[ZEKIA, P., VASSILIADES, TRIANTAFYLLIDES, MUNIR JOSEPHIDES, JJ.]

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IOANNIS PANAYIDES
*and*
1. THE REPUBLIC OF CYPRUS THROUGH
(a) THE MINISTER OF FINANCE
(b) THE COMMISSIONER OF INCOME TAX
2. THE GREEK COMMUNAL CHAMBER

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNIS PANAYIDES,

*Applicant,*

*and*

1. THE REPUBLIC OF CYPRUS THROUGH
   (a) THE MINISTER OF FINANCE
   (b) THE COMMISSIONER OF INCOME TAX
2. THE GREEK COMMUNAL CHAMBER,

*Respondents.*

*(Case No. 214/62).*

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*Administrative Law—Revenue—Taxes—Personal tax—Distinction between married and unmarried persons for purposes of personal tax—Article 87 of the Constitution and liability to personal tax—Not reasonable to make in Cyprus a distinction between married and unmarried persons for such purposes—Equality before the law and discrimination, Article 28.1 and 2 of the Constitution.*

*Constitutional Law—Taxes—Personal tax—Imposition of Personal Contributions on Members of the Greek Community for the year 1961, Law No. 16 of 1961, as amended by Law 8/62 (Greek Communal Chamber Laws)- Section 20 of Schedule "A" thereof and paragraphs 1 and 2 of the Table of Rates of Taxation attached thereto, contravene Article 28 and Article 24.1 of the Constitution, and are, therefore, unconstitutional.*

*Revenue—Taxes—Personal tax—Distinction between married and unmarried persons for purposes of personal tax—Relationship between such distinction and Articles 22 and 87 of the Constitution.*

Applicant who is a bachelor, filed this recourse under Article 146 of the Constitution, seeking a declaration that the "assessment made by the Commissioner of Income Tax on him to pay personal tax for the year 1961 by the Commissioner of Income Tax under Law 16 of 1961 of the Greek Communal Chamber (Law No. 16/61), is *null* and *void* and of no effect whatsoever". The assessment

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in question has been based on section 20 of Schedule "A" to Law 16/61 and paragraphs 1 and 2 of the Table of Rates of Taxation attached thereto, whereby, *inter alia,* a bachelor is made liable to pay personal tax 20% in excess of what would otherwise have been paid by him had he not been a bachelor.

The issue before the Court to determine is whether the assessment in question on the Applicant whereby, by reason of his being a bachelor, he has been made liable to pay as personal tax an amount 20% in excess of the amount which he would have otherwise paid if he had not been a bachelor, is permissible under the Constitution of Cyprus or whether such assessment, which makes a distinction between married and unmarried persons, contravenes any of the provisions of the Constitution.

*Held, I (a)* It is not reasonable to make in Cyprus a distinction between married and unmarried persons in so far as the liability to pay personal tax, of the nature for which provision is made in Article 87 of the Constitution, is concerned, nor does such a distinction have to be made, in view of the intrinsic nature of things.

*(b)* As such distinction, not being a reasonable one to make and not being one which has to be made in view of the intrinsic nature of the status of a bachelor, contravenes Article 28 and paragraph 1 of Article 24 of the Constitution, and, therefore, the relevant legislative provision in question, namely, section 20 of Schedule "A" to Law 16/61 and paragraph 1 and 2 of the Table of Rates of Taxation attached thereto, are unconstitutional.

*Observation* 1 :- Although, in view of the conclusion reached in connection with Articles 28 and 24 of the Constitution it has not become necessary to examine the provisions of paragraph 1 of Article 22 of the Constitution, it might be observed that had the Court found that the making of a distinction for the purposes of personal taxation between married and unmarried persons had not contravened Articles 28 and 24 of the Constitution, then it would have been for consideration whether the encouragement of marriage by the imposition of a personal tax on those who do not marry does not, in fact, amount to an interference with the freedom of marriage which is safeguarded by paragraph 1 of Article 22, inasmuch as it might be said

that those who do not marry were being penalised by taxation legislation on account of their failure to marry.

*Observation 2:-* It likewise becomes unnecessary to consider the submission of counsel for the Applicant concerning paragraph *(f)* of Article 87, but it might be observed in this connection that sub-paragraph *(a)(i)* of paragraph 1 of Article 89 of the Constitution does empower the Communal Chamber "to direct policy within their communal laws".

*The Order:* The assessment made on the Applicant, which was communicated to him by the letter of the Commissioner of Income Tax dated 31st July, 1962, is *null* and *void* and of no effect whatsoever.

*Per* TRIANTAFYLLIDES, J. *(In supplementing the Judgment of the Court):*

(1) I agree with the result of this recourse and, also, with the conclusion reached therein, to the effect that the distinction between married and unmarried persons, in so far as the liability to the particular taxation is concerned, is not reasonable and, therefore, not valid in the sense of Article 28.

(2) I felt it, however, necessary to deal further with two points touched upon in the said Judgment, viz. the relationship between such distinction and Articles 22 and 87 of the Constitution.

(3) Article 22, paragraph 1, provides: "Any person reaching *nubile* age is free to marry and to found a family according to the law relating to marriage, applicable to such person under the provisions of this Constitution". Paragraph 2 makes provision about the law applicable—a matter with which we are not concerned in this Case.

(4) The right to marry, which has been expressly safeguarded as a Fundamental Right and Liberty, necessarily implies the converse, i.e. the right *not* to marry. Nobody can be *free to do* something unless he is also *free not to do* it.

(5) The distinction between married and unmarried persons under consideration in this Case, having already been found not to be reasonable, in the light of the intrinsic

nature of things and as being divorced from the question of means, remains a provision which appears calculated to promote the institution of marriage. In view of Article 22(1) of the Constitution such a social policy can no longer be pursued by means of legislation. Nobody can be burdened with increased taxation by way of an inducement or compulsion to change his unmarried status into a married one. Otherwise, he is not "free to marry".

(6) I would add, however, that nothing in this Judgment is intended to lay down that taxation legislation properly treating the difference of status between married and unmarried persons as a difference leading to the making of reasonable distinction on the basis of means, would also be treated as unconstitutional, as being contrary to Article 22. The matter would have to be determined when it arises, if at all, and in the meantime should be left entirely open.

(7) A social policy, such as above, cannot in any case be pursued, in my opinion, by means of taxation legislation enacted by a Communal Chamber under Article 87 (1)(f).

(8) It is correct that, under Article 89(1)(a)(i), Communal Chambers have competence "to direct policy within their communal laws" but this should be taken as meaning policy which is within the competence of Communal Chambers to pursue by means of such laws, in accordance with the purposes for which the competence to enact the said laws has been granted to Communal Chambers. The purpose for which the taxing powers have been granted to Communal Chambers is clearly to be found set out in Articles 87(1)(f) and 88(1) and it is viz. to provide additional financial means for meeting the balance, if any, of their expenditure. In my opinion, the pursuing of a social policy, as above, by means of taxation legislation, is far beyond the competence granted to the Communal Chambers in the matter.

*Assessment complained of declared null and void.*

Cases referred to:

*Mikrommatis and the Republic,* (2 R.S.C.C. p. 125 *at* p. 131).

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**Recourse.**

Recourse against the assessment of income tax which has been made on the applicant as personal tax for the year 1961 by the Commissioner of Income Tax under Law 16 of 1961 of the Greek Communal Chamber.

*A. Hadjioannou* for the applicant.

*M. Spanos, Counsel of the Republic*, for Respondent No. 1

*G. Tornaritis*, for Respondent No. 2.

*Cur. adv. vult.*

The following judgments were read:

ZEKIA, P.: The judgment of the Court will be delivered by Mr. Justice Munir, and will be supplemented by Mr. Justice Triantafyllides.

MUNIR, J.: By this recourse, which is made under Article 146 of the Constitution, the Applicant seeks a declaration that "the decision or act of the Commissioner of Income Tax contained in the letter dated 31st July, 1962, with reference file No. 3516/6 and addressed to Applicant is *null* and *void* and of no whatsoever effect".

The "decision or act" referred to in the Applicant's motion for relief is the assessment of tax which has been made on the Applicant as personal tax for the year 1961 by the Commissioner of Income Tax under Law 16 of 1961 of the Greek Communal Chamber (hereinafter referred to as "Law 16/61"). The assessment in question has been based on section 20 of Schedule "A" to Law 16/61 and paragraphs 1 and 2 of the Table of Rates of Taxation attached thereto, whereby, inter alia, a bachelor is made liable to pay personal tax 20% in excess of what would otherwise have been paid by him had he not been a bachelor.

The Applicant in this Case is a bachelor and a manufacturer of shoe-polish, carrying on business in Nicosia. On the 30th June, 1962, the Commissioner of Income Tax, acting at the request of the Greek Communal Chamber, assessed the Applicant to pay the sum of £58.080, as personal tax for the year 1961 under Law 16/61, as amended by Law 8/62 of the Greek Communal Chamber. On the 12th July, 1962, the Applicant wrote a letter to the Commissioner of Income Tax raising the unconstitutionality of the said assessment

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on the ground that it contravened Article 6. In a written reply to this letter dated the 31st July, 1962, the Applicant's objection concerning unconstitutionality was rejected and a Notice of Tax Payable under the said assessment was enclosed with the reply.

The submissions made by counsel for the Applicant may be summarised as follows:—

(i) the assessment and the legislative provisions on which it was based, are contrary to Article 28 of the Constitution, because no such discrimination between an unmarried and married person is permitted under Article 28(2);

(ii) the assessment and the legislative provisions on which it was based, also contravene Article 24(1) of the Constitution, because that Article provides that every person must contribute towards the public burdens "according to his means" and not according to his personal status. The distinction, therefore, made in this respect between married and unmarried persons is unconstitutional;

(iii) Article 22 of the Constitution provides that "any person reaching nubile age is free to marry". The freedom to marry (or not to marry) has thus been recognized by the Constitution as one of the fundamental rights and liberties. It was submitted by counsel for the Applicant that the relevant provisions of Law 16/61, by placing an additional financial burden on unmarried persons, were thus interfering with the freedom of marriage and any such provision, therefore, contravened Article 22;

(iv) the provisions of the said section 20 of, and paragraphs 1 & 2 of Schedule "A", to Law 16/61, in so far as they allow a distinction to be made between married and unmarried members of the Greek Community in relation to the imposition of personal taxation, are also contrary to Article 87(1)(f), because no such distinction is permissible under that Article;

(v) it was also submitted in connection with Article 87 that the provisions in question of Law 16/61

was purporting to regulate social and economic policy such as whether marriage should be encouraged or not as a matter of public policy, and it was submitted that the formulation of such policy belonged to the sphere of central administration and not to that of the Communal Chambers.

The submissions of counsel for Respondent No. 1 and Counsel for Respondent No. 2 may be summarized as follows:—

(*a*) The distinction made by Law 16/61 between married and unmarried persons is one to be found in the legal systems of many countries, with provisions in their constitutions similar to those of Article 24(1). The main object of such distinction is to encourage marriage, and it is based on the right of the State to regulate its demographic structure;

(*b*) inasmuch as the taxation imposed by the Communal Chamber by virtue of Article 87 of the Constitution is a "personal tax", the personal status of the person liable to pay such tax, such as his marital status, can properly be taken into account;

(*c*) equality under Article 28(1) must be understood to convey the notion of proportional equality and not arithmetical equality and in this connection reference was made to the Judgment of the Supreme Constitutional Court in the Case of *Mikrommatis and the Republic*, 2 R.S.C.C. p. 125, at p. 131. The distinction, therefore, between married and unmarried persons, it was submitted, did not contravene Article 28, because such persons do not belong to the same category and are not of equal status. Such a distinction was thus based on reasonable criteria and was not discriminatory. (In this connection the following authorities were cited: *Svolos-Vlachos*, The Constitution of Greece (1954) p.194 and *Jenning's*, Law and the Constitution (1952) at p. 49);

(*d*) the Greek Communal Chamber, by imposing personal taxation on the basis of personal status under Law 16/61, intended, *inter alia*, to encourage marriage and such encouragement did not contravene Article 87 of the Constitution and that the Greek Communal

Chamber was expressly empowered by sub-paragraph (*a*) (*i*) of paragraph 1 of Article 89 "to direct policy" ("determiner les principles directeurs").

The issue for this Court to determine is whether the assessment in question on the Applicant whereby, by reason of his being a bachelor, he has been made liable to pay as personal tax an amount 20% in excess of the amount which he would have otherwise paid if he had not been a bachelor, is permissible under our Constitution or whether such assessment, which makes a distinction between married and unmarried persons, contravenes any of the provisions of the Constitution.

It is not in dispute that this distinction between married and unmarried persons for purposes of Income Tax was first introduced into the income tax legislation of this country by the legislation which had existed prior to the establishment of the Republic. The form in which such provision existed in income tax legislation immediately before Independence may be found in paragraph 2 of the Second Schedule to the Income Tax Law, Cap. 323. The relevant provisions of Law 16/61 has no doubt been modelled on the corresponding provision of Cap. 323.

When this distinction between married and unmarried persons for income tax purposes was first made in this country over twenty years ago our Constitution was not, of course, in force at the time and the question of whether such a distinction is now permissible under our Constitution and in the present times requires careful examination in the light of the various relevant provisions of the Constitution, notwithstanding the fact that such a distinction, which is almost as old as the institution of income tax itself in this country, has been made for so many years and is not, therefore, a novel distinction in this country.

The first provision of the Constitution to consider is Article 28, paragraphs 1 and 2 of which read as follows:—

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

2. Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground

of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class, or on any ground whatsoever, unless there is express provision to the contrary in this Constitution".

There can be no doubt that a distinction has been made between married persons, on the one hand, and unmarried persons, on the other, by the provisions in question of Law 16/61 but the question is whether such distinction on account of personal status amounts to the kind of "direct or indirect discrimination" which it is intended to prevent by paragraph 2 of Article 28. In this connection it is useful to quote in full a passage from the Judgment of the Supreme Constitutional Court in the Case of *Mikrommatis and the Republic*, 2 R.S.C.C. p. 125 at p. 131, bearing on this point, which reads as follows:—

> "In the opinion of the Court the term '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. Likewise, the term 'discrimination' in paragraph 2 of Article 28 does not exclude reasonable distinctions as aforesaid".

The question which thus arises is whether the distinction which has been made in this matter between married and unmarried persons is a "*reasonable distinction*" which has been made in view of the intrinsic nature of things and whether such distinction is just and proper.

The same considerations apply to the interpretation of paragraph 1 of Article 24 of the Constitution, which reads as follows:—

> "1. Every person is bound to contribute according to his means towards the public burdens".

In the *Mikrommatis Case*, cited above, the Supreme Constitutional Court again, at p. 131, stated that the view set out in the above-quoted passage from that Case "regarding the application of the principle of equality applies also to the interpretation of paragraph 1 of Article 24".

Applying this principle of "reasonable distinctions which

have to be made in view of the intrinsic nature of things", the Supreme Constitutional Court in the *Mikrommatis Case* went on to hold "that *reasonable distinctions* in taxation legislation between married and unmarried persons do not *in principle* offend against paragraphs 1 or 2 of Article 28 and against paragraph 1 of Article 24".

What we now have to consider in this case is whether, having regard to "the intrinsic nature of things", it was *reasonable*, for the purpose of the imposition of personal taxation by the Greek Communal Chamber under paragraph (1) (*f*) of Article 87 of the Constitution on members of the Greek Community, for the Greek Communal Chamber to make a distinction between married and unmarried members of this Community. If the making of such a distinction for the purposes of such personal taxation was, in all the circumstances, a *reasonable* distinction to make then in the opinion of this Court, such a distinction would not amount to "discrimination" in the sense of Article 28 of the Constitution nor would it contravene the provisions of paragraph 1 of Article 24 of the Constitution, but if it was not reasonable to make such a distinction then the contrary would be the case.

Coming now to the specific question whether the making of such a distinction between married and unmarried persons in this respect was *reasonable*, the first point to consider is whether, having regard to the circumstances and conditions prevailing in Cyprus, and particularly having regard to the customs and traditions of the particular Community of the Communal Chamber which has imposed such personal taxation, it is reasonable to assume that a bachelor is in fact in a more advantageous position financially, all other relevant things being equal, than a married person of the same social and economic class as such bachelor. It is true that when a bachelor gets married he assumes added financial responsibilities towards his wife and children and, to that extent, it may be said that a married man's financial obligations are thus greater than a bachelor's. This distinction may more readily appear reasonable in certain countries where an unmarried man is not expected to have any financial or other obligations towards his family, such as in the case of those countries where as soon as a young man comes of age he probably leaves home and probably severs all financial and other ties with his parents' family. It is well known, how-

ever, that in Cyprus, and particularly amongst the Greek Community, an unmarried man is expected by custom and tradition to undertake financial obligations not only towards his parents (which is also a legal obligation) but also towards the members of his family and in particular towards his unmarried sisters, and there are often instances where a young man may find that he is not in a financial position to marry, and is not expected to do so, until his sisters have been settled in marriage.

Furthermore, the unreasonableness of the distinction might be illustrated by considering the extreme case of a bachelor and a person whose wife dies, for example, the day after their marriage. Could it be said that it would be reasonable to make a distinction, for the purposes of the personal taxation in question, between a bachelor and such a widower? The answer must of course in the Court's view be in the negative.

It should also be observed that the provisions in the Law in question allowing deductions to be made in respect of the wife and children of a married man already appear to make adequate allowance for the added financial burden of a person who is responsible for maintaining a family and bringing up his children. Having thus made this allowance for a married man, it seems unreasonable to discriminate further between married and unmarried persons by imposing an increased rate of taxation on unmarried persons.

In these circumstances the Court is of the opinion that it is not reasonable to make in Cyprus a distinction between married and unmarried persons in so far as the liability to pay personal tax, of the nature for which provision is made in Article 87 of the Constitution, is concerned, nor does such a distinction have to be made, in the Court's opinion, in view of the intrinsic nature of things.

The Court is, therefore, of the opinion that as such distinction, not being a reasonable one to make and not being one which has to be made in view of the intrinsic nature of the status of a bachelor, contravenes Article 28 and paragraph 1 of Article 24 of the Constitution, and, therefore, the relevant legislative provision in question, namely, section 20 of Schedule "A" to Law 16/61 and paragraphs 1 and 2 of the Table of Rates of Taxation attached thereto, are unconstitutional.

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Although, in view of the conclusion reached in connection with Articles 28 and 24 of the Constitution it has not become necessary to examine the provisions of paragraph 1 of Article 22 of the Constitution, it might be observed that had the Court found that the making of a distinction for the purposes of personal taxation between married and unmarried persons had not contravened Articles 28 and 24 of the Constitution, then it would have been for consideration whether the encouragement of marriage by the imposition of a personal tax on those who do not marry does not, in fact, amount to an interference with the freedom of marriage which is safeguarded by paragraph 1 of Article 22, inasmuch as it might be said that those who do not marry were being penalised by taxation legislation on account of their failure to marry.

It likewise becomes unnecessary to consider the submission of counsel for the Applicant concerning paragraph (*f*) of Article 87, but it might be observed in this connection that sub-paragraph (*a*) (*i*) of paragraph 1 of Article 89 of the Constitution does empower the Communal Chamber "to direct policy within their communal laws".

For all the reasons given above the Court is of the opinion that the assessment in question made on the Applicant, which was communicated to him by the letter of the Commissioner of Income Tax dated 31st July, 1962, is *null* and *void* and of no effect whatsoever.

TRIANTAFYLLIDES, J.: In this Case, I have had the benefit of reading the Judgment of my brother Judge Mr. Justice Munir and I agree with the result of this recourse and, also, with the conclusion reached therein, to the effect that the distinction between married and unmarried persons, in so far as the liability to the particular taxation is concerned, is not reasonable and, therefore, not valid in the sense of Article 28.

I felt it, however, necessary to deal further with two points touched upon in the said Judgment, viz. the relationship between such distinction and Articles 22 and 87 of the Constitution.

Article 22, paragraph 1, provides: "Any person reaching nubile age is free to marry and to found a family according to the law relating to marriage, applicable to such person under the provisions of this Constitution". Paragraph 2

makes provision about the law applicable—a matter with which we are not concerned in this Case.

In my opinion, the right to marry, which has been expressly safeguarded as a Fundamental Right and Liberty, necessarily implies the converse, i.e. the right *not* to marry. Nobody can be *free to do* something unless he is also *free not to do* it.

The distinction between married and unmarried persons under consideration in this Case, having already been found not to be reasonable, in the light of the intrinsic nature of things and as being divorced from the question of means, remains a provision which appears calculated to promote the institution of marriage. In view of Article 22(1) of the Constitution such a social policy can no longer be pursued by means of legislation. Nobody can be burdened with increased taxation by way of an inducement or compulsion to change his unmarried status into a married one. Otherwise, he is not "free to marry".

I would add, however, that nothing in this Judgment is intended to lay down that taxation legislation properly treating the difference of status between married and unmarried persons as a difference leading to the making of reasonable distinction on the basis of means, would also be treated as unconstitutional, as being contrary to Article 22. The matter would have to be determined when it arises, if at all, and in the meantime should be left entirely open.

A social policy, such as above, cannot in any case be pursued, in my opinion, by means of taxation legislation enacted by a Communal Chamber under Article 87 (1) (*f*).

It is correct that, under Article 89 (1) (*a*) (i), Communal Chambers have competence "to direct policy within their communal laws" but this should be taken as meaning policy which is within the competence of Communal Chambers to pursue by means of such laws, in accordance with the purposes for which the competence to enact the said laws has been granted to Communal Chambers. The purpose for which the taxing powers have been granted to Communal Chambers is clearly to be found set out in Articles 87(1) (*f*) and 88(1) and it is viz. to provide additional financial means for meeting the balance, if any, of their expenditure. In

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Triantafyllides, J.

my opinion, the pursuing of a social policy, as above, by means of taxation legislation, is far beyond the competence granted to the Communal Chambers in the matter.

*Assessment complained of declared null and void. No order as to costs.*