[VASSILIADES, TRIANTAFYLLIDES, JOSEPHIDES, JJ.]

PANTELIS PETRIDES,
Appellant-Plaintiff,

v.

THE GREEK COMMUNAL CHAMBER AND ANOTHER,
Respondents-Defendants.

(*Civil Appeal No.* 4494)

Claim for compensation for damage suffered during the liberation struggle—Law No. 12/1961 *of the Greek Communal Chamber—Civil action claiming damages for omission to consider and satisfy claim for compensation under the Law, consequent upon an administrative act or decision declared to be void under Article* 146.4 *of the Constitution—Appellant an "aggrieved person"* (Πρόσωπον ζημιωθὲν), *within Article* 146.6 *and entitled to sue.*

Jurisdiction—Power of granting remedy under Article 146.6 *of the Constitution vested in the District Court—Appellant entitled to institute proceedings in the District Court for damages and also for other remedy—Equitable damages to be assessed by Court.*

Practice—Supreme Court—Use of powers conferred under the provisions of section 25 (3) *of the Courts of Justice Law,* 1960 (*Law No.* 14 *of* 1960).

Administration of Justice—Duty of Supreme Court to sustain "good administration" (χρηστὴν καὶ νόμιμον διοίκησιν) *in the Republic.*

Appellant filed the present appeal against the judgment of the District Court of Nicosia in an action instituted by the appellant under the provisions of Article 146.6 of the Constitution. The claim is for "just and equitable damages" against the Greek Communal Chamber for its omission to consider and satisfy the claim of the plaintiff for compensation as provided in Law 12 of 1961 of the Greek Communal Chamber.

Article 146 of the Constitution reads :—

"1. The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or admi-

nistrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person

2 Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a Community, is adversely and directly affected by such decision or act or omission.

3 Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse

4 Upon such a recourse the Court may, by its decision—

'(*a*) confirm, either in whole or in part, such decision or act or omission or

(*b*) declare, either in whole or in part, such decision or act to be null and void and of no effect whatsoever , or

(*c*) declare that such omission either in whole or in part ought not to have been made and that whatever has been omitted should have been performed

5 Any decision given under paragraph 4 of this Article shall be binding on all courts and all organs or authorities in the Republic and shall be given effect to and acted upon by the organ or authority or person concerned

6 Any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article or by any omission declared therein that it ought not to have been made shall be entitled if his claim is not met to his satisfaction by the organ authority or person concerned, to institute legal proceedings in a court for the recovery of damages or for being granted other remedy and to recover just and equitable damages to be assessed by the court or to be granted such other just and equitable remedy as such court is empowered to grant

The respondents in this case strongly contesting appellant's action contended *inter alia*, both in the District Court and in the appeal that appellant's claim under Article 146 did not lie

The proceedings throughout were conducted by the appellant-plaintiff in person in a manner which caused considerable difficulty and confusion

The appellant owing to lack of professional assistance, has not been able to give proper particulars of all the parts of his claim although he produced and filed in support thereof, voluminous correspondence and other documents during the long proceedings before different Courts and other Authorities since August, 1961.

By a ruling dated 11th December, 1964, the Court of Appeal held :—

(1) We have come to the conclusion that instead of referring the case to the District Court to deal further with the items of loss within the statutoty definition, included in the claim, but not properly or sufficiently put before the Court, we should rather make use of our powers under the provisions of sec. 25(3) of the Courts of Justice Law (14 of 1960) to hear further the plaintiff on the matters which we shall now specify ; and, if necessary, to hear additional evidence, both on the part of the appellant-plaintiff and on the part of the respondents-defendants.

(2) The issue upon which we shall receive evidence is —

Whether the appellant-plaintiff has suffered loss beyond the £1,200 found by the trial Court which comes within the definition " Ζημία " in section 2 of Law 12 of 1961. We make directions that the appellant should give full and detailed particulars of any such loss to the respondents, within seven days from today ; filing at the same time a copy of such particulars with the registry of this Court. Furthermore to give to the Court and the other side the names of any witnesses who could support such claim or any items thereof, if required.

(3) The respondents on the other hand, within 14 days of receipt of such particulars to give notice to the appellant (filing a copy thereof with the Registrar) of the items in the said particulars (or any part thereof)—which the respondents dispute ; and moreover to give the names of any witnesses whom the respondents think that they might find it necessary to apply to the Court to hear in this appeal.

(4) Let it be quite clear to both sides that for the hearing of any witnesses other than the appellant, whose names appear in the list of either side, a fresh application, sufficiently supported, will have to be made, in due course. Such application may be made orally during the hearing of the appeal.

(5) After a filing of particulars and notice of dispute as above, either side may apply to the Registrar for a day of hearing. And we hope that the Chief Registrar will be able to give to this case an early date.

The judgment of the Court was delivered on the 25th February, 1965, and :—

Held, (1) considering the case as a whole, and taking into account the reduced percentages of about 43% in the granting of compensations under Law 12/61, and the effect of all the evidence on record concerning the extent of the material damage (ὑλικὴ ζημία) involved, we have reached unanimously the conclusion that the damages in this case should have been assessed at £2,250. In reaching such conclusion, we have carefully weighed all relevant factors including the duty of this Court vigilantly to sustain "good administration" (χρηστὴν καὶ νόμιμον διοίκησιν) in the Republic, in the course of which, we believe that the appellant would have received as compensation under Law 12/61, the amount now awarded.

(2) The appeal against the first respondents herein (the public authority in question) must succeed ; and the judgment of the District Court in this action, including the order for costs be set aside. In lieu thereof judgment to be entered for the plaintiff against the first defendants for £2,250 with 4% interest from today ; and costs to be taxed on the appropriate scale, both in the District Court and in the appeal. Any amount of the court-deposit paid out to the plaintiff, to be first appropriated against costs, and thereafter against the judgment.

Appeal against respondent No. 1 allowed. Judgment of the District Court, including the order as to costs, set aside. New judgment and order as to costs entered as aforesaid.

Appeal.

Appeal against the judgment of the District Court of Nicosia (Stavrinides, P.D.C. and Georghiou, D.J.) given on the 19th May, 1964 (Action No. 2017/63) whereby plaintiff was awarded the amount of £522, as compensation for damage suffered by him during the liberation struggle, on his claim of £13,228.

A. Tziros with *A. Triantafyllides*, for the appellant.

G. Tornaritis, for the respondents.

Cur. adv. vult.

The facts of the case are sufficiently stated in the judgment of the Court (at p. 44 post).

The following ruling was delivered on the 11th December, 1964, by :—

VASSILIADES, J.: At this stage of the hearing of the present appeal, the Court is faced with a situation, which is most exceptional. Apart of the fact that the proceedings throughout were conducted by the appellant-plaintiff in person, in a manner which caused considerable difficulty and confusion, we are dealing with a case which found its way to the civil Courts under the provisions of Article 146 (6) of the Constitution, in circumstances which have been described by the appellant—not without justification, in our opinion—as persistent refusal on the part of the appropriate statutory Authority to deal with his claim under the relative statute, τὸν περὶ Ἀποζημιώσεως τῶν Ὑποστάντων Ζημίας κατὰ τὸν Ἀγῶνα Νόμον (No. 12/61) of the Greek Communal Chamber.

We are now dealing with plaintiff's appeal from the judgment of the District Court of Nicosia, where his claim was decided, he contends, upon criteria different to those prescribed by the statute. The District Court awarded compensation on the basis of what is described in the judgment as " physical " loss which is not the damage described in the definition section 2 of the statute in question.

We are further more faced with the position that the appellant owing to lack of professional assistance, has not been able to give proper particulars of all the parts of his claim although he produced and filed in support thereof, voluminous correspondence and other documents during the long proceedings before different Courts and other Authorities since August, 1961.

Without going into the detailed history of this litigation we can say that it has reached a stage when it has become highly desirable that it should come to an end. with the least possible delay, in the interests of Justice. In these very exceptional circumstances we have come to the conclusion that instead of referring the case back to the District Court to deal further with the items of loss within the statutory definition, included in the claim, but not properly or sufficiently put before the Court, we should rather make use of our powers under the provisions of s. 25 (3) of the Courts of Justice Law (14 of 1960) to hear further the plaintiff on the matters which we shall now specify ; and, if necessary, to hear additional evidence,

both on the part of the appellant-plaintiff and on the part of the respondents-defendants. The issue upon which we shall receive evidence is : Whether the appellant-plaintiff has suffered loss beyond the £1,200.– found by the trial Court, which comes within the definition «Ζημία» in section 2 of Law 12/61. We make directions that the appellant should give full and detailed particulars of any such loss to the respondents, within seven days from to-day ; filing at the same time a copy of such particulars with the registry of this Court. Furthermore to give to the Court and the other side the names of any witnesses who could support such claim or any items thereof, if required.

The respondents on the other hand, within 14 days of receipt of such particulars to give notice to the appellant (filing a copy thereof with the Registrar) of the items in the said particulars (or any part thereof)—which the respondents dispute ; and moreover to give the names of any witnesses whom the respondents think that they might find it necessary to apply to the Court to hear in this appeal.

Let it be quite clear to both sides that for the hearing of any witnesses other than the appellant, whose names appear in the list of either side, a fresh application, sufficiently supported, will have to be made, in due course. Such application may be made orally during the hearing of the appeal.

After a filing of particulars and notice of dispute as above, either side may apply to the Registrar for a day of hearing. And we hope that the Chief Registrar will be able to give to this case an early date.

The following judgment was delivered on the 25th February, 1965, by :—

VASSILIADES, J.: This is an appeal from the judgment of the District Court of Nicosia in an action instituted by the appellant under the provisions of Article 146.6 of the Constitution. The claim is for "just and equitable damages" against the Greek Communal Chamber for its omission to consider and satisfy the claim of the plaintiff for compensation as provided in Law 12 of 1961 of the Greek Communal Chamber.

For convenience we shall refer hereafter, to the appellant-plaintiff as the "appellant" ; to the defendant Communal

Chamber, as the " respondents " ; and to Law 12 of 1961, the full title of which is " Περὶ Ἀποζημιώσεως τῶν Ὑποστάντων Ζημίας κατὰ τὸν Ἀγῶνα Νόμος, 1961 " as " Law 12/61 ".

The matter may, perhaps, be made clearer if we lay stress right from now on the constitutional provision that an action of this nature lies against " any organ, authority or person, exercising any executive or administrative authority " in the State (Article 146.1) by " any person aggrieved by any decision or act declared to be void under paragraph 4 " of the Article in question ; or declared thereunder that " it ought not to have been made ". The respondents are thus being sued as an organ in, or authority forming part of the State ; a position which has never been challenged in this action.

It may be useful to give here in a summary form, the scope of Article 146 as a whole :

(*Paragraph* 1, provides that the Supreme Constitutional Court (now the Supreme Court) has exclusive jurisdiction to adjudicate finally on complaints in the form of a recourse to the Court, that a decision, act or omission of any organ of the State exercising executive or administrative authority, is contrary to law, or is made in excess or in abuse of power ;

Paragraph 2 states that such a recourse may be made by any person whose any existing legitimate interest is adversely and directly affected by such decision, act or omission ;

Paragraph 3 regulates the time-limit within which such a recourse can be made ;

Paragraph 4 specifies that the Court, upon such a recourse may (*a*) confirm the act complained of ; or, (*b*) declare such administrative decision or act to be *null and void*, either wholly or in part ; or, (*c*) declare that, the administrative omission ought not to have been made and should now be performed ;

Paragraph 5 makes all such decisions of the Court binding on all courts and all organs and authorities in the Republic whom it requires to give effect to the Court's decision ; and

Paragraph 6 provides that " any person aggrieved by any decision or act declared to be void under paragraph 4

or by any omission declared thereunder that it ought not to have been made, *shall be entitled*, if his claim is not met *to his satisfaction* by the organ, authority or person concerned, to institute legal proceedings in a court, for *the recovery of damages* or, *for being granted other remedy and to recover just and equitable* damages to be assessed by the court, or to be granted such other just and equitable remedy as such court is empowered to grant".

The extent of the right thus given to the person aggrieved by this constitutional provision, is most significant and important. And while on this point it may be usefully added that a right to compensation in such cases, is not peculiar to the Constitution of the Republic of Cyprus. Professor Kyriakopoulos in his Ἑλληνικὸν Διοικητικὸν Δίκαιον—(Greek Administrative Law, 4th Ed. 1961, Vol. 3 at p. 155) says:

> «Ἡ ὑποχρέωσις τῆς διοικήσεως εἰς ἀκριβῆ συμμόρφωσιν πρὸς ἀκυρωτικὴν ἀπόφασιν, ἐκδοθεῖσαν ἐπὶ ἐκτελεσθείσης ἤδη πράξεως, συνίσταται εἰς τὴν ἐξαφάνισιν τῶν ἀποτελεσμάτων αὐτῆς, ἤτοι εἰς τὴν ἀποκατάστασιν τῆς προηγουμένης πραγματικῆς καταστάσεως».
>
> «Ἡ ἀποκατάστασις δέον νὰ εἶναι πλήρης, ἤτοι νὰ περιλαμβάνῃ πάντα τὰ ζημιοῦντα τὸν προσφυγόντα ἀποτελέσματα τῆς πράξεως ἐξ ἀρχῆς. Ἡ ἀποκατάστασις ὅμως δὲν περιλαμβάνει καὶ τὴν ἀνόρθωσιν τῆς ὑλικῆς ζημίας. Τὸ Συμβούλιον Ἐπικρατείας, μὴ κρῖνον ἄλλωστε περὶ τῶν ἐξ αὐτῆς δικαιωμάτων τοῦ προσφυγόντος καὶ τῶν ἀντιστοίχων ὑποχρεώσεων τῆς διοικήσεως, δὲν ἐπιδικάζῃ χρηματικὰς καταβολὰς . Ἂν δὲ ἡ διοίκησις ἀρνῆται νὰ ἐκπληρώσῃ τοιαύτας ὑποχρεώσεις, ἀνακύπτει πλέον ἀστικὴ διαφορὰ διὰ τὴν ὁποίαν ἁρμόδια εἶναι τὰ πολιτικὰ δικαστήρια, τὰ ὁποῖα δεσμεύονται ὡς πρὸς τὸ ὑπὸ τοῦ Σ.Ε. κριθὲν ζήτημα. περὶ οὗ γεννᾶται δεδικασμένον ἐκ τῆς ἀποφάσεως τούτου».

And dealing with the liability of the State to compensate the citizen for damage caused by organs of the State as a result of wrongful acts of the kind covered by Article 172 of our Constitution, the same learned author says at p. 474 of Vol. 2 of his said treatise :—

> « Τοιουτοτρόπως ἡ ἐπιδίκασις ἀποζημιώσεως εἰς βάρος τῆς δημοσίας διοικήσεως ἀπέβη μορφή τις καταστολῆς τῶν παραβάσεων τῆς ἀρχῆς τῆς νομίμου διοικήσεως.»

The respondents in this case, strongly contesting appellant's action, contended, *inter alia*, both in the District Court and in the appeal, that appellant's claim

under Article 146 did not lie. The judgment of the trial Court in this connection, reads (p. 7 of the judgment, at p. 35 of the record, letter H) :

> "What is the legal position? It is contended for the defendants that the plaintiff is not Πρόσωπον ζημιωθὲν (person aggrieved—in the English version of the Constitution) within Article 146.6 of the Constitution, at any rate as from the communication to him of the decision to compensate him. However, as the defence states, the decision was made known to him (plaintiff) by letter of the defendants dated June, 17, 1963 (Exhibit 1 (*a*)). Clearly when this action was brought the plaintiff, was an "aggrieved person" and entitled to sue ; and we cannot see how the right to maintain the action could be lost as a result of the subsequent communication to him of a decision to compensate him, even if that decision had been taken before action brought."

The decision to which the District Court refer, is an alleged decision of the respondents said to have been taken as early as the 22nd April, 1963, concerning the application of the appellant for compensation, but not communicated to him until long after the filing of his action, notwithstanding his persistent request for a reply before action.

Regarding the submission made on behalf of the respondents as to the jurisdiction of the civil Court to deal with appellant's claim, the trial Court say this, in the same part of their judgment (p. 36, letter B) :—

> "Then Mr. Tornaritis said : 'If the Court were to award the plaintiff compensation in this case it would be acting as an administrative Court. But the Court cannot substitute its opinion or assessment for that of the Assessment Committee'. With regard to the first proposition, whether a Court awarding compensation in a case of this sort is acting as an administrative Court, or not, it is accepted all round that the power of granting remedies under Article 146.6, is vested in the District Courts."

It will be seen from what we have already said in this connection, that the trial Court made, in our opinion, a correct approach, and have taken a correct view regarding their jurisdiction. The appellant was, we think, clearly entitled to sue the respondents for damages in the District Court.

We can now go into the facts and merits of the case. They can be sufficiently found in the record before us which contains the evidence adduced by both sides in this protracted litigation, and the assessment of such evidence by the different Courts who received it, as reflected in their judgments.

The Supreme Constitutional Court dealt with appellant's complaint on October 2nd, November 1st, 10th, 17th, December 1st, 1962, March 7th, 1963 and delivered its judgment on the 21st March, through its President, Professor Forsthoff, as reported in 5, R.S.C.C., p. 48 at p. 50. The Court had before them in that recourse, the evidence of the appellant and two witnesses called on his behalf; two other witnesses called by the respondents; and 27 documents—(*vide* Exhibit 10 herein, pp. 8 and 9 and pp. 11 to 26).

The *uncontested facts* of the case as given in the first part of the reported judgment (pp. 50, 51 and 52), mostly taken from the Judge's statement of the case after presentation, are as follows :—

> " The applicant is a member of the Greek Community. The applicant was, prior to and at the time of the events leading to the present recourse, the owner and manager of a quite prosperous tourist and travel-agency business which had its offices on the corner of Kyrenia and Asmalti Streets, a very short distance from Ataturk Square, in the Turkish quarter of Nicosia.
>
> In or about April, 1956, and as a result of disturbances between Greeks and Turks, the said office of applicant suffered damage on two occasions due to riots by Turks. This was repeated also in December, 1957. There were minor incidents in between. Eventually applicant had to evacuate his said offices in March 1958. All through this disturbed period the business of applicant was seriously affected and diminishing more and more, as Greeks, who were the majority of his clients would not come to applicant's office in the Turkish quarter. Though the extent and nature of the financial loss suffered by applicant as a result of such events is in dispute among the parties, there is no dispute about the fact that actual financial loss has in fact been suffered by applicant in the circumstances.

By a Supplementary Appropriation Law, Law 4/60, the Government of the Republic made a grant to the Greek Communal Chamber (hereinafter referred to as ' the Chamber ') of an amount of £620,000. The law in question was promulgated on the 27th October, 1960.

On the 3rd November, 1960, a decision was taken by the Chamber, which was published in the official *Gazette* of the 22nd December, 1960, concerning the said grant of £620,000, to the effect that £400,000 were to be deposited with the Co-operative Central Bank as income-yielding capital for pensions to dependants of those fallen during the liberation struggle, £20,000 were to be used in meeting the immediate needs of such dependants and £200,000 were to be used in compensating those who suffered damage due to the action of security forces or riots by Turks

On the 28th November, 1960, the applicant applied to a Relief Committee of the Chamber for compensation concerning damage suffered due to rioting, as aforesaid, and he claimed an amount of £2,000 " at least ".

On the 9th December, 1960, applicant addressed a letter to the President of the Chamber complaining that he had not received any reply to his application for compensation. Applicant was informed by letter of the 15th December, 1960 that all claims were under consideration, category by category.

On the 5th June, 1961, after a meeting of the 2nd June, 1961, between applicant and a certain Mr. George Violaris, who was acting as an assessor on behalf of the Chamber in respect of claims for compensation, applicant addressed a letter to the President and Members of the Chamber setting out his claim for compensation in very great detail and stating that the total amount of his loss was, thus, £13,228.

On the 12th June, 1961, respondent wrote to applicant informing him that all claims were under examination but as the amount to be distributed was only £200,000, they could be met in part only. It was stated further therein that the whole matter would have to wait the promulgation of the relevant legislation.

Such legislation, Law 12/61 of the Greek Communal Chamber, was promulgated on the 11th August, 1961.

On the 1st September, 1961, applicant cabled the President of the Chamber complaining against the delay in relation to his claim. On the 2nd of September, 1961, respondent wrote back stating that the work of the Relief Committee was still in progress.

On the 17th November, 1961, applicant addressed yet another letter to the President of the Chamber, stating that he had heard unofficially that he had been classified as a person who was well off and, therefore, no compensation at all was to be paid to him, and stating that this was not at all the true position.

On the 6th December, 1961, applicant was informed in writing by respondent that he could not be compensated under the relevant legislation.

On the 11th December, 1961, applicant wrote to the President of the Chamber complaining against the decision not to compensate him, alleging that he had received unequal treatment and asking for the reasons for the said decision, pursuant to Article 29 of the Constitution. No reply appears to have been received to this letter. On the 13th January, 1962, the applicant filed in this Court Case No. 19/62 against the decision not to compensate him but the recourse was withdrawn on the 2nd May, 1962, on being discovered, during Presentation, that the Committee of Selection and Administration had not finally confirmed the decision in question, as provided under section 8 of Law 12/61. It was undertaken that the said Committee would review the matter not later than the 31st July, 1962.

On the 1st August, 1962, the present recourse was filed, as applicant had not received any further communication from respondent. On the same day, however, a letter had been written to applicant by respondent, which had been posted on the 2nd August, 1962, and received by applicant on the 3rd August, 1962, and by which he was informed that the Committee of Selection and Administration had decided on the 31st July, 1962, not to grant him any compensation."

After stating in their judgment the uncontested facts as above, the Supreme Constitutional Court proceed to deal in about two and a half pages in the report, with the reasons which led them to their decision, the last paragraph of which reads : (p. 55H).

> " In the circumstances the Court has to declare the decision in question (respondents' decision dated 31st July, 1962, to reject completely appellant's claim) to be null and void and of no effect whatsoever, and the respondent has to reconsider now the application of applicant for compensation by applying correctly the relevant legislation in the light of the correct facts."

It may be recalled here that appellant's claim for compensation was originally for £2,000 " at least " ; and that the detailed statement of his losses which the appellant gave to the respondents after his interview with their assessor, Mr. Violaris, in June, 1961, showed a loss amounting to £13,228. Furthermore it may be recalled that in the statement of the uncontested facts, the judgment of the Supreme Constitutional Court, after describing the period from April, 1956, when the Turkish riots commenced detrimentally affecting appellant's business until March, 1958, when he had to remove his place of business away from the Turkish quarter of the town, they (the Court) say that " though the extent and nature of the financial loss suffered by applicant as a result of such event is in dispute, among the parties, there is no dispute about the fact that actual financial loss has in fact been suffered by applicant in the circumstances."

This was part of the loss which was the duty of the respondents as a public authority to ascertain and compensate by " applying correctly the relevant legislation ", (Law 12/1961) as explained and clarified by the Supreme Constitutional Court. It was expressly stated in the judgment that this " was a matter of public administration and a decision of the appropriate authorities under the said Law is an exercise of executive or administrative authority in the sense of Article 146.1 " (5 R.S.C.C., p. 53 F.).

It may also be recalled at this point that the decision of the Supreme Constitutional Court to declare the rejection of appellant's claim as " null and void and of no effect whatsoever ", was a decision under Article 146.4, which under Article 146.5 of the Constitution, was " binding on all Courts and all organs or authorities in the Republic ".

It thus became the duty of the respondents to " give effect to, and to act upon " that decision in the appropriate manner.

The way in which the respondents performed that duty appears from the record of the action in the District Court. And is reflected in the judgment of the trial Court as follows : (Record p. 31, letters C to E).

> " The Constitutional Court judgment was delivered on April 2, 1963. On the following day the plaintiff (appellant) sent to the Committee of Administration, or formerly of Selection and Administration, (of the Greek Communal Chamber) a registered letter (*Exhibit* 1) enclosing a copy of it and asking the committee ' to review his application ' in the light of the correct facts as described in the judgment. On May 1, 1963, the plaintiff (appellant) sent a second registered letter (*Exhibit* 3) and on the 7th of the same month a third (*Exhibit* 4) both similarly addressed. By the former he complained that he had received no reply to his first letter and, *inter alia*, ' drew the attention of the Committee ' to Article 29, para. 2, and Article 146, para. 5 of the Constitution."

By his last letter the appellant called upon the respondents to reply " only in writing and not later than the 15th instant ". Receiving no reply, the appellant filed the present action on the 16th May, 1963, in exercise of his right to do so, under the provisions of Article 146.6 ; and claimed £13,228—compensation or damages against the respondents. Alternatively the plaintiff claimed " the same amount or any amount, corresponding to the unsatisfied claim of the plaintiff for compensation, which the Honourable Court might deem fit and reasonable ".

About a month after the filing of the action, by a letter dated the 17th June, 1963, the respondents purported to inform the appellant that " after due consideration of all the facts of his application (they) arrived at the decision to pay to the plaintiff £225 as compensation under Law 12 of 1961..... " (Record p. 32, letter H in the judgment).

By a letter dated the 18th May, 1963 (two days after the filing of appellant's action) the appellant was requested to attend at the offices of the respondents at 10 a.m. of the 23rd May, to supply them with further information regarding the damage he had suffered. This the appellant declined to do ; quite justifiably, we think, in the circumstances.

Before answering appellant's claim in the action, respondents filed an application on the 5th June, 1963, under O. 16, r. 9 to have the writ of summons and the service thereof, set aside for want of jurisdiction. The District Court ruling that an ambiguity had arisen as to the interpretation of Article 146.6, referred the case to the Supreme Constitutional Court to decide whether the appellant was entitled to file an action for relief in the District Court. Against that decision, the appellant took civil appeal No. 4467 where the Court of Appeal held that the District Court should get on with the case and decide the issues raised therein, including that of their jurisdiction. In the last part of their judgment (at p. 7) the Court made this significant remark :

> " As the matter is now pending before the trial Court, we do not wish to say anything more at this stage, regarding appellant's claim, or respondents' way of dealing with it ."

Returning now to the proceedings in the District Court, we come to the defence where, quite properly, we think, the respondents admit most of the allegations in the statement of claim resting on the judgment of the Supreme Constitutional Court (*supra*) ; but they deny appellant's allegations regarding the extent of the loss suffered. Respondents' pleading concludes with the statement that " After due consideration of all the facts.....(the respondents) arrived at the decision to pay to the plaintiff £225 as compensation under Law 12/61.....for the loss he had suffered as a result of the Turkish riots during the liberation struggle ". And add in the last paragraph, that " this fact was made known to the plaintiff by a letter of the defendants dated the 17th June, 1963 ". The letter and alleged decision, to which we have already referred, were communicated to appellant for the first time about a month after action, and well after their application to have the writ set aside.

The issues arising from the parties' pleadings were strongly contested at the trial which lasted for five days. The main witnesses in the recourse before the Supreme Constitutional Court, were called and examined again ; and in addition the trial Court received a number of exhibits including part of the record of proceedings before the Supreme Constitutional Court (*Exhibit* 10). The trial ended with a carefully considered judgment, delivered on the 19th of May, 1964.

After going into the history of the case, and making reference to the decision of the Supreme Constitutional Court as reported in 5 R.S.C.C., 48, the trial Court deal with the evidence regarding appellant's loss. Quite rightly, in our opinion, the court go first to the relative findings of the Supreme Constitutional Court. But in so doing they do not seem to appreciate sufficiently that the subject matter of the recourse was not the extent of appellant's loss, but the administrative decision of rejecting his claim for compensation ; while the object of the action in the District Court was " the recovery of damages " for his loss and grievance consequent upon the administrative act or decision declared to be void under paragraph 4 of Article 146. He (the plaintiff) was now entitled to institute such proceedings for damages. And not only for damages, but also, for being granted other remedy *and* to recover "*just and equitable damages*" to be assessed by the court. In a case of this nature, however, probably the first of its kind in Cyprus, the difficulty of the District Court is understandable. At page 34 of the record the trial Court say :—

> "Even if it were assumed that anything contained in that judgment could, as a matter of law, be used by us in assessing the loss, or any of the loss, suffered by the plaintiff, there is nothing to enable us to do so as a matter of fact."

And yet the effect of occasional riotous disturbances directly connected with the liberation struggle, over a period lasting nearly two years, during which the appellant was required, according to his evidence, to keep his Greek post in the disturbed area, was manifest. The melting away of his " flourishing " business, amply reflected in the serious deterioration of his financial standing, offered unmistakable evidence of such effects ; and supplied the material where the court could find " the extent and nature of the financial loss suffered by applicant as a result of such events ", in order to assess the " just and equitable " damages to be awarded. The existence of such loss was one of the uncontested facts in the recourse ; and the trial Court had that position in mind, as it clearly appears from their judgment (pp. 30, H ; and 31, A.B.C.).

But the respondents were not inclined to look into appellant's claim. They would not even consider the loss resulting from the repeated smashing of his offices and equipment. And they reacted to the decision of the Supreme Constitutional Court in a manner which

speaks for itself on the record ; but we would rather not describe in this judgment, as it would, we think, require quite strong language to do so adequately.

Another difficulty in the trial Court's approach was that they seem to have been mainly concerned with what they called " physical damage " in their judgment ; the damage which respondent's assessor found at £500 and the appellant put in items amounting to a total of £1,200 out of the £13,228 claimed.

In this connection the trial Court say (at p. 35 E.F.) :—

> " Regarding as we do, Mr. Violaris' assessment as unsatisfactory, we prefer the plaintiff's evidence and find that the physical damage caused to his property in consequence of Turkish riots totalled £1,200."

But as pointed out in the course of the argument before us, the damage which Law 12/61 required the respondents to assess was the loss specified, in the definition-section of the statute ; «ὑλικὴ ζημία» which in English one could perhaps, call " material damage ", to distinguish it from " moral injury ". The matter becomes quite clear, in our opinion, by the last pərt of the statutory definition which provides that such damage « περιλαμβάνει μόνον τὴν θετικὴν ζημίαν, οὐχὶ δὲ καὶ τὸ διαφυγὸν κέρδος». But for this qualification, " material damage " would apparently include " lost profit " as well, which the legislator specifically wanted to exclude.

Moreover what is meant by «θετικὴ ζημία» from which the legislator excluded the " lost profit ", can be seen by a glance on articles 298 and 299 of the Greek Civil Code, where «ἡ ἀποζημίωσις περιλαμβάνει τὴν μείωσιν τῆς ὑπαρχούσης περιουσίας τοῦ δανειστοῦ (θετικὴ ζημία) ὡς καὶ τὸ διαφυγὸν κέρδος» and articles 918, 919 and 920 which provide for compensation (ἀποζημίωσιν) in certain cases of moral injury. It is, in this connection, significant that the words used in the Greek version of the Constitution, in Article 146.6 are «δικαία καὶ εὔλογος ἀποζημίωσις καθοριζομένη ὑπὸ τοῦ δικαστηρίου».

We are not concerned here with what is known to the English law as " special damage ". We are clearly dealing with a provision giving to the citizen the right to claim an award of general damages to be assessed by the civil court, to compensate him for the failure of the public authority to deal with and decide according to law, his case,

in their hands, by reason of their competence in the State ; and to put him as near as it may be done, in the position in which he would have been, had the law been properly applied by the authority concerned.

And there is, in our opinion, ample material on record to establish two salient facts in this action : first that the material damage suffered by appellant in consequence of the Turkish riots amounts to a great deal more than the £1,200 found by the trial Court (it may well run into several thousands, of pounds) ; and second, that the respondent-public authority persistently failed in their duty to consider properly appellant's claim for compensation under Law 12/61. This failure in their duty to the citizen did not only bring them to an administrative decision which was eventually annulled by the Supreme Constitutional Court at the instance of the appellant, but it apparently continued to govern their conduct, even after the litigation and adjudication of appellant's recourse in that very high judicial authority of the State, whose decision went into considerable detail and explanation in order to help them. Even then, the respondents did not show the proper sense of duty to try and meet appellant's " claim to his satisfaction " as required by Article 146.6 of the Constitution and as directed by the Court.

In assessing the damages which the appellant became thus entitled to, the District Court found that he had " established a loss of £1,200 and nothing more ". We have already indicated that on the evidence on record, such finding was plainly wrong. The trial Court also found that " legally he was eligible for compensation ". It would be more accurate, in our opinion, to say that " he was entitled to damages as provided in Article 146.6 of the Constitution ". The term compensation may not be very apt in this connection. Taking into consideration the evidence for the respondents that owing to the inadequacy of the funds appropriated for the purpose, such claims were only met by about 43% (50% reduced by 13%. *Vide* judgment at pp. 35G and 36F) the trial Court gave judgment against the first respondents " for £522 with 9% interest from ' the date of action till payment, and £30 costs (of which £8 is for disbursements) '." As against the second defendants the action was dismissed without costs.

We take the view that in assessing the damages to be awarded, the trial Court were entitled to take into consideration the evidence that only a certain percentage of the

loss suffered was being compensated, owing to the size of such losses in comparison to the amount made available for compensations under Law 12/61. And we think that they rightly acted upon that evidence. But as already pointed out earlier in this judgment, we cannot reach the same conclusion regarding the trial Court's finding and assessment concerning appellant's loss. And we can only explain the award of "9% interest until payment"—which was not open to the trial Court to make in the circumstances—as an attempt to increase the award in case of, perhaps, anticipated delay on the part of the respondents to make payment in due course. Having heard no argument in support of the appeal from the dismissal of the action against the second defendants, we must assume that that part of the appeal was abandoned; and must therefore be dismissed on that ground; not on the merits.

Considering the case as a whole, and taking into account the reduced percentages of about 43% in the granting of compensations under Law 12/61, and the effect of all the evidence on record concerning the extent of the material damage (ὑλικὴ ζημία) involved, we have reached unanimously the conclusion that the damages in this case should have been assessed at £2,250. In reaching such conclusion, we have carefully weighed all relevant factors including the duty of this Court vigilantly to sustain "good administration" (χρηστὴν καὶ νόμιμον διοίκησιν) in the Republic, in the course of which, we believe that the appellant would have received as compensation under Law 12/61, the amount now awarded.

The appeal against the first respondents herein (the public authority in question) must succeed; and the judgment of the District Court in this action, including the order for costs be set aside. In lieu thereof judgment to be entered for the plaintiff against the first defendants for £2,250—with 4% interest from today; and costs to be taxed on the appropriate scale, both in the District Court and in the appeal. Any amount of the Court-deposit paid out to the plaintiff, to be first appropriated against costs, and thereafter against the judgment.

Judgment and order for costs accordingly.

Appeal against respondent No. 1 allowed. Judgment of the District Court, including the order as to costs, set aside. New judgment and order as to costs to be entered as aforesaid.