

1987 February 27

(STYLIANIDES J)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

HARA HOTELS LTD AND OTHERS

*Applicants,*

v

THE REPUBLIC OF CYPRUS THROUGH

1 THE DIRECTOR OF THE DEPARTMENT OF  
WATER DEVELOPMENT

2 THE ATTORNEY-GENERAL OF THE REPUBLIC AS  
REPRESENTING THE COMMITTEE AND/OR THE FUND  
RELATING TO THE WATERWORK FOR THE WATER SUPPLY  
OF THE IMPROVEMENT AREA OF AMATHUS

3 THE IMPROVEMENT BOARD OF AMATHUS, C/O THE  
LIMASSOL DISTRICT ADMINISTRATION,

*Respondents*

*(Cases Nos 394/80, 408/80, 502/81,  
91/82-100/82, 102/82, 108/82,  
127/82, 128/82)*

*Subsidiary legislation — Ultra vires enabling law — Principles governing the question — Practice followed in modern statutes — Enumeration of particular matters regarding which rules may be made «without prejudice to the generality» of a foregoing power — Specific enumeration does not circumscribe the general power*

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*Taxation — «Tax» and «fees» — Distinction — Basis of distinction*

*Constitutional Law — Taxation — Constitution, Art 24 — Fee — Does not constitute taxation in the sense of Art 24*

*Constitutional Law — Taxation — Equality — Constitution, Arts 24 and 28 — In matters of taxation the legislative is allowed greater latitude and has a broader power of classification than in other fields*

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*Streets and Buildings — Building permit — Water supply — Powers and duties of the appropriate Authority — The Streets and Buildings Regulation Law, Cap 96, as amended by Law 13/74, section 9(1)(e)(xi), 9(3)(e) and 4(1)*

**3 C.L.R. Hara Hotels v. Republic**

*Administrative Law — General principles — Application of Regulations before their publication — Relevant decision null and void*

5 *Water Supply — The Government Water Works Law, Cap 351, as amended by Laws 129/68, 51/71, 1/77 — The rule making power of the Council of Ministers — Section 4(e) and 24 — The Supply of Water to the Area of the Improvement Board of Amathus (Grant of Right of Connection with the Water Supply) (Amendment) Regulations — Regulation 3 — Intra vires enabling law — Neither repugnant to nor inconsistent with Arts 24 1 and 28 of the Constitution — Connection fees thereunder — Do not constitute taxation in the sense of Art 24 — In any event not of a destructive or prohibitive nature*

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15 On 16 2 79 the Council of Ministers decided in virtue of its powers under sections 4 and 5 of the Government Waterworks Law, Cap 341, as amended by Laws 129/68, 51/72 and 1/77, to construct waterworks known as «Government Waterwork for the Supply of Water for the Area of the Improvement Board of Amathus»

20 On 30 3 79 there were published in the Official Gazette the «Supply of Water to the Area of the Improvement Board of Amathus (Grant of Right of Connection with the Water Supply) Regulations, 1979» Regulation 3 provided for the payment of £500 per donum and rateably for part thereof as connection fee with the water supply of the aforesaid Waterwork by the owner or possessor of immovable property within the area of the Improvement Board of Amathus

25 The said Regulation 3 was repealed and substituted by a new Regulation 3\* by the «Government Waterwork for the Water Supply of the Area of the Improvement Board of Amathus (Grant of Right for Connection with the Water Supply) (Amendment) Regulations published on 16 5 80 (hereinafter referred to as «the 1980 Regulations»

30 The applicants in these cases are the owners and/or possessors of houses and/or flats within the area of the Improvement Board of Amathus

The factual situation and the points of law raised are identical in all cases, except cases 394/80, 408/80 and 98/82

35 The factual situation in all cases, except the said three cases, may be briefly described as follows. On completion of the aforesaid Waterwork the applicants were requested to pay the connection fee calculated in accordance with «the 1980 Regulations»

The applicants in the aforesaid cases submitted that (a) The «1980 Regulations» are ultra vires the enabling law as they provided that the fee

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\* Quoted at pp 626 627 post

would be assessed «per donum of property according to the Town Planning Zone to which such property belongs» and in addition the «additional connection fee of £100 for 100 square meters of the total floor area of the storeys of the proposed building or rateably for part of such area» whereas the Law does not give the right either to differentiate between donums of land or to calculate the fee on the basis of the floor area or to combine such methods (b) The imposition of the fees in question is contrary to the proviso to section 24(2) of the said laws, (c) The fee is of a destructive or prohibitive nature and, therefore, contrary to Art 24 4 of the Constitution and (d) The sub judice decisions amount to discrimination and infringe the principles of equality and are, therefore, contrary to Art 24 1 and 28 of the Constitution

It must be noted that the aforesaid Regulations were enacted in virtue of the powers of the Council of Ministers under Section 4(e)\* and Section 24\*\* of the Government Waterworks Law, Cap 341, as amended by Laws 129/68 51/72 and 1/77

CASE No 394/80 The applicants, who are the registered owners of a plot of land situated within the area of the Improvement Board of Amathus applied for a building permit for the erection of a hotel The permit was granted but on condition that the sum of £30,380 calculated in accordance with «the 1980 regulations» be paid as water supply fee The applicants paid the said sum under protest and when their request for the return of the money was turned down they filed the said recourse It must be noted that the decision to impose the said fee was taken before the publication of «the 1980 regulations»

CASE No 408/80 The appropriate Authority approved the grant of a building permit to the applicant for the erection of five multi-storey buildings The decision was communicated to the applicant by letter dated 13 2 80, whereby the applicant was requested to pay the fees under the Streets and Buildings Regulations The applicant paid the said fees on 14 2 80 By letter dated 29 4 80 the applicant was requested to pay £17,625 for water supply and £460 for electrification

Hence the present recourse The applicant contended that on payment of the said fees on 14 2 80 the building permit became a final executory act and therefore, it could not be completed or altered later Once again, the fee of £17,625 was calculated in accordance with «the 1980 regulations» before their publication

CASE No 98/82 The applicant applied for a building permit with respect to extensions and additions to his house situated on land within the area of the Improvement Board of Amathus As the applicant was

\* Quoted at pp 629 630 post

\*\* Quoted at p 630 post

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informed that in connection with such permit he had to pay £3.960. as water connection fee, he filed the above recourse

5           Held. (1) The legal principles governing questions relating to regulations alleged to be ultra vires have been summed up in *Papaxenophonos and Others v. The Republic* (1982) 3 C.L.R. 1037 at p 1047 In modern  
10 statutes the practice is to confer rule-making power by one general provision empowering the rule-making Authority to make rules «for carrying out the purposes of the law» followed by the enumeration of certain particular matters regarding which rules may be made «without prejudice to the  
15 generality of the foregoing power» In such a case the specific enumeration does not circumscribe the general power Any regulation which comes within the scope of the general power would be valid

15           The Council of Ministers under Section 4 has the power to fix by regulations the fees and rates payable in consideration of the water supplied by the Republic or the benefit accruing from the water supplied or any waterwork and in general of the services rendered by the Republic relating to such supplies

20           Subsection (1) of Section 24 is cast in very general terms The provisions of subsection (2) are not restrictive of subsection (1), as indeed is expressly stated by the words «without prejudice to the generality of subsection (1)» The challenged regulations are necessary for carrying into effect the law

25           Even assuming that the general power for rule-making given to the Council of Ministers by Subsection (1) does not control the detailed provision in Subsection (2), again «the 1980 Regulations» are intra vires Regulation 2(a) provides that the fees and rates and any other money consideration may be fixed («δυναμίων να καθορισθώσι») either by donum of land, or . . . rateably to the benefit which accrues or may accrue  
30 to any person or any ownership by the water or any waterwork Such «benefit» in a highly developed tourist area, such as the area in question, depends on the area and the zone in which the land is situated as well as the area of the building erected or proposed to be erected «Proposed» building in the regulations means building for purposes of connection with the Water Supply It makes no difference whether it exists or it is proposed to be erected

35           (2) The words «inter alia» in the proviso to section 24(2)(a) must be given full effect In any event no material was placed before the Court to substantiate the allegation that the fees imposed are beyond the limitations of the proviso.

40           (3) The distinction between tax and fee is plain The reason for the payment in the case of fees is the special benefit accruing to the individual, in the case of tax, the particular advantage, if it exists at all, is

an incidental result of state action. The connection fees in case of waterworks do not merge with the general revenue but they are set apart for the particular purpose. It follows that they are not taxation in the sense of Art 24 of the Constitution. Even assuming that such fees constituted taxation, the sub judice fees were not destructive or prohibitive.

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(4) The burden of proving the unconstitutionality of a law is upon him who raises it. A taxation will be struck down as violative of Art 28 if there is no reasonable basis behind the classification made by it. In matters of taxation the legislature is allowed greater latitude and has a broader power of classification than in other fields (*Antoniades and Others v The Republic* (1977) 3 C L R 641 at 655). The fees in question are based on objective reasonable criteria: the extent of the land, the zone within which it is situated and the area of the building standing or proposed to be erected thereon.

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(5) As regards case 394/80 (a) Under the Streets and Buildings Regulation Law Cap 96 as amended by Law 13/74 the appropriate authority on granting a permit for the erection of a new building has power to impose a condition for the supply of adequate and suitable water (section 9(1)(b)(xi)) and shall not grant any permit under section 3 unless it is satisfied that the applicant has complied with the provisions relating to the supply and provision of water contained in this or any other Law or in any Regulations for the time being in force (Section 9(3)(b)). Moreover section 4(1) provides that «No permit shall be granted under Section 3 of this Law unless the appropriate authority is satisfied that the contemplated work or other matter in respect of which the permit is sought is in accordance with the provisions of this Law and the Regulations in force for the time being.»

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(b) It follows that the connection fee was a condition imposed lawfully on granting the permit. The rate, however, was calculated in accordance with «the 1980 regulations» which were not in force at the time. The sub judice decision and the consequential collection of the amount of £30,380 was contrary to law and, therefore, null and void.

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(6) As regards case 408/80 (a) The appropriate authority could not approve the issue or granting of a building permit unless satisfied about the compliance with the provisions of the relevant legislation for adequate water supply and compliance with the provisions of the Law and Regulations. Though in the printed letter of 13 2 80 the condition for the payment of the connection fees was not included, the applicant cannot validly assert that such a condition was not imposed at the time of the decision for the approval of the building permit -9 2 80. The printed letter of 13 2 80 is not the decision. The omission to request the applicant by this letter of 13 2 80 to pay the connection fees is not fatal for the

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Administration

(b) The sub judice decision however has to be annulled for the same reason as the sub judice decision in case 394/80

5 (7) As regards case 98/82 in view of what was said earlier about the statutory provisions in the Streets & Buildings Regulations Law and «the 1980 Regulations» in connection with other cases this recourse fails

*Sub judice decisions in cases  
394/80 and 408/80 annulled  
All other recourses dismissed  
10 No order as to costs*

Cases referred to

*Chnstodoulou v The Republic 1 R S C C 1*

*Spyrou and Others v The Republic (1973) 3 C L R 627*

*Papaxenophontos and Others v The Republic (1982) 3 C L R 1037*

15 *Stavrou v The Republic (1976) 3 C L R 66*

*Menicos v The Republic (1983) 3 C L R 1130*

*Ethnicos v K O A (1984) 3 C L R 1150*

*Lefkats and Others v The Republic (1985) 3 C L R 1372*

*Ross - Clunis v Papadopoulos 23 C L R 71*

20 *Constantinides v E A C (1982) 3 C L R 798*

*Apostolou and Others v The Republic (1984) 3 C L R 509*

*Mathews v Chirkory Marketing Board 60 C L R 263*

*Shirur Mut Case Commissioner, Hindu Religious Endowments,  
Madras v Sn Lakshmindra Thirtha Swamiar of Sn Sharur Mutt (1954)  
25 S C R 1005 (54) A C 282,*

*The Board for Registration of Architects and Civil Engineers v  
Kynakides (1966) 3 C L R 640*

*HadjiKynacou v The Republic, 5 R S C C 22,*

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

30 *Demetnades v The Republic (1977) 3 C L R 213,*

*Ioannides v The Republic (1987) 3 C L R 297*

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

*Singer Sewing Machine Co v. The Director of the Department of Inland Revenue* (1978) 3 C L R 71.

*Road Improvement Dt v Missoun R C.* 274 U S 188

*Thomas Walston v Joseph Nevin* (1888) 128 U S 578

*Allied Stores v Bowers* (1959) 358 U S 522

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**Recourses.**

Recourses against decisions of the respondents to impose a fee for the connection of applicant's properties with the water supply of Amathus Waterwork.

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*G. Cacoyannis.* for applicants in Cases Nos. 394/80, 408/80 502/81, 91/82-100/82, 127/82 and 128/82.

*E Michaelides with Chr. Hadjianastassiou.* for applicants in Cases Nos. 102/82 and 108/82

*Ch. Kyriakides, Counsel of the Republic,* for the respondents

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*Cur. adv. vult.*

STYLIANIDES J read the following judgment. In all these cases there are common points of facts and law. On the application of counsel and the approval of the Court at some stage of the proceedings they were taken together.

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The factual situation and the points of law raised are identical in all cases except Case No. 394/80, 408/80 and 98/82 and, therefore, I shall deal with these last three cases after the determination of the others.

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The applicants by means of these recourses seek the annulment of the decisions communicated to each one of them separately whereby a fee was imposed for the connection of their respective properties with the water supply of Amathus Waterwork.

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The applicants are the owners and/or possessors of houses and/or flats situated within the vicinity of Ayios Tychonas

village, now within the area of the Improvement Board of Amathus, outside the area of the Water Board of Limassol. The Water Board of Limassol has a duty to supply water only within its limits. As Amathus Hotel was built in the area

5 Amathus Navigation Co pursuant to an agreement with the Water Board of Limassol laid pipes 4" in diameter from the boundaries of the area of the Water Board of Limassol upto Amathus Navigation Co pursuant to an agreement with Amathus Hotel. Subsequent to this and consequential to this

10 the Limassol Water Board supplied water to the properties of the applicants particularly described in each case.

Due to the rapid tourist development of the area the formation of the Improvement Board of Amathus and the expanding needs in water, the Council of Ministers by virtue of

15 its power under Sections 4 and 5 of the Government Waterworks Law, Cap 341, as amended by Laws No 129/68 51/72 and 1/77 on 16 2 79 by decision published in the Official Gazette under Notification No 26 Subsidiary Legislation, Part I 1979 page 73 decided to construct

20 waterworks known as «Government Waterwork for the Supply of Water for the Area of the Improvement Board of Amathus »

On 23 3 79 the Government Waterwork for the Supply of Water to the Area of the Improvement Board of Amathus (Control and Administration) Regulations 1979 made by the

25 Council of Ministers in virtue of their power under sections 4(a) and 24 of the same Law, were published in the Official Gazette under Notification No 51/79, Supplement No 3 pp 141-143. A Committee for the said waterwork was established by Regulation 3 thereof.

30 On 30th March of the same year the Government Waterwork for the Supply of Water to the Area of the Improvement Board of Amathus (Grant of Right of Connection with the Water Supply) Regulations, 1979, were published under Notification No 56/79 in the Official Gazette, Supplement No 3 Part I p 153.

35 Regulation No 3 provided for the payment of £500 - per donum and rateably for part thereof as connection fee with the water supply of this Waterwork by the owner or possessor of immovable property within the area of the Improvement Board of Amathus. This fee was payable on approval of the grant of water



Regulation No.3 was repealed and substituted by the Government Waterwork for the Water Supply of the Area of the Improvement Board of Amathus (Grant of Right for Connection with the Water Supply) (Amendment) Regulations, 1980, published in the Official Gazette on 16.5.80 (hereinafter referred to as «the 1980 Regulations»). 5

The new regulation No. 3 reads as follows:-

«3. Οσάκις εγκρίνεται υπό της Επιτροπείας, θα χορηγήται εις ιδιοκτήτην ή κάτοχον ακινήτου ιδιοκτησίας κειμένης εντός της περιοχής του Συμβουλίου Βελτιώσεως Αμαθούντος δικαίωμα διά σύνδεσιν μετά της υδατοπρομηθείας του Υδατικού Έργου εν σχέσει προς την ακίνητον ιδιοκτησίαν της οποίας είναι ιδιοκτήτης ή κάτοχος επί τη καταβολή: 10

(i) βασικού δικαιώματος συνδέσεως κατά σκάλαν κτήματος αναλόγως της πολεοδομικής Ζώνης εις την οποίαν τούτο ευρίσκεται ως ακολούθως: 15

Ζώνη	Δικαίωμα Συνδέσεως κατά σκάλα	
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B1	£ 175	20
B2	£1000	
B3	£ 900	
B4	£ 650	
Γ	£ 225	
Δ	£ 225	25
Z	£ 125	

(ii) επιπρόσθετον δικαίωμα συνδέσεως εκ £100 ανά 100 τετρ. μέτρα του συνολικού εμβαδού των ορόφων των προτεινομένων οικοδομών ή κατ' αναλογίαν διά μέρος του εμβαδού τούτου». 30

(«3. Whenever it is approved by the Committee, there shall be granted to the owner or possessor of immovable property situated within the area of the Improvement Board of Amathus a right for connection with the water supply of the Waterworks in relation to the immovable property of which he is the owner or possessor upon payment: 35

(i) of a basic connection fee per donum of land according to the Town Planning Zone to which such property belongs as follows:

	Zone	Connection fee per donum
5	--	--
	B1	£ 175
	B2	£1000
	B3	£ 900
	B4	£ 650
	C	£ 225
10	D	£ 225
	Z	£ 125

(ii) An additional connection fee of £100 for 100 square meters of the total floor area of the storeys of the proposed building or rateably for part of such area»).

15 The Water Board of Limassol by letter dated 5.3.80 handed on 28.4.80 and 29.4.80 to all the consumers of water of the Water Board in the area of Amathus, including the applicants, notified them that on completion of the works of the Government Waterwork for the area of the Improvement Board of Amathus the

20 Water Board of Limassol would cease supplying water to that area and they were advised to apply to the District Officer as Chairman of the Committee of the new waterwork for the connection of their property with the Amathus Waterwork.

25 On completion of the above waterwork the Chairman of the Committee of the Government Waterwork of Amathus informed each one of the applicants that the area was supplied with water from the new waterwork and they were requested to pay the connection fee. The amount of the fee imposed is mentioned in each of the letters addressed to the applicants.

30 The connection fee imposed was in accordance with the provisions of «the 1980 Regulations».

The applicants seek the annulment of the aforesaid decisions imposing the connection fee on the following grounds:-

- (a) «The 1980 Regulations» are ultra vires the enabling Law;
- 35 (b) The imposition of the said fees is contrary to the proviso to s.24(2) of the Law;

(c) The method of imposition of the said fee is repugnant to the Constitution in that it is of a destructive or prohibitive nature and, therefore, contrary to Article 24.4 of the Constitution:

(d) It amounts to invidious discrimination and infringes the doctrine of equality and, therefore, is contrary to Articles 24.1 and 28 of the Constitution.

(a) *ULTRA VIRES*:

The decisions of the Administration has to be annulled and be declared to be null and void and of no effect whatsoever if it was based on invalid enactment. In the term «enactment» it is included statute and subsidiary legislation - (*Christodoulou v. The Republic*, 1 R.S.C.C. 1; *Spyrou and Others v. The Republic*, (1973) 3 C.L.R. 627). 10

The legal principles governing questions relating to regulations alleged to be ultra vires have been summed up in the case of *Papaxenophontos and Others v. The Republic*, (1982) 3 C.L.R. 1037, at p. 1047, as follows:- 15

«A sub-judice decision has to be annulled and be declared to be null and void and of no effect whatsoever if it was based on an invalid enactment - (*Christodoulou v. The Republic*, 1 R.S.C.C. 1; *Spyrou & Others v. The Republic*, (1973) 3 C.L.R. 627). 20

The legislature can, without impairing its sovereignty, authorise other bodies to legislate. Delegated legislation must be intra vires the enabling statute. 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 relevant enabling enactment. If delegated legislation interferes with a fundamental right, such as the right to property, any doubt arising as to the ambit and effect of the relevant enactment must be resolved in favour of the liberties of the citizen - (*Fina (Cyprus) Ltd. v. The Republic*, 4 R.S.C.C. 26; *Chester v. Bateson*, [1920] 1 K.B. 829, at p. 838; *Newcastle Breweries, Ltd. v. The King*, [1920] 1 K.B. 854). 25 30 35

In examining whether or not delegated legislation is ultra vires the enabling enactment, the state of the law at the time when such enactment was passed and the changes which it was

5 passed to effect as well as the structure of such enactment as a whole, have particularly to be borne in mind - (*Utah Construction and Engineering Property Limited and Another v Pataky* [1965] 3 All E R 650) Delegated legislation may be challenged for substantive ultra vires, that is, on the ground that it goes beyond the powers granted by the legislature - (*Commissioners of Customs and Excise v Cure and Deeley Ltd* [1962] 1 Q B D 340)»

10 (See, also, *Stavrou v The Republic*, (1976) 3 CLR 66, *Menicos v The Republic*, (1983) 3 CLR 1130, *Ethnicos v KOA*, (1984) 3 CLR 1150, *Lefkatis and Others v The Republic*, (1985) 3 CLR 1372)

15 In most modern statutes, the practice is to confer rule-making power by one general provision empowering the rule-making authority to make rules «for carrying out the purposes of the law» followed by the enumeration of certain particular matters regarding which rules may be made «without prejudice to the generality of the foregoing power» In such a case, it has been held that the specific enumeration does not circumscribe the general power conferred to make any rules provided they are required for carrying out the purposes of the Law and they are consistent with the provisions of the Law Any rule which comes within the scope of the general power would be valid - (*Ross-Clunis v Papadopoulos*, 23 CLR 71)

25 The empowering Law is the Government Waterworks Law, as amended by Laws No 129/68, 51/72 and 1/77 The powers of the Council of Ministers, as set out in Section 4, include, inter alia, the power given by paragraph (e) -

30 «(ε) να καθορίζη διά κανονισμών τα καταβλητέα δικαιώματα και τέλη εις αντάλλαγμα του υπό της Δημοκρατίας παρεχομένου ύδατος, η της ωφελείας του παρεχομένου ύδατος, ή οιασδήποτε άλλης ωφελείας προσγενομένης υπό του ύδατος ή οιουδήποτε υδατικού έργου, και γενικώς των υπό της Δημοκρατίας παρεχομένων υπηρεσιών σχετικών με τας παροχάς ταύτας».

35 «(e) To fix by regulations the fees and rates payable in consideration of the water supplied by the Republic or the benefit accruing from the water supply or any other benefit accruing from the water or any waterwork and in general of

the services rendered by the Republic relating to such supplies»)

The material part of Section 24 as substituted by Section 15 of Law No 129/68 reads -

«(24) (1) The Council of Ministers *may* make Regulations for carrying out the purposes of this Law 5

(2) In particular and without prejudice to the generality of Subsection (1) such Regulations may include provisions -

(a) fixing the maximum fees rates and any other money consideration, which may be levied or collected on or from any person by virtue of this Law such fees rates or other money considerations 'δυναμένων να καθορισθωσι', which may be fixed, either per donum of land, or according to kind of crop, or according to the volume or time of the water supplied or used or according to the benefit accruing or capable of accruing to any person or any property by the water or any waterworks 10 15

Provided that in such fixing regard shall always inter alia, be had to-

(i) interest on capital expended, 20

(ii) adequate provision for a sinking fund and insurance of the works,

(iii) cost of repair and maintenance and administration of the works,

(b) establishing a fund wherein shall be deposited all fees, rates and other monies and monetary penalties in respect of any waterwork, any manner of disposal of such sums and generally the manner of operation and control of such fund, 25

(c) prescribing the powers and procedure to be followed by the Water Commissioners in the preparation and revision of the Specification referred to in the provisions of this Law, 30

(d) prescribing anything which under this Law may be prescribed»

It is the contention of counsel for the applicants that «the 1980 Regulations» are ultra vires the enabling Law as they provide that the fee payable for the connection of any property with the water supply of Amathus Waterwork would be assessed «per donum of 35

property according to the Town Planning Zone to which such property belongs» and in addition the «additional connection fee of £100 for 100 square meters of the total floor area of the storeys of the proposed building or rateably for part of such area». This  
5 contravenes the enabling statute in that -

- (i) the Law does not give the right to differentiate between donums of land;
- (ii) the Law does not give the right to calculate the fee on the basis of the floor area of the buildings to be erected; and/or,
- 10 (iii) the Law does not give the right to combine such methods which ought to have been applied in the alternative.

As we have said earlier, the Council of Ministers under Section 4 has the power to fix by regulations the fees and rates payable in consideration of the water supplied by the Republic or the benefit  
15 accruing from the water supplied or any waterwork and in general of the services rendered by the Republic relating to such supplies.

Subsection (1) of Section 24 is cast in very general terms. It empowers the Council of Ministers to make regulations for carrying out the purposes of the present Law. The detailed  
20 provision of Subsection (2), which does not relate only to the fixing of the fees or duties but to other matters as well, are without prejudice to the generality of the enabling power given by Subsection (1). Therefore, according to the decision of the Privy Council in the *Papadopoulos* case (*supra*), any rule which comes  
25 within the scope of the general power is valid, provided it is required for carrying out the purposes of the Law and it is consistent with the provisions of the Law.

The function of Subsection (2) of Section 24 is merely an illustrative one; the rule-making power is conferred by Subsection  
30 (1) and the provisions of Subsection (2) are not restrictive of Subsection (1), as indeed is expressly stated by the words «without prejudice to the generality of Subsection (1)».

The challenged Regulations are necessary for the carrying into effect of the Law.

35 With regard to their consistency with the Law, I shall deal further when dealing with point (b).

Even assuming that the general power for rule-making given to the Council of Ministers by Subsection (1) does not control the

detailed provisions in Subsection (2) again «the 1980 Regulations» are intra vires Regulation 2(a) provides that the fees and rates and any other money consideration may be fixed («δυναμειων να καθορισθώσι») either by donum of land, or rateably to the benefit which accrues or may accrue to any person or any ownership by the water or any waterwork If this last criterion - the criterion of benefit - is taken into consideration, then the extent of the land and the zone in which it is situated as well as the area of the building standing or proposed to be erected thereon have to be taken into consideration The benefit to the person or ownership by the supply of water in the cases of land developed for building purposes in a highly developed tourist area, as the area of the Improvement Board of Amathus depends on and is proportionate to the area and the zone in which the land is situated as well as the area of building erected or proposed to be erected «Προτεινομένου» in the Regulation means building for purposes of connection with the water supply of the waterwork It makes no difference if the building actually exists at the time of the approval of the connection or it is proposed to be erected thereon The Regulations are within the power delegated by the Law to the Council of Ministers, they are intra vires the Law

*(b) PROVISO TO SECTION 24(2)*

According to the proviso to section 24(2)(a), in fixing the maximum fees and rates regard shall always be had, inter alia, to -

- (i) interest on capital expended,
- (ii) adequate provision for a sinking fund and insurance of the works, and,
- (iii) cost of repair and maintenance and administration of the works

No material whatsoever was placed before the Court to substantiate the allegation that the fees imposed for connection are beyond the limitations imposed by the Law It is further to be observed that the considerations enumerated in the proviso, as expressly stated therein, are not exhaustive The words «μεταξύ άλλων» «(inter alia)» cannot be ignored and must be given full effect

This ground fails It follows that the basis of the power conferred by the statute was not transgressed by the rule-making authority

(c) ARE THE FEES OF DESTRUCTIVE OR PROHIBITIVE NATURE CONTRARY TO ARTICLE 24.4. OF THE CONSTITUTION;

5 The next point that falls for determination is whether the imposition for payment of «connection fee» under the Law and the Regulation is «φόρος, τέλος ή εισφορά οιασδήποτε φύσεως» («tax, duty or rate of any kind whatsoever») that comes within the provision of Article 24 of the Constitution, and then whether this connection fee, if within the ambit of Article 24, is of destructive or  
10 prohibitive nature.

The nature of taxation in its wide sense falling within Article 24 has been considered in *Constantinides v. The Electricity Authority of Cyprus*, (1982) 3 C.L.R. 798, and *Apostolou and Others v. The Republic*, (1984) 3 C.L.R. 509.

15 The distinction between a fee for services and tax is plain. Latham, C.J., in *Mathews v. Chickory Marketing Board*, 60 C.L.R. 263, 276, said:-

20 «A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not a payment for services rendered».

In *Shirur Mutt Case- Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, (1954) S.C.R. 1005, (54) A.S.C. 282, Mukherjea, J., referring to taxation, said:-

25 «The second characteristic is that it is a public impost without any reference to services rendered, which is expressed by saying that a tax is imposed for the purpose of general revenue, and its object is not to confer any special benefit upon any particular individual and consequently  
30 there is no element of quid pro quo between the taxpayer and the public authority. A fee is generally defined to be a charge for a special service rendered to individuals by some governmental agency and is supposed to be based on the expenses incurred in rendering the service, though in many  
35 cases, the costs are arbitrarily assessed».

The reason for the payment in the case of fees is the special benefit accruing to the individual; in the case of tax, the particular advantage, if it exists at all, is an incidental result of state action. The collections of the fees in the case of waterworks do not merge



with the general revenue but they are set apart for the particular purpose. Therefore, the connection fees are not taxation in the sense of Article 24 of the Constitution and the constitutional provisions regarding taxation - Article 24 - are not applicable.

Assuming, however, that the connection fees were taxation, in the circumstances of the present cases it cannot be said that the applicants have discharged the onus of satisfying the Court beyond any reasonable doubt that the fees provided by «the 1980 Regulations» and which were imposed on each one of the applicants - connection fees - offend against Article 24.4 of the Constitution which excludes the imposition of destructive or prohibitive taxation.

(d) *DISCRIMINATION:*

It was submitted on behalf of the applicants that the method of imposition of the said fee amounts to invidious discrimination and/or infringes the doctrine of equality and is, therefore, repugnant to Articles 24.1 and 28 of the Constitution.

The burden of proving the unconstitutionality of a Law is upon him who raises it - (*The Board for Registration of Architects and Civil Engineers v. Kyriakides*, (1966) 3 C.L.R. 640, and particularly at pp. 654, 655, 664, 665).

The basic principles which govern the examination of the constitutionality of taxing laws by this Court have been exhaustively expounded in a number of cases by reference to the caselaw of other countries and in particular of that of the Supreme Court of the United States of America - (See, inter alia, *HadjiKyriacou v. The Republic*, 5 R.S.C.C. 22; *Andreas Matsis v. The Republic*, (1969) 3 C.L.R. 245; *Demetriades v. The Republic*, (1977) 3 C.L.R. 213; *Ioannides v. The Republic*, (1977) 3 C.L.R. 297; *Antoniades and Others v. The Republic*, (1977) 3 C.L.R. 641; *Singer Sewing Machine Co. v. The Director of the Department of Inland Revenue*, (1978) 3 C.L.R. 71).

In *Antoniades and Others v. The Republic*, (supra), at p.655, the position was summed up as follows:-

«The basic principles that can be deducted from them are that when the constitutionality of a law imposing taxation is attacked on the ground that it infringes the principle of equality, the legislative discretion is allowed great latitude in view of the complexity of fiscal adjustment and that in taxation

5 matters there is a broader power of classification by the legislation than in the exercise of legislative power in other fields. Moreover, absolute equality in taxation cannot be obtained, it is not required by the principle of equality and that in matters of taxation the State is allowed to pick and choose districts, objects, persons, methods and even rates of taxation»

10 Hence a taxation will be struck down as violative of Article 28 if there is no reasonable basis behind the classification made by it. If a special or local assessment is actually made on the basis of benefit, there should not be any palpable discrimination amongst the subjects to be taxed without regard to the degree of the benefit - (*Road Improvement Dt v Missoun R C*, 274 U S 188)

15 Whenever the Law operates alike upon all persons and property, similarly situated, equal protection cannot be said to be denied - (*Thomas Walston v Joseph Nevin*, (1888) 128 U S 578)

20 The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it. It is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value - (*Allied Stores v Bowers*, (1959) 358 U S 522, at p 527)

25 In the present cases the fees are based on objective, reasonable criteria - the extent of the land, the zone within which it is situated and the area of the building standing or proposed to be erected thereon. The classification made does not violate the principle of equality as the difference in treatment is a distinction that has objective and reasonable justification. It has to be observed that these criteria are of general application for all the owners within  
30 the area of the supply of Amathus Waterwork

For all the foregoing reasons all cases with the exception of Cases No. 394/80, 408/80 and 98/82, with which the Court will presently deal, will be dismissed

I turn now to these last numbered cases.

35 CASE No 394/80.

The applicants in this case are the registered owners of a plot of land under Registration No. 9578 situated on the main Limassol - Nicosia road, within the Improvement Area of Amathus, of an extent of 15 donums, 1 evlek and 2,800 sq ft

By Application B424/79 they applied for the issue of a building permit for the erection of a hotel. The appropriate authority - the Improvement Board of Amathus - approved the said application and granted the building permit applied for, and by letter dated 11.3.80 communicated this to the applicants. 5

One of the conditions imposed was the payment of £30,380.- to the fund of the District Officer as water supply fees. The applicants paid on 11.3.80 the aforesaid amount and receipt voucher, exhibit No. 3A, was issued to them. It emerges clearly from the receipt and from a letter dated 1.9.80, exhibit No. 6, that the aforesaid amount was collected as «connection fees» with the Government Waterwork of Amathus and that the calculation and the imposition were made in accordance with the provisions of «the 1980 Regulations» to which reference has been made hereinabove and which are described in the letter, exhibit No. 6, as «K.Δ.Π. 104/ 80». 10 15

The applicants, being in dire need of the issue of the building permit, paid under protest the aforesaid amount and later they protested and claimed the refund of the whole or a substantial part thereof. Their such petition was turned down and by letter dated 1.9.80 they were informed that this was the connection fee with the Government Waterwork of Amathus. 20

The applicants by means of this recourse seek the annulment of the decision contained in the letter dated 1.9.80 and declaration that the said imposition and collection were null and void and of no effect. 25

Under the Streets & Buildings Regulation Law, Cap. 96, as amended by Law No. 13/74, the appropriate authority shall have power on granting a permit with regard to the erection of a new building to impose, inter alia, a condition for the supply of adequate and suitable water - (section 9(1)(b)(xi)). The appropriate authority shall not grant any permit under Section 3, unless it is satisfied that the applicant has complied with the provisions relating to the supply and provision of water contained in this or any other Law or in any Regulations in force for the time being - (Section 9(3)(b), as amended by Law No. 13/74). 30 35

Section 4(1) of the same Law provides that-

«No permit shall be granted under Section 3 of this Law unless the appropriate authority is satisfied that the

contemplated work or other matter in respect of which the permit is sought is in accordance with the provisions of this Law and the Regulations in force for the time being»

5 The application for building permit was submitted in 1979. The building permit was granted on 11.3.80. The appropriate authority - the Improvement Board of Amathus - was duty-bound under the Law to be satisfied that the applicants complied with the provisions relating to the supply and provision of water.

10 At the material time the relevant Regulations in force were the Government Waterwork for the Supply of Water to the Area of the Improvement Board of Amathus (Grant of Right of Connection with the Water Supply) Regulations 1979, Notification No. 56/79, published in the Official Gazette on 30.3.79.

15 Regulation 3 fixed the connection fee at £500 - per donum or rateably for part thereof. This amount was payable to a person authorised by the Committee of the Waterwork composed of the Director-General of the Ministry of Interior or his representative as Chairman, the Director-General of the Ministry of Finance, the Director-General of the Ministry of Agriculture and Natural Resources and the Director-General of the Ministry of Communications and Works or their representative. The District Officer was the representative of the Chairman.

25 The aforesaid Regulation was repealed and substituted by «the 1980 Regulations» which were published in the Official Gazette and came into force on 16.5.80. At the bottom of «the 1980 Regulations» we read «Done on 24th April, 1980».

30 It is apparent that the calculation and the imposition for the connection fee was made on the basis of regulations which were not existent at the time. Probably they were in the making at the office of the District Administration of Limassol even before 24.4.80, but a Regulation, being a public instrument, comes into operation on the date of its publication in the Gazette unless otherwise provided for. (See s. 7 of the Interpretation Law).

35 The sub-judice decision and the consequential collection of the amount of £30,380 - was contrary to Law and, therefore, null and void.

It was within the competence of the proper Authority to impose and collect an amount of £500 - per donum and rateably per part thereof. The sub-judice decision will, therefore, be annulled. It is

to be noted, however, that the general principle is that the application of the applicants and the imposition and collection of the connection fees have to be made in accordance with the legal situation existing at the time of the sub-judice decision and, therefore, any connection fees by any new decision have to be in compliance with the regulations in operation on 11.3.80. The payment of the connection fees was a condition imposed lawfully on granting the permit. The rate, however, was calculated on the regulation that was not in force at the time. 5

Before concluding, I have to observe that counsel for the respondents rightly did not contend that the payment of the fees, in the circumstances of this case, was an acceptance of the challenged decision which disentitled the applicants from resorting to the administrative Court for its annulment. 10

*CASE NO. 408/80:*

in this case the applicant is the owner of two pieces of land under Plots Nos. 232/1 and 232/2 of Sheet/Plan LIV/45, situated on the main Limassol - Nicosia road, within the Improvement Area of Amathus, under Registration No. 8294, of an extent of 8 donums, 3 evleks and 2,850 sq. ft. 15 20

The applicant by Application B. 342/79 applied for a building permit for the erection of five multi-storey buildings. The appropriate authority - the Improvement Board of Amathus - approved the grant of this permit and communicated this decision to the applicant by letter dated 13.2.80, exhibit No.2. The applicant was requested to pay the fees under the Streets & Buildings Regulations which he did on 14.2.80. Nevertheless, the permit was not issued to him. 25

On 29.4.80 letter, exhibit No.4, emanating from the District Administration of Limassol, was sent to the applicant whereby he was asked to deposit £17,625. - to the District Treasury for water supply and £460.- to the Improvement Board of Amathus for electrification. By letter of his counsel dated 18.7.80, exhibit No. 5, the applicant protested. He claimed that no condition was imposed; that he paid the prescribed fees and requested for the issue and delivery to him of the building permit for which nothing was left to be done. By letter dated 26.8.80, exhibit No. 6, the District Officer as Chairman of the Improvement Board Amathus 30 35

replied that the payment of the aforesaid fees was a prerequisite for the issue of the building permit.

5 The applicant by means of this recourse seeks the annulment of the decision to impose the aforesaid water and «electrification fees» as the payment of such fees is illegal and contrary to Law and the decision of the Administration was made in excess and/or in abuse of power.

10 The allegations about the invalidity of «the 1980 Regulations» raised in the other applications were submitted also in this case. The decision of the Court in the other cases constitutes a complete answer.

15 Counsel for the applicant submitted that the decision to grant the building permit became a final administrative executory act on the payment of the fees for the building permit on 14.2.80. It could not be altered or completed later; no further conditions could be imposed; at the material time no law or regulation empowered the respondents or any of them to impose or demand payment of the connection fees.

20 Counsel for the respondents submitted that on 9.2.80 the application for a building permit had been approved. The applicant was notified by letter dated 13.2.80 and on 29.4.80 he was requested to pay the connection fees so that the appropriate building permit would be granted

25 I need not repeat what was said earlier in this judgment with regard to the legal aspect relating to the water supply and the connection fees when dealing with Case No. 394/80.

30 The appropriate authority could not approve the issue or granting of a building permit unless satisfied about the compliance with the provisions of the relevant legislation for adequate water supply and compliance with the provisions of the Law and Regulations. Though in the printed letter of 13.2.80 the condition for the payment of the connection fees was not included, the applicant cannot validly assert that such a condition was not imposed at the time of the decision for the approval of the building permit - 9.2.80. The printed letter of 13.2.80 is not the decision. 35 The omission to request the applicant by this letter of 13.2.80 to pay the connection fees is not fatal for the Administration.

The fees were calculated under «the 1980 Regulations» which were non-existent at the material time as they came into operation on the date of their publication in the Official Gazette on 16 5 80. The fact that they «were done on 24 4 80» as printed in the Gazette, does not make them operative as from that date. The material date for the present case is 13 2 80. Even if it were 29 4 80, which could not be, there is no difference. 5

This case with regard to the water fees follows the decision in Case No 394/80.

It is plain that the water supply and the electrification were conditions imposed on the granting of the permit though they were not communicated to the applicant in the letter of 13 2 80. 10

*CASE No 98/82*

In this case the applicant is the owner of a piece of land under Plot No 249/1, Sheet/Plan LIV/45, situated within the Improvement Board of Amathus, on the main Limassol - Nicosia road, under Registration No 8516, of an extent of four donums and 2,000 sq ft within the Town Planning Zone B 3. 15

The applicant applied for the issue of a building permit with respect to extensions and additions to his house situated on the said land. Now plans were requested by the respondent No 2 which were submitted by applicant's architect on 19 3 81. 20

On 9 12 81 the Chairman of the Committee of Amathus Waterwork by letter, exhibit No 2, informed the applicant that with regard to his application for a building permit, the Committee of Amathus Government Waterwork decided to grant to him water and that the connection fees amounted to £3 960 - which he was requested to pay at the District Treasury. 25

The calculation was made on «the 1980 Regulations»

In view of what was said earlier about the statutory provisions in the Streets & Buildings Regulation Law and «the 1980 Regulations» in connection with the other cases, this recourse fails. 30

In the result Cases No 502/81, 91/82, 92/83, 93/82, 94/82, 95/82, 96/82, 97/82, 98/82, 99/82, 100/82, 102/82, 108/82, 127/82 and 128/82 are hereby dismissed. The sub-judice 35

**3 C.L.R. Hara Hotels v. Republic Stylianides J.**

decisions are hereby confirmed

The sub-judice decisions in Cases No 394/80 and 408/80 with regard to the connection fees for the supply of water are declared null and void and of no effect whatsoever

5 Let there be no order as to costs

*Sub judice decision in  
Cases Nos 394/80 and 408/80  
annulled All other cases  
dismissed No order as to costs*