1982 September 30

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS APOSTOLIDES AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTRY OF LABOUR AND SOCIAL INSURANCE AND OTHERS,

Respondents.

(*Case No.* 383/81).

Constitutional Law—Constitutionality of legislation—Revisional jurisdiction of Supreme Court—Cannot be invoked for the determination of constitutionality of Laws in abstracto—Issue of Constitutionality of legislation may be determined within the context of an act, decision or omission of organs of public administration.

Administrative Law—Administrative acts or decisions—Executory act—Letter to Director-General Ministry of Labour and Social Insurance claiming redundancy payment—Director having no power to decide about the making of such payments—Therefore, his decision rejecting the claim not executory and cannot be made the subject of a recourse.

Statutes—Renewal by reference—Validity.

Constitutional Law—Constitutionality of legislation—Principles applicable—Burden of satisfying the Court that a statute is unconstitutional on party propounding unconstitutionality—A law is presumed to be constitutional until the contrary is proved —It must be demonstrated that a law is clearly unconstitutional before a submission as to its unconstitutionality is upheld.

Constitutional Law—Constitutionality of legislation—Termination of Employment Law, 1975 (Law 1/75 as amended) not contrary to Articles 9, 23, 25 and 28 of the Constitution.

Constitutional Law—No article of the Constitution makes it constitutionally offensive to take away by law rights that vested at civil law.

Constitutional Law—Equality—Concept of equality in the context of Article 28 a relative one—Designed to maintain equality among things equal in themselves.

Constitutional Law—Right to a decent existence and social security—Article 9 of the Constitution—Temporary suspension of redundancy payments, following the Turkish invasion, made under the Termination of Employment Law, 1975 (Law 1/75)—Article 9 not contravened.

Constitutional Law—Reserve power of the State to legislate in the face of an emergency.

As a result of the Turkish invasion, the mine and business sites of the Cyprus Mining Corporation (C.M.C.) were occupied and placed under the control of the Turkish army. The mine became inaccessible to its work force and its operations suspended. On March 1, 1975 C.M.C. was declared a stricken company under the provisions of the Termination of Employment (Temporary Restrictive Provisions) Law, 1974 (Law 50/74), a status that gave it the right to dismiss its employees; and they dismissed them as far as from 31.3.1975.

Negotiations opened between the management of C.M.C. and an ad hoc committee set up by its employees for the payment of compensation to dismissed workers. They resulted in an agreement reached on 21.5.1975 involving the payment of some compensation to each one of the dismissed employees. The aforementioned ad hoc committee of dismissed employees made representations to the Ministry of Labour and Social Insurance for the payment to dismissed C.M.C. employees of redundancy payments. These representations received a negative reply because of the provisions of the Termination of Employment Law, 1975 (Law 1/75 as amended by Laws 67/75, 17/76 and 18/77) which provided for the suspension of redundancy payment to every worker dismissed as a result of the tragic events of the summer of 1974. As far back as 20.3.1979, the Minister of Labour and Social Insurance, in a letter addressed to the representatives of the dismissed C.M.C.

employees, categorically signified the intention of the government to abide by the provisions of the law on the subject of redundancy payments. Following the enactment of Law 92/79, which amended the provisions of the above Law, applicants applied for a review of their case by means of a letter dated 13.7.1981 addressed to the Director-General of the Ministry of Labour and Social Insurance. In reply the Director-General informed the applicants that the Law conferred no discretion to anyone to relax the application of its provisions and allow redundancy payment to a worker dismissed between the periods specified by the Termination of Employment Laws, 1975 (Law 1/75 as subsequently amended). Hence this recourse.

Counsel for the applicants mainly contended:

(a) That the extension of the period of suspension of the redundancy payments, brought about by the enactment of Laws 67/75, 17/76 and 18/77 was invalid because Law 1/75 was renewed by reference.

(b) That Law 1/75 was unconstitutional because it divested applicants of rights acquired under a repealed Law.

(c) That Law 1/75 was unconstitutional because it infringed Articles 9, 23, 25 and 28 of the Constitution.

Counsel for the respondents, along with submitting that Law 1/75 was constitutional, raised the objection that the recourse was out of time because the time that elapsed since the enactment of Law 1/75 and the signification of the respondents to abide by its provisions was more than the 75 days time-limit, provided by Article 146.3 of the Constitution, within which a recourse could be made.

Held, (I) on the preliminary objection:

That the revisional jurisdiction of the Supreme Court is not the forum for a review of the constitutionality of laws in abstracto; that litigants cannot move the Supreme Court to exercise its revisional jurisdiction for the challenge of the constitutionality of laws; that issues of constitutionality may be determined incidentally, if necessary, for the purpose of adjudicating upon the propriety of an act, decision or omission of organs of public administration; that it is, therefore, incompetent for the applicants to seek, outside the context of administrative

action, a declaration that the Termination of Employment (Amendment) Law, 1/75, is unconstitutional, that, moreover, if the reaction of the authorities to the claim of the applicants for a redundancy payment was treated as a decision in the sense of a refusal of the appropriate organ to pay redundancy payment, the recourse is out of time inasmuch as the applicants must be presumed to have had knowledge of such decision years before the initiation of the present proceedings, and the interval of 75 days cannot be by-passed or relaxed, for it is mandatory to ensure certainty in the administrative process.

Held, further, that the decision of the Director-General of the Ministry of Labour and Social Insurance of 25.8.1981 could, under no conceivable circumstances, be construed as an administrative act, justiciable under Article 146; that the Director-General of the Ministry of Labour and Social Insurance had no power to decide, one way or the other, about the making of a redundancy payment; that, therefore, his decision could have no bearing whatever on the rights of the applicants; that the Redundancy Fund is, under the provisions of the principal law—the Termination of Employment Law, 24/67—a juridical body with a personality of its own, capable of suing and being sued in its own name (s. 24(2) of Law 24/67); that neither the Director-General nor anybody else can take a decision in its stead; that inasmuch as this Court can only take cognizance of executory acts, the decision complained of, subject-matter of this recourse, is not of this character and as such it must be dismissed.

Held, (*II*) *on the merits of the recourse:*

(1) That so long as the will of the legislature is clearly expressed in a given direction, effect will be given to it notwithstanding the form chosen for its accomplishment; accordingly contention (a) should fail (*Republic* v. *Pavlides and Others* (1979) 3 C.L.R. 603 followed).

(2) That no article of the Constitution makes it constitutionally offensive to take away by law rights that vested at civil law; accordingly contention (b) should fail.

(3) That the burden of satisfying the Court that a statute or a section of it is unconstitutional, is on the party propounding the unconstitutionality of the law; that a law is presumed to

be constitutional until the contrary is proved; that it must be demonstrated that a law is clearly unconstitutional before a submission as to its unconstitutionality is upheld; that the antithesis or incompatibility of the provisions of a given law to the Constitution, must be clear and manifest, and such as not to be capable of being remedied by a beneficial construction.

(4) That Articles 23 and 25 are not at all relevant to the issue of constitutionality of Law 1/75.

(5) That the concept of equality in the context of Article 28 is a relative one designed to maintain equality among things equal in themselves, that is to say, intrinsic equality; that it was open to the legislature to introduce measures necessary to cope with the realities that emerged after 14.7.1974, in the domain of termination of employment, without, in any way, offending Article 28.

(6) That Article 9 has the effect of placing social rights on an equal footing with political rights, both fundamental under the Cyprus Constitution, as well as the universal declaration of human rights proclaimed by the General Assembly in 1948; that it can be validly presumed that the Termination of Employment Law, 1967 (Law 24/67) was enacted in discharge of the specific obligations of the State under Article 9; that the temporary suspension of redundancy payments was a measure designed to protect the institution of redundancy payments for the sake of the longer-term interests of workers; that there is nothing before the Court proving that the temporary suspension of redundancy payments constituted, in the grave circumstances that followed the Turkish invasion, a departure from the constitutional dictate to provide for workers and the poor a system of social security compatible with the means of the State; accordingly Law 1/75 is not contrary to Article 9 of the Constitution.

Held, further, that even if a contrary view was held, the grave emergency created by the Turkish invasion justified the invocation of the reserve powers of the State to legislate, by suspending laws principally designed to cope with social needs in times of peace and tranquillity.

Application dismissed.

Cases referred to:

Pitsillos v. *C.B.C.* (1982) 3 C.L.R. 208;

Republic v. *Pavlides and Others* (1979) 3 C.L.R. 603;

Improvement Board of Eylendja v. *Constantinou* (1967) 1 C.L.R. 167;

Evlogimenos and Others v. *Republic*, 2 R.S.C.C. 139;

Republic v. *Menelaou* (1982) 3 C.L.R. 419;

Mikrommatis v. *Republic*, 2 R.S.C.C. 125;

Panayides v. *Republic* (1965) 3 C.L.R. 107;

Republic v. *Arakian* (1972) 3 C.L.R. 294;

Kyriakides v. *Council for Registration of Architects and Civil Engineers* (No. 2) (1965) 3 C.L.R. 617;

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

Worringham v. *Lloyd's Bank Ltd.* [1981] 2 All E.R. 435;

Papaphilippou v. *Republic*, 1 R.S.C.C. 64;

Singer Sewing v. *Republic* (1979) 3 C.L.R. 507;

Pathumma v. *State of Kerala*, AIR 1973 SC pp. 771, 772, 774, 779;

Pershad v. *Administration for Union Territory of New Delhi*, 1961 AIR SC p. 1602;

Majid v. *Mayak*, 1951 SC p. 440;

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

Attorney-General of the Republic v. *Ibrahim and Others*, 1964 C.L.R. 195.

Recourse.

Recourse for a declaration that the Termination of Employment (Amendment) Law, 1975 (No. 1/75) is unconstitutional.

A. S. Angelides, for the applicants.

D. Papadopoullou (*Mrs.*), for the respondents.

PIKIS J. read the following judgment. What we are required to decide in these proceedings is, in essence, the constitutionality of the laws suspending or abolishing the right of workers, those dismissed between 14.7.74 and 18.4.77, to redundancy payment, the Termination of Employment Law 1/75, as amended in 1975, 1976 and 1977 (Laws 1/75, 67/75, 17/76, 18/77 see also 92/79).

The applicants, 12 of the 600, or so, workers, dismissed by the Cyprus Mining Corporation (C.M.C.), claim a declaration that the Termination of Employment (Amendment) Law - 1/75, is unconstitutional to the extent it suspends their right to redun-

dancy payment, and that the refusal or omission to pay them founded thereon, is invalid. The answer submitted on behalf of the Attorney-General is that the law is constitutional. However, the respondents dispute the right of the applicants to raise the present proceedings on account of the time that elapsed since the enactment of Law 1/75, and the signification of the intention of the political authorities to abide by its provisions and their refusal to make any redundancy payments. Reference to the background of the case will help elucidate the nature and breach of the issues posing for consideration.

THE FACTS:

As a result of the Turkish invasion, the mine and business sites of C.M.C. were occupied and placed under the control of the Turkish army. The mine became inaccessible to its work force; operations were suspended. On 1.3.75 C.M.C. was declared a stricken company under the provisions of the Termination of Employment (Temporary Restrictive Provisions) Law - 50/74, a status that gave it the right to dismiss its employees. They dismissed their employees as from 31.3.75. Negotiations opened between the management of C.M.C. and an ad hoc committee set up by its employees for the payment of compensation to dismissed workers. They resulted in an agreement reached on 21.5.75, involving the payment of some compensation to each one of the dismissed employees. The aforementioned ad hoc committee of dismissed employees made representations to the Ministry of Labour and Social Insurance and other political authorities of the State, for the payment to dismissed C.M.C. employees, of redundancy payment. These representations were intended to persuade the authorities either to by-pass or amend the provisions of Law 1/75 that prohibited such payment. The reaction of the authorities was understandably negative. They could not ignore the provisions of the law. Pressure was kept up, by the employees, despite the persistence of the body-politic to stick to the spirit and letter of Law 1/75. Law 1/75 was intended as a temporary measure to tidy over a grave emergency entailing the suspension of redundancy payment to every worker, and there were thousands of them, dismissed, as a result of the tragic events of the summer of 1974. The duration of Law 1/75 was successively extended, by extending the duration of the 1975 law, upto 18.4.77 (see Laws 67/75, 17/76 and 18/77).

The respondents contend there is overwhelming material in the file establishing that the recourse is, on any view of its purport, out of time. The representations made by the committee to various authorities, their protestations and the widespread publicity given to their claim, make it hard for anyone of them to assert that they were not aware of the negative reaction of the authorities to their demands. As far back as 20.3.79, the Minister of Labour and Social Insurance, in a letter addressed to the representatives of the dismissed C.M.C. employees, categorically signified the intention of the government to abide by the provisions of the law on the subject of redundancy payments. In support of her submission that the recourse is out of time, counsel for the respondents made reference to Greek case-law, tending to establish that knowledge of an act or decision may be inferred indirectly. The interval of time that elapses between a decision and the recourse, plus the publicity given to a claim coupled with the interest that a party affected by the decision is reasonably expected to show in the pursuit of his rights, are facts from which knowledge of an act or decision may be imputed to the applicant. (See, inter alia, *Index to Case-Law of the Greek Council of State* 1961 - 1970, Decisions 721/62, 1375/62 and 1362/67). The more the publicity the stronger the presumption as to knowledge. (See, *Index*, supra, Cases 285/62 and 1332/67). So, in the contention of the respondents, this recourse was taken out of time, quite independently from other obstacles, in the way of applicants succeeding.

However, the arguments as to the timeliness of the recourse are, in my view, fraught with a misconception of the true nature of the facts and the complaint of the applicants; they complain, in effect, that the law suspending their right to redundancy payment is unconstitutional. Of this law they are credited with knowledge as from the date of its promulgation in the Official Gazette. Certainly they knew that the law prohibited a redundancy payment in their case and were all along fighting to have the law either by-passed or amended. Most certainly they knew their right to redundancy payment was restricted the moment Law 1/75 was enacted. On the date of their dismissal, they were not entitled, under the law, to redundancy payment. Nor did they formally lodge a claim for the payment of compensation to the Redundancy Fund so as to provoke a decision

or establish an omission. Their complaint all along, was that the law was unjust.

The revisional jurisdiction of the Supreme Court is not the forum for a review of the constitutionality of laws in abstracto. Litigants cannot move the Supreme Court to exercise its revisional jurisdiction for the challenge of the constitutionality of laws. Issues of constitutionality may be determined incidentally, if necessary, for the purpose of adjudicating upon the propriety of an act, decision or omission of organs of public administration.

It is, therefore, incompetent for the applicants to seek, outside the context of administrative action, a declaration that the Termination of Employment (Amendment) Law, 1/75, is unconstitutional. Moreover, if the reaction of the authorities to the claim of the applicants for a redundancy payment was treated as a decision in the sense of a refusal of the appropriate organ to pay redundancy payment, the recourse is out of time inasmuch as the applicants must be presumed to have had knowledge of such decision years before the initiation of the present proceedings. And the interval of 75 days cannot be by-passed or relaxed for, it is mandatory to ensure certainty in the administrative process.

Counsel for the applicants maintained that Law 92/79, amending the provisions of the Termination of Employment Law, brought about a new state of affairs that necessitated the holding of a new inquiry into the claim of the applicants for redundancy payments. They asked for a review of their case by a letter dated 13.7.81 addressed to the Director-General of the Ministry of Labour and Social Insurance. The reply conveyed by the letter of the Director-General of the Ministry of Labour was negative, confirmatory of the attitude of the Ministry of Labour and Social Insurance, all along, that the law conferred no discretion to anyone to relax the application of its provisions and allow redundancy payment to a worker dismissed between the periods specified by the Termination of Employment Law, 1/75, as subsequently amended. The complaint of the applicants in this connection relates not to the suspension of the right to redundancy payment of workers dismissed subsequent to the Turkish invasion, but to the provisions regulating the

reactivation of redundancy payments, the allegation being that it is discriminatory against those who, like the applicants, had reached the age of retirement and could not, therefore, benefit from the reactivation of the Termination of Employment Law. The complaint here is on a quite different footing from the original complaint of the applicants, in that it has no bearing on the suspension of redundancy payments but to the reactivation of the scheme for the making of such payments. It is a complaint against a legislative scheme. There is no material before us and nothing was placed before the authorities that applicants resumed work after retirement and that payment was refused after dismissal because of redundancy. Here, as elsewhere, we have a complaint voiced in abstracto, pertaining to the constitutionality of a law and as such it is non-cognizable.

However, the decision of the Director-General of the Ministry of Labour and Social Insurance of 25.8.81 could, under no conceivable circumstances, be construed as an administrative act, justiciable under Article 146. The Director-General of the Ministry of Labour and Social Insurance had no power to decide, one way or the other, about the making of a redundancy payment; therefore, his decision could have no bearing whatever on the rights of the applicants. The Redundancy Fund is, under the provisions of the principal law - the Termination of Employment Law, 24/67 - a juridical body with a personality of its own, capable of suing and being sued in its own name (s.24 (2) of Law 24/67). Neither the Director-General nor anybody else can take a decision in its stead. And inasmuch as this Court can only take cognizance of executory acts, the decision complained of, subject-matter of this recourse, is not of this character and as such it must be dismissed. On the other hand, we cannot identify the existence of any omission on the part of the Fund to pay redundancy payment in the absence of any material whatever, to suggest that the claim was advanced to the Fund and that they omitted so deal with it in a proper manner.

For the reasons above given, the recourse cannot but be dismissed. However, we shall proceed to deal with the substantive issues, pertaining to the constitutionality of the Termination of Employment (Amendment) Law - 1/75, raised in these proceeding, in accordance with the settled practice requiring the

trial Court to deal with every issue before it in case a different view prevails on appeal on the foregoing matters.

DETERMINATION OF AN ISSUE OF CONSTITUTIONALITY OF A LAW:

Questions of constitutionality are decided in abstracto. Rarely is evidence admissible and then, only if necessary, to illuminate the implications of the law, otherwise obscure. Once the constitutionality of a law is put in issue, the task of the Court is to decide whether the provisions of the impugned legislation are reconcilable with those of the Constitution. If inconsistent with or contrary to one or more provisions of the Constitution, it is the duty of the Court to declare the law unconstitutional, quite independently from the repercussions likely to arise therefrom. The task of the Court is purely judicial; if the law is compatible with the Constitution, effect must be given to it, being beyond the province of the Court to examine either the wisdom of the legislation or its efficacy. The legislative function is exclusively the province of the legislature, a position spelled out explicitly in the Constitution, as well as warranted by the system of separation of State powers entrenched therein. The House of Representatives are the arbiters of legislation. They are responsible for identifying the needs of the people and the evils against which they must be protected, as well as the remedies appropriate to the circumstances. The burden of satisfying the Court that a statute or a section of it is unconstitutional, is on the party propounding the unconstitutionality of the law. A law is presumed to be constitutional until the contrary is proved. So, it must be demonstrated that a law is clearly unconstitutional before a submission as to its unconstitutionality is upheld. The antithesis or incompatibility of the provisions of a given law to the Constitution, must be clear and manifest, and such as not to be capable of being remedied by a beneficial construction. (See, *Modestos Pitsillos v. C.B.C.* (1982) 3 C.L.R. 208).

The applicants contest, in this case, the constitutionality of s.2 of Law 1/75, on the ground that it violates or infringes the provisions of Articles 9, 23, 25 and 28. Also, they contest the validity of the extension of the period of suspension brought about by the enactment of Laws 67/75, 17/76 and 18/77. The

argument here, is that a law cannot be renewed by reference. We need concern ourselves no further with this submission for the decision of the Supreme Court in *Republic v. Pavlides and Others* (1979) 3 C.L.R. 603, makes the submission unsustainable. So long as the will of the legislature is clearly expressed in a given direction, effect will be given to it notwithstanding the form chosen for its accomplishment.

In the course of argument, counsel also submitted that s.2 of Law 1/75 runs contrary to, or is inconsistent with, the provisions of Article 26 as well. We shall pay no heed to this submission for, it is inappropriate for the Court to take cognizance of questions of constitutionality, unless raised in the formal and solemn manner indicated in *The Improvement Board of Eylendjia v. Constantinou* (1967) 1 C.L.R. 167, a procedure compatible with the gravity of issues of constitutionality. I must confess that I found it hard to see how Articles 23 and 25 are at all relevant to the issue of constitutionality of Law 1/75. Article 23 safeguards property rights, ownership as well as possession, and fences their enjoyment from interference by the State. Property rights cannot be taken away at the instance of the State, except in the manner envisaged in paragraphs 3 and 4 of Article 23. Any doubts as to the ambit and implications of Article 23, there may have existed, were resolved by the Supreme Constitutional Court in the case of *Stelios E. Evlogimenos and 2 Others v. The Republic,* 2 R.S.C.C. 139, where it was proclaimed that Article 23 is not meant to interfere with legislative regulation of civil law rights, but is concerned with the protection of such rights from State interference.

Equally irrelevant is Article 25, safeguarding freedom to pursue or practise any profession or carry on any occupation, trade or business. Law 1/75 in no way restricts the freedom entrenched in Article 25.1. Article 25.1 does not purport to safeguard any right to compensation on dismissal from employment. So, we must leave on one side Article 25 as well.

Another submission which can be dealt with equal brevity as those aforementioned, is that revolving round the validity in constitutional law of an enactment divesting the subject of rights acquired under a repealed law. First, no article of the Constitution makes it constitutionally offensive to take away by

law rights that vested at civil law. So, no question of constitutionality arises. What there exists, is a statutory presumption in virtue of s.10(2)(c) of the Interpretation Law, Cap.1, that, in the absence of an indication to the contrary, a law will be interpreted as leaving intact rights, privileges, obligations or liabilities acquired, accrued or incurred, under a repealed law. As we pointed out in the case of *The Republic v. Ch. Menelaou* (1982) 3 C.L.R. 419, in the face of clear language to the contrary, the presumption recedes to the point of extinction. Here, there is no doubt that Law 1/75 was clearly intended to take away rights that might have accrued under the Termination of Employment Law that it amended. We must, however, observe that no question of accrued rights can arise in this case for when the applicants were dismissed on 31.3.75, Law 1/75 was in force. So the law did not purport to take away any rights that had vested in them under the Termination of Employment Law, before its amendment. And let us finally observe for the disposal of this point, that no one has a vested interest in the non change of the law.

The force of the argument of applicants on the question of constitutionality was directed towards establishing infringement of Article 9 of the Constitution, and, to a lesser extent, Article 28.

We find it convenient to deal with the submissions turning on Article 28, first, easier to dispose of in view of the abundance of authority on its interpretation, and then go on to examine Article 9, juxtaposing it with the provisions of Law 1/75.

THE CONSTITUTIONALITY OF LAW 1/75 *IN RELATION TO ARTICLE* 28:

Article 28 has, more than any other article of the Constitution, been the subject of discussion by the Supreme Court. (See, inter alia, *Mikrommatis v. The Republic,* 2 R.S.C.C. 125; *Panayides v. The Republic* (1965) 3 C.L.R. 107; *The Republic v. Arakian* (1972) 3 C.L.R. 294; *Kyriakides v. The Council for Registration of Architects and Civil Engineers (No. 2)* (1965) 3 C.L.R. 617; *Matsis v. The Republic* (1969) 3 C.L.R. 245).

It is authoritatively acknowledged that the concept of equality in the context of Article 28 is a relative one designed to

maintain equality among things equal in themselves, that is to say, intrinsic equality. *Equality, in the context of Article* 28, *is used, in the Aristotelian sense, as the measure of justice* ('Αριστοτέλη " 'Ηθικὰ Νικομάχεια περὶ Δικαιοσύνης" Νικολούδη, 'Αθῆναι 1975. Κεφ. 7, σελ. 43, 44, 45, 46 καὶ 47). The legislature is not bound either to assimilate things dissimilar or to equate the unequal. So long as their classification has a rational basis and is objectively just, courts will keep their distance from legislative deliberations and proclaim them as a valid expression of the will of the people. On the other hand, if the realm of equality established by the Constitution is transgressed, it is the duty of the Court to proclaim a law unconstitutional. The objectivity of the law would be seriously diminished if Courts were unduly swayed by the practical repercussions for the application of the law in construing its provisions (*Worringham v. Lloyds Bank Ltd.* [1981] 2 All E.R. 435 - a decision of the Court of Justice of the European Committee).

Law 1/75 treats all those that were dismissed after 14.7.74 in a like manner. The argument turning on inequality concerns those dismissed prior to 14.7.74 and those subsequent to 18.4.77. It comes to this: There was no ground for differentiating between workers dismissed on the aforementioned dates. Any student of the recent history of Cyprus would, at first glance, find plenty of reasons from distinguishing between these three classes of workers. The social and economic conditions of the country changed dramatically after the Turkish invasion, posing a direct threat to every institution of the State, a subject upon which we expatiate later on in this judgment. The socio-economic climate of the country was totally different from that prevailing prior to 14.7.74 and relatively different to the one that prevailed after 18.4.77. It is unnecessary to debate whether it is at all possible to question, on grounds of inequality, the constitutionality of a law by reference to legislation introduced years afterwards. But as we may judicially notice, the socio-economic climate of the country began to improve with the gradual reactivation of the economy in the years that followed the Turkish invasion. In my judgment, it was open to the legislature to introduce measures necessary to cope with the realities that emerged after 14.7.74, in the domain of termination of employment, without, in any way, offending Article 28.

THE CONSTITUTIONALITY OF LAW 1/75 BY REFERENCE TO ARTICLE 9 OF THE CONSTITUTION:

Article 9 provides:

> "Every person has the right to a decent existence and to social security. A law shall provide for the protection of the workers, assistance to the poor, and for a system of social insurance."

Article 9 embodies a constitutional directive, enjoining the State to safeguard the fundamental human right to social security. It is a provision directed equally to the executive to introduce, and the legislative branch of the State to enact laws that uphold the dignity of man; fencing his being from the hazards of poverty and social insecurity factors that reduce his ability to participate and contribute to the social aims. Failure to comply with this directive, burdens the State institutionally and not administratively. (See the case of *Papaphilippou v. The Republic,* 1 R.S.C.C. 64).

No Cyprus case was cited, dealing at any length with the interpretation of Article 9, presumably because of the clarity of its provisions.

Article 9 may be divided into two parts:

The first casts a general duty on the State to maintain minimum standards of existence and social security for everyone. The second imposes a specific duty to establish a system of social security for the protection of the weakest elements of society, the poor and the workers. The general duty, that is to say, one owed to everyone, is absolute in the sense that the State is enjoined to safeguard minimum standards for a decent existence for everyone. This is compatible with the ideal of a human society that places man in the epicentre of social action. The specific duties are relative, in the sense that social security for the poor and the workers must be compatible with and proportionate to the means of the State. Arguably, the means of the State in this area are not those presently available, but those that could be raised by appropriate legislation.

Article 9 has the effect of placing social rights on an equal footing with political rights, both fundamental under the Cyprus

Constitution, as well as the universal declaration of human rights proclaimed by the General Assembly in 1948. We can validly presume that the Termination of Employment Law - 24/67, was enacted in discharge of the specific obligations of the State under Article 9. It was in every sense a salutary measure.

A law designed to confer social security to workers, may be presumed to be a law enacted in fulfilment of the obligations of the State under Article 9. Guided by the spirit of the Constitution, one may go a step further and subscribe to the view that social legislation, introduced in furtherance to constitutional directives, is a measure necessary for the discharge of the obligations of the State under Article 9. Consequently, the repeal of such a piece of social legislation, or the curtailment of social security afforded therethrough, may give rise to a presumption of derogation from the constitutional entrenchment of social security. Such a presumption is, however, far from conclusive for, we must not overlook that the Constitution does not envisage the enactment of any particular piece of social legislation but, as earlier indicated, it envisages the enactment of legislation conferring social security - we are referring to the second leg of Article 9 - to workers and the poor, in proportion to the means of the State. Therefore, the repeal or modification of a law granting social security, is far from being in itself conclusive about the discharge of the obligations of the State under Article 9. The whole field of social legislation must be reviewed and examined in order to ascertain whether, at anyone time, the sum total of the measures of social security are proportionate to the means of the State. This, in turn, would require a dual exercise involving examination of the compass of social legislation in its entirety on the one hand, and the socio-economic climate of the country, on the other. As the Supreme Court held in *Singer Sewing v. The Republic* (1979) 3 C.L.R. 507, the socio-economic conditions of the country are an important consideration for the evaluation of a law designed to cope with an extraordinary state of affairs. A similar approach was adopted by Indian Courts, grading the socio-economic climate of the country as an all important consideration for the evaluation of legislation from the constitutional angle.* At no stage was it submitted that social

* (See *Pathumma* v. *State of Kerala*, AIR 1973 SC, pp. 771, 772, 774, 779, and *Pershad* v. *Administration for Union Territory of New Delhi*, 1961, AIR SC p. 1602, and *Majid* v. *Mayak*, 1951, AIR SC p. 440).

security measures that were provided after the Turkish invasion were, in any way, disproportionate to the means of the State diminished as a result of the disastrous consequences of the invasion and the chaotic condition into which the country was plunged. The temporary suspension of redundancy payments was a measure designed to protect the institution of redundancy payments for the sake of the longer-term interests of workers. In my judgment, there is nothing before the Court proving that the temporary suspension of redundancy payments constituted, in the grave circumstances that followed the Turkish invasion, a departure from the constitutional dictate to provide for workers and the poor a system of social security compatible with the means of the State. But even if a contrary view was held, the grave emergency created by the Turkish invasion justified the invocation of the reserve powers of the State to legislate, by suspending laws principally designed to cope with social needs in times of peace and tranquillity.

THE RESERVE POWER OF THE STATE TO LEGISLATE IN THE FACE OF AN EMERGENCY:

In *Manglis v. Chimonides* (1967) 1 C.L.R. 125, the Supreme Court acknowledged the possession by the State of a reserve power to deviate from the provisions of the Constitution in the face of an emergency. The departure will be sanctioned so long as the measures taken are strictly necessary to cope with the emergency and of no longer duration than the emergency warrants. Similar powers were acknowledged to the State in the United States of America, as it was laid down in a number of decisions of U.S.A. Supreme Courts, cited with approval in the majority of judgments of the Supreme Court, in *Chimonides,* supra. Earlier, in 1964, the Supreme Court accepted the doctrine of necessity as an integral part of our law, empowering the State to take measures deemed absolutely necessary for the running of the State, in the absence of which a vacuum would be left in the government of the country. (See, *A-G- of the Republic v. Mustafa Ibrahim and Others,* 1964 C.L.R. 195). To my comprehension, necessity is but another aspect of the reserve power of the State to legislate in the interests of the integrity of the State and social coherence. In U.S.A. the existence of a reserve power is regarded as a concomitant of the sovereignty of the people to provide for their social survival.

One may compare the right of society to survival, to the parallel right of the individual to survival. And inasmuch as man may take measures necessary to ensure his survival, so can society. In both cases, we are concerned with a universal right to survival. In the case of the individual, an individual right, and in the case of society, a social right. Reserve power is necessary to safeguard both the individuality and inborn social inclination of man. The right to survival as an organic entity, is equally fundamental for the preservation of the State. As a result of the Turkish invasion of 1974, the occupation of a large part of the country by a foreign army and the displacement of a vast section of the population, not only social organization but the very foundations of the State were threatened. In fact, the State faced an imminent danger of collapse, something that the enemies of the country wished for. That it was not allowed to happen, is largely due to the extraordinary measures taken thereafter in order to safeguard the compactness of the State and social coherence. That the measures were not more extensive than they were, does not but reflect the desire of the people of this country not to deviate from democratic institutions, except to the extent absolutely necessary.

Like any other Judge, I am sensitive to the dangers inherent in the acknowledgment of reserve powers that may be allowed to override fundamental provisions of the Constitution and the law. I am comforted, however, by the fact that the arbiters of the existence of an emergency and its extent are the judiciary, functioning separately and independently of the Executive and Legislative branches of the State that may be trusted to guard against possible abuse. I would not draw equal comfort if any other body had responsibility for the ascertainment of an emergency situation and the extent of it. The reserve power to legislate in deviation of the Constitution cannot be invoked unless absolutely necessary for the protection of the primary aims of society, directly threatened by the emergency and then only to the extent strictly necessary.

For the reasons above given the recourse fails. It is dismissed accordingly. There shall be no order as to costs.

Recourse dismissed. No order as to costs.