

1982 May 14

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KYRIACOS PAPASAVVAS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF LABOUR AND SOCIAL INSURANCE,
Respondent.

(Case No. 165/81).

5 *Social Insurance—Social Insurance Scheme—Contributor—Date of
birth—Commencement of pensionable age—Acceptance of date
of birth, as declared by an insured person when joining the Scheme
and supported by a valid certificate of birth issued under the Births
and Deaths Registration Laws, is both proper and legal—Decision
of respondent Minister not to change applicant's date of birth,
as declared by him, by moving it by 13 days on account of the
10 difference between the old and new ca.endars upheld—Decision
refixing date of public officers' date of birth for pension purposes
under the Pensions Law, Cap. 311 does not apply to pensions
under the Social Insurance Scheme.*

15 *Date of birth—New calendar—Old Calendar—Births and Deaths
Registration Law (Law No. 16 of 1895)—Repeal and replace-
ment of, by law 8 of 1947—Saving in section 30 of the latter
law that every registration or register sheet made or kept under
the repealed laws and every registration or entry made thereunder
would be deemed to have been made or kept under its provisions—
20 Registration of applicant's date of birth which was made under
the Laws in force at the time of his birth in 1917, and when the
old calendar was in force, has under the saving provided by the
said section 30, to be treated as a registration made under Law
8 of 1947 which remained in force until repealed and replaced
by law 85 of 1973, which again has a similar but more elaborate
saving in its section 48.*

When the applicant became a contributor to the Social Insurance Scheme in 1957 he declared as his date of birth the 1st October, 1917. By letter dated the 9th December, 1980 he submitted an official birth certificate, on which there appeared as his date of birth the 1st October, 1917 and asked that that date be moved by 13 days on account of the difference between the old and new calendars, so that the 14th October, 1917 would be considered as the correct date of his birth. The respondent refused to accede to the application and hence this recourse. 5

By means of a decision dated the 30th October, 1975 the council of Ministers decided to approve, for the purposes of fixing the date of the compulsory retirement of the civil servants, who were born before the 10th March, 1924 (the date the new calendar was introduced) under the Pensions Law, Cap. 311, the re-fixing of the date of their birth by thirteen days later. The reason for which applicant was applying for the change of the date of his birth was that he would, by virtue of section 18(2)* of the Social Insurance Law, 1980, be granted special credits given to insured persons, who on the 6th October, 1980 were over fifty and below sixty-three years of age. 10 15 20

Held, (1) that the decision of the Council of Ministers is a decision relating to the Pensions Law, Cap. 311 and the compulsory retirement thereunder of Civil servants and not a decision affecting the date of birth and the certificates issued under the Births and Deaths Registration Laws in general; that the claim of the applicant that this decision applies also to a pension under the Social Insurance Scheme, cannot stand when one connects the term compulsory retirement of Civil Servants with reference to the Pensions Law, Cap. 311. 25

(2) The Births and Deaths Registration Laws commenced with Law No. 16 of 1895, which with certain amendments remained in force until the 1st January 1948, when it was repealed and replaced by the Births and Deaths Registration Law 1947, (Law No. 8 of 1947,) which is to be found also as Cap. 49 in the Statutes of Cyprus, revised edition of 1949; that section 30 of this latter Law, made a saving that every registration or register sheet made or kept under the repealed Laws and every registration or entry made thereunder, would be deemed to have been made or kept under its provisions; that, consequently, 30 35

* Section 18(2) of the law is quoted at p. 550 post.

5 the registration of the birth of the applicant which was made
under the Laws in force at the time of his birth in 1917, has
under the saving provided by the said section 30, to be treated
as a registration made under Cap. 49 which remained in force
10 until repealed and replaced by Law 85 of 1973, which again has
a similar but more elaborate saving in section 48; that the res-
pondents have been for all intents and purposes treating as the
date of birth of an insured person the date appearing on the
official birth certificate submitted by him and that that has been
15 the practice in all cases; that this Court has not been referred
to any authority on the subject for adding thirteen days to the
date of birth as recorded in the official records and is not prepared
to rule that the approach of the respondents was wrong once
by virtue of the saving provisions of the Laws that repealed
and replaced the Law under which the registration of the birth
of the applicant was made, any registration made under the
provisions of the Law in force in 1917 when the registration of
the birth of the applicant was made, should be treated as having
been made under the Laws in force now.

20 *Held*, further, that the Social Insurance Scheme functions
since 1957 and the date of birth of a contributor has always been
of great importance for the safeguard of the rights of the insured;
that it is also important for the date of the commencement
25 of the pensionable age of an insured person and of course since
the new Law for the grant of special credits to persons who on
the 6th October 1980 were between 50 and 63 years of age;
that the acceptance of the date of birth as declared by an insured
person when joining the scheme and supported by a valid certi-
30 ficate of birth issued under the Laws is both proper and legal
and establishes a certainty both for the insured as well as for
the fund regarding their respective rights, obligations and burdens
under the Law.

Application dismissed.

Recourse.

35 Recourse against the refusal of the respondent to change
applicant's date of birth from 1st October, 1917 to 14th October,
1917.

Ch. Ierides, for the applicant.

40 *R. Gavrielides*, Senior Counsel of the Republic, for the
respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks (a) a declaration of the Court that the refusal and/or omission of the respondent, to recommend for the purposes of the Social Insurance Law, 1980 (Law 41/80) (hereinafter to be referred to as the Law), as his date of birth the 14th October 1917, is null and void and of no effect whatsoever; (b) a declaration of the Court that the decision and/or act of the respondent not to change the date of birth of the applicant from the 1st October 1917 to the 14th October 1917, and his nonacceptance, that the applicant falls within the provisions of section 18(2) of the Law, is null and void and of no effect whatsoever.

When the applicant became a contributor to the Social Insurance Scheme in 1957 he declared as his date of birth the 1st October, 1917. By letter dated the 9th December 1980, the applicant submitted an official birth certificate, issued by the District Officer Kyrenia in 1947, and on which there appears as his date of birth the 1st October 1917 and asked that that date be moved by 13 days on account of the difference between the old and new calendars, so that the 14th October 1917 would be considered as the correct date of his birth. He stated in the said letter that the reason for which he was asking for the change of the date of his birth was that he would be granted special credits given to insured persons, who on the 6th October 1980 were over fifty and below sixty-three years of age. This he asked should be done in accordance with the government practice adopted since a long time that the date of birth for official purposes of those born before the 10th March 1924 is moved forward by thirteen days, which in this case would have been, as already mentioned, the 14th October 1917. Obviously, this was based on the provisions of section 18(2) of the Law, which reads as follows:

“(2) Every insured person who on the appointed day was between 50 and 63 years of age shall be credited with insurable earnings in the upper part of insurable earnings for every week for which a contribution has been paid by or credited to him under the repealed Law falling in the period between the date on which he reached the age of 50 years and the appointed day”.

The Director of the Social Insurance Services, by letter dated

the 5th January 1981, informed the applicant, in reply to his aforesaid letter, that for the purposes of the Social Insurance the correct date of his birth was the 1st October 1917, as he had declared it to be at the time he became a contributor and as
 5 appearing in the certificate submitted by him. He was further informed that if he was dissatisfied from that decision, he could appeal to the Minister within 15 days therefrom.

The aforesaid decision was taken under the provisions of section 76(1) of the Law, which in so far as relevant provides:

10 "76(1) If any question arises as to—

(h) which is the correct date of birth of an insured person;

15 that question shall, subject to the provisions of this section, be determined by the Director".

The applicant, through his counsel, on the 14th January 1981 appealed under section 78 of the Law to the Minister and relied therein for the change of the date of his birth to the long adopted Government practice which was applied by the Department of Administration and Personnel of the Republic for all
 20 civil servants for all official purposes and that the same should be followed in his case. The decision of the Minister was communicated to the applicant through his counsel by letter dated the 11th April 1981, where it is stated that when the
 25 applicant became a contributor to the Social Insurance Scheme in 1957, he declared as his date of birth the 1st October 1917, and that that date was confirmed by the certificate of birth which was submitted to the Department of Social Insurance and it was added that in view of that and the fact that no new
 30 element had been produced to justify a change in the date of his birth, the decision of the Director of the Social Insurance Services, could not be reviewed. As it appears in a memorandum prepared by the said Director for use by the Minister (paragraphs 4 and 6 of red 7, exhibit 2), with regard to the difference
 35 between the old and new calendars, since the date the new calendar was adopted there is no addition of thirteen days to those born before the date of the adoption of the new calendar and that the District Officer issues birth certificates for all those born before 1924, that is the date appearing in their registers.

Also that the Social Insurance Scheme functions since 1957, and the date of birth has always been of a substantial importance for the insurance of the rights of the insured persons and that the date of birth is important in relation to the commencement of the old age pension and under the new Law for the grant of the special credits; that since 1957 they accepted as the date of birth of the insured persons, who were born before 1924, the dated of birth which was registered under the old calendar without any change; that thousands of decisions were taken on this basis and that any change to this practice would result to chaos, thus they would have to review tenths of thousands of decisions that were taken on that basis. 5 10

By decision No. 14.378, dated the 30th October 1975, the Council of Ministers decided to approve, for the purposes of fixing the date of the compulsory retirement of the Civil Servants who were born before the 10th March 1924, (the date the new Calendar was introduced) under the Pensions Laws, the refixing of the date of their birth by thirteen days later, in the cases where this was not done. 15

It is obvious that this is a decision relating to the Pensions Laws and the compulsory retirement thereunder of Civil servants and not a decision affecting the date of birth and the certificates issued under the Births and Deaths Registration Laws in general. The claim of the applicant that this decision applies also to a pension under the Social Insurance Scheme, cannot stand when one connects the term compulsory retirement of Civil servants with the reference to the Pensions Law, Cap. 311. The Births and Deaths Registration Laws commenced with Law No. 16 of 1895, which with certain amendments remained in force until the 1st January 1948, when it was repealed and replaced by the Births and Deaths Registration Law 1947, Law No. 8 of 1947, which is to be found also as Cap. 49 in the Statutes of Cyprus, revised edition of 1949. Section 30 of this latter Law, made a saving that every registration or register sheet made or kept under the repealed Laws and every registration or entry made thereunder, would be deemed to have been made or kept under its provisions. Consequently the registration of the birth of the applicant which was made under the Laws in force at the time of his birth in 1917, has under the saving provided by the said section 30, to be treated 20 25 30 35 40

as a registration made under Cap. 49 which remained in force until repealed and replaced by Law 85 of 73, which again has a similar but more elaborate saving in section 48 as the one provided in section 30 of Cap. 49 and section 28 in Cap. 275.

5 It has been usual to refer to these two Calendars as the old and the new one, but it is more accurate to refer to the old one as the Julian, and to the new one, as the Gregorian Calendar, which as stated in Halsbury's Laws of England, third edition
10 Volume 37, paragraph 134 footnote (e) "was adopted in every country in Christendom, including Scotland, but excepting England and the countries in which the Orthodox or Greek Church was recognised". The consequence was that during the 17th century and the first half of the 18th there was an entire want of harmony between the system prevailing
15 in England and that prevailing in the greater part of Europe". The Gregorian Calendar was adopted in England in 1750 by the Calendar (New Style) Act of that year which had for its object the assimilation of the English Calendar to the Calendar recognized in other parts of Europe. In fact that was the
20 official Calendar used in Cyprus by the State, although the Greek Orthodox Church only adopted it as from the 10th March 1924.

With these observations on the history of the Calendars I shall proceed more to examine the arguments advanced on
25 behalf of the applicant, which are to the effect that he, having been born on the 14th October 1917, he would satisfy the provisions of subsection 2 of section 18 of the Law inasmuch as he would be an insured person, who on the appointed day, that is the 6th October 1980, was between 50 and 63 years of age,
30 whereas if the 1st October 1917, is treated as his date of birth, he will not be entitled to the said credits, the completion of his 50th year of age not being possible unless his date of birth is moved to the 14th October 1917. It was argued that under section 2 subsection 2 of the Law a person shall be deemed to
35 be over any age if he has reached that age and that the applicant will reach that age on the 14th of the month and not on the 1st of the month as specified in his birth certificate.

It appears that the respondents have been for all intents and purposes treating as the date of birth of an insured person

the date appearing on the official birth certificate submitted by him and that that has been the practice in all cases.

I have not been referred to any authority on the subject for adding thirteen days to the date of birth as recorded in the official records and I am not prepared to rule that the approach of the respondents was wrong once by virtue of the saving provisions of the Laws that repealed and replaced the Law under which the registration of the birth of the applicant was made, any registration made under the provisions of the Law in force in 1917 when the registration of the birth of the applicant was made, should be treated as having been made under the Laws in force now. 5 10

The Social Insurance Scheme functions since 1957 and the date of birth of a contributor has always been of great importance for the safeguard of the rights of the insured. It is also important for the date of the commencement of the pensionable age of an insured person and of course since the new Law of the aforementioned grant of special credits to persons who on the 6th October 1980 were between 50 and 63 years of age. The acceptance of the date of birth as declared by an insured person when joining the scheme and supported by a valid certificate of birth issued under the Laws is both proper and legal and establishes a certainty both for the insured as well as for the fund regarding their respective rights, obligations and burdens under the Law. 15 20 25

For all the above reasons this recourse is dismissed but in the circumstances I make no order as to costs.

Application dismissed. No order as to costs.