

1986 May 31

(TRIANAFYLLIDES, P)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS S ANGELIDES,

Applicant,

v.

**THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF SOCIAL INSURANCE AND/OR
THE DIRECTOR OF SOCIAL INSURANCE.**

Respondents

(Case No. 637/84).

Social insurance — The Social Insurance Law 41/80, section 73(1)(f) and the Social Insurance Regulations, Reg 18(5) — Self-employed person — Whether entitled to demand that his social insurance contribution be calculated on the basis of income of his own choosing, which is not his real income and is lower than the lowest amount of income specified by the said law for such person's occupation category — Question determined in the negative

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The Director of Social Insurance informed the applicant a self-employed person, that as he was not satisfied that the latter's real income is lower than the lowest amount of income specified by the Social Insurance Legislation for applicant's occupational category, he was obliged to demand payment of social insurance contributions, on the basis of the lowest amount specified by the aforesaid legislation, for applicant's occupational category and not on the basis of the amount of income, as specified by the applicant at a level lower than the said lowest amount

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Held, *dismissing the recourse* (1) Applicant's submission that section 73(1)(f) of Law 41/80, as amended by Law 48/82, gives him the unquestionable right to choose any income on the basis of which his social insurance contributions are to be calculated, even if such income is lower than the specified lowest income for his occupational category and even if such income is not his real income, cannot be accepted

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(2) Regulation 18(5) of the relevant Regulations provides that a self-employed person can choose to pay social insurance contributions on the basis of an income lower than the lowest income provided for his

occupational category only in case he satisfies the respondent Director that such income is his real income

(3) Consequently the applicant was not entitled to demand that his contributions be made on the basis of an income, which was not his real income and was lower than the lowest amount of income specified for applicant's occupational category by the Social Insurance Legislation. 5

*Recourse dismissed
No order as to costs*

Recourse.

Recourse against the decision of the respondents to impose on applicant the payment of social insurance contributions on the basis of his specified under the Social Insurance Scheme income. 10

Applicant appeared in person.

Cl. Antoniadis, Senior Counsel of the Republic, for the respondents. 15

Cur. adv. vult.

TRIANAFYLLIDES P. read the following judgment. By the present recourse the applicant challenges, in effect, the validity of the decision of the respondent Director of Social Insurance Services, dated 15 September 1984, to impose on him the payment of social insurance contributions on the basis of his specified under the relevant Social Insurance Scheme income. 20

The applicant seeks, also, a declaration that the refusal of the respondent Director to accept the payment of social insurance contributions on the basis of the income stated by the applicant is unconstitutional. 25

The applicant is a self-employed advocate and by virtue of sections 3 and 12 of the Social Insurance Law, 1980 (Law 41/80), as amended by the Social Insurance (Amendment) Law, 1982 (Law 48/82) and by the Social Insurance (Amendment) Law, 1983 (Law 11/83), he is obliged to pay contributions to the Social Insurance Fund envisaged by Section 69 of Law 41/80. 30

By virtue of section 73(1) of Law 41/80, as amended, and regulation 18 of the Social Insurance (Contributions) Regulations

of 1980-1982 all self-employed persons are classified into occupational categories, which are set out in the Schedule to such Regulations; and for every occupational category there is specified a lowest amount of income on the basis of which contributions are to be paid.

Under regulation 18(5) of the aforesaid Regulations a self-employed person who asserts that his real income is lower than the lowest income specified for his occupational category has a right to submit an application to the respondent Director claiming to pay social insurance contributions on the basis of his real income.

On 24 January 1984 the applicant addressed a letter to the respondent Director informing him that for the purposes of the Social Insurance legislation he had chosen as income a lower amount than that provided as the lowest income for his occupational category—namely the amount of £32 per week - and applied that the social insurance contributions payable by him should be calculated on the basis of such amount. It is to be noted that in a statement made by applicant in support of his application on 4 September 1984 it was made abundantly clear that the income chosen by him was not his real income but less than that.

On 15 September 1984 the Director informed the applicant that as he was not satisfied that the applicant's real income for purpose of social insurance was lower than the lowest income specified for his occupational category he was obliged to pay social insurance contributions on the basis of the said lowest income; and then the applicant filed his present recourse.

It has been contended by the applicant that section 73(l) (f) of Law 41/80, as amended by Law 48/82, gives him the unquestionable right to choose any income on the basis of which his social insurance contributions are to be calculated, even if such income is lower than the specified lowest income for his occupational category and even if such income is not his real income.

By means, however, of regulation 18(5) of the relevant Regulations it is provided that a self-employed person can choose to pay social insurance contributions on the basis of an income lower than the lowest income provided for his occupational

category only in case he satisfies the respondent Director that such income is his real income.

Consequently, in view of the said regulation 18(5), which, in my opinion, on the basis of a proper interpretation of section 73(l) (f) of the relevant legislation, cannot be found to be ultra vires the said section 73(l) (f), it was not open to the applicant to act as he has done in the present case and the respondent Director could have examined an application of the applicant for exemption from the obligation to pay social insurance contributions on the basis of the lowest amount specified for his occupational category only if such application had been made in relation to the real income of the applicant.

I cannot accept that it was ever the intention of the Legislature, in enacting the aforementioned section 73(l) (f), to afford to a self-employed person the right to pay social insurance contributions on the basis of any income that he might choose, even if such income is lower than the lowest income specified for his occupational category and lower than his real income.

It follows in the light of all the foregoing, that by his decision of 15 September 1984 the respondent Director rightly rejected the applicant's aforementioned application dated 24 January 1984 and, consequently, none of the reliefs claimed by the applicant by his present recourse can be granted to him.

In the result the present recourse fails and it is dismissed accordingly; but with no order as to its costs.

*Recourse dismissed.
No order as to costs.*