

1983 February 5

[TRIANTAFYLLODES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ELIAS KEKKOU.

Applicant

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF LABOUR AND SOCIAL INSURANCE.

Respondent

(Case No 162/81)

Administrative Law—Inquiry—Due inquiry—Proper administration—Precepts of—Misconception—Discontinuance of old age pension—Because applicant failed to fill in and return to the appropriate officer a certificate that he was still alive—Applicant living in the Turkish occupied area of Cyprus—And said certificates never personally received by him—Fact that applicant was living in the Turkish occupied area ought to be taken into account—And due inquiry ought to have been carried out in order to ascertain whether applicant had received the forms and whether still alive—Sub judice decision not consonant with precepts of proper administration—Lack of due inquiry and its consequence of discontinuing old age pension vitiate fatally the validity of the relevant administrative action

Social Insurance—Old age pension—Payment retrospectively—Possible when pensioner deprived of the pension in an invalid manner—Social Insurance (Allowances) Regulations, 1972 and 1980 regulation 4(3)(4) not applicable

The applicant was 85 years old and a person entitled to old age pension under the provisions of the relevant Social Insurance legislation. He was, and is still, residing at Kormakitis village in the northern area of Cyprus which is under Turkish military occupation as a result of the Turkish invasion in 1974. The payment of the old age pension of the applicant was discontinued

as from April, 1977 because he failed to fill in and return to the appropriate officer a certificate that he was still alive; and forms for such a certificate had been sent to him in March, 1977 and in April, 1979. On the basis of the material before it the Court was quite satisfied that both the aforementioned 5 forms were never personally received by the applicant. When applicant came to know about the discontinuance of his pension he protested against such discontinuance and, also, filed this recourse.

Held, that in this really exceptional case there ought to have 10 been taken into account that the applicant was living in the Turkish occupied area of Cyprus and a due inquiry ought to have been carried out in order to ascertain whether the applicant had received the forms sent to him and whether he was still 15 alive; and, therefore, the complained of action of the respondent was not consonant with the precepts of proper administration; that the lack of due inquiry and its consequence, namely that the old age pension of the applicant was discontinued due to a misconception, resulted in vitiating fatally the validity of the relevant administrative action in the present instance; accordingly 20 the recourse succeeds and the sub judice decision is declared null and void and of no effect whatsoever.

Held, further, that regulation 4(3)(4) of the Social Insurance (Allowances) Regulations, 1972 and regulation 4(3)(4) of the 25 1980 Regulations were inapplicable to the case of the applicant as it was not a case of belated claim for retrospective payment of old age pension, which could be treated as excluded by such regulations, but an instance of restoring to the applicant, as a matter of proper administration, what he had been deprived 30 of in an invalid manner.

Sub judice decision annulled.

Cases referred to:

Mikellidou v. Republic (1981) 3 C.L.R. 461 at p. 470;

Agrotis v. Electricity Authority of Cyprus (1981) 3 C.L.R. 503 35 at p. 512;

Haviaras v. Republic (1981) 3 C.L.R. 492 at p. 496.

Recourse.

Recourse against the refusal of the respondent to pay to

applicant his old age pension for the period April, 1977 to December, 1978.

P. Sarris with *M. Christodoulou*, for the applicant.

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

Cur. adv. vult.

10 TRIANTAYLLIDIS P. read the following judgment. By means of the present recourse the applicant challenges, in effect, the refusal to pay to him his old age pension in respect of the period from April 1977 to December 1978.

The present recourse, which was filed on the 5th May 1981, after the communication to the applicant by the Minister of Labour and Social Insurance on the 3rd March 1981 of his final decision in the matter, should be treated as having been
15 filed within the period of the seventy-five days prescribed by Article 146.3 of the Constitution.

The salient facts of this case are as follows:

20 The applicant, at the time of the filing of the recourse, was 85 years old and a person entitled to old age pension under the provisions of the relevant Social Insurance legislation.

He was, and is still, residing at Kormakitis village in the northern area of Cyprus which is under Turkish military occupation as a result of the Turkish invasion in 1974.

25 In October 1976 the applicant informed the appropriate authority of the Republic that he wished his old age pension to be paid into his account with the Bank of Cyprus Ltd. in Nicosia.

30 As there appears from the aforesaid letter of the respondent Minister of Labour and Social Insurance, dated 3rd March 1981, the payment of the old age pension of the applicant was discontinued as from April 1977 because the applicant failed to fill in and return to the appropriate officer a certificate that he was still alive; and forms for such a certificate had been sent to the applicant in March 1977 and in April 1979.

35 As Chrysostomos Kalos, an Assistant Principal Insurance Officer, has testified, the relevant form had been sent to the

applicant in March 1977, together with his pension, through his bank in Nicosia, and as such form was not filled in and returned by the applicant to the Social Insurance Department the payment of the old age pension of the applicant was discontinued as from April 1977. Then, in April 1979 a new form was sent to the applicant to his address at Kormakitis, by ordinary post, which, also, was not filled in and returned by the applicant. 5

On the basis of the material before me, including an affidavit of his dated 12th April 1982, I am quite satisfied that both the aforementioned forms were never personally received by the applicant. 10

When the applicant came to know for the first time about the discontinuance of his pension, through a relative of his who visited the Social Insurance Department on his behalf, he protested against such discontinuance on the 2nd February 1981 to the Minister of Labour and Social Insurance explaining that he had never received the forms in question. It seems that as a result of the protest of the applicant the payments of his old age pension were resumed, and actually he was paid all that was due to him as from January 1979. The respondent Minister refused, however, by his letter dated 3rd March 1981, to pay to the applicant the old age pension instalments that had become due and payable to him during the period from April 1977 to December 1978 on the ground, as it appears from the material on record in this case, that regulation 4(3)(4) of the Social Insurance (Allowances) Regulations of 1980 (see No. 243, 3rd Supplement, Part I, to the Gazette) excluded the payment of old age pension retrospectively for more than a period of two years, that is for more than the period covered by the years 1979 and 1980. 15
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In the circumstances of the present case it is abundantly clear that the discontinuance as from April 1977 of the payment to the applicant of his old age pension was due to the mistaken assumption that he was dead; and that his death was presumed solely from the fact that the relevant forms sent to him were not returned duly filled in by him so as to be established that he was still alive. 35

In this really exceptional case there ought to have been taken into account that the applicant was living in the Turkish occu-

pied area of Cyprus and a due inquiry ought to have been carried out in order to ascertain whether the applicant had received the forms sent to him and whether he was still alive; and, therefore, complained of action of the respondent was not consonant with the precepts of proper administration.

The lack of due inquiry and its consequence, namely that the old age pension of the applicant was discontinued due to a misconception, resulted in vitiating fatally the validity of the relevant administrative action in the present instance (see, inter alia, *Mikellidou v. The Republic*, (1981) 3 C.L.R. 461, 470, *Agrotis v. The Electricity Authority of Cyprus*, (1981) 3 C.L.R. 503, 512, *Haviaras v. The Republic*, (1981) 3 C.L.R. 492, 496).

In my opinion this is not an instance where it can be said that there arose the matter of retrospective payment of old age pension to the applicant contrary to the aforementioned regulation 4(3)(4), above; and, therefore, it is not necessary to examine the argument of counsel for the applicant that the respondent might only invoke regulation 4(3)(4) of the Social Insurance (Allowances) Regulations, 1972, and not the practically identical regulation 4(3)(4) of the aforementioned Regulations of 1980, inasmuch as the payments of the applicant's old age pension were discontinued in 1977. In my view both such regulations were inapplicable to the case of the applicant as it was not a case of belated claim for retrospective payment of old age pension, which could be treated as excluded by such regulations, but an instance of restoring to the applicant, as a matter of proper administration, what he had been deprived of in an invalid manner.

In view of all the foregoing the present recourse succeeds and the sub judice decision is declared to be null and void and of no effect whatsoever. I shall not, however, in the light of all relevant circumstances, make an order as to the costs of this case.

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Sub judice decision annulled. No order as to costs.