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[HADJIANASTASSIOU, MALACHTOS, DEMETRIADES, LORIS, STYLIANIDES, PIKIS, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH THE COMMISSIONER OF INCOME TAX,

Appellant,

v.

CHARALAMBOS MENELAOU,

Respondent.

(Revisional Jurisdiction Appeal No. 240).

Compensation (Entitled) Officers Law, 1962 *(Law* 52/62)*—Enacted for the purpose of implementing Article* 192.3 *of the Constitution —"Entitled Officer" under the Law—Opting to be paid pension instead of gratuity, in exercise of his rights under the Law—Pension exempted from income tax by virtue of section* 8 *of the Law— Exemption from income tax had no constitutional sanction and it could be amended provided such amendment did not offend other constitutional provisions—Pension granted to officer under the above Law and following the exercise by him of his option had all characteristics of a contract between the subject and the State which as a party to a contract is not in a different position from any other party to a contract—Deprivation of exemption from income tax, by virtue of section* 2 *of Law* 19/76, *impermissible because exemption constituted a precedent to entry into the arrangement between the parties—Therefore freedom that officer had to choose between two alternative courses taken away— Consequently section* 2 *of Law* 19/76 *interfered with the freedom of contract safeguarded by Article* 26.1 *of the Constitution.*

Statutes—Amending Law—In the absence of an indication to the contrary it must be read together with the provisions of the law it aims to amend—Section 12(1) *of the Interpretation Law, Cap.* 1.

Contract—State party to a contract—Is not in a different position from any other party to a contractual transaction.

Constitutional Law—Freedom of contract—Article 26.1 *of the Constitution—Section* 2 *of Law* 19/76 *interferes with freedom of contract safeguarded by the above Article.*

The respondent held up to the 16th August, 1960, the day of the coming into operation of the Constitution, the permanent and pensionable post of master at the Teachers' Training College. After the independence of Cyprus, as from the 16th August, 1960, his post came under the Greek Communal Chamber and he ceased to be a civil servant by operation of Article 87.1(b) of the Constitution. Under Article 192.3 of the Constitution he was entitled to just compensation or pension on abolition of office terms. For the purpose of promoting the application of Article 192.3 of the Constitution there was enacted the Compensation (Entitled Officers) Law, 1962 (Law 52/62) by virtue of which entitled pensionable officers, such as the respondent, were given an option to choose between two species of compensation, a pension and a gratuity, both calculable in accordance with the provisions of the Pensions Law, Cap. 311. Applicant elected compensation by way of pension instead of gratuity. Section 8 of Law 52/62 laid down that all payments under the Law, both a pension and a gratuity, would be exempt from income tax. In 1976 there was enacted Law 19/1976 which purported to render pensions payable to entitled officers subject to income tax; and thereafter the Commissioner of Income Tax taxed the pension payable to the applicant under Law 52/62 in accordance with the provisions of the Income Tax Law. The respondent challenged the validity of the decision of the Commissioner, whereby his pension was taxed, by means of a recourse. The trial Judge annulled the decision of the Commissioner mainly on the ground that the respondent was not an entitled pensionable officer and consequently the provisions of Law 19/76 were inapplicable in his case and even if applicable, Law 19/76 could not divest him of his rights conferred under and safeguarded by Article 192.3 of the Constitution, implemented thereafter by Law 52/62.

Upon appeal by the Commissioner of Income Tax:

Held, (1) that the pension that the Commissioner sought to tax derived directly from the application of the provisions of Law 52/62 and became payable to the respondent in his capacity as an "entitled pensionable officer"; that he was re-employed

in the public service, makes no difference and does not alter or qualify the nature of the right; that, consequently, the amendment of s.8, by virtue of the provisions of s.2 of Law 19/76, had a direct impact on his rights and unless vulnerable on some other ground, it altered them to his detriment by making his pension liable to income tax; that the wording of the amending law was clear to the extent of leaving no doubt as to the intention of the legislature to remove the exemption of a pension payable under Law 52/62 from liability to income tax; that section 12(1) of the Interpretation Law, Cap. 1, requires that the amending law must, in the absence of an indication to the contrary, be read together with the provisions of the law it aims to amend; that reading the two provisions together, the inescapable conclusion is that the exemption from income tax, conferred by s.8, is taken away; that, therefore, this Court is unable to uphold the view of the trial Judge that Law 19/76 is inapplicable in the case of the respondent based on the view that he is not an entitled pensionable officer for, manifestly, he is.

(2) That Article 192.3 of the Constitution broadly defined the benefits to which civil servants of the colonial administration would be entitled to, if not reappointed in the civil service; that they do not include exemption from income tax; that, therefore, the immunity granted by s.8 of Law 52/62, had no constitutional sanction and like any other statutory provision it could be amended, provided, of course, such amendment did not offend any other constitutional provision; that, therefore, this Court is in disagreement with the ruling of the trial Judge that the exemption was constitutionally guaranteed; it was not and it could, other considerations apart, be taken away.

(3) That the compensation that became payable to the respondent as a result of the application of the provisions of Law 52/62, crystallized after the exercise of a statutory option by him, an arrangement that had all the characteristics of a contract between the subject and the State, creating rights and imposing liabilities in the domain of private law; that it was a statutory condition precedent that the benefits conferred thereunder would be enjoyed free of income tax and it was not legitimate on the part of the State to take away this advantage to the detriment of the subject; that the State, as a party to an arrangement of this kind, is not in any different position from any other party

to a contractual transaction; that a proper application of the rule of law, enshrined in our Constitution, requires that all subjects of the law do observe its provisions without distinction; that whenever the State is a party to an agreement creating civil law rights, it should be implicit that it would not use its power to modify to its advantage obligations undertaken thereunder; that section 2 of Law 19/76 aimed to redefine the background to the arrangements following the enactment of Law 52/62, and to that extent extinguish conditions precedent to entry into the arrangement; that in such circumstances, the freedom that the respondent had to choose between two alternative courses was taken away and with it the freedom he had to enter into the one or the other arrangement; that, consequently, s.2 of Law 19/76 interfered with the freedom of contract safeguarded by Article 26.1 and took away, retrospectively at that, the right the respondent had to determine the nature of his private rights; that if it is permissible to redefine the right of compensation of the respondent, it would be equally permissible to do likewise in the case of entitled officers who opted for a gratuity by taxing the money they received; accordingly the appeal should be dismissed but for reasons different from those relied upon by the trial Court.

Held, further, that the conclusion reached is, also, consonant with the proper application of the concept of the rule of law that requires adherence to basic standards of justice, substantive and procedural; that it would be offensive to common sense and norms of justice to allow the demolition of the foundations of a basically contractual arrangement, injecting thereby an element of uncertainty and mistrust in the management and conduct of the affairs of citizens.

Appeal dismissed.

Cases referred to:

Papapetrou v. *Ministry of Finance* (1968) 3 C.L.R. 502;

Papaneophytou v. *Republic* (1973) 3 C.L.R. 191; (1973) 3 C.L.R. 527 (C.A.);

Economides v. *Republic* (1972) 3 C.L.R. 506;

Paschali v. *Republic* (1966) 3 C.L.R. 593 at p. 607;

Frangou v. *Greek Communal Chamber and Others* (1966) 3 C.L.R. 201;

New Orleans Gas Co. v. *Louisiana Light Co.* (1885) 115 U.S. 650, 29 L. ed. 516, 6 S. Ct. 252;

Fletcher v. *Peck* (1810, U.S.) 6 Cranch 87, 3 L. ed. 162;

Trustees of Dartmouth College v. *Woodward* (1819) U.S. 4 Wheat 518, 4 L. ed. 629;

Atlantic Coast Line R. Co. v. *Phillips* (1947) 332 U.S. 168, 67 S. Ct. 1584, 91 L. ed. 1977, 67 S. Ct. 1584, 173 A.L.R. 1;

Asylum v. *New Orleans*, 105 U.S. 368 (Bk. 26, L. ed. 1130);

Home of the Friendless, 8 Wall. 430 (75 U.S. Bk. 19, L. ed. 495);

New Jersey v. *Wilson*, 7 Cranch, 166 (11 U.S. Bk. 3, L. ed. 303);

Bank of Ohio v. *Knoop*, 16 How. 376 (57 U.S. Bk. 14, L. ed. 980);

Chimonides v. *Manglis* (1967) 1 C.L.R. 125;

Burmah Oil Co. v. *Lord Advocate* [1965] A.C. 75.

Appeal.

Appeal against the judgment* of a Judge of the Supreme Court (Savvides, J.) given on the 24th November, 1980 (Revisional Jurisdiction Case No. 419/78) whereby appellant's decision to assess applicants income for the years 1976–1977, relying on the provisions of Law 19/76, was annulled.

A. Evangelou, Senior Counsel of the Republic, for the appellant.

L. Papaphilippou, for the respondent.

Cur. adv. vult.

HADJIANASTASSIOU J.: The judgment of the Court will be delivered by Pikis, J.

PIKIS J.: Charalambos Menelaou was a civil servant, a master at the Teachers' Training College when the Republic of Cyprus was established on 16th August, 1960. Thereupon, public education ceased to be a department of the central government and became a branch of the respective communal chambers. Consequently, Mr. Menelaou became entitled to the benefits of Article 192.3 providing for the compensation of officers whose appointment in the public service was terminated. They should be compensated as in the event of abolition of post. Compensation was of two kinds, pension or gratuity, whichever was more advantageous to the officer entitled thereto. For the purpose of implementing Article 192.3, a law was enacted in 1962,

* Reported in (1980) 3 C.L.R. 599.

Law 52/62, regulating the discharge of the obligations of the Republic in the area under consideration. It is unnecessary to pronounce whether the aforementioned provisions exhaust the obligations of the Republic under Article 192.3, a question left open in *Papapetrou* v. *Ministry of Finance* (1968) 3 C.L.R. 502. We shall confine ourselves to an examination of the implications of those provisions of the statute, directly relevant to the outcome of the appeal. The definition of an "entitled officer", supplied by s.2, covers officers who were entitled either to a pension or a gratuity. An entitled pensionable officer is one who held a permanent pensionable position in the public service on 15.8.1960. Mr. Menelaou held such a position and, therefore, he qualified as an "entitled officer". The benefits to which he was entitled were specified in section 2 of the law.

Entitled pensionable officers were given an option to choose between two species of compensation, a pension and a gratuity, both calculable in accordance with the provisions of the Pensions Law, Cap. 311. Sub-sections 2, 3 and 4, made detailed provision for the computation of the compensation and the payment of interest for the period following 15.8.1960.

The option envisaged by s.4(1), involving a choice between a pension and a gratuity, had to be exercised within three months. This period was extended to nine months by a law enacted shortly afterwards, Law 68/62 (see section 2(A)). Lastly, and this is the area of contention, section 8 of Law 52/62 laid down that all payments made under the law, both a pension and a gratuity, would be exempt from income tax. As one may surmise, exemption from income tax was conferred because payments made under the law were in the form of compensation for loss of career, and, therefore, a capital payment, and not income derived for services rendered.

The interpretation of section 8 came up for consideration in the case of *Papaneophytou* v. *The Republic* (1973) 3 C.L.R. 191, particularly the compass of the exemption granted. Hadjianastassiou, J. held, on a literal construction of section 8, that the exemption was limited to emoluments that became payable under the law for the period preceding the enactment of the law. On appeal, the Full Bench held that the exemption from income tax provided by s.8, was all embracive, extending to all payments made under the law, past, present and future. *Michalakis Papaneophytou* (*No.* 2) v. *The Republic* (1973) 3

C.L.R. 527. Thus, a pension payable to an entitled officer under s.4(1) was exempt from any income tax liability.

Some three years later, a law was enacted, purporting to render pensions payable to entitled officers, subject to income tax, that is, Law 19/76. Section 2 of the new law that repealed and replaced s.8 of Law 52/62, specifically provided that pensions payable to entitled officers were liable to income tax. In a sense, the legislature reversed the state of the law, as it was found to be by the Supreme Court, in *Papaneophytou* (*No.* 2), supra. Thereafter, the Commissioner of Income Tax taxed the pension payable to the applicant under Law 52/62, in accordance with the provisions of the Income Tax Law. Mr. Menelaou challenged the validity of the decision and made the present recourse to the Supreme Court for its review. Savvides, J., held the sub-judice decision to be null and void, mainly because he took the view that—

(a) Mr. Menelaou was not an entitled pensionable officer and consequently the provisions of section 2 of Law 19/76 were inapplicable in his case, and

(b) even if applicable, Law 19/76 could not divest him of rights conferred under and safeguarded by Article 192.3 of the Constitution, implemented thereafter by Law 52/62.

To avoid confusion, it must be stressed that the authorities never attempted to place a retrospective construction on the provisions of Law 19/76; they sought to apply it prospectively to earnings derived after its enactment, notably 14.5.1976. To the extent that Law 19/76 aimed to take away those rights, the law was found to be unconstitutional.

An appeal was taken on behalf of the Attorney-General, contesting the correctness of the decision of the trial Court on the constitutionality of Law 19/76 and the ruling that applicant was not an entitled pensionable officer in the context of Law 19/76. It was submitted before us that Article 192.3 does not confer to entitled officers immunity from income tax and that any rights bestowed in this respect by Law 52/62 could, without constitutional hindrance be taken away by a subsequent enactment, such as Law 19/76. Further, the view

of the trial Court that Mr. Menelaou was not an entitled pensionable officer, is based on a misconception of the relevant provisions of the law. Mr. Menelaou would have no right to a pension under Law 52/62 had he ceased to be an entitled officer in accordance with Law 52/62. The fact that applicant was employed afresh as from September, 1963, in the public service, did not qualify in any way his position under Law 52/62.

That was a new appointment made independently of the provisions of Law 52/62, in no way a continuation of his previous service. Mr. Papaphilippou invited us to uphold the judgment at first instance and argued in support that a statute, such as Law 52/62, intended to implement constitutional provisions, ranks in pari passu, in all its width to constitutional provisions and any attempt to interfere with rights conferred thereunder, must be struck down as an infringement of the enabling provisions of the Constitution. Another argument, central to his submission is that the Court should not, under any circumstances, countenance any legislative or executive act undermining faith in the law, such as the enactment of Law 19/76, purporting to take away rights that vested as far back as 1962. Reference was made to a treatise of Dhelikostopoulos on the protection of good faith in the domain of administrative law. (See pages 17, 21, 22, 23, 47 and 51).

The trial Judge cited with approval a passage from the judgment of A. Loizou, J., in *Economides* v. *The Republic* (1972) 3 C.L.R. 506, supporting the view that it is impermissible, according to administrative law, to take away vested rights.

We examined the rival submissions with care. We decided thereafter to invite further argment, on an aspect of the case, of paramount importance in our view, that did not attract the attention of either side, that is, the implications arising from the option exercised, particularly the relationship between the State and the subject that came into existence as a result thereof, examined in juxtaposition with freedom of contract safeguarded by Article 26. In response, Mr. Evangelou submitted there is little room in administrative law for the creation of a contractual relationship and referred us to a number of decisions, establishing that arrangements akin to contractual ones, incidental to the implementation of an administrative act, create no rights in the domain of private law and must be examined within

the context of the administrative act giving rise thereto (*Iro Paschali* v. *The Republic* (1966) 3 C.L.R. 593, 607; *Niovi I. Frangou* v. *The Greek Communal Chamber & Others* (1966) 3 C.L.R. 201). Mr. Papaphilippou for his part, took a contrary view, relying on a number of decisions of the French Council of State, discussed by *D. Korsos* in his diatribe on *Contract in Administrative Law*. In his submission, there is ample room for the creation of a contract between the citizen and the State in consequence of the enforcement of the provisions of a law.

We debated the issues arising at length, and shall now proceed to deliver our decision.

"*ENTITLED OFFICERS*":

The pension that the Commissioner sought to tax derived directly from the application of the provisions of Law 52/62 and became payable to him in his capacity as an "entitled pensionable officer". That he was re-employed in the public service, makes no difference and does not alter or qualify the nature of the right. Consequently, the amendment of s.8, by virtue of the provisions of s.2 of Law 19/76, had a direct impact on his rights and unless vulnerable on some other ground, it altered them to his detriment by making his pension liable to income tax. The wording of the amending law was clear to the extent of leaving no doubt as to the intention of the legislature to remove the exemption of a pension payable under Law 52/62 from liability to income tax. Section 12(1) of the Interpretation Law, Cap. 1, requires that the amending law must, in the absence of an indication to the contrary, be read together with the provisions of the law it aims to amend. Reading the two provisions together, the inescapable conclusion is that the exemption from income tax, conferred by s.8, is taken away. Therefore, we are unable to uphold the view of of learned trial Judge that Law 19/76 is inapplicable in the case of the applicant based on the view that he is not an entitled pensionable officer for, manifestly, he is.

STATUTORY PROVISIONS IMPLEMENTING CONSTITUTIONAL DICTATES:

Where the Constitution frames the policy of the law in a given area, it is customary for one or more statutes to be enacted for the purpose of implementing this policy. Such legislation,

though it must conform to the constitutional norms, it need not be confined to the four corners of the constitutional framework. It may make further provision supplementary or additional to that earmarked by the Constitution. Contrary to the submission of Mr. Papaphilippou, there is no rule that a legislation, intended to give effect to constitutional provisions, is of a different character compared to any other enactment. And certainly to the extent to which it does not reproduce constitutional provisions, it is, in every sense, similar to every other law. Constitutionality is an issue directly referrable to the infringement of one or more of the provisions of the Constitution. For a case of unconstitutionality to be made out, the Court must be persuaded convicingly beyond doubt that a given enactment is contrary to or inconsistent with one or more of the provisions of the Constitution.

Article 192.3 of the Constitution broadly defined the benefits to which civil servants of the colonial administration would be entitled to, if not reappointed in the civil service. They do not include exemption from income tax. So, the immunity granted by s.8 of Law 52/62, had no constitutional sanction and like any other statutory provision it could be amended, provided, of course, such amendment did not offend any other constitutional provision. We find, therefore, ourselves in disagreement with the ruling of the learned trial Judge that the exemption was constitutionally guaranteed; it was not and it could, other considerations apart, to which we shall refer later, be taken away.

VESTED RIGHTS:

The concept of vested rights, straight forward at first sight, is sufficiently elusive to be susceptible to a number of interpretations. The expression "vested rights" primarily connotes rights that accrued in law. Rights may accrue both in civil and public law. A right may be deemed to vest if the process of the law for its acquisition has been completed. The right crystallizes thereafter and vests in the subject who becomes its beneficiary in law.

Certainty in the legal process and respect for the law, require that rights acquired under the law should remain undisturbed. Inevitably, interference with such rights undermines certainty

and reduces respect for the laws. The need to sustain vested rights found expression in the Interpretation Law in the form of a presumption that subsequent laws are presumed, but not deemed, to leave unaffected vested rights. Section 10(2)(c) of the Interpretation Law, Cap. 1, provides that it shall be presumed that the repeal of a law leaves unaffected rights, privileges, obligations or liabilities, that were acquired, accrued or incurred under the repealed law. However, the presumption is a rebuttable one and may be displaced whenever a clear intention to the contrary is evinced by the repealing law. In the face of a clear legislative expression to the contrary, the presumption recedes and gives way to the will of the legislature, the supreme arbiters of the law.

The presumption against an intention to take away vested rights, is closely associated with the rule of construction, requiring that a statute be construed prospectively. Rightly, it is considered that giving a retrospective effect to a statute, erodes confidence in the law and is a course apt to lead to injustice.

No suggestion was made that Law 19/76 had a retrospective effect, nor was any attempt made to invoke it retroactively. It was applied prospectively from the date of its promulgation. The crucial question in these proceedings revolves round the nature of the rights that vested in Mr. Menelaou by virtue of the operation of the provisions of Law 52/62, particularly the rights emanating from the option he exercised to opt for a pension free from income tax. To this aspect of the case, we shall presently direct our attention.

THE RIGHTS THAT VESTED IN THE APPLICANT/ RESPONDENT, BY VIRTUE OF THE OPERATION OF LAW 52/62:

The nature of the rights created by virtue of the operation of Law 52/62, merit special scrutiny. Such rights, as there were created, did not vest in the applicant by the automatic process of the law, but entailed his participation and the exercise, on his part, of an option. He was free to choose between two courses, a gratuity and a pension. Whatever his choice, the benefit would be free of income tax. If it was not for this choice and its implications, we would, unhesitatingly, reverse the trial Judge considering the freedom enjoyed by the legislature in the absence of constitutional constraints to change the law.

The pertinent question is whether the rights of the applicant, as fashioned after the exercise, on his part, of an option are akin to contractual rights, making their creation and enjoyment subject to the provisions of Article 26.1 of the Constitution, safeguarding freedom of contract. The problem is new to Cyprus case law, in that it was never raised before in this form. We are unable to agree with Mr. Evangelou that the rights accruing to the applicant after the exercise of his option are incidental to his status as a public officer and, therefore, divorced from the realm of private law that takes cognizance of contract rights. Compensation for loss of career, and any agreement regulating its payment, are primarily matters of private law. More so, in a case such as the present, where the terms were defined partly as a result of the exercise of an option by the beneficiary. That the compensation is calculated by reference to the provisions of the Pensions Law, does not qualify or alter the nature of the right. And here lies, with respect, the error of learned counsel for the Republic who argued that the right of the applicant to compensation for loss of career should be treated for all purposes as a pension right. It is not so and it matters not that the party liable to the payment of the compensation is the State. Also, we are unable to subscribe to the proposition of Mr. Evangelou that, if the rights created by the exercise of the option are in the domain of private law, a revisional court lacks, under any circumstances, jurisdiction to take cognizance of the matter. For, the decision to tax the applicant was, in every respect, an administrative act, liable to judicial review under Article 146. The fact that its validity depends on the constitutionality of Law 19/76 and the issue in turn depends on the infringement, if any, by this law of private rights, does not sap the court of jurisdiction to entertain the recourse. The process of a recourse is the only means available to test the validity of an act of taxation. The issue of constitutionality of Law 19/76 and the extent to which it interferes with rights in the domain of private law, are of direct relevance to the outcome of the appeal, as it was before the trial Court. Hence, it is perfectly competent for this Court to deal with the matter and to that we shall now devote our attention. The right acquired by the applicant in 1962, was the product of the exercise of a choice on his part, a choice involving two alternative courses. The fact that the option was granted by law, does not alter its character, nor does it qualify the nature of the right. It was

a freedom relevant to the determination of applicant's incorporeal rights.

Having made that choice, he was bound thereto, without any amenity, to resile therefrom in the same way as a party becomes bound by the terms of a contract into which he enters. Was it open for the other party to the arrangement, the State, to escape from its provisions? The question is whether the State, as a corporate entity when it binds itself to discharge obligations in the domain of private law, is in any different position from a private individual; and in particular whether it can invoke its legislative powers to modify its obligations to the detriment of the other party to the arrangement. The fact that the arrangement was evolved or was generated within the general framework of a statute, fashioning the policy of the law in a given area, does not alter the character of the obligations of the State. In the U.S.A., private arrangements resulting from the enforcement of a statute were repeatedly held to be indistinguishable from other contractual arrangements; the terminology employed to label these arrangements was "public contracts". Thus, it has been judicially acknowledged that commitments of a contractual character, directly arising from the enforcement of a statute, are enforceable as any other contractual arrangement and bind the parties thereto. The State, as a contracting party, is in no different position from others and certainly cannot invoke the armoury of the State to modify its obligations therein. A series of decisions establish that contracts that spring from the application of the provisions of the statute and contractual freedom granted thereunder, are properly regarded as contracts for the purposes of the constitutional clauses safeguarding freedom of contract, a basic right under the 5th and 14th amendment, entrenching due process. Charters and grants, arising from the application of the provisions of a statute and the acceptance of inducements granted therein, were held to be subject to due process and could not be revoked in circumstances destroying freedom of contract. (See, *Modern Constitutional Law by Antieau*, Vol. 1, para. 3, p. 249, *New Orleans Gas Co.* v. *Louisiana Light Co.* (1885) 115 US 650, 29 L Ed 516, 6 S Ct 252; *Fletcher* v. *Peck* (1810), US 6 Cranch 87, 3 L Ed 162; *Trustees of Dartmouth College* v. *Woodward* (1819) US 4 Wheat 518, 4 L Ed 629; *Atlantic Coast Line R. Co.* v. *Phillips* (1947) 332 US 168, 67 S Ct 1584, 91 L Ed 1977, 67 S Ct 1584, 173

ALR 1). The same was held to apply to tax exemptions extended by a statute as an inducement to enter into a contractual arrangement with the State. It has been held that the State is fettered thereafter from withdrawing the exemptions inasmuch as this would amount to impermissible interference with freedom of contract. (See, inter alia, *Asylum* v. *New Orleans* 105 U.S. 368 (bk. 26, L. ed. 1130); *Home of the Friendless*, 8 Wall. 430 (75 U.S. bk. 19, L. ed. 495); *New Jersey* v. *Wilson*, 7 Cranch, 166 (11 U.S. bk. 3, L. ed. 303); *Bank of Ohio* v. *Knoop*, 16 How. 376 (57 U.S. bk. 14, L. ed. 980).

Coming back to the facts of the case, the compensation that became payable to the applicant as a result of the application of the provisions of Law 52/62, crystallized after the exercise of a statutory option by Mr. Menelaou, an arrangement that had all the characteristics of a contract between the subject and the State, creating rights and imposing liabilities in the domain of private law. It was a statutory condition precedent that the benefits conferred thereunder would be enjoyed free of income tax and the question arises whether it was legitimate on the part of the State to take away this advantage to the detriment of the subject. We must inquire whether the State, as a party to an arrangement of this kind, is in any different position from any other party to a contractual transaction. The answer is in the negative. In the discharge of its obligations in the domain of private law, the State as a corporal entity, is in no different position from any other party. A proper application of the rule of law, enshrined in our Constitution, requires that all subjects of the law do observe its provisions without distinction. Indeed, it can be argued that whenever the State is a party to an agreement creating civil law rights, it should be implicit that it would not use its power to modify to its advantage obligations undertaken thereunder. Nevertheless, the doctrine of separation of powers acknowledges supremacy to each of the three powers in their separate spheres. Therefore, the obligations of the executive branch cannot be regarded in law as a fetter to the exercise of legislative power. Thus, it becomes necessary to examine whether Law 19/76 offends the provisions of Article 26.1 of the Constitution, safeguarding freedom of contract.

FREEDOM OF CONTRACT, ARTICLE 26.1 *OF THE CONSTITUTION—LAW* 19/76:

Article 26.1 of the Constitution safeguards freedom of contract. We need not discuss in these proceedings the compass and ambit of the aforesaid article, a subject that divided the Full Bench of the Supreme Court in *Constantinos Chimonides* v. *Evanthia K. Manglis* (1967) 1 C.L.R. 125. There were three currents of opinion. One expressed by Triantafyllides and Stavrinides, JJ., to the effect that the application of Article 26.1 is limited to the freedom necessary for the formation of a contract. Vassiliades, P., and L. Loizou, JJ., basically subscribed to the view of Triantafyllides J. but not all the way, inasmuch as they acknowledged a reserve power to the State, to limit the right safeguarded by Article 26.1 in an emergency, thereby, agreeing in this respect with Josephides and Hadjianastassiou, JJ., who, by their judgment, gave vent to a wider interpretation of Article 26.1 but always subject to the reserve power of the State. Lastly, Josephides and Hadjianastassiou, JJ., decided that the freedom safeguarded by Article 26.1 is all embracive, extending both to the formation and execution of the agreement. Earlier, we indicated that we shall not attempt to define Article 26.1 in any definitive manner for it is unnecessary for the purposes of the present appeal. There was, on any view of the judgment, uniformity of opinion that the freedom guaranteed by Article 26.1 encompasses, as Vassiliades, P. stated in his judgment, "the right to enter into legal contracts, subject to the conditions and clarifications therein".

Section 2 of Law 19/76 aimed to redefine the background to the arrangements following the enactment of Law 52/62, and to that extent extinguish conditions precedent to entry into the arrangement. In such circumstances, the freedom that Mr. Menelaou had to choose between two alternative courses was taken away and with it the freedom he had to enter into the one or the other arrangement. Consequently, s.2 of Law 19/76 interfered with the freedom safeguarded by Article 26.1 and took away, retrospectively at that, the right Mr. Menelaou had to determine the nature of his private rights. If it is permissible to redefine the right of compensation of Mr. Menelaou, it would be equally permissible to do likewise in the case of entitled officers who opted for a gratuity by taxing the money

they received. One need only state the possibility to dismiss it as totally unsound.

The conclusion we have reached is, we feel, also consonant with the proper application of the concept of the rule of law that requires adherence to basic standards of justice, substantive and procedural. It would be offensive to common sense and norms of justice to allow the demolition of the foundations of a basically contractual arrangement, injecting thereby an element of uncertainty and mistrust in the management and conduct of the affairs of citizens. We need only remind there was an outcry in England when the War Damage Act of 1967 was enacted for the purpose of reversing the state of the law, as it was found to be by the House of Lords in *Burmah Oil Co.* v. *Lord Advocate* [1965] A.C. 75. In England, the doctrine of the supremacy of Parliament leaves no room for impugning on grounds of constitutionality a law, but not so in Cyprus, in view of the mandatory provisions of the Constitution. The appeal is, therefore, dismissed but for reasons different from those relied upon by the trial Court. There will be no order as to costs.

Appeal dismissed. No order as to costs.