

1978 July 25

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS D. LORDOS & SONS (LIMASSOL) LTD.,  
*Applicants,*

v.

THE WATER BOARD OF LIMASSOL,  
*Respondent.*

(Case Nos. 76/77 and 77/77).

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5 *Water Supply (Municipal and Other Areas) Law, Cap. 350—Installation of water supply—Fees and charges therefor—Method of fixing—Whether estimates should be made in each case—Maxim de minimis non curat lex applicable—Sections 13(c) and 30(1) of the Law and the regulations made under section 40.*

10 *Equality—Principle of equality—Article 28.1 of the Constitution—Said principle entails the equal or similar treatment of all those who are found to be in the same situation—Same fee for installation of water supply imposed in respect of each flat, within a Block of flats, and a hotel—Flat owners not in the same situation as hotel owners—Principle of equality not contravened.*

*Fiscal equality—Article 24.1 of the Constitution—Imposition of fees and charges for installation of water supply—Said Article not relevant.*

15 The applicants, as owners of land in Limassol, applied to the appropriate authority and obtained building permits for the erection of buildings consisting of flats and shops. When they applied to the respondent Board for the supply of water to their said buildings the latter replied that the supply applied for  
20 would cost £17.- for each flat and shop. Hence the present recourse.

The respondent Board arrived at the figure of £17 by dividing the total cost of connections made in the previous year with the

number of the installations and taking the average. For the purpose of installing water connections the respondent Board purchases in advance fittings and materials, and maintains stores, offices and staff; it makes no profit in carrying out the installations.

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Counsel for the applicant contended (a) that the decision complained of was taken in excess of powers and contrary to sections 13\* and 30(1)\* of the Water Supply (Municipal and Other Areas) Law, Cap. 350 and the Regulations made thereunder in that neither the Law nor the Regulations empower the respondent Board to fix the amount payable by the applicants in the way it was fixed; (b) that the decision complained of was contrary to Article 28 of the Constitution; and (c) that the arbitrary imposition of a fee for water supply offended against Article 24.1 of the Constitution.

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Regarding contention (a) above counsel submitted that according to the aforesaid sections the amount payable by the consumer must represent the expenses including the costs of the reconstruction of the road and pavement and the connection pipe; that these costs must refer to the particular connection; and that though the provisions of the Law and the Regulations suggest and impose that estimates should be made for each particular connection, in the case in hand the respondent Board arrived at the fee claimed by calculating the costs of the previous year and the number of connections and taking the average.

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Regarding contention (b) above counsel submitted that in the case of hotels or hotel appartments where there is only one connection, the amount of £17 is payable for one meter. This, counsel argued, was contrary to Article 28.1 of the Constitution as it discriminated between those persons who construct hotels or hotel appartments and those who construct blocks of flats.

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*Held*, (1) that though the method employed by the respondent Board in fixing the charges for the installation of water supply may not be the ideal one and at first sight may look that in some cases leads to injustice, if for each connection the services of an expert were required to estimate the actual costs, then in all cases the amount charged would be more than the amount of £17; that the method employed is in conformity with the pro-

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\* Quoted at p. 222 *post*.

visions of sections 13(c) and 30(1) of the Law and the Regulations made under section 40, which provide that the charges for the installation of each communication pipe are fixed by the Board from time to time; that there is nothing in the Law or the Regulations to suggest that estimates should be made for each case; and that though there may be instances where a number of consumers will pay more or less than the actual costs, depending on the particular case, the difference will be so negligible that the maxim de minimis non curat lex may be properly applied.

(2) That the principle of equality entails the equal or similar treatment of all those who are found to be in the same situation (see *Republic v. Arakian and Others* (1972) 3 C.L.R. 294 at p. 298 and the cases cited therein); that in the present case it cannot be said that the applicants are in the same situation with persons who construct hotels or hotel appartments because flats and shops which are separate entities, will eventually come under the possession or ownership of different persons, and so, for each one of them a separate meter is required whilst this cannot be said in the case of hotels and hotel appartments which are run by one and the same person; and that, accordingly, the principle of equality, has not been contravened.

(3) That there is no relevancy of Article 24.1 of the Constitution with the case under consideration.

*Application dismissed.*

Cases referred to:

*Republic v. Arakian and Others* (1972) 3 C.L.R. 294 at p. 298.

#### Recourse.

Recourse against the decision of the respondent Board to claim £17, for the connection and supply of water for each flat and shop of two blocks of flats and shops of the applicants.

*A. Adamides*, for the applicants.

*St. McBride*, for the respondent.

*Cur. adv. vult.*

MALACHTOS J. gave the following decision. In these two recourses, which were heard together, as they involve a common question of law, the applicants claim a declaration of the Court that the act and/or decision of the respondent Water Board to claim £17.- for the connection and supply of water for each

flat and shop of two blocks of flats and shops of the applicants, which were at the material time under construction in Limassol, as well as the sum of £20.- for each block as deposit for the proper construction of the water meter pits and the numbering of the internal supplies, is *null* and *void* and of no legal effect whatsoever. 5

The applicants in Case No. 76/77, as owners of a piece of land situated in Limassol under Plots Nos. 16/1/10/75/2/4/23 and 16/1/11/75/2/4/23, S/P LIV/51.5.III, applied to the appropriate authority and obtained a building permit No. 18355 dated 1/2/77 for the erection of a building consisting of 15 flats and three shops under the name of "Lordos Seaview". 10

The applicants in Case No. 77/77 as owners of another piece of land situated also in Limassol under plot No. 3/19 S/P LIV/59.1.I applied to the appropriate authority and obtained a building permit No. 18346 dated 25th January, 1977, for the erection of a building consisting of 40 flats and two shops under the name of "Lordos Central Court No. 2". 15

By letter dated 2nd February, 1977, the applicants applied to the respondent Board for the supply of water to their said buildings enquiring at the same time as to the cost thereof. By letter dated 5th February, 1977, the respondent Board replied as follows: 20

"For the supply of water, which will be provided by a separate meter for each flat and shop, the down payment by you of the sum of £17.- (seventeen pounds) by the number of the flats and shops to be supplied, is required. The deposit by way of returnable guarantee, for the proper construction, in accordance with our instructions, of the water meter pits and the numbering of the internal supplies, the sum of £20.- (twenty pounds) in relation to each building, is further required." 25 30

It is not in dispute that in arriving at the figure of £17.- as the costs of the connection of water, which besides labour includes the pipe between the main pipe and the meter, the fittings, the stop-cock, the meter itself, £2.- connection fees and £2.- consumers deposit against liability to pay for the water actually consumed, the respondent divides the total costs of connections made in the previous year with the number of 35

installations made during that year and charges for the year in hand the figure arrived at for each connection.

5 The respondent Board for the purpose of installing water connections purchases in advance fittings and materials, and maintains stores, offices and staff. In carrying out the instal-  
lations the Board makes no profit.

10 We are not concerned with the sum of £20.- (twenty pounds) claimed for each one of the two buildings for which there is no dispute that it is a returnable deposit, provided the Board does not have to incur expenses for constructing or altering the  
construction of the water meter pits if not properly constructed by the applicants. What is disputed by the applicants is the claim of £17.- for each flat and shop.

15 The respondent Board has been established under the provisions of the Water Supply (Municipal and Other Areas) Law, Cap. 350. By virtue of section 40 of the above Law (old section 38) a Water Board is given powers to make Regulations for any of the purposes enumerated therein. This section is as follows:

20 "40.(1) A Board may make Regulations for all or any of the following purposes, that is to say:

25 (a) regulating the laying of main pipes and the connection therewith of the various houses and other buildings by the users of water within the area of supply and the distribution of the water to such houses and other buildings;

30 (b) prescribing the size, nature, materials, strength and workmanship and the mode of arrangement, connection and disconnection of the pipes and other fittings used for the purpose of the water supply and providing for the control and test of such pipes or fittings;

35 (c) regulating the use of the water and preventing any waste, undue consumption, misuse, erroneous measurement or contamination of such water;

(d) providing for the maintenance of the water supply within their area of supply and of any works connected therewith;

- (e) regulating the supply and use of water in case of drought or other emergency;
- (f) subject to the provisions of this Law, prescribing the rates or charges to be levied in connection with the supply or use of water and the time or times at which such rates or charges shall be paid; 5
- (g) providing for and regulating the licensing of waterworks fitters;
- (h) generally, for the better carrying out of the provisions of this Law. 10

(2) Regulations under this section shall not be inconsistent with the provisions of this or any other Law and shall be subject to the approval of the Governor and shall not come into operation until they have been approved by him and published in the Gazette. 15

(3) Any Regulations made under subsection (1) may prescribe a penalty of a fine not exceeding twenty-five pounds for any breach thereof, to be paid into the fund of the Board.

(4) The Chairman of the Board may, at his discretion, compound any offence against the provisions of any regulations by accepting from the person who has committed or who is reasonably suspected of having committed such offence a payment of money not exceeding the maximum monetary penalty prescribed in sub-section (3) and the amount so collected shall be paid into the fund of the Board.”. 20 25

The Regulations made by the respondent Board are the Water Board of Limassol Regulations, 1954 to 1974.

The relevant Regulations by virtue of which the respondent Board imposed charges for the installation of water supply to the two buildings of the applicants are Regulations 6, 6(A) and 9(A) which read as follows: 30

“6. The installation of each communication pipe should be carried out by the Board at the expense of the consumer who will be liable to pay to the Board such an amount as the Board may fix from time to time in order to meet the 35

costs for such expense, including the costs for the repairs of streets and/or pavements through which the communication pipe will pass. And the amount fixed in this way will be payable to the Board by virtue of the present Regulations.

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6.(A) Any person wishing town water to be conveyed from the main pipe to his premises, or to any other place, should pay to the Board the amount fixed by Regulation 6, as well as an additional amount of £2.- (two pounds) as  
10 connection fee for the emplacement of the communication pipe on the main pipe of the Board. In case of non compliance with the above the Board may refuse such conveyance.

15 9(A). Each consumer is bound to preserve for each one of the 'premises' which are supplied with water one meter and the term 'premises' includes 'shop' as well as flat of a block of flats but does not include auxiliary rooms.

20 Provided that in the case where one meter supplies water on the date of the publication of the Regulations, to two or more premises, such supply may be continued without the installation of a second meter, if the owner of such premises undertakes the obligation to pay to the Board 750 mils every three months for each additional premises which are supplied with water through the same meter."

25 The grounds of law on which the application is based as argued by counsel for applicants may be summarised as follows:

30 1. The act and/or decision complained of was taken in excess of powers and contrary to the law and the Regulations made thereunder as neither the law nor the Regulations empower the respondent Board to fix the amount payable by the applicants for the water supply of their premises in the way it was fixed; and

2. The act and/or decision complained of is contrary to Articles 24 and 28 of the Constitution.

35 Counsel for applicants argued that the claim of the respondent Board for the installation of water supply in the present case is excessive and contrary to the provisions of sections 13(c)

and 30(1) of the Water Supply (Municipal and Other Areas) Law, Cap. 350. These sections read as follows:

“13. For the purpose of providing their area of supply, or any part thereof, with a supply of water, a Board may, subject to the provisions of this Law – 5

(a) .....

(b) .....

(c) impose water rates or charges for the supply of water and for any services rendered in connection therewith.”

30.(1) All rates or charges made by the Board for the supply of water and for any services rendered by the Board, in connection therewith, shall be fixed at such rate and on such scale that the revenue derived therefrom by the Board in any year, together with their revenue (if any) in such year from other sources, will be sufficient and only sufficient, as nearly as might be, to pay all expenses and meet all obligations of the Board properly chargeable to income in that year (including the payments falling to be made in such year by the Board in respect of the interest on, or repayment of, the principal of any money borrowed by the Board and provision for the redemption of securities issued by the Board under this Law) and such sums as the Board may think proper to set aside in that year for reserve fund, extensions, renewals, depreciation, loans and other like purposes.” 10 15 20

He submitted that according to the above sections the amount payable by the consumer must represent the expenses including the costs of the reconstruction of the roads and pavements and the connection pipe. These costs must refer to the particular connection. The provisions of the Law and the Regulations suggest and impose the method by which the Board must calculate fees payable by the consumer, which is, that estimates should be made for each particular connection. In the case in hand the respondent Board did not follow this method but imposed an amount fixed for each flat irrespective of the actual costs. They calculated the costs of the previous year and the number of connections made and they took the average. According to the Law and the Regulations the respondent Board is 25 30 35



bound to make clear to the consumer that the fees claimed correspond to the costs actually incurred for the connection.

5 In the case of hotels or hotel apartments where there is only one connection, the amount of £17.- is payable for one meter and this is contrary to Article 28.1 of our Constitution, as it discriminates between those persons who construct hotels or hotel apartments and those who construct blocks of flats.

10 Finally, he argued, that the arbitrary imposition by the respondent Board of a fee for the water supply offends against Article 24.1 of the Constitution.

15 No doubt the method employed by the respondent Board in fixing the charges for the installation of water supply may not be the ideal one and at first sight may look that in some cases leads to injustice, but as counsel for the respondent put it, if for each communication pipe the services of an expert were required to estimate the actual costs, then in all cases the amount charged would be more than the amount of £17.- Furthermore, the method employed by the Board is in conformity with the provisions of both sections 13(c) and 30(1) of the Law, and the Regulations made under section 40 of the said Law, 20 which provide that the charges for the installation of each communication pipe are fixed by the Board from time to time. There is nothing in the Law or the Regulations to suggest that estimates should be made for each case. Certainly, there may 25 be instances where a number of consumers will pay more or less than the actual costs depending on the particular case but the difference will be so negligible that the maxim de minimis non curat lex may be properly applied.

30 As regards the complaint of the applicants that they are not equally treated with persons who construct hotels or hotel apartments contrary to Article 28.1 of the Constitution, I must say that I find no merit. In the case of the *Republic v. Nishan Arakian & Others* (1972) 3 C.L.R. 294 at page 298 we read:

35 "The application of the 'principle of equality' has been considered in *Mikrommatis* and *The Republic*, 2 R.S.C.C. 125, where it was stated (at p. 131) that 'equal before the Law in paragraph 1 of Article 28 does not convey the notion of exact arithmetical equality but it safeguards only

against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things', and the *Mikrommatis* case was followed in, *inter alia*, *Panayides v. The Republic* (1965) 3 C.L.R. 107, *Louca v. The Republic* (1965) 3 C.L.R. 383, and *Impalex Agencies Ltd. v. The Republic* (1970) 3 C.L.R. 361. 5

Valuable guidance can be derived in this respect from decisions of the Greek Council of State.

In Case 1273/65 it was stated that the principle of equality entails the equal or similar treatment of all those who are found to be in the same situation." 10

It is clear from the above that the principle of equality entails the equal or similar treatment of all those who are found to be in the same situation. In the present case, it cannot be said that the applicants are in the same situation with persons who construct hotels or hotel apartments. Flats, which are separate dwellings, and shops in the case of the applicants, will eventually come under the possession or ownership of different persons, and so, for each one of them a separate meter is required. This cannot be said in the case of hotels and hotel apartments which are run by one and the same person. 15 20

As regards the last argument of counsel that the imposition by the respondent Board of a fee for the water supply offends against Article 24.1 of the Constitution, which provides that every person is bound to contribute according to his means towards the public burdens, I see no relevancy of this Article to the case under consideration. 25

For the reasons stated above these recourses fail.

There will be no Order as to costs. 30

*Application dismissed.  
No order as to costs.*