

1986 May 31

(TRIANAFYLLIDES P)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS ENTAFIANOS

*Applicant*

v

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

*Respondents.*

*(Case No 649/84)*

*Reasoning of an administrative act — Reasoning in conflict with administrative records — Ground for annulment*

5 *Social insurance — Self-employed persons — Advocate with less than ten years' practice — Despite the fact that he sought to calculate his contributions on the basis of an income lower than the specially reduced income provided by law the respondent was not absolved from responsibility to reach a proper decision in accordance with the law*

10 It is an indisputable fact that the applicant was at the material time a self-employed advocate who had been a practising advocate for less than ten years and therefore under the relevant legislative provisions, he was entitled to have the social insurance contributions payable by him calculated on the basis of a specially reduced income

15 However the applicant sought to pay contributions on an income lower than such specially reduced income. The respondent Director did not accept applicant's stand and, as a result, fixed the amount of income on the basis of which applicant was to pay social insurance contributions at a level higher than such specially reduced level

Hence this recourse

20 Held, annulling the sub judice decision (1) The fact that applicant had less than ten years' practice appears in the relative administrative records. It follows, therefore, that the reasoning on the basis of which the sub judice in the present proceedings decision has been reached, is in conflict with the

relevant administrative records Moreover, it is clear that the sub judge decision is the product of a maternal misconception

(2) The fact that the applicant sought to calculate his contributions on the basis of an income lower than what the law provided did not absolve the respondent Director of Social Insurance from his responsibility to reach the proper in the circumstances, and in accordance with the relevant legislative provisions, decision

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*Sub judge decision annulled  
No order as to costs*

*Cases referred to*

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*Angelides v. The Republic* (1987) 3 C L R 1789,

*HjiDemetrou v The Republic* (1980) 3 C L R 20,

*Mikellidou v The Republic* (1981) 3 C L R 461,

*Foumia Ltd v The Republic* (1983) 3 C L R 262

**Recourse.**

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Recourse against the decision of the respondents whereby applicant's contributions payable to the social insurance were fixed on the basis of an income higher than that stated by him to be his income for social insurance purposes.

*A. S. Angelides*, for the applicant.

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

*Cur adv vult.*

TRIANTAFYLLIDES P. read the following judgment. The applicant challenges by this recourse a decision of the respondent Director of Social Insurance - who comes under the respondent Minister of Labour and Social Insurance - which was communicated to him by letter dated 15 September 1984 and 19 November 1984 and by virtue of which there were fixed the social insurance contributions payable by the applicant on the basis of an income higher than that which had been stated by the applicant to be his income for social insurance purposes.

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The legal issues arising in this case are closely similar to those which arose in *Angelides v. The Republic*, (case 637/84,

determined today and not reported yet)\* and, therefore, in this respect, the judgment given in the *Angelides* case should be read together with the present judgment and that judgment should be treated as forming, to this extent, part of this judgment.

5 It is an indisputable fact that the applicant was at the material time a self-employed advocate who had been a practising advocate for less than ten years and, therefore, under the relevant legislative provisions, he was entitled to have the social insurance contributions payable by him calculated on the basis of a specially  
10 reduced income; but this was not done by the respondent Director of Social Insurance who computed on a higher income basis the social insurance contributions payable by the applicant.

On the basis of all the material before me there can be no doubt that the factor of the less than ten years' practice of the applicant  
15 ought to have been known to the respondent Director of Social Insurance, on the basis of official records, at least as from April 1984 when, in filling in an official form in relation to his social insurance contributions, the applicant had declared that he had  
20 been practising as an advocate from September 1978 and, as a result, he was allowed to pay off on this basis his social insurance contributions for the period from April 1983 to December 1983 (see, in this connection, paragraph 6 of the affidavit sworn on 23 October 1985 by Georghios Antoniadis who is an Assistant Principal Insurance Officer).

25 It is to be noted that the letters by means of which the sub judge decision of the respondent Director was communicated to the applicant were written much later, on 15 September 1984 and 19 November 1984, that is long after the applicant had declared, as  
30 aforesaid, in April 1984, that he had been practising as an advocate only as from September 1978.

It follows, therefore, that the reasoning on the basis of which the sub judge in the present proceedings decision has been reached is in conflict with the relevant administrative records (see, inter alia, *HadjiDemetriou v. The Republic*, (1980) 3 C.L.R. 20, 26,  
35 *Mikellidou v. The Republic*, (1981) 3 C.L.R. 461, 472, and *Fournia Ltd. v. The Republic*, (1983) 3 C.L.R. 262, 276).

It is, furthermore, clear, in view of the foregoing, that the sub judge decision was reached on the basis of a material misconception.

\* (1967) 3 C.L.R. 1789.

The fact that the applicant was seeking to pay his social insurance contributions on the basis of an income even lower than that which would have been attributed to him if he had been treated as a self-employed advocate with less than ten years' practice did not absolve the respondent Director of Social Insurance from his responsibility to reach the proper in the circumstances, and in accordance with the relevant legislative provisions, decision regarding the social insurance contributions payable by the applicant; and a most material circumstance was the less than ten years' practice of the applicant as a self-employed advocate which was not taken into account at all by the respondent Director. 5 10

In the result this recourse succeeds and the sub judice decision of the Director of Social Insurance is annulled; but I shall make no order as to costs of this recourse. 15

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