that any part of the estate of the deceased was property held in trust for the benefit of any of his heirs or dependents was upon the applicants and they failed to discharge such burden. Therefore, this claim also fails.

10 The last claim for deduction is in respect of the sum of £10,000.- value of a Personal Accident Policy. It is the contention of applicants that s. 7(g) of the law does not apply in respect of personal accident policies and that there is no provision in the law empowering the Commissioner of Estate Duty to raise an assessment on any amount payable under such policy.

15 S. 7 of the Estate Duty Laws provides as follows:

«7. Περιουσία λογιζομένη ως περιερχομένη εις άλλους επί τῷ θανάτῳ προσώπου τινος θά περιλαμβάνη τὰ ακόλουθα περιουσιακά στοιχεία, ἤτοι -

20 (Ζ) Χρήματα εισπραττόμενα δυνάμει ἀσφαλιστηρίου ἐγγράφου γενομένου ὑπὸ τοῦ ἀποθανόντος ἐπὶ τῆς ζωῆς του ὅταν τὰ ἀσφάλιστρα καταβάλλωνται καθ' ὀλοκληρίαν ὑπὸ τοῦ ἀποθανόντος πρὸς ὄφελος δωρεοδόχου τινός (ἀρχικοῦ ἢ ἐκδοχέως). ἢ μέρος τῶν
25 τοιοῦτων χρημάτων ἀνάλογον πρὸς τὰ ὑπὸ τοῦ ἀποθανόντος καταβληθέντα ἀσφάλιστρα εἰς περιπτώσεις καθ' ἃς τὰ ἀσφάλιστρα καταβάλλονται μερικῶς ὑπὸ τοῦ ἀποθανόντος διὰ τὸ τοιοῦτον ὄφελος.»

The English text of s 7 reads as follows:

30 “7. Property deemed to pass on the death of the deceased shall be deemed to include the property following, that is to say -

35 (g) Money received under a policy of insurance effected by the deceased on his life where the policy is wholly kept up by him for the benefit of a donee,

whether nominee or assignee, or a part of such money in proportion to the premium paid by him, where the policy is partially kept up by the deceased for such benefit;"

No distinction is drawn in the above section between amounts payable upon the death of a person and in respect thereof under a Personal Accident policy and a General Life Insurance policy. What is clear from the provisions of s. 7(g) is that any amount of money payable on a policy of insurance on death, irrespective of the nature of the policy, is included in the estate of the deceased.

Independently however of the provisions of s. 7(g) such amount would have fallen under the provisions of the next paragraph of s. 7 which provides that -

«(η) έτησία παροχή ή έτερόν τι συμφέρον άγορασθέν ή ουσταθέν υπό του άποθανόντος, είτε τή συμπράξει μεθ' έτέρου προσώπου, κατά τήν έκτασιν τής άξίας του προκύπτοντος λόγω έπιβιώσεως ή άλλως όφέλους έπί τώ θανάτῳ του άποθανόντος».

The English text reads -

"(h) any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased."

Useful reference as to the construction of s. 7(h) may be made to the judgment of A. Loizou, J. in *Ionides v. The Republic* (1983) 3 C.L.R. 369. The question which posed for consideration in that case was whether a sum of money payable to the estate of the deceased under a Company's Pension and Life Assurance Scheme was subject to payment of estate duty. The scheme was introduced by a Trust Deed under which the deceased and the Company were making contribution to a Provident Fund for the purpose of Securing the benefits provided by the scheme for the employees. Upon the death of the deceased a sum

of £14,598.- became payable to his legal representatives. The learned Judge came to the conclusion that the amount in issue was taxable under section 7(h) of Law 67/62. At p. 383 of the judgment we read the following:

5 "It is clear from the facts and circumstances of this case that the deceased contributed towards the cost of the benefit, the beneficiary had an enforceable right to it and the beneficial interest arose in favour of the beneficiary on the employee's death and that this was a Policy provided by the deceased in concert or
10 *arrangement with another, and that in any event what came to the beneficiary was property that the deceased was at the time of his death competent to dispose*".

15 The learned Judge, in the above case, made an elaborate exposition of our law in comparison with the law in England with reference to decided English cases and in particular the case of the *Attorney-General v. Quixley* [1929] All E.R. (Rep.) p. 696.

20 Sankey, L.J. in summing up the position in that case at p. 702 had this to say:

 "The question to be answered here is: had the deceased at the time of her death such an interest in property as enabled her to dispose of the property by will? In my view the answer must be—that, indeed,
25 I gather was admitted by the defendant—in the affirmative. She had such an interest, and she had power to dispose of it by will, but counsel for the defendant took a point in limine which savours rather
30 more of metaphysics than of law; he contended that, at the teacher's death, no property in fact existed, but only a conditional right or interest which had not been ascertained or quantified. I think this is a fallacy."

35 In *Lilian Georghiades v. The Republic* (1982) 3 C.L.R. 659 the Full Bench of the Supreme Court held the following (per Pikiis, J. at pp. 667-669):

 "The decision of the Commissioner of Income Tax is liable to judicial review by the Supreme Court in

the exercise of its revisional jurisdiction under Article 146, a fact signified by the provisions of the law itself. (See, s. 21 of the Taxes (Quantifying and Recovery) Law, 1963 (53/63) (as amended by s. 9 of Law 61/69). Taxation decisions have been the subject of review in numerous cases. (See, inter alia, *Mavrommati v. Republic* (1966) 3 C.L.R. 143; *Kingsfield v. The Republic* (1966) 3 C.L.R. 45; *Christides v. The Republic* (1966) 3 C.L.R. 732; *Hadjjiyannis v. The Republic* (1966) 3 C.L.R. 338; *Pappous v. The Republic* (1966) 3 C.L.R. 77; *Pavlidis v. The Republic* (1966) 3 C.L.R. 530; *Pavlidis v. The Republic* (1967) 3 C.L.R. 217; *Manufacturers Life Insurance v. The Republic* (1967) 3 C.L.R. 460).

The scope and compass of the jurisdiction under Article 146 is by now firmly established. The review and the inquiry it entails is limited to the validity of the act impeached. Such validity is tested by reference to the powers vested by law in the administration, the manner of their exercise and the factual substratum, particularly its correctness. The revisional jurisdiction of the Supreme Court is primarily of a corrective character. It is aimed to ensure, in the interest of legality and public good, that the administration functions within the sphere of its authority and always subject to the principles of good administration. The Court will not assume administrative responsibilities, a course impermissible under a system of separation of State powers, constitutionally entrenched in Cyprus. It is appropriate to recall in this respect, the observations of Triantafyllides, J., as he then was, in *Costas M. Pikiis v. The Republic* (1965) 3 C.L.R. 131, at 149, earmarking the powers of the executive and the judiciary: 'After all it must not be lost sight of that it is for the Government to govern and for the Court only to control...'.
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Unlike the powers vested in the District Court before independence to adjudicate upon a taxation assessment by s. 43—Cap. 233—and earlier by virtue of s. 39 of Cap. 297 (of the old edition of the Statute Laws of Cyprus), the Supreme Court has no juris-

5 diction to go into the merits of the taxation and
substitute, where necessary, its own decision. The
power of the Supreme Court is limited, as indicated,
to the scrutiny of the legality of the action, and to
ascertain whether the administration has exceeded
the outer limits of its powers. Provided they confine
their action within the ambit of their power, an organ
of public administration remains the arbiter of the
10 decision necessary to give effect to the law; and so
long as they make a correct assessment of the factual
background and act in accordance with the notions of
sound administration, their decision will not be
faulted. In the end, the courts must sustain their de-
cision if it was reasonably open to them.”

15 In the circumstances of the present case and bearing in
mind all the facts and the law applicable in the case I find
that the decision taken by the Commissioner was reason-
ably open to him and that the applicants failed to dis-
charge the initial burden of establishing that the assess-
20 ment was wrong.

In the result the recourse fails and is hereby dismissed
with £50.- against costs in favour of the respondent.

*Recourse dismissed with £50.-
costs against applicant.*