

(1988)

1988 July 18

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
ARCHIGOS KOMMATOS DIKEOSINIS, AS REPRESENTATIVE
OF SELF - EMPLOYED MEMBERS OF HIS PARTY,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH THE
ATTORNEY-GENERAL OF THE REPUBLIC AND OTHERS,

Respondents.

(Case No. 969/85).

*Recourse for annulment—Summary dismissal, when "prima facie frivolous"—
Constitution, Art 134.2—Only the Full Bench of this Court can exercised
such a power.*

In the light of the aforesaid principle and as this case was dealt with by
a single Judge, the Court did not summarily dismiss the recourse, but ex-
amined, *ex proprio motu*, its merits and, having concluded that it was filed
out of time, dismissed it.

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*Recourse dismissed. One half of
the costs to be paid by applicant.*

Application.

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Application by Counsel for respondents for the dismissal of
the recourse as manifestly unfounded.

Applicant appeared in person.

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

Cur. adv. vult.

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*(Note: This is an English translation of the judgment in Greek appearing at pp. 1490-
1495 ante).*

SAVVIDES J. read the following judgment. The applicant in his capacity as leader of the "Justice Party" by his present recourse challenges a number of alleged administrative acts and his prayer reads as follows:

5 (a) A declaration of the Court that the administrative acts and/or decisions of the respondents whereby the criminal prosecutions of each one of the members of the party and their obligation to pay contributions over and above their actual income as well as the additional fee as self-employed persons as from 4.10.82-83-10 84-85 without being afforded the right to declare their income in accordance with the law is null and void, unconstitutional and of no legal effect.

(b) A declaration of the Court declaring as null and void and/or 15 unconstitutional the imposition of any additional fee for the reason that the members of the party never refused or omitted to pay their contributions either personally or through the applicant but the respondents were refusing to collect the contributions on the basis of their real income. On 31.3.84 the contributions were sent 20 by the applicant by postal order for certain members in settlement of their contributions for the quarter 4.10.82 till 4.1.83. The respondents collected the amount as payment on account and the same was repeated on the following quarter when the applicant paid the contributions in cash. The respondents refused to issue 25 receipts in full settlement and the members of the party as a result stopped paying contributions and they were prosecuted before the Courts.

(c) A declaration or order directing the respondents to collect 30 immediately and without any further delay the arrears of contributions of the members of the party on the basis of their real income and without any additional fee for the delay for which the full responsibility lies on the respondents for political reasons.

(d) A declaration of the Court directing the respondents to respect the oral and/or written agreements with the applicant and their replies from 10.4.84 till 20.6.85, as on 30.12.82 applica-

tions were filed on forms of the party showing the real income of its members.

(e) A declaration and/or decision directing the arrest and imprisonment of the respondents for disobedience to the decision of the Full Bench of the Supreme Court dated 25.6.1982 and deception of the Court, till their compliance with such decision. 5

(f) An order of the Court directing the respondents to comply with the decision of the Supreme Court dated 25.6.1982 in favour of the self-employed persons.

(g) A declaration of the Court that regulations 48/82/73/80/20/3, paragraph 2 and the Constitution of the Republic have application for the members of the party due to a delayed previous recourse as well as other regulations. 10

(h) A declaration of the Court that the respondents are not entitled and should discontinue to demand double contributions, additional fee and contribution to the defence fund which have been paid. 15

Counsel for respondents filed an application for the dismissal of the recourse as manifestly unfounded.

Counsel for respondents in arguing the application submitted that applicant is not challenging specific administrative acts and that in any event the alleged complaints refer to acts or decisions which were taken and in fact materialized a long time before he filed the recourse and led to the initiation of criminal proceedings for the collection of the contributions and the additional fee due and in any event they are out of time. All other prayers are in respect of remedies which are not within the jurisdiction of this Court as they concern criminal prosecutions and declarations in respect of acts for which due to lapse of time, the applicant and the persons on whose behalf he is alleged to act, lost any legitimate interest. 20
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5 The applicant by his address after a long exposition of the history as to the steps taken by him in the past against the institution of criminal proceedings of members of his party for not paying their contributions, submitted that all the decisions of the respondents were taken as a result of their refusal to collect the contributions in full settlement and were persisting on the additional fee, the imposition of which is unconstitutional. He further invited the Court to reverse any decision of the Full Bench as to the liability for payment of additional fees and to rule that the imposition of
10 any additional fee for the non-payment of contributions is wrong and unconstitutional.

15 In answer to a question put by the Court the applicant agreed that in the present case he is not contesting the amounts of the contributions and submitted that in fact such contributions were tendered to the respondents. What he disputes is the imposition of the additional fee for the non-payment of the contributions.

A perusal of the contents of the remedies prayed for by the applicant shows clearly confusion as to what are the administrative acts which the applicant is challenging.

20 The applicant by this recourse does not challenge any specific administrative acts or decisions but he complains in abstracto about the refusal of the respondents to accept payment of the contributions only, without the additional fee, in cases, in most of which criminal prosecutions had been instituted and most of the complainants had been convicted for non-payment of the contributions and the additional fee.
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30 The remedies sought by applicant concerning the suspension or discontinuance of criminal proceedings are wholly outside the review powers of the Supreme Court under Article 146 of the Constitution.

It is also abundantly clear from the contents of the prayers sought and also from the arguments advanced that the acts sought to be challenged are acts in respect of which the period of 75 days

from their communication to the persons concerned have elapsed and, therefore, in any event they could not have been challenged by this recourse.

The object of a recourse under Article 146.3 of the Constitution is to enable a person to challenge a specific administrative act within the period of 75 days. In the present case notwithstanding the fact that no specific administrative act is challenged the gist of the complaint of the applicant refers to matters which in any event are outside the time limits of Article 146.3 of the Constitution.

I finally conclude that on the material before me and having heard what was said on behalf of the parties this recourse is entirely unfounded and should be dismissed.

Article 134.2 of the Constitution provides as follows:

"134.2 When a recourse appears to be prima facie frivolous the Court may, after hearing arguments by or on behalf of the parties concerned, unanimously dismiss such recourse without a public hearing if satisfied that such recourse is in fact frivolous."

Bearing in mind the wording of such Article that the decision to dismiss a recourse summarily should be unanimously taken, I consider that such power could only be exercised when a case is dealt with by the Full Bench. This is the reason that I have not dismissed the recourse summarily on my own motion and have dealt with the merits of such recourse which in the circumstances is frivolous and manifestly unfounded.

For all the above reasons the respondents succeed in their application and the recourse is hereby dismissed. Concerning costs, in the circumstances, I award costs in favour of respondents against the applicant to the extent of half of their costs.

*Recourse dismissed.
Order for costs as above.*