1982 May 21

[TRIANTAFYLLIDES, P., L. LOIZOU, HADJIANASTASSIOU, A. LOIZOU, MALACHTOS AND DEMETRIADES, JJ.]

ALECCOS CONSTANTINIDES,

Applicant,

v.

THE ELECTRICITY AUTHORITY OF CYPRUS,

Respondent

(*Case No.* 5/80)

Tax—Characteristics—When is an imposition a tax—Imposition of contribution under section 3(1) *of the Cyprus Broadcasting Corporation (Imposition of Contribution) Law,* 1979 (*Law* 14 *of* 1979)*—Amounts to a tax within the meaning of Article* 24 *of the Constitution*

Constitutional Law—Constitutionality of legislation—Taxation legislation attacked as infringing the principle of equality—Principles applicable—Imposition of tax under section 3(1) *of the Cyprus Broadcasting Corporation (Imposition of Contribution) Law,* 1979 (*Law* 14 *of* 1979)*—Not unconstitutional as being contrary to the principle of equality safeguarded by Article* 28.1 *of the Constitution*

Cyprus Broadcasting Corporation (Imposition of Contribution) Law 1979 (*Law* 14 *of* 1979)*—Section* 3(1) *of the Law—Not unconstitutional as being contrary to the principle of equality safeguarded by Article* 28.1 *of the Constitution*

By virtue of section 3(1) of the Cyprus Broadcasting Corporation (Imposition of Contribution) Law, 1979 (Law No. 14 of 1979) there was imposed on every consumer of electricity every two months a contribution in favour of the Cyprus Broadcasting Corporation ("The Corporation"). Under section 4 of this Law this contribution was calculated on the electricity consumed and recorded by the electric meter installed for every consumer and it escalated in accordance with two scales with

different imposition on the tariff of household use on the one and of every other tariff on the other hand. By section 5 the contribution imposed was collected by the respondent Authority and there were provisions for sanctions which may be imposed for those not paying such contribution. Section 3(2) exempted from the said contribution, the Republic, all public corporate bodies, churches, local authorities in relation to the street lighting consumed by them and the consumers of off peak electricity, a meter for a religious tomb, pump stations and staircases of block of flats, as well as meters when the consumption did not exceed 40 kilowatts every two months in case of a tariff for household use and 500 kilowatts every two months in case of every other tariff. The applicant as a consumer of electricity supplied by the respondent Authority was charged on his electricity bill for the sixth period of the year 1979 with a sum of C£3.600 mils as "contribution" to the Corporation and hence this recourse.

Counsel for the applicant mainly contended:

(a) That the above Law was unconstitutional in that it contravened Article 28.1 of the Constitution which provides that "all persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby".

(b) That the test of the consumption of electricity as indicated by the meter was arbitrary as there was no significant correlation between the consumed quantity of electricity and the means of the tax payer and that its choice as a test for the imposition of this taxation does not lead to equality of treatment.

(c) That the taxation imposed by the above Law created an irrebutable presumption which was unconstitutional.

In the course of the hearing there was adduced evidence to the effect that the higher the income of a household is, the higher its expenditure on electricity.

Held, that the Cyprus Broadcasting Corporation (Imposition of Contribution) Law, 1979 (Law 14/1979) is not unconstitutional.

Per A. Loizou J., L. Loizou, Malachtos and Demetriades, JJ. concurring:

(1) That an imposition is a tax if it is found to fulfil certain characteristics, namely, (a) it is compulsory and not optional, (b) it is imposed or executed by the competent authority, (c) it must be enforceable by law, (d) it is imposed for the public benefit and for public purposes, and (e) it must not be for a service for specific individuals but for a service to the public as a whole, a service in the public interest; that it does not matter that those who pay the tax do not receive the benefit which others paying the same tax receive the purpose of the imposition being to help or finance an essential public service which constitutes in the words of Article 24.1 of the Constitution a public burden; and that the subject imposition is a tax within the meaning of Article 24 of the Constitution and it was imposed by virtue of a law.

(2) That the burden of proving the "constitutionality" of a law is upon him who raises it; that when the constitutionality of a law imposing taxation is attacked on the ground that it infringes the principle of equality, the legislative discretion is allowed great latitude in view of the complexity of fiscal adjustment and that in taxation matters there is a broader power of classification by the legislation than in the exercise of legislative power in other fields; that, moreover, absolute equality in taxation cannot be obtained, it is not required by the principle of equality and that in matters of taxation the State is allowed to pick and choose districts, objects, persons, methods and even rates of taxation; that the imposition of tax provided by section 3(1) of the law has a reasonable basis because of the established correlation between consumption of electricity current and means and once this reasonable basis has been established, it is for the State in its own judgment to make exceptions and exemptions in the light of policies which are not demonstratively proved to be oppressive; that the applicant on whom the burden lies has not demonstrated to the satisfaction of the Court that the statutory provisions challenged have that degree of arbitrariness and disregard of reason that should be insisted upon before the drastic judicial remedy of declaring legislation as unconstitutional can be resorted to; accordingly the law in question is not unconstitutional.

(3) That no irrebuttable presumption is created in the present case inasmuch as the taxation imposed is determined by the consumption of electricity which is found out by means of a meter and whose accuracy can be challenged and tested; accordingly the recourse should fail.

Application dismissed.

Cases referred to:

Matthews v. *The Chicory Marketing Board* (1938) 60 C.L.R. 263 at p. 276;

Parton v. *Milk Board* (1949) 80 C.L.R. 229;

Lawson v. *Interior Tree Fruit and Vegetable Committee of Direction* (1931) S.C.R. 357 at p. 363;

Board for Registration of Architects and Civil Engineers v. *Kyriakides* (1966) 3 C.L.R. 640 at pp. 654, 655, 664, 665;

Hadjikyriacou v. *The Republic*, 5 R.S.C.C. p. 22;

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

Demetriades v. *The Republic* (1977) 3 C.L.R. 213;

Ioannides v. *The Republic* (1977) 3 C.L.R. 297;

Antoniades and Others v. *The Republic* (1977) 3 C.L.R. 641 at p. 655.

Recourse.

Recourse against the decision of the respondent to impose the sum of £3.600 mils on applicant as contribution to the Cyprus Broadcasting Corporation.

P. Angelides, for the applicant.

G. Cacoyannis, for the respondent.

G. Polyviou with *P. Polyviou*, for the interested party, the C.B.C.

N. Charalambous, for the Attorney-General of the Republic, as amicus curiae.

Cur. adv. vult.

TRIANTAFYLLIDES P.: The first judgment will be delivered by Mr. Justice Andreas Loizou.

A. LOIZOU J.: By the present recourse the applicant seeks a declaration of the Court that the amount of C£3.600 mils which was imposed by the respondent Authority as contribution is null and void and unconstitutional.

The application is based on the following legal grounds:

"(a) That the contribution of C£3.600 mils is null and void and/or unconstitutional as it contravenes Article 28 of the Constitution and the principle of equality introduced by the said Article, and

(b) In addition and/or in the alternative, the said contribution is null and/or unconstitutional as being contrary to Article 24 of the Constitution and the principle of proportionality introduced by the said Article".

The applicant as a consumer of electricity supplied by the respondent Authority was charged on his electricity bill for the sixth period of the year 1979 with a sum of C£3.600 mils as "contribution" to the Cyprus Broadcasting Corporation (hereinafter referred to as the Corporation), a public utility organization established under the Cyprus Broadcasting Corporation Law, Cap. 300A, as amended. This imposition was made by virtue of the provisions of the Cyprus Broadcasting Corporation (Imposition of Contribution) Law, 1979 (Law No. 14 of 1979), (hereinafter to be referred to as the Law), which abolished all charges, subscriptions, contributions and licence fees imposed and collected by and/or on behalf of the Corporation to date and introduced a new machinery, less cumbersome and more effective for the collection by the respondent Authority of contributions on behalf and for the benefit of the Corporation. These contributions are assessed according to the electricity consumed on a bimonthly basis on a scale as laid down in section 4 of the aforementioned Law. They are collected by the respondent Authority in the same way as electricity charges and in accordance with the provisions of the Electricity Development Law, Cap. 171, as amended by various amending laws including The Electricity Development (Amendment) Law, 1979 (Law No. 31 of 1979), the receipt issued by the Authority to its consumers including such contributions separately. These contributions imposed pursuant to the relevant Law make up a substantial part of the revenue of the Corporation which is essential for and enables it to function as a matter of public interest.

The preamble of the Law reads as follows:-

"Whereas the Cyprus Broadcasting Corporation is a

public Corporation among the functions of which are included the operation of broadcasting and television services for the service of the public;

And whereas this service constitutes in a modern State a substantial social function;

And whereas for the operation of this service the Cyprus Broadcasting Corporation is in need of the necessary for its function funds;

And whereas the funds of the Cyprus Broadcasting Corporation mainly derived from fees from the issue of licences, for radio or television sets are insufficient for the operation of the Corporation and the discharge of its social mission;

And whereas the imposition of taxation for this purpose has been considered necessary, all the until now payable fees for radio and television being abolished;

Now, therefore, the House of Representatives enacts as follows:-

Before commenting on the contents of this preamble, it may be useful to reproduce here section 3 of the Law:-

"3.(1) Ἐπιβάλλεται ἐπὶ παντὸς κατόχου μετρητοῦ καταναλώσεως ἠλεκτρικῆς ἐνέργειας τῆς Ἀρχῆς κατὰ διμηνίαν εἰσφορὰ ὑπὲρ τοῦ Ἱδρύματος.

(2) Ἀπαλλάσσονται τῆς ἐν λόγῳ εἰσφορᾶς ἡ Δημοκρατία, οἱ ὀργανισμοὶ δημοσίου δικαίου, αἱ ἐκκλησίαι, αἱ ἀρχαὶ τοπικῆς διοικήσεως ἐν σχέσει πρὸς τὸν ὑπ' αὐτῶν ὀδικὸν φωτισμὸν καὶ οἱ καταναλωταὶ ἐν ἀναφορᾷ πρὸς μετρητὴν ἐκτὸς αἰχμῆς (off peak), πρὸς μετρητὴν εἰς ἐκκλησιαστικὸν τάφον, ἀντλιοστάσιον καὶ κλιμακοστάσιον πολυκατοικίας ὡς καὶ μετρητὴν ὁσάκις ἡ κατανάλωσις δὲν ὑπερβαίνει τὰ 40 κιλοβὰτ ἀνὰ διμηνίαν ἐν περιπτώσει διατιμήσεως οἰκιακῆς χρήσεως καὶ τὰ 500 κιλοβὰτ ἀνὰ διμηνίαν ἐν ἐν περιπτώσει πάσης ἑτέρας διατιμήσεως".

("3.(1) There is imposed every two months on every consumer of electricity supplied by the Authority a contribution in favour of the Corporation.

(2) From the said contribution there are exempted, the

Republic, public corporations, churches, local administration authorities in respect of street lighting provided by them and the consumers in relation to off peak meters, to meters at ecclesiastical tombs, pumping stations and staircases of a block of flats, as well as meters whenever the consumption does not exceed 40 kilowatts per two months in the case of domestic use tariff and 500 kilowatts per two months in the case of any other tariff").

The philosophy and reasons for the law emerge from the aforesaid preamble. It is, thereby unquestionably established that the Corporation which is a public utility organization validly established under the Law and for which provision is made in the Constitution, renders to the people an essential social service through radio and television broadcasts. The very purpose of the Law is to provide it with adequate resources and devices, as already mentioned, a machinery for the imposition and collection of funds once the methods used in the past and before the enactment of this Law for financing it proved to be either insufficient or abortive.

By subsection 1 of section 3 of the Law, there is imposed on every consumer of electricity every two months a contribution in favour of the Corporation. Subsection 2 thereof exempts from the said contribution, the Republic, all public corporate bodies, churches, local authorities in relation to the street lighting consumed by them and the consumers of off peak electricity, a meter for a religious tomb, pump stations and staircases of block of flats, as well as meters when the consumption does not exceed 40 kilowatts every two months in case of a tariff for household use and 500 kilowatts every two months in case of every other tariff.

Under section 4 of the Law, this contribution is calculated on the electricity consumed and recorded by the electric meter installed for every consumer and it escalades in accordance with two scales with different imposition on the tariff of household use on the one and of every other tariff on the other hand. By section 5 the contribution imposed is collected by the respondent Authority and there are provisions for sanctions which may be imposed for those not paying such contribution.

It has all along been accepted by all sides, that this contribution is a tax within the meaning of Article 24 of our Constitution, not merely because the word "taxation" is expressly mentioned in the preamble of the Law where it is to be found in its last paragraph in the phrase "whereas the imposition of taxation for this purpose was considered necessary", but also because independently of how this imposition is named in the Law, it is a tax. Concessions, however, by counsel on the legal character of such issues do not bind the Court which has to pronounce on them as answering the appropriate legal test in the circumstances.

It was further accepted, and there is no doubt about it, that this tax was imposed by virtue of a valid law and what was really questioned was the constitutionality of its relevant provisions.

But before I examine the various issues raised, it may conveniently be mentioned here that after judgment was reserved, the Court thought it necessary and directed that the case should be reopened for further hearing so that counsel might place before us any additional material or arguments—

"(1) In relation to the issue of whether the 'contribution' imposed by sections 3, 4 and 5 of Law 14/79 is a tax ("foros") or duty ("telos"), or rate ("isfora") in the sense of Article 24 of the Constitution.

(2) In relation to the issue of whether or not the classifications made by sections 3 and 4 of Law 14/79 contravene the principle of equality safeguarded by means of Article 24 and 28 of the Constitution, in view, in particular, of the assertion of counsel for the respondent and counsel for the interested party that the test of electric current consumption was adopted as reflecting the means of the consumers".

With regard to the first question, extensive argument has been advanced by all counsel in support of the proposition that the contribution in question is a tax. In that respect we have been referred to the contents of text books, such as, M. Kypreos, "*Elements of Revenue Law*", 1980, and I. N. Kouli, "*Introduction to Public Finance*", 4th Ed. We have also been

referred to a number of authorities from Commonwealth countries to which reference will shortly be made.

The test that can be discerned from these text books and case-law is that an imposition is a tax if it is found to fulfil certain characteristics, namely, (a) it is compulsory and not optional, (b) it is imposed or executed by the competent authority, (c) it must be enforceable by law, (d) it is imposed for the public benefit and for public purposes, and (e) it must not be for a service for specific individuals but for a service to the public as a whole, a service in the public interest.

It does not matter that those who pay the tax do not receive the benefit which others paying the same tax receive, the purpose of the imposition being to help or finance an essential public service which constitutes in the words of Article 24.1 of our Constitution a public burden.

In the Australian case of *Matthews* v. *The Chicory Marketing Board* (1938) 60 C.L.R. 263, at p. 276 Lathan C.J. said: "The levy is, in my opinion, plainly a tax. It is a compulsory exaction of money by a public authority for public purposes, enforceable by law, and is not a payment for services rendered".

In *Parton* v. *Milk Board* (1949) 80 C.L.R., 229, a case, too involving the imposition of a levy by a marketing board upon individuals—Dixon J. at p. 259 said: "The contribution is a compulsory levy by a public authority for public purposes and that is enough to show that it is a tax".

A similar analysis has been adopted by the Supreme Court of Canada and it is useful to refer to the case of *Lawson* v. *Interior Tree Fruit and Vegetable Committee of Direction* (1931) S.C.R. 357, and in particular to the analysis of Duff J., at p. 363 which in so far as relevant reads:

> "Then they are imposed under the authority of the legislature. They are imposed by a public body. ..... acting in every way under, the authority of the statute, ... The levy is also made for a public purpose. ..... . Indeed, when one considers the number of people affected ..... the extent of the territory over which it executes its orders and directions, it becomes evident that, ... the levies

for the support of which nobody could dispute, would come under the head of taxation".

So, both in Australia and Canada similar guide lines have been set forward for identifying taxes, an approach which is to be found also in India (See Seervai, Constitution of India, 1976, Vol. 2, p. 1250.

Guided by the aforesaid exposition of the Law on the matter, I have no doubt in concluding that the subject imposition is a tax within the meaning of Article 24 of the Constitution and it was imposed by virtue of a law.

Having reached this conclusion, I turn now to the next issue.

The issue of the constitutionality of the law in question is that it offends the principle of equality which is safeguarded by Article 28.1 of the Constitution which provides that "all persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby". The burden of proving the unconstitutionality of a law is upon him who raises it (Board for the *Registration of Architects and Civil Engineers* v. *Kyriakides* (1966) 3 C.L.R. 640 and particularly at pages 654, 655, 664, 665).

The basic principles which govern the examination of the constitutionality of taxing laws by this Court have been exhaustively expounded in a number of cases by reference to the caselaw of other countries and in particular of that of the Supreme Court of the United States of America (see *Hadjikyriacou* v. *The Republic*, 5 R.S.C.C., p. 22; and *Andreas Matsis* v. *The Republic* (1969) 3 C.L.R., p. 245; as well to the cases of *Demetriades* v. *The Republic* (1977) 3 C.L.R. 213, and *Ioannides* v. *The Republic* (1977) 3 C.L.R. 297).

In the case of *Antoniades & Others* v. *The Republic* (1977) 3 C.L.R. 641, at p. 655, the position was summed up as follows:

"The basic principles that can be deducted from them are that when the constitutionality of a law imposing taxation is attacked on the ground that it infringes the principle of equality, the legislative discretion is allowed great latitude in view of the complexity of fiscal adjustment and that in taxation matters there is a broader power of classification by the legislation than in the exercise of

legislative power in other fields. Moreover, absolute equality in taxation cannot be obtained, it is not required by the principle of equality and that in matters of taxation the State is allowed to pick and choose districts, objects, persons, methods and even rates of taxation. This latter principle is fully discussed in Basu's Commentary of the Constitution of India, 5th Ed., Vol. 1 at pp. 463–465".

It has been argued on behalf of the applicant that the test of the consumption of electricity as indicated by the meter is arbitrary as there is no significant correlation between the consumed quantity of electricity and the means of the tax payer and that its choice as a test for the imposition of this taxation does not lead to equality of treatment.

After the reopening of the case and in support of the assertion of counsel for the respondent and counsel for the interested party that the test of electric current consumption was adopted as reflecting the means of the consumers, they thought it helpful to the Court to support this by affidavit evidence. The one comes from George Vasiliou, an Economist, the Managing Director of the Middle East Marketing Research Bureau Ltd., who was commissioned to carry a survey with the purpose of obtaining an objective assessment of the television viewership and radio audience in Cyprus, entitled "The 1979 Cyprus Media Survey". Its results were the following:

"5. The Survey was conducted by MEMRB following the internationally accepted practice for organising such surveys and the validity of the findings was confirmed by the close correlation established between the findings of the survey and objectively known data concerning the composition of the Cyprus population and its demographic characteristics.

6. The survey has shown that 92.8% of the Cyprus households owned a T.V. set and 97% at least one radio.

7. Furthermore, it has been shown that a considerable proportion of those who did not own a T.V. set still watched television and overall only 2.4% of the interviewed claimed that they do not watch any T.V.

8. The incidence of listening to radio is somewhat lower than that as 6.1% of the interviewed do not ever listen to the radio. The analysis of the results by age, sex, income and area shows an equally high incidence of listenship and viewership as well as of incidence of ownership all over the island".

The other affidavit was sworn by Dr. Evros I. Demetriades, The Director of Department of Statistics and Research, Ministry of Finance, on the basis of a household consumption survey conducted by his department in the urban area. Among households of an annual income C£1,000.—to C£3,000.—for the period September 1980 to October 1981, the annual average expenditure on electricity of a household by income-group was as follows:

Annual Income-group of the Household.	Annual expenditure on electricity per household
C£1,000 and under C£1,500.—	C£52.0
C£1,500 " " C£2,000.—	C£58.8
C£2,000 " " C£2,500.—	C£64.7
C£2,500 " " C£3,000.—	C£75.9

The Survey covered 910 households residing in the towns and suburbs of Nicosia, Limassol and Larnaca and had an annual cash disposable income from C£1,000.—to C£3,000.

From the Survey of Household Energy Use for 1979 conducted by his Department which covered 1,000 households in all districts (urban and rural), the average annual expenditure on electricity per household by income-group of the household was:-

Annual Income-group of the Household	Annual expenditure on electricity per household
under C£1,000	C£24.0
C£1,000 — C£2,000	C£36.7
C£2,000 — C£3,000	C£43.4
C£3,000 — C£4,000	C£56.3
C£4,000 and over	C£62.0

The conclusion drawn from the aforesaid results was that the higher the income of a household is, the higher its expenditure on electricity.

No doubt the imposition of tax provided by section 3(1) of the law has a reasonable basis because, of the established correlation between consumption of electricity current and means and once this reasonable basis has been established, on the authorities cited it is for the State in its own judgment to make exceptions and exemptions in the light of policies which are not demonstratively proved to be oppressive.

This principle is clearly stated in the case of *Dandridge* v. *Williams*, 25 Lawyers Edition, Second Series, 491 and referred to in *Demetriades case* (supra), where at pp. 501–502 it is stated:

> "In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice, it results in some inequality'. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 US 61, 78, 55 L Ed 369, 377, 31 S Ct 337. 'The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific'. *Metropolis Theatre Co.* v. *City of Chicago*, 228 US 61, 69–70, 57 L Ed 730, 734, 33 S Ct 441. 'A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it'. *Mc Gowan* v. *Maryland*, 366 US 420, 426, 6 L Ed 2d 393, 399, 81 S Ct 1101".

In deciding the reasonableness of the test adopted by legislation Courts should not take the extreme examples where a man of no means may consume more electricity than a rich one who uses no electric current in his house, but the general rule—and no doubt that is the rule in our society to-day—that the richer classes consume more electric current, and undoubtedly electric consumption is connected with the comfort and the economic

prosperity of the citizens, so they should proportionately have the public burdens as envisaged by Article 24 of the Constitution.

No doubt the test adopted is a safe test of means and the minor discrepancies that appear in the exemptions are rendered insignificant by the amounts involved.

Before concluding I would like to refer briefly to the argument advanced on behalf of the applicant that this taxation as imposed creates an irrebuttable presumption which in his submission is unconstitutional.

In my view, no irrebuttable presumption is created in the present case inasmuch as the taxation imposed is determined by the consumption of electricity which is found out by means of a meter and whose accuracy can be challenged and tested. I need not, therefore, embark, however attractive the arguments have been, on the legal and constitutional aspect of this issue.

No doubt the applicant on whom the burden lies has not demonstrated to my satisfaction that the statutory provisions challenged have that degree of arbitrariness and disregard of reason that should be insisted upon before the drastic judicial remedy of declaring legislation as unconstitutional can be resorted to.

For all the above reasons this recourse should be dismissed but in the circumstances I make no order as to costs.

TRIANTAFYLLIDES P.: I have had the privilege of studying in advance the judgment delivered today in this case by my learned brother Mr. Justice A. Loizou and, though I agree with the outcome of these proceedings as it is stated in his judgment, I feel that I have to express my own views and reservations as regards certain aspects of this case:

First, I would like to say that it is with some reluctance that I have decided to share the view—which is, also, the common view of all counsel appearing in this case—that the contribution, imposed by the Cyprus Broadcasting Corporation (Imposition of Contribution) Law, 1979 (Law 14/79), is a "tax" in the sense

of Article 24 of the Constitution. I was inclined, initially, to think that the said contribution is, in essence, a "rate", in the sense of the said Article, camouflaged into a "tax"; but, as no arguments at all to that effect were advanced by any of the counsel appearing before the Court and, in particular, by counsel for the applicant, I did not feel, in the end, inclined to abide by my above initial view and to disagree, in these particular proceedings, with the aforesaid common view of the parties which seems to be shared, also, by some of my brother Judges on this Bench. I would not, however, be prepared to treat the present case as a safe precedent that a contribution of the nature involved in these proceedings is always a "tax" in the true sense, as envisaged by the provisions of Article 24 of the Constitution.

Secondly, as regards the adoption of the consumption of electricity as a readily available test of means for the imposition of the taxation provided for by Law 14/79, I would observe that such a course does not result in income being directly used as the basis for the imposition of a tax, as for example it is done under the income tax legislation, but income is treated only indirectly as a basis of the taxation imposed by Law 14/79; and such taxation is not characterized by a really satisfactory measure of exactitude, because circumstances may vary so much with the result that a household which has a small income may have to consume more electricity in a bi-monthly period than the electricity which is consumed over the same period by a household with a much larger income.

Also, I would like to draw attention to the fact that, by virtue of section 3(2) of Law 14/79, there are exempted from the taxation in question various categories of consumers in a manner which enables some of them, including households who may have very high incomes, to avoid paying any contribution at all under the provisions of the said Law.

Thus, I have anxiously considered whether or not this is a case in which it would have been proper to hold that there are infringed, by the relevant provisions of Law 14/79, Articles 24 and 28 of the Constitution. Article 28 safeguards the principle

of equality, which is, also, enshrined in Article 24; and in the latter Article there finds expression, too, as regards the imposition of taxation, the principle of proportionality.

What has led me, in the end, to the conclusion that the said Articles cannot be treated, beyond reasonable doubt, as being contravened, is that the contribution payable under Law 14/79 in every respect of every bi-monthly period is, even at its highest, so very moderately low by present day standards that any unjust and unreasonable differentiations resulting from the application of the relevant provisions of Law 14/79 cannot be regarded as being so substantial as to render the scheme of taxation, which is created by such Law, a scheme which is so palpably arbitrary or entails such invidious discriminations as to offend against Articles 28 and 24.

Such might well be found to be the case if the amounts of contribution imposed by means of Law 14/79 are increased to such an extent as to entail the consequence that any unjust and unreasonable differentiations involved in the scheme in question will be so enlarged, proportionately, as to result in actual contraventions of the said Articles 28 and 24.

Subject to the above observations and reservations I concur in the dismissal of this recourse, without any order as regards its costs.

L. LOIZOU J.: I had the advantage of reading the judgment just delivered by my brother A. Loizou, J. and, in the light of the arguments advanced by counsel on all sides and the authorities cited, I also agree that this recourse should be dismissed for the reasons stated in the judgment.

HADJIANASTASSIOU J.: In these proceedings, under Article 146 of the Constitution, the applicant, Aleccos Constantinides of Nicosia, seeks a declaration (a) that the imposition on him of the sum of £3.600 mils which was made by the respondent Electricity Authority as a contribution is null and void; and (b) a declaration that Law 14/79 is unconstitutional.

On 22nd January, 1978, Mr. G. Polyviou appearing for the

Cyprus Broadcasting Corporation of Cyprus, addressed a letter to the Registrar of the Supreme Court, and had this to say:-

> "I would like to inform you that having regard to the nature of its subject matter, the C.B.C. for which I am acting, has a direct interest in it. I would, therefore, request you to place my letter at the appropriate time before His Honour the President of the Court, and please consider this letter as a request that the Corporation should be given formal notice of the proceedings so it can take part in them."

On 20th February, 1980, the Registrar of this Court in reply had this to say:-

> "I have been directed to inform you that it has been fixed for directions on 13th March, 1980 at 9.15 a.m. and a formal application to allow you to take part in the proceedings on behalf of the Cyprus Broadcasting Corporation should be filed in the meantime, so that it may be dealt with by the Judge before whom this case has been fixed."

On 23rd February, 1980, Mr. Polyviou filed an application applying for leave to take part in the recourse as an interested party and for such direction as the Court may deem necessary to issue. This application was based on the Supreme Constitutional Court Rules 1962-75 and regulations 8, 9 (6), 10 (2), 18 and 19 and on the inherent powers of the Supreme Court.

The application of the applicant was based on the following legal grounds: (a) that the contribution of £3.600 mils was null and void and/or unconstitutional because it contravened Article 28 of the Constitution as well as the principles of equality introduced by the said Article; and (b) in addition and/or in the alternative, the said contribution is null and void and/or unconstitutional as being contrary to Article 24 of the Constitution and the principles of proportionality introduced by the said Article. Indeed, the applicant is a consumer of electricity supplied by the respondent authority and was charged on his electricity bill for the 6th period of the year 1979 with a sum

of £3.600 mils as contribution to the C.B.C., a public utility organization established under the Cyprus Broadcasting Corporation Law, Cap. 300A (as amended). This imposition was made by virtue of the provisions of the Cyprus Broadcasting Corporation (Imposition of Contribution) Law, 1979 (Law 14/79), which abolished all charges.

On the contrary, the respondent Electricity Authority opposed the application of the applicant, and the opposition was based on the following grounds:-

1. The Respondent is a public utility organization established under the Electricity Development Law Cap. 171 (as amended by various amending Laws, including Law No. 31/79) and has power to enter into, or effect such arrangements with any other public authority or person for the collection on its behalf of all sums due to it, and on such terms, as to it may seem reasonable.

2. The Cyprus Broadcasting Corporation:- (CBC) is also a public utility organization established under the Cyprus Broadcasting Corporation Law, Cap 300A (as amended).

3. Law 14 of 1979 (hereinafter called "the relevant Law") abolishes all charges subscriptions, contributions and licence fees imposed and collected by and/or on behalf of the CBC to-date and introduces a new machinery, to which reference will be made at the hearing, for the collection by the respondent of contributions on behalf and for the benefit of CBC which contributions are assessed according to the electricity consumed on a bi-monthly basis on a scale as laid down in section 4 of the relevant law. Such contributions are collected by the respondent in the same way as electricity charges, and in accordance with the provisions of the relevant Law the receipt issued by the respondent to its consumers, indicates such contributions separately.

4. Pursuant to the provisions of the said Laws and in particular of the relevant Law, the Authority has charged on behalf of the CBC all such contributions as are referred to hereinabove including the applicant's contribution of £3.600 mils which forms the subject-matter of this recourse.

5. The charge, subject-matter of this recourse, imposed on the applicant is both legal and constitutional, as it was lawfully assessed and imposed under and in accordance with the relevant Law, and the relevant Law is in no way unconstitutional as alleged by the applicant or at all.

6. The relevant Law and the charging, imposition and/or contributions made thereunder are valid constitutional and of full force and effect.

7. The respondent further alleges that such charges or contributions imposed pursuant to the relevant Law make up a substantial part of the revenue of the CBC and if the same are not made and collected as by the said Law provided the CBC will be seriously hampered in the performance of its statutory and public duties and/or functions. The collection of the necessary revenue by the CBC which enables it to continue to exist and function are matters in the public interest.

8. The respondent further alleges that the CBC has a legal right to the amount with which the applicant has been charged and/or to the contributions charged and/or to the amount collected by the respondent on its behalf and for its benefit.

9. The alleged act or decision of the respondent is not contrary to any of the provisions of the Constitution or to any law and it was not made in excess or in abuse of the powers vested in it, but in the proper exercise of such powers.

10. The respondent has acted lawfully and in good faith throughout.

11. The act or decision complained of in the present recourse is intra vires the respondent and has been exercised in discharge of its public and/or statutory duties.

12. The legislative provisions complained of are not unreasonable or arbitrary and the method they prescribe for the assessment and collection of contributions is equitable, just and practical and is fully justified by the intrinsic nature of things.

13. The classification of contributions based as it is on the

consumption of electricity does not violate the principle of equality. The applicant is not discriminated against when compared with other contributors who are in the same or a similar situation or circumstances, but is accorded similar and equal treatment in full cognizance with the said principle of equality.

14. The application does not disclose any valid grounds justifying the annulment of the act or decision complained of.

On 13th March, 1980, when the case was handled by Mr. Justice A. Loizou, the following statement was made by him:-

> "This case will not be taken today for directions nor the application of Mr. Polyviou will be entertained as in view of its nature and general importance, I intend to place it before the Full Bench for a decision as to whether it will be taken by the Full Bench in the first place and thus avoid unnecessary delay by having the case heard in two stages."

With that in mind, Mr. Angelides for the applicant, made this statement:-

> "I think it will be proper for the case to be heard by the Full Bench in the first place and that the C.B.C. should be joined as an interested party as per the application of my learned friend Mr. Polyviou as they are really the persons having a direct interest in the matter raised in this recourse."

Finally, the case was heard by the Full Bench, and I think it is appropriate at this stage to state that after the judgment was reserved and some of us have prepared a draft judgment, at a further meeting it was thought necessary to re-open the case for further argument. Indeed, all counsel appearing before us argued very ably indeed that the contribution imposed by ss. 3, 4 and 5 of Law 14/79 is a tax, and reference was made to a number of authorities as well as quotations from textbooks including the textbook of I.N. Koulis "The Introduction to Public Finance", 4th edn. We have also been referred to a number of authorities from other countries. I think that from the whole argument placed before us by all counsel concerned,

it was accepted that the imposition of the fees by the legislature, in the nature of a contribution is a tax, and the only question was the constitutionality of its relevant provisions.

There is no doubt from the contents of the same law that the C.B.C. provides an essential social service to the people and the very purpose of the law is to provide it with adequate resources in order to fulfil effectively its functions. In effect, from the textbooks as well as from the case law, such imposition is a tax if it is found to fulfil certain characteristics, viz., that it is compulsory and not optional; and it is imposed or executed by the competent authority; and it must be enforceable by law, once it is imposed for the public benefit and for public purposes. Indeed, it must not be for a service for specific individuals, but for a service to the public as a whole, and a service in the public interest.

Furthermore, in my view, it does not matter whether the persons who are paying such tax do not receive any benefit, but there is no doubt that the purpose of the imposition is to finance an essential public service and which constitutes a public burden. (See Article 24.1 of our Constitution). This stand is adopted also in the Australian case of *Matthews* v. *Marketing Board* (1938) 60 C.L.R. 263, and at p. 276 Latham, C.J. had this to say:-

> "The levy is, in my opinion, plainly a tax. It is a compulsory exaction of money by a public authority for public purposes, enforceable by law and is not a payment for services rendered".

See also *Parton v. Milk Board,* (1949) 80 C.L.R. 229 and at p. 259 Dixon J., had this to say:-

> "The contribution is a compulsory levy by a public authority for public purposes, and that is enough to show that it is a tax".

See also Seervai, The Constitution of India, (1976) Vol. 2 at p. 1250 on the identification of taxes.

With these principles in mind, which I would adopt and follow, I would repeat that the said imposition being a tax is within the meaning of Article 24 of our Constitution, and was imposed by virtue of the law in question.

The next question is whether the law in question offends the principle of equality. Article 28.1 of our Constitution provides that "all citizens are equal before the law and the administration of justice and are entitled to equal protection thereof and treatment thereby". There is no doubt that the burden of proving the unconstitutionality of a law is on the person who raised such an issue. In *The Board for the Registration of Architects and Civil Engineers v. Christodoulos Kyriakides*, (1966) 3 C.L.R. 640, Mr. Justice Josephides had this to say at pp. 654-655:-

> "In considering the question of the constitutionality of a statute we have to be guided by certain well-established principles governing the exercise of judicial control of legislative enactments. In doing so we have looked for guidance to cases decided by the Supreme Court of the United States of America and, although not bound by such cases, we have adopted the following principles applicable by American Courts, as we are in agreement with the reasoning behind them.
>
> A rule of precautionary nature is that no act of legislation will be declared void except in a very clear case, or unless the act is unconstitutional beyond all reasonable doubt (*Calder* v. *Bull*, 3 Dall. 386, 399, (1798)). Sometimes this rule is expressed in another way, in the formula that an act of Congress or a State Legislature is presumed to be constitutional until proved otherwise "beyond all reasonable doubt": see *Ogden* v. *Saunders*, 12 Wheat. 212 (1827); and other cases ending with *Federation of Labor* v. *McAdory*, 325 U.S. 450 (1945); see also *The Attorney-General* v. *Ibrahim*, 1964 C.L.R. 195.
>
> Another maxim of constitutional interpretation is that the Courts are concerned only with the constitutionality of legislation and not with its motives, policy or wisdom, or with its concurrence with natural justice, fundamental principles of government or spirit of the Constitution: see *Watson* v. *Buck*, 313 U.S. 387 (1941).
>
> As was said by Mr. Justice Roberts in *Nebbia* v. *New York*, 291 U.S. 502 (1933); 78 Law. ed. 940 at page 957, 'with the wisdom of the policy adopted, with the adequacy

or practicability of the law enacted to forward it, the Courts are both incompetent and unauthorised to deal. The course of decision in this Court exhibits a firm adherence to these principles. Times without number we have said that the legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favour of its validity, and that though the Court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power'.

It is a cardinal principle that if at all possible the Courts will construe the statute so as to bring it within the law of the Constitution: *United States* v. *C.I.O.*, 335 U.S. 106 (1948); *Miller* v. *United States*, 11 Wall. 268 (1871).....

In coclusion, we would like to repeat the words of Mr. Justice Holmes in *Tuson & Bro.* v. *Banton*, 273 U.S. 418, 445-7 (1927):

'I think the proper course is to recognise that a State legislature can do whatever it sees fit to do unless it is restrained by some express prohibition in the Constitution of the United States or of the State, and that courts should be careful not to extend such prohibitions beyond their obvious meaning by reading into them conceptions of public policy that the particular court may happen to entertain..... .....

I am far from saying that I think this particular law a wise and rational provision. That is not my affair. But if the people of the State of New York speaking by their authorized voice say that they want it, I see nothing in the Constitution of the United States to prevent their having their will'."

Indeed, the basic principles which govern the examination of the constitutionality of taxing laws by this Court have been expounded time and again, and in *Andreas Matsis v. The Republic,* (1969) 3 C.L.R. 245, Triantafyllides, J. (as he then was), had this to say at pp. 258 - 259:-

"In every case in which the Court is dealing with an issue

of alleged unconstitutionality of legislation it has to be borne in mind that there is a presumption of constitutionality in favour of the provision concerned, and that such provision can only be found to be unconstitutional if the Court is persuaded in this respect beyond reasonable doubt (see *Board for Registration of Architects and Civil Engineers* v. *Kyriakides* (1966) 3 C.L.R. 640).

Furthermore, it must not be lost sight of that when taxation laws are attacked on the ground that they infringe the doctrine of equality, the Legislative discretion is permitted by the Judiciary great latitude, in view, especially 'of the inherent complexity of fiscal adjustment of diverse elements' and because 'the power of the Legislature to classify is of 'wide range and flexibility' so that it can adjust its system of taxation in all proper and reasonable ways' (see the decision of the Supreme Court of India in *Khandige* v. *Agricultural I.T.O.A.*, as referred to in Basu's Commentary on the Constitution of India, 5th ed. vol. I, p. 464).

The same line of reasoning runs constantly through the relevant case-law of the Supreme Court of the United States of America."

See also my own judgment in *Ioannides* v. *The Republic* (1979) 3 C.L.R. 297 on this very issue.

Counsel for the applicant further argued that the test of the consumption of electricity as indicated by the meter is arbitrary as there is no correlation between the consumed quantity of electricity and the means of the taxpayer, and that its choice as a test for the imposition of this taxation does not lead to equality of treatment.

Having read certain provisions of the law and particularly the imposition of tax provided by s.3, it seems to me that it has a reasonable basis because of the aforesaid established correlation between the consumption of electricity current and means, and once this reasonable basis has been established, I think in spite of my reservations that on the authorities quoted, it is for the State in its own assessment to make exceptions in the light of policies which are not oppressive. I would, however

state that by virtue of s.3(2) of Law 14/79 there are exempted from the taxation in question various categories of consumers and it enables some of them including households who have very high incomes, to avoid paying any contribution at all under the provisions of the law in question. It is, to say the least, regrettable, and the appropriate authority I think should look into the matter in the near future.

With those observations in mind, I would dismiss this recourse once Law 14/79 was found not to be contrary to the provisions of Articles 23, 24 and 28 of the Constitution. Indeed, I also concur with the judgment of my brother Justice A. Loizou, but in the particular circumstances of this case, I am not making an order for costs.

MALACHTOS J.: Once it has been accepted by all concerned that the contribution is a tax and not a duty or rate, I have no difficulty to agree that this recourse should be dismissed, with no order as to costs, for the reasons stated in the judgment just delivered by my brother Judge A. Loizou, which judgment I had the advantage to read in advance.

DEMETRIADES J.: I, also, had the advantage of reading in advance the judgment of my brother Judge A. Loizou, which was just delivered, and I fully agree with it.

TRIANTAFYLLIDES P.: In the result this recourse is unanimously dismissed, with no order as to costs.

Application dismissed. No order as to costs.