

1976 June 19

[TRIANTAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. PANKYPRIOS SYNTECHNIA DIMOSION YPALLILON,
2. LELLA HADJIOANNOU AND OTHERS,

Applicants,

v.

THE MUNICIPALITY OF NICOSIA,

Respondent.

(Cases Nos. 6/74, 7/74, 8/74).

5 *Administrative Law—Administrative review of administrative acts or decisions—Though jurisdiction of the Supreme Court, under Article 146, in Administrative Law matters exclusive, this does not exclude review procedure provided for by a Law—Review procedure, under paragraph (d) of the proviso to section 157 (1) of Cap. 240, not a step necessary for the completion of the relevant administrative process but only an optional administrative remedy—Applicants could make a recourse under the above Article, against the imposition of professional tax, even though they did not resort first to the review procedure.*

10 *Professional tax—Nature of—Imposition of professional tax on Public Officers—Under paragraph (c) of proviso to section 157 (1) (as amended) of the Municipal Corporations Law, Cap. 240 (which continued to be in force by virtue of section 8 (2) of Law 64 of 1964) and Part I of the Tenth Schedule to the Law (as amended)—Does not contravene Articles 25, 23, 28, 35 and 192 paragraphs (1) and 7 (b).*

Words and phrases—“Profession for profit” in section 156 of the Municipal Corporations Law, Cap. 240.

20 *Statutes —Construction —Proviso—Whether “repugnant”—Principles applicable—Paragraph (c) of proviso to section 157 (1) of the Municipal Corporations Law, Cap. 240—Not a mere proviso but*

a provision extending and supplementing the main part of section 157.

Constitutional Law—Constitutionality of legislation—Principles applicable—Burden of establishing that statute is unconstitutional—Paragraph (c) of proviso to s. 157 (1) of the Municipal Corporations Law, Cap. 240 not contrary to Articles 23, 25, 28, 35 and 192 paragraphs (1) and 7 (b). 5

Administrative Law—Administrative Court—Matters of legislative, and in particular of fiscal, policy are within the sphere of the Executive and Legislative powers—Principles on which Court will interfere in a matter of fiscal policy. 10

Public Officers—Payment of professional tax—Not contrary to Articles 23, 25, 28, 35 and 192 paragraphs (1) and 7 (b) of the Constitution.

Municipal Corporations Law, Cap. 240—Paragraph (c) of proviso to section 157 (1) of the Law not contrary to Articles 23, 25, 28, 35 and 192 paragraphs (1) and 7 (b) of the Constitution. 15

Applicant No. 1, which is a trade union of persons in the public service, and the individual applicants, who are all public officers, complain against the decision of the respondent Municipality to impose professional tax on the individual applicants. 20

The legislative* provisions governing the imposition of the *sub judice* tax are paragraph (c) of the proviso to sub section (1)** of section 157 of the Municipal Corporations Law, Cap. 240 and Part I of the Tenth Schedule to the Law, which have continued to be in force by virtue of section 8 (2) of the Municipal Corporations Law, 1964 (Law 64/64). 25

* See all relevant legislative provisions at pp. 125–32 *post*.

** Section 157 (1) proviso paragraph (c) reads as follows:

“157 (1) Any person desiring to carry on, exercise or practise, for profit, any business, trade, calling or profession within any municipal limits shall apply to the council for a licence and the council shall determine the fee payable therefor, not exceeding the appropriate fee set out in Part I of the Tenth Schedule to this Law:

Provided that –

- (a)
- (b)
- (c) The council prescribes in accordance with this paragraph the fees payable by permanent officers and servants of the Republic and in the service of the Evcaf Office without the submission by them of an application for a licence.”

Counsel for the applicants contended:

- 5
- (a) That the professional tax in question is in reality a fee and, therefore, it could only be demanded in return for a service rendered by the respondent municipality; that the service concerned in the present instance is the procedure by means of which persons other than public officers apply and obtain professional licences and are entered in the relevant register; and that in the case of public officers though no such service is rendered, because paragraph (c) of the proviso to section 157 (1) does not require them to apply for a professional licence, they nevertheless have to pay professional tax.
- 10
- (b) That the imposition of the professional tax in question amounts to a contravention of Article 25* of the Constitution.
- 15
- (c) That the professional tax results in an infringement of the proprietary rights protected under Article 23 of the Constitution in that there results deprivation of money of the applicants when they pay the professional tax imposed on them.
- 20
- (d) That paragraph (c) of the proviso to subsection (1) of section 157 constitutes a "repugnant proviso" because though—allegedly—the public officers are not working for profit it is expressly provided in the relevant legislation, particularly in section 156, that the professional tax is imposed in relation to the carrying on, practice or exercise of any business, trade, calling or profession "for profit".
- 25
- (e) That Article 28 of the Constitution has been contravened because there is not made, as regards professional tax, sufficient differentiation as between public officers on the one hand and private employees on the other, though the two categories differ in status.
- 30
- (f) That Article 35** of the Constitution has been contravened. It has been submitted, in this connection, that, since under this Article the Executive Power has
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* Quoted at p. 136 *post*.

** See p. 140 *post*.

to secure the efficient application of the provisions of the Constitution safeguarding fundamental rights and liberties, it has to safeguard the right of public officers to carry out their duties without having to pay professional tax because of doing so, as without the functioning of the public service there can be no effective protection and proper enjoyment of the fundamental rights and liberties of the citizens. 5

- (g) That because public officers are in any event bound to work in order to carry out their duties they should not have to pay professional tax. 10

It has been pointed out, in this connection, that in Greece public officers are exempted from the obligation to pay professional tax.

In addition to the above contentions the Court dealt also (a) with the issue of whether or not, in view of paragraph (d)* in the proviso to subsection (1) of section 157, which makes provision for administrative review of the relevant decisions of the respondent municipality, the *sub judice* imposition of professional tax on the individual applicants are finalized administrative acts which could be attacked by means of a recourse and (b) with an issue relating to Article 192** of the Constitution, paragraphs (1) and 7 (b). 15 20

Held, (I) (on the issue whether or not the imposition of professional tax on the individual applicants are finalized administrative acts). That though the jurisdiction of this Court in administrative law matters is exclusive there is nothing in such article to prevent procedures for administrative review; that the review procedure under paragraph (d) of the proviso to section 157 (1) of Cap. 240, is not a step necessary for the completion of the relevant administrative process but only an optional administrative remedy and, consequently, these recourses could be made by the applicants even though they did not resort first to the review procedure (see *Petrolina Ltd. v. The Municipal Committee of Famagusta* (1971) 3 C.L.R. 420 at pp. 423-425). 25 30 35

* See p. 132 *post*.

** See p. 141 *post*.

Held, (II) (on the issue relating to Article 192, paragraphs (1) and 7 (b) of the Constitution). That it cannot be regarded as a term or condition of service of public officers who were employed by the Government of the Colony of Cyprus prior to the coming
5 into operation of the Constitution on August 16, 1960, and who have continued to be members of the public service thereafter, that they are to pay their professional tax in the same manner as was provided for, prior to 1960, by means of the 10th Schedule to Cap. 240.

10 Held, (III) on contentions (a) to (g) above:

(1) That the professional tax in question is a tax (see *Voyias v. The Republic* (1974) 10 J.S.C. 909-916) which has, also, the attributes of a fee; and that though a service should, always, be rendered in return for a fee to be collected from a citizen,
15 the service rendered in return for the professional tax in the instant case is not the formal administrative process of applying and obtaining a licence because other services are rendered by the respondent municipality, in the exercise of powers such as those set out in sections 123 to 126 of Cap. 240 for the benefit
20 of all those who work within its municipal limits.

2 (a) That the professional tax is not imposed in a manner affecting directly, as such, the right of every person, under Article 25, to practise any profession or to carry on any occupation, trade or business, and therefore, it cannot be held to amount
25 to a contravention of that Article (see, also, *Voyias v. The Republic* (1974) 10 J.S.C. 909 at pp. 936-937). *Murdock and Others v. Commonwealth of Pennsylvania*, 87 L. Ed. 1292 distinguishable from the present case.

30 2 (b) That there is nothing unconstitutional in regulating the exercise of a profession or occupation by means of a tax imposed for that purpose (see *Royall v. State of Virginia*, 29 L. Ed. 735).

35 2 (c) That a tax affecting the exercise of the right safeguarded by Article 25.1 of the Constitution could only be declared unconstitutional if the relevant legislation is proved to be unreasonable; and that this is not so in the present case. (See Basu's Commentary on the Constitution of India, 5th ed. vol. 1 pp. 543 and 782).

Per curiam: Even if it were to be found that it is a tax directly affecting the said right, it does not infringe Article 25 because

it is "a formality" or "condition" which is "prescribed by law" and is "necessary in the public interest", in the sense of paragraph (2) of such Article.

(3) That there cannot be an infringement of the constitutional right to property, safeguarded under Article 23, by something which is expressly envisaged by another Article of the Constitution, which in the present instance is Article 24*; and that when a tax, duty or rate is not otherwise unconstitutional it cannot be treated as contravening Article 23 merely because it results in deprivation of money for the purpose of payment of such tax, rate or duty; because otherwise Article 23 would render Article 24.1 devoid of any effect whatsoever.

4 (a) That it is the substance, and not the form, of a legislative enactment that must be looked at, and that which is in form a proviso may be in substance a fresh enactment, adding to, and not merely qualifying, that which goes before it; and that when the said paragraph (c) is looked at against the background of the legislation concerned, it is proper to conclude that it is not in substance a mere proviso, but it is a provision extending and supplementing the main part of section 157 of Cap. 240 in which it is to be found.

Per curiam: Even if it were to be held that it is a mere proviso, it cannot be treated as a "repugnant proviso", because public officers do, indeed, work for profit in the sense of section 156.

4 (b) (*After stating the meaning of the words "office of profit"—vide p. 139 post*). That the word "profit", as used in the relevant legislation, is not used in its strictly commercial narrow sense, but in the sense of remuneration accruing from whatever source and that it does include remuneration such as the emoluments of public officers.

(5) That notwithstanding some differences which are not material for the purposes of the present proceedings, both categories (*i.e.* public officers and private employees) comprise persons who have to carry out their duties within the municipal limits and, in this respect, they enjoy equally services of the municipality which enable them to work efficiently, safely and

* Quoted at p. 138 *post*.

comfortably; and that, accordingly, article 28 of the Constitution has not been contravened.

5 (6) That the Executive Power has to discharge its duty under Article 35 in the normal course of the implementation of its task under the Constitution and it cannot be held that it has failed to discharge such duty adequately if it has not turned into a privileged class any of its organs, such as by exempting public officers from the general and normal obligation to pay professional tax.

10 7 (a) That though it might not be unjustified, in view of the special status of public officers, to exempt them from the payment of professional tax, it cannot be said that such status is constitutionally or otherwise legally incompatible with their statutory obligation in Cyprus to pay professional tax.

15 7 (b) That in Greece public officers are exempted from the payment of professional tax by legislative provisions; that the position is exactly the opposite in Cyprus; that matters of legislative, and in particular of fiscal, policy are within the sphere of the competence of the Executive and Legislative Powers and the Judicial Power cannot substitute its own views in the place of their views; and that an administrative Court cannot interfere in a matter of fiscal policy so long as the legislation concerned is not unconstitutional.

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25 (8) That the alleged unconstitutionality of a statute has to be established beyond reasonable doubt and that the burden was on the applicants to satisfy the Court that the relevant legislation was unconstitutional and they have failed to do so.

30 *Per curiam:* Public officers do appear to have a deserving moral claim not to be subjected, in the same manner and to the same extent as other employed persons, to the obligation to pay professional tax for serving the public, but this is a matter of policy for the Government which can only be implemented by legislation and not by a judicial decision.

35 *Application dismissed.*
No order as to costs.

Cases referred to:

Petrolina Ltd. v. The Municipal Committee of Famagusta (1971)
3 C.L.R. 420 at pp. 423-425;

- Rallis v. The Greek Communal Chamber*, 5 R.S.C.C. 11, at p. 15;
Pancyprian Federation of Labour (PEO), v. Board of Cinematograph Films Censors and Another (1965) 3 C.L.R. 27 at pp. 33-34;
Voyias v. The Republic (1974) 10 J.S.C. 909-916, 936-937 (to be reported in (1974) 3 C.L.R.); 5
Murdock and Others v. Commonwealth of Pennsylvania, 87 L. Ed. 1292;
Royall v. State of Virginia, 29 L. Ed. 735;
Gundling v. City of Chicago, 44 L. Ed. 725; 10
Rhondda Urban Council v. Taff Vale Rail Co., [1909] A.C. 253 at p. 258;
Commissioner of Stamp Duties v. Atwill and Others [1973] 1 All E.R. 576 at p. 581;
Henry (Inspector of Taxes) v. Galloway, 148 L.T. 453 at p. 455; 15
Cowan v. Seymour [1920] 1 K.B. 500 at p. 511;
Loucas and Others v. The Republic (1965) 3 C.L.R. 65 at p. 70;
O'Malley v. Woodrough, 83 L. Ed. 1289, at pp. 1293, 1294;
A. Magnano Company v. Hamilton, 78 L. Ed. 1109;
State of Wisconsin v. J. C. Penney Company, 85 L. Ed. 267; 20
Board for Registration of Architects and Civil Engineers v. Kyriakides (1966) 3 C.L.R. 640 at p. 654.

Recourse.

Recourse against the decision of the respondent Municipality of Nicosia to impose professional tax on the individual applicants. 25

A. Triantafyllides, for the applicant.

K. Michaelides, for the respondent.

L. Loucaides, Deputy Attorney-General, on behalf of the Attorney-General of the Republic, as amicus curiae. 30

Cur. adv. vult.

The following judgment was delivered by:

TRIANTAFYLLIDES P.: By these three recourses, which were heard together in view of their nature, applicant 1, which is a trade union of persons in the public service, and the individual applicants, who are all public officers, seek a declaration that 35

the decision of the respondent to impose professional tax on the individual applicants is *null* and *void* and of no effect whatsoever.

It is necessary to refer, first, to the relevant legislation:

5 Initially the pertinent provisions were sections 156–159 of the Municipal Corporations Law, Cap. 240, and the Tenth Schedule to such Law, which, as modified by virtue of Article 188 of the Constitution, read as follows:–

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

Provided that –

15 (a) no person shall be required to obtain more than one licence in the same municipal limits during any period;

20 (b) any person who has taken out a licence in any municipal limits shall not be required to take out another licence in any other municipal limits unless he has a permanent place of business therein or remains therein for the purpose of carrying on his business, trade, calling or profession at any one time for a period exceeding seven days;

25 (c) this section shall not apply to persons performing only religious duties;

30 (d) officers and servants permanently in the service of the Government of the Republic or of the Evcaf Office and in receipt of an annual salary shall not be required to obtain such licence but shall pay the fees hereinafter provided.

35 157. (1) Any person desiring to carry on, exercise or practise, for profit, any business, trade, calling or profession within any municipal limits shall apply to the council for a licence and the council shall determine the fee payable therefor, not exceeding the appropriate fee set out in Part I of the Tenth Schedule to this Law:

Provided that –

- (a) any person aggrieved may, within seven days from the day of the notification to him of such determination, appeal to the District Officer whose decision shall be final and conclusive; 5
- (b) nothing in this section contained shall apply to persons performing only religious duties;
- (c) subject to the provisions of section 159 of this Law, nothing in this section contained shall apply to the officers and servants to which section 159 relates. 10
- (2) Upon payment of the fee determined by the council or of such fee as may be decided upon by the District Officer on appeal, as the case may be, the council shall cause the name of the applicant to be entered in a register kept for the purpose (hereinafter called the 'register of trade licences') and shall issue to the applicant a licence. 15
- (3) The council shall keep the register of trade licences open for inspection by any person interested at all reasonable times without the payment of any fee. 20
158. If any person fails to apply to the council for a licence, as in section 157 of this Law provided, within one month of his having commenced or recommenced to carry on, exercise or practise any business, trade, calling or profession, the council may determine the fee payable by such person, not exceeding the appropriate fee set out in Part I of the Tenth Schedule to this Law, and enter his name in the register of trade licences and the decision of the council shall be final and conclusive. 25
159. (1) Officers and servants permanently in the service of the Government of the Republic or of the Evcaf Office and in receipt of an annual salary shall pay to the municipal corporation within the limits of which they usually perform their duties the fees set out in Part II of the Tenth Schedule to this Law. 30
- (2) The fees provided for by subsection (1) of this section shall be payable in two half annual instalments on 35

the thirtieth day of June and the thirty-first day of December of each year:

5 Provided that no such payment shall be made if the officer has not for the period of six months preceding any such date performed his duties within any municipal limits.

(3) Any dispute arising under the provisions of this section as to -

- (a) whether any or what fees are payable; or
- 10 (b) the municipal corporation to which any fees are payable,

shall be referred to the Minister of Interior whose decision shall be final and conclusive.

..... ”.

“ TENTH SCHEDULE

PART I.

15 (Sections 157 and 158).

FEEES FOR LICENCES FOR CARRYING ON PROFESSION, ETC.

		<i>Annual fee not exceeding £</i>
20	(a) Yearly licences:-	
	1. any individual person (other than persons included in paragraphs 2 and 3 hereof)	6
25	2. any money-lender, wine and spirit merchant and any person selling intoxicating liquors (whether local or foreign and whether by wholesale or retail) ..	25
30	3. any tobacco or wine and spirit manufacturer and distiller	50
	4. any banking establishment, company or partnership as such (other than such as are included in paragraphs 5 and 6 hereof)	50

	£	
5. any insurance agency as such	25	
6. any telegraph agency as such	10	

(b) Half yearly licences:-

The one half of the fees hereinbefore set out.

PART II 5
(Section 159).

FEES PAYABLE BY GOVERNMENT SERVANTS, ETC.

	<i>Mils</i> <i>per annum</i>	
Class 1. Officers and servants whose salary does not exceed £100 per annum	250	10
Class 2. Officers and servants whose salary exceeds £100 but does not exceed £300 per annum	500	
Class 3. Officers and servants whose salary exceeds £300 but does not exceed £600 per annum	1,000	15
Class 4. Officers and servants whose salary exceeds £600 but does not exceed £1,000 per annum	2,000	20
Class 5. Officers and servants whose salary exceeds £1,000 per annum	3,000"	

The above provisions have continued to be in force by virtue of section 8 (2) of the Municipal Corporations Law, 1964 (Law 64/64). 25

By means of the Municipal Corporations (Amendment) (No. 3) Law, 1970 (Law 89/70), paragraph (c) of the proviso to subsection (1) of section 157, *supra*, was replaced by the following paragraph:-

“(γ) Οὐδὲν τῶν ἐν τῷ παρόντι ἄρθρῳ διαλαμβανομένων θὰ ἐφαρμόζηται ἐπὶ ὑπαλλήλων καὶ ὑπηρετῶν εὐρισκομένων μονίμως ἐν τῇ δημοσίᾳ ὑπηρεσίᾳ ἢ ἐν τῇ ὑπηρεσίᾳ τοῦ Ἐβκάφ”.

(“ (c) nothing in this section contained shall apply to

officers and servants permanently in the public service or in the service of the Evcaf Office.”)

Furthermore, a new subsection, (4), was added, which reads as follows:—

5 “ (4) Πᾶς ἐργοδότης ὀφείλει, ἄμα τῇ αἰτήσῃ τοῦ Συμβουλίου, νὰ δηλώσῃ ἐγγράφως ἐντὸς ἐνὸς μηνὸς εἰς τὸ Συμβούλιον τὸ ὄνομα, τὴν διεύθυνσιν καὶ τὰς ἐτησίας ἀπολαβὰς παντὸς ὑπ’ αὐτοῦ ἐργοδοτουμένου.”.

10 (“ (4) Every employer must, at the request of the Council, declare in writing within a month to the Council the name, address and the yearly emoluments of everyone employed by him.”)

Also, section 159 was repealed, and Parts I and II of the Tenth Schedule were replaced by the following Part I which
15 reads as follows:—

“ ΔΕΚΑΤΟΣ ΠΙΝΑΞ

Μέρος Ι.

(Ἄρθρα 157 καὶ 158)

20	Ἐτήσιον δικαίωμα μὴ ὑπερβαῖνον
Κατηγορίαι Προσώπων:	
(α) Ἐτήσιαι Ἄδειαι:	
25	1. Ἐργάται καὶ ἄλλοι ἡμερομίσθιοι μὴ ἔχοντες τακτικὴν ἀπασχόλησιν 500 μίλις
	2. Μισθωτοὶ τῶν ὁποίων αἱ ἐτήσιαι ἀπολαβαὶ δὲν ὑπερβαίνουν τὰς £750 £2
30	3. Μισθωτοὶ τῶν ὁποίων αἱ ἐτήσιαι ἀπολαβαὶ ὑπερβαίνουν τὰς £750 ἀλλὰ δὲν ὑπερβαίνουν τὰς £1,500 £4
	4. Μισθωτοὶ τῶν ὁποίων αἱ ἐτήσιαι ἀπολαβαὶ ὑπερβαίνουν τὰς £1,500 ἀλλὰ δὲν ὑπερβαίνουν τὰς £3,000 £12
35	5. Μισθωτοὶ τῶν ὁποίων αἱ ἐτήσιαι ἀπολαβαὶ ὑπερβαίνουν τὰς £3,000 £50

6.	Βιοτέχναι εργαζόμενοι δι' ίδιον λογαριασμόν	£12	
7.	Έπαγγελματίαι άσκούντες έλευθέριον έπάγγελμα, ήτοι Ιατροί, δικηγόροι, άρχιτέκτονες, μηχανικοί, έμποροι, βιομήχανοι και έπιχειρηματίαι, εργαζόμενοι ώς άτομα	£50	5
8.	Έταιρείαι περιωρισμένης εύθύνης:		
	Ίδιωτικά	£100	
	Δημόσια	£250	10
9.	Όμόρρυθμοι και έτερόρρυθμοι έταιρείαι..	£50	
10.	Άλλοδαπαί έταιρείαι έγγεγραμμένα εν Κύπρω και άσκούσαι άσφαλιστικές, άτμοπλοϊκές, άεροπορικές, τραπεζιτικές και λοιπάς έμπορικής έργασίας..	£250	15
11.	Συνεργατικά Ίδρύματα	£100	
12.	Άλλα φυσικά ή νομικά πρόσωπα μη έμπύπτοντα εις οίανδήποτε τών άνω κατηγοριών	£50	
(β)	Έξάμηνοι άδειαι:		20

Τò ήμισυ τών άνωτέρω έκτιθεμένων δικαιωμάτων.

Διά τούς σκοπούς του παρόντος Πίνακος ή Άρχή Ήλεκτρισμοῦ Κύπρου, ή Άρχή Τηλεπικοινωνιών Κύπρου, ή Έπιτροπή Σιτηρών και τὰ Συμβούλια Ύδατοπρομηθείας εν τή έδρα των, και έκαστον τών εις τὰς άλλας πόλεις γραφείων αυτών, θα θεωρώνται και ταξινομώνται ώς δημόσια έταιρεία περιωρισμένης εύθύνης.”.

(" TENTH SCHEDULE

PART I.

(Sections 157 and 158)

Annual fee 30
not
exceeding

Categories of Persons:

(a) Yearly Licences:

1.	Workers and others on daily wages who are not in regular employment ..	500 mils	35
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	2.	Salaried persons whose yearly emolument do not exceed £750	£2
5	3.	Salaried persons whose yearly emolument exceed £750 but do not exceed £1,500	£4
	4.	Salaried persons whose yearly emolument exceed £1,500 but do not exceed £3,000	£12
10	5.	Salaried persons whose yearly emolument exceed £3,000	£50
	6.	Craftsmen working for their own account	£12
15	7.	Professional persons carrying on a profession such as doctors, advocates, architects, engineers, merchants, industrialists and businessmen working as individuals	£50
	8.	Companies of limited liability:	
		Private	£100
20		Public	£250
	9.	General and limited partnerships ..	£50
	10.	Foreign companies registered in Cyprus and carrying on the business of insurance, aviation, banking and other commercial enterprises.. .. .	£250
25			
	11.	Co-operative Societies	£100
	12.	Other natural or legal persons not falling within any of the above categories	£50
30	(b)	Six months' licences:	
		Half of the above stated fees.	

For the purposes of this Schedule the Electricity Authority of Cyprus, the Cyprus Telecommunications Authority, the Grain Commission and the Water Boards at their principal offices, and at every office of theirs in other towns, will be regarded and classified as public companies of limited liability").

Then, by the Municipal Corporations (Amendment) Law, 1972 (Law 87/72), paragraph (c) of the proviso to subsection

(1) of section 157 was replaced by a new paragraph (c) as follows:-

“(γ) Τὸ συμβούλιον καθορίζει συμφώνως πρὸς τὸ παρὸν ἐδάφιον τὰ δικαιώματα τὰ πληρωτέα ὑπὸ μονίμων ὑπαλλήλων καὶ ὑπηρετῶν τῆς Δημοκρατίας καὶ ἐν τῇ ὑπηρεσίᾳ τοῦ Ἐβκάφ ἄνευ ὑπ’ αὐτῶν ὑποβολῆς αἰτήσεως δι’ ἄδειαν.” 5

“(c) The council prescribes in accordance with this paragraph the fees payable by permanent officers and servants of the Republic and in the service of the Evcaf Office without the submission by them of an application for a licence;”) 10

Also, another paragraph, (d), was added, which reads as follows:-

“(δ) πᾶν πρόσωπον ἀναφερόμενον ἐν τῇ ἐπιφυλάξει (γ) δύναται, ἐντὸς ἑπτὰ ἡμερῶν ἀπὸ τῆς εἰς αὐτὸ κοινοποίησεως τοῦ καθορισμοῦ τοῦ δικαιώματος, νὰ ὑποβάλῃ ἐφῆσιν εἰς τὸν Ἐπαρχὸν τῆς Ἐπαρχίας τοῦ κατὰ τῆς ἐπιβολῆς τοῦ δικαιώματος ἢ τοῦ ποσοῦ αὐτοῦ, πᾶσα δὲ διαφορά ὡς πρὸς τὸν δῆμον εἰς ὃν τὰ δικαιώματα δέον νὰ καταβάλλωνται ἀναφέρεται εἰς τὸν Ὑπουργὸν ὅστις καὶ ἀποφασίζει σχετικῶς.”. 20

“(d) every person referred to in proviso (c) may, within seven days of the communication to him of the determination of the fee, file an appeal to the District Officer of his District against the imposition of the fee or of its amount, and every dispute regarding the municipality to which the fee must be paid is referred to the Minister who decides in this connection.”). 25

As the relevant legislation is now, after it has developed as above, public officers are in exactly the same position in so far as professional tax is concerned as all other salaried persons, that is they pay such tax on the basis of their emoluments and in accordance with the criteria set out in the amended Tenth Schedule of Cap. 240. 30

A problem which I have had to face in these proceedings, though it was not raised by any one of the parties before me, was whether or not, in view of the specific provisions of the new paragraph (d) in the proviso to subsection (1) of section 157, the *sub judice* impositions of professional tax on the in- 35

dividual applicants in these cases are finalized administrative acts which could be attacked by means of a recourse; because, by means of the said paragraph (d) provision has been made for administrative review of the relevant decisions of the respondent municipality and it does not appear that the applicants have sought such a review under paragraph (d). I have had, therefore, to decide whether the said review is an indispensable stage for the completion of the relevant administrative action, in which case I would not have before me finalized administrative acts which could have been attacked by recourse, or whether it is merely an optional remedy which need not be resorted to for the purpose of completing the administrative process concerned.

On this point it is useful to refer to *Petrolina Ltd. v. The Municipal Committee of Famagusta*, (1971) 3 C.L.R. 420, where the following were stated (at pp. 423-425):-

“ It is, *inter alia*, provided by the said section 10 (see subsection 1 (a)) that any person whose legitimate interest is affected by the refusal of the Licensing Authority to grant a licence may (δύνεται), within ten days, apply to the Council of Ministers for a review of the matter.

.....

There is nothing in Article 146 of the Constitution, under which the present recourse has been made to this Court, or in any other legislative enactment, which prevents the making of recourse without resorting first to a remedy such as the one under section 10 (1) (a) of Law 94/68.

The position in this respect is closely similar to that under section 6 of the Motor Transport (Regulation) Law (16/64); see the case of *The Cyprus Transport Co. Ltd. v. The Republic* (1966) 3 C.L.R. 617. In that case reference was made to the earlier case of *Pelides and The Republic*, 3 R.S.C.C. 13, where, in the judgment, the following are stated (at p. 17):-

‘ The Court takes this opportunity of stressing that though Article 146 grants it exclusive jurisdiction in administrative law matters there is nothing in such Article to prevent procedures for administrative review of executive or administrative acts or decisions from

being provided for in a Law. Such review may be either –

- (a) By way of confirmation or completion of the act or decision in question, in which case no recourse is possible to this Court until such confirmation or completion has taken place (e.g. under section 17 of Cap. 96); or 5
- (b) by way of a review by higher authority or by specially set up organs or bodies of an administrative nature, in which case a provision for such a review will not be a bar to a recourse before this Court but once the procedure for such a review has been set in motion by a person concerned no recourse is possible to this Court until the review has been completed.' 10 15

Because of the manner in which section 10 is framed I have reached the view that the review by the Council of Ministers, as provided therein, is not a step by way of confirmation or completion of the relevant administrative action, but only a review by higher administrative authority; therefore, the possibility to apply for such a review does not prevent the making of a recourse to this Court, under Article 146 of the Constitution, in a case in which there has not first been made a relevant application to the Council of Ministers. 20 25

It is useful to refer in this connection to the decisions of the Greek Council of State (Συμβούλιον Ἐπικρατείας) in Cases 24/1932 and 97/1937 whereby there was adopted, in closely similar situations, the same approach as the one adopted in the present instance. It is interesting to note, also, that in England—where in the absence of the judicial remedy of a recourse for annulment, such as the one under Article 146, resort is had to the remedy of an action for a declaration—it was held in the case of *Cooper v. Wilson* [1937] 2 K.B. 309, that an ex-sergeant of the police force, who claimed that he had not been validly dismissed from the force, was not limited to the right of appeal to the Secretary of State given by the Police Appeals Act, 1927, and that the fact that there existed the said remedy which 30 35 40

he could take did not prohibit his access to the Court by way of an action for a declaration; and the *Cooper* case was quite recently applied in the case of the *London Borough of Ealing v. Race Relations Board* [1971] 1 All E.R. 424."

- 5 Other relevant case-law are the decisions in *Rallis v. The Greek Communal Chamber*, 5 R.S.C.C. 11, 15, and in *Pancyprion Federation of Labour (Peo), v. Board of Cinematograph Films Censons and Another*, (1965) 3 C.L.R. 27, 33-34.

10 In the light of the foregoing I have reached the conclusion that the review procedure, under paragraph (d) of the proviso to section 157 (1) of Cap. 240, is not a step necessary for the completion of the relevant administrative process but only an optional administrative remedy and, consequently, these re-
15 courses could be made by the applicants even though they did not resort first to the review procedure.

One of the main arguments of counsel for the applicants has been that the professional tax in question is in reality a fee and, therefore, it could only be demanded in return for a service rendered by the respondent municipality; he has submitted that
20 the service concerned in the present instance is the procedure by means of which persons other than public officers apply and obtain professional licences and are entered in the relevant register, and he has stressed that in the case of public officers though no such service is rendered, because paragraph (c) of
25 the proviso to section 157 (1) does not require them to apply for a professional licence, they nevertheless have to pay professional tax.

I would like to observe, first, that the distinction, in this respect, between public officers and private employees has, to
30 a great extent, been obliterated in view of the enactment of subsection (4) of section 157; secondly, in any event, I cannot agree with counsel for the applicants that the service rendered in return for the professional tax is the formal administrative process just described above; other services are rendered by the
35 respondent municipality, in the exercise of powers such as those set out in sections 123 to 126 of Cap. 240, for the benefit of all those who work within its municipal limits and such services are essential in order to enable those paying professional tax to work more efficiently, safely and comfortably.

I do agree that a service should, always, be rendered in return for a fee to be collected from a citizen (see, *inter alia*, Κυριακοπούλου "Ελληνικόν Διοικητικόν Δίκαιον", 4th ed., vol. C, pp. 354-355); this is how a fee is distinguished from a tax, since the State can impose taxation without rendering, directly, in return any service to particular citizens (see, again, Κυριακοπούλου, *supra*, pp. 347-348, as well as Στασινοπούλου "Μαθήματα Δημοσιονομικοῦ Δικαίου", 3rd ed., pp. 260-261). 5

Regarding the exact nature of the municipal professional tax I share the view, which was expounded by Hadjianastassiou J. in *Voyias v. The Republic*, (1974) 10 J.S.C. 909-916*, that it is a tax; but, I would go somewhat further and say that, in my opinion, it is a tax which has, also, to a certain extent, the attributes of a fee, because, as pointed out earlier, there are services which are rendered, in return for such tax, by the municipality, to those working within the municipal limits. 10 15

The next submission of counsel for the applicants which I have to examine is that a tax which is imposed in respect of the exercise of a profession, such as that of a public officer, amounts to a contravention of Article 25 of the Constitution, which, in its material parts, reads as follows:- 20

- " 1. Every person has the right to practise any profession or to carry on any occupation, trade or business.
2. The exercise of this right may be subject to such formalities, conditions or restrictions as are prescribed by law and relate exclusively to the qualifications usually required for the exercise of any profession or are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person or in the public interest." 25 30

I agree with the view expressed in the *Voyias* case, *supra* (see pp. 936-937), that the professional tax is not imposed in a manner affecting directly, as such, the right safeguarded under Article 25, above, and, therefore, it cannot be held to amount 35

* To be reported in (1974) 3 C.L.R.

to a contravention of that Article. Even if, however, I were to find that it is a tax directly affecting the said right I am of the opinion that it does not infringe Article 25 because it is "a formality" or "condition" which is "prescribed by law" and is "necessary in the public interest", in the sense of paragraph (2) of such Article.

I have been referred by counsel for applicants to the case of *Murdock and others v. Commonwealth of Pennsylvania*, 87 L.Ed. 1292; that was a case where a flat tax was imposed on certain persons disseminating religious material and it was held that it infringed the rights of freedom of religion and of free speech; in my opinion the *Murdock* case is distinguishable from the present cases, because, as it was pointed out (at p. 1299), the tax involved in that case was a licence tax of a fixed amount unrelated to the scope of the activities of the petitioners or to their realized revenues, whereas the professional tax payable by the applicants is related to the scope of their activities and to their revenues.

A more relevant case is *Royall v. State of Virginia*, 29 L. Ed. 735, where it was held that there is nothing unconstitutional in regulating the exercise of a profession or occupation by means of a tax imposed for that purpose and this was confirmed in the later case of *Gundling v. City of Chicago*, 44 L. Ed. 725.

Useful reference may, also, be made, in this respect, to Basu's Commentary on the Constitution of India, 5th ed., vol. 1, p. 543, where there is set out Article 19 (1) (g) of the Indian Constitution which provides that "All citizens shall have the right... to practise any profession, or to carry on any occupation, trade or business"; and as it is to be derived from the same textbook (at p. 782) a tax affecting the exercise of the above right could only be declared unconstitutional if the relevant legislation is proved to be unreasonable; and I have not been satisfied that this is so in the present instance.

Regarding, next, the contention that the professional tax results in an infringement of the proprietary rights protected under Article 23 of our Constitution in that there results deprivation of money of the applicants when they pay the professional tax imposed on them, I cannot agree with this contention because there cannot be an infringement of the constitutional

right to property, safeguarded under Article 23, by something which is expressly envisaged by another Article of the Constitution; in the present instance such Article is Article 24 which reads as follows:-

- “ 1. Every person is bound to contribute according to his means towards the public burdens. 5
- 2. No such contribution by way of tax, duty or rate of any kind whatsoever shall be imposed save by or under the authority of a law.
- 3. No tax, duty or rate of any kind whatsoever shall be imposed with retrospective effect: 10
- Provided that any import duty may be imposed as from the date of the introduction of the relevant Bill.
- 4. No tax, duty or rate of any kind whatsoever other than customs duties shall be of a destructive or prohibitive nature.” 15

When a tax, duty or rate is not otherwise unconstitutional it cannot be treated as contravening Article 23 merely because it results in deprivation of money for the purpose of payment of such tax, rate or duty; because otherwise Article 23 would render paragraph (1) of Article 24 devoid of any effect whatsoever. 20

Another argument which has been advanced by counsel for the applicants is that the at present in force paragraph (c) of the proviso to subsection (1) of section 157 constitutes a “repugnant proviso” because though—allegedly—the public officers are not working for profit it is expressly provided in the relevant legislation, particularly in section 156, that the professional tax is imposed in relation to the carrying on, practice or exercise of any business, trade, calling or profession “for profit”. 25 30

In Halsbury’s Laws of England, 3rd ed., vol. 36, p. 400, para. 604, it is stated that it is the substance, and not the form, of a legislative enactment that must be looked at, and that which is in form a proviso may be in substance a fresh enactment, adding to, and not merely qualifying, that which goes before it; and reference is made, in this respect, to *Rhondda Urban Council v. Taff Vale Rail Co.*, [1909] A.C. 253, 258, 35

which has been followed in *Commissioner of Stamp Duties v. Atwill and others*, [1973] 1 All E.R. 576, 581.

I am of the view that in the present case, when the aforementioned paragraph (c) is looked at against the background of the legislation concerned, it is proper to conclude that it is not in substance a mere proviso, but that it is a provision extending and supplementing the main part of section 157 of Cap. 240 in which it is to be found. But, even if it were to be held that it is a mere proviso, I would not treat it as a "repugnant proviso", because I am of the view that public officers do, indeed, work for profit in the sense of section 156, above.

What is meant by an office of profit is explained in *Words and Phrases Legally Defined*, 2nd ed., vol. 4, pp. 24, 25. Useful reference may be made also to *Henry (Inspector of Taxes) v. Galloway*, 148 L.T. 453, where Finlay J. stated the following (at p. 455):-

"Now 'office of profit' is not a thing particularly easy to define; everybody, I think, has a good idea of what it means, but certainly it is not easy of exact definition. I was referred to a case, and some assistance is to be got from it, of *Delane v. Hillcoat* (9 B. & C. 310), but it is, I think, true to say that the exact definition is by no means easy. It is, of course, and must be an office, and no doubt it must be an office to which remuneration is in some way or other attached. You cannot have an office of profit unless you have got the remuneration attached to it."

In *Cowan v. Seymour*, [1920] 1 K.B. 500, Atkin L.J. said the following (at p. 511):-

"In my view if a profit does accrue to the holder of an office or employment by reason of his office or employment, such office or employment is an office or employment of profit,"

In the present case I am of the opinion that the word "profit", as used in the relevant legislation, is not used in its strictly commercial narrow sense, but in the sense of remuneration accruing from whatever source and that it does include remuneration such as the emoluments of public officers; indeed, in this respect, there is no real difference between public officers and private employees.

The next matter which has to be considered is the submission of counsel for the applicants that Article 28 of the Constitution is being contravened because there is not made, as regards professional tax, sufficient differentiation as between public officers on the one hand and private employees on the other, though, according to the contention of counsel for the applicants, the two categories differ in status. I cannot accept as correct this proposition; notwithstanding some differences which are not material for the purposes of the present proceedings, the fact remains that both categories comprise persons who have to carry out their duties within the municipal limits and, in this respect, they enjoy equally services of the municipality which enable them to work efficiently, safely and comfortably.

It has been argued, next, that there is being contravened Article 35 of the Constitution which reads as follows:-

“The legislative, executive and judicial authorities of the Republic shall be bound to secure, within the limits of their respective competence, the efficient application of the provisions of this Part.”

The Part of the Constitution concerned is Part II which relates to “Fundamental Rights and Liberties”.

It has been submitted, in this connection, that, since the Executive Power has to secure the efficient application of the provisions of the Constitution safeguarding fundamental rights and liberties, it has to safeguard the right of public officers to carry out their duties without having to pay professional tax because of doing so, especially as without the functioning of the public service there can be no effective protection and proper enjoyment of the fundamental rights and liberties of the citizens. I cannot agree with the above submission; I think that it is somewhat far-fetched. In my view the Executive Power has to discharge its duty under Article 35, above, in the normal course of the implementation of its task under the Constitution and it cannot be held that it has failed to discharge such duty adequately if it has not turned into a privileged class any of its organs, such as by exempting public officers from the general and normal obligation to pay professional tax.

I shall deal next with an issue relating to Article 192 of the Constitution, paragraphs (1) and 7 (b) of which read as follows:-

5 " 1. Save where other provision is made in this Constitution any person who, immediately before the date of the coming into operation of this Constitution, holds an office in the public service shall, after that date, be entitled to the same terms and conditions of service as were applicable to him before that date and those terms and conditions shall not be altered to his disadvantage during his continuance in the public service of the Republic on or after that date.

.....
 7.

10 (b) 'terms and conditions of service' means, subject to the necessary adaptations under the provisions of this Constitution, remuneration, leave, removal from service, retirement pensions, gratuities or other like benefits.' "

15 In *Loucas and others v. The Republic*, (1965) 3 C.L.R. 65, 70, it was pointed out that "the question of what is precisely saved by Article 192 of the Constitution and whether a particular matter falls within the expression 'terms and conditions of service', as defined in paragraph 7 (b) of Article 192 of the
 20 Constitution is one which must be decided according to the nature of the particular matter under consideration."

In the first place I do not think that it can be regarded as a term or condition of service of public officers who were employed by the Government of the Colony of Cyprus prior to the coming
 25 into operation of the Constitution on August 16, 1960, and who have continued to be members of the public service thereafter, that they are to pay their professional tax in the same manner as was provided for, prior to 1960, by means of the Tenth Schedule to Cap. 240; but, even assuming that Article 192
 30 could be held to be applicable at all to a matter of this nature, I am of the view that the maximum that could be said, in this respect, would be that such Article 192 safeguards the right of the public officers concerned to be taxed, as regards professional tax, in a reasonable in the circumstances manner; and, in my
 35 opinion, the now in force relevant arrangements cannot be described as being unreasonable in the light of present day realities.

In relation to this issue of Article 192 it is rather useful to refer, by way of analogy, to the view of the U.S.A. Supreme Court that the constitutional provisions forbidding the diminution of a Judge's salary during his term of office does not prevent the imposition of income tax on his salary (see Pritchett on the American Constitution, 1959, p. 116 and *O'Malley v. Woodrough*, 83 L. Ed. 1289, 1293, 1294). 5

It has, also, been contended that, because public officers are in any event bound to work in order to carry out their duties, they should not have to pay professional tax; and, it has been pointed out, in this connection, that in Greece public officers are exempted from the obligation to pay professional tax (see Κυριακοπούλου "Δίκαιον τῶν Πολιτικῶν Διοικητικῶν Ὑπαλλήλων", 1954, p. 212). 10

In my opinion, though it might not be unjustified, in view of the special status of public officers, to exempt them from the payment of professional tax, it cannot be said that such status is constitutionally or otherwise legally incompatible with their statutory obligation in Cyprus to pay professional tax; also, it should be borne in mind, in this respect, that it is not only public officers who are bound to work in order to perform their duties, but, also, private employees under their contracts of employment; and both categories enjoy equally the benefits of the same relevant municipal services. 15 20

In Greece public officers are exempted from the payment of professional tax by legislative provisions to that effect; the position is exactly the opposite here in Cyprus, and, as an administrative Court, I cannot interfere in a matter of fiscal policy so long as the legislation concerned is not unconstitutional. 25 30

Matters of legislative, and in particular of fiscal, policy are within the sphere of the competence of the Executive and Legislative Powers and the Judicial Power cannot substitute its own views in the place of their views (see, *inter alia*, *A. Magnano Company v. Hamilton*, 78 L. Ed. 1109, and *State of Wisconsin v. J. C. Penney Company*, 85 L. Ed. 267). 35

In *The Board for Registration of Architects and Civil Engineers v. Kyriakides*, (1966) 3 C.L.R. 640, 654, it was held that the alleged unconstitutionality of a statute has to be established

beyond reasonable doubt. The burden was on the applicants, in the present cases, to satisfy me that the relevant legislation was unconstitutional and they have failed to do so.

5 I would like to conclude by stressing that public officers do appear to have a deserving moral claim not to be subjected, in the same manner and to the same extent as other employed persons, to the obligation to pay professional tax for serving the public, but this is a matter of policy for the Government which can only be implemented by legislation and not by a
10 judicial decision.

For all the above reasons these recourses are dismissed; but, in the light of all relevant considerations, I am not prepared to make any order as to their costs.

Application dismissed.
No order as to costs.

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