

1985 March 28

[SAVVIDES. J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

MAROULLA KORATSITOU AS ADMINISTRATRIX OF
THE ESTATE OF THE LATE CHARALAMBOS
KORATSITIS.

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE COUNCIL OF MINISTERS,
2. THE MINISTER OF FINANCE,

Respondents.

(Case No. 318/82).

*Estate Duty—Remitting or reduction of—Section 13 of the
Estate Duty (Amendment) Law, 1976 (Law 3/76)—Does
not apply to estates of persons who had died before its
enactment—Section 15 of the Law.*

Constitutional Law—Equality—Discrimination—Article 28 of 5
*the Constitution—There cannot be discriminatory treat-
ment in an unlawful act.*

The applicant was the administratrix of the estate of the
deceased Charalambos Koratsitis who died in 1970; and
this recourse was directed against the refusal of the res- 10
pondents to reduce or forego the balance of estate duty
due on the estate of the deceased. The claim for the reduc-
tion was based on the provisions of sections 13* and 15*
of the Estate Duty (Amendment) Law, 1976 (Law 3/76)
which amended the Estate Duty Law, 1962 (Law 67/62). 15
Section 15 provides that the provisions of section 13—
which make provisions for reduction—apply only in rela-
tion to the levying of duty on the estate of persons dying

* Sections 13 and 15 are quoted at pp. 603-604 post.

on or after the publication of the Law in the official Gazette of the Republic, which was the 30th January, 1976.

5 *Held*, that since the deceased died in 1970 he is not entitled under the Law to the benefit of the provisions of section 13 of Law 3/76; and that, therefore, the refusal of the respondents to allow her a relief was justified.

10 *On the contention of the applicant, that in view of the fact that in similar cases in the past respondents have treated section 13 as covering cases of death prior to 1976 and that, following that practice the respondents should have granted the relief sought in the present case, otherwise, there is unequal treatment and discrimination against the applicant, contrary to Article 28 of the Constitution:*

15 *Held*, that there cannot be discriminatory treatment in an unlawful act, since there is no equality in this respect.

20 *Per curiam*: The power to legislate is vested, under the Constitution, and the doctrine of separation of powers, in the House of Representatives and if by the provisions of section 15 the object of the remedy provided by the new section 46(A)(1) is defeated, it is for the legislature to cure such defect. Bearing in mind the argument advanced by both counsel on this issue, I am of the opinion that there is good reason for the House of Representatives to consider the question as to whether an amendment of the Law is necessary for extending the benefit to persons who died before the 30th January, 1976, whose estate was depreciated in value as a result of the Turkish invasion and who in fact should enjoy such benefit.

30 *Application dismissed.*

Cases referred to:

- Proestou v. Republic* (1981) 3 C.L.R. 314 at p. 320;
Karayianni v. Educational Service Committee (1979) 3 C.L.R. 371 at p. 378;
 35 *Falas v. Republic* (1983) 3 C.L.R. 523 at p. 534.

Recourse.

Recourse against the refusal of the respondents to reduce

or forego the balance of estate duty due on the estate of the deceased Charalambos Koratsitis.

G. Triantafyllides, for the applicant.

M. Photiou, for the respondents.

Cur. adv. vult. 5

SAVVIDES J. read the following judgment. The applicant is the administratrix of the estate of the deceased Charalambos Koratsitis, late of Nicosia, who died in 1970.

The present recourse is directed against the refusal of the respondents to reduce or forego the balance of estate duty due on the estate of the deceased. 10

The facts of the case are briefly as follows:

The deceased left estate consisting mainly of Bank of Cyprus shares and Kermia shares. After an agreement reached between the applicant and the Commissioner of Estate Duty, the estate of the deceased was assessed at £95,227.- and the estate duty payable on such property was raised at £22,258.560 mils. plus interest till the date of the assessment, that is, the 22nd November, 1973, amounting to £1,739,216 mils making a total of £23,997,775 mils. An amount of £7,197,776 mils was paid against such amount and the balance remained due. 15 20

In the meantime, the events of 1974 occurred and the matter remained in abeyance. As a result of the amendment of the Estate Duty Law in 1976, the administratrix of the estate submitted an application to the Council of Ministers through the Ministry of Finance, requesting them to forego any balance of the estate duty due, by virtue of the power which vested in the Council of Ministers under section 13 of Law 3/76. 25 30

The ground set out in the said letter in support of the request for reduction, was that the property consisted mainly of Bank shares and as a result of the Turkish invasion and the events of 1974, such Bank shares dropped substantially in value. Such application was considered by the Council of Ministers, which decided to reject the application and its decision was communicated to the administra- 35

trix by letter signed by the Director-General of the Ministry of Finance. As a result, applicant filed recourse No. 415/78 challenging such decision. Such application came up for hearing before a Judge of this Court and with the leave of
5 the Court it was withdrawn after the following statements were made before the Court by counsel appearing on both sides:

10 “*Mr. Lemonaris*: We have agreed with my learned friend that the sub judice decision will be reconsidered on the basis of the factual situation existing at the time of the decision and in the circumstances, I seek leave to withdraw the recourse, subject to the condition that the matter will be reconsidered de novo.

15 *Evangelou*: That is so and we undertake to reconsider the case as stated by my learned friend.”

After the withdrawal of such recourse counsel for applicant on the 11th February, 1980 addressed a letter to Mr. Evangelou who was appearing in the previous recourse on behalf of the respondents, the contents of which are
20 as follows:

“I write to you on the above matter so that you may forward this letter to the Council of Ministers when they will reconsider my client’s case afresh.

25 The reconsideration will take place on the factual situation existing at the time of my client’s application i.e. in April, 1976.

On the basis of the above, I submit that the Council of Ministers will have to decide on the following two points:

- 30 (a) Whether the value of the Bank of Cyprus shares and Kermia shares *were at the time*, substantially reduced in value, and
- (b) if so, whether the reduction was due to the abnormal situation prevailing in Cyprus.

35 I submit that there can be no dispute as to point (a) above and this can be easily ascertained from the

market prices of the said shares ruling at the time as there were undoubtedly several transactions carried out at the material time.

As to point (b) I submit that the only reason behind the fall of the share price was the abnormal situation and nothing else. However, if the Council of Ministers decide that the fall in the price was due to other reasons, then such reasons should be specified by them.”

The following letter was sent in reply to the above letter by the Director-General of the Ministry of Finance, on the 10th June, 1982:

“I have been instructed to refer to your letter to the Attorney-General of the Republic in connection with the application of Maria Koratsitou to reduce the estate duty but I regret to inform you, that notwithstanding the fact that the case of your client has been re-examined by the Minister of Finance (in accordance with the decision of the Council of Ministers No. 15116 dated 29.7.76, the Minister exercises the powers emanating from section 46(A)(1)), but he cannot give a positive reply on the matter for the following reasons.

The only property data of the deceased the value of which has been diminished after the events of 1974, were the shares of Bank of Cyprus and shares of Kermia. Our Ministry believes that the events of 1974 were not the sole cause for the falling prices of the shares which was observed during the years 1975-1976, as from the existing material, it appears that during the period 1974-1981, four drops were observed in the value of Kermia shares (1975, 1976, 1980, 1981) and three increases (1977, 1978, 1979), and also four drops were observed in the value of Bank of Cyprus (Investments) (1975, 1976, 1980, 1981) and three increases (1977, 1978, 1979)”.
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A letter was also sent directly to the applicant on behalf of respondents, informing her that her application could not be acceded to. As a result, applicant filed the present recourse, whereby she applies for the following relief:

(a) Declaration that the decision of the respondents contained in exhibit 5 not to remit or reduce or forego the balance of the estate duty due on the estate of the deceased, Charalambos Koratsiti, late of Nicosia, or any part thereof, is null and void and of no effect whatsoever.

(b) Declaration that the decision of the respondents to dismiss the application of applicant, exhibits 1 and 4 whereby she was asking respondents to remit or reduce or forego the balance of the estate duty in respect of the property of the above deceased or any part thereof, is null and void and of no effect whatsoever.

The grounds of Law set out in support of the application are the following:

1. The decision complained of is not duly or at all reasoned.

2. The respondents acted in abuse of powers in that under section 46(A) of Law 67/62 they should have remitted and/or reduced and/or foregone the balance of the estate duty due by the applicant.

3. All assets of applicant's estate have been almost nullified as a result of the war in Cyprus, at any rate, at the time of the original application in 1976.

4. In other similar or analogous cases, respondents have remitted or foregone estate duty due and consequently applicant complains of discrimination contrary to Articles 24 and 28 of the Constitution.

5. The reconsideration ordered and agreed in Court as per exhibit 3, should have been made on the basis of the factual situation existing in 1976. However, as it appears from exhibit 5 the reconsideration took into account, facts after 1976.

The application was opposed and the opposition was based on the following grounds:

The acts and/or decisions complained of were properly and lawfully taken after all relevant facts and circumstances were taken into consideration, viz:

- (a) The assessment of the Estate Duty payable in respect of the estate of late Charalambos Koratsitis late of Nicosia was raised under sections 4, 5, 6 and 35 of the Estate Duty Law, 1962 as amended by Law No. 71 of 1968. 5
- (b) The decision of the respondents not to remit the balance of the estate duty payable was correctly taken under the provisions of section 13 of the Estate Duty (Amendment) Law No. 3 of 1976. The relevant section in the principal Law being 46(A) (1). 10

On the direction of the Court, written addresses were filed. What emanates from the written addresses filed is whether the applicant is entitled to the benefit of section 46(A) (1) of the Estate Duty Law, 1962, as amended by section 13 of the Estate Duty (Amendment) Law, No. 3/76. The argument of counsel for applicant and the submissions made, may be summarised as follows: 15

1. Applicant should have been granted the benefit of section 46(A)(1) of the Estate Duty Law 1962 because the value of the Estate of the deceased, Charalambos Koratsitis, comprising merely of shares of the Bank of Cyprus and Kermia, has been substantially reduced as a result of the abnormal situation; and 20

2. The decision of the respondents contained in exhibit 5 is wrong because, notwithstanding the express agreement between the parties as it appears in exhibit 3, that the case was going to be reconsidered on the basis of the factual situation existing at the time of the decision, i.e. 26th April, 1976, the respondents took into account reductions and increases in the value of the shares occurring before 1977-1981, i.e. well after the time of the application of applicant and the decision of the respondents. 25 30

By his written address counsel for respondent submitted that the respondents rightly came to their conclusion relying on section 13 of Law 3/46, amending Law 67/62 in that 35

applicant failed to satisfy the respondents that the reduction in the value of the shares in question was not due wholly to the events of 1974 but to other factors too, and he further submitted that the burden was on the applicant to satisfy the Court that the shares in question had substantially dropped in value as a result of the abnormal situation.

It is apparent from the written addresses filed that both parties argued their case on the assumption that the provisions of the Law were applicable in the present case.

Directions were made for affidavit evidence to be filed and an affidavit sworn by Louis Clappas, a stock-broker and investment consultant, expressing his opinion on the diminution of the value of shares, was filed. When the case came up for clarifications and further evidence, counsel for respondents made a statement to the following effect:

"In the course of a conference with the authorities for the purpose of preparing an affidavit in reply to an affidavit of applicant, we have noticed that there is an additional point of Law which I have not raised in my previous address and which is fatal for this recourse, as the Law on which my learned friend relies is not applicable in the case. Therefore, I apply for leave to file a supplementary written address."

No objection was raised by counsel for applicant to such course and directions were given for the filing by counsel for respondents of a supplementary address with leave to counsel for applicant to file a written address in reply thereto.

By his supplementary address counsel for respondents raised an objection that the present recourse is not maintainable on the ground that the provisions of Law 3/76 were not applicable in cases where the death occurred after the 30th January, 1976 and the deceased in the present case died on 10.12.1970. Counsel contended that though this reason was not invoked by the respondents, in the sub judice decision, such decision would not be annulled if

there exist other legal grounds supporting such decision.

Counsel for applicant by his reply submitted that it had been the consistent practice of the respondents to grant the reduction claimed only in relation to persons who died before the invasion and never after that date. He further added that in fact the intention of the legislature, when the Law was enacted, was to alleviate the situation resulting from the Turkish invasion, so that the valuation of the assets of a deceased person for the purpose of estate duty be made at the time of the death, as due to the Turkish invasion, there was a substantial drop in the value of assets of persons who died before the invasion. It was also the contention of counsel for applicant that if it was to be accepted that the intention of the legislature was that the provisions of section 13 were to apply to persons who died on or after the 30th January, 1976, that would render the whole provision nugatory because, after the 30th January, 1976 there had been no reduction since the 20th July, 1974 when the Turkish invasion took place.

Counsel made extensive reference to the provisions in the Law and the nugatory effect of section 15 to the rest of the Law and, in particular, to section 13. Counsel further contended that irrespective of the provisions of section 15 the consistent practice of the Council of Ministers in all cases where they have granted a reduction under section 13 of the Law, were cases where the persons had died before the 20th July, 1974, and not after such date. Therefore, he submitted, if the consistent practice of the respondents was to grant such a reduction by virtue of section 13 of the Law to persons who died before the 20th July, 1974, it would amount to an arbitrary discrimination vis-a-vis the case of the applicant if such practice was not followed in this case.

He finally submitted that the respondents had a duty to take the appropriate steps to remedy the situation by asking for an amendment of this Law, so that the nugatory effect of section 15 be eliminated and the intention of the legislature as manifested by section 13 be given effect to.

Counsel for the respondents, on the other hand, submitted that the clear and unequivocal words of section 15

which gave for the first time the right to the Council of Ministers to reduce the tax payable as estate duty, do not cover the case of the applicant because applicant died on the 10th December, 1970.

5 As to the practice alleged by counsel for the applicant, counsel for the respondents submitted that the applicant did not specifically mention any cases similar to the one under consideration and that from inquiries he carried out, he
10 found out that there was only one case of a person who died on 22nd November, 1970 in which a relief was granted. This, however, counsel added, was before the Ministry of Finance discovered that the wording of section 15 was such as to allow a reduction only in cases of persons who died after the 30th January, 1976. One or two
15 isolated cases, counsel submitted, cannot be described as consistent practice, but even in cases where such practice may be established, when same is contrary to Law, there is a duty to abandon it and an applicant cannot rely on a previous decision which was taken illegally.

20 It is common ground in this case that without the enactment of the Estate Duty (Amendment) Law, 1976 (Law 3/76), no power was vested in the Council of Ministers to forego the whole or any part of estate duty raised under a proper assessment. Law 3/76 brought about a number of
25 amendments to the principal Law, the Estate Duty Law of 1962 (Law 67/62) as amended by Law 71/68. The amendments, material to the present case, are the ones under section 13 and 15 of Law 3/76 which provide as follows:

Section 13:

30 'Ο βασικός νόμος τροποιείται διὰ τῆς ἐν αὐτῷ ἐνθέσεως, εὐθύς μετὰ τὸ ἄρθρον 46, τοῦ ἀκολουθοῦ νέου ἄρθρου-

46A.- (1) Τὸ Ὑπουργικὸν Συμβούλιον δύναται νὰ
35 χάριση ἐν ὅλῳ ἢ ἐν μέρει τὸν ἀναλογοῦντα φόρον πρὸς περιουσιακὰ στοιχεῖα τῶν ὁποίων ἡ ἀξία ἐμειώθη οὐσιωδῶς συνεπείᾳ τῶν ἐκ τῆς ἐκρύθμου καταστάσεως δημιουργηθειῶν συνθηκῶν.

(2) Ἄνεξαρτήτως παντὸς ἐν τῷ παρόντι Νόμῳ διαλαμβανομένου, οὐδεὶς τόκος ἐπιβάλλεται ἀπὸ τῆς 20ῆς

Ἰουλίου, 1974, ἀναφορικῶς πρὸς τὸν ἀναλογοῦντα φόρον πρὸς περιουσιακὰ στοιχεῖα εὐρισκόμενα εἰς ἀπροσπελάστους περιοχάς, ἡ δὲ πληρωμὴ τοῦ εἰς τὰ τοιαῦτα περιουσιακὰ στοιχεῖα ἀναλογοῦντος φόρου ἀναστέλλεται διὰ τοιοῦτο χρονικὸν διάστημα οἷον ὁ Ἔφορος ἤθελεν ἐγκρίνει ἢ γίνεται διὰ τοιούτων δόσεων αἵτινες ἤθελον διευθετηθῆ μετὰ τοῦ Ἐφόρου», 5

(“13. The principal Law is hereby amended by the insertion therein immediately after section 46 of the following new section- 10

46A.-(1) The Council of Ministers may remit in whole or in part the proportionate duty on property the value of which has been substantially reduced as a result of the conditions created by the abnormal situation. 15

(2) Notwithstanding anything in this Law contained, no interest shall be charged as from the 20th July, 1974, in respect of the proportionate duty on property situated in inaccessible areas, and the payment of the proportionate duty on such property shall be stayed for such time as the Commissioner may approve or shall be effected by such instalments as may be arranged with the Commissioner.”. 20

Section 15:

Ὁ παρῶν Νόμος ἐφαρμόζεται ἐν σχέσει πρὸς τὴν φορολογίαν τῆς Κληρονομίας παντὸς προσώπου ἀποθνήσκοντος κατὰ ἢ μετὰ τὴν ἡμερομηνίαν τῆς δημοσιεύσεως τοῦ παρόντος Νόμου ἐν τῇ ἐπισήμῳ ἐφημερίδι τῆς Δημοκρατίας, 25

(“15. This Law shall apply in relation to the levying of Estate duty of every person dying on or after the date of publication of this Law in the official Gazette of the Republic”). 30

The marginal note to section 13 reads as follows:

«Εἰδικὴ μεταχείρισις λόγῳ τῆς ἐκρύθμου καταστάσεως». 35

(“Special treatment as a result of the abnormal situation”).

The wording of section 15 of the Law is clear and unambiguous. It expressly provides that the provisions of the new section 46(A)(1) introduced by section 13, as well as all other provisions in the Law, apply only in relation to the levying of duty on the estate of persons dying on or after the publication of the Law in the official Gazette of the Republic, which was the 30th January, 1976. No reservation whatsoever is made in respect of section 46(A)(1). Where the legislator intended that any provision would have retrospective effect, it expressly provided so as in sub-section (2) of the new section 46(A), whereby in respect of interest it gives retrospective effect as from 20th July, 1974. If the provision under section 46(A)(1) was intended to apply to persons who died prior to the 30th January, 1976, who according to the submission of counsel for applicant were the ones affected by the abnormal situation and who were intended to be benefited by the introduction of such provision, such intention should have been manifested by a proviso in section 15 of the amending Law. However logical the submission of counsel for the applicant may be, I cannot go outside the wording of section 15 and introduce such a wording in section 15, as to extend the application of section 46(A)(1), introduced by section 13 of Law 3/76, in the way submitted by counsel for applicant. The duty of the Court is to interpret and apply the Law and not to legislate. The power to legislate is vested, under the Constitution, and the doctrine of separation of powers, in the House of Representatives and if by the provisions of section 15 the object of the remedy provided by the new section 46(A)(1) is defeated, it is for the legislature to cure such defect. Bearing in mind the argument advanced by both counsel on this issue, I am of the opinion that there is good reason for the House of Representatives to consider the question as to whether an amendment of the Law is necessary for extending the benefit to persons who died before the 30th January, 1976, whose estate was depreciated in value as a result of the Turkish invasion and who in fact should enjoy such benefit.

In the light of my finding that the applicant is not entitled under the Law to the benefit of the provision of section 46(A)(1) introduced by section 13 of Law 3/76, the refusal of the respondents to allow her a relief is justified.

As to the contention of counsel for applicant that in view of the fact that in similar cases in the past respondents have treated section 13 as covering cases of death prior to 1976 and that, following that practice the respondents should have granted the relief sought in the present case, as, otherwise, there is unequal treatment and discrimination against the applicant, contrary to Article 28 of the Constitution, I find myself unable to agree with him. If the respondents had misinterpreted or wrongly applied the Law in other cases, contrary to the express provision contained in the Law, this cannot be a ground for a claim for equal treatment and non-discrimination. 5 10

It is well settled that there cannot be discriminatory treatment in an unlawful act, since there is no equality in this respect. In the Conclusions from the Case Law of the Greek Council of State (1929-1959) p. 158, it is stated: 15

“Because the Administration did not enforce the Law in another case, no annulment is created either by the application of the Law in the case under consideration nor an unlawful act of the administration in the past or concerning other persons creates any obligation for it to repeat likewise the contravention.” 20

(See, also, the cases of the Greek Council of State 1118, 1121/54. Relevant in this connection are also the cases of *Proestou v. The Republic* (1981) 3 C.L.R. 314 at p. 25 320, *Karayianni v. Educational Service Committee* (1979) 3 C.L.R. 371 at p. 378 where other authorities on the point are also mentioned, and *Falas v. The Republic* (1983) 3 C.L.R. 523 at p. 534).

For all the above reasons, this recourse fails and is hereby dismissed with no order for costs. 30

Recourse dismissed.
No order as to costs.