IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

TAKIS MOUXIOURIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
(1) THE MINISTER OF FINANCE,
(2) THE DIRECTOR OF THE DEPT. OF PERSONNEL,

Respondents.

(*Case No.* 122/70).

Administrative Law—Executory decision—Confirmatory decision—What constitutes a confirmatory decision—It cannot form the subject of a recourse under Article 146 *of the Constitution unless such decision has been taken "after a new inquiry" into the matter—Withdrawal of recourse concerning revision of salary upon an undertaking by the administration to consider a new application by applicant—New application containing an allegation of fact put before the administration for the first time—Administration being under a duty to investigate such allegation, and reply to it, cannot be heard to say that it did not make an inquiry regarding the said allegation which would be a "new inquiry"—Respondents' reply to said new application is not a confirmatory decision but a new executory decision which can be made the subject of a recourse under Article* 146.1.

The applicant complains against the decision of the respondents not to revise his salary. Prior to filing the instant recourse applicant had, through a previous recourse, complained against a decision of the respondents relating to the same subject-matter. The former recourse was withdrawn upon an undertaking given by the respondents to "reconsider a new application in the light of both the facts and the arguments which appear in the present recourse as well as additional facts and arguments" which would be put forward in such application.

After the withdrawal of the said former recourse counsel for the applicant wrote to the respondents a letter paragraph 6 of which reads:

> " It is to my knowledge that anomalies in the emplacement on the revised salary scales of several officers in the Public Works, and Inland Revenue Departments were remedied by the award of additional increments pursuant to s. 4 of Law 127 of 1968".

Respondents' reply was that it has not been possible to alter their previous decision (*viz.* the one against which the former recourse was filed). Hence the present recourse. The application having been opposed on the ground that it is merely confirmatory of that complained of by the previous recourse, at the hearing counsel for the respondents raised the preliminary objection that the application was out of time.

Held, (1) An administrative decision which " repeats the contents of a previous executory decision and expresses the administration's adherence to the solution previously given by it", known as a " confirmatory decision", cannot form the subject of an application to this Court under Article 146 of the Constitution. (Stassinopoulos, Law of Administrative Disputes, 4th edn. p. 175). But there is a qualification to this principle—if the latter decision has been taken " after a new inquiry" into the matter then it is treated as an executory decision and an application under that provision lies in respect of it.

(2) The allegation in the aforequoted paragraph 6 was an allegation of fact put forward for the first time. It was the duty of the administration to investigate the allegation, and to reply to it, and the administration cannot be heard to say that it did not, following the receipt by it of the letter in question, make an inquiry regarding the allegation mentioned in paragraph 6 thereof—which would be " a new inquiry" in the sense in which that term is used in administrative Law—, and indeed it has not said so.

(3) Accordingly the subject decision is not a confirmatory one, but a new executory decision—one that the applicant may complain of by this application.

Order accordingly.

Recourse.

Recourse against the refusal of the respondents to revise applicant's salary.

L. Clerides, for the applicant.

Cl. Antoniades, Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgment was delivered by:-

STAVRINIDES, J.: This application is a sequel of a previous one, No. 240/69, by which the applicant, then, as now, a Senior Supervisor of Accounts in the Treasury, was complaining of a decision of the Minister of Finance dated July 11, 1969, purportedly taken under s. 4 of the Public Officers (Revision of Salaries and Salary Scales) Law, 106 of 1968, whereby his salary was fixed at £1,572 per annum from January 1, 1968, and at £1,620 per annum from July 1, 1968, instead of at £1,620 and £1,678 per annum respectively. That application was opposed and on December 5, 1969, was withdrawn and dismissed after counsel on either side had made the following statements:

Mr. Clerides: "Having discussed this case with my learned colleague, I have now reached a decision that if the respondent undertakes, within a reasonable time, to reconsider a new application in the light of both the facts and the arguments which appear in the present recourse as well as additional facts and arguments which I shall put forward in such application within three weeks from today, then I would be prepared to seek the leave of the Court to withdraw the present recourse".

Mr. Talarides: "I undertake to place before the appropriate authority such application of my learned friend's, for their consideration and decision within two months from the date of such application".

Mr. Clerides: "In the light of the statement of my learned friend, I seek leave to withdraw the recourse".

The applicant now complains of a decision of the Minister of Finance "not to revise applicant's salary" which is in these terms:

"I am directed to refer to your letters of December 18, 1969, and March 24, 1970, concerning the revision of salary of your client Mr. Takis Mouxiouris, Senior Supervisor of Accounts, and to inform you that his case having

been studied again it is regretted that it has not been possible to alter this Ministry's decision which was communicated to Mr. C. Adamides, Advocate, in my letter No. 6026/68 of July 11, 1969, a copy of which is enclosed for your information".

The application is opposed on two grounds, *viz.* (a) that it relates to a decision which is " merely confirmatory" of that complained of by the previous application and (b) that it was " lawfully taken on the basis of the existing legislation and the relevant facts". At the hearing counsel for the respondents raised point (a) by way of a preliminary objection that the application was out of time, and both counsel having been heard on that objection I reserved judgment thereon.

An administrative decision which " repeats the contents of a previous executory decision and expresses the administration's adherence to the solution previously given by it", known as a " confirmatory decision" (Stassinopoulos, Law of Administrative Disputes, 4th Edn., p. 175), cannot form the subject of an application to this Court under article 146 of the Constitution. Counsel for the respondents did not explain what he meant by " *merely* confirmatory", but I take it that what he meant was that the decision did not go beyond affirming adherence to the earlier one, *i.e.* what Stassinopoulos calls simply a " confirmatory decision". But there is a qualification to this principle—if the later decision has been taken " after a new inquiry" into the matter then it is treated as an executory decision and an application under that provision lies in respect of it.

Having given the matter my best consideration, I have come to the conclusion that the subject decision is not a " merely confirmatory" one in the above sense, for these reasons: After the withdrawal of the first application counsel for the applicant wrote to the Director-General of the Ministry of Finance a letter in English, para. 6 of which reads:

> " It is to my knowledge that anomalies in the emplacement on the revised salary scales of several officers in the Public Works, and Inland Revenue Departments were remedied by the award of additional increments pursuant to s. 4 of Law 127 of 1968".

This was an allegation of fact put before the administration for the first time. In the earlier application reliance had been

placed on discrimination, but only one instance was then relied upon, *viz.* the alleged preferential treatment of Mr. M. Maratheftis. Here, however, in the paragraph quoted, the allegation is made that " anomalies in the revised salary scales of *several* officers had been remedied by the award of additional increments", which is an allegation of fact put forward for the first time. It is true that particulars are not given in the letter; but this is done in the prayer for relief, para. (b) at p. 1 of the application. Therefore it was the duty of the administration to investigate the allegation, and to reply to it, and the administration cannot be heard to say that it did not, following the receipt by it of the letter in question, make an inquiry regarding the allegation mentioned in para. 6 thereof—which would be " a new inquiry" in the sense in which that term is used in administrative law—, and indeed it has not said so.

Accordingly the subject decision is not a confirmatory one but a new executory decision—one that the applicant may complain of by this application.

Order accordingly.