

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

GEORGE CONSTANTINOU,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF HEALTH AND/OR THE  
DIRECTOR OF MEDICAL SERVICES,

*Respondent.*

(Case No. 325/71).

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*Sponsored Patients—Medical Board—Convened under Regulation 2 of the Sponsored Patients Regulations, 1960—Recommending treatment at a particular Hospital in the U.K.—And submitting relevant certificate under Regulation 3—Patient coming to know of said recommendation before final approval by Minister, leaving for U.K. and receiving treatment at another hospital—Thereafter Board's decision reconsidered at the request of Director-General of Ministry—And patient recommended for treatment in another country, at a time when the Board knew or ought to have known that patient had already left for U.K. as aforesaid—Minister's approval a mere formality once the Board's certificate was properly issued—Director-General not entitled to act in the way he did in the particular circumstances of this case—And he was not acting in the sense of good administration by acting as he did—Nor was the Board empowered by the said Regulations to name in its certificate, besides the country in which the patient will be sent, the hospital in which he will be treated—Respondent's decision, therefore, refusing payment of costs of transport and medical treatment annulled.*

*Medical Board—Sponsored Patients—The Sponsored Patients Regulations, 1960—See supra.*

The facts sufficiently appear in the judgment of the learned Judge annulling the decision of the respondent refusing pay-

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ment to the applicant—a sponsored patient—of transport and medical treatment expenses.

### Recourse.

Recourse against the refusal of the respondents to pay the costs for transport and medical treatment of applicant's wife in Great Britain.

*L. Demetriades*, for the applicant.

*L. Loucaides*, Senior Counsel of the Republic,  
for the respondents.

*Cur. adv. vult*

The following judgment was delivered by :-

MALACHTOS, J. : The applicant in this recourse is a Geologist Grade 1, in the Government Department of Geological Survey. By letter dated the 19th February, 1971, *exhibit* 3, the applicant wrote to the Director of the Department of Medical Services informing him that his wife had a parotid tumour and requested that a Medical Board be convened under the regulations governing the Dispatch of patients abroad for treatment under the care of the Government.

I consider it necessary at this stage to cite the whole text of the above regulations since reference to all of them will be made in the course of this judgment.

The said regulations were published in the Official Gazette of the Republic on the 9th December, 1960, under Notification No. 308 and they read as follows :-

#### -ΚΑΝΟΝΙΣΜΟΙ ΔΙΕΠΟΝΤΕΣ ΤΗΝ ΑΠΟΣΤΟΛΗΝ ΑΣΘΕΝΩΝ ΕΙΣ ΤΟ ΕΞΩΤΕΡΙΚΟΝ ΔΙΑ ΘΕΡΑ- ΠΕΙΑΝ ΦΡΟΝΤΙΔΙ ΤΗΣ ΚΥΒΕΡΝΗΣΕΩΣ.

1. Ούδεις ασθενής δύναται νά συστήνεται πρός ἀποστολήν εἰς τὸ ἐξωτερικόν διὰ θεραπείαν φροντιδὶ τῆς Κυβερνήσεως, ἐκτὸς ἐάν :-

(α) δὲν δύναται νά παρασχεθῆ ἡ δέουσα θεραπεία ἐν Κύπρῳ καὶ

(β) θεραπεία εἰς τὸ ἐξωτερικόν εἶναι ἀπαραίτητος, διὰ νά σωθῆ ἡ ζωὴ του, ἢ νά σωθῆ ὁ ἄσθενής ἀπὸ σοβαρὰν τινα ἀνικανότητα, ἢ

μειονέκτημα σωματικών ή διανοητικών, τὸ ὁποῖον ἄλλως θὰ τὸν καθίστα ἄχρηστον μέλος τῆς κοινωνίας.

2. Οὐδείς ἀσθενὴς δύναται νὰ ἀποστέλλεται εἰς τὸ ἐξωτερικὸν φροντίδι τῆς Κυβερνήσεως ἐκτὸς ἐὰν ἐξετασθῇ ὑπὸ Ἰατρικοῦ Συμβουλίου ἀποτελουμένου ἐκ :-

Τοῦ Βοηθοῦ τοῦ Πρώτου Ἰατρικοῦ Λειτουργοῦ (ἐπὶ ἱατρικῶν Ζητημάτων) ὡς Πρόεδρου, τοῦ Εἰδικοῦ, ὑπὸ τὴν φροντίδα τοῦ ὁποῖου εὐρίσκεται ὁ ἀσθενής, καὶ δύο Ἰατρικῶν Λειτουργῶν, εἰς ἐκ τῶν ὁποίων θὰ εἶναι Ἕλλην καὶ ὁ ἕτερος Τουρκοκ, ἀμφότεροι τῶν ὁποίων νὰ ὑποδειχθῶν ὑπὸ τοῦ Πρώτου Ἰατρικοῦ Λειτουργοῦ.

Τὸ Ἰατρικὸν Συμβούλιον ὀφείλει ἀπαρεγκλίτως νὰ ἐκδίδῃ Πιστοποιητικὸν περιγράφον τὴν πάθησιν τοῦ ἀσθενοῦς καὶ νὰ ἐκθέτῃ τοὺς λόγους, διὰ τοὺς ὁποίους συνιστᾶται ἡ θεραπεία εἰς τὸ ἐξωτερικόν, συμπεριλαμβανομένης καθαρᾶς δηλώσεως κατὰ πόσον ὁ ἀσθενής ἐμπίπτει εἰς τὸν Κανονισμόν 1.

3. Τὸ Πιστοποιητικὸν τοῦ Ἰατρικοῦ Συμβουλίου δέον νὰ ὑποβάλλεται εἰς τὸν Ὑπουργὸν Ὑγείας μετὰ κοινοποίησιν πρὸς τὸν Πρῶτον Ἰατρικὸν Λειτουργόν.
4. Οὐδείς ἀσθενής θὰ ἀπαλλάττεται τῆς πληρωμῆς εἴτε ὀλοκλήρου εἴτε μέρους τῶν ἐξόδων, ἐκτὸς ἐὰν ἡ οικονομικὴ κατάστασις τοῦ ἰδίου ἢ τῆς οἰκογενείας του ἔχει ἐξετασθῇ μέσω τῶν Ἀρμοδίων Ἀρχῶν (Ἐπάρχου ἢ Ἑλληνικοῦ ἢ Τουρκικοῦ Γραφείου Εὐημερίας) καὶ πιστοποιηθῇ ὅτι ἀδυνατεῖ νὰ πληρώσῃ ὅ,τιδήποτε. Ἐὰν ἀποφασισθῇ, ὅτι ὁ ἀσθενής πρέπει νὰ πληρώσῃ μέρος τῶν ἐξόδων, τὸ τοιοῦτο μέρος θὰ καθορισθῇ ὑπὸ τοῦ Πρώτου Ἰατρικοῦ Λειτουργοῦ ἐν συνεννοήσει μετὰ τῶν Ἀρμοδίων Ἀρχῶν, καὶ ἐγκριθῇ ὑπὸ τοῦ Ὑπουργείου.
5. Ὄταν ὁ ἀσθενής εἶναι καθ' οἰονδήποτε τρόπον ἐξαρτώμενον πρόσωπον, οὗτος ἢ ἐκεῖνοι, ἐκ τῶν ὁποίων ὁ τοιοῦτος ἀσθενής ἐξαρτᾶται, θὰ καθί-

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στανται υπεύθυνοι διά τήν πληρωμήν είτε ολοκλήρου, είτε μέρους τών έξόδων, έκτός εάν άπαλλαγούν τής πληρωμής.

Διά τόν σκοπόν καθορισμού τοῦ ποσοστοῦ, τὸ ὁποῖον θά πληρωθῆ ἔναντι τών έξόδων, ἢ ἀπαλλαγῆς τοῦ τοιοῦτου προσώπου ἢ προσώπων ἀπό οἰανδήποτε πληρωμῆν ἔναντι τών έξόδων, δεόν νά γίνουιν ἔρευνοι, ὡς ἀναφέρεται εἰς τόν Κανονισμόν 4.

6. Κυβερνητικοὶ Ὑπάλληλοι καὶ Μέλη τῆς Κυπριακῆς Ἀστυνομίας, Χωροφυλακῆς καὶ τοῦ Κυπριακοῦ Στρατοῦ, ἢ οἱ ἐξ αὐτῶν ἐξαρτώμενοι, οἵτινες, συμφώνως πρὸς πιστοποίησιν τοῦ Ἰατρικοῦ Συμβουλίου, δυνάμει τοῦ Κανονισμοῦ 1, ἔχουν ἀνάγκην θεραπείας εἰς τὸ ἐξωτερικόν, θά ἀποστέλλωνται εἰς τὸ ἐξωτερικόν διὰ θεραπείαν δαπάναις τῆς Κυβερνήσεως, συμπεριλαμβανομένης τῆς πληρωμῆς τῶν ναύλων, ἀλλὰ θά ἀπαιτῆται παρ' αὐτῶν, ὅπως συνεισφέρουν ἔναντι τῶν έξόδων τὸ ποσόν, τὸ ὁποῖον θά ἐπλήρωνον ἐάν ἐτύγγανον θεραπείας εἰς Κυβερνητικόν ἐν Κύπρῳ Νοσοκομεῖον.
7. Αἱ χώραι, εἰς τὰς ὁποίας δύνανται νά ἀποστέλλωνται οἱ ἀσθενεῖς, εἶναι ἡ Ἑλλάς, ἡ Τουρκία καὶ ἡ Ἀγγλία. Ἡ ἀκριβῆς χώρα, εἰς τήν ὁποίαν θά ἀποστέλλεται ὁ ἀσθενής, θά ἀποφασίζεται εἰς ἐκάστην περίπτωσιν ἐπὶ τῇ βάσει τῶν πορισμάτων καὶ τῶν συστάσεων τοῦ Ἰατρικοῦ Συμβουλίου.

(“REGULATIONS GOVERNING THE DISPATCH OF PATIENTS ABROAD FOR TREATMENT UNDER THE SPONSORSHIP OF THE GOVERNMENT.

1. No patient may be recommended for dispatch abroad for treatment under the sponsorship of the Government unless :-
  - (a) Proper treatment cannot be offered in Cyprus; and
  - (b) treatment abroad is indispensable, in order to save his life, or to save the patient from a serious incapacity, or from a defect of the

body or mind, which would have otherwise rendered him a useless member of the Community.

2. No patient may be dispatched abroad under the sponsorship of the Government unless examined by a Medical Board constituted as follows :-

The Assistant Chief Medical Officer (on medical matters), as Chairman, the specialist who is looking after the patient, and two medical officers, one of whom shall be a Greek and the other a Turk, both of whom to be designated by the Chief Medical Officer.

The Medical Board shall issue a certificate describing the patient's illness and state the reasons for which treatment abroad is recommended including a clear statement as to whether the patient comes under Regulation 1.

3. The certificate of the Medical Board should be submitted to the Minister of Health with copy to the Chief Medical Officer.
4. No patient should be exempted from payment either of the whole or part of the expenses unless the competent authorities (District Officer or Greek or Turkish Welfare Office) have inquired into his financial position or that of his family and have certified that he is not in a position to pay any amount. If it is decided, that the patient should pay part of the expenses, such part shall be determined by the Chief Medical Officer in consultation with the competent authorities, and be approved by the Ministry.
5. When the patient is in any way a dependant person, the one or those, on whom such patient depends, shall be rendered liable for the payment of either of the whole, or part of the expenses unless they are exempted from payment.

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For the purpose of determining the percentage to be paid towards the expenses, or exempting such person or persons from any payment towards the expenses, there should take place inquiries as stated in Regulation 4.

6. Government Officers and members of the Cyprus Police, Gendarmerie and Cyprus Army, or their dependants, who in accordance with a certificate of the Medical Board under Regulation 1, require treatment abroad, will be dispatched abroad for treatment at Government expense, including payment of fares, but they shall be required to contribute towards the expenses the amount which they would have paid had they been receiving treatment at a Government Hospital in Cyprus.
7. The countries to which patients may be dispatched, are Greece, Turkey and England. The precise country where the patient will be dispatched shall in each case be specified on the basis of the findings and recommendations of the Medical Board").

In view of the fact that the applicant is a civil servant regulations 4 and 5 do not apply in his case.

On the 20th February, 1971, instructions were given to the Medical Superintendent, Nicosia General Hospital, to convene the Medical Board to examine applicant's wife and submit the relative certificate. In the meantime, due to the urgency of the case, the relative delay of the Medical Board to meet and issue the said certificate, as well as the possibility of the certificate being unfavourable, the applicant was making his own private arrangements and succeeded to secure the admission of his wife in the Westminster Hospital in London for the 28th March, 1971, to be operated upon the next day, 29th March, 1971, by Professor H. Ellis.

On the 23rd March, 1971, a Medical Board consisting of Dr. D. Ch. Fessas, Medical Superintendent, Nicosia General Hospital, Dr. G. N. Marangos, Senior Specialist Surgeon, and Dr. N. C. Spanos neurosurgeon, examined Mrs. Constantinou, applicant's wife. They submitted a

certificate (*exhibit 4*) confirming the diagnosis that she had a parotid tumour. They advised that it was necessary for her to proceed to the U.K. at Middlesex Hospital either under Dr. Handley or Dr. Patey for any treatment that was necessary. They further recommended that the wife of the applicant be a sponsored patient on the grounds that :

- (a) Treatment was not available in Cyprus; and
- (b) treatment in the U.K. was indispensable in order to save the patient from some serious incapacity of body which would render her a useless member of the community.

The said meeting was convened and the relative certificate was issued and submitted to the Director-General of the Ministry of Health in accordance with the above-mentioned Regulations 2, 1 and 3 respectively.

On the 27th March, 1971, applicant's wife left for U.K. where she was operated upon with success by Professor H. Ellis at the Westminster Hospital as pre-arranged.

It must be noted here, however, that the applicant before his wife left for U.K., came to know of the contents of the certificate of the Board.

After receiving the said certificate the Director-General of the Ministry of Health instructed the Director of the Department of Medical Services to request the Medical Board to report whether the operation on Mrs. Constantinou could be carried out in Greece or the German Democratic Republic. These instructions were dictated, as he put it, by the fact that for the last several years an amount in the region of £15,000.- has been appropriated annually in the Ordinary Estimates to be spent for the treatment abroad of Cypriot Patients whose case could not be treated with the means available locally and the spending of this public money is authorised having always in mind the object of deriving the maximum benefit, *i.e.* treatment abroad of a larger number of patients. In furtherance of the same object, agreements and arrangements were made with Greece and the German Democratic Republic for treatment of Cypriot patients in their hospitals free of charge.

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On the 30th March, 1971, a Medical Board was convened consisting of Dr. Fessas, Dr. Papanastassiou and Dr. Spanos and the case of the wife of the applicant was re-examined. They submitted a report in which they state :

- (a) That they had ascertained from Deputy Professor Georghiades of the Evangelismos Hospital, Athens, that the operation could be carried out by him; and
- (b) that they had reconsidered their decision and they recommended that the patient be sponsored to Greece.

On the 27th May, 1971, the applicant addressed to the Director of the Department of Medical Services a letter informing him that his wife had been successfully operated upon by Professor H. Ellis at the Westminster Hospital, and that the expenses for such operation, including transport, amounted to £291,320 mils. The relative receipts were attached to the said letter. At the same time the applicant was requesting the remission of the above sum to him.

In answer to his above letter the applicant received from the Director of Medical Services a letter dated 14th June, 1971, *exhibit 2*, which reads as follows :

"In answer to your letter of the 27th May, 1971, where you apply for payment of the costs for transport and medical treatment of your wife in Great Britain I have been instructed to inform you that it is not possible according to the regulations in force payment of costs to be authorised in cases where patients proceed abroad for treatment on their own initiative and under their own arrangements."

As a result the applicant filed the present recourse claiming a declaration that the act and/or decision of the respondent contained in the letter of the Director of Medical Services under No. 179/71 dated 14th June, 1971, is null and void and of no effect whatsoever.

The application is based, as stated therein, on two grounds of law :



1. The act and/or decision complained of was taken in abuse or excess of power in that the respondent failed to comply with the regulations governing the dispatch of ill persons abroad for treatment under the sponsor of the Government of the Republic, Notification 308, published in the official Gazette No. 22 dated 9th December, 1960; and

2. The act or decision aforesaid was taken under a misconception of fact and/or under a misconception of law.

It has been argued on behalf of the applicant that before his wife left for the U.K. the decision of the Board of the 23rd March, 1971, had already been communicated to him. This fact although denied by counsel for the respondent at the first hearing of the case, it was later on, after the hearing of evidence on both sides, admitted. Once, he argued, the provisions of Regulations 1, 2 and 3 were complied with the administrative act was concluded as there was nothing else to be done. Therefore, the decision of the respondent of the 14/6/71 (*exhibit 2*) was taken contrary to the provisions of the said regulations. He also argued that the ground for issuing the decision complained of is based on a misconception of fact and is wrong in law.

In the present case, he said there was a final report of the Board before the departure of the applicant's wife for the U.K. The Board, under regulation 7 has to recommend either Greece, Turkey or the U.K. There is nothing in the regulations empowering the Board to recommend any specific hospital in which the patient will be treated or any specific specialist who is to attend the patient.

Counsel for the respondent, on the other hand, submitted that the report of the Medical Board is not binding and, consequently, no claim in the form of a right could be derived from it. It is only a necessary prerequisite laid down in the respective regulations in the form of a recommendation. The decision entirely rests with the appropriate authority, which is the Ministry of Health.

Furthermore, in the present case the patient proceeded to another hospital instead of the one recommended by the Board.

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Finally, he argued that on the 30th March, 1971, the Medical Board reconsidered its decision and recommended Greece instead of the U.K.

It is clear from the wording of the Regulations that the Medical Board is empowered to make recommendations only and cannot issue a final decision. The final decision on these matters rests with the Minister of Health who is the proper organ and to whom the relative certificate of the Board is submitted for approval. However, I hold the view that this approval of the Minister is a mere formality, particularly in cases covered by regulation 6, once the relative certificate of the Board is properly issued, and the specific country to which the patient should be sent is named therein, as in the case under consideration. The Director-General of the Ministry of Health in my opinion did not act in the sense of good administration by referring the case of the applicant's wife back to the Board asking them to reconsider their decision in the light of the reasons given by him, which reasons have been referred to earlier in this judgment. He could only bring to the knowledge of the Board the aforesaid reasons to have them in mind in future cases before issuing their relative certificate. In addition, he was not entitled under the Regulations to ask the Board to consider the German Democratic Republic, as a country where patients may be sent for treatment, as this country is not included in the countries referred to in Regulation 7. Regulation 7 speaks clearly that the countries where a patient may be sent are Greece, Turkey and England. So, it is evident, that the action taken by the Director-General of the Ministry of Health in the case under consideration, was wrong.

As regards the Medical Board there is nothing in the Regulations which empowers them to name in their certificate, besides the country in which the patient will be sent, the hospital in which he will be treated and the specialist by whom he will be attended to. If they do so, this should be considered as an advice. The patient will only be bound to proceed to one of the three countries recommended.

Furthermore, at the time the Board were taking their second decision on the 30th March, 1972, they knew or

ought to have known that the applicant's wife had already left for the U.K. This is clear from the evidence of Demetris Papadopoulos, the Administrative Officer of the Department of Medical Services who stated that on 27th March, 1971, he made a note in the relative file, *exhibit 5*, that on that day the wife of the applicant was leaving for the U.K.

Since the Director-General of the Ministry of Health was not entitled in the circumstances of this particular case to act in the way he did, then the other alternative was to approve the recommendations and submissions of the Medical Board contained in their certificate of the 23rd March, 1971, *exhibit 2*.

For all the above reasons the decision of the Director of the Department of Medical Services, dated 14th June, 1971, the subject matter of this recourse, should be and is hereby declared null and void.

Respondent to pay £20.- against the costs of the applicant.

*Sub judice decision annulled.  
Order for costs as above.*

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