

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LOIZOS XYDIAS
v.
REPUBLIC
(MINISTER
OF INTERIOR
AND ANOTHER)

LOIZOS XYDIAS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR AND ANOTHER,

Respondents.

(Case No. 154/72).

Constitutional Law—Constitutionality of legislation—Judicial control of—Principles applicable—Taxation Laws—Attacked as infringing the principle of equality—The legislative discretion is permitted a great latitude in view of the complexity of fiscal adjustment.

5 *Constitutional Law—Taxes, duties or rates—Article 24. 4 of the Constitution—Mere fact that the duty payable by the tax payer is higher than the net profit made by him from the business in connection with which the duty is paid does not render the legislative enactment imposing it of a destructive nature and as such contrary*
10 *to the said Article 24. 4—Bye-Law 163(1)(a) of the Villages (Administration and Improvement) (Aradippou) Bye-Laws, 1951 (as amended in 1971) not contrary to the said Article 24. 4 or to the Villages (Administration and Improvement) Law, Cap. 243 or to any other Law.*

15 *Equality—Principle of equality—Meaning of—Article 28.1 of the Constitution—Entertainment duty—Fact that such duty is collected by other Improvement Boards by payment of lump sum and by respondent Board by payment of a specified amount for each ticket does not infringe the principle of equality.*

20 *Villages (Administration and Improvement) Law, Cap. 243—Constitutionality of Bye-Laws made thereunder.*

The applicant is a cinema and theatre enterpriser who is running in partnership with others two cinemas at Aradippou village.

25 Following the amendment in 1971, of bye-law 163* of the

* See the new bye-law 163 at pp. 308-309 *post*.

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Villages (Administration and Improvement) (Aradippou) Bye-laws 1951, respondent 2 (the District Officer Larnaca) imposed a duty on cinema and theatre performances performed by applicant by affixing a stamp, of the value provided by the new bye-law 163, on each ticket sold by him.

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The applicant applied to respondent 2 to revise and review the imposition of the new duty and allow him to continue pay a lump sum of £ 10 per month. Respondent 2 turned down his application on the ground that the relevant bye-laws do not permit the collection of a lump sum as entertainment duty.

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Hence the present recourse.

Counsel for the applicant contended:

- (a) That the new bye-law 163 which provides for imposition of duty of about 10% on the amount collected by the applicant as admission fees, is contrary to Article 24. 4 of the Constitution which provides that no tax duty or rate of any kind whatsoever other than customs duties shall be of a destructive or prohibitive nature.

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In this connection counsel alleged that the Improvement Board collects more duty than the net profits of the applicant from his business.

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- (b) That the new bye-law 163 is inconsistent with the enabling section 24(1) of the Villages (Administration and Improvement) Law, Cap. 243, the inconsistency being the discrimination and the unreasonable amount which renders the taxes or dues destructive for the business of the applicant.

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- (c) That section 22 of Cap. 243, as amended by Law 31/69, and the new bye-law 163, are unconstitutional because they create unfavourable discrimination as regards the applicant and other cinema owners in other Improvement Boards such as the Improvement Board of Ayios Dhometios where the cinema owners pay a fixed sum of £ 10 per month as entertainment duty.

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Held, (1) that the mere fact that the duty payable by the tax payer is higher than the net profit made by him from the business in connection with which the tax is paid, does not render the legislative enactment imposing such tax of a destructive nature,

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and that in the present case it cannot be said that an amount of 10% imposed by the Improvement Board as entertainment duty on the admission fees collected by the applicant is an exorbitant amount so as to render the new bye-law 163 inconsistent with the provisions of Cap. 243, or any other Law.

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(2) (After stating the principles governing the question of constitutionality of a statute and the question of "equality" and "discrimination" vide pp. 312-313 *post*) that the fact that this kind of duty is collected by other Improvement Boards by the payment of a lump sum and not by affixing stamps on each ticket does not infringe the principle of equality; the principle of equality entails the equal or similar treatment of all those who are found to be in the same situation and it is not contravened by regulating differently matters which are different from each other (see *Republic v. Arakian and Others* (1972) 3 C.L.R. 294).

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Application dismissed.

Cases referred to:

Board for Registration of Architects and Civil Engineers v. Kyriakides (1966) 3 C.L.R. 640 at p. 654;

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Matsis v. The Republic (1969) 3 C.L.R. 245 at p. 259;

Mikrommatis and The Republic, 2 R.S.C.C. 125;

Republic v. Arakian and Others (1972) 3 C.L.R. 294 at p. 299.

Recourse.

Recourse against the refusal of the respondent to revise and review the imposition of duty on cinema and theatre performances.

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A. E. Georghiades, for the applicant.

Cl. Antoniadis, Counsel of the Republic, for the respondents.

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C. Varda (Mrs.), for the Improvement Board of Aradippou.
Cur. adv. vult.

The following judgment was delivered by:-

MALACHTOS, J.: The Improvement Board of Aradippou is a Board established under the provisions of the Villages (Administration and Improvement) Law, Cap. 243, which came into force on the 2nd day of June, 1950. In exercise of the powers vested in them by section 24 of this Law, the said Improvement Board, made bye-laws, which were published on 18/4/51 in

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Supplement No. 3 to the Cyprus Gazette under Not. 189. Bye-law 2 provides that the Villages (Administration and Improvement) (Pedhoulas) Bye-Laws, 1951, published in Supplement No. 3 to the Gazette of the 14th March, 1951, (hereinafter called "the model bye-laws") shall—

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(a) be deemed to be bye-laws made by the Improvement Board of Aradippou and to be incorporated herein, and

(b) apply to the improvement area of Aradippou: Provided that for the word "Pedhoulas" and for the word "Nicosia" wherever they occur in the model bye-laws the word "Aradippou" and the word "Larnaca" shall be substituted respectively.

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The model bye-laws were made by the Improvement Board of Pedhoulas by virtue of section 24(1)(b) of the Law which provides that a Board may, from time to time, make bye-laws not inconsistent with the provisions of this or any other Law in force for the time being for any of the following purposes, that is to say:—

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(a)

(b) to enable or assist the Board to carry out any of the provisions of section 22 and to provide for the payment of any rates, fees, rents, tolls or charges in connection therewith.

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In this section 22 of the law the powers of the Board are enumerated under subsections (a) to (m). In particular sub-section (k) reads as follows:

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"(k) to grant, within the improvement area, licences and permits, and, subject to the provisions of this Law, attach to such licences or permits such terms and conditions as to the Board may seem necessary or desirable and suspend or revoke such licences and permits whenever the Board on good cause shown considers it advisable so to do".

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Bye-laws 162 and 163 of the said model bye-laws read as follows:

" 162.—(1) Within the improvement area no theatre, building, tent or place shall be used for the performance of any

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stage play or cinematograph exhibition, for dancing, for any entertainment to which the public is admitted or for any public meeting without a licence first obtained therefor from the Board or the person authorized by the Board in that behalf.

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(2) Such licence may be granted either for a single performance, cinematograph exhibition, dance, entertainment or public meeting or for any period not exceeding one month.

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(3) Any licence granted under this bye-law shall be granted to the owner, lessee or occupier of the premises and shall be in such form as the Board may from time to time approve.

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163.-(1) The following fees shall be paid by every person obtaining a licence under this Part of these bye-laws, that is to say:-

(a) For a period of one month a fee, to be determined in each case by the Board, not exceeding £ 6;

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(b) For a period of one week a fee, to be determined in each case by the Board, not exceeding £ 3;

(c) For a single performance, cinematograph exhibition, dance, entertainment or public meeting a fee, to be determined in each case by the Board, not exceeding £ 2.

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(2) Every such fee shall be paid to the person authorized by the Board in that behalf".

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It is clear from the above that the duty imposed on all payments made for admission to any public entertainment by every person obtaining a licence under the above bye-laws was paid periodically either monthly or weekly or for a single performance.

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By section 6 of Law 31/69 section 22 of the Basic Law, Cap. 243, was amended by the addition after paragraph (k) thereof, of a new paragraph (ka). This paragraph which is identical to section 124(2)(n)(i), (ii)(iii) and (iv) of the Municipal Corporations Law, Cap. 240, reads as follows:

“(ka)(i) to impose a duty on all payments made for admission to any public entertainment;

- (ii) to provide that no person shall be admitted for payment to any public entertainment except with a ticket stamped or marked in such manner as to denote that the duty has been paid;
- (iii) to prescribe the manner in which the duty shall be collected and paid; 5
- (iv) to exempt from the payment of the duty or remit the whole or any part of the duty in the case of any public entertainment the takings whereof either wholly or in part are devoted to philanthropic, educational or charitable purposes”. 10

In 1971 the Improvement Board of Aradippou amended the existing bye-laws and as a result bye-law 163 was repealed and reenacted.

The new bye-law, and in particular, bye-law 163(1)(a), (b) 15 and (c) reads as follows:

“ 163. (1)(α) Τὸ Συμβούλιον θὰ ἐπιβάλλῃ τέλος (ἐν τοῖς ἐφεξῆς καλούμενον ‘τέλος θεάματος’) ἐπὶ ὄλων τῶν πληρωμῶν τῶν γενομένων δι’ εἴσοδον εἰς οἰονδήποτε θέατρον, κινηματογράφον ἢ κτίριον, τόπον ἢ σκηνὴν χρησιμοποιουμένην διὰ τὴν διεξαγωγὴν οἰασδήποτε θεατρικῆς παραστάσεως ἢ διὰ κινηματογραφικὴν προβολὴν ἢ διὰ χορὸν ἢ οἰονδήποτε δημοσίαν ψυχαγωγίαν ἢ δημοσίαν συγκέντρωσιν. 20

(β) Τὸ τέλος θεάματος θὰ καταβάλλεται εἰς τὸν Γραμματέα τοῦ Συμβουλίου ὑπὸ τοῦ Διευθυντοῦ ὡς ἀκολουθῶς: 25

(i) Δι’ ἕκαστον εἰσιτήριο, δι’ ἓν ἄτομον, τοῦ ὁποίου ἡ ἀξία δὲν ὑπερβαίνει τὰ 50 μίλς, 5 μίλς.

(ii) Δι’ ἕκαστον εἰσιτήριο, δι’ ἓν ἄτομον, τοῦ ὁποίου ἡ ἀξία ὑπερβαίνει τὰ 50 μίλς ἀλλὰ δὲν ὑπερβαίνει τὰ 100 μίλς, 10 μίλς. 30

(iii) Δι’ ἕκαστον εἰσιτήριο, δι’ ἓν ἄτομον, τοῦ ὁποίου ἡ ἀξία ὑπερβαίνει τὰ 100 μίλς ἀλλὰ δὲν ὑπερβαίνει τὰ 150 μίλς, 15 μίλς.

(iv) Δι’ ἕκαστον εἰσιτήριο, δι’ ἓν ἄτομον, τοῦ ὁποίου ἡ ἀξία ὑπερβαίνει τὰ 150 μίλς, 25 μίλς. 35

(γ) Τὸ τέλος θεάματος θὰ καταβάλλεται κατόπιν ἐπικολλήσεως ἐνόημου ἐπὶ τῶν εἰσητηρίων εἰσόδου πρὸ τῆς πωλή-

σεώς των, τὰ ὁποῖα ὁ Διευθυντῆς θὰ προμηθεύεται παρὰ τοῦ Συμβουλίου.”

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5 (“163.(1)(a) The Board shall impose duty (hereinafter referred to as ‘entertainment duty’) on all payments made for admission in any theatre, cinema or building, place or stage used for the carrying out of any theatrical performance or cinematographic projection or for dancing, or for any public entertainment or public meeting.

10 (b) The entertainment duty shall be paid to the Secretary of the Board by the manager as follows:—

(i) For each ticket, for one person, of which the value does not exceed 50 mils, 5 mils.

15 (ii) For each ticket, for one person, of which the value exceeds 50 mils, but does not exceed 100 mils, 10 mils.

(iii) For each ticket, for one person, of which the value exceeds 100 mils but does not exceed 150 mils, 15 mils.

20 (iv) For each ticket, for one person, of which the value exceeds 150 mils, 25 mils.

(c) The entertainment duty should be paid by affixing stamp on the admission tickets, before their sale, which the Manager should be supplied by the Board”).

25 These amended bye-laws were published in Supplement No. 3 to the Cyprus Gazette of 3/12/71 under Not. No. 963.

30 The applicant in this recourse, who is a cinema and theatre enterpriser, and is running in partnership with others two cinemas at Aradippou village, on 21/2/72 applied to the District Officer of Larnaca, who is the Chairman of the Improvement Board of Aradippou, to revise and review the imposition of duty on cinema and theatre performances, which was imposed as a result of the new Bye-Law 163 and allow him to pay a lump sum of £ 10.- per month instead of affixing stamps on each ticket
35 sold.

By letter dated 6th April, 1972, the District Officer replied as follows:

“ I have the honour to refer to your application of the 21st February, 1972, by which you apply that the Improvement Board of Aradippou should discharge you from payment of entertainment duty for your cinemas by the affixing of stamps on the tickets sold, and instead to pay to the Board a monthly fee of £ 10.-, and to inform you that the Board has considered your application, but cannot accede to it, as the bye-laws of the Board do not permit the collection of a lump sum as entertainment duty but by the affixing of stamps on the sold tickets”.

As a result the applicant filed the present recourse claiming a declaration of the Court that the decision of the District Officer of Larnaca dated 6th April, 1972, is void and of no legal effect whatsoever.

The grounds which appear on the face of the application and on which the application is based, read, verbatim, as follows:

- (a) The said decision is unconstitutional as it vitiates and/or contravenes fundamental articles of the Republic. 5
- (b) The Rules made by the Improvement Board of Aradippou as regards the imposition of duty and/or dues and/or fees and charges on Cinema and Theatrical performances are unconstitutional, arbitrary and most unfair and unreasonable as there is unfavourable discrimination with other Rules made in respect of imposition of such duty, and/or dues and/or fees and charges by other Improvement Boards, namely the Improvement Board of Ayios Dhometios etc., which Boards impose similar duty, and/or dues and/or fees and charges by fair, just and reasonable monthly payment, i. e. £ 10.- monthly for areas with much more greater population in comparison with the inhabitants of Aradippou. 20 25 30
- (c) The right of imposition of such duty, and/or dues and/or fees and charges by way of stamps or otherwise on every Theatrical and Cinema performances in only given to the Municipal Corporations, pursuant to s. 124(n)(i) of the Municipal Corporations Law Cap. 240. This Law does not make any provision for Improvement Boards and is therefore only applicable to Towns and as a matter of fact only the Town Municipalities 35 40

impose such duty, and/or dues and/or fees and charges until now and the respondents are among the first Improvement Boards who made such bye-laws and/or regulations.

- 5 (d) The said decision is inequitable and against the principles of natural Law, the Common Law and is therefore oppressive.

10 As far as I could make out from the above grounds as well as from the arguments put forward by counsel for applicant, his complaint is that the new bye-law 163 which provides for imposition of duty of about 10% on the amount collected by the applicant as admission fees, is contrary to Article 24.4 of the Constitution which provides that no tax, duty or rate of any kind whatsoever other than customs duties shall be of a destructive or prohibitive nature. In the present case, according always to the allegations of counsel for applicant, the Improvement Board collects more duty than the net profits of the applicant from his business.

20 Counsel for applicant further argued that the power to make bye-laws is given to the Board by section 24(1) of The Villages (Administration and Improvement) Law, Cap. 243, which provides that any bye-laws made under this section should not be inconsistent with the provisions of this or any other law. He submitted that the new bye-law 163 is inconsistent with this Law, the inconsistency being, as he put it, the discrimination and the unreasonable amount which renders the taxes or dues destructive for the business of the applicant.

30 He also argued that section 22 of the Law, Cap. 243, as amended in 1971 and the new bye-law 163, which was made thereunder, are unconstitutional because they create unfavourable discrimination as regards the applicant and other cinema owners in other Improvement Boards such as the Improvement Board of Ayios Dhometios where the cinema owners pay as entertainment duty a fixed amount of £ 10.- per month.

35 I have considered the arguments of counsel for applicant, as far as I have been able to apprehend them, and I must say from the outset that I find no merit in them. The mere fact that the duty payable by the tax payer is higher than the net profit made by him from the business in connection with which the tax is paid, does not render the legislative enactment imposing such tax of a destructive nature.

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In the case in hand it cannot be said that an amount of 10% imposed by the Improvement Board as entertainment duty on the admission fee collected by the applicant is an exorbitant amount so as to render the new bye-law 163 inconsistent with the provisions of the Law, Cap. 243, or any other law.

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In considering the question of constitutionality of a statute we have to be guided by certain well established principles governing the exercise of judicial control of legislative enactments. A rule of precautionary nature is that no act or legislation will be declared void except in a very clear case or unless the act is unconstitutional beyond all reasonable doubt. (*The Board for Registration of Architects and Civil Engineers v. Kyriakides* (1966) 3 C.L.R. 640 at page 654).

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When taxation laws are attacked on the ground that they infringe the doctrine of equality the legislative discretion is permitted by the judiciary a great latitude in view of the complexity of fiscal adjustment; in other words, the power of the state to classify for purposes of taxation is of wide range and flexibility. (*Matsis v. The Republic* (1969) 3 C.L.R. 245 at page 259).

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The question of “discrimination” and “equality before the law” was considered in a number of decisions of this Court starting from the case of *Mikrommatis* and *The Republic* 2 R.S.C.C. 125. In the recent case of *The Republic v. Nishian Arakian and Others* (1972) 3 C.L.R. 294, this Court in its appellate jurisdiction reviewed the authorities on this point and repeated the principle enunciated in *Mikrommatis* case “that equality before the law in paragraph 1 of Article 28 of the Constitution does not convey the notion of exact arithmetical equality but it safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things”. At page 299 of this report this Court adopted the principles enunciated in the following three cases of the Greek Council of State, namely, Case No. 1273/65 where it was stated that the principle of equality entails the equal or similar treatment of all those who are found to be in the same situation. In Case No. 1247/67 it was held that the principle of equality safeguarded by Article 3 of the Greek Constitution of 1952—which corresponds to Article 28.1 of our Constitution—excludes only the not making of differentiations which are arbitrary and totally unjustifiable. In

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Case No. 2063/68 it was held that the principle of equality was not contravened by regulating differently matters which are different from each other.

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5 The fact that this kind of duty is collected by other Improvement Boards by the payment of a lump sum and not by affixing stamps on each ticket does not infringe the principle of equality. As it has been stated in the *Arakian* case, *supra*, the principle of equality entails the equal or similar treatment of all those who are found to be in the same situation, and it is not contravened
10 by regulating differently matters which are different from each other.

For the reasons stated above this recourse fails.

There will be no order as to costs.

Application dismissed. No order as to costs.

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