

1980 September 25

[A. LOIZOU, DEMETRIADES AND SAVVIDES, JJ.]

GEORGE L. POUROS AND OTHERS,
Appellants-Plaintiffs,

v.

THE ATTORNEY-GENERAL OF THE REPUBLIC,
Respondent-Defendant.

(Civil Appeal No. 5842).

5 *Jurisdiction—Conflict of jurisdiction—Parallel remedy—Taxation—
Imposition—A matter within the domain of public law—And
therefore within the exclusive jurisdiction of the Supreme Court
under Article 146 of the Constitution—No room for a case of
legal remedy parallel to that in Article 146.*

*Constitutional Law—Recourse under Article 146 of the Constitution—
Judgment in such a recourse—Effect—How far binding.*

10 *Constitutional Law—Equality—Principle of equality—Article 28 of
the Constitution—Claim for unjust enrichment—Whether said
principle violated because of the exclusion of the jurisdiction of
the Civil Court for such a cause of action when party liable is
the State—And whether there is interconstitutional conflict between
Articles 28 and 146 of the Constitution.*

15 *Constitutional Law—Actionable rights of citizens—Wrongful acts
or omissions by officers or authorities of the Republic under
Article 172 of the Constitution—No action for damages in relation
to such acts or omissions will lie in a civil Court except upon a
judgment of the Supreme Court under Article 146.4 of the
Constitution.*

20 The appellants-plaintiffs, who were receiving pension unde^r
the provisions of the Compensation (Entitled Officers) Law,
1962 (Law 52/62), paid income tax on such pension for the years
of assessment 1962–1971. Following the judgment of the Supre-
me Court in the Case of *Papaneophytou (No. 2) v. Republic* (1973)
3 C.L.R. 52, where it was held that such pension was exempted
25 from income tax, the appellants wrote to the Commissioner of

Income Tax and asked for the refund to them of the taxes collected during the above years. The Commissioner turned down appellants' requests on the ground that they were not submitted within the time limit specified by the law. Thereupon the appellants claimed refund of the said tax by means of a civil action at the District Court of Nicosia which was dismissed because the reply of the Commissioner was an executory administrative act that came within the domain of public law and, therefore, the District Court had no jurisdiction in the matter in view of the provisions of Article 146 of the Constitution. Hence this appeal.

Counsel for the appellants contended that the judgment in the *Papaneophytou* case (*supra*) gave rights not only to the applicant in those proceedings but also to all other persons who were likewise entitled to pension; that the deductions of income tax from appellants' pensions created for them a cause of action for money had and received before a Civil Court; that the exclusion of the jurisdiction of the civil Court for such a cause of action, when the party liable was the State, amounted to discrimination offending Article 28 of the Constitution inasmuch as there was offered to the State a different forum for protection than the one which is offered for similar causes of action by and against ordinary citizens; and that there was an interconstitutional conflict between Articles 146 and 28 of the Constitution as far as this issue was concerned.

Held, (1) that the imposition of taxation by virtue of a law whether correctly or wrongly applied, is a matter that falls within the domain of public law and any person aggrieved from such a decision when executory in its character has a remedy under Article 146 of the Constitution and the proper Court which has exclusive competence in such matters is now the Supreme Court in its revisional jurisdiction; that in this case the assessments made on the appellants as a result of which the deductions were effected were impositions of tax amounting to executory administrative acts; that this being so there is no room left under our legal system for a case of legal remedy parallel to that in Article 146; and that, moreover, a judgment in an administrative recourse is binding only as between the parties thereto and its result does not annul or render illegal any other similar decision taken by the administration for other persons.

(2) That for wrongful acts or omissions referred to in Article 172 of the Constitution and which come within the ambit of Article 146, and an action for money had and received is one of those covered by Article 172 of the Constitution, no action for damages will lie in a civil Court except upon a judgment of the Supreme Court under paragraph 4 of Article 146, that is to say after the legality of the act or decision complained of has been examined by the Supreme Court in its revisional jurisdiction and pronounced as null and void and of no effect (principles laid down in *Kyriakides v. Republic*, 1 R.S.C.C. 66 at p. 74 and *Pavlidis v. Republic* (1967) 3 C.L.R. 217 adopted).

(3) That there is no violation whatsoever of the principle of equality as the right to seek redress in a Court of Law is duly recognized to all citizens as against other citizens or the State, but for matters falling within different domains of the Law different procedures and Courts with different jurisdictions are made available to them under the Constitution; that there is no interconstitutional conflict as argued by counsel for the appellants; and that, accordingly, the appeal must fail.

20 *Appeal dismissed.*

Cases referred to:

Papaneophytou (No. 1) v. The Republic (1973) 3 C.L.R. 191;
Papaneophytou (No. 2) v. The Republic (1973) 3 C.L.R. 527;
Kyriakides v. The Republic, 1 R.S.C.C. 66 at p. 74;
 25 *Ouzounian v. The Republic* (1966) 3 C.L.R. 553;
Pavlidis v. Republic (1966) 3 C.L.R. 530 and (1967) 3 C.L.R. 217.

Appeal.

30 Appeal by plaintiffs against the the judgment of the District Court of Nicosia (Papadopoulos, S.D.J.) dated the 26th April, 1978 (Action No. 3843/75) whereby their claims for the refund to them of income tax deducted from their pension were dismissed.

L. Papaphilippou, for the appellants.

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

35 A. LOIZOU J. gave the following judgment of the Court: This is an appeal from the judgment of the District Court of Nicosia, by which the claims of the appellants for the refund to them of income tax deducted from their pensions, were

dismissed on the ground that the District Court lacked jurisdiction on the matter which, under the provisions of Article 146 of the Constitution, was within the exclusive competence of the Supreme Court.

The facts of the case are not in dispute and may be summed up as follows: 5

The appellants, plaintiffs in the Court below,—held until the date of the coming into operation of the Constitution pensionable posts in the Department of Co-Operative Development and on transfer or election by them to serve under the Greek Communal Chamber under the competence of which by operation of the Constitution the posts held by them came, were upon retirement awarded pension by the Government under the provisions of the Compensation (Entitled Officers) Law 1962 (Law No. 52 of 1962) as amended by Law 68 of 1962, with which amendment we are not really concerned. 10 15

The pensions received by the appellants for the years of assessment 1962—1971 were assessed by the Commissioner of Income Tax and tax was collected thereon as it appears in the statement of claim filed and for which there is no dispute. 20

Section 8 of the aforesaid Law reads as follows:—

“All payments made under the provisions of this Law shall be exempt from income tax imposed by the Income Tax Law or any other law in force at any time and relating to the imposition of income tax.” 25

This provision was judicially considered in the case of *Papaneophytou (No. 1) v. The Republic* (1973) 3 C.L.R. p. 191 by which the recourse of the applicant claiming the annulment of the decision of the Commissioner of Income Tax treating as liable to income tax the yearly pension received under section 4(1) of the aforesaid Law, was dismissed by a Judge of this Court in the first instance and upon appeal to the Full Bench reported as *Papaneophytou (No. 2) v. The Republic* (1973) 3 C.L.R. p. 527, it was held that on the proper construction of the aforesaid section 8 such pension was exempted from income tax and the *sub judice* decision in that recourse was declared as null and void and of no effect whatsoever. 30 35

The appellants, until the judgment in the *Papaneophytou*

case was delivered lodged no objection and filed no recourse against the deductions of income tax made on them as a result of assessments made by the Commissioner of Income Tax for the years of assessment 1962–1971. After the judgment in the
5 *Papaneophytou* case was pronounced, the appellants wrote to the Commissioner of Income Tax asking for the refund to them of the taxes collected. The said Commissioner, by a letter dated 24th November, 1973, dismissed these objections—as he put it—for the years 1960–1971, and informed them that the
10 reason for such dismissal was that they were not submitted within the time limit specified by the law and, consequently, he was unable to review such assessments.

The trial Judge, after referring to the various authorities, came to the conclusion that this reply of the Commissioner was an
15 executory administrative act that came within the domain of public law and, therefore, he had no jurisdiction in the matter in view of the provisions of Article 146 of the Constitution.

It is the case for the appellants that the judgment of the Full Bench in the *Papaneophytou* case (*supra*) on the proper construction of the aforesaid statutory provision gave rights not only
20 to the applicants in those proceedings but also to all other persons who were likewise entitled to pension. That being so, the assessments made on the present appellants and the consequential deductions from their pensions created for them a
25 cause of action for money had and received which they could pursue before a civil Court as any citizen would pursue a similar cause of action against another citizen. The exclusion of the jurisdiction of the civil Court for such a cause of action when the party liable was the State amounted to discrimination
30 offending Article 28 of the Constitution inasmuch as there was offered to the State a different forum for protection than the one which is offered for similar causes of action by and against ordinary citizens. In fact he went on to suggest that there is, as he put it, an inter-constitutional conflict between
35 Articles 146 and 28 of the Constitution as far as this issue was concerned.

The issue whether the trial Court had jurisdiction on the matter or not is not devoid of authority and we shall be shortly referring to them. As a prerequisite, however, to the views that we hold
40 on the matter it should be stated here that the imposition of

taxation by virtue of a law whether correctly or wrongly applied, is a matter that falls within the domain of public Law and any person aggrieved from such a decision when executory in its character has ultimately and after going through the procedures that may possibly exist for administrative review a remedy under Article 146 of the Constitution and the proper Court which has exclusive competence in such matters is now the Supreme Court in its revisional jurisdiction. There is no doubt that in the present case the assessments made on the appellants as a result of which the deductions were effected were impositions of tax amounting to executory administrative acts. This being so there is no room left under our legal system for a case of legal remedy parallel to that in Article 146. Furthermore a judgment in an administrative recourse is binding only as between the parties thereto and its result does not annul or render illegal any other similar decision taken by the administration for other persons.

That point came up and was duly decided by the Supreme Constitutional Court in one of its first cases, namely that of *Phedias Kyriakides and The Republic (Minister of Interior)*, 1 R.S.C.C. p. 66, where at p. 74, it was stated:

“Article 172 lays down the general principle that the Republic is made liable ‘for any wrongful act or omission causing damage committed in the exercise or purported exercise of the duties of officers or authorities of the Republic’. It is clearly aimed at remedying the situation existing before the coming into force of the Constitution whereby the former Government of the Colony of Cyprus could not be sued in tort.

The principle embodied in Article 172 has been given effect, *inter alia*, in the Constitution by means of paragraph 6 of Article 146 in respect of all matters coming within the scope of such Article 146.

Therefore, in the opinion of this Court, in respect of all wrongful acts or omissions referred to in Article 172 and which acts or omissions come within the scope of Article 146 an action for damages lies in a civil Court only under paragraph 6 of such Article, consequent upon a judgment of this Court under paragraph 4 of the same Article, and in

such cases an action does not lie direct in a civil Court by virtue of the provisions of Article 172.”

It is clear from the aforesaid passage that for wrongful acts or omissions referred to in Article 172 of the Constitution and which come within the ambit of Article 146, and an action for money had and received is one of those covered by Article 172 of the Constitution, no action for damages will lie in a civil Court except upon a judgment of the Supreme Court under paragraph 4 of Article 146, that is to say after the legality of the act or decision complained of has been examined by the Supreme Court in its revisional jurisdiction and pronounced as null and void and of no effect.

This principle has been adopted and expounded further in a number of decisions of this Court, suffice it to refer to the cases of *Ouzounian v. The Republic*, (1966) 3 C.L.R. p. 553 and *Pavlidis v. The Republic*, (1966) 3 C.L.R. p. 530 confirmed on appeal by the Full Bench and reported under the same name in (1967) 3 C.L.R. p. 217. We abide by all these judicial pronouncements and we find no violation whatsoever of the principle of equality as the right to seek redress in a Court of Law is duly recognized to all citizens as against other citizens or the State, but for matters falling within different domains of the Law different procedures and Courts with different jurisdictions are made available to them under the Constitution. Nor do we find any interconstitutional conflict as argued by counsel for the appellants.

Having reached this conclusion we do not think it will be disrespectful if we do not go into the other points raised by both counsel regarding such matters as unjust enrichment as well as the provisions of the Income Tax Law offering machinery for claims for refund of Income Tax which have been invoked, as we understand, in support of the main arguments advanced before us in this appeal.

Whilst on this point we may mention, however, that the question of unjust enrichment was also raised in the *Pavlidis case* (*supra*) and decided therein that there was no question of any unlawful enrichment of the State or of the tax-payer having paid beyond his liability according to Law. It was up to the tax-payer, if he so wished, to attack by a recourse within the

time specified in Article 146, the assessments made on him instead of electing to pay his tax liability without any protest.

For all the above reasons this appeal is dismissed with no order as to costs as none have been claimed.

Appeal dismissed. No order as to costs. 5