1968
Oct. 26

COSTAS IOANNOU
v.
THE GRAIN COMMISSION

[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS IOANNOU,

Applicant,

and

THE GRAIN COMMISSION,

Respondent.

(Case No. 66/68).

Public Officers—Rent allowance—Recourse concerning readjustment of rent allowance on the basis of the Judgment of this Court in Physentzides *and* The Republic (1967) 3 C.L.R. 505*—Recourse out of time—Confirmatory act or decision as distinct from an executory act or decision—A merely confirmatory act cannot be made subject of recourse under Article* 146 *of the Constitution—Acquiescence—Applicant by acquiescing in the reduction of the rent allowance paid to him, and by accepting payment of the so reduced allowance without protest, deprived himself of the legitimate interest in the sense of Article* 146.2 *of the Constitution.*

Recourse under Article 146 *of the Constitution—Recourse out of time—Article* 146.3*—Decision complained of a merely confirmatory act, consequently it cannot be made the subject of r course under Article* 146*—Acceptance without protest of an administrative decision deprives one of the existing legitimate interest in the matter—Article* 146.2 *of the Constitution.*

Confirmatory act or decision—As distinct from an executory act or decision—See above.

Executory act or decision—See above.

Legitimate interest—Article 146.2*—Acceptance without protest of an administrative decision may destroy the legitimate interest required by Article* 146.2 *of the Constitution.*

Res judicata—The Judgment in the present case cannot be treated as constituting a res judicata *barring the Applicant from claiming, should in the future the occasion arise, that he is entitled to receive a non-reduced rent allowance— Otherwise had the recourse failed on the merits.*

Administrative and Constitutional Law—See above under Public Officers; Recourse under Article 146 of the Constitution; Res judicata.

Acquiescence in, or acceptance of, an administrative act or decision—Effect on recourse under Article 146 of the Constitution, and particularly on the ingredient of legitimate interest required under paragraph 2 of that Article—See above.

Rent allowance—Public Officers—See above.

By this recourse the Applicant complains against the refusal of the Respondent Grain Commission to readjust in his favour the total of the amounts of rent allowance paid to him during the period from April 1, 1964 to October 31, 1967.

In 1964 the matter of the rent allowance payable to him was reviewed in the light of a circular dated the 15th January, 1964 (*Exhibit* 3), by virtue of which a public officer's "full-age children with income living" with him should be deemed to be contributing £3 per month to their parent and such amount "should be set off against the rent which the officer pays for his house in which he resides". As a result, the rent allowance paid monthly to the Applicant in the years 1964 to October 1967 was much reduced. All through the aforementioned period the Applicant took no legal steps for any readjustment of the reduced rent allowance paid to him; nor does it appear that he ever protested regarding this matter.

Then, on the 21st December 1967, the Applicant addressed a letter to the Respondent, relying on the Judgment of this Court in the case of *Physentzides* and *The Republic* (1967) 3 C.L.R. 505; he claimed the refund of all deductions made to his detriment in the rent allowances paid to him in respect of the said period 1964 to October 1967. He received a reply dated January 5, 1968 whereby he was informed that as the relevant circular had not been changed, there could be no readjustment of the rent allowances paid to him. As a result the Applicant, filed the present recourse on February 28, 1968.

Dismissing the recourse the Court:

Held, (1). As this recourse was filed on February 28, 1968, it is clearly out of time in so far as it relates to the de-

cision leading up to the payment of a reduced rent allowance to the Applicant for the period from 1st April, 1964 to the 31st October, 1967.

(2) What is stated in the aforesaid reply of the Respondents dated the 5th January, 1968, (and it is only with regarp to this that the present recourse was made)—does not amount to an act or decision that can be the subject-matter of a recourse under Article 146 of the Constitution; it is only a mere confirmation of the course already adopted during the said period from April 1, 1964 to October 31, 1967; no new facts had to be examined before such letter was addressed to the Applicant; the Respondents were simply requested to act on a judicial decision, in an allegedly similar case *(Physentzides* case, *supra)*, which had supervened in the meantime, and they refrained from doing so; their refusal in these circumstances is not an executory act or decision, but only a confirmatory one which cannot be challenged by recourse under Article 146 of the Constitution (see *Markou* and *The Republic*, reported in this Vol. at p. 267 *ante*).

(3) It is up to each individual to claim his rights, in time, by instituting appropriate legal proceedings, if need be. He cannot sleep over his rights and then seek to take advantage of the outcome of proceedings instituted by others in order to put forward a claim never made by him previously (see *Pavlides* and *The Republic* (1967) 3 C.L.R. 217); otherwise there can never be any finality and certainty in administration.

(4) But there is a further reason for which this recourse cannot succeed. By acquiescing at the material time to the reduction of the rent allowance paid to him from April, 1964 to October 1967 and by accepting without protest payment of the so reduced rent allowance, the Applicant deprived himself of the possibility of possessing an existing legitimate interest in the matter directly and adversely affected, in the sense of Article 146.2 of the Constitution (See Conclusions from the Jurisprudence of the Greek Council of State 1929–1959, p. 261).

Recourse dismissed.
No order as to costs.

Per curiam: As this recourse has not failed on the merits, this Judgment cannot be treated as constituting a *res judicata* barring the Applicant from claiming, should

in the future the situation arise, that he is entitled to receive a non-reduced rent allowance on the basis of the *Physentzides* case *supra*.

Cases referred to:

Markou and *The Republic*, reported in this Vol. at p. 267 *ante*;

Pavlides and *The Republic* (1967) 3 C.L.R. 217;

Physentzides and *The Republic* (1967) 3 C.L.R. 505.

Recourse.

Recourse against the refusal of the Respondent Grain Commission to readjust in Applicant's favour the total of the amounts of rent allowance paid to him during the period from the 1st April 1964 to the 31st October 1967.

L. Clerides, for the Applicant.

K. Talarides, Senior Counsel of the Republic, for the Respondent.

Cur. adv. vult.

TRIANTAFYLLIDES, J.: In this case the Applicant complains, in effect, against the refusal of the Respondent Grain Commission to readjust in his favour the total of the amounts of rent allowance paid to him during the period from the 1st April, 1964 to the 31st October, 1967.

The salient facts of the matter are as follows:-

The Applicant was receiving a rent allowance—under the relevant scheme in force in respect of public officers—as from 1961.

In 1964 the matter of the rent allowance payable to him was reviewed in the light of a circular dated the 15th January, 1964 (see *exhibit* 3), by virtue of which a public officer's "full-age children *with income* living" with him should be deemed to be contributing £3.- per month to their parent and such amount "should be set off against the rent which the officer pays for his house in which he resides".

As a result, the rent allowance paid monthly to the Applicant in 1964 was much reduced. The same course was followed in respect of the rent allowance paid monthly to him in the years 1965 and 1966, and up to October, 1967,

when the Applicant stopped receiving any rent allowance at all because he ceased living in a rented house.

As this recourse was filed on the 28th February, 1968, it is clearly out of time in so far as it relates to the decision leading up to the payment of a reduced rent allowance to the Applicant for the period from the 1st April, 1964 to the 31st October, 1967.

All through the aforementioned period the Applicant took no legal steps for any readjustment in his favour of the reduced rent allowance paid to him; nor does it appear that he ever protested regarding this matter.

Then, on the 21st December, 1967, the Applicant addressed a letter to the Respondent (see *exhibit* 1), relying on the Judgment of this Court in the case of *Physentzides* and *The Republic*, (1967) 3 C.L.R. 505; he claimed the refund of all deductions made out of the rent allowance paid to him in respect of the said period.

He received a reply dated the 5th January, 1968 (see *exhibit* 2), by means of which he was informed that as the relevant regulations had not been changed—(and this, obviously, referred to the aforementioned circular, *exhibit* 3)—there could be no readjustment of the rent allowance paid to him.

In my opinion, what is stated in the letter, *exhibit* 2, with reference to the rent allowance already paid to the Applicant —(and it is only with regard to this that the present recourse has been made)—does not amount to an act or decision that can be the subject-matter of a recourse under Article 146; it is only a confirmation of the course already adopted by the authorities concerned during the period from the 1st April, 1964 to the 31st October, 1967; no new facts had to be examined by the said authorities before such letter was addressed to the Applicant; they were simply requested to act on the basis of a judicial decision, in an allegedly similar case, which had supervened in the meantime, and they refrained from doing so; in the circumstances, their refusal is not an executory act or decision, but only a confirmatory one, which cannot be challenged by recourse under Article 146 (see *Markou* and *The Republic*, reported in this Vol. at p. 267 *ante*).

It is up to each individual to claim his rights, in time,

by instituting appropriate legal proceedings, if need be. He cannot sleep over his rights and then seek to take advantage of the outcome of proceedings instituted by others, in order to put forward a claim never made by him previously (see *Pavlides* and *The Republic*, (1967) 3 C.L.R. 217); otherwise there can never be any finality and certainty in administration.

Actually, the Applicant by acquiescing, at the material time, to the reduction of the rent allowance paid to him, and by accepting payment of the so reduced rent allowance, deprived himself of the possibility of possessing an existing legitimate interest in the matter, directly and adversely affected, in the sense of Article 146.2 of the Constitution; and this, indeed, is a further reason for which this recourse cannot succeed. (See Conclusions from the Jurisprudence of the Greek Council of State 1929–1959, p. 261).

In the light of all the foregoing this recourse fails and has to be dismissed accordingly; but, as it has not failed on the merits, this Judgment cannot be treated as constituting a *res judicata* barring the Applicant from claiming, should in future the situation arise, that he is entitled to receive on the basis of the *Physentzides* case (*supra*) a non-reduced rent allowance; of course, I leave the question of the fate of such a claim of the Applicant entirely open.

Regarding the costs of this recourse I have decided to make no order about them.

Application dismissed.
No order as to costs.