

1983 February 24

[TRIANTAFYLIDES P., HADJIANASTASSIOU. A. LOIZOU,  
MALACHTOS, SAVVIDES, LORIS. PIKIS, JJ.]

ANDREAS ALOUPAS AND ANOTHER,

*Applicants.*

v.

NATIONAL BANK OF GREECE. S.A.,

*Respondents.*

(Case Stated No. 182)

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AMBROSIA OILS & MARGARINE INDUSTRY LIMITED  
AND OTHERS,

*Applicants.*

v.

BANK OF CYPRUS LIMITED,

*Respondents.*

(Case Stated No. 183).

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*Debtors Relief (Temporary Provisions) Law, 1979 (Law 24/79)—*  
*Sections 3 and 4 of the Law to the extent, if any, to which they*  
*contravene Articles 6, 23, 24, 25, 26, 28 and 30 of the Constitution*  
*are justified by the "law of necessity" and they were consequ-*  
*ently validly enacted.*

5

*Necessity—Law of necessity—Principles applicable.*

The following questions were, by virtue of section 9 of the  
Debtors Relief (Temporary Provisions) Law, 1979 (Law 24/79)  
referred to the Supreme Court for its opinion in the above two  
Cases Stated.

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(a) *Case Stated No. 182:*

"Whether assuming Applicants to be stricken debtors  
in the sense such term is defined in Law No. 24 of

1979, sections 3 and 4 of Law No. 24 of 1979 as amended by Law No. 78 of 1980, are contrary to the provisions of Articles 6, 23, 24, 25, 26, 28 and 30 of the Constitution or any one of such Articles, and are for that reason void and of no legal effect whatsoever, affording Applicants no right and no remedy vis-a-vis their judgment creditors in Action No. DCN 560/1978". 5

(b) *Case Stated No. 183:*

"Whether sections 3(1) and 4 of the Debtors' Relief (Temporary Provisions) Law, No. 24/79, are unconstitutional as being repugnant to the right of property, the principle that each person should contribute to the public burdens in accordance with his means, the right of exercise of a profession or business, the right of freedom of Contract, the principle of equality and the right to have access to the Courts, as the aforesaid are declared and safeguarded in Articles 23, 24, 25, 26, 28 and 30 of the Constitution, respectively, and the Supreme Court is respectfully requested to remit the matter to this Court with its opinion thereon". 10 15 20

*Held*, that sections 3 and 4 of Law 24/79 to the extent, if any, to which they contravene Articles 6, 23, 24, 25, 26, 28 and 30 of the Constitution are justified by the "law of necessity" and they were consequently validly enacted. 25

*Order accordingly.*

Cases referred to:

*Attorney-General of the Republic v. Ibrahim*, 1964 C.L.R. 195;  
*Ioannides v. The Police* (1973) 2 C.L.R. 125;  
*Theodorides v. Ploussiou* (1976) 3 C.L.R. 319;  
*Chimonides v. Manglis* (1967) 1 C.L.R. 125;  
*Apostolides and Others v. Republic* (1982) 3 C.L.R. 928 at p. 945. 30

Cases Stated. 35

Cases stated by a Senior District Judge of the District Court of Nicosia (Hji Constantinou, S.D.J.) and by the Full District Court of Nicosia (Stylianides, P.D.C. and Fr. Nicolaides, D.J.)

(Applications Nos. 58/80 and 75/79 respectively) for the opinion of the Supreme Court, on the question whether sections 3 and 4 of the Debtors Relief (Temporary Provisions) Law, 1979 (Law No. 24/79) (as amended by Law No. 78/80) are contrary to the provisions of Articles 6, 23, 24, 25, 26, 28 and 30 of the Constitution.

C. Clerides, for the applicants in Case Stated 182.

A. Triantafyllides with L. Demetriades, A. S. Angelides and M. Cleopas, for the applicants in Case Stated 183.

10 G. Cacoyiannis with A. Dikigoropoulos, for the respondents in Case Stated 182.

G. Polyviou with P. Polyviou, for the respondents in Case Stated 183.

15 M. Kyprianou, Senior Counsel of the Republic, for the Attorney-General of the Republic, as amicus Curiae.

*Cur. adv. vult.*

The following judgments were read.

20 TRIANTAFYLLIDES P.: These two Cases Stated were heard together, by consent of the parties concerned, in view of the closely similar nature of the legal issues to which they relate.

Both Cases Stated came before this Court by virtue of the provisions of section 9 of the Debtors Relief (Temporary Provisions) Law, 1979 (Law 24/79).

25 Case Stated 182 arose out of proceedings in application No. 58/80 in the District Court of Nicosia and reads as follows:

“The facts of the case are as follows:—

30 By reason of a consent judgment passed and entered in action No. 560/78 the District Court of Nicosia ordered and adjudged that the applicants in these proceedings, and defendants in the said action, do pay to the respondents/ plaintiffs the sum of £2,518.155 mils with interest thereon at 9% per annum as from 24/11/77 plus £75.250 mils costs with stay of execution from month to month so long as the applicants do pay monthly and regularly with ten days grace the sum of £20.- per month as from 1/1/79.

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. The applicants failed to abide by the terms of the judg-

ment aforesaid, and the respondents sought to have the judgment executed.

By their present application the applicants pray for—

- (a) An order of the Court staying the proceedings in Action No. 560/78 for so long as Law 24/79 remains in force. 5
- (b) A declaration of the Court that the respondents are not entitled to collect any interest on the applicants' debt, the subject-matter of their application, from 15/8/1974 and so long as Law 24/79 remains in force. 10
- (c) A declaration of the Court that the applicants are 'stricken debtors' within the meaning of the said Law 24/79.

The respondents opposed the above application, denied that the applicants were or are 'stricken debtors', and claimed that even if applicants were to be held on the facts 'stricken debtors' they could not be entitled to the remedies prayed for in this application, alleging that the relevant provisions of Law 24/79 are contrary to the provisions of Articles 6, 23, 25, 26, 28 and 30 of the Constitution and are, therefore, inoperative and of no legal effect. 15 20

Whilst the proceedings in this application were pending, by an application dated 8.8.1980 made under S.9(1) of Law 24/79, without prejudice to their allegations set out in their defence, the respondents applied for a case to be stated for the opinion of the Supreme Court on the issue of the constitutionality of Law 24/79. The applicants consented to such respondents' application. 25

In the relevant case stated No. 182, the Supreme Court remitted the case back to this Court 'so as to be redrafted in accordance with and sufficiently for the purposes of the provisions of S.9 of the Debtors Relief (Temporary Provisions) Law of 1979 (Law 24/79).' 30

On the application of counsel of both parties the following question is referred to the opinion of the Supreme Court: 35

#### *QUESTION*

'Whether assuming Applicants to be stricken debtors

5 in the sense such term is defined in Law No. 24 of 1979, Sections 3 and 4 of Law No. 24 of 1979 as amended by Law No. 78 of 1980, are contrary to the provisions of Articles 6, 23, 24, 25, 26, 28 and 30 of the Constitution or any one of such Articles, and are for that reason void and of no legal effect whatsoever, affording Applicants no right and no remedy vis-a-vis their judgment creditors in Action No. DCN 560/1978.' ”.

10 Case Stated 183 arose out of proceedings in application No. 75/79 in the District Court of Nicosia and reads as follows:

“1. The facts of the case are as follows:-

15 The Respondents by Action No. 4263/76 claim from the Applicant No. 2 £10,125.940 mils with interest at 9% from 1.12.1975 until final payment by virtue of a written agreement dated 22.3.1971.

The Applicant admits the debt with the reservation that the amount contained interest.

20 The Applicant on 27.11.1980 alleged that he was a stricken debtor and on 10.4.1981 he added that he was a stricken and/or a displaced debtor.

The Applicant contended that he being a stricken and/or displaced debtor:-

- 25 (a) The right of recovery and/or the cause of action has been suspended by virtue of Law 24/79 (Section 3(1) );
- (b) The respondents are not entitled to charge or debit or recover any interest on the amount due as from 15.8.1974, by virtue of the provisions of s.4 of Law 24/79.

30 2. The Respondents-creditors on 27th November, 1980, admitted that for the purpose of this case only, Applicant No. 2 is a stricken debtor. On 10th April, 1981, they admitted that Applicant No. 2 is a stricken and/or displaced debtor.

35 The Respondents contend that Sections 3(1) and 4 of the Debtors' Relief (Temporary Provisions) Law, No.

24/79, are unconstitutional as they are repugnant to the right of property, the principle that each person should contribute to the public burdens in accordance with his means, the right to exercise of a profession or business, the right of freedom of contract, the principle of equality and the right to have access to the Courts, as the aforesaid rights are declared and safeguarded in Articles 23, 24, 25, 26, 28 and 30 of the Constitution, respectively. 5

3. The Applicant contends that Sections 3(1) and 4 of the Debtors' Relief (Temporary Provisions) Law, No. 24/79, are not unconstitutional. 10

4. On the application of counsel of both parties the following question is referred for the opinion of the Supreme Court:-

*QUESTION* 15

The question upon which the opinion of the Supreme Court is desired is:-

Whether Sections 3(1) and 4 of the Debtors' Relief (Temporary Provisions) Law, No. 24/79, are unconstitutional as being repugnant to the right of property, the principle that each person should contribute to the public burdens in accordance with his means, the right of exercise of a profession or business, the right of freedom of Contract, the principle of equality and the right to have access to the Courts, as the aforesaid are declared and safeguarded in Articles 23, 24, 25, 26, 28 and 30 of the Constitution, respectively, and the Supreme Court is respectfully requested to remit the matter to this Court with its opinion thereon". 20 25

Section 3 of Law 24/79, as amended by section 3 of the Debtors Relief (Temporary Provisions) (Amendment) Law, 1980 (Law 78/80) reads as follows: 30

"3.- (1) Παρά τὰς διατάξεις οἰουδήποτε ἑτέρου Νόμου, καὶ τηρουμένων τῶν διατάξεων τοῦ ἀρθροῦ 4, διαρκούσης τῆς ἐκρύθμου καταστάσεως καὶ ἐν πάσῃ περιπτώσει διὰ τὴν περίοδον τὴν ἀρξαμένην τὴν 15ην Αὐγούστου, 1974 καὶ λήγουσαν τὴν 31ην Δεκεμβρίου, 1982, τὸ δικαίωμα παντὸς πιστωτοῦ δι' εἰσπραξίν ὀφειλῆς ὀφειλομένης ὑπὸ 35

έκτοπισθέντος ή πληγέντος όφειλέτου άναστέλλεται και άπασαι αί κατά τήν ήμέραν έναρξεως τής Ισχύος του παρόντος Νόμου έκκρεμοῦσαι ή όρισθεΐσαι άναγκαστικάι πωλήσεις άναστέλλονται εάν αύται άφοροῦν εις—

5 (α) άκίνητον ή κινητήν ιδιοκτησίαν εύρισκομένην έντός πληγείσης περιοχής.

(β) άκίνητον ή κινητήν ιδιοκτησίαν μή εύρισκομένην έντός πληγείσης περιοχής αλλά τελοῦσαν υπό πώλησιν δι' ίκανοποίησιν χρέους προκύψαντος έκ τής πωλήσεως, 10 ύποθηκέυσεως, ένεχυριάσεως ή κατ' άλλον τρόπον επιβαρύνσεως έτέρας ιδιοκτησίας εύρισκομένης έντός πληγείσης περιοχής.

(2) 'Η βάσει του παρόντος άρθρου άναστολή άναστέλλει 15 τήν περίοδον Ισχύος οίουδήποτε έντάλματος πωλήσεως ή διατάγματος παραλαβής ή διαλύσεως έν σχέσει προς ταύτην”.

(“3.—(1) Notwithstanding the provisions of any other Law and subject to the provisions of section 4, during the abnormal situation and in any case during the period beginning 20 as from the 15th August, 1974, and ending on the 31st December, 1982, the right of every creditor to recover a debt due by a displaced or stricken debtor is suspended and all forced sales pending or fixed on the date of the coming into operation of this Law shall be stayed if they 25 relate to—

(a) immovable or movable property situate within a stricken area;

(b) immovable or movable property not situate within 30 a stricken area but subject to sale in satisfaction of a debt resulting from the sale, mortgage, pledge or other encumbrance of other property situate within a stricken area.

(2) The stay under this section shall suspend the period 35 during which any writ of sale, receiving order or winding up order in relation thereto is in force”.

Section 4 of Law 24/79 reads as follows:

“4.—(1) Παρά τας διατάξεις οίουδήποτε έτέρου Νόμου διαρ-

κούσης τῆς περιόδου τῆς ἀναφερομένης εἰς τὸ ἐδάφιον (1) τοῦ ἄρθρου 3 οὐδεις τόκος ἐπιβαρύνεται, χρεώνεται ἢ εἰσπράττεται ἐπὶ ὀφειλῆς ἐκτοπισθέντος ἢ πληγέντος ὀφειλέτου.

(2) Ἄπαντες οἱ τυχὸν ἐπιβαρυνθέντες ἢ χρεωθέντες τόκοι ἢ οἱ ὑπὸ τοῦ ἐκτοπισθέντος ἢ πληγέντος ὀφειλέτου καταβληθέντες τόκοι διὰ τὴν περίοδον ἀπὸ τῆς 15ης Αὐγούστου, 1974 μέχρι τῆς ἡμερομηνίας ἐνάρξεως τῆς ἰσχύος τοῦ παρόντος Νόμου λογίζονται ὡς ἐπιβαρυνθέντες, χρεωθέντες ἢ καταβληθέντες, ὡς θὰ ἦτο ἡ περίπτωσης, ἐναντι τοῦ ὑπολοίπου τῆς ὀφειλῆς. 5 10

(3) Ἐν περιπτώσει καθ' ἣν ἡ ὀφειλὴ εἶχεν ἐξοφληθῆ κατὰ τὸ ἐν τῷ προηγουμένῳ ἐδαφίῳ διαρρεῦσαν διάστημα καὶ διὰ τοῦ ἐν αὐτῷ προνοουμένου τρόπου, ἢ τὸ εἰσέτι παραμένον ὑπόλοιπον τῆς ὀφειλῆς εἶναι μικρότερον τοῦ ποσοῦ τῶν ἐν τῷ ἐδαφίῳ τούτῳ ἐπιβαρυνθέντων, χρεωθέντων ἢ καταβληθέντων τόκων, ὡς θὰ ἦτο ἡ περίπτωσης, ὁ πιστωτῆς ὑποχρεοῦται ὅπως ἐντὸς τριῶν μηνῶν ἀπὸ τῆς ἡμερομηνίας ἐνάρξεως τῆς ἰσχύος τοῦ παρόντος Νόμου καταβάλλῃ τὴν διαφορὰν εἰς τὸν ἐκτοπισθέντα ἢ πληγέντα ὀφειλέτην". 15

("4.-(1) Notwithstanding the provisions of any other Law, during the period mentioned in subsection (1) of section 3, no interest shall be charged, debited or collected on a debt of a displaced or stricken debtor. 20

(2) Any interest which may have been charged or debited or the interest paid by a displaced or stricken debtor for the period as from the 15th August, 1974, until the date of the coming into operation of this Law shall be deemed to have been charged, debited or paid, as the case may be on account of the balance of the debt. 25

(3) Where any debt has been discharged during the period mentioned in the previous subsection and in the manner provided thereby, or the balance of the debt still due is smaller than the amount of the interest charged, debited or paid under the said subsection, as the case may be, the creditor shall, within three months from the date of the coming into operation of this Law, pay the difference to the displaced or stricken debtor"). 30 35

It is not necessary, for the purposes of the present judgment,



to quote in full the texts of the Articles of the Constitution referred to in the Cases Stated in question as it suffices to state that Article 6 safeguards against discrimination, Article 23 safeguards the right of property, by Article 24 there is given  
5 constitutional force to the principle that each person is bound to contribute towards the public burdens according to his means, Article 25 safeguards the right to practice any profession, occupation, trade or business, Article 26 safeguards the freedom of contract, Article 28 safeguards the right to equality and Article  
10 30 safeguards the right of access to the courts and of fair trial.

It is abundantly obvious and it can be, therefore, judicially noticed that Law 24/79 is legislation which was enacted in order to meet the consequences and repercussions flowing from the abnormal situation created by the Turkish invasion and continuing military occupation of a considerable part of the Republic  
15 of Cyprus.

It is, furthermore, clear that the calamity caused by the said Turkish invasion and military occupation is of such magnitude that it could not be faced merely by a Proclamation of  
20 Emergency under Article 183.1 of our Constitution, in view of the limited, by paragraph 2 of Article 183, scope of such Proclamation. The said paragraph 2 reads as follows:

“2. Any such Proclamation shall specify the Articles of the Constitution which shall be suspended for the  
25 duration of such Emergency:

Provided that only the following Articles of the Constitution may be suspended by any such Proclamation that is to say:-

Article 7, only in so far as it relates to death inflicted  
30 by a permissible act of war; Article 10, paragraphs 2 and 3; Article 11; Article 13; Article 16; Article 17; Article 19; Article 21; Article 23, paragraph 8, sub-paragraph (d); Article 25 and Article 27”.

It follows that Law 24/79 is legislation which, to the extent  
35 to which it interferes with fundamental rights and liberties safeguarded by the aforementioned Articles of the Constitution in a manner incompatible with such Articles, can only be treated as being valid if it is found that its enactment was justified by

the "law of necessity" (as expounded in, inter alia, *The Attorney-General of the Republic v. Ibrahim*, 1964 C.L.R. 195, *Ioannides v. The Police*, (1973) 2 C.L.R. 125 and *Theodorides v. Ploussiou*, (1976) 3 C.L.R. 319).

In *Chimonides v. Manglis*, (1967) 1 C.L.R. 125, there was 5  
 division of judicial opinion as to whether the fundamental  
 rights and principles, which are safeguarded by Articles (such  
 as 6, 23, 24, 25, 26, 28 and 30) which are to be found in Part  
 II of the Constitution, can be subjected to any limitations or  
 restrictions other than those provided in the said Part II, by 10  
 resorting to the "reserve powers" or "police powers" of the  
 State.

Having given to the matter further consideration, especially  
 in the light of the able arguments advanced by counsel who  
 have appeared before us in these proceedings, I am still inclined 15  
 to the view that there can be no question of subjecting, during  
 a period of normality, the fundamental rights and liberties  
 guaranteed in Part II of the Constitution to any limitations or  
 restrictions other than those provided in such Part, in a manner  
 contrary to Article 33 of the Constitution. 20

I am, however, of the view that, when the State is faced with  
 a calamity which has surpassed the remedial scope of a Procla-  
 mation of Emergency under Article 183 of the Constitution,  
 the State can resort to measures entailing the limitation or  
 restriction or even deprivation of the fundamental rights and 25  
 liberties guaranteed by Part II of the Constitution, even in  
 a manner contrary to the aforesaid Article 33, and that  
 it can do so by virtue of the "law of necessity"; and, in such a  
 case, whether one speaks of the "law of necessity" or of "reserve  
 powers" it makes no material difference because both notions 30  
 are two sides of one and the same juridical coin.

Of course, resort to any legislative measures, as aforesaid,  
 is and should, always, be subject to judicial control so as to  
 ensure that such measures are justified by the calamity in relation  
 to which they have been enacted. 35

In the present instance, without having to go into any further  
 detail, I am satisfied that, to the extent, if any, to which sections  
 3 and 4 of Law 24/79, as amended by Law 78/80, contravene  
 Articles 6, 23, 24, 25, 26, 28 and 30 of the Constitution, such con-

traventions, even if they entail—without so deciding—limitations or restrictions beyond those envisaged by Article 33 of the Constitution, are justified by the “law of necessity” and, consequently, the said two sections were validly enacted.

5 While the judgment in relation to the present two Cases Stated stood reserved Law 24/79 was amended by the Debtors Relief (Temporary Provisions) (Amendment) Law, 1982 (Law 79/82) and by means of it there was amended, inter alia, section 3(1) of Law 24/79 so as to substitute therein the year “1984”  
10 in the place of the year “1982”.

I am not concerned at all, at this stage, with the constitutional validity of the aforesaid amendment or of any other amendment entailed by the enactment of Law 79/82 and I leave all these issues entirely open.

15 The opinion of the Court, as expressed in this judgment, will now be transmitted to the District Court of Nicosia so as to be applied in determining the proceedings in respect of which the two Cases Stated in question have come before us.

20 TRIANTAFYLLIDES P.: Mr. Justice Savvides, who is abroad, has asked me to convey that he agrees with the judgment just delivered.

25 HADJIANASTASSIOU J.: As I find myself in agreement with the President of the Court, we should sustain the Debtor’s Relief (Temporary Provisions) Law 24/79 as a valid enactment regulating the repayment of the debts by debtors, who are displaced and stricken because of the Turkish invasion of our country.

30 The two stated cases came before the Court by virtue of the provisions of s.9 of the Debtors Relief (Temporary Provisions) Law 1979, (Law 24/79). On the application of counsel for both parties, the question upon which the opinion of the Court is desired, is:—

35 “Whether sections 3(1) and 4 of the Debtors Relief (Temporary Provisions) Law 24/79 are unconstitutional as being repugnant to the right of property, the principle that each person should contribute to the public burdens in accordance with his means, the right of exercise of a profession or business, the right of freedom of contract, the principle

of equality and the right to have access to the Courts, as the aforesaid are declared and safeguarded in Articles 23, 24, 25, 26, 28 and 30 of the Constitution, respectively, and the Supreme Court is respectfully requested to remit the matter to this Court with its opinion thereon". 5

There is no doubt that s. 3 of Law 24/79 (as amended) by s. 3 of the Debtor's Relief (Temporary Provisions) (Amendment) Law, 1980 (Law 78/80) is in these terms:-

"3.-(1) Notwithstanding the provisions of any other Law and subject to the provisions of section 4, during the abnormal situation and in any case during the period beginning as from the 15th August, 1974, and ending on the 31st December, 1982, the right of every creditor to recover a debt due by a displaced or stricken debtor is suspended and all forced sales pending or fixed on the date of the coming into operation of this Law shall be stayed if they relate to- 10 15

- (a) immovable or movable property situate within a stricken area;
- (b) immovable or movable property not situate within a stricken area but subject to sale in satisfaction of a debt resulting from the sale, mortgage, pledge or other encumbrance of other property situate within a stricken area. 20

(2) The stay under this section shall suspend the period during which any writ of sale, receiving order or winding up order in relation thereto is in force". 25

Furthermore, section 4 of Law 24/79 reads as follows:-

"4.-(1) Notwithstanding the provisions of any other Law, during the period mentioned in subsection (1) of section 3, no interest shall be charged, debited or collected on a debt of a displaced or stricken debtor. 30

(2) Any interest which may have been charged or debited or the interest paid by a displaced or stricken debtor for the period as from the 15th August, 1974, until the date of coming into operation of this Law shall be deemed to have been charged, debited or paid, as the case may be, on account of the balance of the debt. 35

(3) Where any debt has been discharged during the period mentioned in the previous subsection and in the manner provided thereby, or the balance of the debt still due is smaller than the amount of the interest charged, debited or paid under the said subsection, as the case may be, the creditor shall, within three months from the date of the coming into operation of this Law, pay the difference to the displaced or stricken debtor".

It is not in dispute that Article 6 of our Constitution safeguards against the discrimination of every citizen, and Article 23 safeguards the right of property. Furthermore, by Article 24 constitutional force is given to the principle that each person is bound to contribute towards the public burdens according to his means. (See also Articles 25 and 26 which safeguard the freedom of contract). In addition, Article 30 safeguards the right of access to the Courts and of fair trial.

Pausing here for a moment, I would add that because of the Turkish invasion of our country and the continuing military occupation of a considerable part of our island, in my view, the legislator quite rightly and properly enacted Law 24/79 in order to meet the consequences and repercussions. Law 24/79 is a piece of legislation which obviously was enacted to protect and meet the consequences flowing from such abnormal situation.

The first question is whether Law 24/79 is admittedly legislation interfering with fundamental rights and principles, is incompatible with the aforesaid Articles of the Constitution and whether that legislation can be treated as a valid legislation by the law of necessity. Before answering this question I think I ought to place on record that no-one should forget the magnitude of the catastrophe which our country has faced and the devastation brought about by the Turkish invasion, and that as a result of the occupation thousands of our people were left homeless and the economy of the country had suffered the biggest blow it has known. Indeed, in the face of such catastrophe of our country and in order to alleviate the pain and suffering of our people the legislature quite rightly in our view legislated Law 24/79 in order, I repeat, to alleviate in some way the pain and suffering of our people.

In answering the question raised earlier, I think the answer is to be found in the case of the *Attorney-General of the Republic v. Ibrahim and Others*, 1964 C.L.R. 195. Josephides, J. having quoted the provisions of Article 183 which provide for the proclamation of emergency in case of war and other public danger threatening the life of the country, touched also the principles regarding the law of necessity and had this to say at pp. 264, 265: 5

“In the light of the principles of the law of necessity as applied in other countries and having regard to the provisions of the Constitution of the Republic of Cyprus (including the provisions of Articles 179, 182 and 183), I interpret our constitution to include the doctrine of necessity in exceptional circumstances, which is an implied exception to particular provisions of the constitution; and this in order to ensure the very existence of the State. The following prerequisites must be satisfied before this doctrine may become applicable: 10

- (a) an imperative and inevitable necessity or exceptional circumstances; 20
- (b) no other remedy to apply;
- (c) the measure taken must be proportionate to the necessity; and
- (d) it must be of a temporary character limited to the duration of the exceptional circumstances. 25

A law thus enacted is subject to the control of this court to decide whether the aforesaid prerequisites are satisfied, i.e. whether there exists such a necessity and whether the measures taken were necessary to meet it”.

Finally, the learned Judge concluded as follows:— 30

“Having regard to these exceptional circumstances prevailing at the time (cf. *Barrot and others* (1957), Conseil d’Etat of France, Sirey 1957, page 675), I come to the conclusion that Law 33 was duly promulgated by publication in the official Gazette of the Republic in the Greek language and that it came into operation on the day of its publication in the Gazette, viz., on the 9th July, 1964. 35

For these reasons I hold that this Court as constituted in these appeals has jurisdiction to hear and determine the appeals.”

Turning now to the case of *Chimonides v. Manglis* (1967) 5 1 C.L.R. 125, there was a division of judicial opinion as to whether the fundamental rights and principles, which are safeguarded by Articles such as 6, 23, 24, 25, 26, 28 and 30 can be subjected to any limitations or restrictions other than those provided in the said Part II of the Constitution by resorting to 10 the “reserve powers” or “police powers” of the State. Josephides J. in delivering the first judgment of the Court had this to say at p. 139:

“Section 4(1) of the Law gave the right to tenants of premises within the depressed area to apply to the Court, 15 within two months of the publication of the order under section 3(1), to have the rent of the business premises occupied by them determined, with the result that, as from the date of the Court order for the adjustment of the rent, the rent payable by the tenant shall be the rent so 20 adjusted by the Court.”

Then having dealt with the facts of that case and having quoted at length both the law and some of the articles of the Constitution, had this to say at p. 143:

“In considering questions on the constitutionality of a 25 statute we have adopted certain principles governing the exercise of judicial control of legislative enactments and we need not in this case refer to them in detail. Those principles are to be found in the case of the *Board for Registration of Architects and Civil Engineers v. Kyriakides* 30 (1966) 3 C.L.R. 640.

The landlord’s complaint in this case is that the rent agreed upon by the parties by virtue of a contract which is still valid and binding, may be reduced by an order of the Court under the provisions of section 4 of the Law of 35 1965, and that this amounts to a restriction or limitation of his right of property without the payment of any compensation, which would be repugnant to the provisions of paragraphs 1, 2 and 3 of Article 23.”

Having further referred to a great number of authorities and

having looked into the provisions of the Constitution of Greece, and the rent restriction legislation in force there, as well as to cases from the United States of America, Mr. Justice Josephides concluded as follows at pp. 152, 153:

“These provisions show that the Law of 1965, under consideration, is a temporary measure to tide over an economic emergency, subject to certain strict conditions, namely, that (a) it applies only after the making of an order by the Council of Ministers under the provisions of section 3(1) which lays down all the elaborate prerequisites for the making of such an order; (b) it applies only to those tenants who apply to the Court for relief within two months from the publication of the aforesaid order of the Council of Ministers, and to no other tenant. Even if he comes within the provisions of section 3(1) a tenant cannot apply to the Court for relief after the lapse of two months from the publication of the Ministerial order; (c) the tenant is protected from ejection so long as he complies with the conditions of the order made by the Court under the provisions of section 4; (d) the order made by the Court under the provisions of section 4, adjusting the rent payable by the tenant, may, on the application either of the landlord or the tenant, be varied or even set aside if the circumstances have materially altered; and (e) the Council of Ministers may revoke their order under section 3(1) if the circumstances which led to the making of such an order have ceased to exist, whereupon the provisions of the Law shall cease to apply (subject to any specified conditions).

Considering the circumstances under which the Law of 1965 came to be enacted, I am satisfied that severe economic conditions, arising out of the well-known recent events since December, 1963, created a public economic emergency, calling for the exercise of the State’s police power. I am further satisfied that relief is justified by the economic emergency, that it is of an appropriate character and is granted upon reasonable conditions, I, therefore, hold that the aforesaid Law of 1965 is a reasonable and valid exercise of the State’s reserved power to protect the vital interests of the public during the emergency and that it does not violate Article 26.1 of our Constitution. The State had both a duty and authority to safeguard the vital



interests of a certain class of people; and, to adapt the words of the Chief Justice in the Blaisdell case (supra), the policy of protecting the freedom of contract presupposes the maintenance of a Government by virtue of which contractual relations are worth while a Government which retains adequate authority to secure the peace and good order of society.

For these reasons I would allow the appeal, set aside the judgment of the Court below and remit the case to the District Court to be heard on the merits."

In delivering my own judgment and in agreeing with the judgment of Mr. Justice Josephides I had this to say at p. 164:-

"With respect to the learned trial Judge, I take the view that although contractual tenancies were excluded from the Law of 1961, nevertheless it is clear from the wording of section 4(1) of Law 19 of 1965 'any tenant of premises within a depressed area' that the legislature intended to include such contractual tenancies within the ambit of the Law 19 of 1965; and in order to relieve a class of persons that is the depressed tenants in a 'depressed area' from the burden of high rent. As I am in full agreement with the reasons given by my learned brother Mr. Justice Josephides, I hold that the Law 19 of 1965 applies not only to statutory tenancies but also to contractual tenancies."

Then dealing with the complaint that Law 19/65 is repugnant to the provisions of Article 23, paragraphs 1, 2 and 3, of the Constitution, and the law imposes a restriction or limitation on the right of a landlord's property without providing for the payment of a just compensation, in accordance with Article 26 of our Constitution, I had this to say at pp. 164, 165:-

"I am of the opinion that as the restriction or limitation in the present case, is not effected in the interests of the State or any public body, the provisions of the Law 19 of 1965 which regulate the civil law rights in property between the parties, are not repugnant to the provisions of Article 23, paragraph 1, 2 and 3 of the Constitution."

Having further dealt with the provisions of Articles 25 and 26 of the Constitution, I reached the view that Articles 25 and 26

are complementary to each other and both guarantee the fundamental rights and liberties of every citizen as against the interference by the State. I am of the opinion that the wording in paragraph 1 of Article 26 "the right to enter freely into a contract" is not limited only at the time of entering into such contract but one should construe it that refers to the notion of the freedom of the contract, subject of course, to such conditions, limitations or restrictions as are laid down by the general principles of the Law of Contract. (See *Chimonides v. Manglis* (supra) at p. 164).

In *Apostolides and Others v. The Republic*, (1982) 3 C.L.R. 928. Mr. Justice Pikis after referring to *Chimonides v. Manglis* had this to say at p. 945:

"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."

With that in mind I would adopt and apply the reasoning of Pikis, J., in the present case as to the prerequisites for a valid exercise of legislative powers in cases of necessity. Indeed, in my view, necessity arises to take extraordinary measures as I had explained when constitutional order has been upset and need arises to take action to safeguard the social substratum. For all these reasons the submission that Law 24/79 is unconstitutional fails.

I also associate myself with the view taken by Pikis, J. that

necessity can be tidied over only by legislative measures ultimately subject to judicial control in the interests of preservation of the rule of law.

5 A. LOIZOU J.: I have had the advantage of reading in advance the judgments of my brother Judges, Triantafyllides P., which has just been delivered, and Pikis J., which is about to be delivered and I agree with their reasoning leading to the result arrived at.

10 I am not, however, prepared to say in this case, as the matter does not arise, that the doctrine of necessity justifies only legislative and not measures by means of executive or administrative acts.

MALACHTOS J.: I agree with the judgment just delivered by the President of the Court and I have nothing to add.

15 LORIS J.: I fully agree with the judgment of the learned President of the Court and I have nothing further to add.

20 PIKIS J.: I agree with the learned President that we should sustain the Debtors Relief (Temporary Provisions) Law - Law 24/79, as a valid enactment regulating the repayment of debts by debtors, displaced and stricken, as a consequence of the Turkish invasion of the country; consequently, we should answer the questions raised for our opinion in the manner suggested by Triantafyllides, P. Thus I concur in the result.

25 But as I arrived at the conclusion above indicated, by a somewhat different process from that followed by the learned President, I feel dutybound to earmark the gauge and direction of the train of thought I followed. In pursuing this course, I was emboldened by the knowledge that, as eminent a Judge as Lord Reid, advocated against the delivery of one judgment by  
30 superior Courts, if that judgment could not give expression and accommodate all shades of judicial opinion. (See, a recent book by Dr. Alan Paterson "*The Law Lords*" and, a review of the book by Lord Denning in *The Listener* of 7th October, 1982).  
35 The doctrine of necessity as a proper basis for legal action in appropriate circumstances, is firmly embedded in our law, as acknowledged in the judgment of Triantafyllides, P. Its invocation made possible institutionally the functioning of the State of Cyprus and gave premise to the sustenance of law and

order. In resorting to this doctrine, Cyprus did not innovate. It followed the path trodden by many nations having a written constitution as the supreme law, as Cyprus does and, adhering to the concept of the rule of law, such as Greece, France and Italy. Also the doctrine of necessity has, over the years, received approval from eminent jurists, such as Raymond Odent, Glanville Williams and Sir William Scott. 5

In England, necessity in appropriate circumstances legitimises action that would otherwise be unlawful and, as a legal precept, it is regarded as ingrained in the law of the land notwithstanding the supremacy of Parliament and the absence of a written Constitution. (See, *Article by Professor Glanville Williams - Current Legal Problems*, 1953). 10

In the leading Cyprus case on the doctrine of necessity - *The Attorney-General of the Republic v. Ibrahim*, 1964 C.L.R. 195 - a wide survey is made of the jurisprudence of many countries on the subject and an attempt is made to discern the proper basis for the doctrine. The justification for the doctrine of necessity is found in the need to safeguard the existence of the State and preservation of social order. Law is for man and not vice-versa. Necessity, therefore, as a juridical concept, aims to ensure the existence of the State and preservation of social order when the legal framework, fashioned to the needs of normality and peace, provides no remedy. The application of the doctrine of necessity fills the gap and prevents chaos from overtaking social order. As it was pointed out in *Apostolides and Others v. Republic* (1982) 3 C.L.R. 928, the doctrine of necessity has to do with measures designed for the survival of society, in the same way that necessity may justify action in terms of municipal law for conduct otherwise illegal. It was observed that "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." The reserve power of the State to legislate in the face of an emergency, acknowledged by some members of the Supreme Court in *Chimonides v. Manglis* (1967) 1 C.L.R. 185, is another aspect of the doctrine of necessity. As I had occasion to observe in *Apostolides supra*, "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." 15  
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The doctrine of necessity provides for extra legal remedies. It does not derive its force from the existing legal order but from the ultimate norm of society dictating the taking of measures necessary for the preservation of society. And this  
5 brings me to the point of departure from the judgment of Triantafyllides, P., who finds justification for resorting to, in the present case, the doctrine of necessity in the limited scope of Article 183 of the Constitution, limiting the power of the State to suspend constitutional provisions.

10 The magnitude of the catastrophe that befell Cyprus in 1974 and the devastation brought about by the Turkish invasion and occupation of a large part of the country, were calamities unprecedented in scale and character in the history of the country, putting to peril the foundations of society, threatening directly  
15 social order and social cohesion. Tens of thousands of people were left homeless and propertiless. The economy of the country came to a virtual standstill. The State, on the other hand, with the limited resources at its disposal, was unable to safeguard their homes or restore their properties. The Turkish  
20 military machine made that impossible, while threatening the rest of the country. The enjoyment of constitutional rights by the citizens of the country, such as the right to property and freedom of movement, was made impossible for reasons beyond the control of the State. It became impossible, as a result of  
25 the Turkish invasion, for a vast section of the population to enjoy many constitutional rights, including the right to property safeguarded by Article 23. Relieving them of obligations intrinsically dependent on the enjoyment of their property rights, was necessary in order to redress the imbalance created  
30 because of their inability to enjoy their rights. The balance between rights and duties, the preservation of which depended upon the discharge of obligations, was upset. Legal measures in the form of relief for the discharge of financial obligations became necessary in order to restore an acceptable balance  
35 between rights and obligations, a balance grafted in the Constitution. It is upon an acceptable balance between rights and obligations that social order and social cohesion depend. It is upon this premise that legislation was enacted, to relieve displaced and stricken debtors from their inability to enjoy their  
40 rights in recognition of the fact that this inability muted their capacity to discharge legal obligations.

In the face of such a unique emergency dire necessity dictated, in the name of humanity and social order, urgent measures to preserve social cohesion and frustrate the objectives of those aiming at the destruction of the State of Cyprus. Measures, therefore, had to be taken to ensure the existence of the State and preservation of social order and cohesion. A series of laws were enacted for the relief of the worse afflicted sections of the society, for a dual purpose:- 5

- (a) To alleviate their hardship and.
- (b) to ensure their continued contribution to the social effort. 10

From these measures everybody stood to gain. For, the reintegration of society and the weaving together of the ruptured threads of the social fabric, were to everybody's benefit.

The threat to society was such as to establish the juridical basis for the application of the doctrine of necessity. 15

The Debtors Relief (Temporary Provisions) Law - 24/79 and its predecessors, i.e. the legislation that preceded it - Law 9/75 and amendments thereto - were but one of the laws intended for the relief of the victims of the Turkish invasion. The Rent Control legislation was one other aspect of the measures adopted for the relief of the victims of the Turkish invasion. (See, inter alia, *Laws* 51/74, 36/75, 56/78 and 6/80). 20

That the measures taken were not as extensive as one might contemplate, is but a vindication of the will of Cyprus society not to forego cherished freedoms and liberties even in the midst of the gravest emergency. Political rights were left intact. And so it should be. For, freedom of speech and expression in particular, is always conducive to the good of society. It makes possible decision taking in a climate of unimpeded communication propitious to the taking of enlightened decisions (see *Police v. Ekdotiki Eteria* (1982) 2 C.L.R. 63). 25 30

The measures taken in the aftermath of the summer of 1974 must be examined against the background that generated their enactment. They were designed to cope with the emergency created by the Turkish invasion. They were not aimed either to do away with constitutional order or to supplant it. Far from it. They were intended to reinforce social premises and 35

serve, in the longer run, constitutional order. Consequently, they cannot be judged by reference to constitutional dictates but against the necessity that made their introduction unavoidable in the interests of social order. The usefulness of the  
 5 measures taken in 1974, has, to my comprehension, been proven by and large. A degree of normality and prosperity has been restored against all odds. From this achievement, we can all draw comfort, not least the banking institutions who depend on financial activity and economic movement.

10 The doctrine of necessity has to do with law. Necessity arises from the need to pull social elements together. Measures taken in the name of necessity must spring from the collective will for survival. Hence they must have the sanction of the Representatives of the people. Necessity is no warrant for  
 15 any State authority to assume powers outside its acknowledged sphere. A series of decisions of the Supreme Court at first instance, supports the view that measures in the name of necessity must, unless of strictly temporary nature, originate from and have the sanction of the legislature. (See, *Joseph C. Georgiades v. The Republic* (1966) 3 C.L.R. 317; *Andreas Hadji-georghiou v. The Republic* (1966) 3 C.L.R. 504; *Pantelis Pappantelis and Others v. The Republic* (1966) 3 C.L.R. 515 and, *Ioannis Iosif v. Cyprus Telecommunications Authority* (1970) 3 C.L.R. 225). The same view is supported, to my comprehension, by the analysis of the law made by the Full Bench of  
 25 the Supreme Court in *D. Theodorides and Others v. S. Ploussiou* (1976) 3 C.L.R. 319. It subscribes to the view that, where appointments are made in virtue of the "law of necessity", what is in issue is not the validity of the appointment as such  
 30 but the legislation upon which such appointment was made. The following passage from the judgment of Triantafyllides, P. in the above case, sets out the problem in appropriate terms:

35 "Once that was so it cannot be said that, in the light of the 'law of necessity', the said two appointments could have been made only on a temporary, and not on a permanent basis, because it was not the appointments as such which were made by virtue of the 'law of necessity', but it was section 15(2) of Law 48/63 which became legislation validly applicable, on the basis of such 'law of necessity',  
 40 in respect of all appointments authorized by its provisions

In my opinion, the same principle finds expression in the leading case of *Ibrahim* supra.

It is by recourse to legislation that the State sought to fill the vacuum in the functioning of State organs created by the voluntary departure of Turkish officers of the State following the events of 1963-64. Law 33/67 was enacted to fill the vacuum in the public service, while Law 61/70 to remedy the situation in public bodies. 5

The doctrine of necessity has its own legal dynamics. Like every legislative measure, it must have a legitimate origin and must emanate from the House of Representatives, while its content must be directly related to the emergency it aims to tidy over and be commensurate to it. The rule of law does not abate in an emergency subject to the qualification that necessity creates a valid juridical basis for legal action. Legislative measures are subject to juridical control. The Judiciary is charged to ensure that the measures taken are a genuine response to a necessity and, further, that they go no further than the necessity warrants. Judicial control is a hedge against arbitrary invocation of necessity as a justification for legal measures, as well as a hedge against abuse of necessity by taking measures uncalled for by the necessity. But so long as the measures taken are a genuine response to necessity and designed to cope with it, there will be no interference with legislative action. The legislators are the arbiters of the measures necessary to ease the emergency. 10  
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The Turkish invasion threatened the existence of society and social institutions with collapse and measures were necessary in law to afford inter alia a degree of relief and protection to displaced and stricken debtors. The measures taken were broadly proportionate to the need created and reflected a genuine desire on the part of the people to relieve stricken and displaced debtors, on the one hand and, make possible the reactivation of the economy, on the other. It was an important piece of social legislation that contributed directly to strengthening social cohesion and helped avoid strains that would threaten further the shattered social foundations of the State. 30  
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In my judgment, the measures taken were necessary from a



humanitarian, social as well as economic angle. The law must be upheld and so I rule.

We have not touched upon the learned arguments advanced before us by Mr. Polyviou and Mr. Triantafyllides, not out of discourtesy to them or any desire to belittle their effort. Far from it, we are grateful for their assistance. It must be appreciated, however, as indicated in this judgment, that the application of the doctrine of necessity is peculiarly connected with the circumstances giving rise to its application. Therefore, limited guidance may be derived from the experience of others. The problems arising from the Turkish invasion were unique; one can say unparalleled. It is the magnitude of these problems that should guide us answer the questions raised for our consideration. To that end, we applied ourselves as indicated hereinabove. Our answer has already been given.

TRIANTAFYLLIDES P.: The opinion of this Court, as un-animously expressed in the judgments just delivered, will now be transmitted to the District Court of Nicosia so as to be applied in determining the proceedings in respect of which the two Cases Stated in question have come before us.

*Order accordingly.*