

1985 August 2

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

LOUCAS GEORGHIOU KARYDAS,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF LABOUR AND
SOCIAL INSURANCE,
2. THE SOCIAL INSURANCE OFFICER,

Respondents.

(Case No. 184/73).

*Constitutional Law—Equality—Article 28 of the Constitution
—The Termination of Employment Law 24/1967, s.17—
Whether the provisions of this section are repugnant to
or offend against the provisions of Article 28 of the
Constitution.*

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On the 1.2.1973 applicant's employer liquidated his business and terminated the employment of all his employees, including the applicant, under circumstances giving to the applicant the right to payment from the Redundancy Fund.

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The applicant submitted a claim in this respect under the provisions of the Termination of Employment Law, 1967. By letter dated 15.3.1973 respondent 2 informed the applicant that his application was only partly approved and that he would receive a sum of £53,865 mls from the Fund, representing the difference between the amount to which the applicant would be entitled with reference to the Fourth Schedule of the Law and the amount, which the applicant had already collected and which represented his employer's contribution to a Provident Fund, esta-

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blished by an agreement dated 7.1.1967 between applicant's former employer and all the latter's employees.

5 Counsel submitted that the net result of the provisions of s.17* is that, if the amount representing the employer's contributions received by an employee from the Provident Fund, is higher than the amount he is entitled to under the provisions of Law 24/67, he receives the whole of the redundancy payment and that when such amount is less than the amount he is entitled to under the Law he receives 10 only the difference between the two amounts from the Redundancy Fund, which amounts to unequal treatment.

15 With reference to paragraph (b) of sub-section (3) of the above section Counsel further argued that if the employee collects from the Redundancy Fund the whole of the amount he is entitled to by reference to the Fourth Schedule the employer will in any case be bound, under the collective agreement between him and his employees, to pay also the whole amount due under the Provident Fund and not only the difference between the two.

20 *Held, dismissing the recourse* (1). The effect of section 17* of the Termination of Employment Law 24/1967 is that where because of redundancy an employee is entitled to the payment of any sum in relation to his employment with an employer (hereinafter referred to as the Employment Fund payment, which term will not include the employee's contributions and any interest thereon) as well as to payment by reference to the fourth Schedule of the Law (hereinafter referred to as the Redundancy Fund payment) the employee receives the greater of the two sums 25 as follows, namely in case the Employment Fund payment is equal to or less than the Redundancy Fund payment then the employee will receive the whole of the Employment Fund and the difference from the Redundancy Fund and in case the Employment Fund payment is greater 30 than the Redundancy Fund payment then he will receive the whole of the Redundancy Fund payment and the difference from the Employment Fund. 35

2) It cannot be said that the provisions of section 17

* The provisions of section 17 and of the fourth Schedule are quoted at pp. 1569-1571 post.

of the said Law are repugnant to or offend against the provisions of Article 28 of the Constitution; the treatment accorded under such provisions to all persons in the same circumstances is the same; and such difference as may occur, where the Employment Fund is greater than the Redundancy Fund and the employee by reason of any private agreement or arrangement receives in addition to the Redundancy Fund payment the whole of the Employment Fund payment (instead of only the difference between the two), is not due to the provisions of section 17 of the said Law, but to the application of such private agreement or arrangement between the employee and his employer in a manner contrary to the provisions of the above section of the Law.

Recourse dismissed. 15
No order as to costs.

Recourse.

Recourse against the decision of the respondents to the effect that the applicant was entitled to an amount of £53.865 mils from the Redundancy Fund and not to an amount of £350.740 mils. 20

P. Pavlou, for the applicant.

L. Loucaides, Deputy Attorney-General of the Republic, for the respondents.

Cur. adv. vult. 25

L. LOIZOU J. read the following judgment. The issue in this recourse is the constitutionality of s. 17 of the Termination of Employment Law, 1967 (No. 24 of 1967) and more particularly whether it offends against the equal protection safeguarded by Article 28 of the Constitution. 30

The facts are not in dispute and, so far as they are relevant for the purposes of this case, are briefly these:

The applicant was, since March, 1955, employed as a clerk at a dairy farm near Limassol. As a result of an agreement between the employer and his employees, including the applicant, a Provident Fund was set up as from the 7th January, 1967, and each employee contributed 5% of his 35

emoluments to the Fund and the employer contributed an equal amount.

5 On the 1st February, 1973, the employer liquidated his business and terminated the employment of all his employees, including the applicant, under circumstances giving to the applicant the right to payment from the Redundancy Fund.

10 The applicant submitted a claim in this respect under the provisions of the Termination of Employment Law, 1967, for redundancy payment to him (exhibit 1).

15 On the 15th March, 1973, the Insurance Officer informed the applicant by his letter of even date (Appendix "A" attached to the application) that his application was only partly approved and that he would receive a sum of £53.865 mils from the Fund which was the balance between the amount to which he would be entitled to with reference to the Fourth Schedule to the Law which was £350.740 mils and the amount of £296.875 mils which represented his employers contributions to the Provident Fund and which he had already collected.

20 It is common ground that the above amounts were correctly calculated in accordance with the provisions of s.17 of the Law and the Fourth Schedule thereto and that what is challenged is only the constitutionality of the section in question and not any error in the calculations made; in fact the respondents acting under the above provisions of the Law could not have come to any other decision.

25 As a result the applicant filed the present recourse praying for "a declaration that the decision of the respondents to the effect that the applicant was entitled to an amount of £53.865 mils from the Redudancy Fund and not to an amount of £350.740 mils is null and void and of no effect whatsoever, as being contrary to the Constitution and/or the Law and/or as being ultra vires and/or as having been taken in excess or in abuse of the powers vested in the respondents and/or as having been based on a provision of the Law which is repugnant to, or inconsistent with, the provisions of the Constitution."

The grounds of Law upon which the present recourse is based as set out in the Application read as follows:

1) The decision of the respondents that the applicant was only entitled to the payment of an amount of £53.865 mils out of the Redundancy Fund established under the provisions of The Termination of Employment Law of 1967 (Law No. 24 of 1967) and not to the amount of £350.740 mils, which is the amount he should receive as redundant by reference to the Fourth Schedule of Law 24 of 1967, is contrary to the Constitution and in particular to Article 28 thereof in that it amounts to an unequal treatment and/or constitutes a discrimination against the applicant. 5
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2) The aforesaid decision of the respondents is contrary to the provisions of Law 24 of 1967 and in particular to sections 16 and 17 and to the Fourth Schedule thereof. 15

3) The decision complained of was based on the provisions of section 17 of Law 24 of 1967 which provisions are null and void, inoperative and of no effect as being repugnant to, or inconsistent with the provisions of the Constitution. 20

4) The said section 17 of Law 24 of 1967 is unconstitutional inasmuch as it creates or allows unequal treatment or discrimination, inter alia, against redundant employees who receive from their Provident Fund amounts which are, excluding their own contributions, less than the amounts to which they are entitled by reference to the Fourth Schedule of Law 24 of 1967. 25

The only issue touched by counsel for the applicant in the course of the hearing of the recourse was the constitutionality of s. 17 of the Termination of Employment Law, 1967. He argued that the provisions of this section are repugnant to the Constitution in that they allow unequal treatment of employees who are declared redundant and receive payment from the Redundancy Fund in that some employees receive more from the Fund and some less, according to their share in the Provident Fund. 30
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Counsel submitted that the net result of the provisions

of s. 17 is that if the amount representing the employer's contributions received by an employee from the Provident Fund is higher than the amount he is entitled to under the provisions of Law 24/67 he receives the whole of the re-
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dundancy payment and that when such amount is less than the amount he is entitled to under the Law he receives only the difference between the two amounts from the Redundancy Fund, which amounts to unequal treatment.

10 With reference to paragraph (b) of sub-section (3) counsel further argued that if the employee collects from the Redundancy Fund the whole of the amount he is entitled to by reference to the Fourth Schedule the employer will in any case be bound, under the collective agreement be-
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tween him and his employees, to pay also the whole amount due under the Provident Fund and not only the difference between the two.

I consider it pertinent before dealing with counsel's submission to set out the provisions of s. 17 and the Fourth Schedule to the Law as it stood at the relevant time:

20 "17 - (1) Where because of redundancy, as defined in section 18, an employee is entitled, on or after the appointed day, to any immediate redundancy payment, severance pay, gratuity or any other such lump sum
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payment granted in relation to his employment with an employer, whether this entitlement is by reason of custom, law, collective agreement, contract or otherwise, if the amount of that payment is in excess of the payment the employee would receive by reference to the Fourth Schedule then the employee shall re-
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ceive the greater of the two sums:

Provided that in calculating the amount due to the employee under this sub-section any contribution made by the employee towards such redundancy payment, severance pay, gratuity or other such lump sum pay-
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ment and any interest on such a contribution shall be discounted.

(2) Where, on redundancy, an employee is entitled to a payment as specified in sub-section (1) of this section and that payment is equal to or less than the

payment to which the employee is entitled under the Fourth Schedule, then payment shall be made to the employee as follows:-

(a) the employee shall receive from the employer or from any fund or other arrangement operated on behalf of the employer the amount due in accordance with sub-section (1) of this section: 5

(b) the difference between the amount due under the Fourth Schedule and the amount due under sub-section (1) of this section shall be paid to the employee by the Fund. 10

(3) Where an employee is entitled under sub-section (1) of this section to a greater payment than that he would receive by reference to the Fourth Schedule, then payment shall be made to the employee as follows:- 15

(a) the employee shall receive from the Fund the amount he would have received had his payment been calculated by reference to the Fourth Schedule; 20

(b) the difference between the amount calculated by reference to the Fourth Schedule and the amount due under sub-section (1) of this section shall be paid by the employer or from any fund or other arrangement operated on behalf of the employer, direct to the employee." 25

“FOURTH SCHEDULE

(Section 16 and Section 17)

1. An employee who becomes redundant within the meaning of section 18 shall receive a redundancy payment from the Fund calculated as follows: 30

(a) two weeks’ wages for each period of fifty-two weeks of continuous employment up to a maximum of six years;

(b) one week’s wages for each period of fifty-two weeks of continuous employment in excess of 35

six years up to a maximum of twenty years' service in all.

2. No payment shall be made in respect of any employment before the 1st January, 1960.

5 3. The length of the period of employment and whether or not the employment has been continuous shall be decided in accordance with the Second Schedule.

10 4. For the purposes of this Schedule, the amount of a week's wages shall be the amount the employee would be entitled to in the last week of his employment as calculated in accordance with the Third Schedule:

15 Provided that any sum in excess of £30 shall be discounted in computing the amount of a week's pay:

Provided further that the Minister may, by order, provide for a sum larger than the sum of £30 referred to above."

20 To sum up the position, it appears that where because of redundancy an employee is entitled to the payment of any sum in relation to his employment with an employer (to which I will refer as the Employment Fund payment—which term will not include his own contributions and any interest on such contributions—) as well as
25 to payment by reference to the Fourth Schedule (to which I shall refer as the Redundancy Fund Payment) the employee receives the greater of the two sums as follows:

30 In case the Employment Fund payment is equal to or less than the Redundancy Fund payment then the employee will receive the whole of the Employment Fund payment and the difference from the Redundancy Fund.

35 And in case the Employment Fund payment he is entitled to is greater than the Redundancy Fund payment then he will receive the whole of the Redundancy Fund payment he is entitled to and the difference between the Redundancy Fund payment and the Employment Fund payment will be paid out of the Employment Fund direct to the employee.

The net result of the above is that the employee, in any case, receives the greater of the two sums as provided by sub-section (1) of s. 17 and the only difference lies in the proportion that is paid from each of the two Funds. The above, of course, applies where there is in existence any scheme for payment to the employee what I have been referring to as an Employment Fund payment because otherwise the employee would, when he becomes redundant, get just the whole of what he is entitled to under the Redundancy Fund.

But learned counsel's argument in support of his case is not merely based on the provisions of the section itself but is also related to the private agreements or arrangements, where such exist, between the employers and their employees and how they are applied. Where, he argued, there is in force such agreement or arrangement and the Employment Fund payment thereunder is higher than the Redundancy Fund payment (as per sub-section (3) of s. 17) then, in spite of the provisions of the section, the employee concerned, in practice and as a result of such agreement or arrangement with his employer, in addition to the Redundancy Fund payment also receives the whole of the Employment Fund payment instead of only the difference between the two as provided by the section and this puts him in an advantageous position over employees whose Employment Fund payment is less than the Redundancy Fund payment, as in the case of the applicant, who get only a part of the Redundancy Fund.

So, quite clearly, the difference in treatment is not due to the provisions of the section but to the application of the private arrangement or scheme between the employee and his employer in a manner contrary to such provisions.

In the light of the above it does not seem to me that the provisions of the section can be said to be repugnant to or to offend against the provisions of Article 28 of the Constitution since the treatment accorded under such provisions to all persons in the same circumstances is the same; and such difference as may occur is not due to the provisions of the Law but to the way the private arrangement between the employee and the employer is applied.

Bearing all the above in mind I am not satisfied that section 17 can be said to be unconstitutional in the sense that it is repugnant to or offends against the provisions of Article 28 of the Constitution the more so since in calculating the Employment Fund payment to which an employee is entitled upon redundancy his own contributions thereto and any interest on such contributions are discounted.

In the result this recourse must fail and it is hereby dismissed. There will be no order as to costs.

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Recourse dismissed.
No order as to costs.