

1988 July 27

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LOUIS ANTONIOU AND OTHERS,

Applicants,

v.

AGRICULTURAL INSURANCE ORGANISATION,

Respondents.

(Case No. 308/86).

Public Corporations—The Agricultural Insurance Organization—The Agricultural Insurance Regulations, 1977, (Regulations 167/77), Regs. 10(5), 10 (6) and 21—Assessment of damage—Whether insured should be given an opportunity to be present during the assessment—Question determined in the affirmative—Manner of notification of such date.

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General principles of administrative Law—Presumption of regularity—Duty of agent of a public body to inform applicants of the date when a particular activity will take place—Absence of evidence that the duty had not been performed—Assumption that the duty was performed.

The applicants were insured with the respondents against damage to their fruit trees from hail. As a result of hail fall they suffered damage. The damage was assessed by the respondents. The applicants applied for re-assessment. The damage was re-assessed. Such re-assessment is the subject-matter of this recourse.

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The main complaint of the applicants was that they were not given the opportunity of being present during the reassessment. The respondents disputed that the applicants had such a right. Nevertheless they argued that the applicants had such opportunity as the respondents had notified the secretary of the local co-operative society and the rural constable of the date of the reassessment. There was no evidence that the secretary did not inform the applicants of such a date.

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Held, *dismissing the recourse*: (1) Regulation 10(5)* gives the applicants the right to be present during the assessment or re-assessment (*Kazamias v. The Agricultural Insurance Organization* (1988) 3 C.L.R. 625 not followed).

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* Quoted at p. 1581 post

(2) The object of Reg. 10(6) is entirely different. It creates an obligation to be present at the assessment, if the assessor so requires.

(3) In the light of para. (1) ante, the applicants should have been notified of the date of assessment.

5 (4) Such notification may be given in the manner provided by Reg. 21*
The secretary of the local Co-operative Credit Society is an insurance agent.
In the absence of evidence to the contrary the presumption of regularity applies. Therefore, it must be assumed that he had duly notified—as, indeed,
10 it was his duty to do—the applicants of the date of assessment.

*Recourse dismissed.
No order as to costs.*

Cases referred to:

Kazamias v. The Agricultural Insurance Organization (1988) 3 C.L.R. 625.

15 **Recourse.**

Recourse against the refusal of the respondents to increase the compensation payable to applicants as a result of damage caused to their fruit trees by hail.

M. Tsangarides, for the applicants.

L. Koursoumba (Mrs.), for the respondents.

20 *Cur. adv. vult.*

SAVVIDES J. read the following judgment. The applicants challenge, by this recourse, the decision of the respondents contained in their letter dated the 21st February, 1986, by which they rejected the applications of the applicants for the increase of the compensation payable to them as a result of damage caused to their fruit trees by hail.

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The applicants are farmers and owners of fruit tree groves in the area of Statos-Ayios Photios villages in the district of Paphos.

* Quoted at p. 1582.

During 1985 fruit trees including those of the applicants suffered damage as a result of hail fall. The applicants, as well as other owners who were insured with the respondents against damage from hail, applied to the respondents for compensation. The respondents proceeded to the assessment of the damages and announced the results on the 28th August, 1985. 5

Several objections were raised against the said assessments, amongst which those of the applicants, which were considered and determined by the 12th December, 1985. Certain producers who were not satisfied with the outcome of the objections made representations to the Minister and were asked to present material to prove their allegations, at a meeting with the Director of Agricultural Insurance and the Agricultural Insurance Officer, which took place on the 30th December, 1985. The applicants were heard on that date and the respondents thereafter dismissed their applications and informed them accordingly by letters dated the 21st February, 1985. As a result the present recourse was filed. 10 15

Counsel for applicants argued, in his written address, that the respondents acted in excess of their power and contrary to the Law and exercised their discretion wrongly in that they failed to invite the applicants to be present during the assessment or reassessment of the damages to their trees, contrary to the provisions of Regulations 10 and 11 of the 1977 Regulations (Not. 167/77). It is also the position of the applicants that the sub judice assessments do not reflect the real damage suffered by them. They filed, in support, in this respect, the assessments made for them by two agriculturalists. 20 25

Counsel for the respondents denied that the respondents have any obligation under the Law to invite the applicants to be present but argued that in any event the applicants were informed orally about the assessments and reassessments by the Secretary of the Co-operative Credit Society and the Rural Constable of their village. As to the assessments counsel argued that they were properly made and this Court cannot interfere with the findings of the assessors. She finally argued that it was reasonably open to the 30 35

respondents to dismiss the applicants' applications in view of the fact they submitted false or misleading information in presenting their cases.

5 The relevant Regulations are The Agricultural Insurance Regulations, 1977, published in Supplement No. III, part I, of the official Gazette of the Republic dated the 29th July, 1977, under Not. 167/77. Regulation 10(5) reads as follows:

10 "(5). Ο ησφαλισμένος ή ο αντιπρόσωπος τούτου δύναται να παρίσταται κατά την εκτίμησιν και να εκθέτη τας αντιλήψεις του επί της ζημίας."

and the English translation:

"(5). The insured or his representative may be present during the assessment and express his views on the damage."

15 Paragraph (6) of the same Regulation, which was invoked by counsel for the respondents in contradistinction to paragraph (5) in order to show that there is no obligation on the part of the respondents to invite the applicants to be present reads as follows, as far as relevant:

20 "(6). Ο ησφαλισμένος υποχρεούται όπως επιδείξη το ζημιωθέν αγροτεμάχιον ή να παραστή κατά την εκτίμησιν.....ή να παρέχη οιασδήποτε σχετικά πληροφορίας όποτε τούτο ήθελε ζητηθή υπό του εκτιμητού....."

And the English translation is as follows:

25 "(6). The insured is obliged to show the damaged field or to be present during the assessment or to forward any relevant information whenever he is requested to do so by the assessor....."

The same question came up for consideration in case No. 536/

84, *Costas A. Kazamias v. The Agricultural Insurance Organisation* (1988) 3 C.L.R. 625. In that case Loris, J. , came to the conclusion that the wording of Regulation 10(5), in contradistinction to the wording of Regulation 10(6) is such as not to imply any obligation on the part of the respondents to invite the applicant to be present.

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Having considered the matter in the light of the contents of the Law and the Regulations, I find myself in disagreement with my learned brother in this respect. It is clear that the wording of Regulation 10(5) gives the applicants the right to be present if they so wish, during the assessment or reassessment, as the case may be. As a result they have a right to be informed of the date of the assessment or reassessment, in order to be afforded the opportunity to exercise this right of theirs, otherwise such right would have been meaningless. The purpose of Regulation 10(6) is different in that it gives the right to the assessor, if he requires the presence of the applicants, to request them to be there, in which case they have an obligation to be present and their right to be present only if they so wish ceases to exist.

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The right of the applicants to be informed, however, or any obligation of the respondents to bring the matter to their knowledge may be satisfied by the provisions of Regulation 21(c) which provides as follows:

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"21. Τα κυριώτερα καθήκοντα των ασφαλιστικών πρακτόρων δύνανται να συνοψισθούν ως ακολούθως:

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.....

(γ) Γνωστοποίησης ημερομηνίας επισκέψεως εκτιμητού ή επανεκτιμητών ούτως ώστε να δύνανται οι ενδιαφερόμενοι πληγέντες παραγωγοί εάν το επιθυμούν, να παρευρίσκονται κατά την διενέργειαν των εκτιμήσεων ή επανεκτιμήσεων."

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And the translation in English:

"21. The main duties of the insurance agents may be summarized as follows:

5 (c) Notification of the date of the visit of the assessor or re-assessors so as to enable those of the stricken
01 producers who are interested, if they so wish, to be present during the assessments or reassessments."

10 As I said earlier counsel for the applicants argued that the respondents did not invite the applicants to be present, whilst counsel for the respondents maintained that the applicants were informed about the dates of the proposed assessments and reassessments, both through the Secretary of the Co-operative Credit Society, who is the insurance agent of the respondents under the Law, as well as through the rural constable. No evidence was adduced, however, by either side for the purpose of establishing their allegations or disproving those of the other side.

20 In the absence of any evidence to the contrary, and having regard to the principle of regularity, it is to be presumed that the insurance agent of the respondents, that is the Secretary of the Co-operative Credit Society, in the proper discharge of his duties under the Law, has notified the date of the assessments and reassessments in question and the applicants could, by exercising reasonable diligence, ascertain the dates through the notifications and
25 thus exercise their right to be present or not. Although counsel for the respondents argued also that the applicants were present either personally or through representatives, during the assessments or reassessments in question, I cannot find this as a fact in the absence of satisfactory evidence to this effect.

30 In view of the above, this ground of the recourse fails.

As to the substance of the recourse, that is the allegation, that

the sub judice assessments are not correct and do not reflect the real damage suffered by the applicants, having considered the matter carefully, in the light of the material before me, which was also before the respondents, I find that it was reasonably open to the respondents, in the circumstances of the case, to reach the sub judice decision and no valid reason has been shown for any interference with it.

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In the result this recourse fails and is hereby dismissed with no order for costs.

*Recourse dismissed.
No order as to costs.*

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