[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, STAVRINIDES, LOIZOU, HADJIANASTASSIOU, JJ.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS MATSIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF FINANCE,
2. THE COMMISSIONER OF ESTATE DUTY,

Respondents.

(*Case No.* 188/65).

Estate Duty—Gifts inter vivos—Made by the deceased donor within three years before his death—Deemed to be passing on the donor's death and to form part of the deceased's estate for estate duty purposes—Estate Duty Law, 1962 (*Law No.* 67 *of* 1962 *enacted on October* 20, 1962), *section* 7(*d*)*—Provisions thereof do not entail an arbitrary and unreasonable classification for taxation purposes as to contravene the principle of equality safeguarded by Article* 24 *of the Constitution—Certain such gifts made within the aforesaid three years' period exempted from the operation of the Estate Duty Law* (supra)*—Proviso* (*iv*) *and proviso* (*v*) *to section* 7(*d*) *of Law* 67/62 (supra)*—"Normal expenditure" of the deceased—Gift shown to have been part of the "normal expenditure" of the deceased; and to have been reasonable "having regard to the amount of his income, or to the circumstances under which they were made.................." Proviso* (*iv*) supra*—Construction—The said proviso can and must be construed in a much more liberal manner than the corresponding provision in England* (*viz. section* 59(2) *of the Finance Act* 1910)*—Upon the principle that in construing and applying a statutory provision, the Court must give to it, if fairly possible, a meaning consistent with constitutionality—Thus, it is possible to increase the effectiveness of the said proviso* (*iv*)*—And the issue of "normality of expenditure" should not be considered only in relation to a deceased donor's expenditure on gifts, but in relation to such donor's spending habits in general—And there should exist no presumption against the reasonableness of the gift merely because it has been made* *out of capital—And on each occasion the relevant administrative decision should be reached on the basis of the totality of all relevant considerations—Due weight being given always to the question whether or not the gift involved was made in fact, with the intention of avoiding the incidence of estate duty—In the instant case, proviso (iv) to said section 7(d) of the Estate Duty Law,* 1962 (*Law No.* 67 *of* 1962) *not applied in a manner compatible with the true interpretation thereof—Consequently the sub judice assessment must be annulled as being contrary to law and in excess and abuse of powers—The Estate Duty Law,* 1962 (*Law No.* 67 *of* 1962) *enacted on October* 20, 1962 *section* 7(*d*)*—Cf. The Estate Duty Law, Cap.* 319, *section* 7(*d*)*—Article* 28 *of the Constitution—Cf. The* 14*th Amendment to the U.S.A. Constitution—The Customs and Inland Revenue Act* 1881, *section* 38*—The Customs and Inland Revenue Act* 1889, *section* 11*—Finance Act* 1910, *section* 59 *in general and sub-section* (2) *thereof in particular—Finance Act* 1946, *section* 47 (*and the Eleventh Schedule thereto*)*—Finance Act* 1960 *section* 64*—See, also, herebelow.*

Estate Duty—Gifts inter vivos—Liable to estate duty under certain circumstances—Section 7(*d*) *of the Estate Duty Law* 1962*—Principle of non-retrospectivity of taxation legislation—Article* 24.3 *of the Constitution—Gift made in March* 1961 *when the Estate Duty Law, Cap.* 319 *was still in force* (*Note: it continued in force until March* 31, 1961)*—Since then legislative vacuum in matters relating,* inter alia, *to estate duty taxation until the enactment on October* 1962 *of the aforesaid Estate Duty Law* 1962*—Donor died on June* 9, 1963*—Therefore, the said gift is within the three years' period provided in section* 7(*d*) supra*—And as such subject to estate duty—This does not in the least contravene Article* 24.3 *of the Constitution which excludes imposition of taxes with retrospective effect—Cf.* 5*th Amendment to the U.S.A. Constitution—Cf. The Taxes and Duties* (*Continuation of Provisions*) *Law,* 1960 (*Law No.* 23 *of* 1960)*—Cf. Article* 188.2 *of the Constitution—Cf. Article* 30.2 *of the Constitution and Article* 6(1) *of the European Convention of Human Rights of* 1950.

Constitutional Law—Constitutionality of taxation legislation—Section 7(*d*) *of the Estate Duty Law,* 1962 (supra)*—Attacked on the ground that its provisions contravene the principle of equality safeguarded by Article* 28 *of the Constitution—Wide discretion allowed to legislation in matters regarding classifications for taxation purposes—Principles applicable—See, also, hereabove.*

Constitutional Law—Estate Duty—Gifts inter vivos—Gift made by the donor before the enactment on October 20, 1962 *of the Estate Duty Law* 1962*—Donor died thereafter—Gift subject to estate duty under section* 7*(d) of that Law—Such taxation in no way contravenes the principle of non-retrospectivity in imposition of taxes safeguarded under Article* 24.3 *of the Constitution—See, also, hereabove.*

Constitutionality of Legislation—Presumed—Court will not interfere unless satisfied beyond reasonable doubt that a given legislation is unconstitutional—See, also, hereabove and herebelow.

Unconstitutionality of legislation—Must be established to the satisfaction of the Court beyond reasonable doubt—See, also, hereabove and herebelow.

Principle of Equality—Article 28 *of the Constitution—The Principle of equality in its application to classifications made for taxation purposes—See hereabove.*

Principle of non-retrospectivity—Imposition of taxes—Article 24.3 *of the Constitution—Gifts inter vivos—Estate duty—See above.*

Constitutional Law—Constitutionality of legislation—The principle of equality and taxation legislation—Principle of non-retrospectivity of imposition of taxes—See hereabove.

Gifts—Gifts inter vivos—Estate duty—See above.

Taxation—Classifications for purposes of taxation and the principle of equality under Article 28 *of the Constitution—Principle of non-retrospectivity—Estate Duty Legislation—See above.*

Statutes—Construction of—Statutes should be construed as far as fairly possible in a manner compatible with constitutionality.

Words and Phrases—"Normal expenditure of the deceased.............." in proviso (iv) of section 7*(d) of the Estate Duty Law* 1962 *(Law No.* 67 *of* 1962*).*

In this recourse under Article 146 of the Constitution the Applicant seeks a declaration annulling the decision of the Commissioner of Estate Duty to assess him to pay estate duty, amounting to £247.670 mils, in respect of two monetary gifts, of £500 each, made to the Applicant in March 1961, and December 1962, respectively by the late A. Ioannou of Famagusta, who died on June 9, 1963 and who was the brother of a grand parent of the Applicant.

The said assessment was raised because the deceased donor died within three years of the making of the gifts in question to the Applicant; it was based on section 7(d) of the Estate Duty Law 1962 (Law No. 67/62 enacted on October 20, 1962). Section 7(d) is set out in Greek in the judgment of the Court. In substance it is a repetition of section 7(d) of the Estate Duty Law, Cap. 319 which reads as follows:

> "7. Property passing on the death of the deceased shall be deemed to include the property following, that is to say –..
>
> (d) property taken as a *donatio mortis causa* made by the deceased or taken under a disposition made by him purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust, or otherwise, which shall not have been bona fide made three years before his death, or taken under any gift, whenever made, of which bona fide possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise".

It is material to be noted that proviso (iv) to the said section 7(d) of the Estate Duty Law, 1962 (as well as of the Estate Duty Law, Cap. 319) excludes from the operation of the "three years" provision gifts which are shown to have been part of the normal expenditure of the deceased, and to have been reasonable, having regard to the amount of his income, or to the circumstances under which they were made, or which, in the case of any donee, do not exceed in the aggregate one hundred pounds in value or amount. Lastly proviso (v) to the same section excludes from taxation any gifts made in consideration of marriage.

It is common ground that the two gifts in question made to the Applicant by his great–uncle, the aforesaid deceased, were bona fide "immediate gifts" and that they would not have been otherwise subject to estate duty had the deceased donor died after three years from the dates when such gifts were made.

It should be observed that the Estate Duty Law, Cap. 319 (*supra*) continued to be in force until March 31, 1961 and that since then there had been a legislative vacuum regarding estate duty until the enactment on October 20, 1962, of the Estate Duty Law, 1962 (*supra*) under which the *sub judice* assessments have been raised.

In reply to counsel for the Applicant, the Commissioner of Estate Duty wrote a letter (*Exhibit* 1(a)) where it is stated:

> "Regarding your argument that 'all these gifts formed part of the deceased's normal expenditure' I have already explained that they are neither 'normal' nor expenditure. Gifts made out of capital are *not* expenditure. Moreover there is extreme inconsistency in the values gifted, from £400 in 1958 to £30,000 in 1962. The only reasonable inference is that the deceased, realising that he did not have long to live, began giving away his capital.
>
> This does not preclude consideration of evidence of special circumstances in which any of these gifts may be deemed as normal expenditure."

It was argued on behalf of counsel for the Applicant:–

(1) That the relevant part of section 7(2) of the Estate Duty Law, 1962 (*supra*) offends against the principle of equality safeguarded under Article 28 of the Constitution in that, *inter alia*, the material provisions in section 7(d) create an arbitrary differentiation between *bona fide* gifts made without an intention to evade the payment of estate duty, within three years from the death of a donor, and similar gifts made earlier than such period of three years.

(2) That in view of Article 24.3 of the Constitution (which excludes imposition of taxes with retrospective effect) the "three years" provision in section 7(d) of the aforesaid Estate Duty Law 1962 is not applicable to the gift of £500 made to the Applicant by the deceased in March 1961, when admittedly the said Law had not yet been enacted.

(3) That in any event, the gifts in question amount to a 'normal expenditure' of the deceased and therefore, are not taxable in view of proviso (iv) to section 7(d) of the Estate Duty Law 1962 (*supra*).

Paragraph 1 of Article 28 of the Constitution reads as follows:

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

On the other hand paragraph 3 of Article 24 of the Constitution provides that:

> "3. No tax, duty or rate of any kind whatsoever shall be imposed with retrospective effect:
>
> Provided that any import duty may be imposed as from the date of the introduction of the relevant Bill."

Held, I. As to the issue whether or not the provisions of section 7(d) of the Estate Duty Law 1962 *offend against the principle of equality safeguarded under Article* 28 *of the Constitution:–*

(1) In every case in which the Court is dealing with the issue of alleged unconstitutionality it has to be borne in mind that there is a presumption of constitutionality in favour of the provision concerned, and that such provision can only be unconstitutional if the Court is persuaded in this respect beyond reasonable doubt (see *Board for Registration of Architects and Civil Engineers* v. *Kyriakides* (1966) 3 C.L.R. 640).

(2)(a) Furthermore, when taxation laws are attacked on the ground that they infringe the doctrine of equality, the legislative discretion is permitted by the Judiciary great latitude, in view especially "of the inherent complexity of fiscal adjustments 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" (see decision of the Supreme Court of India in *Khandige* v. *Agricultural I.T.O.,A.* as referred in Basu's Commentary on the Constitution of India, 5th ed. vol. 1, p. 464).

(b) The same line of reasoning runs constantly through the relevant case-law of the Supreme Court of the United States of America. It is useful in this respect to refer to a number of its decisions (all relating to the doctrine of equality safeguarded by the U.S.A. Constitution, under its 14th Amendment, in relation to State legislation). (See the cases and dicta quoted in the judgment of the Court).

(3)(a) Section 7(2) of the Estate Duty Law 1962 (*supra*) is in substance a repetition of section 7(2) of the Estate Duty Law, Cap. 319, enacted in 1942 (*supra*) which latter section owes its existence to analogous provisions in England and in particular to section 59 of the Finance Act 1910. At present the corresponding provision in England is section 64 of the Finance Act, 1960.

(b) The object of section 7(d) is obviously to frustrate evasion of estate duty through transactions so proximate to the death of a donor that it is reasonable to treat the provisions in question as being intended to lessen the estate duty payable on his death. The *bona fides* of such transactions does not alter the position because a transaction may be a *bona fide,* one, namely, real and genuine for all intents and purposes, and yet still have as its object the avoidance of payment of estate duty (see Green's Death Duties 5th ed. p. 15).

(c) For the purpose of appreciating the true nature of such provision as the one under section 7(d) it is important to bear in mind that it does not result in the imposition of legacy or succession duty, but it relates solely to the imposition of estate duty: it merely results in having the property affected be treated as forming part of the estate of the deceased donor, for estate duty purposes. As put by Lord Loreburn L.C. in *Winans* v. *The Attorney-General* (No.2) [1910] A.C. 27, at p. 30: "Legacy and succession duties fall upon the benefits received by survivors on their accession upon a death. Estate duty falls upon the property passing upon a death apart from its destination". (See also Green's Death Duties, *supra* at pp. 1–4).

(4)(a) Our task in this case is to decide whether or not the three years' provision in section 7(d) (*supra*) which results in treating, for estate duty purposes, as part of the property of a deceased donor passing on his death gifts made within three years before such death—even if some of such gifts cannot be shown to have been made with the intention of evading estate duty—entails such an arbitrary and unreasonable classification for taxation purposes as to contravene the principle of equality safeguarded by Article 28 of the Constitution (*supra*).

(b) In this respect it is most material to bear in mind proviso (iv) and proviso (v) to section 7(d) (*supra*) which exclude from the operation of the Estate Duty Law 1962, gifts clearly not motivated by an intention to defeat the object of the estate duty legislation. It is correct that not all such gifts can be so excluded by virtue of the aforementioned provisos; and thus there can, indeed, be instances of individual hardship resulting because of the effect of the "three years' period" provision in section 7(d); but in considering whether or not a classification for taxation purposes contravenes the principle of equality, due allowance has to be made for the fact that it is impossible to expect any such classification to guard against all possible individual cases of hardship; absolute equality is neither required by the said principle nor is it feasible.

(5)(a) Proviso (iv) to section 7(d) (*supra*) is practically identical with the corresponding provision in section 59(2) of the Finance Act, 1910, in England. Regarding the mode of the application of such English provision we may refer to the principles stated in Hanson's Death Duties, 10th ed. at pp. 580–581 (Note: the passage is set out in full in the judgment of the Court).

(b) It is, we think, proper, in view of the similarity of the respective legislative systems for our Inland Revenue authorities to derive guidance from the corresponding English practice. But in a case such as the present one, in which proviso (iv) to section 7(d) is an integral part of the taxation provision under consideration, and its existence is directly relevant to the issue of whether or not the right of equality is being violated, we must bear in mind the principle that in construing and applying a statutory provision the Court must give to it, if possible, a meaning consistent with constitutionality. As it has been stated quite recently by Mr. Justice Harlan, in delivering the opinion of the U.S.A. Supreme Court in *Lynch* v. *Overholser* (8 L ed 2d 211, at p. 215:

" That construction finds further support in the rule that a statute should be interpreted, if fairly possible, in such a way as to free it from not insubstantial constitutional doubts."

(6)(a) It is, indeed, possible to construe the notion of a gift being "part of the normal expenditure of the deceased, and to have been reasonable, having regard to the amount of his income, or to the circumstances under which the gift is made," in the aforesaid proviso (iv), in a much more liberal manner than the corresponding provision in England is being construed, and, thus, increase considerably the effectiveness of such proviso (iv) in achieving its purpose as part of the legislative scheme to which it belongs.

(b) In particular, the issue of normality of expenditure should not be considered only in relation to a deceased donor's expenditure on gifts, but in relation to such donor's spending habits in general; and there should exist no presumption against the reasonableness of a gift merely because it has been made out of capital. On each occasion the relevant administrative decision should be reached on the basis of the totality of all relevant considerations, due weight being given always to whether or not the gift involved was made, in fact, with the intention of avoiding the incidence of estate duty.

(7) In the light of all that we have said regarding the true nature and effect of the said provision in section 7(d) (*supra*) and regarding the interpretation that should, and can, be placed on proviso (iv) thereto, and when the provision in question is examined in its proper context and on a broad and common sense basis, it seems to us that it is, in the final analysis, a fiscal policy measure bearing a reasonable relationship to the object of estate duty legislation and making a reasonable and usual classification in furtherance of such object.

We have not, therefore, been satisfied by the Applicant, beyond reasonable doubt—as we must before deciding to invalidate legislation—that such provision is unconstitutional as being contrary to Article 28 of the Constitution. (The decision of the U.S.A. Supreme Court in the cases of *Schlesinger* v. *State of Wisconsin* (70 Law. ed. 557) and *Heiner* v. *Donnan* (76 Law. ed. 772, *distinguished*).

Held, II. On the issue whether or not, in view of Article 24.3 *of the Constitution which excludes the imposition of taxes with retrospective effect, section 7(d) of the Estate Duty Law* 1962 (supra) *is at all applicable to the gift of* £500 *made to the Applicant by the deceased in March,* 1961 *when the said Law had not yet been enacted:–*

(1) We think that section 7(d) of the said Law is directly and validly applicable, itself, to the gift made by the deceased in March 1961. Our reasons for this view are as follows: The death of the deceased took place on June 9, 1963, viz. after the enactment on October 20, 1962 of the Estate Duty Law 1962. It is the event of his death which rendered *then* the gift taxable for purposes of estate duty; and the fact that the gift made to the Applicant in March, 1961, is brought within the ambit of the notion of property passing on death, by virtue of the provisions of section 7(d) of the said Law, does not render that Law an enactment imposing retrospective taxation contrary to Article 24.3 of the Constitution (*supra*). The position is

clearly analogous to that in the case of *HjiKyriacos and Sons Ltd.*, 5 R.S.C.C. 22, where the statute involved was, similarly, not found to be retrospective in a sense offending against Article 24.3.

(2) Regarding the general principle of non-retrospectivity of legislation which found expression in the decision of the Supreme Court of the United States of America in the case *Shwab* v. *Doyle* (66 Law. ed. 747, at p. 752), it is clear from that case, too, that, in effect, all that that principle amounts to is a mere presumption of non-retrospectivity which can be rebutted by the express wording in the enactment concerned. And in the instant case our Law (the Estate Duty Law 1962) expressly provides that its provisions shall apply in relation to the death of any person who has died on or after December 1942 (see its section 4); and thus, its relevant intent is expressly indicated.

(3) Moreover, it cannot be said that when the said gift was made in March 1961 to the Applicant there was no estate duty legislation, on the strength of which the possibility of such gift being computed for estate duty purposes could be foreseen or contemplated, because there was then in force the Duties and Taxes (Continuation of Provisions) Law, 1960 (Law No. 23 of 1960) which was enacted on December 31, 1960 in order to continue in force, *inter alia,* the Estate Duty Law, Cap. 319 until March 31, 1961. Consequently, by virtue of that Law 23/1960 the provisions of section 7(d) of Cap. 319—identical practically to the provisions of section 7(d) of the Estate Duty Law 1962—were continued in force until the 31st March, 1961; and notwithstanding the argument advanced against the validity of the aforementioned Law 23/1960 that Law, nonetheless, constituted, at the material time an enactment which was in force, having not been declared to be invalid by judicial pronouncement.

Held, III. As to the manner in which the provisions of section 7(d) of the Estate Duty Law 1962 *and especially, proviso (iv) thereto, have been applied by the Respondents to the two gifts in question:–*

(1) From the letter of the Commissioner of Estate Duty (*Exhibit* 1(a) *supra*) in reply to Applicant's counsel we have formed the view that the Respondent Commissioner did not apply proviso (iv) to section 7(d) in a manner compatible with

the proper interpretation of this proviso, as we have found it to be in this judgment (Note: see under 1(5)(6) and (7) *supra*).

(2) We have, therefore, reached the conclusion that the *sub judice* assessment has to be annulled as being contrary to law and in excess and abuse of powers; and it is hereby declared to be *null* and *void* and of no effect whatsoever. The matter will now have to be reconsidered by the Commissioner of Estate Duty in the light of this judgment. There will be no order as to costs.

Sub judice assessment annulled;
no order as to costs.

Cases referred to:

Board for Registration of Architects and Civil Engineers v. *Kyriakides* (1966) 3 C.L.R. 640;

Louca v. *The Republic* (1965) 3 C.L.R. 383;

HjiKyriacos and Sons Ltd., 5 R.S.C.C. 22;

Winans v. *Attorney-General* (*No.* 2) [1910] A.C. 27, at p. 30 per Lord Loreburn L.C.;

Decision of the Supreme Court of India in the case *Khandige* v. *Agricultural I.T.O.,A.* as referred to in Basu's Commentary on the Constitution of India, 5th ed. vol. 1, at p. 464.

The following decisions of the Supreme Court of the United States of America:

Bell's Gap Railroad Co. v. *The Commonwealth of Pennsylvania,* 33 Law. ed. 892, at p. 895;

Magoun v. *Illinois Trust & Savings Bank,* 42 Law. ed. 1037, at p. 1042;

Citizens' Telephone Co. v. *Fuller,* 57 Law. ed. 1206, at p. 1213;

Royster Guano Co. v. *Commonwealth of Virginia,* 64 Law. ed. 989, at pp. 990–991;

Louisville Gas and Electric Co. v. *Coleman,* 72 Law. ed. 770, at p. 774;

Ohio Oil Co. v. *Conway,* 74 Law. ed. 775, at p. 782;

Colgate v. *Harvey*, 80 Law. ed. 299, at p. 307;

Great Atlantic and Pacific Tea Co. v. *Grosjean*, 81 Law. ed. 1193, at p. 1200;

Madden v. *Commonwealth of Kentucky*, 84 Law. ed. 590, at p. 593;

Allied Stores of Ohio v. *Bowers*, 3 L ed 2d 480, at pp. 484–485;

Central Railroad Co. of Pennsylvania v. *Commonwealth of Pennsylvania*, 8 L ed 2d, 720, at p. 728;

Lynch v. *Overholser*, 8 L ed 2d, 211, at p. 215;

Schlesinger v. *State of Wisconsin*, 70 Law. ed. 557;

Heiner v. *Donnan*, 76 Law. ed. 772;

Shwab v. *Doyle*, 66 Law. ed. 747, at p. 752;

See also:

"X" against Belgium, decided by the European Commission of Human Rights on the 1st October, 1965, reported in the relevant 1965 Year Book, No. 8, at p. 282, and particularly at p. 312.

Recourse.

Recourse against the decision of Respondent 2, to assess the Applicant to pay estate duty, amounting to £247.670 mils, in respect of two monetary gifts, of £500 each, made to the Applicant in March, 1961 and December, 1962, respectively, by the late Athanasios Ioannou of Famagusta, who died on the 9th June, 1963.

A. Triantafyllides with *Y. Chrysostomis*, for the Applicant.

K. Talarides, Senior Counsel of the Republic, for the Respondents.

Cur. adv. vult.

VASSILIADES, P.: Mr. Justice Triantafyllides will deliver the judgment of the Court.

TRIANTAFYLLIDES, J.: In this case the Applicant seeks, in effect, a declaration annulling the decision of Respondent 2, the Commissioner of Estate Duty—who comes under Respondent 1, the Minister of Finance—to assess the Applicant to pay estate duty, amounting to £247.670 mils, in respect of two monetary gifts, of £500 each, made to the Applicant in March, 1961, and December, 1962, respectively, by the late Athanasios Ioannou of Famagusta, who died on the 9th June, 1963, and who was the brother of a grandparent of the Applicant.

The final assessment in this matter was raised by Respondent 2 on the 17th August, 1965 (see *exhibit* 1(*b*)), after an objection had been lodged by the Applicant on the 15th June, 1965 (see *exhibit* 1(*c*)), which was rejected by Respondent 2, for the reasons set out in a letter of his dated the 28th June, 1965 (see *exhibit* 1(*a*)).

The said assessment was raised because the deceased donor died within three years of the making of the gifts in question to the Applicant; it was based on section 7(d) of the Estate Duty Law 1962 (Law 67/62), which reads as follows:–

«7. Περιουσία λογιζομένη ὡς περιερχομένη εἰς ἄλλους ἐπὶ τῷ θανάτῳ προσώπου τινός, θὰ περιλαμβάνῃ τὰ ἀκόλουθα περιουσιακὰ στοιχεῖα, ἤτοι —

....

(δ) περιουσιακὰ στοιχεῖα ληφθέντα ὑπὸ μορφὴν δωρεᾶς αἰτίᾳ θανάτου γενομένης ὑπὸ τοῦ ἀποθανόντος, ἢ περιουσιακὰ στοιχεῖα ληφθέντα δυνάμει διαθέσεως γενομένης ὑπ' αὐτοῦ σκοπούσης ὅπως ἰσχύῃ ὡς ἄμεσος δωρεὰ ἐν ζωῇ, εἴτε διὰ μεταβιβάσεως εἴτε διὰ παραδόσεως, συστάσεως τράστ (trust) ἢ ἄλλως, ἐφ' ὅσον ἡ τοιαύτη δωρεὰ δὲν ἐγένετο καλῇ τῇ πίστει τρία ἔτη πρὸ τοῦ θανάτου αὐτοῦ, ἢ περιουσιακὰ στοιχεῖα ληφθέντα δυνάμει πάσης δωρεᾶς, ὁποτεδήποτε γενομένης, ἐφ' ὧν ὁ δωρεοδόχος δὲν ἀπέκτησεν εὐθὺς ἅμα τῇ συμπληρώσει τῆς δωρεᾶς καλόπιστον κατοχὴν καὶ χρῆσιν καὶ δὲν διετήρησεν ἔκτοτε ταῦτα ὑπὸ τὴν κυριότητά του ὑπὸ συνθήκας ἀποκλειούσας καθ' ὁλοκληρίαν τὸν δωρητὴν ἐκ τῶν τοιούτων στοιχείων ἢ ἐξ οἱουδήποτε συμβατικοῦ ἢ ἄλλου τινὸς ὀφέλους».

This provision is, in substance, a repetition of section 7(d) of the Estate Duty Law, Cap. 319, which reads as follows:–

"7. Property passing on the death of the deceased shall be deemed to include the property following, that is to say–

....

(d) property taken as a donation mortis causa made by the deceased or taken under a disposition made by him purporting to operate as an immediate gift inter vivos, whether by way of transfer, delivery, declaration of trust, or otherwise, which shall not have been bona fide made three years before his death, or taken under any gift, whenever made, of which bona fide possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise".

Cap. 319 was no longer in force when Law 67/62 was enacted.

It is common ground that the gifts made to the Applicant were bona fide gifts and that they would not have been otherwise subject to estate duty had the deceased donor died after three years from the dates when such gifts were made.

Applicant's counsel, at the hearing before us, have attacked the constitutional validity of the relevant part of section 7(d) of Law 67/62; they have alleged a violation of the right to equality safeguarded under Article 28 of the Constitution; it was argued, *inter alia*, that the material provisions in section 7(d) create an arbitrary differentiation between bona fide gifts made without an intention to evade the payment of estate duty, within three years from the death of a donor, and similar gifts made earlier than such period of three years. A further contention that there is, in this connection, a violation of Articles 23 and 24 of the Constitution was abandoned.

In every case in which the Court is dealing with an issue of alleged unconstitutionality of legislation it has to be borne in mind that there is a presumption of constitutionality in favour of the provision concerned, and that such provision can only be found to be unconstitutional if the Court is persuaded in this respect beyond reasonable doubt (see *Board for Registration of Architects and Civil Engineers* v. *Kyriakides* (1966) 3 C.L.R. 640).

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 discretion 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" (see the decision of the Supreme Court of India in *Khandige* v. *Agricultural I.T.O.,A.* as referred to in Basu's Commentary on the Constitution of India, 5th ed. vol. 1, p. 464).

The same line of reasoning runs constantly through the relevant case-law of the Supreme Court of the United States of America. It is useful in this respect to refer to a number of its decisions (all relating to the doctrine of equality safeguarded by the U.S.A. Constitution, under its 14th Amendment, in relation to State legislation):-

In *Bell's Gap Railroad Co.* v. *The Commonwealth of Pennsylvania* (33 Law. ed. 892) Mr. Justice Bradley, delivering the opinion of the Court, had this to say (at p. 895):-

> " The provision in the XIVth Amendment, that no State *shall deny to any person within its jurisdiction the* equal protection of the laws, was not intended to prevent a State from adjusting its system of taxation in all proper and reasonable.............................. . It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject, that would include all cases. They must be decided as they arise. We think that we are safe in saying that the XIVth Amendment was not intended to compel the States to adopt an iron rule of equal taxation."

In *Magoun* v. *Illinois Trust & Savings Bank* (42 Law. ed. 1037) Mr. Justice McKenna, delivering the opinion of the Court, said (at p. 1042):

> " The clause of the 14th Amendment especially evoked is that which prohibits a state denying to any citizen the equal protection of the laws. What satisfies this equality has not been and probably never can be precisely defined.... *it may be safely said that the rule prescribes no rigid* equality and permits to the discretion and wisdom of

the state a wide latitude as far as interference by this Court is concerned."

In *Citizens' Telephone Co.* v. *Fuller* (57 Law. ed. 1206) Mr. Justice McKenna, after reviewing relevant past cases, concluded (at p. 1213):–

" It may therefore be said that in taxation there is a broader power of classification than in some other exercises of legislation".

In *Royster Guano Co.* v. *Commonwealth of Virginia* (64 Law. ed. 989) Mr. Justice Pitney stated the following in the opinion of the Court (at pp. 990–991):–

> " It is unnecessary to say that 'equal protection of the laws' required by the 14th Amendment does not prevent the states from resorting to classification for the purposes of legislation. Numerous and familiar decisions of this Court establish that they have a wide range of discretion in that regard. But the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. The latitude of discretion is notably wide in the classification of property for purposes of taxation and the granting of partial or total exemptions upon grounds of policy...................... Nevertheless, a discriminatory tax law cannot be sustained against the complaint of a party aggrieved if the classification appear to be altogether illusory."

In *Louisville Gas & Electric Co.* v. *Coleman* (72 Law. ed. 770) Mr. Justice Sutherland stressed (at p. 774) that –

"the power of the state to classify for purposes of taxation is of wide range and flexibility".

In *Ohio Oil Co.* v. *Conway* (74 Law. ed. 775) in the opinion of the Court, as delivered by Chief Justice Hughes, it is stated (at p. 782):–

> " The states, in the exercise of their taxing power, as with respect to the exertion of other powers, are subject to the requirements of the due process and the equal protection clauses of the 14th Amendment, but that Amendment

imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to schemes of taxation. The state may tax real and personal property in a different manner. It may grant exemptions. The state is not limited to ad valorem taxation. It may impose different specific taxes upon different trades and professions and may vary the rates of excise upon various products. In levying such taxes, the state is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value. To hold otherwise would be to subject the essential taxing power of the state to an intolerable supervision, hostile to the basic principles of our government and wholly beyond the protection which the general clause of the 14th Amendment was intended to assure.........................
With all this freedom of action, there is a point beyond which the state cannot go without violating the equal protection clause. The state may classify broadly the subjects of taxation, but in doing so it must proceed upon a rational basis. The state is not at liberty to resort to a classification that is palpably arbitrary. The rule is generally stated to be that the classification 'must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' "

In *Colgate* v. *Harvey* (80 Law. ed. 299) Mr. Justice Sutherland, delivering the opinion of the Court, said (at p. 307):-

" This Court has frequently said that absolute equality in taxation cannot be obtained and is not required under the Fourteenth Amendment. This, of course, is not to say that, because some degree of inequality from the nature of things must be permitted, gross inequality must also be allowed. The boundary between what is permissible and what is forbidden by the constitutional requirement has never been precisely fixed and is incapable of exact delimination. In the great variety of cases which have arisen, decisions may seem to be difficult of reconcilement; but investigation will generally cause apparent conflicts to disappear when due weight is given to material circumstances which distinguish the cases. If the evident intent and general operation of the tax legislation is to adjust the burden with a fair and reasonable degree of equality, the constitutional requirement is satisfied..........................

The classification, in order to avoid the constitutional prohibition, must be founded upon pertinent and real differences as distinguished from irrelevant and artificial ones. The test to be applied in such cases as the present one is—does the statute arbitrarily and without genuine reason impose a burden upon one group of taxpayers from which it exempts another group, both of them occupying substantially the same relation toward the subject matter of the legislation? '*Mere* difference is not enough...........................'."

In *Great Atlantic and Pacific Tea Co.* v. *Grosjean* (81 Law. ed. 1193) Mr. Justice Roberts, delivering the opinion of the Court, had this to say regarding classification of chain stores for purposes of taxation (at p. 1200):-

" We cannot say that classification of chains according to the number of units must be condemned because another method more nicely adjusted to represent the differences in earning power of the individual stores might have been chosen, for the legislature is not required to make meticulous adjustments in an effort to avoid incidental hardships. It is enough that the classification has reasonable relation to the differences in the practices of small and large chains. The statute bears equally upon all who fall into the same class, and this satisfies the guaranty of equal protection."

In *Madden* v. *Commonwealth of Kentucky* (84 Law. ed. 590) Mr. Justice Reed, delivering the opinion of the Court, stated in relation to the constitutionality of a State taxation statute (at p. 593):-

" The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. This Court fifty years ago concluded that 'the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation' and the passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other

> fields, legislatures possess the greatest freedom in classification.................... The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it."

In *Allied Stores of Ohio* v. *Bowers* (3 L ed 2d 480) Mr. Justice Whittaker, delivering the opinion of the Court, said the following (at pp. 484–485):–

> " Of course, the States, in the exercise of their taxing power are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation. The State may impose different specific taxes upon different trades and professions and may vary the rate of excise upon various products. It is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value."

Lastly the case of *Central Railroad Company of Pennsylvania* v. *Commonwealth of Pennsylvania* (8 L ed 2d 720) is another instance, and quite a recent one, in which the Supreme Court of the U.S.A. declined to invalidate a State taxation statute, as being in conflict with the doctrine of equality enshrined in the 14th Amendment to the U.S.A. Constitution, because the Court found that the differentiation in taxation introduced by the statute could have some reasonable basis. Mr. Justice Harlan, delivering the opinion of the Court, said (at p. 728):–

> " Finally, we think that the Appellant's equal protection argument is insubstantial and that it was correctly rejected by the Pennsylvania Supreme Court. For purposes of this tax, Pennsylvania could reasonably differentiate between railroads having tracks which lay only within its borders and those whose tracks were located both within and without the State. The various considerations that justify such a classiffication from a federal constitutional standpoint need hardly be elaborated. It is sufficient to note that the State might reasonably have concluded that the probability of a nondomiciliary apportioned ad valorem tax on a railroad's total assets is greater if the railroad maintains tracks in another State than if it does not. Or it might have determined that the imposition of franchise

or other taxes by nondomiciliary States in which the railroad did business compelled some mitigation of the domiciliary's property tax in order to prevent an oppressive tax burden. In either event, the possible basis for the taxing measure's classification would be reasonable and could not be held to violate the Equal Protection Clause."

In applying the principles established by these dicta to the relevant provision in our section 7(d)—to which we shall hereafter refer as the "three years' provision"—it is necessary to examine, first, the true nature and effect of such provision:

It results in creating one out of the three categories of gifts to which section 7(d) relates; the other two categories being donations mortis causa and gifts of which bona fide possession and enjoyment is not assumed and retained by the donee to the entire exclusion of the donor.

Whether or not a gift falls within either of the said two other categories is a question of fact. But regarding the category of gifts with which we are concerned in this case no question of fact arises, except only as to whether or not a gift is a bona fide one; otherwise, once a gift has been made within three years before the death of the donor, it falls within this category.

The "three years' provision" appeared, initially, in the legislation of Cyprus through section 7(d) of the Estate Duty Law, 1942.

There is no doubt that it owes its existence to analogous provisions in the Estate Duty legislation in England, and in particular to section 59 of the Finance Act 1910, in which, also, the relevant period was fixed at three years.

At present, the corresponding provision in England is section 64 of the Finance Act, 1960, and the period in question is a five years' period, but there are certain graduated reductions in the value of the property, for estate duty purposes, depending on whether the death of the donor takes place in the third, fourth or fifth year.

Previously to the enactment of section 64 of the Finance Act, 1960, the period was again five years, by virtue of section 47 of (and the Eleventh Schedule to) the Finance Act, 1946, but without the aforesaid graduated reductions; before then it was three years, under section 59 of the Finance Act, 1910;

still earlier, it was only twelve months, by virtue of section 11 of the Customs and Inland Revenue Act, 1889; and, originally, it was only three months, under section 38 of the Customs and Inland Revenue Act, 1881.

The object of our provision in question is, obviously, to frustrate evasion of estate duty through transactions so proximate to the death of a donor that it is reasonable to treat them as being intended to lessen the estate duty payable on his death. The bona fides of such transactions does not alter the position because a transaction may be a bona fide one, namely, real and genuine for all intents and purposes, and yet still have as its object the avoidance of payment of estate duty (see Green's Death Duties 5th ed. p. 15).

For the purpose of appreciating the true nature of such a provision it is important to bear in mind that it does not result in the imposition of legacy or succession duty, but it relates solely to the imposition of estate duty; it merely results in having the property affected be treated as forming part of the estate of the deceased donor, for estate duty purposes.

As put by Lord Loreburn L.C. in *Winans* v. *Attorney-General* (No. 2) [1910] A.C. 27, at p. 30: "Legacy and succession duties fall upon the benefits received by survivors on their accession upon a death. Estate duty falls upon the property passing upon a death, apart from its destination"; and, in England, also, the provision corresponding to our "three years' provision" is considered as resulting in the imposition of estate duty (see Green's Death Duties, *supra* at pp. 1–4).

Our task in this case is to decide whether or not the said "three years' provision", in section 7(d), which results in treating, for estate duty purposes, as part of the property of a deceased donor passing on his death gifts made within three years before such death—even if some of such gifts cannot be shown to have been made with the intention of evading estate duty—entails such an arbitrary and unreasonable classification for taxation purposes as to contravene the principle of equality safeguarded by Article 28.

In this respect it is most material to bear in mind proviso (iv) to section 7(d) which excludes from the operation of the "three years' provision" gifts which are shown to have been part of the normal expenditure of the deceased, and to have been reasonable, having regard to the amount of his income, or to the circumstances under which they were made, or which, in the case of any donee, do not exceed in the aggregate one hundred pounds in value or amount; as well as proviso (v) to the same section which excludes from taxation gifts made in consideration of marriage.

Thus, to a considerable extent, gifts which were clearly not motivated by an intention to defeat the object of the estate duty legislation are excluded from the notion of the taxable estate of the deceased. It is correct that not all such gifts can be excluded by virtue of the aforementioned provisos; and, thus, there can, indeed, be instances of individual hardship resulting because of the effect of the "three years' provision"; but in considering whether or not a classification for taxation purposes contravenes the principles of equality due allowance has to be made for the fact that it is impossible to expect any such classification to guard against all possible individual cases of hardship; absolute equality is neither required by the said principle nor is it feasible.

Proviso (iv) is practically identical with the corresponding provision in section 59(2) of the Finance Act, 1910, in England.
Regarding the mode of the Application of such English provision—by the Commissioners of Inland Revenue—the following is stated in Hanson's Death Duties (10th ed. at pp. 580–581):–

" It is not clear whether normality is to be considered in relation to the deceased's expenditure in general, or to his expenditure on gifts. The Commissioners have adopted the latter view, which focuses attention upon the habit of giving rather than the habit of spending. In order to satisfy the Commissioners that a gift was part of the deceased's normal expenditure it is necessary to show that the deceased habitually made gifts comparable in amount or value on that kind of occasion (birthday, Christmas time, for example), or of that particular character (e.g., cash, chattels, real estate), and to that class of recipient (e.g., family, friends, or charity). The individual donees may vary, and the gifts need not be regular in amount or periodicity, although these features help to show normality.

To secure exemption a gift must not only pass the test of normality, but must, in addition, be reasonable, having regard either (a) to the amount of the deceased's income, or (b) to the circumstances. No hard and fast test of reasonableness is possible. A gift out of income which did not encroach upon the donor's capacity to maintain his habitual standard of life would normally be regarded as reasonable, although a gift of the same amount out of capital would usually be regarded as neither normal nor reasonable. Factors which might be considered, other than the amount of the donor's income, include the particular motive and occasion which prompted the gift, the relative circumstances of the donor and the donee, and the relationship between them."

It is, we think, proper, in view of the similarity of the respective legislative systems, for our Estate Duty authorities to derive guidance from English Estate Duty practice. But in a case such as this, in which proviso (iv) to section 7(d) is an integral part of the taxation provision under consideration, and its existence is directly relevant to the issue of whether or not the right to equality is being violated, we must bear in mind the principle that in construing and applying a statutory provision the Court must give to it, if possible, a meaning consistent with constitutionality.

As it has been stated quite recently by Mr. Justice Harlan, in delivering the opinion of the U.S.A. Supreme Court in *Lynch* v. *Overholser* (8 L ed 2d, 211, at p. 215):-

"That construction finds further support in the rule that a statute should be interpreted, if fairly possible, in such a way as to free it from not insubstantial constitutional doubts".

It is, indeed, possible to construe the notion of a gift being "part of the normal expenditure of the deceased, and to have been reasonable, having regard to the amount of his income, or to the circumstances under which the gift is made," in proviso (iv), in a much more liberal manner than the corresponding provision in England is being construed, and, thus, increase considerably the effectiveness of such proviso (iv) in achieving its purpose as part of the legislative scheme to which it belongs.

In particular, the issue of normality of expenditure should not be considered only in relation to a deceased donor's expenditure on gifts, but in relation to such donor's spending habits in general; and there should exist no presumption against the reasonableness of a gift merely because it has been made out of capital. On each occasion the relevant administrative decision should be reached on the basis of the totality of all relevant considerations, due weight being given always to whether or not the gift involved was made, in fact, with the intention of avoiding the incidence of estate duty.

In the light of all that we have said regarding the true nature and effect of the said provision in section 7(d) and regarding the interpretation that should, and can, be placed on proviso (iv) thereto, and when the provision in question is examined in its proper context and on a broad and common sense basis, it seems to us that it is, in the final analysis, a fiscal policy measure bearing a reasonable relationship to the object of estate duty legislation and making a reasonable and usual classification in furtherance of such object. We have not, therefore, been satisfied by the Applicant, beyond reasonable doubt—as we must be before deciding to invalidate legislation—that such provision is unconstitutional as being contrary to Article 28 of the Constitution.

Reference has been made, during argument on this point, to the U.S.A. Supreme Court cases of *Schlesinger* v. *State of Wisconsin* (70 Law. ed. 557) and *Heiner* v. *Donnan* (76 Law. ed. 772).

In the *Schlesinger* case it was held that an inheritance tax on gifts made within six years of death, and conclusively presumed to have been made in contemplation of death, was a denial of the equal protection of laws, in violation of the 14th Amendment to the U.S.A. Constitution.

The relevant statutory provision in the State of Wisconsin provided that "every transfer by deed, grant, bargain, sale or gift, made within six years prior to the death of the grantor, vendor or donor, of a material part of his estate, or in the nature of a final disposition or distribution thereof, and without an adequate valuable consideration, shall be construed to have been made in contemplation of death".

Though, it does appear that in the U.S.A. the notion of "in contemplation of death" is wider than that of "mortis causa", and is regarded as capable of including an intention to make a transfer of property in lieu of, or in order to avoid, the passing of such property by operation of law—under a will or in case of an intestacy—the difference between the position in the *Schlesinger* case and that in the case before us is a clear and substantial one:

The Wisconsin statute which led to the decision in the *Schlesinger* case created an irrebuttable presumption regarding the *subjective* intention of a transferor, thus discriminating arbitrarily between transferors, and against transferees, whereas our section 7(d) lays down a reasonable objective criterion—by virtue of the "three years' provision" therein—as to whether property shall be deemed or not to have passed upon the death of a deceased donor; in other words, it draws a reasonable distinction between categories of property (see, also, in this respect *Louca and The Republic* (1965) 3 C.L.R., 383). Moreover, our own legislation, due to provisos (iv) and (v) to section 7(d)—and particularly by means of proviso (iv)—does safeguard effectively against rendering the said "three years' provision" either arbitrary or unreasonable, and against enabling it to raise an irrebuttable presumption in all cases of gifts made within three years before the donor's death.

In the *Heiner* case a provision of a Federal statute in the U.S.A. (imposing a death transfer tax in respect of transfers at the time of, or in contemplation of, death) that any transfer made within two years prior to the death of the transferor should be deemed to have been made "in contemplation of death" within the meaning of the statute, was found to violate the due process clause of the 5th Amendment to the U.S.A. Constitution.

All that we have said, already, about the case before us being distinguishable from the *Schlesinger* case, applies to render the present case distinguishable from the *Heiner* case, as well. Furthermore, in the *Heiner* case the provision complained of was found to be contrary to the due process clause in the 5th Amendment to the U.S.A. Constitution, which does not correspond to anything in our Article 28 of the Constitution, on which, eventually, counsel for Applicant have chosen solely to rely, for the purposes of the contention about unconstitutionality; and it is, in this respect, interesting to note that in the opinion of the U.S.A. Supreme Court in the *Heiner* case the *ratio decidendi* in the *Schlesinger* case was taken to be, mainly, the provision in the 14th Amendment to the U.S.A. Constitution about due process, and not the provision about equal protection of the laws in the same Amendment.

There is nothing in our Constitution safeguarding expressly the right to due process in the sense in which such right is safeguarded under the U.S.A. Constitution, except that the provisions in Article 30.2 of our Constitution, safeguarding the right to a fair trial, do coincide to a certain extent with the concept of due process.

In this case learned counsel for the Applicant have not sought to rely on Article 30.2, either by way of the particulars of the grounds of law on which this recourse is based, or during argument; and we think rightly so, because the provisions of our Article 30.2, which are practically the same as those of Article 6(1) of the European Convention of Human Rights, of 1950, apply only to the determination of "civil rights and obligations or of any criminal charge," and liability under a fiscal law, which is a branch of public law, appears not to come within the ambit of Article 6(1) of the Convention, and, consequently, not within the ambit of our Article 30.2, either. (See "*X against Belgium*" decided by the European Commission of Human Rights on the 1st October, 1965, and reported in the relevant 1965 Year Book, No. 8, at p. 282, and particularly at p. 312).

As a result, on the basis of all that has been stated hitherto in this judgment, it follows that the contention of the Applicant regarding unconstitutionality must fail.

The next issue which falls to be determined is whether or not the "three years' provision" in section 7(d) of Law 67/62 is, at all, applicable to the gift of £500 made to the Applicant by the deceased in March, 1961, when, admittedly, the said Law had not yet been enacted.

It has been submitted in this respect that in March, 1961, there was not estate duty legislation in force, because Cap. 319 had ceased to be in force on the 31st December, 1960, by virtue of the provisions of Article 188.2 of the Constitution, and the Duties or Taxes (Continuation of Provisions) Law 1960 (Law 23/60), which was enacted in order to continue in force, *inter alia*, Cap. 319 until the 31st March, 1961, is not a constitutionally valid piece of legislation.

Also, the U.S.A. Supreme Court case of *Shwab* v. *Doyle* (66 Law. ed. 747) was cited to us in support of the proposition that, in a case such as the present one, Law 67/62 could not validly be given retrospective effect so as to affect the gift made to the Applicant in March, 1961; this submission was made in addition to reliance having been placed on the provisions of Article 24.3 of our own Constitution which excludes the imposition of any tax with retrospective effect.

We did not find it necessary to resolve in this judgment the question of the validity of Law 23/60; and this is so because we think that section 7(d) of Law 67/62 is directly and validly applicable, itself, to the gift made by the deceased in March, 1961. Our reasons for this view are as follows:–

The death of the deceased took place on the 9th June, 1963, after the enactment of Law 67/62 on the 20th October, 1962. It is the event of his death which rendered *then* the gift taxable for purposes of estate duty; and the fact that the gift made to Applicant in March, 1961, is brought within the ambit of the notion of property passing on death, by virtue of the provisions of section 7(d) of the said Law, does not render the Law an enactment imposing retrospective taxation contrary to Article 24.3 of our Constitution. The position is clearly analogous to that in the case of *HjiKyriacos and Sons Ltd.* (5 R.S.C.C. 22), where the statute involved was, similarly, not found to be retrospective in a sense offending against Article 24.3.

Regarding the general principle of non-retrospectivity of legislation, which found expression in *Shwab* v. *Doyle* (*supra*), it is clear from that case, too, that, in effect, all that principle amounts to is a presumption of non-retrospectivity which can be rebutted by the express wording in the enactment concerned. In that case Mr. Justice McKenna said, in delivering the opinion of the Court, (at p. 752):

> " There is absolute prohibition against them when their purpose is punitive; they then being denominated *ex post facto* laws. It is the sense of the situation that that which impels prohibition in such case exacts clearness of declaration when burdens are imposed upon completed and remote transactions, or consequences given to them of which there could have been no foresight or contemplation when they were designed and consummated.....................
> If the absence of such determining declaration leaves to the statute a double sense, it is the command of the cases that that which rejects retroactive operation must be selected".

In the case before us Law 67/62 expressly provides that its provisions shall apply in relation to the death of any person who has died on or after the 1st December, 1942, (see its section 4); and, thus, its relevant intent is expressly indicated. Moreover, it cannot be said that when the gift of March, 1961, was made to the Applicant there was no estate duty legislation, on the strength of which the possibility of such gift being computed for estate duty purposes could be foreseen or contemplated, because there was then in force Law 23/60 by virtue of which the provisions of section 7(d) of Cap. 319—identical practically to those of section 7(d) of Law 67/62—were continued in force until the 31st March, 1961; and notwithstanding the arguments advanced against the validity of Law 23/60 it constituted at the material time an enactment which was in force, having not been declared to be invalid by judicial pronouncement.

Thus the principle propounded in *Shwab* v. *Doyle* (*supra*) cannot be of any assistance to the Applicant for the purpose of putting the gift made to him, in March, 1961, by the deceased donor, outside the ambit of section 7(d) of Law 67/62.

We come now to the manner in which the legislation concerned has been applied to the two gifts made to the Applicant on the aforementioned dates:

In this respect the Respondent Commissioner of Estate Duty had this to say, in reply to counsel for the Applicant, in *exhibit* 1(*a*) (in relation to the two gifts concerned and gifts made to other donees by the same deceased person):-

> " Regarding your argument that 'all these gifts formed part of the deceased's normal expenditure' I have already explained that they are neither 'normal' nor expenditure. Gifts made out of capital are *not* expenditure. Moreover there is extreme inconsistency in the values gifted, from £400 in 1958 to £30,000 in 1962. The only reasonable inference is that the deceased, realising that he did not have long to live, began giving away his capital.
>
> This does not preclude consideration of evidence of special circumstances in which any of these gifts may be deemed as normal expenditure".

From the above we have formed the view that the Respondent Commissioner did not apply proviso (iv) to section 7(d) in a manner compatible with the proper interpretation of this proviso, as we have found it to be in this judgment.

We have, therefore, reached the conclusion that the *sub judice* assessment has to be annulled as being contrary to law and in excess of powers; and it is hereby declared to be *null* and *void* and of no effect whatsoever. The matter will now have to be reconsidered by the Commissioner of Estate Duty in the light of this judgment.

Regarding costs we think that the proper course is not to make any order.

Sub judice assessment annulled;
no order as to costs.