

1987 January 24

[TRIANIAFYLIIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THE CYPRUS PHASSOURI PLANTATIONS CO LTD.

Applicant.

v.

THE ORGANIZATION OF AGRICULTURAL INSURANCE.

Respondent.

(Case No 276/81).

ARCHANGELOS DOMAIN LTD..

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE COUNCIL OF MINISTERS.
2. THE ORGANIZATION OF AGRICULTURAL INSURANCE.

Respondents.

(Case No. 370/81).

*The Agricultural Insurance Law 19/77, as amended, sections 15, 16 and 17 —
They are not repugnant to or inconsistent with Articles 23, 24, 25, 26, 28 and
30 of the Constitution.*

- 5 *Constitutional Law — Taxation — Tax not of a universal nature based on
reasonable classifications — Not inconsistent with Arts. 24 and 28 of the
Constitution.*

*Constitutional Law — Right to property — Constitution, Art. 23 — Deprivation of
money by reason of taxation — Not inconsistent with Art. 23.*

- 10 *Constitutional Law — Right to practice a profession — Constitution, Art. 25 —
Does not protect against indirect interference with such a right.*

Phassouri Plantations v. Agric. Insurance (1987)

Constitutional Law — Right to make a contract — Constitution, Art 26 — The Agricultural Insurance Law 19/77, sections 15, 16, 17 — Not contrary to Art 26

Constitutional Law — Right to have access to Courts — Constitution, Art 30 — The Agricultural Insurance Law 19/77, sections 15, 16 and 17 — Not contrary to Art 30 5

The Agricultural Insurance Law 19/77 — The premiums payable thereunder — They are in the nature of tax

The applicants who are engaged in the production for sale of table grapes, challenge in effect the imposition on them of the obligation to pay «insurance premiums» in respect of table grapes of the 1981 crop at the rate of 2 5 mls per o'ne (or of 2 mls per kilo) 10

The sub judice decisions were taken in virtue of Agricultural Insurance Law, (Law 19/77) as amended The Agricultural Insurance Regulations 1977 and the Order of the Council of Ministers dated 5 5 78 Counsel for the applicants have contended that sections 15 16 and 17 of Law 19/77 are unconstitutional as contravening Articles 23 24 25 26 28 and 30 of the Constitution 15

They have submitted further that the aforesaid insurance premium of 2 mls per kilo is arbitrary and unreasonable and that the decision by means of which it was fixed is not duly reasoned 20

Held dismissing the recourse (1) The contributions in question are in the nature of a tax, in the sense of Article 24(2) of the Constitution, and the fact that such tax is not of a universal nature does not offend against the principle of equality which is safeguarded by Articles 24(1) and 28 of the Constitution, because its imposition is based on a reasonable in the light of all relevant considerations classification 25

(2) When a tax duty or rate is not otherwise unconstitutional it cannot be treated as contravening the provisions of Article 23 of the Constitution merely because it results in deprivation of money for the purpose of such tax, duty or rate 30

(3) Article 25 protects against direct and not also indirect interference with the rights safeguarded by it

(4) The application of the relevant legislative provisions does not, in fact entail entering into a contract in the sense in which the notion of entering into a contract is safeguarded by Article 26 1 of the Constitution 35

(5) The contention that the law in question denies applicants right to have access to the Court in order to challenge the obligation to be an insured

3 C.L.R. Phassouri Plantations v. Agric. Insurance

person is wholly unfounded because the applicants have filed under Article 146 of the Constitution their present recourse by means of which all their contentions are being determined

- 5 (b) The applicants on whom the burden lay have failed to persuade the Court that the fixing of such premiums at 2 5 mils per oke (or 2 mils per kilo) is arbitrary and unreasonable

Recourses dismissed
No order as to costs

Cases referred to

- 1) *Lanitis Farm Ltd and another v The Republic* (1982) 3 C L R 124
Constantinides v The Electricity Authority of Cyprus 3 C L R 798
Re HjiKynakos and Sons Ltd 5 R S C C 22
The Republic v Demetnades (1977) 3 C L R 213
15 *Ioannides v The Republic* (1979) 3 C L R 295
Antoniades v The Republic (1979) 3 C L R 641
PASYDY v The Municipality of Nicosia (1978) 3 C L R 117
Ambrosia Oils v The Republic (1984) 3 C L R 943
Psaras v The Republic (1968) 3 C L R 353
Antoniades v The Republic (1979) 3 C L R 641
20 *Apostolou v The Republic* (1984) 3 C L R 509
Frangou v The Greek Communal Chamber (1966) 3 C L R 201
Chimonides v Manglis (1967) 1 C L R 125
Saba Kypns & Co v The Republic (1980) 3 C L R 149
The Republic v Menelaou (1982) 3 C L R 419
25 *Aloupas v National Bank of Greece* (1983) 1 C L R 55
Decision 1457/55 of Greek Council of State

Recourses.

- 30 Recourses against the decision of the respondents to impose on applicants the obligation to pay insurance premiums in respect of table grapes of the 1981 crop at the rate of 2 5 mils per oke

G *Cacoyiannis*, for applicants in Case No 276/81

G *Trantafyllides*, for applicant in Case No 370/81

S *Matsas*, for the respondents

Cur. adv. vult

TRIANTAFYLLIDES P. read the following judgment. By means of the present recourses, which were heard together in view of their nature, the applicants challenge, in effect, the imposition on them of the obligation to pay «insurance premiums» in respect of table grapes of the 1981 crop, at the rate of 2.5 mils per oke (or of 2 mils per kilo). 5

The applicants are companies engaged in agriculture and amongst their activities is the production for sale at the local market and for export abroad of table grapes and of grapes suitable for wine making. 10

By means of section 4 of the Agricultural Insurance Law, 1977 (Law 19/77), there was set up the Organization of Agricultural Insurance which functions under the supervision of the State and exercises the powers entrusted to it by the said Law.

By virtue of section 15 of Law 19/77 all persons in Cyprus engaged in agriculture are considered as «insured persons» for the purposes of this Law and are bound to pay to the Organization, as provided in section 17 of the Law, monetary contributions by way of insurance premiums in respect of their agricultural crops 15

By a proviso to section 21 of Law 19/77, which was added by section 2 of the Agricultural Insurance (Amendment) (No. 2) Law, 1980 (Law 26/80), the export by any person of any insured agricultural crop is prohibited unless the appropriate authority is satisfied, by a certificate of the respondent Organization, that the insurance premiums have been paid. 20
25

The premiums payable by the applicants in respect of their crops were fixed in accordance with the Agricultural Insurance Regulations 1977, which were made under section 33 of Law 19/77 (see No. 167 in the Third Supplement, Part I, to the Official Gazette of 29 July 1977). 30

The Council of Ministers, acting under section 16 of Law 19/77, has specified by an Order made on 5 May 1978 (see No. 80 in the Third Supplement to the Official Gazette) the agricultural crops which are compulsorily insurable for the purposes of Law 19/77 and in such crops are included table grapes and grapes suitable for wine making. 35

The validity of the aforementioned Order of the Council of Ministers was challenged by means of recourses Nos. 276/78 and

3 C.L.R. Phassouri Plantations v. Agric. Insurance Triantafyllides P.

177/78 which were dismissed by a judgment delivered by my
colleague Judge A. Loizou J. (see *Lanitis Farm and another v. The
Republic*, (1982) 3 C.L.R. 124) on the ground that such Order is of
5 a regulatory nature and legislative content and, therefore, it could
not be made directly the subject-matter of a recourse under Article
146.1 of the Constitution.

Counsel for the applicants have contended that sections 15, 16
and 17 of Law 19/77 are unconstitutional as contravening Articles
23, 24, 25, 26, 28 and 30 of the Constitution.

10 They have submitted further that the aforesaid insurance
premium of 2 mils per kilo is arbitrary and unreasonable and that
the decision by means of which it was fixed is not duly reasoned.

Before proceeding further it may be noted that the object of
agricultural insurance is, in section 3 of Law 19/77, stated to be the
15 promotion of the national economy and the welfare of those
occupied in agriculture; and by section 2 of Law 19/77 the
insurance premiums are defined as being the monetary
contributions payable by those insured to the Organization.

As regards the nature of such contributions I have duly
20 considered the submissions of counsel for the parties and, bearing
in mind the approach adopted by our Supreme Court in, inter alia,
Constantinides v. The Electricity Authority of Cyprus, (1982) 3
C.L.R. 798, 805-807, I have reached the conclusion that they are
25 contributions in the nature of a tax, in the sense of Article 24(2) of
the Constitution; and the fact that such tax is not of a universal
nature does not, in my opinion, offend against the principle of
equality which is safeguarded by Articles 24(1) and 28 of the
Constitution because its imposition is based on a reasonable, in
30 the light of all relevant considerations, classification (see, inter alia,
In re Hji Kyriakos and Sons Ltd., 5 R.S.C.C. 22, *The
Republic v. Demetriades*, (1977) 3 C.L.R. 213, *Ioannides v. The
Republic*, (1979) 3 C.L.R. 295, and *Antoniades v. The Republic*,
(1979) 3 C.L.R. 641, as well as the Decision 1457/1955 of the
Council of State in Greece).

35 It has been further submitted by counsel for the applicants that
the imposition of the sub judice compulsory insurance scheme,
which involves the compulsory payment of money by way of
insurance premiums contravenes Article 23 of the Constitution in
40 that the applicants are deprived of this money which they have to
pay as insurance premiums:

In *PASYDY v. The Municipality of Nicosia*, (1978) 3 C.L.R. 117. 138, there was stated that when a tax, duty or rate is not otherwise unconstitutional it cannot be treated as contravening the provisions of Article 23 of the Constitution merely because it results in deprivation of money for the purpose of such tax, duty or rate, because otherwise Article 23 of the Constitution would render Art. 24.1 of the Constitution devoid of any effect whatsoever. 5

The same approach was adopted in *Ambrosia Oils v. The Republic*, (1984) 3 C.L.R. 943, 948, where it was stated that Article 23 does not come into play in cases concerning imposition of taxes, duties, or rates of any kind, when such imposition comes within the provisions of Article 24 of the Constitution. 10

As I have already found that the provisions of Law 19/77 do not offend against Article 24 of the Constitution I have to find that the payment of money by the applicants by way of insurance premiums does not offend against Article 23 of the Constitution. 15

Another submission put forward by counsel for the applicants was that the compulsory insurance scheme in question interferes with the right to practice any profession or to carry on any occupation, trade or business which is safeguarded by Article 25 of the Constitution: 20

It has been held on a number of occasions that Article 25 protects against direct and not, also, indirect interference with the rights safeguarded by it (see, inter alia, in this respect, *Psaras v. The Republic*, (1968) 3 C.L.R. 353, 364, *Antoniades v. The Republic*, (1979) 3 C.L.R. 641, 659 *Apostolou v. The Republic*, (1984) 3 C.L.R. 509, 524 and the *Ambrosia*, case, supra 948). Consequently, I am of the opinion that since the imposition on the applicants of the duty to pay the insurance premiums in question does not interfere directly with their rights under Article 25 of the Constitution such Article is not contravened by the sub judice insurance scheme. 25 30

I come, next to the applicants' contention that their compulsory participation in the agricultural insurance schemes in question constitutes an imposed obligation to enter into a contract of insurance, in a manner violating their right which is safeguarded by Article 26 of the Constitution: 35

the lic case law such as *Frangou v The Greek*
munal Chamber (1966) 3 C L R 201, 209, *Chimonides v*
Manglis (1967) 1 C L R 125, *Psaras v The Republic* (1968) 3
C L R 353 364, *Saba, Kypris & Co v The Republic*, (1980) 3
5 C L R 149 160, *The Republic v Menelaou*, (1982) 3 C L R 419
and *Aloupas v National Bank of Greece*, (1983) 1 C L R 55, I am
of the opinion that the right safeguarded under Article 26 1 of the
Constitution as explained in the said case-law, has not been
10 the application of the relevant legislative provisions does not, in
fact entail entering into a contract, in the sense in which the notion
of entering into a contract is safeguarded by Article 26 1 of the
Constitution. In my view for the purposes of this insurance scheme
the applicants are not forced to enter into any contract at all
15 because they are made to participate in a scheme which is of
statutory and not of a contractual nature.

Counsel for the applicants complained, also, that neither in Law
19/77 nor in the relevant Regulations is there any provision
enabling an insured person to challenge by Court proceedings his
20 obligation to be an insured person under such Law or his
obligation to pay a particular insurance premium and therefore the
applicants, as insured persons, are being denied access to Court in
a manner contrary to Article 30 of the Constitution.

I find this contention of counsel to be wholly unfounded
25 because the applicants have filed under Article 146 of the
Constitution their present recourse by means of which all their
contentions regarding the alleged unconstitutionality, or
otherwise invalidity, of Law 19/77 and the Regulations made
thereunder, as well as any complaints about the validity of the
30 mode of the application of such Law and Regulations, are being
determined.

Lastly, as regards the complaint of the applicants about the
particular insurance premiums which they have to pay I am of the
view that the applicants on whom the burden lay, have failed to
35 persuade me that the fixing of such premiums at 2 5 mils per oke
(or 2 mils per kilo) is arbitrary and unreasonable so that they might
succeed in their recourses on this ground.

In the result these recourses fail and are dismissed accordingly,
but without any order as to costs.

Recourses dismissed
No order as to costs.