1982 April 29, June 25

[TRIANTAFYLLIDES, P., HADJIANASTASSIOU, MALACHTOS, DEMETRIADES, SAVVIDES, JJ.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PAVLOS ANGELIDES AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS THROUGH THE DIRECTOR OF SOCIAL INSURANCE SERVICES,

Respondent.

(*Cases Nos.* 370/80, 436/80, 476/80, 501/80, 14/81, 15/81, 16/81, 17/81, 53/81, 58/81, 63/81, 77/81, 136/81, 154/81).

Social Insurance—Self-employed persons—Professional categories of contributors—Lowest and highest insurable income in respect of each category—Established through the joint application of regulations 9 *and* 18 *of the Social Insurance Regulations,* 1980 *—Which when applied together are unreasonable and therefore invalid—And entail such arbitrary results and unequal treatment even among persons is one and the same profession that they infringe Article* 28 *of the Constitution which safeguards the right to equality—And, also, result in contravention of Article* 24 *of the Constitution.*

Constitutional Law—Constitutionality of legislation—Social Insurance Regulations, 1980, *regulations* 9 *and* 18*—When applied together they infringe Articles* 24 *and* 28 *of the Constitution.*

Delegated Legislation—Bye-laws—Jurisdiction of testing their validity by their reasonableness—Principles applicable.

Provisional order—Practice—Recourses against validity of acts taken under the Social Insurance Law, 1980 (*Law* 41/80)*—Provisional order made ex proprio motu by the Court, after conclusion of hearing of recourses, suspending effect of sub judice*

acts till delivery of judgment—Rule 13 of the Supreme Constitutional Court Rules of Court.

The applicants in these recourses challenged the decisions and acts of the respondent Director of Social Insurance Services in the Ministry of Labour and Social Insurance, by means of which each one of them was classified, as a self-employed person in one of the categories of contributors for the purposes of the Social Insurance Scheme which came into operation by virtue of the Social Insurance Law, 1980 (Law 41/80). The said categories were established under regulation 18 of the Social Insurance (Contributions) Regulations of 1980 which for the purposes of payment of contributions, made provisions about professional categories of self-employed persons and, also, provision as to how the lowest and highest insurable income, in respect of each professional category, is computed. Regulation 9 of the above Regulations provided that the basic weekly insurable emoluments were C£14 weekly and C£728 annually. Sections 12 and 13 of Law 41/80 provided about the obligation of self-employed persons to contribute for the purposes of the aforementioned scheme and about the extent of their contributions. Many of the applicants in the present recourses were advocates; and by virtue of the above provisions a self-employed advocate, from the very first moment when he commences his career, was, by the operation of the above Law, and without having to prove the contrary, presumed to have weekly insurable emoluments amounting at least to C£56 and he was required to pay contributions amounting to 12 per cent of such emoluments, that is C£6.720 mils per week. Moreover a professional person's contribution was not obligatorily increased when, with the passage of time and in the normal course of events, he started earning more than at the beginning of his career. Unless he himself opted to pay a contribution based on a higher amount of insurable emoluments, which in any event could not be treated as exceeding, in the case for example of a self-employed advocate, the amount of C£84 per week, he would continue paying a contribution based, for the whole of the time when he was a contributor, on his lowest presumed insurable emoluments, that is C£56 per week.

In the course of the hearing of the above recourses Counsel

for the respondents applied for an adjournment of the hearing for a period of at least two months and stated that during these two months no criminal proceedings will commence or proceed against the applicants.

Held, (I) *on the application for adjournment:*

These cases will be adjourned for judgment to June 25, 1982; that in view of the nature of these cases, including the consequences entailed under the relevant Law in case of non-compliance of the applicants with the administrative acts or decisions, which are challenged in these cases, and in view of the conclusions which this Court reached till now in considering these cases, it has decided to take the rather exceptional course of making at this stage, ex proprio motu, under rule 13 of the Supreme Constitutional Court Rules of Court, a provisional order suspending, till the date of the delivery of the judgment, the effect of all the sub judice acts or decisions, because it feels that this is a course required in the interests of justice.

Held, (II) *on the merits of the recourses:*

(1) That regulations 9 and 18 of the Social Insurance (Contributions) Regulations of 1980, are delegated legislation in the same way as bye-laws; that buy-laws may be ultra vires, on the ground that they are unreasonable and therefore invalid; that the joint application of regulations 9 and 18 of the above Regulations produce unjust and unreasonable results and are, therefore, when applied together unreasonable.

(2) That regulations 9 and 18 when applied together entail such arbitrary results and unequal treatment, inter alia, even among persons in one and the same profession, that they infringe Article 28 of the Constitution which safeguards the right to equality (see *Fekkas* v. *Electricity Authority of Cyprus* (1968) 1 C.L.R. 173 at pp. 183-184); that, moreover, to the extent to which contributions to the scheme of social insurance concerned may be regarded as contributions according to means towards a public burden, in the sense of Article 24 of the Constitution, the two regulations in question result in a contravention of such Article, too; accordingly the administrative acts and decisions complained of have to be annulled.

Sub judice decisions annulled.

Cases referred to:

Slattery v. *Naylor* [1888] 13 A.C. 446 at p. 452;

Kruse v. *Johnson* [1898] 2 K.B. 91 at pp. 96, 99–100;

Arlidge v. *Mayor, Aldermen, and Councillors of the Metropolitan Borough of Islington* [1909] 2 K.B. 127 at pp. 134–135;

Repton School Governors v. *Repton Rural District Council* [1918] 2 K.B. 133 at pp. 137–138;

Townsend (Builders) Ltd. v. *Cinema News and Property Management Ltd.* [1959] 1 W.L.R. 119;

Fekkas v. *The Electricity Authority of Cyprus* (1968) 1 C.L.R 173 at pp. 183–184;

Republic v. *Georghiades* (1972) 3 C.L.R. 594.

Recourses.

Recourses against the decisions of the respondent Director of Social Insurance Services whereby each one of the applicants was classified, as a self-employed person, in one of the categories of contributors for the purposes of the social insurance scheme which came into operation by virtue of the Social Insurance Law, 1980 (Law 41/80).

P. Angelides appears in person as the applicant in case 370/80 and for the applicants in case 136/81.

E. Vrahimi (*Mrs.*), for the applicants in case 436/80.

A. Koumis appears in person as an applicant and for the other applicants in case 476/80.

C. Mavrantonis appears in person as the applicant in case 501/80.

L. Georghiadou (*Mrs.*) appears in person as an applicant and for the other applicant in case 14/81.

A. S. Angelides appears in person as an applicant and for the other applicants in case 15/81.

E. Markidou (*Mrs.*) appears in person as an applicant and for the other applicants in case 16/81 and for the applicants in case 17/81.

Chr. Demetriou (*Mrs.*), for the applicant in case 53/81.

A. Haviaras, for the applicants in case 58/81.

C. Loizou, for the applicants in case 63/81.

G. Karapatakis, for the applicants in case 77/81.

Chr. Sozos appears in person as the applicant in case 154/81.

R. Gavrielides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

April 29, 1982

Mr. Gavrielides: Your Honours, at this stage I wish to apply for an adjournment of the hearing of the present recourses for a period of at least two months. I am authorized by the respondent to state that during the period of these two months he is prepared to examine the possibility of effecting some changes to the "system of presumed income" and of amending the relevant Regulations accordingly. Furthermore, I am authorized by the respondent to state that during these two months no criminal proceedings will commence or proceed against the affected applicants.

All *Counsel for the applicants* object to the adjournment.

Court: We do not think that we need to hear counsel for the applicants in reply to counsel for the respondent.

We shall adjourn these cases for judgment to June 25, 1982, at 9.30 a.m.

In view of the nature of these cases, including the consequences entailed under the relevant Law in case of non-compliance of the applicants with the administrative acts or decisions, which are challenged in these cases, and in view of the conclusions which we have reached till now in considering these cases, we have decided to take the rather exceptional course of making at this stage, ex proprio motu, under rule 13 of the Supreme Constitutional Court Rules of Court, a provisional order suspending, till the date of the delivery of our judgment, the effect of all the sub judice acts or decisions, because we feel that this is a course required in the interests of justice.

June 25, 1982

TRIANTAFYLLIDES P. read the following judgment of the Court. The several applicants in these cases, which have been heard together in view of their nature, challenge, in effect, decisions and acts of the respondent Director of Social Insurance Services, in the Ministry of Labour and Social Insurance, by means of which each one of them was classified, as a self-employed person, in one of the categories of contri-

butors for the purposes of the social insurance scheme which came into operation by virtue of the Social Insurance Law, 1980 (Law 41/80).

The said categories were established under regulation 18 of the Social Insurance (Contributions) Regulations of 1980 (No. 240 in the Third Supplement, Part I, to the Official Gazette of August 29, 1980) and are set out in the Schedule to such Regulations.

Sections 12 and 13 of Law 41/80 provide about the obligation of self-employed persons to contribute for the purposes of the aforementioned scheme and about the extent of their contributions.

Section 73(1) of the same Law empowers the Council of Ministers to make Regulations regarding, inter alia, the classification of self-employed persons in professional categories and other related matters (see, in particular, paragraphs (d) and (e) of sub-section (1) of section 73).

Regulation 9 of the aforementioned Regulations provides that the basic weekly insurable emoluments are C£14 weekly and C£728 annually; and regulation 18 of the same Regulations states that, for the purposes of payment of contributions, there are specified in columns (a) (b) and (c) of the Schedule to the Regulations professional categories of self-employed persons and provision is, also, made as to how the lowest and highest insurable income, in respect of each professional category, is computed.

It is useful to illustrate the operation of the aforesaid legislative provisions by taking, as an example, the case of an advocate, especially as many of the applicants in the present recourses are advocates. By virtue of such provisions a self-employed advocate, from the very first moment when he commences his career, is, by operation of law, and without having the right to prove the contrary, presumed to have weekly insurable emoluments amounting at least to C£56 and he is required to pay contributions amounting to 12 per cent of such emoluments, that is C£6.720 mils per week.

It is noteworthy that a professional person's contribution is not obligatorily increased when, with the passage of time and

in the normal course of events, he starts earning more than at the beginning of his career. Unless he himself opts to pay a contribution based on a higher amount of insurable emoluments, which in any event cannot be treated as exceeding, in the case for example of a self-employed advocate, the amount of C£84 per week, he will continue paying a contribution based, for the whole of the time when he is a contributor, on his lowest presumed insurable emoluments, that is C£56 per week.

It is useful to point out, too, that in case 476/80, which is one of the cases now before us, all the applicants are displaced self-employed advocates and each one of them is receiving by way of refugee allowance from the Advocates' Pension Fund C£20 monthly. Yet, by the operation of the aforementioned Regulations, they are bound to pay approximately C£1 per working day as contribution to the social insurance scheme in question.

In the light of the foregoing we have reached the conclusion that the joint application of regulations 9 and 18 of the relevant Regulations produce unjust and unreasonable results.

The said regulations 9 and 18 are delegated legislation, in the same way as bye-laws.

As regards the jurisdiction of testing the validity of bye-laws by their reasonableness it was pointed out by the Privy Council, in England, in *Slattery v. Naylor*, [1888] 13 A.C. 446, 452, that it was originally applied in such cases as those of manorial bodies, towns, or corporations having inherent powers or general powers conferred by charter of making such legislation and that as new corporations or local administrative bodies have arisen the same jurisdiction has been exercised over them.

In *Kruse v. Johnson* [1898] 2 K.B. 91, Lord Russell of Killowen C.J. said the following (at pp. 96, 99-100):

> "It is objected that the by-law is ultra vires, on the ground that it is unreasonable and therefore bad. It is necessary, therefore, to see what is the authority under which the by-law in question has been made, and what are the relations between its framers and those affected by it.
>
> But first it seems necessary to consider what is a by-law. A by-law, of the class we are here considering, I

take to be an ordinance affecting the public, or some portion of the public, imposed by some authority clothed with statutory powers ordering something to be done or not to be done, and accompanied by some sanction or penalty for its non-observance. It necessarily involves restriction of liberty of action by persons who come under its operation as to acts which, but for the by-law, they would be free to do or not do as they pleased. Further, it involves this consequence - that, if validly made, it has the force of law within the sphere of its legitimate operation: *Edmonds v. Master & c. of the Company of Watermen and Lightermen.*(1)

But, when the Court is called upon to consider the by-laws of public representative bodies clothed with the ample authority which I have described, and exercising that authority accompanied by the checks and safeguards which have been mentioned, I think the consideration of such by-laws ought to be approached from a different standpoint. They ought to be supported if possible. They ought to be, as has been said, 'benevolently' interpreted, and credit ought to be given to those who have to administer them that they will be reasonably administered. This involves the introduction of no new canon of construction. But, further, looking to the character of the body legislating under the delegated authority of Parliament, to the subject-matter of such legislation, and to the nature and extent of the authority given to deal with matters which concern them, and in the manner which to them shall seem meet, I think courts of justice ought to be slow to condemn as invalid any by-law, so made under such conditions, on the ground of supposed unreasonableness. Notwithstanding what Cockburn C.J. said in *Bailey v. Williamson* (2), an analogous case, I do not mean to say that there may not be cases in which it would be the duty of the Court to condemn by-laws, made under such authority as these were made, as invalid because unreasonable. But unreasonable in what sense? If, for

(1) [1855] 24 L.J. (M.C.) 124.
(2) [1873] L.R. 8 Q.B. 118, at p. 124.

instance, they were found to be partial and unequal in their operation as between different classes; if they were manifestly unjust; if they disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say, 'Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires.' But it is in this sense, and in this sense only, as I conceive, that the question of unreasonableness can properly be regarded. A by-law is not unreasonable merely because particular judges may think that it goes further than is prudent or necessary or convenient, or because it is not accompanied by a qualification or an exception which some judges may think ought to be there. Surely it is not too much to say that in matters which directly and mainly concern the people of the country, who have the right to choose those whom they think best fitted to represent them in their local government bodies, such representatives may be trusted to understand their own requirements better than judges. Indeed, if the question of the validity of by-laws were to be determined by the opinion of judge as to what was reasonable in the narrow sense of that word, the cases in the books on this subject are no guide; for they reveal, as indeed one would expect, a wide diversity of judicial opinion, and they lay down no principle or definite standard by which reasonableness or unreasonableness may be tested."

In *Arlidge v. Mayor, Aldermen and Councillors of the Metropolitan Borough of Islington*, [1909] 2 K.B. 127, Lord Alverstone C.J. stated the following (at pp. 134-135):

"By-law 17 provides that 'subject to the provisions of these by-laws the landlord of a lodging-house shall, in the month of April, May or June in every year, cause every part of the premises to be cleansed.' That is the material part of the by-law. The rest of the by-law prescribes the method of cleansing certain parts of the premises. By-law 21 imposes a penalty for breach of any of the by-laws. If by-law 17 had used some such words as 'take reasonable steps' or 'take reasonable means' to cause every part of the

premises to be cleansed, or if the by-law had first imposed the duty upon the tenant with a right to proceed against the landlord where the latter was in a position to enforce performance of the duty, I do not say that it might not have been valid. It seems to me that there are not a few forms in which this by-law would be valid, but for the reasons which have been urged upon us on behalf of the appellant I think that this by-law goes too far. It imposes an imperative obligation upon every landlord to cause the premises to be cleansed without regard to the position in which the landlord may be. I do not rest my judgment upon the fact that the landlord may be an agent employed by an absent owner to collect the rents and look after the property, because I recognize that it may be necessary for the enforcement of the sanitary provisions of the Act to fasten the liability on the agent of the owner, though apart from the Act there may be no duty upon him personally to cause the work to be done. But this by-law seems to me to go beyond anything which the necessity of the case demands. An absolute duty is imposed on every landlord to cause the premises to be cleansed, and a penalty is imposed for breach of that duty, when the landlord may be quite unable to carry out the work without breaking a contract or committing a trespass. The by-law is therefore unreasonable and bad."

Darling J., also, in the same case, said (at p. 135):

"It is always difficult to say in any particular case whether or not a by-law oversteps the limits of reasonableness; but in this case I have come to the conclusion that the by-law is unreasonable and goes beyond the authority intended to be conferred by the Act under which it purports to be made."

In *Repton School Governors v. Repton Rural District Council*, [1918] 2 K.B. 133, Pickford L.J. said the following (at pp. 137-138):

"It is an important case, because it affects a very great number of by-laws throughout the country. I quite agree that by-laws, especially those of public bodies, should be approached from the point of view of upholding them, if

possible, and should be, as it has been described, benevolently interpreted; but still they must be reasonable. I think Bailhache J. has stated the considerations to be applied quite accurately as follows (4): 'One may certainly add this - that if the effect in a given case, which might be of frequent occurrence, of construing a by-law in a particular way would lead to a result quite unnecessary for the protection of the public health, and would impose a serious restriction upon the ordinary rights of property owner with no good object, I think one would be entitled to say that the by-law was void because it was unreasonable. One must of course be careful to see that the result is such as no one would desire, and would in itself be absurd, but it is found to be so, than I think one is entitled, and indeed bound, to say that such a by-law is bad for unreasonableness.'

The question is not whether it is possible in some particular cases to find a use of the by-law which is reasonable, but whether the by-law itself looked at in the light of all the cases to which it applies is so vague or so unreasonable as to be invalid."

It is useful to point out that the aforequoted dicta of Lord Russell of Killowen in *Kruse v. Johnson*, supra, were applied, many years later, as being still correct, in *Townsend (Builders) Ltd. v. Cinema News and Property Management Ltd.*, [1959] 1 W.L.R. 119.

For the same reasons for which we have already held that regulations 9 and 18 of the Regulations in question are, when applied together, unreasonable, we, also, find that they entail arbitrary results and unequal treatment, inter alia even among persons in one and the same profession, that they infringe Article 28 of the Constitution which safeguards the right to equality. In this respect we draw attention to the following passage from the judgment in *Fekkas v. The Electricity Authority of Cyprus* (1968) 1 C.L.R. 173 (at pp. 183-184):

"In applying a constitutional provision, such as Article 28, a Court can only interfere with the validity of legislation if the legislative enactment concerned is clearly unreasonable or arbitrary; the Court cannot substitute its own

discretion, in the place of the discretion of the Legislature, once there do exist circumstances which could reasonably lead to the distinction or differentiation introduced by an enactment.

As Mr. Justice Brewer has put it in *Bachtel v. Wilson*, (204 U.S. 36; 51 Law. ed. 357):-

> 'In short, the selection, in order to become obnoxious to the 14th Amendment'-

of the U.S.A. Constitution which safeguards equal protection of the laws –

> 'must be arbitrary and unreasonable; not merely possibly, but clearly and actually so'."

Furthermore, to the extent to which contributions to the scheme of social insurance concerned may be regarded as contributions according to means towards a public burden, in the sense of Article 24 of the Constitution, we are of the view, for the reasons already stated in this judgment, that the two regulations in question result in a contravention of such Article, too.

For all the above reasons the administrative decisions and acts which are complained of in the present recourses have to be annulled; and, once we have reached this conclusion, it will be of no use for the purposes of these proceedings to decide on any other issues (see, also, in this connection, *The Republic v. Georghiades* (1972) 3 C.L.R. 594).

Sub judice decisions annulled.