

1983 March 11

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOSSIF ANDRONIKOU,

*Applicant.*

v.

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

*Respondent.*

(Case No. 439/80).

*Administrative Law—Competence—Lack of competence a ground for annulment—Hierarchical recourse to Minister of Labour and Social Insurance under the Social Insurance Law, 1980 (Law 41/80)—Competent organ to deal with such recourse the Minister—Section 78 of the Law—Decision on the recourse not valid because it was not taken by the Minister.*

*Practice—Competence of an organ—A matter that the Court may raise ex proprio motu.*

10 Upon applying for a Social Insurance Card in 1957 applicant stated the year of his birth as being 1921. When, in April, 1980, he applied to the Ministry of Labour and Social Insurance for old age pension he gave the date of his birth as the 20th April, 1915. In view of this discrepancy the Ministry carried out an inquiry with a view to ascertaining applicant's correct date of birth and upon completing the inquiry it informed applicant that it had been decided that the correct date of his birth was the year 1921. There followed correspondence between applicant and the Ministry and on the 5th September, 1980, applicant made a hierarchical recourse to the respondent Minister under section 78 of the Social Insurance Law, 1980. In reply a letter was addressed to him on behalf of the Director of the Ministry informing him that his date of birth could not

be revised; and hence this recourse. Nowhere in the file of the administration was there a decision of the Minister nor was it stated either in the facts in support of the opposition or in the letter by means of which the sub judge decision was conveyed to the applicant that such decision was that of the Minister. 5

*Held.* (after stating that the question of the competence of an organ is a matter that the Court may raise *ex proprio motu*) that the sub judge decision does not amount to a decision duly taken by the Minister under s.78 of the Social Insurance Law, 1980 (Law 41/80); that it is clear from the provisions of this section 10 that the only competent organ to decide on the hierarchical recourse is the Minister and nobody else; that lack of competence of an organ is a ground for annulment; that since the sub judge decision was not taken by the Minister who only had competence, under the provisions of the law, to decide it is not 15 a valid decision and must be annulled.

*Sub judge decision annulled.*

Cases referred to:

*Republic v. Georghiades* (1972) 3 C.L.R. 594 at p. 692;  
*Georghiades v. Republic* (1966) 3 C.L.R. 252; 20  
*Hadjistefanou v. Republic* (1966) 3 C.L.R. 289;  
*Evlogimenos v. Republic* (1973) 3 C.L.R. 174;  
*Phoenicia Hotels Ltd. and Another v. Republic* (1978) 3 C.L.R.94.

**Recourse.**

Recourse against the refusal of the respondent to grant 25 applicant old age pension.

*M. Papapetrou*, for the applicant.

*A. Papasavvas*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.* 30

L. LOIZOU, J. read the following judgment. By the present recourse the applicant seeks a declaration that the act and/or decision of the respondent dated 17th October, 1980, by which he refused his application for old age pension and/or decided that the applicant had not completed his pensionable age for 35 the purposes of the Social Insurance Law is null and void and of no legal effect.

The undisputed facts of the case are briefly as follows:

On the 10th January, 1957, the applicant made an application on the prescribed form for a Social Insurance Card. In the column where he should have stated the date of his birth he made no reference either to the month or the date but merely stated the year of his birth as being 1921. On the 21st April, 1980, the applicant applied to the Ministry of Labour and Social Insurance for old age pension. In his application form he gave the date of his birth as the 20th April, 1915. In support of this he attached a certificate of birth No. 988385. This certificate was issued by the District Officer of Paphos on the 5th January, 1980, on the strength of an affidavit sworn by the applicant. It is common ground that prior to the 5th January, 1980, there was no entry in the Register of Births of the District regarding applicant's date of birth.

In view of this discrepancy between the date originally given by the applicant and the date given in the application for old age pension it was decided to carry out an inquiry with a view to ascertaining applicant's correct date of birth. From the records in the office of the population census it was found that when the applicant originally applied for an identity card in the year 1956 he stated the year 1921, again without any date or month, as being the date of his birth. In the Migration office there was no file for the applicant because he had never applied for a passport. The matter was then referred to the District Labour and Social Insurance Office of Paphos for an inquiry to be carried out with a view to ascertaining applicant's correct date of birth. The officer who was appointed to carry out the inquiry visited applicant's village and took a statement from him. In his statement applicant stated that he was born on the 20th April, 1915 and that he knew this because his mother used to tell him so before she died. He was married in 1945 but could not say how old he was then. He named two co-villagers of his who, he said, were of the same age as he remembered that they attended elementary school together. He said that he was the third of five brothers and that his eldest brothers were born in 1908 and 1913. He further stated that when he took out his identity card he gave the date of his birth as the year 1921. The officer also took a statement from one of the persons named by the applicant who stated that he was

born on the 30th September, 1915, but that his identity card shows that he was born in 1920. He further stated that the applicant was of the same age as he was because they attended elementary school at the same time. The officer did not take a statement from the other person named by the applicant because, as he puts it, he would have told him that the applicant was 65 years old. His impression was that there was some sort of collusion as on two previous occasions that he carried out similar inquiries the same persons volunteered evidence and although another inhabitant of the village informed him that the applicant was younger than 65, when asked he refused to give his name. Be that as it may, the conclusion he reached was that he could not express an opinion nor could he find out any other material establishing the correct date of birth of the applicant. The applicant was consequently informed that after an inquiry it had been decided that the correct date of his birth for the purposes of the Social Insurance Law was the year 1921 and that his application had been rejected (reds 5 and 6 in exhibit 1).

On the 10th July, 1980, the applicant wrote another letter to the Social Insurance Department of the Ministry (red 8 in exhibit 1) strongly protesting and requesting the reconsideration of his case. He enclosed another photocopy of the certificate of birth he had obtained by an affidavit and stated that one of his elder brothers was born on the 5th July, 1909, and the other on the 10th December, 1912 and that his mother used to give birth to one child every three years. He again mentioned the name of the person who had made a statement to the officer supporting his allegation.

On the 31st July, 1980, the Ministry informed the applicant that his case could not be reconsidered as he had submitted no material justifying such reconsideration.

On the 11th August, 1980, applicant wrote a letter to the Minister setting out the history of his application and asking for his intervention in the matter. He was informed in reply by the Director of Social Insurance that the Minister had gone through his case very carefully but from the available material the revision of the decision regarding his date of birth was not justified. He was further requested that if he had any other material to submit it to the Minister. As a result on the 5th

September, 1980, the applicant wrote another letter to the Minister enclosing two certificates of birth of his elder brothers according to which they were born on the 5th July, 1909 and 10th December, 1912 and three statements from three co-villagers of his, one of whom was the same person from whom the officer who carried out the inquiry took a statement, to the effect that they were born the first in 1913 and the other two in 1915 and that they knew the applicant since childhood and that he was born in 1915. In reply the letter exhibit 2 was forwarded to the applicant informing him that his date of birth could not be revised on the basis of the material supplied and that if he were to produce other undisputable evidence his case would be re-examined.

As a result the present recourse was filed.

The grounds of law set out in the application are: (a) Contravention of the Social Insurance Law No. 41/80 and/or the Regulations; (b) misconception of facts and/or wrong legal characterization of the actual facts and (c) lack of reasoning or due reasoning of the decision.

In the course of his short address learned counsel said that he based his case on the grounds of misconception of facts and lack of due reasoning; and he confined his argument to a submission that the respondent should have relied on the material and information supplied by the applicant and should allow the change of his date of birth from 1921 to 1915.

It seems to me that counsel's submission does not disclose any misconception as to the facts nor does it appear from the facts of the case that there has been such a misconception. The short issue that had to be resolved was the correct date of applicant's birth and all the evidence related to this matter. What, in my view, learned counsel's argument amounts to is a wrong assessment by the administration of the facts before it. Such assessment, however, except in cases where the administration exceeds the extreme limits of its discretionary powers, is not subject to review by an administrative Court. See Conclusions from the Case Law of the Greek Council of State (1929-1959) p. 268 and *The Republic v. Georghiadis* (1972) 3 C.L.R. 594 at p. 692 et seq.

With regard to the ground of lack of due reasoning although learned counsel, apart from mentioning in the course of his address that he relied on such ground, had nothing else to say, it seems clear to me that both the letter dated 17th October, 1980, exhibit 2, by means of which the final decision was communicated to the applicant as well as the previous correspondence exchanged between him and the Ministry and the other material in the file make it abundantly clear why the application was refused. I, therefore, find no merit in either of the grounds raised by counsel.

Having said this I feel that I must point out, although the matter may not be material for the determination of this recourse, that the inquiry carried out with a view to ascertaining applicant's correct date of birth by the officer appointed for the purpose by the Director falls short of the procedure set out in s.76 of the Law. Although the officer was vested with powers to summon any person to attend and give evidence or produce any necessary documents he failed to do so with the result that persons who could, to his knowledge, give material information were not summoned to attend the inquiry and give such information. Also, once the officer knew from the statement of the applicant that he had two younger brothers and in the absence of any indication that their dates of birth were not recorded in the Register of Births, one would have thought that the verification of their ages would provide a more or less safe solution to the matter under investigation. But he, nevertheless, failed to inquire into this matter. But, having said this, I hasten to say that, it is not the decision of the Director that is the subject of this recourse. What is challenged is the decision of the Minister on the hierarchical recourse. The procedure in case of such recourse is set out in s.78 of the Social Insurance Law No. 41/80. The Minister could, under the second proviso thereto, appoint an officer or committee of officers from his Ministry with a view to examining certain matters raised in the recourse and report back to him before he issued his decision. The Minister did not choose to follow this course probably because he considered that the material available was sufficient for the purpose of deciding the issue. It is, however, abundantly clear from the provisions of the section that the only competent organ to decide is the Minister and nobody else. The question of the competence of an organ is a matter that the Court may

raise ex proprio motu. See Stassinopoulos on the Law of Administrative Disputes (1964) p. 251; *Georgiades v. The Republic* (1966) 3 C.L.R. 252; *Hadjistefanou v. The Republic* (1966) 3 C.L.R. 289; and lack of competence of an organ is  
5 a ground for annulment. (See, inter alia, *Evlogimenos v. The Republic* (1973) 3 C.L.R. p. 174 and *Phoenicia Hotels Ltd. and Another v. The Republic* (1978) 3 C.L.R. 94.

In the present case all relevant documents are contained in the Ministry file exhibit 1. Nowhere in this file is there a decision  
10 by the Minister nor is it stated either in the facts in support of the Opposition or in the letter exhibit 2 by means of which the sub judice decision was conveyed to the applicant that such decision was that of the Minister. In the letter exhibit 2 which is addressed to the applicant on behalf of the Director reference  
15 is made to the applicant's letter of the 5th September, 1980, to the Minister in relation to his date of birth for the purposes of the Social Insurance Law and he is informed that the date of his birth cannot be revised on the basis of the certificate of birth of various co-villagers of his which he had forwarded  
20 together with his letter.

But whatever the contents of the letter it could not in itself amount to a decision duly taken by the Minister under s. 78 of the Law.

This being the position I feel that I must come to the  
25 conclusion that the decision was not taken by the Minister who only had competence under the provisions of the law to decide and that, therefore, it is not a valid decision and must be annulled.

In the result this recourse succeeds but in the circumstances  
30 I make no order as to costs.

*Sub judice decision annulled. No order as to costs.*