

[TRIANTAFYLIDIS, P., STAVRINIDES, HADJIANASTASSIOU,
A. LOIZOU, JJ.]

1972
Apr 25

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS AND OTHERS,

REPUBLIC
(COUNCIL OF
MINISTERS
AND OTHERS)

Appellants

v.

COSTAS CH
DEMETRIOU
AND OTHERS

and

COSTAS CH. DEMETRIOU AND OTHERS,

Respondents.

(Revisional Jurisdiction Appeal No. 98).

Administrative acts or decisions—Which alone can be made the subject of a recourse—Article 146.1 of the Constitution—Executory act—What constitutes an executory act—A mere expression of intention of the administration, as contradistinguished from an expression of its will, does not amount to an executory act—Letter written in answer to representations against abolition of a public street—It is only a mere statement of intention of an informative nature—It does not amount to an executory act—Consequently a recourse under Article 146 of the Constitution against such statement is not maintainable.

Executory act—What constitutes an executory act—Expression of intention of a mere informative character—See supra.

This is an appeal by the respondents in the recourse against the decision of a Judge of the Supreme Court holding that the sub judice act or decision amounts to an executory act which can be made the subject matter of a recourse under Article 146 of the Constitution (see this judgment reported in this part at p. 143, *ante*).

Reviewing the facts and allowing the appeal, the Supreme Court :

Held, (1) We are of opinion that the letter in question, which was written in answer to representations

1972
Apr. 25

REPUBLIC
(COUNCIL OF
MINISTERS
AND OTHERS)

v.

COSTAS CH
DEMETRIOU
AND OTHERS

made by affected inhabitants against the abolition of Aharnon Street, is, as shown by its wording, a communication stating merely the intention of the administration and giving information, and not expressing its will as a final decision in the particular matter.

- (2) As stated in the Conclusions from the Case-Law of the Council of State in Greece («Πορίσματα Νομολογίας του Συμβουλίου Έπικρατείας») 1929-1959, at p. 237, executory administrative acts are acts by means of which there is expressed the will of the administration in order to produce legal consequences regarding those governed, and which entail immediate administrative enforcement; the main element of the notion of an administrative act is the production of a legal result through the creation, modification or termination of a legal situation (See also in this respect *the decisions of the Greek Council of State* in case Nos. 487/1936, 950/1954 and 1866/1967).
- (3) A mere expression of intention («πρόθεσις») of the administration—as contradistinguished from an expression of its will («βούλησις»)—does not amount to an executory act (see Conclusions etc. (*supra*) at p. 239, and *the decision of the Greek Council of State* No. 296/1932; also, there are not executory acts those acts of the administration which are only of an informative nature (see *Conclusions etc. (supra)* at p. 238, and *decisions of the Greek Council of State* Nos. 1713/1968, 2446/1968).

Appeal allowed.

Per curiam : We would like to observe that since any physical interference with Aharnon street (*supra*) which has taken place before the filing of this recourse on May 19, 1971, has taken place in advance of the subsequent executory decision in the matter by the Council of Ministers on December 30, 1971 it is clear that such interference is action for which a remedy could lie only before a Civil Court.

The facts sufficiently appear in the judgment of the Court allowing this appeal by the respondents in the recourse.

1972
Apr. 25
—

Cases referred to :

Decisions of the Greek Council of State Nos. 487/1936,
950/1954, 1866/1967, 296/1932, 1713/1968,
2446/1968.

REPUBLIC
(COUNCIL OF
MINISTERS
AND OTHERS)

v.

COSTAS CH
DEMETRIOU
AND OTHERS

Appeal.

Appeal from a decision of a Judge of the Supreme Court of Cyprus (Malachtos, J.) given on the 16th March, 1972 (Case No. 201/71) in relation to preliminary legal issues, raised before him in a recourse against the validity of administrative acts concerning the free use of a street in Famagusta, whereby he decided that the recourse should proceed as the act complained of was an executory administrative act which could be made the subject of a recourse.

L. Loucaides, Senior Counsel of the Republic,
for the appellants.

J. Kaniklides, for the respondents.

The judgment of the Court was delivered by :

TRIANTAFYLIDIS, P. : This is an appeal from a decision * given by a Judge of this Court in relation to preliminary legal issues which were raised before him, as a trial Judge, in recourse No. 201/71.

By the said recourse the respondents in this appeal—applicants in the recourse—had claimed :-

“(a) A declaration that the act of the respondents”
—the present appellants—“or either of them whereby
the full and/or free use of Aharnon Street,
Famagusta, or part thereof is interfered with, is in
excess or abuse of powers, unconstitutional and

* Reported in this Part at p. 143, *ante*.

1972
Apr. 25

REPUBLIC
(COUNCIL OF
MINISTERS
AND OTHERS)

v.

COSTAS CH.
DEMETRIOU
AND OTHERS

illegal and/or against the general principles of Administrative Law, null and void and of no effect whatsoever.

(b) A declaration that the decision of the respondents No. 1 and 2 to abolish that part of Aharnon Street, Famagusta, which runs between Kennedy Avenue and the beach, *i.e.* a stretch of about 600 feet, is in excess or abuse of powers, unconstitutional and illegal and/or against the general principles of Administrative Law, null and void and of no effect whatsoever."

During the proceedings before the trial Judge it was stated that the decision referred to in paragraph (b) of the motion for relief was reached on the 30th December, 1971—after the filing of the recourse on the 19th May, 1971—and it was agreed by counsel for the parties that the recourse was, therefore, premature in this respect; and it was so ruled by the trial Judge.

The Judge proceeded then to decide that the recourse should proceed in so far as paragraph (a) of the motion for relief was concerned; he held that as the "act" to which such paragraph related, namely a letter of the Director-General of the Ministry of Commerce and Industry, dated 5th April, 1971, "made known the will of the administration on the subject of Aharnon street and this will was put into execution on the 14th May, 1971", such act was an executory administrative act against which a recourse could be made.

We are of the opinion that the said letter, which was written in answer to representations made by affected inhabitants against the abolition of Aharnon street, is, as shown by its wording, a communication stating merely the intention of the administration and giving information, and not expressing its will as a final decision in the particular matter.

As stated in the Conclusions from the Case-Law of the Council of State in Greece («Πορίσματα Νομολογίας του Συμβουλίου της Ἐπικρατείας») 1929—1959, at p.

237, executory administrative acts are acts by means of which there is expressed the will of the administration in order to produce legal consequences regarding those governed, and which entail immediate administrative enforcement; the main element of the notion of an administrative act is the production of a legal result through the creation, modification or termination of a legal situation" (« αὶ ἐκτελεσται πράξεις, τούτεστιν ἐκείναι δι' ὧν δηλοῦται βούλησις διοικητικοῦ ὄργάνου, ἀποσκοποῦσα εἰς τὴν παραγωγήν ἔννομου ἀποτελέσματος ἐναντι τῶν διοικουμένων καὶ συνεπαγομένη τὴν ἄμεσον ἐκτέλεσιν αὐτῆς δια τῆς διοικητικῆς ὁδοῦ Το κύριον στοιχεῖον τῆς ἐννοίας τῆς ἐκτελεστῆς πράξεως εἶναι ἡ ἀμεσος παραγωγή ἔννομου ἀποτελέσματος, συνισταμένου εἰς τὴν δημιουργίαν, τροποποίησιν ἢ κατάλυσιν νομικῆς καταστάσεως ») See, also, in this respect, the decisions of the Council of State in Greece in cases 487/36, 950/54 and 1866/67.

A mere expression of the intention («πρόθεσις») of the administration—as contradistinguished from an expression of its will («βούλησις»)—does not amount to an executory act (see the Conclusions from the Case-Law of the Council of State in Greece, 1929—1959, at p 239, as well as the decision of such Council in case 296/32), also, there are not executory those acts of the administration which are only of an informative nature (see the Conclusions, *supra*, at p. 238, as well as the decisions of the Council of State in Greece in cases 1713/68 and 2446/68)

As already stated we are of the view that the aforesaid letter of the Director-General of the Ministry of Commerce and Industry, dated 5th April, 1971, was only a statement of intention and of an informative nature; therefore, not being an executory act it could not be made the subject matter of a recourse under Article 146 of the Constitution

For this reason the recourse No 201/71 cannot proceed even as regards paragraph (a) of the motion for relief and having been found to be otherwise premature it is dismissed as a whole.

Before concluding we would like to observe that since any physical interference with Aharnon street which has

1972
Apr 25

REPUBLIC
(COUNCIL OF
MINISTERS
AND OTHERS)

v

COSTAS CH
DEMETRIOU
AND OTHERS

1972
Apr. 25
—

REPUBLIC
(COUNCIL OF
MINISTERS
AND OTHERS)

v.

COSTAS CH.
DEMETRIOU
AND OTHERS

taken place before the filing of this recourse on the 19th May, 1971, has taken place in advance of the subsequent executory decision in the matter by the Council of Ministers on the 30th December, 1971, it is clear that such interference is action for which a remedy could lie only before a civil court.

In the light of the foregoing this appeal is allowed and, in the circumstances, we order that the respondents should pay £15 towards the costs of the appellants.

Appeal allowed.

Order for costs as above.