

1971  
Aug. 6

[L. LOIZOU, J.]

ERMA  
CHRISTOFIDES

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

v.  
MINISTRY  
OF FINANCE  
(COMMITTEE  
OF THE  
FUND FOR  
DAMAGED  
PERSONS)

ERMA CHRISTOFIDES,

*Applicant,*

*and*

THE MINISTRY OF FINANCE, THROUGH  
THE COMMITTEE OF THE FUND FOR DAMAGED  
PERSONS,

*Respondents.*

(Case No. 113/70).

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*Recourse under Article 146 of the Constitution—Decision challenged by the present recourse held to be a merely confirmatory act of an earlier decision and not an executory one—It cannot therefore be the subject of a recourse—Article 146.1 and 3 of the Constitution—Time within which to file a recourse—Article 146.3.*

*Confirmatory acts or decisions—An act or decision merely adopting a previous one and in the absence of any new facts or of any facts which were not known to the respondent Committee at the time of their previous said decision, is a confirmatory act (and not an executory one) which cannot be made the subject of a recourse under Article 146 of the Constitution—And new legal arguments or submissions, in the absence of such facts as aforesaid, do not amount to a new inquiry resulting to a fresh executory act or decision. (See Conclusions from the Jurisprudence of the (Greek) Council of State 1929–1959, p. 241)—It follows that a recourse does not lie against such act or decision merely confirming a previous one—And that the recourse is out of time as against such earlier decision—Article 146.3.*

*Administrative acts or decisions—Which alone can be made the subject of a recourse—Article 146.1 of the Constitution—Executory acts or decisions—As distinct from merely confirmatory (or informatory) acts—See also supra, passim.*

By this recourse the applicant lady challenged the validity of the decision of the respondent Committee of Management of the Fund for Damaged Persons (established under section 3 of the Fund for the Assistance of Damaged Persons Law,

1968 (Law No. 2 of 1968) whereby her application for a loan was rejected. The said decision is contained in the letter dated 21st February, 1970, addressed to the applicant by the Chairman of the Committee. The text of this letter is quoted *post* in the Judgment.

The Court held that the subject said decision was merely a confirmatory act or decision of a previous one which was duly communicated to the applicant by letter dated July 11, 1969 ; and the Court dismissed the recourse accordingly. (*Note* : ~~the text of the last mentioned letter is also quoted~~ *post* in the Judgment of the Court).

*Held*, (1). It is clear from the documents on record and the very wording of the decision of the 21st February, 1970 (subject matter of this recourse, which was filed on May 5, 1970) that the respondents are merely signifying their adherence to their previous decision contained in their said letter of July 11, 1969 (*supra*) ; and that it is no more than a mere repetition and confirmation of such previous decision and not a new decision taken after a new inquiry on new facts which were not before them when they took their first decision contained in their letter of July 11, 1969 (*supra*).

(2) Nor can the legal arguments advanced by learned counsel for the applicant in his memorandum submitted to the respondent Committee on October 24, 1969, and his view regarding the construction of the Law, amount, in the absence of any new facts or of any facts which were not known to the Committee at the time of their first decision (July, 1969), to a new inquiry. (See Conclusions from the Jurisprudence of the (Greek) Council of State 1929-1959, p. 241).

(3) In the light of all the above I am clearly of the view that the decision challenged by this recourse under Article 146 of the Constitution is merely confirmatory of the earlier decision of July 11, 1969, and cannot, therefore, be the subject of a recourse ; and that this recourse (filed on May 5, 1970) is out of time as against such earlier decision in view of the period of 75 days prescribed under Article 146.3 of the Constitution for the filing of the recourse.

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

Cases referred to :

*Conclusions from the Jurisprudence of the (Greek) Council of State 1929-1959, p. 241.*

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## Recourse.

Recourse against the validity of the decision of the respondents whereby applicant's application for a loan under section 3 of the Fund for the Assistance of Damaged persons Law, 1968 (Law No. 2 of 1968) was rejected.

C. *Indianos* with *E. Lemonaris*, for the applicant.

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

*Cur. adv. vult.*

The following judgment was delivered by :—

L. LOIZOU, J. : By this Recourse the applicant challenges the validity of the Decision of the Committee of Management of the Fund established under section 3 of Law 2 of 1968, whereby her application for a loan was rejected. The said Decision is contained in the letter dated 21st February, 1970, addressed to the applicant and her counsel by the Chairman of the Committee, which reads as follows :

\*«Ένετάλην ὅπως ἀναφερθῶ εἰς τὴν ἐπιστολὴν σας ἡμερομηνίας 27ης Δεκεμβρίου, 1969 ἀναφορικῶς πρὸς τὸ θέμα παροχῆς δανείου, δυνάμει τῶν περὶ Ταμείου Βοηθείας Ζημιωθέντων Νόμων καὶ Κανονισμῶν τοῦ 1968 καὶ 1969, εἰς τὴν πελάτιδά σας Ἔρμα Χριστοφίδου καὶ σᾶς πληροφορήσω τὰ ἀκόλουθα :

Ἡ Ἐπιτροπὴ ἐμελέτησεν μετὰ προσοχῆς τὰ ἐν τῇ ἐπιστολῇ σας ἡμερομηνίας 24ης Ὀκτωβρίου, 1969 ἀναφερόμενα νομικὰ ἐπιχειρήματα πλὴν ὅμως λυπεῖται διότι ἀδυνατεῖ νὰ ἀναθεωρήσῃ τὴν προηγουμένην τῆς ἀπόφασιν, δι' οὗς λόγους ἐξετέθησαν πρὸς τὴν αἰτήτριαν δι' ἐπιστολῆς μας ἡμερομηνίας 11ης Ἰουλίου, 1969».

By their opposition the respondents allege that the Decision attacked by the Recourse is confirmatory of a previous decision on the same subject and that, therefore, a Recourse does not lie ; and that, in any case, the said Decision is in conformity with the provisions of the Law.

The relevant facts are briefly as follows :

The applicant is the registered owner of a house situate at Ibrahim Pasha Quarter, Nicosia. This area is now not accessible to her as a result of the conditions which prevail

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\* An English translation of this appears at p. 308 *post*.

after the 21st December, 1963. The said house was registered in applicant's name on the 5th January, 1967, by way of gift from her uncle.

On the 27th May, 1968, the applicant submitted an application on the prescribed form to the Committee of Management of the Fund (hereinafter "the Committee"), for a loan of £6,000 (six thousand pounds). Her application is Red No. 2 in *Exhibit 6*; attached to the application is the certificate of registration of the property in question. She based her application on the ground that her house had to be abandoned. The reason given for the loan was the establishment of a business for the sale of ready-made clothes. After due notice to the applicant, the application was fixed for hearing on the 30th December, 1968. The applicant appeared before the Committee and explained to them that the house in question belonged to her uncle, the late A. Indianos, advocate, who had gifted it to her. She said that she considered herself "ζημιωθεισαν" within the meaning of the Law because in normal circumstances she would be in a position to sell her house. She further informed the Committee about the financial position of her husband and that she proposed to use the loan, if granted, in order to start a business for the sale of ladies clothes in partnership with an uncle of hers.

The Committee considered the application and decided to reject it. Their Decision was communicated to the applicant and her counsel on the 11th July, 1969. It reads as follows :

« Α Π Ο Φ Α Σ Ι Σ

\*Κυρία,

Αναφορικώς προς την ως άνω αίτησίν σας ήμερομηνίας 27ης Μαΐου, 1968, δι' ής αιτείσθε την χορήγησιν δανείου προς επέκτασιν τής ύφισταμένης εργασίας ύμών ή προς δημιουργίαν νέας τοιαύτης, πληροφορείσθε ότι ή Έπιτροπή άφου έξήτασεν μετά προσοχής την άνωτέρω αίτησίν σας, απέφάσισεν όπως άπορρίψη ταύτην, καθ' ότι ή περίπτωσίς σας δέν έμπίπτει εις τας προνοίας του Κανονισμού 4 (ε) του περι Ταμείου Βοηθείας Ζημιωθέντων Νόμου και Κανονισμών του 1968, καθ' όσον δέν είχατε περιουσίαν ήτις κατεστράφη ή έγκατελείφθη ή υπέστη ζημίαν έκ των μετά την 21ην Δεκεμβρίου, 1963 δημιουργηθεισών συνθηκών άλλα απέκτησατε έκ των ύστέρων περιουσίαν ήτις είχεν ήδη επηρεασθή.»

On the 15th July, 1969, applicant's counsel wrote to the Committee requesting them to reconsider their decision; and on the 24th October, 1969, he submitted a memorandum

\* An English translation of this text appears at p. 308 *post*.

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to them (*Exhibit 4*) setting out in five paragraphs the facts of the case and then the relevant provisions of the Law and his view regarding the construction and effect thereof. On the 21st February, 1970, applicant and her counsel were informed of the Committee's decision by the letter (*Exhibit 5*) quoted earlier on.

The Recourse, which was filed on the 5th May, 1970, is directed against this Decision.

And the first question that falls for consideration is the issue of limitation of time.

It was submitted by learned counsel for the applicant that the memorandum (*Exhibit 4*) contained new material facts and raised legal points which rendered the second decision not merely confirmatory of the first but a new decision against which a Recourse could be made. With regard to the alleged new facts, learned counsel said, they appeared by a comparison of the facts contained in the original application to the Committee and those contained at page 1 of *Exhibit 4*: More particularly, he said, the new facts are those appearing in Items (1), (2), (4) and (5) at page 1 of the said *Exhibit*.

On the part of the respondents it was submitted that the substance of all facts in *Exhibit 4* were already before the respondents when they took their first decision and that the decision attacked, taken without any new inquiry, is merely confirmatory of the previous decision on the same matter dated 11th July, 1969, and, therefore, not executory.

Let us now see what the facts contained in Items (1), (2), (4) and (5) at page 1 of *Exhibit 4*, are and whether they are in fact new facts, as alleged on behalf of the applicant.

In Item (1), it is stated that "the applicant was at all material times, for the purposes of the present application, the registered owner of the immovable property described in her application, dated 27th May, 1968, which was transferred and registered in her name by way of gift on the 2nd January, 1967".

In Item (2) it is stated that "before the 2nd January, 1967, the said house was the property of the late Antonis Indianos".

In Item (4) it is stated that "the said property was abandoned or has suffered material positive damage, as a result

of the conditions which prevail after the 21st December, 1963, that is to say, as a result of the Turkish military occupation of the area in the proximity of the property”.

Lastly, in Item (5) it is stated that “the purpose of the loan applied for is the sale of ladies novelties etc.”.

A mere comparison of the information contained in the above Items to the information contained in her application to the Committee, the certificate of registration of the house, a photocopy of which is attached to her said application, and her statement made to the Committee on the day of the hearing of the application, will reveal that there is not one iota of information or one single fact contained in the said Items, which was not before the Committee when they took their first decision, which was communicated to her on the 11th July, 1969.

Nor can the legal arguments advanced by learned counsel in his memorandum (*exhibit* 4) and his view regarding the construction of the Law, amount, in the absence of any new facts or of any facts which were not known to the Committee at the time of their first decision, to a new inquiry. (See Conclusions from the Jurisprudence of the Greek Council of State 1929-1959, page 241).

It is clear from the very wording of the Decision of the 21st February, 1970—subject matter of this Recourse—that the respondents are merely signifying their adherence to their previous decision and that it is no more than a mere repetition and confirmation of such previous decision and not a new decision taken after a new inquiry.

In the light of all the above I am clearly of opinion that the Decision challenged by this Recourse is merely confirmatory of the earlier decision of the 11th July, 1969, and cannot, therefore, be the subject of a Recourse; and that this Recourse is out of time as against such earlier decision in view of the provisions of Article 146.3 of the Constitution.

In view of the conclusion that I have reached this Recourse must be dismissed and I consider it unnecessary to deal with the merits of the case.

Very reluctantly I have decided not to make an order for the payment of costs by the applicant.

*Application dismissed.  
No order as to costs.*

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This is an English translation of the Greek texts, published at pages 304 and 305 *ante*, as prepared by the Registry.

(a) *Text of p. 304.*

“ I am directed to refer to your letter dated 27th December, 1969, on the question of the grant of a loan, under the Fund for the Assistance of Damaged Persons Laws and Regulations 1968 and 1969, to your client Erma Christofides and to inform you as follows :—

The Committee has considered carefully the legal arguments mentioned in your letter of the 24th October, 1969, but it regrets for being unable to reconsider its previous decision, for the reasons stated to the applicant in our letter dated 11th July, 1969.”

(b) *Text of p. 305,*

“ *DECISION*

Madam,

With reference to your above application dated 27th May, 1968, whereby you apply for the grant of a loan for extension of your existing business or for the establishment of a new one, you are hereby informed that the Committee having considered carefully your above application, decided to reject same, because your case does not fall within the provisions of Regulation 4 (e) of the Fund for the Assistance of Damaged Persons Law and Regulations of 1968, as you had no property which has been destroyed or abandoned or has suffered damage due to the conditions created after the 21st December, 1963, but you subsequently acquired property which had already been affected.”