

1988 February 3

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTAKIS ECONOMOU,

*Applicant,*

v.

THE IMPROVEMENT BOARD OF AYIA NAPA,

*Respondent.*

*(Case No.236/85).*

*Time within which to file a recourse—Imposition of "rent" fee by an Improvement Board—Objection without submission of new material—No new inquiry carried out —Decision turning down the objection—Of a confirmatory nature—Lodgement of objection did not interrupt the time.*

*Time within which to file a recourse—The issue may be raised and examined by the Court ex proprio motu.*

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*The Villages (Administration and Improvement ) Law, Cap. 243, section 24(1) (d) as enacted by section 7(a) of Law 31/69—Enables an Improvement Board to enact bye-Laws providing for "rent" fees—Bye - law 181(1) as amended by Regulatory Administrative Act 108/82 of the Ayia Napa Bye - Laws—The "rent" fee is a tax in the wider sense.*

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*Constitutional Law—Equality—Constitution, Article 28.1 —Does not convey the notion of exact arithetical equality, but safeguards only against arbitrary differentiations.*

*Constitutional Law—Taxation—Constitution, Article 24.4—"Of a destructive or prohibitive nature"—Sub judice "rent " fee (tax) having regard to other duties, rates or taxes payable by applicant is not of such a nature.*

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*Constitutional Law—Taxation—Constitution, Article 24—"Double taxation"—Fact that the same person has to pay other taxes, rates or duties—Not a valid reason for annulling sub judice"rent" fee.*

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The applicant was the owner of 2/7 undivided shares in 7 touristic

apartments and a house, situated within the area of the respondent Board.

By means of the sub judice decision the Board imposed on the applicant a "rent" fee of £120 for 1984. On 27.6.84 the applicant objected. On 5.12.84 the Board turned down the objection. On 22.2.85 the applicant  
5 filed this recourse.

Held, dismissing the recourse: (A) (1) The Court should examine ex proprio motu whether this recourse was filed within the time limit of 75 days provided for by Article 146.3 of the Constitution.

10 (2) Though the date on the letter whereby the first decision of the respondent was communicated to the applicant is illegible, it must be assumed that it was the 27.6.84 ( when the objection was filed) or an earlier date.

15 (3) The applicant did not submit new material with a view to enable the Board to carry out a new inquiry; consequently, none was carried out. The decision of 5.12.84 was confirmatory of the first one. The lodgement of the objection did not interrupt the running of time.

(4) It follows that the recourse is out of time.

(B) (1) Para. (d) of section 24(1) for Cap. 243 (enacted by Law 31/69, section 7(a)) enables the respondent Board to provide for the payment of fees by the owner of any premises whether let or ceded on payment of rent.

20 (2) In virtue of such power the Board enacted Bye-Law 181, which, as amended by Regulatory Act 108/82, enables the Board to impose a rent fee of upto £500.

25 (3) It follows that the said bye-law is intra vires the law and that the sub judice decision is within the limits of the respondents' discretionary powers.

(4) Applicant failed to substantiate his allegation for discriminatory treatment.

(5) The "rent" fee in question is a tax in the wide sense of the term.

30 (6) It has not been shown to the satisfaction of the Court that the fee in question is, having regard to the other taxes, duties or rates payable by the applicant, "of a destructive or prohibitive nature", in the sense of paragraph 4 of Article 24 of the Constitution.

(7) With regard to the issue of double taxation, the fact that the applicant

has to pay other taxes or fees is not a valid reason for annulling the sub  
judice decision.

*Recourse dismissed with £30 costs against applicant.*

*Cases referred to:*

*Morou v. The Republic*, 1 R.S.C. C. 10;

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*Markoullides v. Greek Communal Chamber*, 4 R.S.C.C.7;

*Larkos v. The Republic* (1987) 3 C.L.R.2189;

*Constantinides v. EAC* (1982) 3 C.L.R. 798;

*Apostolou and Others v. The Republic* (1984) 3 C.L.R. 509;

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*Lami Groves Ltd. v. The Republic* (1986) 3 C.L.R. 2378;

*Aristidou v. Improvement Board of Ayia Phyla* (1965) 3 C.L.R. 686;

*Xydias v. The Republic* (1976) 3 C.L.R. 303;

*Micrommatis v. The Republic*, 2 R.S.C. C. 125;

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

*Matsis v. The Republic* (1969) 3 C.L.R. 245.

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**Recourse.**

Recourse against the decision of the respondent to impose on  
applicant the fee of £120.= as rent fee for the year 1984.

*N. Econonou*, for the applicant.

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*P. Angelides*, for the respondent.

*Cur. adv. vult.*

LORIS J. read the following judgment. The applicant impugns

by means of the present recourse the decision of the Improvement Board of Ayia Napa (a statutory body under the provisions of the Villages (Administration and Improvement) Law, Cap. 243), whereby a fee of £120.- was imposed on the applicant for the year 1984, as "rent" fee, in respect of properties situated within the area of the Improvement Board of Ayia Napa, leased to third persons.

Other fees under two separate Heads-apart from the aforesaid "rent" fees - were imposed on the applicant by the respondent Board for 1984; applicant submitted to respondent an objection on 27.6.84 for all three fees imposed, but his objection was eventually turned down by the respondent Board on 5.12.84 (vide letter of the respondent Board addressed to counsel acting for applicant, allegedly received on 11.12.84).

The present recourse is directed against the imposition of "rent" fee of £120, only.

Before proceeding to examine the merits of the present recourse I have decided to examine the time within which the present recourse was filed, acting ex proprio motu, as the provisions of paragraph 3 of Article 146 are mandatory and they have to be given effect in the public interest (vide *Moran v. The Republic* 1 R.S.C.C. 10, *Markoullides v. The Greek Communal Chamber*, 4 R.S.C.C. 7).

The respondent Board notified the applicant about the imposition of the "rent" fee in question; the relevant notice is appended to the recourse and is marked Exhibit "A" unfortunately the date appearing thereon is illegible. The fact remains though, that the applicant submitted an objection dated 27.6.1984. (vide exhibit "B" attached to the recourse). In the circumstances it can be safely inferred that the applicant received the notice of assessment either on 27.6.84 or some time prior to that date. The objection of the applicant was turned down on 5.12.84.

It is clear from Exhibit "B" that no new material was submitted

by the applicant with a view to enabling the respondent Board to carry out a new inquiry, in consequence thereof none was carried out. Therefore the reply of the respondent dated 5.12.84 did not convey to the applicant an executory decision but merely a confirmatory one indicating the adherence of the respondent Board to its initial decision. In the circumstances the decision of 5.12.84 being of confirmatory character is not justiciable according to the principles of Administrative Law.

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Furthermore, the objection of the applicant (not envisaged by Law) dated 27.6.84 does not interrupt the running of the 75 days (envisaged by para 3 of Article 146) which commenced running from the time - the initial the executory decision - was communicated to the applicant. (In this connection vide the majority decision of the Full Bench of this Court in *Larkos v The Republic* (1987) 3 C L R 2189)

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So the present recourse, which was filed as late as the 22.2.85, i.e. more than 240 days after the initial executory decision of the Respondent was communicated to applicant, was filed out of time and for this reason it is doomed to failure.

I shall now proceed to examine the merits of the recourse, assuming that same was filed in time.

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The applicant was at all material times the owner of 2/7 undivided shares in 7 touristic apartments and a house, situated within the area of the Improvement Board of Ayia Napa, which were let to a third person.

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The respondent Board acting obviously pursuant to the provisions of s 24(d) of Cap 243, as amended, and the relevant Regulations made thereunder, imposed on the applicant a "rent" fee of £120.-, in respect of the leased premises aforesaid, owned by the applicant.

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Hence the present recourse.

The main complaints of the applicant may be grouped under two broad Heads.

A. Abuse or excess of power.

B. Unconstitutionality of the relevant regulations:

5 (i) as allegedly the fee in question- a tax-was not imposed in virtue of a Law, thus defying Article 24.2 of the Constitution.

(ii) The fees in question are allegedly of a destructive or prohibitive nature contrary to Article 24.4 of the Constitution.

10 (iii) The fees were allegedly imposed in a discriminatory manner in violation of Article 28 of the Constitution.

15 The complaints under A and B(i) above, as I was able to apprehend them, arise out of a misconception of the Law by the applicant; it is apparent from his written address (page 2) that his submission tantamounts in effect to an allegation that the regulations in question (to which I shall be referring later on in the present judgment) are ultra vires the enabling enactment.

20 The applicant sets out in his written address the contents of section 24(1) (d) of the Villages (Administration and Improvement ) Law, Cap. 243 obviously in order to indicate that the respondent Board had no power to make bye-Laws for the collection of "rent" fees by the Respondent.

Paragraph (d), the enabling section of the Law, as it initially stood in the Statute Book, and as cited by the applicant reads as follows:

25 "(d) to provide for the payment of rates or fees by the owner of any premises whether let or in the occupation of the owner:

Provided that no rate or fee shall be payable in respect of

premises let or used solely for agricultural purposes;»

With respect para. (d) of s. 24(1) of Cap. 243 was repealed and replaced by a new para (d) in virtue of s.7(a) of Law 31/69 which is still in force, something which obviously the applicant did not notice as it is nowhere referred to either in his recourse or his written address.

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The new paragraph (d) substituted by s. 7(a) of Law 31/69 reads as follows:

"(d) να προνοή δια τήν καταβολήν δικαιωμάτων υπό του ιδιοκτήτου εφ' οιωνδήποτε υποστατικών τα οποία ενοικιάζονται ή παραχωρούνται επί μισθώσει:

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Νοείται ότι ουδέν δικαίωμα θα καταβάλληται εν σχέσει προς υποστατικά τα οποία χρησιμοποιούνται αποκλειστικώς δια γεωργικούς σκοπούς."

(English Translation:

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"(d) to provide for the payment of fees by the owner of any premises whether let or ceded on payment of rent:

Provided that no fee shall be payable in respect of premises which are being used exclusively for agricultural purposes."

The Improvement Board of Ayia Napa in exercise of the powers vested in it by section 24 of Cap. 243, as amended, made certain bye -laws which were published under Notification No. 28 in Supplement No. 3 to the Cyprus Gazette No. 1168 of the 31st January, 1975 (Κ.Δ.Π. 28/75) whereby the Village (Administration and Improvement) Pedoulas Bye-Laws, 1951, were adopted by Ayia Napa Improvement Board subject to certain amendments which included the insertion in the principal bye-laws of certain new bye-laws, the material one of which for the purposes of this case is bye-law 181, the relevant part of which reads as follows:

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5 "Κανονισμός 181.- (1) Θα πληρώνεται καθ' έκαστον έτος  
υφ' εκάστου ιδιοκτήτου οιουδήποτε οικήματος εντός της  
περιοχής βελτιώσεως, υπό ενοικίασιν ή εις την κατοχήν  
του τοιούτου ιδιοκτήτου κατά την διάρκεια της θερινής  
περιόδου ή μέρους αυτής, και το οποίον χρησιμοποιείται  
ως ξενοδοχείον, οικοτροφείον, κατάλυμα, δικαίωμα εις  
αναλογία, η οποία θα ορίζεται υπό του Συμβουλίου από  
έτους εις έτος και η οποία δεν θα υπερβαίνη τας £20.-

(2) .....

10 English Translation:

15 "Regulation 181.- (1) There shall be paid in each year by  
the owner of any premises within the improvement area, under  
lease or in the occupation of such owner during the Summer  
period or any part thereof, which is being used as an hotel,  
boarding house, lodging, a fee at a rate to be fixed by the  
Board from year to year not exceeding £20.

(2)....."

20 Regulation 181(1) was amended on 9.4.82 (vide Not. 108 in  
Supplement No. 3 of CG1770 -Κ.Δ.Π.108/82), by the deletion  
therefrom of £20.- "and the insertion of £500.-" in substitution  
thereof. The respondent Board was thus authorised to impose on  
the owner of premises set out in Regulation 181(1) a fee not  
exceeding £500.-

25 It is therefore clear from the above, that the "rent" fee (the  
nature of which will be examined hereinbelow) of £120.-  
imposed on the applicant for the year 1984, was a fee under  
Regulation 181(1) which was a regulation intra vires the enabling  
enactment i.e. s.24 (1) (d) of the Villages (Administration and  
Improvement) Law, Cap. 243 as amended by s. 7(a) of Law 31/  
30 69.

Before proceeding to examine the remaining complaints of the



applicant it is necessary at this stage to determine the nature of the "rent" fee imposed; is it a fee for services rendered or is it in substance and in fact a "tax";

Having considered the nature of the fee under consideration and guided by the principles set out by the Full Bench of this Court in the cases of *Aleccos Constantinides v. E.A.C.* (1982) 3 C.L.R. 798 and *Apostolou and Others v. The Republic* (1984) 3 C.L.R. 509, I hold the view that the "rent" fee in question is a tax in the wide sense of the term. It is akin to the "annual rate" provided for in s. 9(1) (c) of the Public Health (Villages) Law Cap. 259 as amended by Laws 81/63 and 5/83. (Vide in this connection *Lami Groves Ltd v. Republic* (1986) 3 C.L.R. 2378). 5 10

With regard to the issue of "double taxation" it may well be that the applicant is liable to pay other forms of taxation duties or rates, as well as the particular fee which is the subject-matter of this recourse but I do not consider this to be a valid reason for declaring the imposition of the fee in question invalid on this ground. It has not been shown to the satisfaction of the Court that the fee in question is, having regard to the other taxes, duties or rates payable by the applicant, "of a destructive or prohibitive nature", in the sense of paragraph 4 of Article 24 of the Constitution (vide the judgment of Munir J. in *Sophia Christou Aristidou v. The Improvement Board of Ayia Phyla* (1965) 3 C.L.R. 686 at p. 700 which was reversed on appeal on another issue). 15 20 25

In this connection it may be noted that a duty of 10% on the amount collected as admission fee in a cinema was not held to be of a destructive or prohibitive nature" (vide *Xydias v. The Republic* (1976) 3 C.L.R. 303).

Turning now to the question of discrimination; the applicant in his written address maintains that the sub judge decision contravenes Art. 28:1 of the Constitution as on other occasions the respondent Board imposed a "rent" fee of £10.- or £15. - for each apartment whilst the applicant in the present recourse "whilst 30

substantially entitled to two apartments according to his share" was assessed with a "rent" fee of £120.-.

5 In the first place it must be observed that although the applicant, in his written address reserved his right to call evidence in order to substantiate his allegation for discrimination as aforesaid, he failed to do so and there is no material whatever before me enabling this Court to determine this issue. Vague allegations in the written address that on other occasions the respondent Board imposed a "rent " fee of £10.- or £15.-for each apartment are not enough.

10 Independently of the fact that there is no material whatever before me to substantiate the issue of alleged discriminatory treatment of the applicant it must be borne in mind that the principle of equality "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" (*Micrommatis and The Republic*, 2 R.S.C.C. 125- *Republic v. Nishan Arakian &Others* (1972) 3 C.L.R. 294).

20 "Furthermore, it must not be lost sight of that when taxation laws are attacked on the ground that they infringe the doctrine of equality, the Legislative descretion is permitted by the Judiciary great latitude, in view, especially, 'of the inherent complexity of fiscal adjustment of diverse elements' and because 'the power of the Legislature to classify is of wide range and flexibility so that it can adjust its system of taxation in all proper and reasonable ways'" (*Andreas Matsis v. The Republic* (1969) 3 C.L.R. 245 at p. 259).

30 For the reasons I have endeavoured to explain above, present recourse is doomed to failure on the merits as well, and it is accordingly dismissed.

Applicant to pay £30.- against the costs of the respondent Board.

35 *Recourse dismissed.*  
*Applicant to pay £30.= costs.*