

1985 June 14

[L. Loizou, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

YIANNAKIS DROUSIOTIS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTRY OF LABOUR AND  
SOCIAL INSURANCE,

*Respondent.*

(Case No. 194/79).

5 *Constitutional Law—Right to a decent existence and social security—Article 9 of the Constitution—Section 44(1) of the Social Insurance Law, 1972 (Law 106/72) and regulation 3(1)(2)(b) of the Social Insurance Regulations, 1972 providing for a time-limit within which an application for old age pension should be made—Not contrary to the provisions of the above Article.*

10 *Social Insurance—Time-limit within which an application for old age pension should be made—Section 44(1) of the Social Insurance Law, 1972 (Law 106/72) and regulation 3(1)(2)(b) of the Social Insurance Regulations, 1972—“Reasonable cause” for not submitting an application within the prescribed time-limit in the proviso to the above regulation.*

15 The sole issue in this recourse was whether the provision of section 44(1) of the Social Insurance Law, 1972 (Law 106/72) and the provisions of regulation 3(1)(2)(b) of the Social Insurance Regulations, 1972, which provide for a time limit within which an application for old age pension  
20 should be made contravene the provisions of Article 9\*

\* Article 9 reads as follows:

«Every person has the right to a decent existence and to social security. A law shall provide for the protection of the workers, assistance to the poor and for a system of social insurance».

of the Constitution in that they deprive the applicant of his rights.

*Held*, that having regard to the provisions of Article 9 the provisions of the above Law and/or the Regulations relating to the time within which an application should be made or the sanctions imposed in case of failure to comply therewith, cannot be said to aim at or to amount to a restriction of the right to pension or that they are, in any way, repugnant to the provisions of the said Article and that it is entirely up to each individual to safeguard his rights and interests by complying with the necessary legislative provisions by the exercise of no more than reasonable diligence. 5 10

*Held, further*, that in any event the reasons\* given by applicant for the delay could not amount to the "reasonable cause" for which provision is made in the proviso to regulation 3(2). 15

*Application dismissed.*

**Recourse.**

Recourse against the decision of the respondent not to grant applicant any pension for the period 22.7.1977-20.9.1978 and also not to accept his explanation for not submitting his application in time as a "reasonable cause". 20

*M. Christofides*, for the applicant.

*M. Kyprianou*, Senior Counsel of the Republic, for the respondent. 25

*Cur. adv. vult.*

L. LOIZOU J. read the following judgment. The facts of this case are not in dispute and they are briefly as follows: 30

On the 29th November, 1978, the applicant applied to the Social Insurance Department of the Ministry of Labour and Social Insurance for old age pension on the prescribed

\* The reasons for the delay invoked by applicant were the wrong impression he had that he was not entitled to pension because he was working and paying social insurance contributions or if he was entitled he would receive a notice from the department concerned

form (exhibit 2) enclosing a certificate of baptism, a certificate of marriage and a certificate signed by the Chairman of the village Commission to the effect that he was living together with his wife.

- 5 The application was forwarded under cover of a letter dated 19th December, 1978 (exhibit 1). Paragraph 2 of this letter reads as follows:

10 «Η καθυστέρησης διά την υποβολήν τῆς αἰτήσεως τῶν 17 μηνῶν ὀφείλεται μεταξύ ἄλλων καί εἰς τήν λανθασμένην ἐντύπωσιν πού εἶχα ὅτι ἐπειδή ἐργάζομαι καί πληρώνω κοινωνικάς ἀσφαλίσεις, εἴτε δέν ἐδικοιούμην συντάξεως, εἴτε ἐάν ἐδικοιούμην, θά ἐλάμβανα σχετικήν εἰδοποίησιν ἀπό τό ἀρμόδιο τμήμα, τό ὁποῖον ἄλλωστε ὁσάκις ὑπάρξει καθυστέρησης πληρωμῆς εἰς τό ταμεῖον Κοιν. Ἀσφαλίσεων πάντοτε δι' εἰδοποίησεως ὑπενθυμίζει.»

15

(The delay of 17 months in submitting the application is due, inter alia, to the wrong impression I had that because I am working and paying social insurance contributions, either I was not entitled to pension, or if I was entitled, I would receive a notice from the department concerned, which, in any case, when there is delay in the payment to the Social Insurance Fund always sends a reminder).

20

- 25 On the 25th January, 1979, the applicant was requested by notice (exhibit 3) to forward to the Social Insurance Department, the soonest possible, a certificate of birth, returning to him at the same time the certificate of baptism.

30 On the 30th January, 1979, the applicant forwarded to the Department concerned an official certificate of birth according to which the date of his birth was the 22nd July, 1912 and consequently he had reached his pensionable age (65th year) on the 22nd July, 1977.

35 His application was approved except for the period commencing the 22nd July, 1977, until the 20th September, 1978, for which his application was, by virtue of the provisions of regulation 3(2)(b) of the Social Insurance (Benefits) Regulations, 1972, out of time and with regard to which the reasons for the delay given by him in his letter

(exhibit 1) was not accepted to be a "reasonable cause".

The applicant was informed accordingly on the 28th February, 1979.

As a result the present recourse was filed challenging the validity both of the decision not to grant to the applicant any pension for the period 22nd July, 1977, to the 20th September, 1978, and also the decision not to accept his explanation for not submitting his application in time as a "reasonable cause" under the proviso to regulation 3 of the regulations.

It was argued by learned counsel for the applicant in his short address that in view of the provisions of Article 9 of the Constitution the State should be bound to pay old age pension from the moment a person completes his 65th year of age and is otherwise qualified in so far as his contributions are concerned. Counsel added that the respondents knew from their records the age of the applicant and they must have also known the number of his identity card; and further that the provisions of the Law and/or the regulations made thereunder which provide for a time limit within which the application should be made contravene the provisions of Article 9 of the Constitution in that they deprive the applicant of his rights.

Article 9 reads as follows:

"Every person has the right to a decent existence and to social security. A Law shall provide for the protection of the workers, assistance to the poor and for a system of social insurance."

Section 44 of the Social Insurance Law, 1972 (Law 106/72) in force at the relevant time, to which counsel has referred as offending against the above Article of the Constitution reads as follows:

«44.-(1) Το δικαίωμα εις οίανδήποτε παροχήν ήρτηται εκ της προς τοῦτο ὑποβολῆς αίτησεως. Κανονισμοί δε θέλουσι προβλέπει περί της προθεσμίας ὑποβολῆς τῶν αίτησεων, τῶν περιστάσεων ὑφ' ἃς ἡ τοιαύτη προθεσμία παρατείνεται, τοῦ τρόπου ὑποβολῆς αίτησεως καὶ τῶν περιστάσεων ὑφ' ἃς εἶτε ὑπεβλήθη αι-

τησις είτε μή, τὸ πρὸς λῆψιν παροχῆς δικαίωμα ἀπόλυται λόγω παραλείψεως ἢ καθυστερήσεως εἰς τὴν ἐνέργειαν ἢ τὴν εἰσπραξίν τῆς πληρωμῆς.

5 (2) Κανονισμοὶ θέλουσιν ὡσαύτως προβλέπει περὶ τοῦ χρόνου καὶ τρόπου πληρωμῆς οἰασοδήποτε παροχῆς, τοῦ χρόνου ἐνάρξεως τῆς καταβολῆς τῆς τὸ πρῶτον χορηγομένης παροχῆς καὶ τοῦ χρόνου καθ' ὃν τίθενται ἐν ἰσχύϊ τυχόν μεταβολαὶ εἰς τὸ ὕψος τῆς παροχῆς, δύνανται δὲ ὡσαύτως νὰ προβλέψωσι περὶ τοῦ  
10 ὑπολογισμοῦ τῆς παροχῆς διὰ χρονικὰς περιόδους ἄλλας ἢ τῆς μιᾶς ἐβδομάδος.

(44. (1) The right to any benefit is subject to the submission of an application in this respect and Regulations will provide for the time limit for the submission of the applications, the circumstances under which such time limit is extended, the manner of the submission of an application and the circumstances under which either an application has been submitted or not, the right to the receipt of a benefit is lost because  
15 of failure or delay in taking action or in the collection of the payment.

(2) Regulations will also provide as to the time and manner of payment of any benefit, the time of the commencement of the payment of a benefit granted  
25 for the first time and the time at which any changes in the rate of the benefit are put into force, and they may also provide for the calculation of the benefit for periods of time other than for one week.)

30 And the relevant part of regulation 3 of the 1972 Regulations reads as follows:

«3. (1) Πᾶσα αἴτησις πρὸς χορήγησιν παροχῆς δεῖον ὅπως ὑποβάλληται ἐντὸς τῆς ὑπὸ τοῦ παρόντος Κανονισμοῦ προβλεπομένης προθεσμίας.

(2) Ἡ ἐν τῇ παραγράφῳ (1) ἀναφερομένη προθεσμία εἶναι-

(α) .....

(β) προκειμένου περὶ συντάξεως γήρατος, συντάξεως ἀνικανότητος, συντάξεως χρεΐας, ἐπιδόματος

όρφανίας, παροχῶν λόγω ἀναπηρίας ἢ παροχῶν λόγω θανάτου, χρονικὸν διάστημα οὐχὶ μακρότερον τῶν τριῶν μηνῶν ἀπὸ τὴν ἡμέραν διὰ τὴν ὁποίαν προβάλλεται ἀπαίτησις πρὸς χορήγησιν παροχῆς.

(γ) ..... 5

(δ) .....

Νοεῖται ὅτι ἐὰν ὁ αἰτῶν (ἀποδείξη εὐλογον τινα αἰτίαν διὰ τὴν μὴ ὑποβολὴν αἰτήσεως ἐντὸς τῆς καθωρισμένης προθεσμίας ὑφισταμένην καθ' ὅλον τὸ μεταξὺ τῆς ἐκπνοῆς τῆς τοιαύτης προθεσμίας καὶ τῆς ἡμερομηνίας ὑποβολῆς τῆς αἰτήσεως χρονικὸν διάστημα, ἢ προθεσμία ἐν τῇ περιπτώσει αὐτοῦ παρατείνεται διὰ τὸ ὡς εἰρηται χρονικὸν διάστημα, ἐν οὐδεμιᾷ ὅμως περιπτώσει αὕτη παρατείνεται πέραν τῶν δώδεκα μηνῶν ἀπὸ τῆς σχετικῆς ἡμερομηνίας. 10 15

(3) .....

(4) .....

(5) Ἡ αἰτησις πρὸς χορήγησιν παροχῆς ὑποβάλλεται ἐν τῷ καθοριζομένῳ ὑπὸ τοῦ Διευθυντοῦ τύπῳ, ἐκτὸς ἐὰν ἄλλως ὁ Διευθυντὴς ἤθελεν ἀποφασίσαι εἰς εἰδικὴν τινα περίπτωσιν. 20

(6) Ὁ αἰτῶν δεόν ὅπως συμμορφοῦται πρὸς τοιαύτας ἀπαιτήσεις ἀφορώσας εἰς τὴν ὑποβολὴν τῆς αἰτήσεως καὶ προσάγη τοιαῦτα στοιχεῖα καὶ ἔγγραφα ὡς ὁ Διευθυντὴς ἤθελε κρίνει ὡς ἀναγκαῖα διὰ τὴν ἐξέτασιν τῆς αἰτήσεως. 25

(3.(1) Every application for the grant of a benefit must be submitted within the time limit provided by the present Regulation.

(2) The time limit referred to in paragraph (1) is- 30

(a) .....

(b) In the case of old age pension, disability pension, widow's pension, orphan's benefit, disability benefit or death grants, a time period not longer

than three months from the day from which a claim for the grant of the benefit is made;

(c) . . . . .

(d) . . . . .

5            Provided that if the applicant proves a reasonable cause for not submitting an application within the prescribed time limit which subsists during the whole interval between the expiration of such time limit and the date of the submission of the application,  
10            the time limit in his case is extended for the said interval but in no case is it extended for more than twelve months from the relevant date.

(3) . . . . .

(4) . . . . .

15            (5) The application for granting a benefit is submitted in the form prescribed by the Director, unless otherwise decided by the Director in any particular case.

20            (6) The applicant must comply with such requirements regarding the submission of the application and produce such material and documents as the Director may deem necessary for the examination of the application.)

25            It will be seen from the above that the application in the present instance had to be made, in view of the provisions of regulation 3(2)(b) within a period of not more than three months from the date a claim for old age pension could be made and also by virtue of para. 5 thereof it had to be made in the prescribed form.

30            In so far as the time limit is concerned such period is subject to the proviso by virtue of which it may be extended upon proof by the applicant of a "reasonable cause" for the delay but only for a period during which such cause subsists and in no case can it be extended for more  
35            than twelve months.

          In the form prescribed under para. 5 information has

to be furnished not only as to the matters mentioned by counsel i.e. applicant's age and identity card number but also as to whether he is married, single or a widower as well as details as to his dependents for whom he claims an increased pension, which are matters of which the Social Insurance Department could hardly be aware. 5

It seems to me that the above information is clearly necessary in order to enable the department concerned to ascertain and calculate the exact amount of the pension or other benefit that applicant may be entitled to. As to the time limit prescribed by regulation 3 there is no doubt that it is conducive to the keeping of proper books of accounts and necessary so that the department may be in a position to know what amounts will have to be paid out of the Fund at any given time. 10 15

But, quite independently of the above, having regard to the provisions of Article 9 I cannot agree that the provisions of the Law and/or the regulations relating to the time within which an application should be made or the sanctions imposed in case of failure to comply therewith, can be said to aim at or to amount to a restriction of the right to pension or that they are, in any way, repugnant to the provisions of the Article. It is entirely up to each individual to safeguard his rights and interests by complying with the necessary legislative provisions by the exercise of no more than reasonable diligence. 20 25

As to the decision relating to the rejection of the reasons given by the applicant with regard to the delay in applying, although included as a ground in the prayer for relief, learned counsel has not touched on this issue at all during his address and I can only assume that he has abandoned it. In any case I would not be prepared to hold that the reasons given by him could amount to the "reasonable cause" for which provision is made in the proviso. 30

In the light of the above this recourse fails and it is hereby dismissed. In all the circumstances there will be no order as to costs. 35

*Recourse dismissed.  
No order as to costs.*