IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNIS C. VOYIAS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MUNICIPALITY OF LIMASSOL AND ANOTHER,

Respondents.

(Case No. 432/72).

Municipal Corporations—Professional annual licence—Licence fee—Payable for issue of licence to carry on or practise a business, trade or profession within the municipal limits—Such fee is in the way of taxation—Municipal Council—Vested with power to prescribe the amount of the licence fee to be paid by the members of each class—Sections 156, 157 (1), 158 *and* 161 *of the Municipal Corporations Law, Cap.* 240 *(as incorporated by reference into Law No.* 64 *of* 1964)*—Part I of the* 10*th Schedule to the said Law (as amended by Law No.* 89/1970)*—Paragraph* 5 *of said Part I.*

Professional licence—Licence fee—See supra; *see also* infra.

Fiscal equality—Principle of fiscal equality safeguarded under Article 24.1 *of the Constitution—Section* 157 (1) *of Cap.* 240 (supra) *and the imposition thereunder of the professional licence fee not repugnant to that Article—Classification into twelve classes of the persons liable to pay the said licence fee—Part I of the* 10*th Schedule to the said law,* supra*—Neither discriminatory nor arbitrary—Rather in line with the principle of fiscal equality.*

Right to carry on or practise any business, trade or profession—Safeguarded under Article 25 *of the Constitution—Not absolute and can be regulated in the public interest—Section* 157 (1) *of the said statute* (supra) *and the imposition thereunder of a professional licence fee do not infringe the said right—Statutory provisions regarding professional licences and fees in relation thereto do not actually regulate the professions, callings, trades practised or*

carried on within the municipal limits—Such provisions are taxing provisions setting up a machinery conceived and intended exclusively to provide revenue for the Municipalities.

Constitutional law—Articles 24.1 and 25 of the Constitution, supra—*Not violated by section 157 (1) of the Municipal Corporations Law, Cap. 240 (as re-enacted)—See further* supra.

In this recourse under Article 146 of the Constitution the applicant, who is the Manager of the Limassol Branch of the Barclay's Bank International, seeks the annulment of the decision whereby the respondent Municipality of Limassol imposed on him a fee in the sum of £45 for his professional annual licence in respect of the year 1972. The matter of the said annual licence is governed by the Municipal Corporations Law, Cap. 240 (as re-enacted), sections 156, 157, 158 and 161 (the full text of which is set out *post* in the judgment) and Part I of the 10th Schedule to the said Cap. 240 (as amended by Law 89/70).

Section 157 (1) of the Law (*supra*) provides:

> "Any person desiring to carry on, exercise or practise for profit any ...... calling or profession within any municipal limit shall apply to the (municipal) council for a licence and the council shall determine the fee payable therefor, not exceeding the appropriate fee set out in Part I of the 10th Schedule to this Law ....".

Now, Part I of the 10th Schedule just referred to, creates a division into twelve classes or categories of the persons liable to pay the yearly professional licence fee; paragraph 5 of that Part I provides that 'salaried persons' earning an amount of over £3,000 *per annum* are liable to pay a fee not exceeding £50. Then, section 161 of the statute (*supra*) provides that:

> "Any person who, within any municipal limits, carries on, exercises or practises any business, trade or profession without:- (a) having applied for a licence so to do .... or (b) applying for the renewal of any licence so to do....... shall be guilty of an offence and shall, on summary conviction, be liable to a fine not exceeding twenty pounds".

It is common ground that the applicant in this case is the Manager of the Limassol Branch of Messrs. Barclay's Bank International with annual emoluments in the region of £4,600. It would seem that in determining the annual licence fee imposed

on the applicant (*viz.* £45), the respondent Municipality relied on a scale prepared by them within the frame-work of the aforesaid paragraph 5 of Part I of the 10th Schedule to the Statute (*supra*) and which scale is based on the amount of the emoluments of each applicant for the annual licence in question. It is hardly necessary to point out that the whole machinery of the said annual licence issued on payment of a fee is obviously nothing more than a device of taxation, the relative fee paid therefor being merely a tax imposed on any person carrying on, exercising or practising any business, trade, occupation or profession within the municipal limits of each Municipality in the island.

It was objected by counsel for the applicant that section 157 of the statute as well as Part I of the 10th Schedule thereto (*supra*) and, generally, the whole device of the annual professional licence fee are unconstitutional in that they contravene Articles 24.1 and 25 of the Constitution (see *infra*). Counsel for the applicant further argued that in any case the Municipal Council of the respondent Municipality had no power under the statute to set up the aforesaid scale upon which they determined the fee payable by the applicant in this case (*supra*).

None of the main arguments propounded on behalf of the applicant in support of his case appears to have satisfied the learned judge, who, dismissing the recourse, held, *inter alia*, that:–

(a) The Municipal Council of Limassol has the power under the statute to make the scale upon which they relied in imposing the fee in question, such power being consonant with paragraph 5 of Part I of the 10th Schedule to the statute (*supra*);

(b) section 157 of the statute (*supra*) and the annual professional licence fee (or tax) provided thereunder and payable by a limited class of persons—*i.e.* those carrying on or practising any business, trade or profession within the municipal limits—and not by every person according to his means within such limits, in no way contravene the principle of fiscal equality safeguarded under Article 24.1 of the Constitution (*infra*), such principle not excluding separate and different kinds of taxation, based on different material or on the same material, but on the basis of different criteria;

(c) the aforesaid classification into twelve classes set up under Part I of the 10th Schedule to the statute (*supra*) far from being discriminatory, creates on the contrary differentiations in line with the principle of fiscal equality;

(d) the statutory provisions requiring a licence and the payment of a fee (tax) for the carrying on or practising any business, trade or profession within the municipal limits, is clearly outside the ambit of Article 25 of the Constitution (safeguarding the right to exercise or carry on any profession, business or profession, *infra*), because such provisions do not in the least regulate or restrict any business, trade, calling or profession, constituting a taxing legislation *i.e.* a legislation creating a machinery or a method of taxation, conceived and intended solely to provide revenue for the benefit of the Municipalities.

Let us now deal in some detail with the main points raised on behalf of the applicant in support of his case:–

First point: The Municipal Council (of Limassol) has no power under the statute to set up the scale referred to above and, generally, to prescribe the amount of the professional licence fee to be paid by the members of each class—there are twelve such classes—established under Part I of the 10th Schedule to the statute (*supra*).

Second point: Article 24.1 of the Constitution provides that every person is bound to contribute according to his means towards the public burdens. That being so, section 157 of the statute (*supra*) and the imposition thereunder of the aforesaid annual professional licence fee (tax) offend against the principle of fiscal equality safeguarded under that Article 24.1, once the fee (tax) in question is not imposed on every person according to his means within the municipal limits, but only on the limited class of persons who work or are employed within such limits. Furthermore, the aforesaid division into classes (twelve) under Part I of the 10th Schedule to the statute (*supra*) of the persons liable to pay the professional licence fee (tax) is, also, repugnant to the principle of fiscal equality, because such classification is arbitrary and discriminatory amongst the various taxable professions, callings trades etc. etc.

Third point: Considering that in view of the relevant statutory provisions (*supra*) no person can lawfully carry on or practise any business, trade or profession within the municipal limits without having first obtained the statutory annual licence on payment of the relevant fee—a licence, be it noted, which has nothing to do with qualifications and the like—, it follows that the statutory provisions concerning the device of such annual professional licence contravene Article 25 of the Constitution which, subject to certain conditions or limitations, safeguards the right of every citizen to carry on or practise any business, trade or profession (see immediately hereafter).

Paragraphs 1 and 2 of Article 25 of the Constitution just referred to read as follows:

"25.1. Every person has the right to practise any profession or to carry on any occupation, trade or business.

2. The exercise of this right may be subject to such formalities, conditions or restrictions as are prescribed by law and relate exclusively to the qualifications usually required for the exercise of any profession or are necessary only in the interest of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person or in the public interest:

Provided that no such formalities, conditions or restrictions purporting to be in the public interest shall be prescribed by a law if such formality, condition or restriction is contrary to the interests of either Community".

Held, 1. *As regards the legal nature of the annual professional licence fee:*

The payment of the said fee required as a preliminary to the issue of the annual professional licence, is in the nature and form of a tax intended, no doubt, to provide the Municipality with revenue.

Held, II: (*Regarding the First point,* supra):

The Municipal Council has power to prescribe the amount of the annual professional licence fee to be paid by the members

of each of those classes created under Part I of the 10th Schedule to the statute (*supra*); and, therefore, the Municipal Council is given power under the law to impose on the applicant in the present case the fee in question, because he comes within the classification 'Salaried Persons' made under paragraph 5 of the aforesaid Part I of the 10th Schedule.

Held, III: (Regarding the Second point, supra):

(1) (a) It was submitted by counsel for the applicant that section 157 of the statute (*supra*) and, generally, the payment of the annual professional licence fee under the relevant provisions of the statute (*supra*) contravene the principle of fiscal equality safeguarded under Article 24.1 of the Constitution, because the imposition of such tax (fee) is made on a limited class of citizens—those who carry on or practise any business, trade or profession within the municipal limits—and not on every person according to his means within such limit as provided in that Article (*supra* and *infra*).

(b) It is true that Article 24.1 establishes the principle of fiscal equality whereby every person is bound to contribute according to his means towards the public burdens. But with respect, this principle does not exclude taxation on profession, calling or occupation such as the one in hand in the present case; nor, indeed, does it prevent separate kinds of taxation on different material or on the same material but on the basis of different criteria.

(2) Finally, I am of the view that the applicant has failed to show that the aforesaid classification into twelve classes made under Part I of the 10th Schedule of the statute (*supra*) was arbitrary or unreasonable or discriminatory amongst the various classes concerned. Indeed I would have thought that had I accepted the argument of counsel for the applicant that a uniform licence fee should be imposed on each person exercising a calling or profession within the municipal limits, then I would have no hesitation to say that a violation of the fiscal equality would have taken place which would result in *inequality of burden.*

Held, IV. (Regarding the Third point, supra):

(1) (a) It was submitted by counsel for the applicant that the imposition of the professional licence fee by the Municipality violates the provisions of Article 25 of the Constitution (*supra*),

because such licence and such licence fee are not within the formalities, conditions or restrictions regarding the exercise of this right and, therefore, they restrict the right of the applicant to practise his profession contrary to the provisions of that Article 25 (*supra*).

(b) First of all it must be noted that Article 25 (*supra*) guards only against direct and not indirect interference with the rights safeguarded thereunder (see *Police* and *Georghios Liveras*, 3 R.S.C.C. 65, at p. 67; *Psaras* v. *The Republic and Another* (1968) 3 C.L.R. 353; *Loizou* v. *Poullis* (1969) 1 C.L.R. 17 at pp. 24–25. Cf. also *Coppage* v. *Kansas*, 236 U.S. I, 14; 59 Law. Ed. p. 441).

(2) In the light of the authorities, I have come to the conclusion that the imposition of this licence fee does not infringe the right of the applicant to practise his profession; it is only imposed with a view to exact revenue and it is assessed as a condition upon which the relevant licence issues; but such licence has nothing to do with regulating or restricting the profession of the applicant and it is only part of the machinery conceived solely for the purpose of producing revenue for the Municipality. In other words the licence is merely a mode of assessing the tax (the so-called fee) and not a regulatory process of the activities constituting a business, trade, calling or profession.

Held, V. (*Regarding the general issue*).

For these reasons, I am of the view that the applicant has failed to convince me that section 157 of the statute and Part I of the 10th Schedule thereto (*supra*) contravene beyond reasonable doubt the provisions of Article 25 of the Constitution and that they are unconstitutional (*Calder* v. *Bull*, 3 Dall. 386, 399 (1798)). I would add that this rule is sometimes expressed in this formula *viz.* that a statute is presumed to be constitutional until proved otherwise beyond reasonable doubt (see: *Alabama State Federation of Labor* v. *McAdory*, 325 U.S. 450; 89 Law. Ed. 1725; *Board for Registration of Architects etc.* v. *Kyriakides* (1966) 3 C.L.R. 640 C.A.).

Recourse dismissed. No order as to costs.

Cases referred to:

Coppage v. *Kansas*, 236 U.S. I, 14; 59 Law. Ed. p. 441;

Royall v. *Virginia*, 116 U.S. 572, 29 Law. Ed. 735;

Gundling v. *Chicago*, 177 U.S. 183, 44 Law. Ed. 725;

Bradley v. *Richmond*, 57 Law. Ed. 603;

Ohio Oil Co. v. *Conway*, 74 Law. Ed. 775, at pp. 781-82;

Police and *Georghios Liveras*, 3 R.S.C.C. 65, at p. 67;

Psaras v. *The Republic and Another* (1968) 3 C.L.R. 353;

Loizou v. *Poullis* (1969) 1 C.L.R. 17, at pp. 24-25;

District Officer Nicosia and *Ioannides*, 3 R.S.C.C. 107, at p. 109;

Impalex Agencies Ltd. v. *The Republic* (1970) 3 C.L.R. 361;

Kontos v. *The Republic* (reported in this part at p. 112 *ante*, at p. 124).

Calder v. *Bull*, 3 Dall. 386, 399 (1798);

Alabama State Federation of Labor v. *McAdory*, 325 U.S. 450; 89 Law. Ed. 1725;

Board for Registration of Architects etc. v. *Kyriakides* (1966) 3 C.L.R. 640, C.A.;

Decisions of the Greek Council of State: Nos. 933/1952 and 1396/1956.

Recourse.

Recourse against the decision of the respondents to impose on the applicant the sume of £45.– as professional tax for the year 1972.

M. M. Houry, for the applicant.

J. Potamitis, for the Respondents.

Cur. adv. vult.

The following judgment was delivered by:

HADJIANASTASSIOU, J.: In these proceedings under Article 146 of the Constitution, the applicant, Mr. Ioannis Voyias of Limassol, seeks the following relief: A declaration that the imposition by the respondents of the amount of £45 as a tax for the grant of a licence to him to exercise his profession for

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the year 1972, is contrary to the provisions of the Constitution and is made in excess or abuse of the powers vested in the respondents and is *null* and *void* and of no effect whatsoever.

The facts are these: The applicant is the Manager of the Limassol office of Barclay's Bank International Ltd., and on September 29, 1972, a letter (*exhibit* 1) was addressed to him by the Municipality of Limassol informing him that the Municipal Council had imposed on him the sum of £50 as a tax for the purpose of issuing to him a licence in order to carry on his profession for the year 1972. On October 10, 1972, counsel on behalf of their client, wrote (*exhibit* 2) to the Chairman of the Municipal Council, telling him that although the tax was reduced by £5 from the original amount, nevertheless, their client does not consider that reduction as a satisfactory arrangement, and invited him to reduce substantially the amount of tax imposed. On November 6, the Municipality in reply (*exhibit* 3) said that they regretted that they decided not to reduce further the amount of the professional tax of their client, adding that the reduction of £5 was due to partial revision of the schedule of the taxable sums in order to benefit all the tax payers as a whole. The Municipality then goes on " The criteria for the imposition of the professional tax remained unchanged in the way they are fixed under the Municipal Law".

On November 16, the applicant feeling aggrieved because of the refusal of the Municipal Council to reduce substantially his professional tax, filed the present recourse, and the application raised in substance four grounds of law: (1) that Part I of the 10th Schedule of s. 157 (as amended) is contrary to the provisions of Articles 24 and 25 of the Constitution; (2) the tax imposed purports to be based on the applicant's income which is taxable under the Income Tax Laws and is of a destructive or prohibitive nature and amounts to double taxation; (3) that once the tax is imposed according to applicant's means, no procedure exists by which the respondents can verify the means of the townsmen of Limassol under Article 24.1 of the Constitution in order to determine the true proportion of the applicant's contribution to the Municipal budget; and (4) that as s. 157 of Cap. 240 and Law 89/70 impose or provide for the imposition of a tax, duty or rate on the practice of any profession or the carrying on of any occupation, trade or business, then such section and law conflict with Article 25 of the Constitution and are unconstitutional and void.

On December 15, 1972, the respondent Municipality gave notice opposing this application and the facts relied upon are these:- The respondent in determining the fee payable by the applicant relied on the applicant's means and particularly on his emoluments as Manager of the Limassol Branch of Barclay's Bank International Ltd., the amount of which was given to the respondents officially by the applicant.

Pausing here for a moment, it is to be observed that the applicant addressed a letter to the Chairman of the Municipal Committee enclosing at the same time a list, showing details of his emoluments and those drawn by each member of his staff. The respondents further alleged that in determining the correct fee imposed on the applicant, they relied on a scale prepared by them which is based on the amounts of the emoluments of each applicant for a licence. The said scale which was followed in this case regarding the emoluments and the licence fees appears at p. 3 of the opposition. On January 26, the applicant put forward in reply that the imposition of a fee for the granting of a licence to the applicant tantamounts to a restriction not authorized by Article 25.2 of the Constitution because the non-securing of a licence renders the applicant guilty of an offence and renders him liable to criminal proceedings under ss. 156 and 186 of Cap. 240; and that the division made in the 10th Schedule of Cap. 240 (as amended by Law 89/70) is arbitrary and discriminates amongst various occupations and it departs from the principle of equality in the imposition of taxes and at the same time it infringes Article 24.1 in as much as the contribution is not related to everyone's means. Furthermore, the applicant in paragraph 4 alleged that the scale referred to is not made by or under the authority of any law nor was it published nor is there any machinery for ascertaining the emoluments of the persons sought to be taxed and the procedure followed by the respondents is based on conjecture.

There is no doubt that the Municipalities are authorities of local government and the administration of local affairs is within the competence of a Municipal Corporation. Most of the provisions of the Municipal Corporations Law, Cap. 240, which ceased to be in force on May 31, 1962, have been incorporated by reference expressly into the provisions of the Municipal Corporations Law, 1964 (Law 64/64). These provisions relating to the powers and duties of a Municipal Council

will be referred to later on in this judgment. However, s. 8 (2) of Law 64/64 (as amended by Law 9/70 s. 2) provides that the performance of the duties and the exercise of powers specified in ss. 123–126 (inclusive) and 136–181 (inclusive) of this Law, including the Schedules referred to in those sections (which for the purposes of the 1964 law are deemed to be embodied in this law) will be within the competence of Municipal Corporations.

The material sections regarding professional licences read as follows:-

"s. 156: No person shall, within any municipal limits, carry on, exercise or practise any.......... calling or profession for profit unless he has obtained a licence so to do in accordance with the provisions of this Law.

s. 157 (1): Any person desiring to carry on, exercise or practise, for profit, any .... calling or profession within any municipal limit shall apply to the council for a licence and the council shall determine the fee payable therefor, not exceeding the appropriate fee set out in Part I of the 10th Schedule to this Law: provided that-(a) any person aggrieved may, within 7 days from the day of the notification to him of such determination, appeal to the Commissioner of the district whose decision shall be final and conclusive".

Now this 10th Schedule which deals with yearly licences for persons carrying on profession etc. and fixing the annual fee payable, has been amended by Law 89/70 of the Schedule which in effect provides and classifies the various classes of persons. Paragraph 5 which deals with the case in hand shows that salaried persons who are earning over an amount of £3,000 are expected to pay an annual licence not exceeding the amount of £50.

"s. 158: If any person fails to apply to the council for a licence, as in section 157 of this Law provided, within one month of his having commenced or recommenced to carry on, exercise or practise any......... calling or profession, the council may determine the fee payable by such person, not exceeding the appropriate fee set out in Part I of the Tenth Schedule to this Law, and enter his name in the register of trade licences and the decision of the council shall be final and conclusive".

Then section 161 provides:

"Any person who, within any municipal limits, carries on, exercises or practises any business, trade, calling or profession without –

(1) having applied for a licence so to do within one month of his having commenced or recommenced so to do; or

(b) applying for the renewal of any licence so to do within one month of the expiry of any licence previously granted to him,

shall be guilty of an offence and shall, on summary conviction, be liable to a fine not exceeding twenty pounds".

There is no doubt that the work performed by the Municipalities involves considerable expenditure and I think, rightly so, they are forced to invent ways and means to find sources of income to meet some of the cost of the services placed at the disposal of the public. Roughly, the principle is that the persons making use of such services should contribute more towards providing than those who do not. One of such sources is the income from the licence fees of professionals, and the Municipal Council having in mind that the emoluments of the applicant were in the region of £4,600 p.a., imposed on him the amount of £50 at first, but later on on review that amount was reduced to £45.

The first question to be decided in this recourse is whether the Municipal Council has power to prescribe the amount of the professional fee to be paid by the members of each class. I think that the answer to this question is in the affirmative and I have come to the conclusion that the Municipal Council is given power under the law to impose on the applicant that professional fee because he comes within the classification made in paragraph 5, under the heading " Salaried Persons" of Part I of Sch. 10 of the law. It should be noted, however, that the payment required as a preliminary to the licence, is not simply a professional fee, but in the nature and form of a tax, no doubt, in order to provide the Municipality with revenue.

The second question is whether the imposition of this professional tax violates Article 24 of the Constitution once this tax is not imposed on every person according to his means,

but only on a class of persons who work or are employed within the limits of the Municipality. On this second question it is stated on behalf of the applicant that s. 157 (as amended) is unconstitutional, being contrary to Article 24 of the Constitution, because the imposition of such tax is made on a limited class of citizens carrying on a profession or calling and not on every citizen according to his means; and because such tax is arbitrary and discriminatory among the various professions, and is of a destructive nature.

It is true that Article 24.1 establishes the principle of fiscal equality whereby every person is bound to contribute according to his means towards the public burdens. But with respect, one should remember that we are not here dealing with taxation under the Income Tax Laws, but with the power of the Council to impose a professional tax on every person exercising a calling or a profession within the Municipal limits. The principle, therefore, of fiscal equality is not violated, in my view, because it does not prevent the Municipal Council from fixing the amount demanded for the right to pursue a business or calling with a view to revenue on a limited class of persons, irrespective of whether it was based on the salary of the persons seeking such licence. If authority is needed, I think *Royall* v. *Virginia*, 116 U.S. 572, 6 S. Ct. 510, 29 Law. Ed. 735, provides sufficient guidance. In this case under the Laws of Virginia, an assessment, made by law, a condition precedent to obtaining a licence for pursuing a profession, is payable in coupons of certain bonds issued by the State, being within the meaning of the words " taxes, debts, dues and demands due to the State", as used in the Act of March 30, 1871. The plaintiff in error was convicted, in the Hustings Court of the City of Richmond, of the misdemeanour under the Laws of Virginia, of practising law as a lawyer without having first obtained a licence so to do from the Commissioner of the Revenue.

Mr. Justice Matthews, having referred to the Virginia Code of 1873 that no person shall without a licence authorized by law practise as an attorney, explained that this revenue licence is different from, and in addition to the licence to practise law, given only to such as on examination, as to their character and acquirements, are found to be duly qualified therefor. In speaking about what is a licence, Mr. Justice Matthews had this to say at p. 737:-

"The payment required as a preliminary to the licence is in the nature and form of a tax, and is a due to the State which it may demand and exact from every one of its citizens who either will or must follow some business avocation within its limits, to the pursuit of which the assessment is made a condition precedent. It is an occupation tax, for which the licence is merely a receipt and not an authority, except in that sense, because it is laid and collected as revenue, and not merely as incident to the general police power of the State, which under certain circumstances and conditions, regulates certain employments with a view to the public health, comfort and convenience. In the latter class of cases the exactions may be either fees or fines, as they are proportioned to the expense of regulation or laid as a burden upon and a discouragement to the business, and not taxes which are levied for the purpose of raising public revenue by means of a contribution either from the person or the property or the occupation of all citizens in like circumstances. It was, therefore, in the character of a tax that the payments were required and made for licences issued under the Internal Revenue Acts of the United States. *McGuire* v. *Commonwealth*, 3 Wall. 387 (70 U.S. bk. 18, L. ed. 165). Speaking of them in the Licence Tax Cases, 5 Wall. 462, 471 (72 U.S. bk. 18, L. ed. 497, 500), Chief Justice Chase said: 'The granting of a licence, therefore, must be regarded as nothing more than a mere form of imposing a tax', etc., and that 'this construction is warranted by the practice of the Government from its organization. They were regarded merely as a convenient mode of imposing taxes on several descriptions of business, and of ascertaining the parties from whom such taxes were to be collected. But as we have already said, these licences give no authority. They are mere receipts for taxes'. The licence under the laws of Virginia, required from the plaintiff in error, cannot be distinguished from those of the class just referred to, issued under the internal revenue laws of the United States.

We are referred to the case of *Sights* v. *Yarnalls*, 12 Gratt. 292, as defining a licence under the laws of Virginia in a different sense. We think, on the contrary, that it is not only consistent with the view we have taken, but strongly in corroboration of it. In that case, the amount assessed as a condition of the licence is expressly designated to be

a tax. It was an exaction made by the Municipal government of the City of Wheeling, under a law which expressly authorized it, in reference to houses of entertainment to grant or refuse licences; and the case was one of that class. The language of the city charter was: 'They shall further have authority to regulate the manner in which such houses or places shall be kept, and to levy and collect taxes thereon, in addition to any tax which is or shall be payable on the same to the State'.

The law of Virginia, however, on this point was definitely settled in accordance with the view we have here taken, in the case of *Ould* v. *Richmond*, 23 Gratt. 464, followed by *Humphreys* v. *Norfolk*, 25 Gratt. 97, and *Western Union Telegraph Co.* v. *City of Richmond*, 26 Gratt. 1.

In the case of *Humphreys* v. *Norfolk*, *supra*, the Supreme Court of Appeals of Virginia, referring to the previous case of *Ould* v. *Richmond*, said: 'The objection was made in that case that a power to license involves in its exercise the power to prohibit without such licence, and that such power vested in a municipal corporation is incompatible with the rights of attorneys conferred by their general licence to practise in any and every part of the State. This objection did not prevail. Judge Anderson, upon this point, speaking for the entire Court, conceded that the city authorities could not prohibit attorneys at law already licensed from practising their profession within the city limits. The exercise of the vocation was, however, a civil right and privilege, to which are attached valuable immunities and pecuniary advantages, and is a fair subject of taxation by the State and by municipal corporations. The power to impose a licence tax upon the profession is included in the general power of taxation given by the sixty-ninth section of the charter and is not taken away by subsequent limitations. The principles settled by that case', continued the Court, 'are decisive of this. In neither case is the attempt made to prohibit the exercise of the business or vocation. The licence required by the corporation is merely a mode of assessing the tax; if it be reasonable and just, it matters but little by what name it is called. The power to impose fines and penalties for a failure to pay the tax required is not only an incident to the power of taxation, but is expressly conferred by statute'.

> ...That the party complying with the statutory conditions is entitled as of right to the licence, is conclusive that the payment is a tax laid for revenue and not an exaction for purposes of regulation. *Mayor, etc.* v. *Second Ave.* R.R. Co. 32 N.Y. 261; *State* v. *Hoboken*, 33 N.J. L. 280; 2 Dill. Mun. Corp. 766 chap. 19, para. 768. The occupation, which is the subject of the licence, is lawful in itself, and is only prohibited for the purpose of the licence; that is to say, prohibited in order to compel the taking out a licence, and the licence is required only as a convenient method of assessing and collecting the tax. Cooley, Tax. 407. Such a licence fee was held to be a tax by this Court in the cases of *Brown* v. *Md.* 12 *Wheat.* 419 (25 U.S. bk. 6, L. ed. 677); *Ward* v. *Md.* 12 *Wall.* 418 (79 U.S. bk. 20, L. ed. 449), and *Welton* v. *Mo.* 91 U.S. 275 (Bk. 23, L. ed. 347). We think it entirely clear, both from the nature of the case and upon authority, that the payments demandable by the State for the licence applied for by the plaintiff in error are taxes within the meaning of the Act of March 30, 1871, in discharge of which coupons were receivable by its terms, and that the plaintiff in error must be regarded, after making the tender alleged, in the same situation in law as if he had tendered gold or silver coin or other lawful money of the United States".

In *Gundling* v. *Chicago*, 44 Law. Ed. 725, the plaintiff in error was convicted in a Police Court of the City of Chicago of a violation of an ordinance of that city forbidding the sale of cigarettes by any person without a licence and was fined 50 dollars. Mr. Justice Peckham, after referring to three sections of the ordinance in question, had this to say at p. 729:-

> " The other objection made to the validity of the ordinance is that the amount of the licence fee ($100) is an improper and illegal interference with the rights of the citizen, and is therefore a violation of the Fourteenth Amendment.
>
> The amount of the fee is fixed by the common council for the privilege of doing business, and the text of the ordinance and the amount of the fee therein named would seem to indicate that it is both a means adopted for the easier regulation of the business and a tax in the nature of an excise imposed upon the privilege of doing it. In either case the state has power to make the exaction, and

its exercise by the city under state authority violates no provisions of the Federal Constitution.

The Supreme Court of Illinois has held that the city was authorized by the state law to impose the licence fee".

Then, after quoting *Royall* v. *Virghinia*, 29 Law. ed. 735, 737, regarding the question of a licence to do business, he went on:

"It is not a valid objection to the ordinance that it partakes of both the character of a regulation and also that of an excise or privilege tax. The business is more easily subjected to the operation of the power to regulate where a licence is imposed for following the same, while the revenue obtained on account of the licence is none the less legal because the ordinance which authorized it fulfils the two functions, one a regulating and the other a revenue function. So long as the state law authorizes both regulation and taxation, it is enough, and the enforcement of the ordinance violates no provision of the Federal Constitution".

In *Bradley* v. *Richmond*, 57 Law. Ed. 603, the plaintiff was convicted in the Hustings Court of the City of Richmond for the violation of an ordinance forbidding the carrying on of the business of a "private banker" without a licence. The question before the Court was, whether the ordinance in question, required all persons desiring to pursue certain businesses and occupations to pay a special licence tax for the privilege of prosecuting such business. Mr. Justice Lurton delivered the opinion of the Court and had this to say at p. 605:-

"The tax imposed is not merely an exercise of the police power regulating a business; but is a tax assessed as a condition upon which the licence issues. Though it fulfils the double function of both regulating the business and producing revenue, it was fully authorized by the law of the state, as adjudged by the very judgment under (481) review. *Gundling* v. *Chicago*, 177 U.S. 183, 189, 44 L. ed. 725, 729, 20 Sup. Ct. Rep. 633. Since the purpose of the statute is double, it is plain that to exact the same amount from each person or firm subject to the tax might result in inequality of burden under like circumstances and conditions. Therefore it was that the ordinance provided for

a division into classes, those in each class paying the same tax.

The objection to the ordinance does not grow out of any contention that there may not exist just and reasonable distinctions justifying a greater tax upon some of these persons or firms engaged in doing what is called a 'private banking' business than upon others engaged in the same general business; but arises from the fact that the law provides no rule by which some are to be placed in one class and some in another. An ordinance which commits to a broad, committee, or single official the power to make an arbitrary classification for purposes of taxation would meet neither the requirement of due process, nor that of the equal protection of the law.

But this ordinance does not authorize any arbitrary classification, nor could the state or the council legally confer or exercise arbitrary power in classifying for the purpose of either regulating or licensing or taxing. The guaranty of the 14th Amendment would forbid.

But whether the power of classifying be exercised by the state directly or by a city council authorized to require the payment of such a tax as a condition to the issuance of a licence, it is at last the exercise of legislative discretion, and is subject, in either case, to the guaranty referred to.

But when the matter concerns the determination of the business or occupation which may be required to take out a licence and pay a tax as a condition of obtaining such a licence, the power of the state is subject to no limitations, save those found in the guaranty of due process and the equal protection of the law. In the present instance, the state has delegated this power of selecting the businesses and occupations carried on within the city of Richmond, and of dividing them into classes and determining the amount of the tax to be paid by the members of each class. The state Supreme Court has decided that there can be no objection under the Constitution of the state to such delegation. Neither do we see any reason under the 14th Amendment why the state may not delegate to either the council of the city or to a board appointed for that purpose the power to divide such occupations or privileges into classes or subclasses, and prescribe the tax to be paid

by the members of each such class. *Gundling* v. *Chicago*, 177 U.S. 183, 44 L. ed. 725, 20 Sup. Ct. Rep. 633; *Fischer* v. *St. Louis*, 194 U.S. 361, 372, 48 L. ed. 1018, 1024, 24 Sup. Ct. Rep. 673; *New York ex rel. Lieberman* v. *Van De Carr*, 199 U.S. 552, 560, 50 L. ed. 305, 310, 26 Sup. Ct. Rep. 144. In the case last cited, this Court said:

> 'That this Court will not interfere because the states have seen fit to give administrative discretion to local boards to grant or withhold licences or permits to carry on trades or occupations, or perform acts which are properly the subject of regulation in the exercise of the reserved power of the states to protect the health and safety of its people, there can be no doubt'.

That this ordinance does not contemplate any arbitrary discrimination between the persons or firms subject to the licence tax is evident from the direction that they shall be divided into thirteen classes, the members of each class to pay the particular amount named as a condition to the issuance of a licence. It is also evident from the provisions in respect of notice, right to be heard, and a right to a review by the council itself. These are obvious guards against unjust and capricious inequalities".

In *Ohio Oil Co.* v. *Conway*, 74 Law. ed. 775, Hughes C.J., delivering the opinion of the Court, said at pp. 781–782:-

> "The applicable principles are familiar. The states have a wide discretion in the imposition of taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the national government or violating the guaranties of the Federal Constitution, the states have the attribute of sovereign powers in devising their fiscal systems to insure revenue and foster their local interests. 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. *Bell's Gap R. Co.* v. *Pennsylvania*. 134 U.S. 232, 237, 33 L. ed. 892, 895, 10 Sup. Ct. Rep. 533; *Magoun* v. *Illinois Trust & Sav. Bank*, 170 U.S. 283, 293, 42 L. ed. 1037, 1042, 18 Sup. Ct. Rep. 594; *Southwestern Oil Co.* v. *Texas*, 217 U.S. 114, 121, 54 L. ed. 688, 692, 30 Sup. Ct. Rep. 496; *Brown-Forman Co.* v. *Kentucky*, 217 U.S. 563, 573, 54 L. ed. 883, 887, 30 Sup. Ct. Rep. 578; *Sunday Lake Iron Co.* v. *Wakefield Twp.* 247 U.S. 350, 353, 62 L. ed. 1154, 1156, 38 Sup. Ct. Rep. 495; *Heisler* v. *Thomas Colliery Co.*, 260 U.S. 245, 67 L. ed. 237, 43 Sup. Ct. Rep. 83; *Oliver Iron Min. Co.* v. *Lord*, 262 U.S. 172, 179, 67 L. ed. 929, 936, 43 Sup. Ct. Rep. 526; *Stebbins* v. *Riley*, 268 U.S. 137, 142, 69 L. ed. 884, 888, 44 A.L.R. 1454, 45 Sup. Ct. Rep. 424.

With all this freedom of action, there is a point beyond which the state can not 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' *F. S. Royster Guano Co.* v. *Virginia*, 253 U.S. 412, 415, 64 L. ed. 989, 990, 40 Sup. Ct. Rep. 560; *Louisville Gas & E. Co.* v. *Coleman*, 277 U.S. 32, 37, 72 L. ed. 770 773, 48 Sup. Ct. Rep. 423; *Air-Way Electric Appliance Corp.* v. *Day*, 266 U.S. 71, 85, 69 L. ed. 169, 177, 45 Sup. Ct. Rep. 12; *Schlesinger* v. *Wisconsin*, 270 U.S. 230, 240, 70 L. ed. 557, 564, 43 A.L.R. 1224, 46 Sup. Ct. Rep. 260".

In view of the fact that in Greece they have a similar provision in the Constitution (Article 3) establishing the principle of fiscal equality, I think it is very useful and constructive to see

what is the position there regarding the power of the Municipalities in imposing various taxes including a professional one. According to Kyriakopoulos on the Greek Administrative Law 1962, 4th edn. Vol. III at p. 349, the view is that although such taxes amount in fact to double taxation, nevertheless, the avoidance of double taxation is based on the principle of fiscal policy and is not prevented by a Constitutional command. This view accords with the decision No. 933/52 of the Greek Council of State. Furthermore, in Decision No. 1396/56, the Council of State came to the Conclusion that the Constitution does not prohibit the imposition of double taxation when the law empowers the Municipalities to impose taxes including professional tax within their limits. This view, apparently is adopted and followed by Stassinopoulos in his well-known textbook of Lessons of Dimossionomikou Dikeou, 1966, 3rd edn. at pp. 279 and 280, where the author writes about the *principle of fiscal equality and of the internal double taxation*, and has this to say in Greek:-

*" *Τὸ φαινόμενον τῆς ἐσωτερικῆς διπλῆς φορολογίας* ἐμφανίζεται διὰ δύο λόγους: α) διότι συμβαίνει, δύο διάφοροι φορεῖς τῆς φορολογικῆς ἐξουσίας, ὡς π.χ. ἡ Πολιτεία ἀφ' ἑνὸς καὶ ὁ δῆμος ἀφ' ἑτέρου νὰ ἐπιβάλλουν φόρους ἐπὶ τοῦ αὐτοῦ ἀντικειμένου, καὶ β) διότι εἷς καὶ μόνον φορεὺς τῆς φορολογικῆς ἐξουσίας, δηλ. ἡ Πολιτεία, χρησιμοποιοῦσα τὸ σύστημα πολλαπλῆς φορολογίας, λαμβάνει ὡς βάσιν ἄλλοτε μὲν τὴν πηγὴν τῆς προσόδου καὶ ἐπιβάλλει φόρον ἐπ' αὐτῆς, π.χ. εἷς φόρος ἐπὶ τῶν βιομηχανικῶν ἐπιχειρήσεων, ἄλλοτε δὲ αὐτὴν τὴν πρόσοδον, π.χ. φόρος ἐπὶ τῶν κερδῶν ἐκ βιομηχανικῶν ἐπιχειρήσεων. 'Επίσης εἶναι δυνατόν, εἷς καὶ ὁ αὐτὸς φορολογούμενος νὰ φορολογηθῇ δὶς ὑπὸ διαφόρους ἰδιότητας, αἱ ὁποῖαι συμπίπτουν ἐν τῷ προσώπῳ του, ἤτοι ὡς δημότης τοῦ α δήμου καὶ ὡς κάτοικος τῆς β πόλεως ....

'Αντισυνταγματικότης τοῦ φόρου λόγῳ παραβάσεως τῆς ἀρχῆς τῆς ἰσότητος δὲν ὑπάρχει ἐκ τοῦ λόγου ὅτι ἐπιβάλλεται δὶς φόρος ἐπὶ τῆς αὐτῆς ὕλης, ἀρκεῖ ὅτι ἕκαστος ἐκ τῶν ἐπὶ τῆς αὐτῆς ὕλης ἐπιβαλλομένων φόρων στηρίζεται ἐπὶ διαφόρου, ἰδιαιτέρας βάσεως.

'Αληθὲς ὅμως εἶναι ἐπίσης ὅτι ἐνίοτε ἡ διπλῆ φορολογία ἀπολήγει εἰς ἀνισότητα βαρῶν καὶ μαρτυρεῖ προχειρότητα εἰς τὴν φορολογικὴν πολιτικὴν τοῦ κράτους, τὸ ὁποῖον, εὑρῖσκον

* An English translation of this text appears at p. 415 *post*

μίαν ἀποδοτικὴν φορολογικὴν πηγήν, τὴν ἀπομυζᾷ κατ' ἐπανάληψιν, διὰ νὰ ἐξεύρῃ οὕτω μίαν εὔκολον ἀπόδοσιν.

Διὰ τοῦτο, ἡ φορολογικὴ νομοθεσία τείνει νὰ περιορίζῃ τὰς περιπτώσεις τῆς διπλῆς φορολογίας, ὁ δὲ ἑρμηνευτὴς τῶν φορολογικῶν νόμων, ἐν περιπτώσει ἀμφιβόλου ἐννοίας τοῦ νόμου, δέον νὰ τείνῃ εἰς ἀποκλεισμὸν τῶν ἑρμηνευτικῶν λύσεων, αἱ ὁποῖαι ὁδηγοῦν εἰς τὴν διπλῆν φορολογίαν".

In effect, the view taken is that the principle of fiscal equality is not violated because of the imposition of a double tax on the same material, but it suffices to say that each separate tax imposed on the same material must be based on a different private basis.

In India regarding tax on professions, trades, callings and employments, express provision is required to empower the state to levy a tax on professions etc. In Basu's Commentary on the Constitution of India, 5th edn., at p. 309 under the heading "Tax in respect of professions, trades, callings or employments" we read:-

> "The tax may be imposed on professions and employments, including service, even though the employee is already paying income tax. It may be imposed on trades or callings........ or on the income arising........ from profession.......".

Having reviewed the authorities and in the particular circumstances of this case, the imposition by the Municipality of the licence fee on the applicant does not contravene the provisions of Article 24.1 of the Constitution for the following reasons:

(a) because it is authorized by the provisions of s. 157 of Cap. 240 incorporating Part I of the 10th Schedule which fixes the classification of persons for the payment of a yearly licence fee into 12 classes;

(b) because the applicant has failed to show that the said classification was arbitrary or unreasonable or discriminatory in the circumstances of this case. Indeed I would have thought that had I accepted the argument of counsel for the applicant that a uniform licence fee should be imposed on each person exercising a calling or a profession within the municipal limits

irrespective of the amount earned by each category of persons, then I would have no hesitation to say that a violation of the fiscal equality would have taken place, and might result in inequality of burden under like circumstances and conditions;

(c) in the circumstances of this case I find myself in agreement with counsel for the respondent that the amount of £45 is not of a destructive or prohibitive nature because, as I said earlier, although it may be considered as a double tax, the imposition by the Municipality of this amount based on different separate criteria, although high, nevertheless, I repeat, that it is not of a destructive nature.

Finally, I think that the argumant of counsel that the burdens of the Municipality should be shared by everyone within the municipal limits is untenable, because the imposition of a tax being in the nature of a professional fee, it was within the power of the Municipality to classify only those persons who are exercising a calling or a profession and not on every citizen residing within the limits of the Municipality.

In view of the reasons I have endeavoured to advance, I have reached the view that the imposition of this licence fee is not unconstitutional and it cannot be said that it has been imposed in abuse or in excess of power of the Municipality.

The third question is whether the imposition of the professional licence fee by the Municipality violates the provisions of Article 25 of the Constitution, because such licence fee is not within the formalities, conditions or restrictions regarding the exercise of this right. On this third question it was submitted by counsel on behalf of the applicant that the imposition of the professional fee violates Article 25 and restricts the right of the applicant to practise his profession.

I think I must state that in the past, in a laissez faire state, the principle of free enterprise was prevailing and the individual was at liberty to choose his own profession or exercise any business without any controls or hindrance from the State. But in a changing society, the exercise of such right could no longer be absolute and the State now has a power to regulate (Cp. Friedman on the Law in Changing Society at p. 256 et seq.) for the protection of the rights of others or of the com-

munity at large. The existence of the State itself and the requirements of good Government presuppose such regulation.

Now, the right to practise any profession or to carry on any occupation is guaranteed in Cyprus by Article 25 of the Constitution which reads:-

"(1) Every person has the right to practise any profession or to carry on any occupation, trade or business.

(2) The exercise of this right may be subject to such formalities, conditions or restrictions as are prescribed by law, and relate exclusively to the qualifications usually required for the exercise of any profession or are necessary only in the interest of the security of the Republic or the Constitutional order or the public safety or the public order, or the public health or the public morals or for the protection of the rights and principles guaranteed by this Constitution or in the public interest".

It is to be noted that Article 25 guards only against direct and not indirect interference with the rights safeguarded thereunder. *Police and Georghios D. Liveras*, 3 R.S.C.C. 65 at p. 67, *Psaras* v. *The Republic and Another* (1968) 3 C.L.R. p. 353. *Loizou* v. *Poullis* (1969) 1 C.L.R. 17, at pp. 24–25. This Article guards against infringements in the exercise of this right as such, but controls in respect of objects which may be necessary for the exercise of such right, are not excluded by this Article. *District Officer Nicosia* and *Ioannides*, 3 R.S.C.C. 107 at p. 109; *Impalex Agencies Limited* v. *The Republic* (1970) 3 C.L.R. 361; and *Kontos* v. *The Republic* (*Permits Authority*) (reported in this part at p. 112 *ante*, at p. 124).

I should have added, however, that in the U.S.A. there is no provision in the Constitution guaranteeing the freedom of trade, business or profession, but this right is safeguarded only by judicial interpretation of the Fifth and Fourteenth Amendments inferring that such freedom arises from the rights of liberty and property provided therein. *Cf. Coppage* v. *Kansas*, 236 U.S. 1, 14; 59 Law. Ed. p. 441. Thus, it appears that the right to practise any profession or to carry on any occupation, trade or business is not absolute and can be regulated in the public interest.

In the light of the authorities and having regard to the facts of this case, I have come to the conclusion that the imposition

of this licence fee does not infringe the exercise of the right of profession of the applicant as such, but it is only imposed for the exaction of this fee as a revenue and not a condition or restriction relating to the qualifications usually required for the exercise of any profession or calling. I will repeat that this professional fee is a tax assessed as a condition upon which the licence issues, but such a licence has nothing to do with regulating the profession of the applicant and it simply produces revenue for the Municipality.

I am sure that no attempt is made to prohibit the exercise of the profession of the applicant by the imposition of such a licence fee. The licence required by the Municipality is merely a mode of assessing the tax; and if it be reasonable and just, it matters but little by what name it is called. The power, of course, to impose a fine for the failure to obtain or renew the licence required, is not only an incident to the power of taxation but it is expressly conferred by s. 161 of the law, and I repeat, in no way prevents a professional from exercising his profession.

For these reasons, I am of the view that the applicant has failed to convince me that section 157 and Part I of Schedule 10 (as amended) contravenes the provisions of Article 25 of the Constitution beyond reasonable doubt, and that it is unconstitutional. (*Calder* v. *Bull*, 3 Dall. 386, 399, (1798)). I would add that sometimes this Rule is expressed in this formula, that a statute is presumed to be constitutional until proved otherwise beyond all reasonable doubt. *Alabama State Federation of Labor* v. *McAdory*, 325 U.S. 450; 89 Law. Ed. 1725; *Board for Registration of Architects and Civil Engineers* v. *Kyriakides* (1966) 3 C.L.R. 640.

For all the reasons I have advanced, I have come to the conclusion that the said decision of the Council regarding the professional tax of £45 is not contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ.

I would, therefore, dismiss this application, but in view of the novelty of this point, and once there is no decided authority in Cyprus on this issue, I do not propose making an order for costs against the applicant.

Application dismissed. No order as to costs.

This is an English translation of the Greek text appearing at pp. 410-411, *ante*.

"The phenomenon of internal double taxation appears for two reasons: (a) Because it happens that two different organs vested with fiscal powers *e.g.* the state on the one hand and the Municipal Corporations on the other, impose taxes on the same material and (b) because one and the same organ vested with fiscal powers, that is the state, by using the system of multiple taxation it sometimes takes as a basis the source of the revenue and imposes a tax thereon *e.g.* one tax on industrial enterprises and sometimes the source itself, *e.g.* a tax on the profits emanating from industrial enterprises. It is also possible for one and the same tax-payer to be taxed twice under various capacities, which coincide with his person, that is in his capacity as a citizen of municipal corporation A and as a resident of town B...

There does not exist unconstitutionality of the tax due to contravention of the principle of equality by reason of imposing a tax twice on the same material; it suffices that each one of the taxes imposed on the same material is based on a different special basis.

It is also true that sometimes double taxation leads to unequality of burdens and is evidence of lack of planning in the fiscal policy of the state which by finding a productive fiscal source, it repeatedly sucks it out in order to find thus an easy source of revenue.

For this reason fiscal legislation tends to restrict instances of double taxation, and the interpretation of fiscal legislation, in case of doubtful meaning of the law, should lean to the exclusion of interpretation solutions which lead to double taxation".