

1987 January 31

[PIKIS J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTODOULOS DEMETRIADES AND CO LTD ,
Applicant,

v

THE MUNICIPALITY OF LIMASSOL,
Respondents

(Case No 60/86)

Executory act—Confirmatory act—Identification of a confirmatory act—Test applicable—The foremost prerequisite is identity of content of the two decisions

5 *Municipalities—Refuse collection tax or fee—The tax should correlate to the cost of providing the service and, then fairly distributed among the beneficiaries of the service by equitable criteria—Distribution of tax on the basis of extent of premises of beneficiaries—Reasonable*

10 *Municipalities—The Limassol Municipalities Regulations as amended in 1985—Refuse collection tax—Classification of premises—Reg 99(4) and para (e) of such regulation—Part of premises consisting of a store combined with a showroom—Premises neither a shop nor a store and, therefore, properly classified under said para (e)*

15 *Administrative Law—Validity of administrative act—Law applicable—Act revising an earlier one—Law applicable is the law in force, when the earlier act was taken*

Municipalities—The Municipal Corporation Law, Cap 240—Refuse collection tax—Power to levy—Not confined to dwellings, but extend to other premises as well

20 The respondents assessed the applicants, occupiers of a showroom and store, to £575 -, refuse collection tax for the year 1985 The applicants objected and as a result the respondents looked into the matter anew and decided to reduce the amount of the tax to £550 The reduction did not satisfy the applicants, who as a result filed the present recourse

25 Counsel for the respondents raised the objection that the sub judice act was confirmatory of the earlier act, whereby the tax of £575 - was imposed. In support of the objection he argued that the small reduction did not reflect

anything other than a motive on the part of the respondents to achieve a quick settlement of applicants' liability.

Held, *dismissing the recourse*: (1) The foremost prerequisite for the identification of a confirmatory administrative act is identity of content of the two decisions. The test is objective. The classification of a decision depends on its objective attributes, not the subjective considerations that led to its making. The sub judice decision redefined by unilateral action of the administration the obligations of the applicants to refuse collection tax and as such is amenable to the jurisdiction of this Court. 5

(2) The sub judice decision was taken after the enactment of the Municipalities Law, 1985, which undoubtedly gives power to levy refuse collection tax. The matter is of academic importance as a similar power existed under the repealed legislation, i.e. Cap. 240 (*Kyriakides v. Municipality of Limassol* (1985) 3 C.L.R. 607). In any event the law applicable is that in force in September, 1985, because as the sub judice decision merely revised the earlier one, its validity must be judged by reference to the law in force at that time. 10 15

(3) Part of the premises in question consisted of a store, but they were combined with a showroom. Viewed as a unit the premises were neither a shop nor a store and, therefore, they were properly classified under para. (e) of Reg. 99(4) of the Limassol Municipality Regulations, as amended in 1985. 20

(4) The basic principle is that the tax or fee must be correlated to the cost for providing the service and, then, fairly distributed among the beneficiaries of the service by equitable criteria. In this case tax was levied by reference to the said cost and distributed according to the extent of the premises of the beneficiaries. The criteria adopted satisfy the requirement of reasonableness. 25

*Recourse dismissed.
No order as to costs.*

Cases referred to:

Kyriakides v. Municipality of Limassol (1985) 3 C.L.R. 607; 30

Pieris v. The Republic (1983) 3 C.L.R. 1054.

Recourse.

Recourse against the decision of the respondents to assess applicants, occupiers of a showroom and store, to £575.- refuse collection tax for the year 1985. 35

A. Poyadjis for the applicant.

Y. Potamitis with Ph. Potamitis, for the respondents.

Cur. adv. vult.

PIKIS, J.: *In Kyriakides v. Municipality of Limassol** it was decided there is power under the Municipal Corporations Law -
5 Cap. 240, and Regulations made thereunder, to levy a refuse collection tax on the occupiers of immovable property at Limassol. And that the power was not confined to the occupants of dwelling houses but extended to other premises as well. Consequently, it was open to the Municipality of Limassol to
10 collect fees in the form of tax for the service of refuse collection. Arguments to the effect that liability to pay such tax was limited to occupiers of dwelling houses, were dismissed as ill-founded in law. I find myself in full agreement with the analysis of the law
15 made by Demetriades, J. in the above case, and his conclusions regarding the powers of the Municipality of Limassol to levy refuse collection tax on the owners of immovable property in the town.

In exercise of the powers vested in them under the law and Regulations referred to above, the respondents assessed the
20 applicants, occupiers of a showroom and store, to £575.- refuse collection tax for the year 1985. And informed them accordingly by notification dated 2/9/85. Applicants objected to the assessment, claiming it was excessive having regard to the limited volume of refuse they disposed for collection; and petitioned the respondents to reduce it (letter of 14/9/85). Responding to this
25 request the Municipality of Limassol looked into the matter anew and decided to reduce the amount of tax to £550.- (Five Hundred and Fifty Pounds). Of this decision they informed the applicants on 23/12/85 (see relevant letter). The reduction did not remove the
30 grievance of the applicants who mounted the present recourse seeking review of the legality and propriety of the action of the respondents.

Respondents questioned the justiciability of the recourse and contended the decision is non reviewable considering the nature of the new decision being, in their submission, merely
35 confirmatory of the earlier one and as such lacking the executory character necessary to warrant judicial review. Notwithstanding the difference in the content of the two decisions, concerning the amount of the tax, respondents submitted it was nonetheless

**(1985) 3 C.L.R. 607.*

confirmatory as it was not preceded by a new factual inquiry or reappraisal of the legal principles applicable thereto. A gratis reduction was made in the hope of removing the grievance of the applicants and generating thereby favourable response to the levy for refuse collection

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The principles relevant to the nature and identification of confirmatory administrative acts were extensively discussed in *Piens v Republic** The foremost prerequisite is identity of content of the two decisions** And this is so, irrespective of whether the second decision is taken on the initiative of the Administration or at the request of the subject Mr. Potamitis argued that as the second decision did not emanate from any substantive reconsideration of the matter, the decision merely went to confirm the first one And that the small reduction in the amount did not reflect anything other than a motive on the part of the respondents to achieve a quick settlement of the liability to refuse collection tax of the applicants

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The test to determine whether an act is confirmatory of a previous one is objective The classification of a decision is dependent on its objective attributes, not the subjective considerations that led to its making The decision here under consideration was materially different from the first one that it aimed to revoke and replace For whatever it may be worth, it is referred to in the letter communicating it to the applicants (letter of 23/12/85) «As a decision of the Municipal Committee... » The sub judice decision redefined by unilateral action of the Administration, the obligations of the applicants to refuse collection tax, was challenged within the constitutional period of 75 days and as such is amenable to the revisional jurisdiction of this Court

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Counsel for the respondents drew my attention to the fact that the decision was taken subsequent to the enactment of the Municipalities Law 1985 that undoubtedly conferred, in conjunction with the Regulations applicable, power on the respondents to levy refuse collection tax. The matter is of academic interest for as indicated at the outset of this judgment a similar power vested in the respondents under the repealed

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**(1983) 3 CLR 1054*

***(See Conclusions from the Greek Council of State 1929-59, pp 240,241)*

legislation (Cap 240) and Regulations made thereunder
However, for whatever it may be worth, I may record that in my
judgment the law applicable was that in force in September, 1985
The sub judice decision merely revised the earlier one Its validity
5 must be judged by reference to the law in force at that time.

Two other matters remain for decision -

(a) the classification of the premises of the applicants,
specifically whether they constituted a shop or store under Reg
99(4) of the Limassol Municipality Regulations (as amended in
10 1985)*, or

(b) premises not otherwise classified, as provided in para (e) of
the same Regulation

Regulation 99(4) (e) is a hybrid provision encompassing
premises and establishments that do not come under any of the
preceding classification of premises Hence we must decide
15 whether the premises of the applicants were either a shop or a
store.

Part of the premises consisted of a store but they were combined
with a showroom Viewed as a unit the premises were neither a
20 shop nor a store Therefore, they could be properly classified
under para (e) of Reg 99(4) imposing a limit of £1,000 - by way
of maximum taxation. The last question concerns the propriety of
the criteria by reference to which the applicants were taxed

In *Kynakides*, supra, reference was made with approval to
25 Indian and Greek caselaw on the nature of taxation aimed to raise
revenue for funding an essential service The basic principle is that
the tax or fee must be correlated to the cost for providing the
service and, then, fairly distributed among the beneficiaries of the
service by equitable criteria. The criteria adopted in this case
30 emerge from the affidavit evidence of Georghios Pavlou (the
officer-in-charge of the appropriate department of the
Municipality of Limassol); they appear to me to satisfy the
requirement of reasonableness. Tax was levied by reference to the
cost of providing the service, on the one hand and, distributed
35 according to the extent of the premises of the beneficiaries on the
other At the end of the day I remain unpersuaded that the sub

*43/85 - Supplement 3, Part 1, p 105 (No 43)

judice decision is bad for any reason.

Therefore, the recourse is dismissed. The decision is confirmed in accordance with the provisions of Article 146.4(a) of the Constitution.

Let there be no order as to costs.

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*Recourse dismissed.
No order as to costs.*