

1988 March 23

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION  
COSTAS A. KAZAMIAS,

*Applicant,*

v.

THE AGRICULTURAL INSURANCE ORGANIZATION,

*Respondent.*

(Case No. 536/84).

*Agricultural Insurance Organisation—The Agricultural Insurance Regulations, 1977 (167177), as amended - Area declared as "drought stricken"—Reg. 8 (2)—Effect—Assessor not free to overlook it—Organisation not bound to invite owner to be present during the assessment of the damage.*

5       The applicant is the owner of plots of land of an extent of 94 donums. The plot is situated in an area which on 5.5.84 was declared as "drought stricken" area by the Board of the "Agricultural Insurance Organisation".

The relevant part of Reg. 8(2) of the aforesaid Regulations reads as follows: -

10       «In case the assessment has not been carried out till the usual time of harvesting, the insured person has to reap the produce, but he is, however, obliged to leave part of the produce unreaped, as a witness of the damage caused to the said cultivation, as follows:

15       (a) For cereals and potatoes a portion of 10 sq. m. in the centre and in each one of the four edges of each plot of land."

The assessment of the area in question began on 24.5.84. As the area of a plot of 75 donums had been "reaped and grazed without witnesses" no damage was assessed.

20       Hence this recourse. The applicant does not dispute that on the day of assessment there were no "witnesses", but submitted that -

(a) The respondents delayed in carrying out the assessment and by reason of such a delay the "witnesses" left were grazed by flocks from adjacent Turkish occupied area,

(b) The respondents failed, in breach of the regulations, to invite him to be present at the assessment, and 5

(c) The assessment would be made by analogy to the damage assessed in respect of the plots comprising the remaining 19 donums.

Held, *dismissing the recourse*:

(1) The area was declared stricken on 5.5.84; applications ought to have been submitted up to 15.5.84; the assessment in the area began on 24.5.84 and it was completed on 28.5.84. 10

In the circumstances there has been no delay.

(2) The respondent has no obligation to notify the applicant to be present at the assessment.

(3) The assessor has not a free hand to overlook the provisions of Regulation 8(2). The applicant is 'obliged' to leave part of the produce un-reaped, as "witness" of the damage. The assessor could not go beyond such regulations. 15

*Recourse dismissed.*

*No order as to costs.* 20

### Recourse.

Recourse against the assessment of the sum of £147.49 cent compensation awarded to applicant in respect of the damage caused by drought to the land cultivated by applicant with barley.

*E. Efsthathiou*, for the applicant. 25

*S. Matsas*, for the respondent.

*Cur. adv. vult.*

LORIS J. read the following judgment. The Board of the "Agricultural Insurance Organisation" established by virtue of the Ag-

5 ricultural Insurance Law 1977 (Law No. 19/77, amended by Laws: 1/78, 11/80, 26/80, 12/85 and 35/87) declared (pursuant to the provisions of Regulation 6 of the Agricultural Insurance Regulations 1977 - Κ.Δ.Π. 167/77 of 29.7.77—as amended) as 'drought' stricken area, amongst other properties:

(A) On 8.4.84 an area of Potamiou village set out in paragraph (e) of Appendix 1 (attached to the written address of the respondent).

10 (B) On 5.5.84, the remaining area of Potamiou Village (vide Appendix 2).

15 The applicant in the present recourse submitted applications as, and within the time, envisaged by Regulation 7(1)(b) of the Regulations aforesaid, for properties cultivated by him with barley in both the above declared 'drought' stricken areas; the first application was referring to several plots of land covering a total extent of 192 donums within area under (A) above (Appendix 3), whilst the second application was referring to plots of 94 donums situated within (B) area.

20 The assessment of the damage in the area under (A) above, was effected between the 24th April and 9th May 1984; as the relevant properties of the applicant totalling 192 donums in extent, were not reaped at all the assessment of the damage was carried out according to the Regulations and compensation was awarded to the applicant.

25 The assessment of the damage in the area under (B) above, was effected between the 24th May and 28th May 1984; the relevant properties of the applicant in this area totalling 94 donums, (with the exception of 4 donums in respect of one plot - where the provisions of Regulation 8(2) were more or less complied with - and an area of 15 donums in respect of 3 plots, which were not reaped at all) were either reaped or grazed to such an extent that  
30 no "witnesses" were left, according to the provisions of Regulation 8(2). As a result the government agriculturist who carried out

the assessment in this area pursuant to the provisions of regulations 9 and 10, accompanied by the rural constable of the village, was unable to assess the damage in respect of 75 donums of land cultivated by the applicant with barley (out of the 94 in respect of which the second application for "B" area was filed by the applicant) as "witnesses" envisaged by Regulation 8(2) enabling an assessment were not retained (vide Appendices 5(a) and 5(b)). 5

As already stated above, in a plot of 4 donums (out of the 94) some "witnesses" were left, whilst in 3 order plots of a total extent of 15 donums the barley was not reaped; for these 19 donums the assessment was carried out and the amount of £147.49 cent was awarded as compensation to the applicant. 10

The findings of the assessor were published on 28.6.84; the applicant lodged an objection on 3.7.84 pursuant to Regulation 11(1) against the findings of the assessor in the first instance (Vide Appendices 6(a) 6(b) and 6(c)). 15

Following the objection re-assessments were carried out pursuant to Regulation 11(7)(8)(9) & (10), by 2 other agriculturists-re-assessors on 9.7.84 (vide Appendix 7).

The applicant was present during the reassessment and signed before the reassessors the relevant form (vide Appendix 6(c) and the affidavit of re-assessors dated 10.3.87) to the effect that he "could not discern 'witnesses' in his properties." 20

The findings of the re-assessors confirming the findings of the initial assessment were communicated to the applicant on 19.7.84. 25

The relevant part of Regulation 8(2) of the Agricultural Insurance Regulations reads as follows:

"8-(2) Εις περιπτώσιν κατά την οποία δεν έχει διενεργηθή η εκτίμησις μέχρι του συνήθους χρόνου συγκομιδής, το ασφαλιζόμενον πρόσωπον οφείλει να συγκομίση το 30

προϊόν, υποχρεούται όμως να αφήσει μέρος της παραγωγής ασυγκόμιστον, ως μάρτυρα της προξενηθείσης επί της περιήσ ο λόγος καλλιεργείας, ζημίας ως ακολούθως: -

5 (α) Δια τα σιτηρά και τας πατάτας ανά εν τμήμα 10 τ.μ. εις το κέντρον και τα τέσσερα άκρα εκάστου αγροτεμαχίου. .

(β) .....

(γ) ....."

(English translation)

10 "8-(2) In case the assessment has not been carried out till the usual time of harvesting, the insured person has to reap the produce, but he is, however, obliged to leave part of the produce unreaped, as a witness of the damage caused to the said cultivation, as follows:

15 (a) For cereals and potatoes a portion of 10 sq. m. in the centre and in each one of the four edges of each plot of land.

(b) .....

(c) ....."

20 The finding in the initial assessment, which was confirmed by the reassessors in respect of the 75 donums in area "B", (where the applicant cultivated several plots totalling 94 donums out of which 15 donums cultivation was not reaped at all and in another 4 donums where more or less sufficient witnesses were retained) is to the effect that the aforesaid area was "reaped, grazed, without witnesses."  
25

The applicant does not challenge the aforesaid finding.

The complaints of the applicant are confined to the following:

1. Alleged delay by the respondent Organisation in carrying out the assessment in consequence of which the "witnesses" left by him were grazed by flocks from adjacent Turkish occupied areas.

2. Alleged breach of the relevant Regulations by respondent, in non inviting applicant to be present during the assessment of damage. 5

3. Failure of the respondent to carry out an assessment of the damage caused to the 75 donums of applicant's cultivated lands by analogy to the damage found by the respondent to have been caused by the 'drought' to the remaining 19 donums for which £147.49 cent compensation was awarded to the applicant. 10

Now as regards the first complaint:

As already stated area under "B" above was declared by the Board as "drought" stricken on 5.5.84; applications ought to have been submitted for this purpose up to 15.5.84; the assessment in the area began on 24.5.84 and it was completed on 28.5.84. In the circumstances I really fail to see any delay on behalf of the respondent Organisation. 15

With regard to the second complaint I am inclined to agree with the submission of learned counsel appearing for the respondent, to the effect that the respondent has no obligation to notify the applicant to be present at the assessment. According to Regulation 10(5) "ο ησφαλισμένος ή ο αντιπρόσωπος του δύναται να παρίσταται κατά την εκτίμησιν και να εκθέτη τας αντιλήψεις του επί της ζημίας." That is the applicant may be present during the assessment, if he so wishes and if he chooses to attend he has the right to express his views in respect of the damage caused. 20 25

This is in contradistinction to paragraph 6 of Regulation 10 invoked by learned counsel for applicant; in the latter case the applicant has to be present "whenever this is asked by the assessor", 30

which is not the present case.

5 The applicant had sufficient notice from publications in the local press (vide Appendices 8 and 9) of the matter in question; and by exercising reasonable diligence he could ascertain the date and even the time when the assessment was to be carried out. In the circumstances it was up to him to choose either to be present during the assessment or not. It is obvious that the applicant chose not to attend during the first assessment; because at the reassessment he was present according to the material before me.

10 In any event the first assessment was carried out by the assessor accompanied by the rural constable of the area as envisaged by paragraph (3) of Regulation 10.

15 Coming now to the last complaint of the applicant: It must always be borne in mind that the Agricultural Insurance regulations 1977, as amended, provide in part IV thereof, the procedure to be followed for ascertaining and assessing the damage; it is quite clear that an assessor cannot go outside these provisions envisaged by the aforesaid Regulations.

20 The assessor has not a free hand, for instance, to overlook the provisions of Regulations 8(2) set out earlier on in the present judgment. In virtue of the aforesaid regulation the applicant is "obliged" to leave part of the produce unrealed, as "witness" of the damage. The assessor could not go beyond such regulation which ordains the presence of "witnesses" and goes even further  
25 to fix the extent of the property affected to be left unrealed for the purpose.

30 Having carefully gone through the material before me I hold the view that the assessor acted within the limits envisaged by the Law and the relevant Regulations. In the case of properties cultivated by the applicant in the area under "A" above, of 192 donums in extent, a proper assessment was carried out; in the case of properties in area under "B" above of 94 donums in extent, an assessment was carried out for 19 donums out of the 94, as the

requisites of the Law and the Regulations were present: in respect of 4 donums "witnesses" were retained, and the remaining 15 donums were not reaped at all by the applicant; and the proper assessment was followed by the payment of the respective compensation. Unfortunately the requisites of the Law and Regulations were not fulfilled for the remaining 75 donums; in the circumstances I hold the view that the assessor could not assess the damage for these 75 donums applying by analogy, as submitted, the percentage of the damage ascertained by him in respect of the remaining 19 donums; that would in effect mean that the assessor would be acting contrary to Law and the Regulations and in excess of his powers.

For all the above reasons present recourse fails and is accordingly dismissed. Let there be no order as to costs.

*Recourse dismissed.* 15  
*No order as to costs.*