

1981 April 11

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

YIANNIS A. TIKKI AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE DIRECTOR OF
SOCIAL INSURANCE SERVICES,

Respondent.

(Cases Nos. 436/80, 461/80, 20/81, 37/81).

Provisional order—Recourse against validity of decisions taken under the Social Insurance Law, 1980 (Law 41/80)—Applications for provisional order suspending payment of contributions—Principles governing making of provisional order—Public interest should prevail over private interest—Sub judice decisions and the legislation under which they have been reached neither flagrantly unconstitutional nor flagrantly illegal—Applications refused. 5

The applicants in these recourses, which were directed against the validity of the decisions relating to their classification in divers categories under the provisions of the Social Insurance Law, 1980 (Law 41/80), by means of applications for provisional orders sought to suspend, pending the determination of the recourses, the operation of the sub judice decisions in respect of the payment of their contributions under the said Law. 15

Held, on the applications for provisional orders :

(1) That it is a cardinal principle of administrative law, applicable to the present occasion too, that in deciding whether to grant or refuse a provisional order suspending the operation of an administrative act or decision the court has to abide by the rule that the public interest should prevail over any private interest (see, *inter alia*, *C.T.C. Consultants Ltd. v.* 20

5 *The Cyprus Tourism Organisation* (1976) 3 C.L.R. 390, 394) ;
and that though the applicants belong, indeed, to a very
numerous class of persons they cannot be regarded collectively
as possessing a public interest of their own, separate from,
and inconsistent with, the public interest of the State and of
society as a whole, the interest in the matter of each one of
them being a private interest.

10 (2) That though there are being raised in the present cases
serious issues of constitutionality and legality which relate
directly to the validity of the application of Law 41/80, in the
light of the material before the Court it cannot go as far as to
hold that it is satisfied that the sub judice decisions, and the
legislation under which they have been reached, are either
15 flagrantly unconstitutional or flagrantly illegal ; that, more-
over, as the legislative provisions concerned introduce a scheme
of social insurance which is of vital public importance and as,
if provisional orders are granted disrupting the application
of such scheme before it is found that the said provisions are
invalid the public interest will suffer most seriously, the pre-
20 sent applications for provisional orders must be refused.

Applications dismissed.

Cases referred to :

C.T.C. Consultants Ltd. v. The Cyprus Tourism Organization
(1976) 3 C.L.R. 390 at p. 394.

25 **Applications for provisional orders.**

Applications for provisional orders suspending the effect
of the operation of the decisions in respect of the payment of
applicants' contributions under the provisions of the Social
Insurance Law, 1980 (Law No. 41 of 1980) pending the conclu-
30 sion of the proceedings against the validity of such decisions.

E. Vrahimi (Mrs.), for the applicants.

R. Gavrielides, Senior Counsel of the Republic, for the
respondent.

Cur. adv. vult.

35 TRIANTAFYLLIDES P. read the following decision. At this
stage of the proceedings in the present recourses the applicants
are seeking, in effect, provisional orders by means of which
to suspend, pending the conclusion of the proceedings, the

operation of the *sub judice* decisions in respect of the payment of their contributions under the provisions of the Social Insurance Law, 1980 (Law 41/80).

The said decisions were taken in accordance with the provisions of Law 41/80 and they relate to the classification of the various applicants in divers categories which are provided for in relation to the application of Law 41/80. 5

There can be no doubt that there are being raised in the present cases serious issues of constitutionality and legality which relate directly to the validity of the application of Law 41/80. 10
In the light, however, of the material now before me I cannot go as far as to hold that I am satisfied that the *sub judice* decisions, and the legislation under which they have been reached, are either flagrantly unconstitutional or flagrantly illegal.

I have paid due regard to all the arguments advanced by counsel regarding, on the one hand, the hardship which may be suffered by the applicants if the applied for provisional orders are not granted and, on the other hand, the prejudice to the public interest which will be caused if such orders are granted. 15

It is a cardinal principle of administrative law, applicable to the present occasion too, that in deciding whether to grant or refuse a provisional order suspending the operation of an administrative act or decision the Court has to abide by the rule that the public interest should prevail over any private interest (see, *inter alia*, *C.T.C. Consultants Ltd. v. The Cyprus Tourism Organisation*, (1976) 3 C.L.R. 390, 394). 20 25

The applicants belong, indeed, to a very numerous class of persons but they cannot be regarded collectively as possessing a public interest of their own, separate from, and inconsistent with, the public interest of the State and of society as a whole. 30
The interest in the matter of each one of them is a private interest.

It is to be observed, also, that if the applicants do not comply with the *sub judice* decisions they cannot be implemented without instituting judicial proceedings against them; and in the course of such proceedings, even if they are instituted while the present proceedings are pending, the objections to the validity of the legislation concerned, on which these recourses are based, may 35

be raised by way of defence and they can, then, be determined both in the first instance, and, if necessary, on appeal, too. Thus, it cannot be said that the applicants can be made to pay the complained of contributions without having an opportunity
5 to contend that the relevant legislative provisions are invalid.

In any event, it is up to the respondent to weigh carefully whether any judicial proceedings are to be instituted against the applicants for not paying their contributions while these proceedings are pending, especially since one of these cases,
10 No. 436/80, is already fixed, together with other related cases, for hearing before the Full Bench of this Court on June 29, 1981.

In the light of all the foregoing and as the legislative provisions concerned introduce a scheme of social insurance which is of
15 vital public importance and as, if provisional orders are granted disrupting the application of such scheme before it is found that the said provisions are invalid the public interest will suffer most seriously, I have decided to refuse the present applications for provisional orders.

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Applications dismissed.