

1986 October 23

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

PITSA SPYRIDAKI AND ANOTHER,

Applicants.

v.

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

Respondents.

(Case No. 345/84).

Executory act—Confirmatory act—Informatory act—New inquiry based on new facts—A prerequisite of a new executory decision—Impression that respondents in issuing the first decision did not attach any weight to a material consideration—A matter of legal argument, but not a

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After the enactment of the Social Insurance Law 41/80 the applicants were classified in the category of persons exercising a free profession and as such had to pay contributions on the basis of income of £56.- per week in accordance with regulations 9 and 18 of the relevant Regulations enacted on 29.8.80. Regulations 9 and 18 were declared by this Court as unconstitutional and as a result the Regulations were amended on the 15.10.82. The 1982 amending Regulations were given retrospective effect as from 6.10.80.

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On 27.12.82 the applicants, who, during the period 6.10.80 until 3.10.82 were paying their contributions in accordance with the said regulations 9 and 18 with reservation of rights asked respondent 2 to re-adjust their con-

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tributions and credit them with the whole amounts paid by them during the said period against future contributions.

By letter dated 11.3.83 respondent 2 informed the applicants that their income had been re-determined and their contributions re-adjusted, so that the amounts paid by them in excess be credited in their favour towards contributions payable after 4.10.82. 5

By letter dated 24.1.84 counsel for the applicants requested a reply to his clients' applications that the whole amounts paid by them be credited as against future contributions. By letter dated 3.4.84 and signed by the District Social Insurance Officer Counsel was informed inter alia that the applicants had already been informed of the situation. On 11.4.84 counsel met respondent 2 in order to clarify that the case of his clients was one concerning the return of contributions paid with reservation of rights. At the meeting it was agreed that counsel should send a letter in clarification, which he did on 13.4.84. By letter dated 26.4.84* respondent 2 informed counsel of the applicants of the reasons why his clients' claim cannot be satisfied. 10 15 20

As a result, the applicant filed the present recourse.

Held, dismissing the recourse: (1) It is clear from the contents of the relevant letters that the will of the administration to adjust the payments already made by the applicants and credit in their favour only the surplus was clearly expressed as early as 11.3.83. 25

(2) It has been firmly established by our case law that in order to be a new executory decision a new inquiry must take place based on new facts. 30

(3) In this case the letter dated 11.3.83 contained a final executory decision. The letter of 3.4.84 repeats the contents of the letter of 11.3.83 and is of an inforamatory character. Lastly, the letter of 26.4.84 is both confirmatory of the letter of 11.3.83 and inforamatory. 35

* Quoted at p. 1940 post.

5 (4) The letter of 13.4.84 by applicants' counsel did not
put forward new facts, justifying a new inquiry and a new
decision. The meeting between counsel and respondent 2
cannot change the position since no new facts were set
out in the letter that followed. Counsel was under the
impression that the respondent did not attach any
weight to the facts that the payments were made "with
reservation of rights", but this is a matter of legal argu-
ment and certainly not a new fact justifying a new in-
10 quiry and a new decision.

*Recourse dismissed.
No order as to costs.*

Cases referred to:

- Angelides and Others v. The Republic.* (1982) 3 C.L.R. 774;
- 15 *Kritiotis v. Municipality of Paphos and Others* (1986) 3
 C.L.R. 322;
- Photiou v. The Republic* (1985) 3 C.L.R. 1401;
- Constantinides v. The Republic* (1985) 3 C.L.R. 644;
- Argyrou v. The Republic* (1985) 3 C.L.R. 559;
- 20 *Liasidou v. The Municipality of Famagusta* (1972) 3
 C.L.R. 278;
- Ioannou v. Commander of Police* (1974) 3 C.L.R. 504;
- Christophides v. The Republic* (1971) 3 C.L.R. 302;
- Markou v. The Republic* (1968) 3 C.L.R. 267;
- 25 *Kelpis v. The Republic* (1970) 3 C.L.R. 196;
- Razis and Another v. The Republic* (1979) 3 C.L.R. 127;
- Pieris v. The Republic* (1983) 3 C.L.R. 1054.

Recourse.

30 Recourse against the refusal of the respondents to return
to the applicants and/or credit them in respect of contri-
butions paid by them with reservation of their rights, for

the period during which they were not bound to pay contributions as the respective regulations were declared unconstitutional by the Supreme Court.

Sp. Spyridakis, for the applicants.

A. Papasavvas, Senior Counsel of the Republic, for the respondents. 5

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicants pray for a declaration that the decision of the respondents, contained in their letter dated the 26th April, 1984, whereby they refused to return to the applicants and/or credit them in respect of contributions paid by them with reservation of their rights, for the period during which they were not bound to pay contributions as the respective regulations were declared unconstitutional by the Supreme Court, is null and void and of no legal effect whatsoever. 10 15

The two applicants are self-employed being the directors of Hellenic Conservatory of Nicosia.

After the enactment of the Social Insurance Law, 1980. (No. 41/80), the applicants were classified under sections 3, 12 and 13 of the Law in the category of persons exercising a free profession and as such had to pay contributions on the basis of an income of £56.- per week, in accordance with Regulations 9 and 18 of the Regulations (enacted on 29.8.1980) for the period between 6.10.1980 until 3.10.1982. Such payments were made by the applicants with reservation of their rights, in view of the fact that certain recourses were pending before the Supreme Court concerning the constitutionality of the said Regulations. 20 25 30

By the judgment of the Court in the said recourses (see *Angelides & Others v. Republic* (1982) 3 C.L.R. 774) Regulations 9 and 18 of the Regulations were declared unconstitutional on the ground that self-employed persons were deprived of their right to prove their actual income and pay contributions on the basis of such income. 35

As a result of the aforesaid judgment, the Regulations

were amended (Supplement No. III, Part I, to the official Gazette dated 15.10.1982), in such a way as to afford to self-employed persons the opportunity to pay contributions on the basis of their actual income proved by them. The
5 1982 amending Regulations were given retrospective effect as from 6.10.1980, by Law 48/82.

The applicants on 27.12.1982 addressed identical letters to the Director of Social Insurance asking him to re-adjust their contributions and credit them with the whole amounts
10 paid by them against future contributions, stating that such amounts were paid with reservation of their rights.

Respondent 2 after having carried out an inquiry in order to ascertain the actual income of the applicants replied, on 11.3.1983, by identical letters addressed to them,
15 informing them that their income had been re-determined and their contributions re-adjusted, so that the amounts paid by them in excess, be credited in their favour towards contributions payable after the 4th October, 1982.

On the 24th January, 1984, applicants addressed,
20 through their counsel, a letter to the Ministry of Labour and Social Insurance requesting a reply to their application for crediting the whole amounts of contributions paid by them towards future contributions for the same reasons as mentioned in their previous letter.

25 The respondents replied by letter signed by the District Social Insurance Officer, dated 3.4.1984, informing counsel about the position in the case of each one of the applicants and stating that the applicants had already been informed of the situation.

30 Counsel for the applicants who presumably did not consider that his application had been answered, had, on the 11th April, 1984, a meeting with the Director of Social Insurance in order to clarify that the case was one concerning the return of contributions paid with reservation
35 of rights. At that meeting it was agreed that counsel should send a letter in clarification, which he did on 13.4.1984, stressing, once again, the fact that his clients had paid their contributions with reservation of their rights.

Respondent 2 finally replied by letter dated the 26th April, 1984, which reads as follows:

"I refer to your letter dated the 13th April, 1984 and to inform you the following:

It is a fact that the Social Insurance (Contributions) Regulations of 1980 which concerned the manner of calculation of the contributions of self-employed persons have been declared by the Supreme Court as unconstitutional because they did not afford the right to self-employed persons who had an income lower to the presumed one which was specified in the Regulations, to pay contributions on the basis of their actual income. 5 10

With the amending Social Insurance Law, No. 48/82 and the Social Insurance (Contributions) (Amending) Regulations of 1982 the right was afforded to self-employed persons who have an income lower than the presumed one which is specified for their category, to pay on the basis of their actual income, provided they submit an application for the purpose, within the time limit provided by the Regulations. In addition, a right was afforded to those who had already paid contributions for the period between October, 1980—September, 1982, to exercise these rights by submitting an application until 31.12.1982. 15 20 25

From the material in our office it seems that your clients Mrs. Pitsa Spyridaki and Olga Mavronicola have made use of the above provisions of the Law and their income for the period of October, 1980—September, 1982 was redetermined, and the amount in excess to the contributions which they paid for the said period has been credited for periods after October, 1982. The letter of the District Social Insurance Officer of Nicosia, bearing the same file number and dated the 3rd April, 1984 is relevant. 30 35

In view of the above and the fact that the Social Insurance Law does not allow the return of contributions in such cases, I regret to inform you that your claim cannot be satisfied."

The applicants having felt aggrieved, filed the present recourse on the 3rd July, 1984, which is based on the following grounds of law:

5 1. The applicants, having paid the contributions in question with reservation of their rights, have a legitimate interest to claim the return and/or credit of their money.

2. The withholding by the respondents of the contributions paid by the applicants for the period during which there was no law or regulations in force, is unlawful.

10 3. The decision of the respondents contravenes the principle of equality, which is safeguarded by Article 28 of the Constitution.

15 Counsel for the respondents raised, by his opposition the preliminary objection that the sub judice decision does not amount to an executory act or decision but is confirmatory of previous decisions and the recourse is thus out of time.

I intend to deal with this preliminary point, first.

20 Counsel for the respondents argued, in his written address, that the decision contained in the letter of the 26th April, 1984 (the subject matter of this recourse) is confirmatory of the contents of the letter dated 11.3.1983 and had been repeated and confirmed by the letter of the 3rd of April, 1984, the contents of neither of which were
25 challenged.

Counsel for the applicants, on the other hand, contended that applicants' claim was for the return or credit, against future payments of contributions paid without prejudice, and that neither the letter of the respondents of 11.3.1983
30 nor the one of 3.4.1984 contain any decision in this respect. The only letter, counsel submitted, by which an answer was given informing the applicants that the return of contributions paid by them was not possible under the law was the one of 26.4.1984 and such letter was the only

one embodying an executory decision on applicants' claim.

As the contents of the various letters exchanged in connection with the present case is material to enable me decide the nature of the act challenged, I find it necessary, at this stage, to make specific reference to their contents. 5

The letter of 11.3.1983, which was the first one sent by the respondents in reply to the applicants' claim, reads as follows:

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Your application has been examined. The income on the basis of which you have paid contributions as self-employed has been re-determined. 10

From this re-determination there remains a sum of contributions in your favour 15

The amount in excess of contributions will be credited for the settlement of contributions for the period from 4.10.1982 and thereafter, given that you continue to work as a self-employed person.” 20

The applicants did not challenge the contents of this letter, nor did they complain or request any clarifications in the matter, until the 24th January, 1984, when they wrote a new letter, as mentioned earlier in this judgment, to which they received the letter of 3.4.1984, which reads as follows: 25

“I refer to your letter dated 24.1.1984 and inform you as follows:

2. Mrs. Pitsa Spyridaki has been credited with contributions until 11.9.1983. You have been informed about this matter on 11.3.1983. On 21.3.84 she was informed that she owes contributions in relation to two quarters of 1983 which concern the balance of 30

her contributions for the period of September—December, 1983, amounting to £112.68c.

5 3. Mrs. Olga Mavronicola has been credited with contributions until 5.12.1983. You have been informed about this matter on 11.3.1983. On 21.3.1984, she was informed that she owes contributions in relation to one quarter of 1983 which concern the balance for December, 1983, amounting to £4.08c.

10 Again the applicants did not challenge the contents of the above letter, and the letter of 13.4.1984 was written by their counsel, in clarification, after his meeting with the Director of the Department of Social Insurance. This letter reads as follows:

15 “In answer to your letter dated 3.4.84 and our meeting which followed on 11.4.84 with regard to the crediting of contributions to my clients Mrs. Pitsa Spyridaki and Mrs. Olga Mavronicola you are informed that the reason that we ask they should be
20 credited for the future of the whole of the contributions paid before the proportional system for the period for which the Law was declared unconstitutional by the Supreme Court is that they paid their contributions *with reservation of their rights* concerning the
25 matter of the constitutionality of the law which was pending in recourses before the Supreme Court. You are therefore requested to view the whole matter from this point of view and not as a general matter for the return of contributions paid without reservation, after
30 the annulment of the Law by the Supreme Court, which we did not raise.”

The letter dated 26th April, 1984, containing the sub
judice decision, was sent in reply by the respondent, the
contents of which need not be referred again, as reference
35 has already been made in the judgment.

It is clear from the contents of the three letters in question that the will of the respondents to adjust the pay-

ments already made by the applicants and credit in their favour only the surplus was clearly expressed as early as the 11.3.1983 and leaves no room for doubt that there was no intention of returning or crediting the whole amount.

It has been firmly established by our case law that in order to be a new executory decision a new inquiry must take place based on new facts (see *Kritiotis v. Municipality of Paphos and others* (1986) 3 C.L.R. 322, 337; *Photiou v. Republic* (1985) 3 C.L.R. 1401, 1407; *Constantinides v. Republic* (1985) 3 C.L.R. 644; *Argyrou v. Republic* (1985) 3 C.L.R. 559).

Having considered carefully the contents of the letters in question, I find that the letter of the 11th March, 1983, contains, in fact, a final executory decision which has not been challenged. The letter of 3.4.1984 repeats the contents of the letter of 11.3.1983 and is, in my view, of an informatory character. Lastly, the letter of the 26th April, 1984, is also confirmatory of the letter of 11.3.1983 and informatory, explaining both the adjustments made and the legal position. No new decision can be read into the lines of this letter. On the other hand, no new facts were put forward by the letter of applicants' counsel dated 13.4.84 so as to justify a new inquiry and a new decision based on it. (*Liasidou v. Municipality of Famagusta* (1972) 3 C.L.R. 278, *Ioannou v. Commander of Police* (1974) 3 C.L.R. 504).

The fact that applicants' counsel had a meeting with the Director of the Department of Social Insurance at which certain arguments and views were exchanged, cannot change the position since no new facts were set out in the letter that followed. If, as I understand it to be, counsel was of the impression that no weight was placed by the respondents to the fact that his clients had paid the contributions in question with reservation of their rights, this, in my view, is a matter of legal argument and certainly not a new fact justifying a new inquiry and a new decision. (See *Christophides v. Republic* (1971) 3 C.L.R. 302; *Markou v. Republic* (1968) 3 C.L.R. 267; *Kelpis v. Republic*

(1970) 3 C.L.R. 196, *Razis & Another v. Republic* (1979)
3 C.L.R. 127; *Pieris v. Republic* (1983) 3 C.L.R. 1054).

In the result, this recourse fails and is hereby dismissed
with no order for costs.

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Recourse dismissed.
No order as to costs.