[TRIANTAFYLLIDES, P., STAVRINIDES, HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

1977
May 3
—
NICOS ANASTASSIOU
v.
REPUBLIC (MINISTER OF FINANCE AND ANOTHER)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
NICOS ANASTASSIOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF FINANCE,
2. THE COMMISSIONER OF INCOME TAX,

Respondents.

(*Case No.* 157/76).

Income Tax Laws, 1961 to 1973—Income "remitted and received" in the Republic—Section 5(1) of the Laws—Meaning.

Special Contribution (Temporary Provisions) Law, 1974 (Law 55/74)—Has extra-territorial application—Resident of the Republic, employed by the United Kingdom Government in the Sovereign Base Areas—Liable to pay special contribution, under section 3 of this Law, in respect of his income—Emoluments (Temporary Reduction) (Amendment) Law, 1975 (Law 15/75)—Income Tax Laws, 1961 to 1973 section 5(1) (b) and Taxes (Quantifying and Recovery) Law, 1963 (Law 53/63) (as amended by Law 61/69).

Equality—Principle of Equality—Article 28.1 of the Constitution—Special Contribution (Temporary Provisions) Law, 1974 (Law 55/74)—Differentiation made by such Law for the payment of contributions thereunder instead of under The Emoluments (Temporary Reduction) Law, 1974 (Law 54/74) does not result in discrimination and unequal treatment—Existence of different circumstances which make the differentiation reasonable.

Special Contribution (Temporary Provisions) Law, 1974 (Law 55/74)—Not contrary to Article 28.1 of the Constitution.

Special Contribution (Temporary Provisions) Law, 1974 (Law55/74)—Applicable both to salaried and self-employed persons.

The applicant in this recourse complained against a decision of the respondent Commissioner of Income Tax requiring him to pay a special contribution in respect of his emoluments for 1975, under the provisions of the Special Contribution (Temporary Provisions) Law, 1974 (Law 55 of 1974).

Counsel for the applicant contended:

(a) That Law 55/74 is applicable only to the income of self-employed persons and is not applicable at all to that of salaried persons, such as the applicant.

(b) That Law 55/74 is a Law of the Republic of Cyprus which has no extra-territorial application, and therefore it does not apply to the emoluments of applicant who was an employee of the United Kingdom Government, working in the British Sovereign Base Areas, outside the territory of the Republic, though he resided at Larnaca in the Republic.

(c) That if applicant is found liable to pay special contribution under Law 55/74 then this would result in unequal treatment offending against Article 28 of the Constitution.

Held, dismissing the recourse, (1) that Law 55/74 is applicable both to salaried and self-employed persons.

(2) That Law 55/74 has extra-territorial application to the extent which is necessary in order to enable the respondents to require the applicant to pay under it a special contribution.

(3) That the application of Law 55/74 does not result in unequal treatment or discrimination contrary to Article 28 of the Constitution.

(A) *Per Triantafyllides, P.:*

(1) That when the relevant interrelated legislative provisions (Laws 55/74, 54/74, 51/74, 43/75, 15/75) are looked as a complete whole, it emerges that Law 55/74 is an all-embracing enactment, applicable both to salaried and self-employed persons, from the operation of which are exempted only those whose income is subject to reduction under Law 54/74 or Law 51/74 (now Law 36/75).

(2) That the combined effect of the provisions of section 51 of Law 58/61 and of section 3(8) of Appendix 'O' to the Treaty of Establishment give to Law 55/74 extra-territorial

application to the extent which is necessary in order to enable the respondents to require the applicant to pay under it a special contribution.

(3) That Law 55/74 is, in essence, a taxing statute; that it is, indeed, a socio-economic measure which was introduced in view of the repercussions of the calamitous for our country events in the summer of 1974; that in view of the fact that, in certain respects, a person such as the applicant, who is employed in the Sovereign Base Areas, is to be found on a different footing (sometimes better, sometimes worse) when he is compared to other salaried persons who reside and work in the Republic of Cyprus, it is not possible to hold that the requirement that the applicant, or any others like him, should pay a special contribution under Law 55/74 results in any unequal treatment or discrimination contrary to Article 28 of the Constitution merely because as submitted by counsel for the applicant, salaried persons, who reside and work in the Republic and whose emoluments are reduced under Law 54/74, enjoy, as regards tenure of office and terms of employment, the protection of the provisions of Law 50/74, whereas the applicant, who resides in the Republic but works in the Sovereign Base Areas, does not; and that no unreasonable or arbitrary classification is entailed, such as would warrant a finding that Law 55/74 offends against the principle of equality enshrined in Article 28 of the Constitution.

(B) *Per Stavrinides J.:*

That the matter, except as to the point about discrimination, is concluded in favour of the respondent by the combined effect of section 5 of the Income Tax (Foreign Persons) Law, 1961 and paragraph 3(8) of Appendix 'O' to the Treaty of Establishment; and that for the rest the point about discrimination must fail.

(C) *Per Hadjianastassiou, J. (Malachtos J. concurring).*

(1) That the contention that Law 55/74 is applicable to the income of all self-employed persons only and is inapplicable to all salaried persons cannot be accepted because the purpose of section 3 of Law 55/74 (as amended by Law 43/75) in effect is to bring under the provisions of the Law all incomes which have not been subjected to any reduction, such as the applicant's income which has not been subjected under the provisions of Law 54/74.

(2) That once the money is brought into the Republic by the applicant—and this has not been denied by the applicant—this case falls within the meaning of s. 5(1) (b) of the Income Tax Laws 1961-1976 and therefore the income of the applicant is liable to special contribution under the provisions of Law 55 of 1974 (as amended by Law 15 of 1975); and that, therefore, the contention of counsel on this issue must be dismissed.

(3) That Article 28 safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things, both as far as equality before the law is concerned and discrimination thereof (*Mikrommatis and The Republic,* 2 R.S.C.C. 125 and *Matsis v. Republic* (1969) 3 C.L.R. 245, adopted and followed); that taking into consideration that all the salaried and self employed persons contribute to the same cause, there is no room for the criticism by counsel that, because the employees of the Government of Cyprus enjoy a tenure of office, in contrast to the other employees working at the Sovereign bases, this results in a discriminatory or unequal treatment, contrary to Article 28 of the Constitution; and that, therefore, the contention of counsel must be dismissed once the purpose of the law is to alleviate the suffering of a lot of other Cypriots.

(D) *Per A. Loizou J. (Malachtos J. concurring):*

(1) That Law 55/74 does not only apply to self-employed persons but to all other sources of income which have not been subjected to any reduction under any other Law.

(2) For income to be taxable under section 5(1) (b) of Law 53/63 it is not necessary to have accrued or be derived from a source in the Republic; that it is enough if it was remitted and received in the Republic irrespective of where the services for which the gains or profits from such employment were rendered; and that as the meaning of the words "remitted and received in the Republic" in section 5(1) of the Income Tax Laws 1961 to 1973 include the notion of bringing in as well, the applicant must be considered as a person having an income which renders him liable to pay special contribution in respect thereof, under Law 55/74 as amended by Law 15/75.

(3) That the tragic events and the disruption of the economy of the island that resulted therefrom necessitated the enactment of these laws; and the fact that the applicant belongs to a

different class from the point of view of terms of employment and employer and the repercussions that the situation prevailing in the island might have on them renders the differentiation made, by requiring them to pay contribution under Law 55/74 instead of 54/74 as other salaried people employed in the Republic, as not amounting to discrimination and unequal treatment; that there exist different circumstances which make the differentiation reasonable, in addition to the fact that salaried people under Law 54/74 have their contribution deducted at the source, whereas, contributions under Law 55/74 are paid periodically, which results in some benefit; that, therefore, there is a different treatment for different class of people and a reasonable at that, and that the fact that the applicant and people in his category do not enjoy the benefits of Law 50/74, does not change the situation so rendering Law 54/74 unconstitutional as claimed.

Application dismissed.

Cases referred to:

Tomalin v. *S. Pearson & Son Limited* [1909] 2 K.B. 61;

Attorney-General of the Province of Alberta and Another v. *Huggard Assets, Ltd.* [1953] 2 All E.R. 951 at pp. 956-957;

C.E.B. Draper & Son, Ltd. v. *Edward Turner & Son Ltd.* [1964] 3 All E.R. 148 at p. 150;

Henry Kendall & Sons (a firm) v. *William Lillico & Sons Ltd. and Others* [1968] 2 All E.R. 444;

Spyrou and Others (No. 1) v. *Republic* (1973) 3 C.L.R. 478 at p. 484;

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

Rai Ramkrishna v. *Bihar* (1963) A.S.C. 1667;

Jefferson v. *Hackney*, 32 L.Ed. 2d 285 at p. 296;

Lehnhausen v. *Lake Shore Auto Parts Co.*, 35 L.Ed. 2d 351 at pp. 354-355;

Gresham Life Society v. *Bishop*, 4 T.C. 464 at p. 472;

Scottish Widow's Fund Life Assurance Society v. *Farmer* [1909] 5 T.C. 502;

Thomson (Inspector of Taxes) v. *Moyse* [1960] 3 All E.R. 684;

Harmel v. *Wright (Inspector of Taxes)* [1974] 1 All E.R. 945;

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

Recourse.

Recourse against the decision of the respondent Commissioner of Income Tax requiring applicant to pay a special contribution in respect of emoluments of his in 1975, under the provisions of the Special Contribution (Temporary Provisions) Law, 1974 (Law 55/74).

A. Triantafyllides with *A. Economou*, for the applicant.

A. Evangelou, Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgments were read:-

TRIANTAFYLLIDES, P.: This recourse is one out of a series of similar recourses raising the same legal issues and it has been heard by the Full Bench of this Court as a test case.

The applicant complains against a decision of the respondent Commissioner of Income Tax—(who comes under the respondent Minister of Finance)—requiring him to pay a special contribution in respect of emoluments of his in 1975, under the provisions of the Special Contribution (Temporary Provisions) Law, 1974 (Law 55/74).

As it appears from the material before the Court the applicant objected to the payment of such contribution on the ground that he is an employee of the United Kingdom Government and so, though he resides at Larnaca, in the Republic, he works in the British Sovereign Base Areas, outside the territory of the Republic.

By a letter dated May 27, 1976, the respondent Commissioner rejected the applicant's objections; in such letter (*exhibit* 2) he wrote to the applicant as follows:-

"With reference to your objection against the 'Special Contribution' levied on you for the quarters 30th June, 30th September and 31st December, 1975 un-

der assessment numbers 2642/2/75X, 2642/3/75X and 2642/4/75X respectively and for which you had filed before the Supreme Court Recourse No. 28/76, claiming that in accordance with the provisions of the Special Contribution (Temporary Provisions) Law, No. 55 of 1974 you are not liable to Special Contribution, I would like to inform you that after carefully considering your case, I have arrived at the conclusion, that you are subject to the provisions of the said law for reasons mentioned below and that I am unable to modify the assessments:

(a) You are a resident of the Republic;

(b) Under Section 3 of Law 55/74 any income derived from any source other than emoluments, in respect of any office or employment, in respect of which a provision for reduction has been made under the Emoluments (Temporary Reduction) Law No. 54 of 1974, is liable to 'Special Contribution'.

(c) Your emoluments became liable to the provisions of the Special Contribution (Temporary Provisions) Law No. 55 of 1974 as from 1st April, 1975 upon the enactment of the Emoluments (Temporary Reduction) (Amendment) Law No. 15 of 1975;

(d) By virtue of Section 6 of Law No. 55 of 1974, the provisions of the Income Tax Laws 1961 to 1973 and of the Taxes (Quantifying and Recovery) Law No. 53 of 1963 as amended by Law No. 61 of 1969 apply. Therefore under Section 5(1) (b) of the Income Tax Laws 1961 to 1973 your income accruing in, derived from or received in the Republic in respect of gains or profits from any office or employment, irrespective of whether you are serving in Cyprus or elsewhere is liable to Special Contribution.

2. As provided under Section 13(2) (b) of the Taxes (Quantifying and Recovery) Law No. 53 of 1963 as amended by Law No. 69 of 1969, I did not

accept your Returns of Income (form I.R.265) submitted on 4th November, 1975 in respect of the above mentioned quarters declaring NIL income and after enquiries made from your employers regarding your 1975 emoluments, to the best of my judgment I levied the Special Contribution as notified you under assessment Nos. 2642/2/75X, 2642/3/75X and 2642/4/75X sent on 29th November, 1975 and 28th February, 1976 respectively.

3. I enclose Notices of Contribution after objection".

The relevant provisions of Law 55/74 are sections 2, 3 and 6 which read as follows:-

"2.-(1) In this Law, unless the context otherwise requires—'contribution' means the special contribution levied by this Law.

(2) Expressions used in this Law not otherwise defined shall have the meaning assigned to such expressions by the Income Tax Laws 1961 to 1973 and the Taxes (Quantifying and Recovery) Laws 1963 and 1969.

3. For the quarter beginning as from the 1st October, 1974, and for every subsequent quarter during the period when this Law shall be in force, there shall be levied and paid a contribution at the rates and in accordance with the provisions set forth in the Schedule, on the income of every person which is derived from any source other than emoluments in respect of any office or employment, in respect of which provision for reduction has been made under the Emoluments (Temporary Reduction) Law 1974 or from rents in respect of which a provision for reduction has been made under the Dwelling Houses (Temporary Provisions) Law 1974.

6. The provisions of the Income Tax Laws 1961 to 1973 and of the Taxes (Quantifying and Recovery) Laws 1963 and 1969 shall apply, *mutatis mutandis,* subject to the amendments set forth in the schedule, but no personal allowances shall be granted and

no income shall be exempt from the contribution save the income of an owner of a Cyprus ship as referred to in section 3 of the Merchant Shipping (Taxing Provisions) Laws 1963 to 1973, including any income derived from the management of a Cyprus ship".

As it appears from the provisions of section 3, above, a contribution is levied, under Law 55/74, on income of any kind other than income in respect of which provision for its reduction has been made by means either of the Emoluments (Temporary Reduction) Law, 1974, (Law 54/74) or of the Dwelling Houses (Temporary Provisions) Law, 1974 (Law 51/74); and it is to be noted, in this respect, that when, later, Law 51/74 was replaced by the Rent Control Law, 1975 (Law 36/75), section 3 of Law 55/74 was amended accordingly by the Special Contribution (Temporary Provisions) (Amendment) Law, 1975 (Law 43/75).

The relevant corresponding provisions of Law 54/74 are sections 2 and 3 thereof, which read as follows:-

"2. In this Law, unless the context otherwise requires:-

'abnormal situation' has the meaning assigned to this term by subsection (1) of section 2 of the Termination of Employment (Temporary Restrictive Provisions) Law, 1974;

'Court' means the Industrial Disputes Court established by section 12 of the Annual Holidays with Pay Laws 1967 to 1973;

'emoluments' means remuneration in money paid in any manner whatsoever in respect of any office or salaried services, wherever exercised or rendered and includes any allowance, of a monetary or other kind, paid in consideration for such office or services but does not include any pension or any other retirement grant or gratuity or any sums paid by an approved Provident Fund;

'Law' means the Termination of Employment (Temporary Restrictive Provisions) Law, 1974.

3.-(1) Notwithstanding the provisions of any other Law in force and during the abnormal situation for the purposes of this Law the emoluments shall be reduced by such percentage rate and on such terms as specified in the Schedule:

Provided that -

(a) where the emoluments have been reduced prior to the coming into operation of this Law no further reduction of such emoluments shall be made if the reduction already made is equal to the reduction provided by this Law or if greater it has been made in accordance with the arrangements adopted at the time, otherwise the rate of such reduction shall be fixed in accordance with the procedure in force for the time being, and in case the interested parties are unable to agree thereon, by the Court to which it shall be referred for determination, *mutatis mutandis,* in accordance with section 4 of the Law;

(b) where the reduction made prior to the coming into operation of this Law is less than that provided by this Law then an additional reduction shall be made so that the total reduction shall be in accordance with the provisions of this Law.

(c) where after the coming into operation of this Law it should prove necessary on account of special circumstances to reduce the emoluments by a higher rate than that provided in the Schedule, the rate of such reduction shall be determined in accordance with the procedure in force for the time being, and where the interested parties fail to agree thereon, by the Court to which it shall be referred for determination, *mutatis mutandis,* in accordance with section 4 of the Law:

Provided further that where the person liable to pay the emoluments is the Republic or any body cor-

porate and it neglects to refer the case to the Court within ten days from the failure to reach an agreement, then any interested party may refer the case to the Court".

Both the above sections 2 and 3 were amended subsequently, but it suffices, for the purposes of this case, to refer only to the Emoluments (Temporary Reduction) (Amendment) Law, 1975 (Law 15/75), section 2 of which reads as follows:-

"2. The expression 'emoluments' in section 2 of the principal law is hereby amended by the deletion of the semicolon after the word 'Fund' (last line) and the addition of the words 'or emoluments earned by persons employed by foreign Governments or International Organizations'."

Law 15/75 was published on April 4, 1975, and it is common ground that only then the question arose of applying the provisions of Law 55/74 to a person such as the applicant, who is employed by a foreign Government, because, till then his emoluments were not clearly exempted from the definition of "emoluments" in section 2 of Law 54/74 and, therefore, he could not come within the ambit of Law 55/74.

In order to complete the references to relevant legislation, in so far as it is necessary to do so in relation to this case, it is useful to mention, too, the Termination of Employment (Temporary Restrictive Provisions) Law, 1974 (Law 50/74), which is referred to in section 2 of Law 54/74, and the provisions of which are applicable in relation to the operation of Law 54/74, but not in relation to the operation of Law 55/74.

It has been the submission of counsel for the applicant that Law 55/74 is applicable only to the income of self-employed persons, and not applicable at all to that of salaried persons, such as the applicant.

I cannot accept this view as a correct one. I think that, when the above referred to interrelated legislative provisions are looked at as a complete whole, it emerges that Law 55/74 is an all-embracing enactment, applicable both

to salaried and self-employed persons, from the operation of which are exempted only those whose income is subject to reduction under Law 54/74 or Law 51/74 (now Law 36/75).

The next submission of counsel for the applicant with which I will deal is that Law 55/74 is a Law of the Republic of Cyprus which has no extraterritorial application, and, therefore, it does not apply to the emoluments of a person, such as the applicant, which are earned in employment outside the territory of the Republic.

In *Tomalin* v. *S. Pearson & Son, Limited,* [1909] 2 K.B. 61, the presumption of the non-applicability of statutes extraterritorially was referred to in connection with the Workmen's Compensation Act, 1906, and Cozens-Hardy M.R. said in this respect (at p. 64):-

> "It seems to me reasonably plain that this is a case to which the presumption which is referred to in Maxwell on the Interpretation of Statutes in the passage at p. 213, which has been read by Mr. Waddy, must apply: 'In the absence of an intention clearly expressed or to be inferred from its language, or from the object or subject-matter or history of the enactment, the presumption is that Parliament does not design its statutes to operate beyond the territorial limits of the United Kingdom'."

The corresponding relevant passages in the 12th ed. of Maxwell on Interpretation of Statutes are to be found at pp. 169-177.

In *Attorney-General of the Province of Alberta and Another* v. *Huggard Assets, Ltd.,* [1953] 2 All E.R. 951, Lord Asquith of Bishopstone, in delivering the judgment of the Privy Council, stated the following (at pp. 956-957):-

> "The majority of the Supreme Court, as has been stated, based their decision, in the main, on the Statute of Tenures, 1660. Their reasoning assumes that this statute applied to Canada, or at least to 'Rupert's Land'. The Act has no express 'extent' clause. An Act of the Imperial Parliament today, unless it pro-

vides otherwise, applies to the whole of the United Kingdom and to nothing outside the United Kingdom: not even to the Channel Islands or the Isle of Man, let alone to a remote overseas colony or possession.

.....

The question whether such an Act applied outside England (which, since 1536, has by Act of Parliament included Wales) must depend in such circumstances on the intention of its framers, to be deduced from the nature of its subject-matter and substantive provisions. It would, presumably, have no such external application if its subject-matter were beyond question of merely insular and domestic import. Their Lordships, if it were necessary to decide the point, would incline to the view that the Act of 1660 was of purely local application: that it applied to England only".

In *C.E.B. Draper & Son, Ltd.* v. *Edward Turner & Son, Ltd.*, [1964] 3 All E.R. 148, Lord Denning M.R. said (at p. 150):-

"It seems to me that the Fertilisers and Feeding Stuffs Acts, 1926, applies only to sales which take place within the United Kingdom and not to those which take place elsewhere. This is in accord with the general rule that an Act of Parliament only applies to transactions within the United Kingdom and not to transactions outside;"

Lastly, in *Henry Kendall & Sons (a firm)* v. *William Lillico & Sons, Ltd. and Others* [1968] 2 All E.R. 444, though the *Draper* case, *supra*, came under criticism in other respects, it was approved by the House of Lords in so far as it related to the non-applicability extraterritorially of the statutory provision concerned (see the judgment of Lord Morris of Borth-y-Gest, at p. 471).

It is proper to examine the matter of the disputed extraterritorial application of Law 55/74 together with the further submission of counsel for the applicant that his client is, in any case, not liable to pay any contribution under Law 55/74 because of the provisions of section 51

of Law 58/61—(which was, originally, section 75 of such Law, but was renumbered as section 51 by means of section 28 of the Income Tax (Amendment) Law, 1969 (Law 60/69)). In this respect it should be borne in mind that by means of section 6 of Law 55/74 the provisions of the Income Tax Laws 1961 to 1973 (including Laws 58/61 and 60/69) and of the Taxes (Quantifying and Recovery) Laws 1963 and 1969 are rendered applicable, *mutatis mutandis*, in relation to the operation of Law 55/74; and, actually, as it appears from the already quoted letter of the respondent Commissioner of Income Tax, of May 27, 1976, reliance has been placed by him on the said section 6, as well as on section 5(1) (b) of the Income Tax Laws, when he stated the reasons for which the applicant is required to pay a special contribution under Law 55/74.

Section 5(1) (b), above, reads as follows:-

"5.-(1) Tax shall, subject to the provisions of this Law, be payable at the rate or rates specified hereafter for each year of assessment upon the income of any person accruing in, derived from, or received in the Republic in respect of —

.....

(b) gains or profits from any office or employment, irrespective of whether the person employed is serving in Cyprus or elsewhere, including the estimated annual value of any quarters or board or residence or of any other allowance granted in respect of employment whether in money or otherwise;

....."

The afore-mentioned section 51 of Law 58/61 reads as follows:-

"51.-(1) Notwithstanding anything in this Law contained, the liability to tax of the profits or income derived by, or arising or accruing to, any person resident or employed in the Sovereign Base Area and the liability to tax of the profits or income derived by, or arising or accruing to, any member of the United Kingdom Forces or civilian component or Authorised Service Organisation or of the Forces of the King-

dom of Greece and the Republic of Turkey within the territory of the Republic shall be subject to the relative provisions of the Treaty of Establishment or of the Agreement for the Application of the Treaty of Alliance signed at Nicosia on the 16th August, 1960, as the case may be, and shall be charged, assessed, levied, paid and collected subject to such provisions.

(2) For the purposes of this section -

(a) 'Treaty of Establishment' means the Treaty concerning the Establishment of the Republic of Cyprus signed at Nicosia on the 16th August, 1960, and includes the Exchanges of Notes signed at Nicosia on the same date;

(b) Any word or expression used in sub-section (1) of this section shall bear the meaning assigned to it in the Treaty of Establishment or in the Agreement for the Application of the Treaty of Alliance signed at Nicosia on the 16th day of August, 1960, as the case may be".

The relevant part of the Treaty of Establishment of 1960 is Appendix 'O' thereto, section 3(8) of which reads as follows:-

"(8) Taxes

Taxes, rates and fees payable by Cypriots or in respect of Cypriot property in the Sovereign Base Areas will be as far as possible the same as those in the Republic. The Republic will be invited to collect and keep taxes, rates and fees due from Cypriots resident or working in the Sovereign Base Areas or payable by Cypriots on privately owned or occupied immovable property therein. (This will apply also to taxes, rates and fees due from non-Cypriot residents and workers, exclusive of military personnel, civilians working with them and their families)".

In my opinion the term "taxes" in section 3(8), above, is wide enough to include a special contribution such as the one imposed by Law 55/74.

In my view the combined effect of the provisions of section 51 of Law 58/61 and of section 3(8) of Appendix 'O' to the Treaty of Establishment give to Law 55/74 extraterritorial application to the extent which is necessary in order to enable the respondents to require the applicant to pay under it a special contribution. This Court is not concerned, in this case, with the question of the machinery for the collection of such contribution, in execution of the administrative decision which has been attacked by the present recourse; what had to be decided in this case was only whether or not there exists an obligation on the part of the applicant to pay the contribution.

The next step is to determine what is the exact provision of Law 58/61 which (in view of section 6 of Law 55/74) relates to the said obligation of the applicant.

I do not think that it is necessary to rely on section 5(1) (b) of Law 58/61 for this purpose, because, in my view, the express wording of the first part of section 51(1) of the same Law, far from excluding the obligation of the applicant to pay a special contribution under Law 55/74, does suffice by itself in order to render him liable to do so, in view of the fact that his emoluments, in respect of which the contribution is demanded from him, amount to income "derived by, or arising or accruing to" him as a person employed in the Sovereign Base Areas, in the sense of section 51(1).

It should, perhaps, be pointed out, at this stage, that the fact that in his *sub judice* decision the respondent Commissioner of Income Tax referred expressly to section 5(1) (b) of Law 58/61 does not preclude this Court from upholding his decision, on the basis of the same facts, but on the strength of an alternative legal reason applicable to such facts, namely the effect of section 51(1) of Law 58/61, in conjunction, of course, always, with section 6 of Law 55/74 (see, *inter alia, Spyrou and Others (No.* 1) v. *The* Republic, (1973) 3 C.L.R. 478, 484).

The remaining issue with which I have to deal is the contention of the applicant that if he is found liable to pay special contribution under Law 55/74 then this would result in unequal treatment offending against Article 28 (1) (2) of the Constitution, which 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.

2. Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class, or on any ground whatsoever, unless there is express provision to the contrary in this Constitution".

The approach of our Supreme Court to a complaint of unequal treatment in relation to a matter of taxation has been expounded in, *inter alia*, *Matsis* v. *The Republic*, (1969) 3 C.L.R. 245.

In this respect the Supreme Court of India said the following in the case of *Rai Ramkrishna* v. *Bihar*, (1963) A.S.C. 1667, 1673 (see Seervai on Constitutional Law of India, 2nd ed., vol. 1, p. 223):-

". . . the power of taxing the people and their property is an essential attribute of the Government and Government may legitimately exercise the said power by reference to the objects to which it is applicable to the utmost extent to which Government thinks it expedient to do so. The objects to be taxed so long as they happen to be within the legislative competence of the Legislature can be taxed . . . according to the exigencies of its needs, because there can be no doubt that the State is entitled to raise revenue by taxation. The quantum of tax levied . . . the conditions subject to which it is levied, the manner in which it is sought to be recovered, are all matters within the competence of the Legislature, and in dealing with the contention . . . that the taxing statute contravenes Art. 19, Courts would naturally be circumspect and cautious. Where for instance it appears that the taxing statute is plainly discriminatory, or provides no procedural machinery for assessment and levy of the tax, or that it is confiscatory, Courts would be justified in striking down the impugned statute as unconstitutional".

Useful reference may, also, be made to two rather recent decisions of the Supreme Court of the United States of America:

In *Jefferson* v. *Hackney*, 32 L.Ed. 2d 285, Mr. Justice Rehnquist said (at p. 296):-

> "This Court emphasized only recently, in *Dandridge* v. *Williams*, 25 L.Ed. 2d 491, 501, that in 'the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect'."

In *Lehnhausen* v. *Lake Shore Auto Parts Co.*, 35 L.Ed. 2d 351, Mr. Justice Douglas said (at pp. 354-355):-

> "The Equal Protection Clause does not mean that a State may not draw lines that treat one class of individuals or entities differently from the others. The test is whether the difference in treatment is an invidious discrimination. *Harper* v. *Virginia Board of Elections*, 16 L.Ed. 2d 169. Where taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation. As stated in *Allied Stores of Ohio* v. *Bowers*, 3 L.Ed. 2d 480:
>
> 'The States have a very wide discretion in the laying of their 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 ensure revenue and foster their local interests. 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'.

In that case we used the phrase 'palpably arbitrary' or 'invidious' as defining the limits placed by the Equal Protection Clause on state power".

Law 55/74 is, in essence, a taxing statute; and it is, indeed, a socio-economic measure which was introduced in view of the repercussions of the calamitous for our country events in the summer of 1974. In view of the fact that, in certain respects, a person such as the applicant, who is employed in the Sovereign Base Areas, is to be found on a different footing (sometimes better, sometimes worse) when he is compared to other salaried persons who reside and work in the Republic of Cyprus, I do not think that it is possible to hold that the requirement that the applicant, or any others like him, should pay a special contribution under Law 55/74 results in any unequal treatment or discrimination contrary to Article 28 of the Constitution merely because, as submitted by counsel for the applicant, salaried persons, who reside and work in the Republic and whose emoluments are reduced under Law 54/74, enjoy, as regards tenure of office and terms of employment, the protection of the provisions of Law 50/74, whereas the applicant, who resides in the Republic but works in the Sovereign Base Areas, does not; in my opinion no unreasonable or arbitrary classification is entailed, such as would warrant a finding that Law 55/74 offends against the principle of equality enshrined in Article 28 of the Constitution.

For all the foregoing reasons it is my view that this recourse should fail and has to be dismissed accordingly; but, I am not prepared, in the light of all relevant considerations, to make an order of costs against the applicant.

STAVRINIDES, J.: In my judgment the matter, except as to the point about discrimination, is concluded in favour of the respondent by the combined effect of s. 5 of the Income Tax (Foreign Persons) Law, 1961, and paragraph 3(8) of Appendix 'O' to the Treaty of Establishment.

For the rest I agree that the point about the discrimination must fail.

For these reasons I would dismiss the application.

HADJIANASTASSIOU, J.: The present case is one of a number of cases raising the same legal issues, and following previous practice, we have exercised our jurisdiction under the provisions of s.11 of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33 of 1964) and this case has been heard by the Full Court in its original jurisdiction.

This case raises the question whether the emoluments of the applicant of 1975 are liable to special contribution in accordance with the provisions of the Income Tax Laws 1961-1976, The Emoluments (Temporary Reduction) Law, 1974, (No. 54 of 1974); and The Special Contribution (Temporary Provisions) Law 1974 (Law 55 of 1974).

The facts are these:-

The applicant, Nicos Anastassiou of Larnaca is employed by the United Kingdom Government and he derives his income from employment with the Civilian Establishment and Pay Office (CEPO) of the Sovereign Base areas. He is a resident of the Republic and he complains against the decision of the Director of Inland Revenue to impose on him special contribution on his salary of 1975. Because his emoluments became liable to the provisions of Law No. 55 of 1974 as from April 1, 1975, (upon the enactment of the Emoluments (Temporary Reduction) (Amendment) Law No. 15 of 1975) he completed and submitted returns of income (Form I.R. 265) in accorddance with the provisions laid down under Regulation 2 of the Special Contribution (Temporary Provisions) Regulations, 1975, and he declared his income as being nil. Regulation 2 reads as follows:-

> "Within one month from the date of approval of these Regulations, so far as the quarter beginning as from the 1st October, 1974, is concerned, and within one month from the end of each subsequent quarter during the time when the Law shall be in force, every person liable to pay contribution shall be entitled to prepare and submit to the Director a return of income in respect of the quarter ended, whereupon he shall pay a temporary contribution in accordance with such return".

The Director of the Department of Inland Revenue, hereinafter referred to as the "Director", having examined the applicant's returns of income, and after making enquiries from applicant's employers regarding his 1975 emoluments, he decided and levied on him special contribution of £42 for each of the quarters ended June 30, September 30 and December 31, 1975. He notified the applicant by assessments sent to him on November 29, 1975, and February 28, 1976, respectively.

The applicant, feeling aggrieved, objected by an undated letter and claimed that he was not liable to special contribution in accordance with the law without giving any further reasons. He simply added that he was at the disposal of the Director for any further information or explanation. (See *exhibit* 1).

The Director, having considered the objection of the applicant, arrived at the conclusion that he was liable under the provisions of the law and proceeded with the determination of the assessment. On May 27, 1976, he addressed to the applicant a long letter explaining his position which is in these terms:-

> "With reference to your objection against the 'Special Contribution' levied on you for the quarters 30th June, 30th September and 31st December, 1975 under assessment numbers 2642/2/75X, 2642/3/75X and 2642/4/75X respectively and for which you had filed before the Supreme Court Recourse No. 28/76, claiming that in accordance with the provisions of the Special Contribution (Temporary Provisions) Law, No. 55 of 1974 you are not liable to Special Contribution, I would like to inform you that after carefully considering your case, I have arrived at the conclusion, that you are subject to the provisions of the said law for reasons mentioned below and that I am unable to modify the assessments:
>
> (a) You are a resident of the Republic;
>
> (b) Under Section 3 of Law 55/74 any income derived from any source other than emoluments, in respect of any office or employment, in respect of which a provision for re-

duction has been made under the Emoluments (Temporary Reduction) Law No. 54 of 1974, is liable to 'Special Contribution'.

(c) Your emoluments became liable to the provisions of the Special Contribution (Temporary Provisions) Law No. 55 of 1974 as from 1st April, 1975 upon the enactment of the Emoluments (Temporary Reduction) (Amendment) Law No. 15 of 1975;

(d) By virtue of Section 6 of Law No. 55 of 1974, the provisions of the Income Tax Laws 1961 to 1973 and of the Taxes (Quantifying and Recovery) Law No. 53 of 1963 as amended by Law No. 61 of 1969 apply. Therefore under Section 5(i) (b) of the Income Tax Laws 1961 to 1973 your income accruing in, derived from or received in the Republic in respect of gains or profits from any office or employment, irrespective of whether you are serving in Cyprus or elsewhere is liable to Special Contribution.

2. As provided under Section 13(2) (b) of the Taxes (Quantifying and Recovery) Law No. 53 of 1963 as amended by Law No. 69 of 1969, I did not accept your Returns of Income (Form I.R. 265) submitted on 4th November, 1975 in respect of the above mentioned quarters declaring NIL income and after enquiries made from your employers regarding your 1975 emoluments, to the best of my judgment I levied the Special Contribution as notified you under assessment Nos. 2642/2/75X, 2642/3/75X and 2642/4/75X sent on 29th November, 1975 and 28th February, 1976 respectively.

3. I enclose Notices of Contribution after objection".

In the meantime, the applicant on June 10, 1976, filed the present recourse claiming that the amount imposed on him as a special contribution in respect of his salary in 1975, under the Special Contribution (Temporary Provisions) Law, 1974, (Law 55 of 1974) was not applicable to him as he was a salaried and not a self-employed person.

Counsel on behalf of the respondent opposed the application of the applicant and claimed that the acts and/or decisions complained of were properly and lawfully taken after all relevant facts and circumstances were taken into consideration.

"(a) The 'Special Contribution' for the quarters ended 30th June, 30th September and 31st December, 1975 were levied under sections 3 and 6 of the Special Contribution (Temporary Provisions) Law No. 55 of 1974, Section 5(1) (b) of the Income Tax Laws 1961 to 1975 and Section 13(2) (b) of the Taxes (Quantifying and Recovery) Law No. 53 of 1963 as amended by Law No. 61 of 1969.

(b) The objections to the above 'Special Contribution' levied were determined under Section 20 (5) of the Taxes (Quantifying and Recovery) Law No. 53 of 1963 as amended by Law No. 61 of 1969".

There is no doubt that because of the Turkish invasion the Government of Cyprus, having regard to the abnormal situation, was forced to take legislative measures of a welfare nature in order to protect the interest of the refugees who were forced to leave their homes. The first legislative measure of this nature was the Emoluments (Temporary Reduction) Law, 1974 (No. 34 of 1974) for the temporary reduction of emoluments for an office or salaried services. According to the definition section (2):

"In this Law, unless the context otherwise requires:-

'abnormal situation' has the meaning assigned to this term by subsection (1) of section 2 of the Termination of Employment (Temporary Restrictive Provisions) Law, 1974;

'Court' means the Industrial Disputes Court established by section 12 of the Annual Holidays with Pay Laws 1967 to 1973;

'emoluments' means remuneration in money paid in any manner whatsoever in respect of any office or salaried services, wherever exercised or rendered and

includes any allowance, of a monetary or other kind, paid in consideration for such office or services but does not include any pension or any other retirement grant or gratuity or any sums paid by an approved Provident Fund;

'Law' means the Termination of Employment (Temporary Restrictive Provisions) Law, 1974".

Section 3 deals with reduction of the emoluments of an office and says that:-

"3.(1) Notwithstanding the provisions of any other law in force and during the abnormal situation for the purposes of this Law the emoluments shall be reduced by such percentage rate and on such terms as specified in the Schedule:

Provided that -

(a) where the emoluments have been reduced prior to the coming into operation of this Law no further reduction of such emoluments shall be made if the reduction already made is equal to the reduction provided by this Law or if greater it has been made in accordance with the arrangements adopted at the time, otherwise the rate of such reduction shall be fixed in accordance with the procedure in force for the time being, and in case the interested parties are unable to agree thereon, by the Court to which it shall be referred for determination, *mutatis mutandis,* in accordance with section 4 of the Law;

(b) where the reduction made prior to the coming into operation of this Law is less than that provided by this Law then an additional reduction shall be made so that the total reduction shall be in accordance with the provisions of this Law;

(c) where after the coming into operation of this Law it should prove necessary on account of special circumstances to reduce the emoluments by a higher rate than that

provided in the Schedule, the rate of such reduction shall be determined in accordance with the procedure in force for the time being, and where the interested parties fail to agree thereon, by the Court to which it shall be referred for determination, *mutatis mutandis*, in accordance with section 4 of the Law:

Provided further that where the person liable to pay the emoluments is the Republic or any body corporate and it neglects to refer the case to the Court within ten days from the failure to reach an agreement, then any interested party may refer the case to the Court".

With this in mind the first question is whether the applicant's emoluments from his employment are liable to special contribution. In solving this problem, I would refer to Law No. 55 of 1974 which has been framed in these terms:-

"1. This Law may be cited as the Special Contribution (Temporary Provisions) Law, 1974 (No. 55 of 1974).

2.-(1) In this Law, unless the context otherwise requires -

'contribution' means the special contribution levied by this Law.

(2) Expressions used in this Law not otherwise defined shall have the meaning assigned to such expressions by the Income Tax Laws 1961 to 1973 and the Taxes (Quantifying and Recovery) Laws 1963 and 1969.

3. For the quarter beginning as from the 1st October, 1974, and for every subsequent quarter during the period when this Law shall be in force, there shall be levied and paid a contribution at the rates and in accordance with the provisions set forth in the Schedule, on the income of every person which is derived from any source other than emoluments in respect of any office or employment, in respect of

which a provision for reduction has been made under the Emoluments (Temporary Reduction) Law 1974 or from rents in respect of which a provision for reduction has been made under the Dwelling Houses (Temporary Provisions) Law 1974.

4. The Director of the Department of Inland Revenue shall be charged with the implementation of this Law.

5. Notwithstanding the fact that the contribution is not a tax, it shall be collected in accordance with the provisions of the Tax Collection Law, 1962, and shall be deposited in the Fund for the Relief of Displaced and Stricken Persons which is under the control and management of the Accountant-General.

6. The provisions of the Income Tax Laws 1961 to 1973 and of the Taxes (Quantifying and Recovery) Laws 1963 and 1969 shall apply, *mutatis mutandis,* subject to the amendments set forth in the schedule, but no personal allowances shall be granted and no income shall be exempt from the contribution save the income of an owner of a Cyprus ship as referred to in section 3 of the Merchant Shipping (Taxing Provisions) Laws 1963 to 1973, including any income derived from the management of a Cyprus ship".

This Law 55 of 1974 has been amended by Law No. 43 of 1975, but in my view this amending law is immaterial for the determination of this case. Furthermore, as I said earlier, it is clear that Law 54 of 1974 provides for the reduction of the emoluments by such percentage or rate of contribution as specified in the Schedule of the Law, but by virtue of s.2 of Law 15 of 1975, which amended Law 54 of 1974, the emoluments of persons employed by foreign Governments or International Organizations were excluded from the provisions of Law 54 of 1974. Section 2 of Law No. 15 of 1975 provides as follows:

"The expression 'emoluments' in section 2 of the principal law is hereby amended by the deletion of the semicolon after the word 'fund' (last line) and the addition of the words 'or emoluments earned by per-

sons employed by foreign Governments or International Organizations'."

Law 15 of 1975 was published in the official Gazette on April 4, 1975.

I think I can state that it has not been disputed by both counsel that the applicant being employed by a foreign Government he did not pay taxes under the provisions of Law 54 of 1974 (as amended by Law 15 of 1975) and he has not been suffering reduction of salary from November 1, 1974 up to March 31, 1975.

Counsel on behalf of the applicant submitted that Law 55 of 1974 is applicable to the income of all self-employed persons only and is inapplicable to all salaried persons, including himself, who could only come under Law 54 of 1974. With respect to counsel, I am unable to accept this contention because the purpose of s.3 of Law 55 of 1974 (as amended by Law 43 of 1975) in effect is to bring under the provisions of the law all incomes which have not been subjected to any reduction, such as the applicant's income which, as I said earlier, has not been subjected under the provisions of Law 54 of 1974. Furthermore, I find myself in agreement with the contentions of counsel for the Republic that Law 55 of 1974 (as amended) has nothing to do with self-employed or employed persons, and I would, therefore, dismiss this contention of counsel.

The next submission of counsel was that Law 55 of 1974 is a Law which has no extra territorial application, and as a result, it does not apply to emoluments of the applicant which are earned in employment outside the territory of the Republic. But counsel went even further and put forward this argument, that notwithstanding the provisions of s.6 of Law 55/74, the applicant is still not liable to pay contribution under Law 55 of 1974, once s.5(1) (b) of the Income Tax Laws, relied upon by the respondent is not applicable, because of s.51 of the same Law.

I think before dealing with this contention of counsel, it would be helpful to look also at the provisions of the Income Tax Laws and the Taxes (Quantifying and Recovery) Law for charging, determining and collecting special contribution. The Director based his decision on the charging section 5(1) which says that:

"Tax shall, subject to the provisions of this Law, be payable at the rate or rates specified hereafter for each year of assessment upon the income of any person accruing in, derived from, or received in the Republic in respect of -

(a) gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;

(b) gains or profits from any office or employment, irrespective of whether the person employed is serving in Cyprus or elsewhere, including the estimated annual value of any quarters or board or residence or of any other allowance granted in respect of employment whether in money or otherwise".

Then I turn to the proviso of s. 5(3) which reads as follows:-

"Provided that a Cypriot established in the Sovereign Base Area shall not for the purposes of this paragraph be deemed to be established outside the Republic".

It seems to me that from the wording of this proviso it is clear that the Cypriots cannot avail themselves of the provisions of s. 5(3) which might exempt them from liability under certain circumstances referred to in that section.

With this in mind, and having considered the argument of counsel, I find myself unable to agree that the question of extraterritorial application comes into the picture. Having read section 51 of the Income Tax Laws, upon which counsel relies, I have reached the conclusion that it does not apply or help the argument of counsel once the applicant is not a member of the United Kingdom Forces or civilian component as specified by the Treaty of Establishment, and I would dismiss this part of the argument.

I think it is important to have in mind that in order to impose tax upon the income of any person, the income must accrue in, be derived from or received in the Republic in respect of gains or profits. The question posed, there-

fore; is, where does the income of the applicant accrue from or where is it derived from. I think I can state that I am faced with no difficulty in answering this question, that the applicant's income accrues and is derived outside the Republic, and I shall be quoting authorities in due course in support of my stand.

Counsel on behalf of the respondent, in a convincing argument, submitted that the words "remitted and received in the Republic" should be given their true construction that the money is brought into Cyprus. What constitutes a remittance, according to Pinson on Revenue Law, 7th Ed. at p. 167, is that "Income is remitted to the United Kingdom if the money or the equivalent of money in normal commercial usage (*e.g.*, a cheque or bill of exchange) is received in the United Kingdom, either by the resident taxpayer himself or by another person to whom the taxpayer has directed payment to be made (*e.g.*, a creditor)....."

There is no doubt that there cannot be a remittance of any income unless there is a receipt. Therefore, the sums received must be read subject to the principle that income tax is a tax on income, not upon capital, and according to the words of TA 1970, s. 109(2) which state that "tax is charged under Schedule D, cases IV and V in respect of income arising from securities or possessions". See Simon's Taxes Vol. E "Taxes of Individuals", 3rd edn. at p. 164.

I would reiterate that receipt is an essential condition because there cannot be a remittance of any income unless there is a receipt. What is received may be the actual income or some credit, property or value, therefor, but a mere clearance or entry in accounts will not in itself amount to a receipt.

In *Gresham Life Society* v. *Bishop*, 4 T.C. 464 H.L., Lord Halsbury, dealing with the question of receipt as an essential condition to taxation, said at p. 472:-

> "The question in this case seems to me to depend upon the actual words used by the Legislature, and I deprecate a construction which passes by the actual words and seeks to limit the words by what is sup-

posed to be something equivalent to the language used by the Legislature. . .

Now, here the money has not actually been received in this country . . . . The Legislature must be supposed to have contemplated the possibility of drawing a distinction between money received in this country and money accounted for or credited in account. If it were not for the difficulty of ear-marking money I should think no one would have any doubt that the money must be received in this country to bring it within the words of the statute".

Finally, he said:-

". . . . if the Legislature had intended that bringing it into account was to be equivalent to its being received, it would have been easy to say so.... I do not think any amount of book-keeping or treatment of these assets, wherever they may be, will be equivalent to or the same thing as receiving the amount in this country. The words are simple, intelligible, and represent an ordinary and simple thing. I cannot think we ought to go beyond the words themselves, and I think this Judgment ought to be reversed".

In the same case Lord Brampton said at p. 475:-

"If a 'constructive' receipt is the same thing as an actual receipt, I see no reason for the use of the word 'constructive' at all. If it means something differing from or short of an actual receipt, then it seems to me that a constructive receipt is not recognised by the Statute, which in using the word 'received' alone, must be taken to have used it having regard to its ordinary acceptation".

In *Scottish Widow's Fund Life Assurance Society* v. *Farmer,* [1909] 5 T.C. 502, the Lord President, having observed that the law upon the subject of receiving has been already investigated and authoritatively settled by the case of the *Gresham Life Assurance Co.* v. *Bishop,* posed the question "how can this money be said to have been received in this country", and said *inter alia* at pp. 510-511:-

"But those are well-known methods of remitting mo-

ney. The nearest to this case, or I might say the furthest that the Court has gone, was the case of *Scottish Mortgage & c. Company of New Mexico, Limited* v. *Inland Revenue,* 1886, 14 R., 98 (2 T.C. 165) decided in this Court where it was held that money was actually received in this country, although money had not come in hard cash and had not been remitted by bank draft, where it had really been got in this country by a Company performing its remittance for itself. That is to say, money which on this side was not available for divident they had made available for divident and paid here, making a cross entry upon the other side of the Atlantic, and there putting the money available for dividend into a form not available for dividend. That case was a good deal discussed in the House of Lords in the Gresham case. One of the noble Lords had doubts about it, but the general result was that the case was approved. It was pointed out what a very special case it was, and Lord Lindley, who was one of those who approved of it, said the exchange was effected by a book entry, but that entry was a good business mode of carrying out cross remittances which it would have been unbusiness-like and really childish to have effected in any other way. On the other matter I am quite clearly of opinion that this money has not been received in the United Kingdom. It is perfectly easy for the Legislature, if they so wish, to make money in this condition fall within the net of the tax gatherer. At present I do not think they have done so, and accordingly I think the determination of the Commissioners ought to be reversed".

In *Thomson (Inspector of Taxes)* v. *Moyse,* [1960] All E.R. 684, H.L.

"The taxpayer was a British subject domiciled in the United States of America but resident in the United Kingdom. He was in receipt of income in the United States, part of which arose from 'securities out of the United Kingdom' within the meaning of Case IV of Sch. D. to the Income Tax Act, 1918, and the remainder of which arose from 'possessions out of the United Kingdom' within Case V of that Schedule. The income was credited to him in the Bank of New

York. In the relevant years of assessment, the taxpayer drew cheques on the Bank of New York in favour of one or other of his two English banks and sold them to those banks for the sterling equivalent which he was paid immediately. The English banks sent the cheques to New York and cashed them, collecting the dollars there. The Special Commissioners found that the English banks acted as principals and not as the taxpayer's agents in cashing the cheques and collecting the proceeds. The taxpayer was assessed to income tax in respect of the sums with which he was credited as being sums received in the United Kingdom (a) within Case IV, r.2, of Sch.D to the Act of 1918, and (b) within Case V, r.2, of Sch.D to that Act".

The House of Lords held:

"Income of the taxpayer arising abroad had been received as sums of money in the United Kingdom, for the taxpayer, by parting with the right to income in New York had obtained corresponding resources in the United Kingdom, and thus had effected a transmission of his income to the United Kingdom for the purposes both of Case IV and Case V, it being immaterial that no money was actually brought into the United Kingdom in the course of, or in connexion with, the transaction; therefore, the assessments had been rightly made".

Lord Reid, in reversing the decision of the Court of Appeal, having reviewed the authorities at length, said at pp. 688-689:-

"I return to the case of a banker collecting a cheque for a customer but bringing nothing into this country. A survey of the authorities has satisfied me that they contain nothing which precludes me from holding that, in every case where a customer employs a banker to collect, by means of his foreign cheque, money abroad which is part of his income, the sum which the customer receives in this country is a 'sum received' within the meaning of Cases IV, and V, and that it is immaterial that no money was in fact brought into this country in the course of or in connexion with the transaction. Indeed, I think it most

improbable that any of those learned judges whose judgments have been cited by the respondent would have disagreed with that view. From the point of view of the taxpayer, his income has been brought into the United Kingdom. He had, but no longer has, money in a bank abroad; he now has an equivalent amount of money in his hands in this country. How that was achieved is no concern of his, and I cannot read the statutory provisions as making his liability to tax depend on the method which his banker employed".

Lord Radcliffe, delivering his speech in the same case, said at p. 690:-

"It is a straightforward story of a resident of this country selling dollars in his bank account in New York in exchange for sterling which the bankers in London were ready to provide. The American bank account was fed only by the receipt of income arising from his American securities or possessions. I should say that, in the plain meaning of language, the sterling credits were sums received by him in this country out of his American income, which had *pro tanto* been used to acquire them, and that in this sense he had 'brought over' his American income to the United Kingdom. That being so, the sums so received are, in my opinion, properly computed in assessing his tax under Case IV and Case V of Sch. D.

What has puzzled me throughout is to see how or why the banking transactions for effecting the remittance of his money from America to which the respondent resorted should be regarded as insufficient to constitute the sterling proceeds received as assessable sums for the purpose of these two cases. He did not, of course, invest his American income in bullion or commodities to be shipped over here and sold or in United States dollar bills for similar realization; but then nobody says or supposes that assessability is confined to such transactions. Nor did he instruct his bankers or agents to use his dollar income in buying a bill on London which could have been discounted or presented here for payment. These would have been possible methods of 'bringing' the money here, and, no doubt, have been resorted to in their time.

But what he did do seems to me to have been in all essentials a similar transaction, and to have amounted just as much to a 'bringing' in the relevant sense. He wrote out his cheques on his New York bankers directing them to hand over his dollars to or to the order of his United Kingdom purchasers, and these purchasers in return acknowledged a sterling debt to him calculated at the current rate of exchange between New York and London. He parted with his dollars; he got his sterling. He emptied one pocket of dollars in order to fill another pocket with sterling".

In a recent case, *Harmel* v. *Wright* (*Inspector of Taxes*), [1974] 1 All E.R. 945,

"The taxpayer, who was resident in the United Kingdom but domiciled in South Africa, was employed by two South African companies at a substantial salary. In order to reduce his tax liability in the United Kingdom, he adopted a scheme whereby two companies were incorporated in South Africa. The taxpayer was the director and the beneficial owner of all the shares in the first company; the shares in the second company were owned by persons on whom the taxpayer could rely to carry out his scheme. The taxpayer's salary was paid in South Africa and was invested by him by subscribing for shares in the first company. That company then lent the money received from the taxpayer to the second company, which in turn lent the borrowed money to the taxpayer in the United Kingdom. In each case the loans were free of interest and repayable on demand. The taxpayer claimed that he was not liable to income tax under Sch. E, para I case III, of s. 156[a] of the Income Tax Act 1952 on the sums received from the second company on the ground that the emoluments paid to him in South Africa had become shares in the first company and what was received by him in the United Kingdom were merely loans extended to him by the second company".

It was held that:-

"The loans received by the taxpayer were derived

a as amended

from the application of the taxpayer's income in South Africa to achieving the necessary transfers which had led to his receiving money from the second company. Accordingly loans from the second company represented and were the emoluments paid to him in South Africa and, therefore, having been received by him in the United Kingdom, were subject to income tax under Sch. E, para I Case III. *Thomson (Inspector of Taxes)* v. *Moyse* [1960] 3 All E.R. 684 applied".

Templeman, J., dealing with the provisions of s. 156 of the Income Tax Act 1952, on the question of receiving money in England, said at pp. 950-951:-

"When the taxpayer took up his employment in this country it was with the knowledge that if he received any emoluments in this country from his South African employers those emoluments would be taxed. On the other hand, if he avoided tax by not receiving emoluments, and he had no other source of income, then he would starve. In the result, the taxpayer, as he was entitled to do, took steps to ensure, so far as was practicable, that he would be neither taxed nor starved. What happens is this: when the South African companies pay the taxpayer, they do not pay the money to him in this country because that, of course, would immediately cause tax to be exacted under s. 156; they pay it to him in South Africa . . . The taxpayer can ensure that he does not starve and will get the money because the chain of events and the powers of control exercisable by the taxpayer are such that he is in no danger. He can ensure perfectly safely that a sum, by no coincidence equal to his salary, less, perhaps, a few costs which have dripped away in the meantime, will be available to him in London..... ignoring the costs that will drip away, that sum begins in South Africa from the employers of the taxpayer and ends up in this country with the taxpayer. In my judgment, on the peculiar circumstances of this case . . . the sums which the taxpayer eventually receives represent and are the emoluments which start off from his South African employers in the first place".

The learned Justice, having dealt with the authorities, quoted a passage from the speech of Lord Radcliffe in *Thomson* v. *Moyse* (*supra*) at p. 692. This passage reads:-

> " . . . the computation in respect of income from foreign securities depends simply on the question what is the amount of sums which have been or will be received in the United Kingdom in the year of assessment. No doubt proper construction of those words requires that the sums computable must be sums 'of' the income, by which I would understand 'sums of money derived from the application of the income to achieving the necessary transfer'. But that is all. If sterling sums are received and are so attributable, that is enough for liability".

Then, having applied the test adumbrated by Lord Radcliffe, he posed this question: whether the sums of money received here had been derived from the application of a taxpayer's income in South Africa to achieve the necessary transfers which led to his receiving money from Lodestar, and said:-

> "The question turns on the meaning of the word 'derivation'. Can you, as I think, start with £25,000 trace it through to the taxpayer and say the one is derived from the other, or must you, as counsel for the taxpayer says, trace the money as far as the shares in Artemis and, having got there, say it stays there? I see no reason why derivation should stop at the shares, and I have come to the conclusion that the commissioners, in deciding this matter in favour of the Crown, were right".

Finally, he said at p. 954:-

> "If one asks whether, in fact, the original sums paid in South Africa have been used or enjoyed in any manner or in any manner or form transmitted, it is difficult to avoid the conclusion that they have been used, enjoyed and transmitted. All I need say is that para 8 is not inconsistent with the result which I reach by construing s. 156 in the light of the authorities".

Having considered the authorities, I have reached the

conclusion that once the money is brought into the Republic by the applicant—and this has not been denied by the applicant—this case falls within the meaning of s. 5(1) (b) of the Income Tax Laws 1961-1976 and therefore the income of the applicant is liable to special contribution under the provisions of Law 55 of 1974 (as amended by Law 15 of 1975). I therefore dismiss the contention of counsel on this issue.

Finally, the last complaint of counsel was that even if the applicant was found to be liable to pay contribution, that would offend against the principle of discrimination and unequal treatment enunciated under the constitutional provision of Article 28.

It seems to me that the approach of this Court regarding this complaint has been clearly stated in a number of authorities dealing with taxation, starting with the case of *Mikrommatis and The Republic*, 2 R.S.C.C. 125 and *Matsis* v. *The Republic* (1969) 3 C.L.R. 245, which was decided by the Full Court. These authorities show that the principle enunciated is that Article 28 safeguards only against arbitrary differentiation and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things, both as far as equality before the law is concerned and discrimination thereof. Because this principle has ever since been reiterated in a line of other cases, I do not think it is necessary to quote other authorities to substantiate this point further. I would, therefore, contend myself by simply adopting and following the principle already stated. Testing the constitutionality of Law 55 of 1974, I have taken into consideration that once all the salaried and self-employed persons contribute to the same cause, I do not think that there is room for the criticism by counsel that because the employees of the Government of Cyprus enjoy a tenure of office, in contrast to the other employees working at the Sovereign bases, that this results in a discriminatory or enequal treatment, contrary to Article 28 of the Constitution. I would, therefore, dismiss this contention of counsel also, once the purpose of the law is to alleviate the suffering of a lot of other Cypriots.

Having reached this conclusion, and because the applicant has failed to satisfy me that the provisions of Law 55

of 1974 are unconstitutional beyond reasonable doubt—and the onus remains on him—I would dismiss this application, once I have not been persuaded that the said law contravenes the principles already enumerated in the cases quoted earlier.

Recourse dismissed with no order as to costs.

A. LOIZOU, J.: By the present recourse which has been heard by the Full Bench directly in the exercise of its revisional jurisdiction under Article 146 of the Constitution as there was a great number of other pending cases awaiting the determination of the issues raised herein, the applicant seeks the annulment of the decision of the respondents to impose special contribution on him in respect of his salary received during the year 1975 or any part thereof, under the Special Contribution (Temporary Provisions) Law, 1974 (Law No. 55/74).

The grounds of law relied upon are the following:-

"1. Applicant alleges that he is not liable to pay any special contribution inasmuch as he is being employed by the United Kingdom Government and his place of employment is in the Sovereign U.K. Areas, and outside the territory of the Republic. In any case Law 55/74 is not applicable to Applicant as he is salaried and not a self-employed person.

2. If it is found that Applicant is liable to special contribution on the basis of Law 55/74 then it will be submitted that Law 55/74 is unconstitutional, contrary to Article 28 of the Constitution, in that it discriminates against Applicant because,

(a) other Cypriots who work outside the territory of the Republic and in the territory of other countries are not liable to special contribution.

(b) Applicant although a salaried employee, pays more than other salaried persons who are covered by Law 54/74.

3. In any case, the decision itself to impose special contribution on Applicant is, irrespective of the

unconstitutionality or otherwise of the Law discriminatory, on the above grounds.

4. Law 55/74 has to be read in conjunction with Law 50/74. Both laws do not have extra territorial jurisdiction or application. That is to say, the Republic has no control over foreign employers in sovereign territories *e.g.* does not have control over Applicant's employer which is the United Kingdom Government in the Sovereign Areas, and, therefore the Applicant cannot avail himself of the benefits of Law 50/74, providing *inter alia,* against the termination of employment as in the case of other Cypriots who are employed by local employers.

5. Law 55/74 has no extra territorial application and consequently Applicant is not liable, under the provisions of the said law to pay any special contribution. Law 55/74 does not apply to salaried but to self-employed persons only".

The applicant, a resident of the Republic, is employed by the United Kingdom Government, in the Sovereign Base Areas and derives his income from employment with what is known as the Civilian Establishment and Pay Office (C.E.P.O.). In accordance with the provisions under Regulation 2 of the Special Contribution (Temporary Provisions) Regulations, 1975, the applicant completed and submitted returns of income in respect of the quarters that ended 30th June, 30th September and 31st December, 1975, and declared his income as nil.

The respondent Director of the Department of Inland Revenue on examining the said returns, decided that the applicant was liable to special contribution, under the provisions of the Special Contribution (Temporary Provisions) Law, 1974 (Law No. 55/74), as from the 1st April, 1975, upon the enactment of the Emoluments (Temporary Reduction) (Amendment) Law, 1975 (Law No. 15/75) the applicant being a resident of the Republic and bearing in mind also the provisions of paragraph 3(8) of Appendix 'O' of the Treaty of Establishment and the Provisions of the Ordinance 'Powers and Duties (Officers of the Republic of Cyprus) Ordinance, 1960 and 1961' enacted by the Administrator of the Sovereign Base Areas. It levied

as special contribution the sum of £42.- for each of the aforesaid quarters. It notified the applicant in due course, but the applicant objected to this decision claiming that he is not liable to special contribution (*exh.* 1). To this objection the respondent Director replied by letter dated the 27th May, 1976 (*exh.* 2) as follows:

"....I would like to inform you that after carefully considering your case, I have arrived at the conclusion, that you are subject to the provisions of the said law for reasons mentioned below and that I am unable to modify the Assessments:

(a) You are a resident of the Republic;

(b) Under Section 3 of Law 55/74 any income derived from any source other than emoluments, in respect of any office or employment, in respect of which a provision for reduction has been made under the Emoluments (Temporary Reduction) Law No. 54/1974, is liable to 'Special Contribution'.

(d) By virtue of Section 6 of Law 55/74, the provisions of the Income Tax Laws 1961 to 1973 and of the Taxes (Quantifying and Recovery) Law No. 53 of 1963 as amended by Law No. 61 of 1969 apply. Therefore, under Section 5(1) (b) of the Income Tax Laws 1961 to 1973 your income accruing in, derived from or received in the Republic in respect of gains or profits from any office or employment, irrespective of whether you are serving in Cyprus or elsewhere is liable to Special Contribution.

2. As provided under Section 13(2) (b) of the Taxes (Quantifying and Recovery) Law No. 53 of 1963 as amended by Law No. 61 of 1969, I did not accept your Returns of Income (Form I.R. 265) submitted on 4th November, 1975 in respect of the above mentioned quarters declaring NIL income and after enquiries made from your employers regarding your 1975 emoluments, to the best of my judgment I levied the Special Contribution as notified you un-

der assessment No. 2642/2/75X, 2642/375X and 2642/4/75X sent on 29th November, 1975 and 28th February, 1976 respectively.

3. I enclose Notices of Contribution after objection".

The applicant's emoluments became liable to the provisions of the Special Contribution (Temporary Provisions) Law 1974 (Law No. 55/74) as from the 1st April, 1975 upon the enactment of the Emoluments (Temporary Reduction) (Amendment) Law, 1975 (Law No. 15/75).

The abnormal situation which is defined in the Termination of Employment (Temporary Restrictive Provisions) Law, 1974, (Law 50/74), as meaning "the situation created as a consequence of the Turkish invasion . . ." brought about also a disruption of the economy which the Government faced with a series of measures. One of such measures was the Emoluments (Temporary Reduction) Law, 1974, (Law 54/74) enacted on the 1st November, 1974, whose title reads: "A Law to require the temporary reduction of emoluments for an office or salaried services for the duration of the abnormal situation arising as a consequence of the Turkish invasion and to provide for matters connected therewith".

Under section 3(1) thereof,

> "Notwithstanding the provisions of any other Law in force and during the abnormal situation for the purpose of this Law the emoluments shall be reduced by such percentage rate and on such terms as specified in the Schedule".

And "emoluments" were defined in section 2 of this Law, as meaning,

> "remuneration in money paid in any manner whatsoever in respect of any office or salaried services, wherever exercised or rendered and includes any allowance, of a monetary or other kind, paid in consideration for such office or services but does not include any pension or any other retirement grant or gratuity or any sums paid by an approved Provident Fund".

The person liable to pay such emoluments, and where the business carried on by him was not a striken business, had to pay the amount of the reduction of the payable emoluments at the end of each month, into the Relief Fund for Displaced and Striken Persons; whether a business was striken or not it had to be determined in accordance with the provisions of the Termination of Employment (Temporary Restrictive Provisions) Law, 1974, (Law 50/74). It is not in dispute that this Law covered the reduction of emoluments of employees.

On the same day the Special Contribution (Temporary Provisions) Law, 1974 (Law 55/74) was enacted for the purpose of making temporary provisions for the payment of special contribution for meeting again the abnormal situation and relevant matters. Under section 3 thereof,

> "For the quarter beginning as from the 1st October, 1974, and for every subsequent quarter during the period when this Law shall be in force, there shall be levied and paid a contribution at the rates and in accordance with the provisions set forth in the Schedule, on the income of every person which is derived from any source other than emoluments in respect of any office or employment, in respect of which a provision for reduction has been made under the Emoluments (Temporary Provisions) Law, 1974".

The Director of the Department of Inland Revenue was charged with the implementation of this Law and the collection of contributions, though not a tax, was to be collected in accordance with the provisions of the Tax Collection Law, 1962 and deposited in the same fund. By virtue of section 6 thereof,

> "The provisions of the Income Tax Laws 1961 to 1973 and of the Taxes (Quantifying and Recovery) Laws 1963 and 1969 shall apply, *mutatis mutandis*, subject to the amendments set forth in the schedule, but no personal allowances shall be granted and no income shall be exempt from the contribution save the income of an owner of a Cyprus ship as referred to in section 3 of the Merchant Shipping (Taxing Provisions) Law 1963 to 1973, including any income derived from the management of a Cyprus ship".

The amendment of this Law by Law 43/73 is immaterial to the present proceedings.

Law 54/74 was amended by the Emoluments (Temporary Reduction) (Amendment) Law 1975, (Law 15/75). By section 2 thereof the expression "emoluments" in section 2 of the principal law, that is to say, Law 54/74, hereinabove set out was amended by the addition after the word "Fund" (last line) of the words "or emoluments earned by persons employed by a foreign Government or International Organizations". The applicant being a person employed by a foreign Government did not until then, pay contributions under Law 54/74 and did not suffer any reduction from his emoluments from the 1st November, 1974 until the 31st March, 1975.

Under section 3 of Law 55/74 the income of every person which is derived from any source other than emoluments in respect of any office or employment in respect of which a provision for reduction has been made under the Emoluments (Temporary Reduction) Law 1974 (Law 54/74), or from rents in respect of which a provision for reduction has been made under the Dwelling Houses (Temporary Provisions) Law 1974 (Law 51/74) (now Law 36 of 1975), is liable to pay a contribution at the rates and in accordance with the provisions as set forth in the Schedule.

By the enactment of Law 15/75 the position of persons in the employment of foreign governments was clarified, so that income from any other source under section 3 of Law 55/74 was made to apply to such cases as that of the applicant. The effect of Law 55/74 was to bring under its provisions all kinds of income which had not been subjected to any reduction and the applicant's income was one of those incomes which had not until then, been subjected to any reduction, or in any event, if it was liable to pay contribution under section 3 of Law 55/74, it was not so clear. The fact was that until the 1st of April, 1975, people in the category of the applicant, had not paid any contribution as such emoluments were considered as excluded as a source of income from the meaning of the word "emoluments" under Law 54/74, and upon taking this income out of the meaning of the word "emoluments" they became liable to pay contribution under section 3 of

Law 55/74, which, thereby, was made applicable to the income of both self-employed and salaried persons except income subject to reduction under the other Laws, namely, Laws 54/74 and 36/75.

Law 50 and Law 51 of 1974 (now Law 36/75) have nothing to do with the present case, as the salary of employed has not been subjected to other reduction.

The Special Contribution (Temporary Provisions) Law 1974 (Law 55/74) does not only apply to self-employed persons but to all other sources of income which have not been subjected to any reduction under any other law.

Under section 6 of Law 55/74 (as amended) the provisions of the Income Tax Laws 1961-1973 and the Taxes (Quantifying and Recovery) Law, 1963, (Law 53/63) as amended by Law 61/69, are made applicable *mutatis mutandis* subject to the amendments set forth in the Schedule which amendments have no bearing in the present case. So one has to go to these provisions for charging, determining and collecting this special contribution though not a tax within the meaning of the Income Tax Laws.

The *sub judice* decision was based on section 5(1) (b) of the Income Tax Laws, 1961 to 1973, as being income "received in the Republic", irrespective of whether the applicant was serving in Cyprus or elsewhere. The said section reads as follows:-

"5.(Ι) Τηρουμένων τῶν διατάξεων τοῦ παρόντος Νόμου δι' ἕκαστον φορολογικὸν ἔτος ἐπιβάλλεται, βάσει φορολογικῶν συντελεστῶν εἰδικώτερον ἐν τοῖς ἐφεξῆς καθοριζομένων, φόρος ἐπὶ τοῦ εἰσοδήματος παντὸς προσώπου τοῦ κτωμένου ἢ προκύπτοντος ἐν τῇ Δημοκρατίᾳ ἢ ἀποστελλομένου καὶ λαμβανομένου εἰς τὴν Δημοκρατίαν, ἐκ τῶν κατωτέρω ἀναφερομένων πηγῶν, ἤτοι:

(α) .....

(β) κέρδη ἢ ἄλλα ὀφέλη ἐξ οἱουδήποτε ἀξιώματος ἢ μισθωτῶν ὑπηρεσιῶν, ἀνεξαρτήτως τοῦ ἂν τὸ ὑποκείμενον τῆς φορολογίας παρέχῃ τὰς ὑπηρεσίας αὐτοῦ ἐν Κύπρῳ ἢ ἀλλαχοῦ, περιλαμβανομένης τῆς κατ' ἐκτίμησιν ἐτησίας ἀξίας καταλύματος, στέγης καὶ διατροφῆς ἢ οἰκίας, ὡς καὶ

παντὸς ἑτέρου ἐπιδόματος, χρηματικῆς ἢ ἄλλης μορφῆς, χορηγουμένου ἀναφορικῶς πρὸς παρεχομένας μισθωτὰς ὑπηρεσίας".

The English translation of the aforesaid provision as given in the text prepared and published by the Revision and Consolidation of the Cyprus Legislation Office, reads as follows:-

"5.-(1) Tax shall, subject to the provisions of this Law, be payable at the rate or rates specified hereafter for each year of assessment upon the income of any person accruing in, derived from, or received in the Republic in respect of -

(a) .....

(b) gains or profits from any office or employment, irrespective of whether the person employed is serving in Cyprus or elsewhere, including the estimated annual value of any quarters or board or residence or of any other allowance granted in respect of employment whether in money or otherwise".

It has been argued on behalf of the respondent that the words "*apostellomenou ke lamvanomenou*" which verbatim should be translated as "remitted and received" instead "simply received" read in conjunction with the words "whether the person 'employed is serving in Cyprus or elsewhere' ", cover the case of the applicant for two reasons: First, because the word "Cyprus" used in para. (b) should be taken as meaning the whole of the island including that part of it which constitutes the British Sovereign Base Areas as compared with the word "Republic" appearing in sub-section (1) thereof, which, word, is defined in section 2, as meaning the Republic of Cyprus. Secondly, that the words "remitted and received" in the Republic, should be interpreted as including the notion of bringing in as well as their "remittance" even if accruing or paid elsewhere and this is further demonstrated by the word "elsewhere" to be found in para. (b) thereof, after the words "whether the person employed is serving in Cyprus or elsewhere". This is further borne out by the wording of section 8(u) which exempts part of income in foreign exchange imported into the Republic from the

rendering outside the Republic of salaried services to private business, which shows that such income is otherwise taxable.

The differentiation between the meaning of the word "Cyprus" and the word "Republic", though attractive, seems to me to have been accidental, and no particular meaning should be ascribed to it, if one looks to the law as a whole. For example, in section 5, sub-section 3(b) with regard to the definition of a Cypriot, express reference is made to the individual who was born in the "island of Cyprus", which includes, obviously, those born in the parts of the island which, since independence, form part of the Sovereign Base Areas. On the other hand, however, and feeling bound by the strict words of the Law, the words "remitted and received" may not necessarily presuppose actual receipt in the Republic. As stated in the case of the *Scottish Widow's Fund Life Assurance Society* v. *Farmer (Surveyor of Taxes)* 5 T.C. p. 502 by Lord Johnston, The Lord President, at p. 508 with regard to the meaning of the word "received in this country" to be found in an Income Tax provision,

> "Now, actual receipt of money, it seems to me, can only be effected in one of two ways. Either the money itself must be brought over in specie, or the money must be sent in the form which, according to the ordinary usages of commerce, is one of the known forms of remittance".

Useful is also the interpretation given in *Thomson (Inspector of Taxes)* v. *Moyse* [1960] 3 All E.R. 684, to the words "received in the United Kingdom" and "actually received in the United Kingdom from remittances" to be found in rule 2 of the rules applicable to Case V of the Income Tax Act, 1918, which considered in the light of the line of authorities referred to therein has a bearing on the issue before us. As pointed out by Lord Reid at p. 689 -

> "From the point of view of the tax-payer, his income has been brought into the United Kingdom. He had but no longer has, money in a bank abroad; he now has an equivalent amount of money in his hands in this country. How that was achieved is no concern of his, and I cannot read the statutory provisions as

making his liability to tax depend on the method which his banker employed".

There must be acquittance and receipt in some form or other, but I would say, that it makes no difference, whether the amount was actually remitted and received in the Republic, or the person entitled to earn the income outside the Republic, goes and brings it himself into the Republic, as it is the case of the applicant. Otherwise, it would lead to an awkward situation whereby income accruing outside but received in the Republic, was to be taxable, if remitted by some banking or other method or brought in by a courier on behalf of the tax payer, but not taxable, if the tax-payer entitled to it went and brought it himself.

For income to be taxable under s.5(1) (b), it is not necessary to have accrued or be derived from a source in the Republic. It is enough if it was remitted and received in the Republic, irrespective of where the services for which the gains or profits from such employment were rendered and having concluded that the meaning of the words "remitted and received" in the Republic include the notion of bringing in as well, the applicant must be considered as a person having an income which renders him liable to pay special contribution in respect thereof, under the Special Contribution (Temporary Provisions) Law, 1974, (Law 55/74) as amended by Law 15/75.

In my view, section 51 does not change the situation, once the applicant is not exonerated from liability to pay income tax thereby.

Having come to the aforesaid conclusion, it only remains to determine the issue arising out of the claim of the applicant that even if he was found liable to pay special contribution under Law 55/74, that would result in discrimination, contrary to Article 28 of the Constitution.

The question of discrimination and unequal treatment was first dealt with by the then Supreme Constitutional Court in the case of *Mikrommatis and the Republic,* 2 R.S.C.C. p. 125, where it was stated that it safeguards only against arbitrary differentiation and does not exclude reasonable distinctions which have to be made in view of

the intrinsic nature of things, both as far as equality before the law was concerned in para. 1 of Article 28 and discrimination in para. 2 thereof. This principle has since then been reiterated in the line of cases.

Particular reference may also be made to the case of *Matsis* v. *The Republic* (1969) 3 C.L.R., p. 245, where the question of equality of treatment regarding matters of taxation has also been dealt with. Furthermore, as stated in the case of *Lehnhausen* v. *Lake Shore* Auto *Parts Co.*, 35 L.Ed. 2d, 351, by Mr. Justice Douglas at p. 354:

> "The Equal Protection Clause does not mean that a State may not draw lines that treat one class of individuals or entities differently from the others. The test is whether the difference in treatment is an invidious discrimination. *Harper* v. *Virginia Board of Elections,* 383 US 663, 666, 16 L. Ed. 2d 169, 86 S Ct 1079. Where taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation".

The tragic events and the disruption of the economy of the island that resulted therefrom, already referred to, necessitated the enactment of these laws; and the fact that the applicant belongs to a different class from the point of view of terms of employment and employer and the repercussions that the situation prevailing in the island might have on them renders the differentiation made, by requiring them to pay contribution under Law 55/74 instead of 54/74 as other salaried people employed in the Republic, as not amounting to discrimination and unequal treatment. There exist different circumstances which make the differentiation reasonable, in addition to the fact that salaried people under Law 54/74 have their contribution deducted at the source, whereas, contributions under Law 55/74 are paid periodically, which results in some benefit. There is, therefore, a different treatment for different class of people and a reasonable at that. The fact that the applicant and people in his category do not enjoy the benefits of Law 50/74, does not, in my opinion, change the situation so rendering Law 54/74 unconstitutional as claimed.

For all the above reasons, this recourse, must fail and is hereby dismissed accordingly.

MALACHTOS, J.: I have had the advantage of reading in advance the three judgments just delivered and I must say that I agree with the reasons given by my brother Judges T. Hadjianastassiou and A. Loizou in dismissing the recourse.

TRIANTAFYLLIDES, P.: In the result the recourse is dismissed; but bearing in mind all relevant considerations we do not think that this is a proper case in which to make an order for costs against the applicant.

Application dismissed.
Nor order as to costs.