

1986 January 22

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ARCHIMANDRITE NICOLAOS SIDERAS,

Applicant,

v.

1. THE MINISTER OF LABOUR AND SOCIAL INSURANCE,
2. THE DIRECTOR OF SOCIAL INSURANCE,

Respondents.

(Case No. 606/85).

Executory act—Confirmatory act—A communication can only be confirmatory of a previous one, if such previous communication conveyed an executory decision.

Legitimate interest —Whether past action incompatible with one's rights under the law precludes one from asking appropriate authority to put matters right—Question answered in the negative —Applicant joined social insurance scheme as self-employed person in accordance with his own application— Application for the revocation of such classification turned down—Applicant not precluded from challenging such rejection by a recourse.

Time within which to file a recourse.

The applicant is an archimandrite of the Greek Orthodox Church of Cyprus. On 18.11.64 he applied to join and did in fact join the social insurance scheme as a self-employed person. On 14.12.84 the applicant, who had been watching television series of public discussions in respect of such scheme, wrote to the Cyprus Broadcasting

5 Corporation (C.B.C.) pointing out that priests were unjustifiably treated as self employed persons. C.B.C. passed the letter to respondent 2, who, by letter dated 9.2.85, explained to the applicant the reasons why priests were being treated as aforesaid. On 30.5.85 the applicant applied for the revocation of the decision to classify him as a self employed person. His application was turned down by letter dated 19.6.85 stating that respondent 2 saw no reason to depart from his decision communicated to the applicant by the letter of 9.2.85.

Hence the present recourse. The question at this stage of the proceedings is whether this recourse, which was filed on 28.6.85, was filed out of time.

15 *Held*, (1) The letters of 14.12.84 and 9.2.85 cannot be treated as having ever being intended to have or to produce legal consequences.

20 (2) In the circumstances of this case the letter of 19.6.85, which for the sake of brevity referred to the letter of 9.2.85, amounts to a refusal to alter the classification of the applicant for the purpose of the social insurance scheme and, therefore, it conveys an executory decision. A communication can only be confirmatory if it confirms a previous one which conveyed an executory decision. The letter of 9.2.85 was of an informative, and not of an executory nature.

30 (3) The fact that back in 1964 the applicant applied to join the scheme as self-employed does not preclude him from filing this recourse, because it is always open to a citizen to discover that he has acted in the past in a manner incompatible with his rights under the relevant legislation and to ask the appropriate authority to put matters right.

(4) In the light of the above this recourse has to be heard on its merits.

Order accordingly.

Recourse.

Recourse against the decision of the respondents to treat applicant as a self-employed person, instead of as an employee, for the purposes of the social insurance scheme. 5

Chr. Pourgourides, for the applicant.

D. Papadopoullou (Mrs.), for the respondents.

Cur. adv. vult. 10

TRIANAFYLLIDES P. read the following judgment. By this recourse the applicant, who is an archimandrite of the Greek Orthodox Church of Cyprus, complains, in effect, against the decision of respondent 2, who comes under respondent 1, to treat him as a self-employed person, instead of as an employee, for the purposes of the social insurance scheme which was introduced by the Social Insurance Law, 1964 (Law 2/64) and is now being operated under the Social Insurance Laws, 1980 - 1985, and the Regulations made thereunder. 15
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At this stage of the present proceedings I have to decide whether the recourse of the applicant, which was filed on the 28th June 1985, was filed out of time.

The salient relevant facts are briefly as follows:

5 On the 14th December 1984 the applicant, who had been watching a television series of public discussions in relation to the social insurance scheme, wrote to the Cyprus Broadcasting Corporation (C.B.C.) pointing out that priests were unjustifiably treated as self-employed persons and that they should be treated as employees because their emoluments were paid by the Church and the State.

10 The letter of the applicant was passed on to respondent 2 by the C.B.C., on its own initiative, and respondent 2 wrote to the applicant, on the 9th February 1985, explaining why, in view of the nature of their mission in society, priests were being treated as self-employed persons.

15 Then on the 30th May 1985 counsel acting for the applicant wrote to respondent 2 asking him to revoke the decision to classify applicant as a self-employed person and insisting that he should be treated as an employee for the purposes of the social insurance scheme.

20 A reply was given on the 19th June 1985 stating that respondent 2 saw no reason to depart from the decision which was communicated to the applicant by means of his letter dated 9th February 1985.

25 It is correct that the applicant applied initially, on the 18th November 1964, to join the social insurance scheme as a self-employed person and that he has been paying his contributions all along in that capacity and that they are till now being received on that basis.

30 In my opinion the letter which the applicant addressed to the C.B.C., as aforesaid, on the 14th December 1984, and the letter which was written to him by respondent 2, on the 9th February 1985, as a result of the applicant's

letter to C.B.C., cannot be treated as having ever being intended to have, or to produce, legal consequences. The applicant voiced to the C.B.C. his disagreement with the way in which priests were being treated for purposes of social insurance and as a matter of good public relations respondent 2 wrote to him, as already stated earlier on in this judgment. 5

It is correct that in replying on the 19th June 1985, to the letter of applicant's counsel dated 30th May 1985, respondent 2 endorsed, for the sake of brevity, the views which he already had expressed on the 9th February 1985, in his letter to the applicant, but in my opinion the letter of respondent 2, of the 19th. June 1985, amounts, in the particular circumstances of this case, to a refusal to alter the classification of the applicant for the purposes of the social insurance scheme from that of self-employed to that of employee; and, therefore, it is a letter conveying an executory decision of respondent 2 which can be challenged by means of the present recourse which, in so far as it relates to such letter, was filed within the time-limit laid down by Article 146.3 of the Constitution. 10 15 20

The said letter of respondent 2 of the 19th June 1985 cannot be treated as being confirmatory of his previous letter of the 9th February 1985 because, in my opinion, a communication can only be confirmatory if it confirms a previous one which conveys an executory decision and the letter of the 9th February 1985 was only of an informative, and not of an executory, nature. 25

Before concluding I should observe that I do not think that applicant is precluded from filing the present recourse because far back in 1964 he applied to join the social insurance scheme as a self-employed person because, in my view, it is always open to a citizen to discover that he has acted in the past in a manner which was not compatible with his rights under the relevant legislative provisions and to ask the appropriate administrative authority to put right the matter in so far as the future is concerned, just as 30 35

counsel for the applicant has done by his letter of the 30th May 1985.

5 For all the foregoing reasons I find that this recourse has not been filed out of time and has to be heard on its merits.

Order accordingly.