

1988 May 5

(A. LOIZOU, P. MALACHTOS, SAWIDES, STYLIANIDES, KOURRIS, JJ.)

THE DIRECTOR OF SOCIAL INSURANCE SERVICES,

v.

THRASYVOULOS GEORGHIADES,

Accused.

(Question of Law Reserved No. 251).

5 *Constitutional Law — Additional dues payable by reason of failure to pay in time social insurance contributions — The Social Insurance Laws 1980-1984, sections 73(1)(i), 80(1)(2)(4), 81, 84 and 90(1) and the Social Insurance (Contribution) Regulations, Regs. 22 and 24 — Not inconsistent with Art. 12 or Art. 24.1 or Art. 24.4 of the Constitution.*

Social Insurance — Additional dues for failure to pay social insurance contributions in time — Nature of.

10 *Constitutional Law — Public burdens — Constitution Art. 24.1 — Additional dues for failure to pay social insurance contributions in time — Such dues are not contributions to public burdens.*

15 The question reserved for the opinion of the Supreme Court in this case is whether the aforesaid provisions, whereby additional dues are imposed for failure to pay in time social insurance contributions are inconsistent with Art. 12(1)(2)(3) of the Constitution or with Art. 24(1)(4) thereof.

Held: (1) Adopting the ratio of *Loizou v. Sewage Board of Nicosia* (1988) 1 C.L.R. 122, the Court reached the conclusion that the aforesaid provisions are not inconsistent with Art. 12.

20 (2) Art. 24.1 does not come into play at all as this is not a contribution towards public burdens.

(3) Art. 24.4 is also not applicable as the additional charge is an administrative sanction prescribed by law, in order to prompt the taxpayer to pay in time a matter conducive to proper administration.

Opinion as above.

25 (Note: This is an English translation of the judgment in Greek appearing at pp. 74-78 ante).

Cases referred to:

Loizou v. Sewage Board of Nicosia (1988) 1 C.L.R. 122.

Question of Law Reserved.

Question of law reserved by the District Court of Limassol (Hadjihambis, D.J.) for the opinion of the Supreme Court under section 148 of the Criminal Procedure Law, Cap. 155 relative to a ruling of the said District Court made in the course of the hearing of Criminal Case No. 18171/84 filed by the Director of Social Insurance against the respondent, for omitting to pay the additional dues contrary to sections 73(1)(i), 88(1)(2)(4), 81, 84 and 90(1) of the Social Insurance Laws 1980-1984 and Regulations 22 and 24 of the Social Insurance (Contributions) Regulations 1980-1984.

Chr. Ioannides, for the Director of Social Insurance.

Accused appeared in person.

Cur. adv. vult.

A. LOIZOU P. read the following judgment of the Court. This is a Question of Law Reserved for the opinion of the Supreme Court under section 148 of the Criminal Procedure Law, Cap. 155.

The accused was charged before the District Court of Limassol with three counts. The first one was for omitting to pay Social Insurance contributions as a self-employed person contrary to sections 3(b), 10, 12(1), 13, 14(2), 21, 73(1)(b)(d)(e)(f)(f1),(g), (ia), 80(1)(2)(4)(5), 81, 84 and 90(1) of the Social Insurance Laws, 1980 to 1984 and Regulations 9, 18, 19, 21, and 22 of the Social Insurance (Contributions) Regulations, 1980 to 1984. The third count was that the accused omitted to pay special contribution for the defence of the Republic contrary to sections 2(1)(b), 3(2)(c), (3), (4), (8), 5(1)(2), 13(1)(2)(4)(6), 14, 15, 16 of the Special Contribution (Defence of the Republic) Law 1984. The second count which gave rise to the question reserved and to which the accused pleaded not guilty, charged the accused of the offence of omitting to pay the additional dues contrary to sections 73(1)(i), 80(1)(2)(4), 81, 84 and 90(1) of the Social Insurance Laws, 1980 to 1984 and Regulations 22 and 24 of the Social Insurance (Contributions) Regulations 1980 to 1984.

The accused raised the question of constitutionality of the

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relevant laws and regulations under which this count was brought to the effect that the imposition of additional dues for failure to pay social insurance contributions in time, is contrary to Articles 12(1)(2)(3) and 24(1)(4) of the Constitution.

5 The questions raised are as follows:

Whether sections 73(1)(i), 80(1)(2)(4), 81, 84 and 90(1) of the Social Insurance Laws 1980 to 1984 and Regulations 22 and 24 of the Social Insurance (Contributions) Regulations 1980 to 1984 are contrary to:

- 10 (1) Article 12(1)(2)(3) of the Constitution, and,
(2) Article 24(1)(4) of the Constitution.

The answer to both the above questions are in the negative. The question of the imposition of an additional charge in case of failure of a taxpayer to pay in time has been considered by this Court recently inter alia in the case of *Meropi Michael Loizou, v. Sewage Board of Nicosia* (1988) 1 C.L.R. 122 at pp. 128-129. In that case the previous Case Law was reviewed and Stylianides J., who delivered the unanimous judgment of the Court had this to say:

20 «The additional charge is fixed by the challenged legislation at 20% in case of non payment at the prescribed times.

25 The additional amount is paid into the Fund of the Board to be used for the purposes of the Board. The payment of this additional charge is dependent on the objective criterion of non payment and not on any subjective criteria or the non payment for no reasonable cause. The tax payer is charged with this additional burden for the sole reason of non payment at the prescribed time. This does not offend the provisions of Article 24.4 of the Constitution, nor is it a punishment in the sense of Article 12.3 of the Constitution. It is in a sense only a sanction prescribed by law in order to prompt the tax payer to pay in time, a matter conducive to proper administration, taking cognizance of all burdens cast on public revenue by non punctual payment.»

30 And further down it was said:

35 «The power of the Taxing Authority to impose additional

charge in default of payment of a tax is well recognized. The tax payer normally is burdened not only with interests on his unpaid tax, but, also, additional charge. These additional charges, including interest, are the result of the failure of the citizen to perform his duties towards the State or a Corporation of Public Law - (see Kynakopoulos, Greek Administrative Law, 4th Edition, Part C, p. 353). 5

A similar approach is to be found in Stassinopoulos Discourses on Public Finance Law, 3rd edition, 1966, p. 292.

Along these lines one may see the approach of this Court in *Istambouli Bros., v. Director Department of Customs & Excise* (1986) 1 C.L.R. 465, in which the forfeiture of goods brought into the Republic in violation of the relevant Customs legislation was considered as an administrative measure and not as punishment that infringes Article 12.3 of the Constitution.» 10 15

We adopt fully this reasoning which sets out the principles governing the issues before us.

Needless to say that paragraph 1 of Article 24, does not come into play at all as this is not a contribution towards the public burden and paragraph 4 of the same Article likewise is not applicable as the additional charge is, as already found, an administrative sanction prescribed by law, in order to prompt the taxpayer to pay in time a matter conducive to proper administration. 20 25

The case therefore with the answers above given is sent back to the trial Court.

Order accordingly.