1984 January 31

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

COSTAKIS P. APOSTOLOU AND OTHERS,

Applicants

v.

THE REPUBLIC OF CYPRUS, THROUGH THE DIRECTOR OF SOCIAL INSURANCE SERVICES,

Respondent

(*Cases Nos.* 116/83, 144/83, 193/83, 226/83, 349/83).

Social Insurance Law, 1980 (*Law* 41/1980 *as amended by Laws* 48/1982 *and* 11/1983)—*And Social Insurance* (*Contributions*) *Regulations*, 1980-1982—*Contributions thereunder*—*A form of tax in the sense of Article* 24 *of the Constitution*—*Said Law and Regulations not contrary to Articles* 9, 25 *and* 28 *of the Constitution and do not create unequal treatment between self-employed and non-self-employed persons*—*Regulations not ultra vires section* 73(1) *of the Law*—*Rebuttable presumption created by the Law which permits the ascertainment of the actual income of the insured*—*And therefore excludes unequal treatment*

Constitutional Law—*Equality*—*Article* 28 *of the Constitution*—*Taxation legislation attacked as infringing the principle of equality*—*Test applicable*—*Social Insurance Law*, 1980 (*Law* 41/1980 *as amended*) *and the Social Insurance* (*Contributions*) *Regulations*, 1980-1982 *not contrary to the above Article*

Constitutional Law—*Right to a decent existence and to social security*—*Article* 9 *of the Constitution*—*Social Insurance Law*, 1980 (*Law* 41/1980 *as amended*) *and the Social Insurance* (*Contributions*) *Regulations*, 1980-1982 *not contrary to the above Article*

Constitutional Law—*Right to practise any profession or to carry on any occupation, trade or business*—*Article* 25 *of the Constitution*—*Protects the above right from direct and not indirect restrictions or interference*—*Social Insurance Law* 1980 (*Law* 41/1980

as amended) and the Social Insurance (Contributions) Regulations, 1980–1982 not contrary to the above Article.

Insurance—Double insurance—Social insurance—No legal or constitutional principle that it is impermissible to require somebody to be doubly insured.

The applicants challenged the validity of the decisions of the respondents to impose on them a contribution as self-employed persons for the purposes of the Social Insurance Scheme which came into operation by virtue of the Social Insurance Law, 1980 (Law No. 41 of 1980 as amended by Laws Nos. 48 of 1982 and 11 of 1983). Some of the applicants were practising lawyers and as such, self-employed persons who by virtue of sections 3 and 12 of the Law they were obliged to be insured and pay contributions to the Social Insurance Fund established under section 69 of the Law.

Under section 13 "The amount of contribution payable in respect of the employment of a self-employed person shall be 15.5% of insurable earnings of which an amount equal to 12% of insurable earnings shall be payable by him and an amount equal to 3.5% of such earnings shall be payable out of the General Revenue of the Republic"; and under section 2 "insurable earnings" means "the amount of the earnings of the insured person on which contributions are payable under the Law" and the "earnings" in relation to a self-employed person means "the prescribed amount of income", that is, the amount of income prescribed by the Social Insurance (Contributions) Regulations of 1980–1982. By virtue of the provisions of section 73(1)(d), (e) and (f) of the Law and regulation 18 of the above Regulations, all the self-employed persons were classified in occupation categories. For every occupational category there was specified a lowest amount of income on which contributions were paid and a maximum amount of income which could be chosen. In accordance with regulation 18(5) every self-employed person who believed that his real income was lower than the lower income specified for his occupational category was entitled to submit an application for the payment of contributions on the basis of his real income.

On the questions:

(a) Whether the imposition for payment of contributions

under the Law and the Regulations is a "συνεισφορὰ διὰ καταβολῆς φόρου, τέλους ἢ εἰσφορᾶς οἱασδήποτε φύσεως", (contribution by way of tax, duty, or rate of any kind whatsoever), that comes within the provisions of Article 24* of the Constitution in which case it has to satisfy the criteria set out therein, that is it must be a contribution according to ones means towards public burdens and of course imposed by or under the authority of a law, or it is merely, as argued by the Deputy Attorney-General of the Republic on behalf of the respondents, "ἀσφάλιστρο" (insurance premium) and as such not coming within the ambit of Article 24 of the Constitution.

(b) Whether the relevant provisions of the Law and the Regulations offend Article 28 of the Constitution which safeguards the principle of equality in taxation.

(c) Whether the Law as it is creates unequal treatment between the self-employed and non-self-employed persons.

(d) Whether the Law as amended by Law No. 48 of 1982 which was enacted on the 15th October of that year and which in accordance with section 3 thereof came into force as from the 4th October, was unconstitutional.

(e) Whether the Regulations offend Article 25 of the Constitution which safeguards the right to practise any profession or to carry on any occupation, trade or business.

(f) Whether the Law and the Regulations interfere with the rights safeguarded by Article 9 of the Constitution, namely the right to a decent existence and to social

* Article 24 of the Constitution provides as follows:

"1. Every person is bound to contribute according to his means towards the public burdens.

2. No such contribution by way of tax, duty or rate of any kind whatsoever shall be imposed save by or under the authority of a law.

3. No tax, duty or rate of any kind whatsoever shall be imposed with retrospective effect:

Provided that any import duty may be imposed as from the date of the introduction of the relevant Bill.

4. No tax, duty or rate of any kind whatsoever other than customs duties shall be of a destructive or prohibitive nature".

security, inasmuch as the legislator failed, by making arbitrary provisions and unreasonable interferences in this field by the accumulation of burdens and obligations to the citizen, to give effect to these rights.

(g) Whether the Law offends the principle that it is impermissible to require somebody to be doubly insured as it is the case of advocates who have their own special pension fund and they are also required to be contributories to the social insurance scheme as being self-employed.

(h) Whether the Regulations are ultra vires section 73(1)* of the Law.

Held, per A. Loizou, Hadjianastassiou, Malachtos, Demetriades, Stylianides, JJ. concurring and Triantafyllides P. concurring with the outcome, (1) that Article 9** of the Constitution, which contains specific constitutional rules and a command to the legislature, and the International commitments undertaken by the Republic in furtherance thereof and for the public benefit have cast an obligation on the State to promote the welfare of the individual and, as in this instance, by an embracing Social Insurance System providing benefits for the people in their time of need, such ensuring public burden being met by contributions as prescribed by the law; that these contributions are a form of "tax" in the sense of Article 24 of the Constitution and fulfil the characteristics of a tax (see *Constantinides* v. *Electricity Authority of Cyprus* (1982) 3 C.L.R. 798); that this tax satisfies the prerequisites laid down in Article 24 of the Constitution because they are contributions towards a public burden and contributions according to one's means and by no stretch of imagination can be considered either of a destructive or prohibitive nature.

(2) *After stating the principles governing the constitutionality of a law imposing taxation on the ground that it infringes the principle of equality—vide pp.* 522–523 *post:*

That with the Law as amended an opportunity is afforded

* Section 73 is quoted at pp. 525–527 post.

** Article 9 is quoted at p. 519 post.

to the insured person to prove his real income which satisfies not only Article 24.1 of the Constitution, but also Article 28, in the sense that there is no levelling of incomes or of classes, and that, consequently, the Law as it now stands creates a rebuttable presumption that permits the accertainment of the actual income of the insured and therefore excludes unequal treatment

(3) That because of the very nature of a social insurance scheme and the variety of benefits paid, which in certain instances are very peculiar to the one or the other class, the differentiation is a reasonable one and it appears that it is an internationally and at all times accepted differentiation, that there is, therefore, no discrimination created by the Law and the Regulations offending Article 28 of the Constitution

(4) That the Law as amended by Law 48/1982 is not unconstitutional as it did not impose any tax but merely brought in the rebuttable character of the presumption which was of a beneficial character to the insured who could seek the ascertainment of their actual income as from the date this amending Law came into force

(5) That Article 25 of the Constitution protects the right to exercise a profession or to carry on any occupation, trade or business, from direct and not indirect restrictions or interference, and that the Law and Regulations do not offend the said Article 25

(6) That not only there is no interference with the rights safeguarded by Article 9 of the Constitution but on the contrary a promotion of them within the economic potentialities of the Republic

(7) That there is no legal or constitutional principle to the effect that it is impermissible to require somebody to be doubly insured.

(8) That the Regulations in question are not ultra vires section 73(1) of the Law.

Recourses dismissed.

Cases referred to

Antoniades v. *Republic* (1979) 3 C.L.R. 641 at p. 660;

United States Railroad Retirement Board v *Fritz*, 66 L. Ed 2d 368 at pp. 378, 379,

Schweiker v. *Wilson*, 67 L. Ed. 2d 186 at pp. 195, 197, 198, 200;

Western and Southern Life Insurance Co. v. *State Board of Equalization of California*, 68 L. Ed. 2d 514 at pp. 523, 530, 531, 534;

Constantinides v. *Electricity Authority of Cyprus* (1982) 3 C.L.R. 798;

Papaphilippou v. *Republic*, 1 R.S.C.C. 62;

Police v. *Liveras*, 3 R.S.C.C. 65;

Psaras v. *Republic* (1968) 3 C.L.R. 363 at p. 364;

Voyias v. *Republic* (1974) 3 C.L.R. 390 at p. 413;

Impalex Agencies Ltd. v. *Republic* (1970) 3 C.L.R. 361;

Papaxenophontos and Others v. *Republic* (1982) 3 C.L.R. 1037 at p. 1044.

Recourses.

Recourses against the decision of the respondent to impose on applicants a contribution as self-employed persons for the purposes of the Social Insurance Scheme.

Chr. Sozos, for applicants in Cases Nos. 116/83 and 144/83.

K. Michaelides with *E. Markidou* (*Mrs.*), *M. Vassiliou*, *A. S. Angelides*, *A. Haviaras* and *A. Mappourides*, for *applicants in Case No.* 193/83.

E. Vrahimi (*Mrs.*), for applicants in Case No. 226/83.

L. Loucaides, Deputy Attorney-General of the Republic with *A. Papasavvas*, Senior Counsel of the Republic and *Cl. Theodoulou*, Counsel of the Republic, for the respondent.

Cur. adv. vult.

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

A. LOIZOU J.: By these recourses which have been heard together, the applicants challenge the validity of the decisions of the respondents to impose on them a contribution as self-employed persons for the purposes of the Social Insurance Scheme which came into operation by virtue of the Social Insurance Law 1980, (Law No. 41 of 1980), as amended by Laws Nos. 48 of 1982 and 11 of 1983, hereinafter to be referred to as "the Law".

The facts of these cases are not in dispute. Some of the applicants are practising lawyers and as such, self-employed persons

who by virtue of sections 3 and 12 of the Law they are obliged to be insured and pay contributions to the Social Insurance Fund established under section 69 of the Law.

Under section 13 "The amount of contribution payable in respect of the employment of a self-employed person shall be 15.5% of insurable earnings of which an amount equal to 12% of insurable earnings shall be payable by him and an amount equal to 3.5% of such earnings shall be payable out of the General Revenue of the Republic."

Under section 2 of the Law "insurable earnings" means "the amount of the earnings of the insured person on which contributions are payable under the Law" and the "earnings" in relation to a self-employed person means "the prescribed amount of income", that is, the amount of income prescribed by the Social Insurance (Contributions) Regulations of 1980-1982.

By virtue of the provisions of section 73(1)(d), (e) and (f) of the Law and regulation 18 of the Regulations, all the self-employed persons are classified in occupational categories. For every occupational category there is specified a lowest amount of income on which contributions are paid and a maximum amount of income which can be chosen.

The said categories were established under regulation 18 of the Regulations and are set out in the Schedule to such Regulations. The applicants were classified to the appropriate occupational categories. When the Scheme first came into force a recourse under Article 146 of the Constitution was filed by a number of self-employed persons and the judgment of the Full Bench of this Court is reported as *Pavlos Angelides and Others v. The Republic* (1982) 3 C.L.R., 774. By the said judgment it was held: (p. 776):

"(1) That regulations 9 and 18 of the Social Insurance (Contributions) Regulations of 1980, are delegated legislation in the same way as bye-laws; that bye-laws may be ultra vires, on the ground that they are unreasonable and therefore invalid; that the joint application of regulations 9 and 18 of the above Regulations produce unjust and unreasonable results and are, therefore, when applied together unreasonable.

(2) That regulations 9 and 18 when applied together entail such arbitrary results and unequal treatment, inter alia, even among persons in one and the same profession, that they infringe Article 28 of the Constitution which safeguards the right to equality (see *Fekkas v. Electricity Authority of Cyprus*, (1968) 1 C.L.R. 173 at pp. 183-184); that, moreover, to the extent to which contributions to the scheme of social insurance concerned may be regarded as contributions according to means towards a public burden, in the sense of Article 24 of the Constitution, the two regulations in question result in a contravention of such Article, too; accordingly the administrative acts and decisions complained of have to be annulled".

As a result of these judicial pronouncements which were delivered on the 25th June, 1982, and obviously for the purpose of bringing these Regulations within the constitutional principles enunciated therein the said Regulations were amended by the repeal of reg. 18, 19, 20 and their replacement by the new Regulation 18 and 19, published in supplement No. 3 to the Official Gazette of the Republic No. 1808 of the 15.10.82 under Not. No. 259 which read as follows:

"18. (1) For the purposes of payment contributions, the occupational categories of the self-employed shall be as specified in column (a) of the Schedule.

(2) The minimum and maximum weekly amount of income for each occupational category shall be the weekly amount of basic insurable earnings for the time being in force multiplied by the factor specified in columns (b) and (c), respectively, of the Schedule for each occupational category.

(3) Subject to the provisions of paragraphs (5) and (6), every self-employed person shall pay contributions on the minimum weekly amount which is specified in paragraph (2) for the respective occupational category.

(4) The self-employed may elect to pay contributions on a weekly income up to the maximum amount of income specified in paragraph (2) for the respective occupational category.

(5) If, after an application, a self-employed satisfies the Director that he has a weekly income lower than that specified in paragraph (2), he shall pay contributions on the amount of his actual income:

Provided that if it is proved that the actual income of any self-employed who has applied as aforesaid, is higher than that specified in paragraph (2), he shall pay contributions on his actual income, but in no case he shall pay contributions on an income which exceeds the weekly amount of the maximum insurable earnings of the respective occupational category.

(6) For the purposes of paragraph (5), the weekly amount of income of the self-employed person for any contribution year shall be the average weekly amount of his actual income for the actual period of his employment in the calendar year preceding the contribution year in which the contributions are payable, and where the self-employed person has not been employed as such in the preceding calendar year, the weekly income which he is reasonably expected to earn out of his employment.

19. Any decision of the Director under paragraph (4) of regulation 18 shall be valid as from the beginning of the quarterly period, as this is defined in paragraph (2) of regulation 22, for which the relevant application has been made".

So in accordance with regulation 18(5) every self-employed person who believes that his real income is lower than the lower income specified for his occupational category is entitled to submit an application for the payment of contributions on the basis of his real income.

Some of the recourses that have been chosen to be heard together as representative of several others, challenge the validity of the Law and the Regulations as they were under Notification No. 259. Regulation 18, however, has been further amended, along with other amendments made by the amending Regulations published under Notification No. 73, in Supplement No. 3, to the Official Gazette of the Republic No. 1853 of the 2nd April, 1983, and the Schedule has also been replaced by a

new one. These Regulations came into force on the 4th April, 1983, except regulation 3 whose force commenced on the 4th January, 1982. As in one of the recourses before us the sub judice acts were taken on the basis of these latest Regulations my approach to the case will cover both situations as in force prior to and since the 4th April.

The new amendments in so far as they affect regulation 18 of the principal regulations, are as follows:

"(a) By the deletion from paragraph (2) of the words 'the weekly amount of basic insurable earnings for the time being in force multiplied by the factor' (second and third lines); and

(b) by the insertion immediately after the word 'application' in paragraph (5) (first line), of the words 'in the form prescribed by the Director'".

The first point for determination is whether the imposition for payment of contributions under the Law and the Regulations is a "συνεισφορὰ διὰ καταβολῆς φόρου, τέλους, ἢ εἰσφορᾶς οἱασδήποτε φύσεως", (contribution by way of tax, duty, or rate of any kind whatsoever), that comes within the provisions of Article 24 of the Constitution in which case it has to satisfy the criteria set out therein, that is it must be a contribution according to ones means towards public burdens and of course imposed by or under the authority of a law, or it is merely as argued by the Deputy Attorney-General of the Republic on behalf of the respondents "ἀσφάλιστρο" (insurance premium) and as such not coming within the ambit of Article 24 of the Constitution.

The nature of taxation, and I use this term in its wide sense, falling within Article 24 has been considered in the case of *Constantinides v. Electricity Authority of Cyprus*, (1982) 3 C.L.R. p. 798, where it was found:

"that an imposition is a tax if it is found to fulfil certain characteristics, namely, (a) it is compulsory and not optional, (b) it is imposed or executed by the competent authority, (c) it must be enforceable by law, (d) it is imposed for the public benefit and for public purposes, and (e) it must not

be for a service for specific individuals but for a service to the public as a whole, a service in the public interest.

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

Article 9 of the Constitution provides that:

"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."

This Article guarantees two rights - a right to decent existence and a right to social security with which we are concerned in this case. This right aims at protecting the individual from unemployment, sickness, disability, widowhood, old age, or the loss of livelihood in circumstances beyond his control.

This provision of the Constitution has to be read in conjunction with Article 35 by which "the legislative executive and judicial Authorities of the Republic shall be bound to secure within the limits of their respective competence the efficient provisions of this Part" and when it speaks "of this Part", it means of course Part II of the Constitution of which it is the last Article and which contains the provision under the heading Fundamental Rights and Liberties.

The nature of the contents of Article 9 came under judicial review by the then Supreme Constitutional Court in *Papaphilippou v. The Republic*, 1 R.S.C.C. p. 62 in which it was decided that Article 9 contains specific constitutional rules and a command to the legislature, but a person cannot by an Administrative Recourse under Article 146.1 of the Constitution seek to remedy an omission of the legislature to enact within a reasonable time a Law as provided in the second sentence of this Article.

Our Constitution in fact includes a series of Articles guaranteeing to the individual certain Social and Economic Rights, and I would like to take advantage of this opportunity and refer briefly to the evolution of such Rights during the last century or so.

At the end of the 18th century it was generally agreed that all men are free and equal by nature and born possessing inalienable Rights - The Human Rights -. This is to be found in the Declaration of Human Rights of the American and French Revolutions. The Question of Social Rights developed in effect with the industrialization in the 19th century and they can be generally divided into three different groups. The Right to Work, the Right to Social Security, the Right to Social and Cultural Development, whereas the traditional Human Rights can be classified as Liberty Rights. Their basic difference can be seen in the fact that in contrast to the traditional Human Rights the Social Rights do not expect the State to abstain but to interfere in order to change certain situations or economic and social processes on behalf of persons that need protection. Social Security in various aspects became an important part of legislation of the late 19th century in European countries. After World War I, Social Rights were promoted by the International Labour Organization and they found a place in several Constitutions. There have been further developments and the period after World War II, seems to show the general acceptance of Social Rights as Human Rights. Articles 22–28 of the United Nations Universal Declaration on Human Rights of 1948 and the International Covenants on Economic, Social and Cultural Rights of 1966—ratified by Cyprus by Law 14 of 1967 —prove this on the International level, the European Social Charter signed in Tourin in 1961 and ratified by Cyprus, by Law 64 of 1967 on the European level. In fact one of its provisions that Cyprus accepted is Article 12 which covers the Right to Social Security, which provides inter alia as follows:–

"With a view to ensuring the effective exercise of the right to social security, the Contracting Parties undertake:

1. to establish or maintain a system of social security;

2. to maintain the social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention (No. 102) Concerning Minimum Standards of Social Security;

3. to endeavour to raise progressively the system of social security to a higher level;

4. to take steps, by the conclusion of appropriate bilateral

and multilateral agreements, or by other means, and subject to the conditions laid down in such agreements, in order to ensure:

.....".

An international commitment has thereby been undertaken and the standards set thereby have to be respected. It is not enough to establish or maintain a system of social security. A State has to raise progressively the system of social security to a higher level.

It is pointed out by the Attorney-General of the Republic, Cr. Tornaritis in his study entitled the Social and Economic Rights under the Law of the Republic of Cyprus at p. 10 that:

"Without adhering to a particular economic or social system a fair balance is maintained between the individualistic liberal theories of the laisser-faire state of the last century and the social trends of the twentieth century. Thus though the private initiative and free economy are declared and adhered to nevertheless the private enterprise is checked by state intervention when public interest and benefit so require. The functions and the role of the state contemplated by the constitution are those of the 'welfare state' ".

As regards the notion of a "welfare state" I find it very useful to refer to the International Encyclopedia of the Social Sciences, Volume 16 at p. 512 where it is stated:

"The welfare state is the institutional outcome of the assumption by a society of legal and therefore formal and explicit responsibility for the basic well-being of all of its members. Such a state emerges when a society or its decision-making groups become convinced that the welfare of the individual (beyond such provisions as may be made 'to preserve order and provide for the common defence') is too important to be left to custom or to informal arrangements and private understandings and is therefore a concern of government. In a complex society such assistance may be given to the individual directly or, just as often, to the economic interest most immediately affecting his welfare. The rubric is a relatively recent one not to be found in the traditional political lexicons, so that the point at which a state, in

expanding social services to its citizens, earns this label is imprecise and controversial".

There is no doubt that this constitutional command and the International commitments undertaken by the Republic in furtherance thereof and for the public benefit, have cast an obligation on the State to promote the welfare of the individual and, as in this instance, by an all embracing Social Insurance System providing benefits for the people in their time of need, such ensuing public burden being met by contributions as prescribed by the law. These contributions are a form of "tax" in the sense of Article 24 of the Constitution, that satisfy the test laid down in the *Constantinides* case (supra) and which has already been set out in this judgment.

As such it has to be examined if it satisfies the prerequisites laid down in the said Article and in particular whether every person is required to contribute according to his means and that such contributions are neither of a destructive or prohibitive nature. That they are contributions towards a public burden there is no doubt in the light of the obligations of the State to care for the welfare and well being of its citizens. There is also no doubt to my mind that an amount equal to 12% of a person's insurable earnings is but a contribution according to ones means and by no stretch of imagination can be considered either of a destructive or prohibitive nature. Social and economic rights cost money and the necessary funds for their maintenance have to come from the citizens who, by so contributing according to their means and when they enjoy the benefit of employment are like a sensible person who saves for a rainy day. Moreover the principle of proportionality is duly observed by the provisions of the Law under examination.

The next point for consideration is whether the relevant provisions of the Law and the Regulation offend Article 28 of the Constitution which safeguards the principle of equality in taxation. The principles governing the application of Article 28 of the Constitution in matters of taxation have come under judicial consideration in a number of cases. It is enough for the purposes of this judgment if I refer to what was held by this Court in the case of *Serghios Antoniades and others* v. *The Republic* (1979) 3 C.L.R. p. 641 at p. 645:

"That when the constitutionality of a law imposing taxation is attacked on the ground that it infringes the principle of equality, the legislative discretion is allowed a great latitude in view of the complexity of fiscal adjustment and that in taxation matters there is a broader power of classification by the legislation than in the exercise of legislative power in other fields; that, moreover, absolute equality in taxation cannot be obtained, and it is not really required by the principle of equality; that in matters of taxation the state is allowed to pick and choose districts, objects, persons, methods and even rates of taxation; that a state does not have to tax everything in order to tax something;"

In the present case with the amendments effected after the *Angelides* case (supra), an opportunity is afforded to the insured person to prove his real income which satisfies not only Article 24.1 of the Constitution, but also Article 28, in the sense that there is no levelling of incomes or of classes.

It may be mentioned here that according to the affidavit sworn by the Director of Social Insurance Services and filed on behalf of the respondents, about two-thousand applications by self-employed persons were submitted since the amendment of the Regulations, under regulation 18 paragraph 5, thereof for the purpose of ascertaining their actual income and that at least 80% of them have been accepted. Consequently the Law as it now stands creates a rebuttable presumption that permits the ascertainment of the actual income of the insured and therefore excludes unequal treatment. Connected with this ground is the argument that the Law as it is creates unequal treatment between the self-employed and non-self-employed insured persons. In the case of *Antoniades* (supra) it was held that there was a sound basis for differentiation between self-employed and salaried persons. In the present case because of the very nature of a social insurance scheme and the variety of benefits paid, which in certain instances are very peculiar to the one or the other class, the differentiation is a reasonable one and it appears that it is an internationally and at all times accepted differentiation. There is therefore no discrimination created by the Law and the Regulations offending Article 28 of the Constitution.

The next point is that the Law as amended by Law No. 48 of 1982, which was enacted on the 15th October of that year

and which in accordance with section 3 thereof came into force as from the 4th October, is unconstitutional. This point can be briefly disposed of by pointing out that that amendment did not impose any tax but merely brought in the rebuttable character of the presumption which was of a beneficial character to the insured who could seek the ascertainment of their actual income as from the date this amending Law came into force.

The applicants withdrew their contention that the relevant provisions of the Law and the Regulations offended Article 23 of the Constitution, but argued that same offend Article 25 of the Constitution which safeguards the right to practise any profession or to carry on any occupation, trade or business.

It has been urged that the burden imposed on the self-employed by the Law and the Regulations by the payment of the contributions set out therein is such that it reaches the limits of a prohibition or a restriction impermissible and contrary to Article 25 of the Constitution. It is a well settled principle that Article 25 of the Constitution protects the right to exercise a profession or to carry on any occupation, trade or business, from direct and not indirect restrictions or interference. Ample authority can be found inter alia in the following cases, *The Police and Liveras,* 3 R.S.C.C. pp. 65–57; *Psaras* v. *The Republic,* (1968) 3 C.L.R. 363, 364; *Antoniades and others* v. *The Republic* (1979) 3 C.L.R. 641, 659; *Ioannis Voyias* v. *The Republic* (1974) 3 C.L.R. p. 390, 413; *Impalex Agencies Ltd.* v. *The Republic* (1970) 3 C.L.R. 361; and *Antoniades* case (supra) at p. 655.

Without accepting that the said impositions are of a nature that could be considered as restrictive to or prohibitive of the exercise of the applicants' profession or trade, yet I have no difficulty in arriving at the conclusion, in the light of the aforementioned authorities that this ground should also fail.

Brief reference may be made also to the ground of Law relied upon on behalf of the applicants that the Law and Regulations in question interfere with the rights safeguarded by Article 9 of the Constitution. Namely the right to a decent existence and to social security, inasmuch as the legislator failed by making arbitrary provisions and unreasonable interferences in this field by the accumulation of burdens and obligations to the citizen to give effect to these rights.

I have already dealt at length with the meaning and effect of Article 9 and in the light of the remaining conclusions reached regarding the nature and extent of the burdens imposed by the Law and the Regulations, it can be clearly said that not only there is no interference with the rights safeguarded thereunder but on the contrary a promotions of them within the economic potentialities of the Republic.

Another point which is raised in recourse No. 144/83 by Mr. Sozos to the effect that it offends the principle that it is impermissible to require somebody to be doubly insured as it is the case of advocates who have their own special pension fund and they are also required to be contributories to the social insurance scheme as being self-employed. The brief answer is that the decisions of the Greek Council of State relied upon turn on the interpretation of particular legislative provisions in existence in Greece and not applicable to our case and in any event there is no such legal or constitutional principle that I know of. This ground therefore should fail.

The last ground relied upon is that the regulations in question are ultra vires the Law. The legal principles governing questions relating to regulations alleged to be ultra vires, the empowering enactments have been summed up by Stylianides, J., in the case of *Papaxenophontos and others* v. *The Republic* (1982) 3 C.L.R. 1037 at p. 1044, and I need not refer to them. Suffice it to say that the gist is that when subsidiary legislation is examined with a view to determining whether it is intra or ultra vires, the answer to the question depends in every case on the true construction of the enabling enactment.

In the present case the enabling enactment is section 73 which in so far as relevant reads as follows:

> "73.-(1) The Council of Ministers shall have power to make Regulations generally for the better carrying into effect of the provisions of this Law and, without prejudice to this generality, may by such Regulations prescribe or regulate any matter required to be prescribed or regulated; and in particular prescribe or regulate the following:
>
> (a) the rate below which earnings constitute negligible earnings;

(b) the rate of basic insurable earnings and the ceiling of the insurable earnings;

(c) the amount of insurable earnings of any category of employed persons;

(d) the classification of self-employed by occupational category;

(e) the minimum and maximum amount of income for each occupational category of self-employed persons;

(f) the conditions and terms under which each self-employed person may opt for an amount of income between the lower and the maximum amount of income;

(g) the registration of insured persons and employers;

(h) any matters incidental to the payment and collection of contributions including:-

(i) the manner of calculating or estimating the insurable earnings of particular classes or categories of employed persons;

(ii) the co-ordination thereof with the payment and collection of contributions payable under any other law;

(iii) the time of payment of contributions;

(iv) the circumstances in which contributions paid without liability may be refunded;

(v) the conditions for the refund of contributions paid by an insured person for any contribution year on insurable earnings exceeding the annual ceiling of insurable earnings;

(i) the payment of additional charge not exceeding one hundred per cent of the amount of contributions due in case of failure to pay contributions contrary to the provisions of this Law;

(j) for requiring a qualified medical practitioner attending on or called in to visit a patient, whom he believes to be suffering from a disease contracted in the course of his employment to send a notice containing such particulars as may be prescribed;

(k) for the circumstances in which a person shall be deemed not to be gainfully occupied".

It is clear from the aforesaid provision that the regulations in question are intra vires as leaving aside any other of the particular provisions to be found in the various paragraphs of subsection 1. There is authority in the text of the opening of the said section which enables the Council of Ministers to make regulations generally for the better carrying into effect of the provisions of the law and that the points set out in the ensuing sub-paragraphs are without prejudice to the generality of the said empowering provision.

I have no difficulty in concluding that the regulations in question are intra vires the Law and therefore valid.

For all the above reasons these recourses are dismissed but in the circumstances I make no order as to costs.

HADJIANASTASSIOU J.: I agree with the judgment of my brother Judge Mr. Justice A. Loizou and I have nothing to add.

MALACHTOS J.: I also agree with the judgment just delivered by my brother Judge Mr. Justice A. Loizou that these recourses should be dismissed for the reasons given in the said judgment and I have nothing useful to add.

DEMETRIADES J.: I have had the opportunity to discuss with my brother Judge Mr. Justice A. Loizou these cases and consider his judgment and I agree fully with it.

STYLIANIDES J.: I have had the opportunity to discuss and consider in advance the judgment of Mr. Justice A. Loizou and I agree with the dismissal of these recourses for the reasons stated in his judgment.

TRIANTAFYLLIDES P.: I am in agreement with the outcome of these cases as it is stated in the judgment of my brother Judge A. Loizou.

In the case of *Antoniades* v. *The Republic*, (1979) 3 C.L.R. 641, 660, I expressed the view that the exemption from the obligation to pay special contribution, under the Special Contribution (Temporary Provisions) Law, 1976 (Law 15/76), as amended by the Special Contribution (Temporary Provisions)

(Amendment) Law, 1977 (Law 22/77), of any person to the extent to which his income consisted of emoluments was an unwarranted infringement of the principle of the universality of taxation resulting in unequal treatment contrary to Articles 24 and 28 of the Constitution. The present cases are, however, distinguishable from the *Antoniades* case, supra, inasmuch as all persons, irrespective of their sources of income and including employees and self-employed persons, are obliged to contribute for the purposes of the Social Insurance scheme which was established, and is being operated, under the provisions of the Social Insurance Law, 1980 (Law 41/80), as amended by the Social Insurance (Amendment) Law, 1982 (Law 48/82), and the Social Insurance (Amendment) Law, 1983 (Law 11/83), as well as under the provisions of the relevant Regulations.

It is correct that the treatment of employees and self-employed persons under the Social Insurance scheme in question, both as regards the nature and the extent of their contributions as well as their entitlement to benefits, is not the same but I am satisfied that any differentiations which exist, in this respect, are, in the light of all pertinent considerations, reasonable and, consequently, they do not result in unequal treatment offending against Articles 24 and 28 of the Constitution. Such differentiations are an expression of social policy of the State, as it has been adopted by the Legislature, and this Court cannot substitute its own views in the place of those of the Legislature as regards the advisability of the said policy.

It is useful, at this stage, to refer to, inter alia, the case of *United States Railroad Retirement Board* v. *Fritz*, 66 L. Ed. 2d 368, where Justice Rehnquist in delivering the majority opinion of the Supreme Court of the United States of America said (at pp. 378, 379):

> "Where, as here, there are plausible reasons for Congress' action, our inquiry is at an end. It is, of course, 'constitutionally irrelevant whether this reasoning in fact underlay the legislative decision', *Flemming* v. *Nestor*, 363 US, at 612, 4 L Ed 2d 1435, 80 S Ct 1367, because this Court has never insisted that a legislative body articulate its reasons for enacting a statute. This is particularly true where the legislature must necessarily engage in a process of line-drawing.

The 'task of classifying persons for.....benefits..... inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line'. *Mathews* v. *Diaz*, 426 US 67, 83–84, 48 L ed 2d 478, 96 S Ct 1883 (1976), and the fact the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration".

Also, in *Schweiker* v. *Wilson*, 67 L. Ed. 2d 186, Justice Blackmun, in delivering the majority opinion of the U.S.A. Supreme Court, stated the following (at pp. 195, 197, 198, 200):

"The equal protection obligation imposed by the Due Process Clause of the Fifth Amendment is not an obligation to provide the best governance possible. This is a necessary result of different institutional competences, and its reasons are obvious. Unless a statute employs a classification that is inherently invidious or that impinges on fundamental rights, areas in which the judiciary then has a duty to intervene in the democratic process, this Court properly exercises only a limited review power over Congress, the appropriate representative body through which the public makes democratic choices among alternative solutions to social and economic problems. *See San Antonio School District* v. *Rodriguez*, 411 US 1, 36 L Ed 2d 16, 93 S Ct 1278 (1973). At the minimum level, this Court consistently has required that legislation classify the persons it affects in a manner rationally related to legitimate governmental objectives. See, e.g., *Dandridge* v. *Williams*, 397 US 471, 25 L Ed 2d 491, 90 S Ct 1153 (1970); *Mathews* v. *De Castro*, 429 US 181, 50 L Ed 2d 389, 97 S Ct 431 (1976).

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Thus, the pertinent inquiry is whether the classification employed in s. 1611(e)(1)(B) advances legitimate legislative goals in a rational fashion. The Court has said that, although this rational-basis standard is 'not a toothless one,' *Mathews* v. *Lucas*, 427 US 495, 510, 49 L Ed 2d 651, 96 S Ct 2755 (1976), it does not allow us to substitute our personal notions of good public policy for those of Congress:

'In the area of economics and social welfare, a State

does not violate the Equal Protection Clause (and correspondingly the Federal Government does not violate the equal protection component of the Fifth Amendment) merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis', it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequity. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 US. 61, 78 (55 L Ed 369, 31 S Ct 337)'. *Dandridge* v. *Williams*, 397 US, at 485, 25 L Ed 2 491, 90 S Ct 1153.

The Court also has said: ''This inquiry employs a relatively relaxed standard reflecting the Court's awareness that the drawing of lines that create distinctions is peculiarly a legislative task and an unavoidable one. Perfection in making the necessary classifications is neither possible nor necessary'. *Massachusetts Bd. of Retirement* v. *Murgia*, 427 US 307, 314, 49 L Ed 2d 520, 96 S Ct 2562 (1976). See also *United States Railroad Retirement Bd.* v. *Fritz*, 449 US 166, 66 L Ed 2d 368, 101 S Ct 453 (1980). As long as the classificatory scheme chosen by Congress rationally advances a reasonable and identifiable governmental objective, we must disregard the existence of other methods of allocation that we, as individuals, perhaps would have preferred.

.....

This Court has granted a 'strong presumption of constitutionality' to legislation conferring monetary benefits, *Mathews* v. *De Castro*, 429 US, at 185, 50 L Ed 2d 389, 97 S Ct 431, because it believes that Congress should have discretion in deciding how to expend necessarily limited resources. Awarding this type of benefits inevitably involves the kind of line-drawing that will leave some comparably needy person outside the favored circle"

Lastly, in *Western and Southern Life Insurance Company* v. *State Board of Equalization of California*, 68 L. Ed. 2d 514,

Justice Brennan in delivering the majority opinion of the U.S.A. Supreme Court said (at pp. 523, 530, 531 and 534):

"The Fourteenth Amendment forbids the States to deny 'to any person within (their) jurisdiction the equal protection of the laws' but does not prevent the States from making reasonable classifications among such persons. See *Lehnhausen* v. *Lake Shore Auto Parts Co.*, 410 US 356, 359–360, 33 L Ed 2d 351, 93 S Ct 1001 (1973); *Allied Stores of Ohio* v. *Bowers*, 358 US 522, 526–527, 3 L Ed 2d 480, 79 S Ct 437, 9 Ohio Ops 2d 321, 82 Ohio L Abs 312 (1959).

.....

In determining whether a challenged classification is rationally related to achievement of a legitimate state purpose, we must answer two questions: (1) Does the challenged legislation have a legitimate purpose?, and (2) Was it reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose? See *Minnesota* v. *Clover Leaf Creamery Co.*, 449 US, at 461–463, 66 L Ed 2d 659, 101 S Ct 715; *Vance* v. *Bradley*, 440 US 93, 97–98, 59 L Ed 2d 171, 99 S Ct 939 (1979).

.....

Parties challenging legislation under the Equal Protection Clauses cannot prevail so long as 'it is evident from all the considerations presented to (the legislature), and those of which we may take judicial notice, that the question is at least debatable'. *United States* v. *Carolene Products Co.*, supra, at 154, 82 L Ed 1234, 58 S Ct 778".

The above case-law has strengthened considerably my view that it has not been shown to my satisfaction that the legislative provisions which are challenged in the present proceedings are unconstitutional.

Before concluding this judgment I must stress emphatically that what has weighed very much with me in deciding that, in the present intsance, there does not exist unequal treatment, as complained of by the applicants, is the express and unqualified statement of counsel for the respondent, during the hearing of these cases, that the basis for the computation of the amount

payable by way of contribution to the Social Insurance scheme concerned, by every self-employed person, is taken to be his net income after deduction of the expenses incurred for the purpose of practising his profession or carrying on his occupation, trade or business.

TRIANTAFYLLIDES P.: The present recourses are unanimously dismissed, but with no order as to their costs.

Recourses dismissed with no order as to costs.