

1974

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EVRIPIDES
IOANNOU
v.
COMMANDER
OF POLICE
(MINISTER
OF INTERIOR)

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

EVRIPIDES IOANNOU,

Applicant,

and

THE COMMANDER OF POLICE OF THE REPUBLIC OF
CYPRUS, THROUGH THE MINISTER OF INTERIOR,

Respondent.

(Case No. 17/72).

Administrative Law—Confirmatory Act—What constitutes a confirmatory act—It is not executory and cannot be made the subject of a recourse—Letter written in answer to letter by applicant's counsel which did not contain any new elements calling for a new inquiry—Was merely a confirmation of a previously taken decision and cannot be made the subject of a recourse—Present recourse out of time as filed after the lapse of 75 days from the said previous decision—Article 146.3 of the Constitution.

Confirmatory Act—What constitutes a confirmatory act.

Time—Within which to file a recourse—Article 146.3 of the Constitution.

A preliminary objection has been raised that the recourse is out of time, because it was filed after the lapse of the period of seventy-five days which is provided under Article 146.3 of the Constitution.

After the services of the applicant were terminated as a result of disciplinary proceedings he wrote to the Commander of Police and requested to receive a payment in respect of the leave to which he was entitled. By a letter dated 5th May, 1971 (*exhibit 5*) the respondent replied that the applicant was not entitled to any leave, due to the fact that he had been dismissed from the police as a result of disciplinary proceedings.

There followed three letters from applicant's counsel to the respondent; in the first letter dated 11th May, 1971, he asked for a copy of the record of the disciplinary proceedings and

stated that the applicant was entitled to what was due to him in respect of his leave, in the second letter dated 18th October, 1971, he asked for the whole matter to be reviewed and he requested to be informed, *inter alia*, on what Regulations or Law the decision of the respondent was based; finally in the third letter dated 3rd November, 1971, (*exhibit 3*) applicant's counsel wrote that there was nowhere to be found any provision in the relevant Regulations preventing payment to the applicant in respect of leave to which he was entitled up to the time of his dismissal

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Respondent duly replied to all the said three letters and in his reply to the last letter, dated the 6th November, 1971 (*exhibit 1*) stated that he could not review his decision (contained in the letter of the 5th May)

Counsel for the respondent submitted that the relevant executory decision is contained in the letter of the 5th May, 1971 (*exhibit 5*). On the other hand, applicant's counsel submitted that the final administrative decision in the matter is the one contained in the letter dated the 6th November (*exhibit 1*).

Held, (1) A confirmatory act is one which repeats the contents of a previous executory decision and it indicates the adherence of the administration to a course already adopted by it; it is not executory and cannot be made the subject of a recourse under Article 146 (see, *inter alia*, *Kolokassides v The Republic* (1965) 3 C.L.R. 542)

(2) It is to be noted in particular, that *exhibit 1* was written in answer to *exhibit 3* (the letter by applicant's counsel dated the 3rd November, 1971) In the said letter there were not really contained any new elements which called for a new inquiry into the matter, so that if such inquiry had taken place then the resulting decision would have been of an executory nature and could be made the subject of a recourse.

(3) In the light of the foregoing principles of law, as well as of the facts of this case, I am of the view that the contents of the letter (*exhibit 1*) were merely a confirmation of a previously taken decision in the matter, as contained in *exhibit 5* (dated the 5th May, 1971), and repeated in *exhibit 2* (dated the 25th October, 1971) and, therefore, as no recourse could be made in respect of the contents of *exhibit 1*, and as the recourse

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is out of time in respect of *exhibits* 5 and 2, it has to be dismissed as being out of time.

Application dismissed.

Cases referred to:

Varnava v. The Republic (1968) 3 C.L.R. 566 at p. 574;

Kolokassides v. The Republic (1965) 3 C.L.R. 542;

Ktenas and Another (No. 1) v. The Republic (1966) 3 C.L.R. 64;

Vafeadis v. The Republic, 1964 C.L.R. 454;

Kythreotis v. The Republic (1965) 3 C.L.R. 437;

Police Association and Others v. The Republic (1972) 3 C.L.R. 1.

Recourse.

Recourse against the decision of the respondent whereby applicant's claim to receive payment in respect of leave to which he was entitled, was turned down.

Ch. Loizou, for the applicant.

A. Evangelou, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:—

TRIANTAFYLIDIS, P.: In this case there has been raised the preliminary objection that the recourse is out of time, because it was filed after the lapse of the period of seventy-five days which is provided under Article 146.3 of the Constitution.

The main facts of the case are briefly as follows:

In December, 1970, the applicant who was serving as a police constable at Polis (Chrysochou) was transferred to Lysos. Because of his refusal to comply with the order for his transfer, his services in the police force were, eventually, terminated, as a result of disciplinary proceedings, on the 13th January, 1971.

As it appears from the material before me, the termination of his services was something which the applicant himself wanted, too. As it is stated in a letter addressed to the Commander of Police of the 28th April, 1971, by the applicant's advocate (*exhibit* 4), the applicant had, even before his transfer, applied in writing on the 11th December, 1970, for permission

to resign from the police force, and he had, also, requested, at the time, to receive a payment in respect of the leave to which he was entitled.

By a letter dated the 5th May, 1971 (*exhibit 5*), the respondent replied that the applicant was not entitled to any leave, due to the fact that he had been dismissed from the police as a result of disciplinary proceedings.

On the 11th May, 1971, the applicant's advocate wrote (see *exhibit 6*) asking for a copy of the record of the disciplinary proceedings and stating, also, that he was of the view that the applicant was entitled, in any event, to what was due to him in respect of his leave. The said record was transmitted to applicant's advocate on the 24th May, 1971.

On the 18th October, 1971, the applicant's advocate applied (see *exhibit 8*) for the whole matter to be reviewed so as to make a payment to the applicant in respect of his accumulated leave; and he requested to be informed, in case of a negative decision, on what Regulations or Law the decision of the respondent was based; and, also, to what leave was the applicant entitled, if the respondent would have decided that he was entitled to leave.

On the 25th October, 1971, respondent replied (see *exhibit 2*) referring to Regulation 17 of the Police (General) Regulations, 1958–1968 (see 1958 Subsidiary Legislation at p. 274)—under which leave is granted to members of the police force—and he reiterated his decision that the applicant had lost all his rights to any leave accumulated up to the time of his dismissal; it was stated, also, that the leave in question was 348 days; furthermore, the applicant's advocate was invited to point out to the respondent the existence of any legal obligation to make a payment to the applicant in respect of such leave.

On the 3rd November, 1971, applicant's counsel wrote to the respondent (see *exhibit 3*) that there was nowhere to be found any provision in the relevant Regulations preventing payment to the applicant in respect of leave to which he was entitled up to the time of his dismissal; and he insisted that the applicant was entitled to the payment in question, as he had been lawfully employed at the material time; he requested that the whole matter be re-examined.

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On the 6th November, 1971, the respondent replied by letter (*exhibit 1*) in which it was stated that he could not review his decision and that if it was thought that the applicant had any lawful right he could take appropriate action.

On the 10th November, 1971, applicant's counsel wrote (see *exhibit 9*) to the respondent asking him to seek the advice of the Attorney-General, in order that Court proceedings might be avoided. The respondent replied on the 13th November, 1971 (see *exhibit 10*) that in his view it was not necessary to seek such advice as the position was clear.

Counsel for the respondent has submitted, during the hearing of this case, that the relevant executory decision is contained in the letter of the 5th May, 1971 (*exhibit 5*) and that, therefore, the present recourse was filed out of time; he added that, even if the view were to be taken that such decision was contained in the letter dated 25th October, 1971 (*exhibit 2*), again the recourse is out of time; it was filed, actually, on the 20th January, 1972, that is more than seventy-five days after the date of *exhibit 2*.

On the other hand, applicant's counsel has submitted that the final administrative decision in the matter concerned is the one contained in the letter dated the 6th November, 1971, (*exhibit 1*) and he added that the contents of such letter are not merely confirmatory, but they amount to an executory decision; he referred in this respect to *Varnava v. The Republic* (1968) 3 C.L.R. 566, at p. 574.

It is clear that if the final decision is contained in either *exhibit 5* or *exhibit 2*, and if the contents of *exhibit 1* are of a confirmatory nature, then this recourse is out of time.

A confirmatory act is one which repeats the contents of a previous executory decision and it indicates the adherence of the administration to a course already adopted by it; it is not executory and cannot be made the subject of a recourse under Article 146 (see *Kolokassides v. The Republic* (1965) 3 C.L.R. 542, *Ktenas and Another (No. 1) v. The Republic* (1966) 3 C.L.R. 64 and the *Varnava* case, *supra*).

In order to decide whether or not the contents of *exhibit 1* are of a confirmatory nature, one has to look, not only at such

document in isolation, but to the relevant correspondence as a whole.

It has to be noted, in particular, that *exhibit 1* was written in answer to *exhibit 3* (the letter by applicant's counsel dated the 3rd November, 1971). In the said letter there were not really contained any new elements which called for a new inquiry in the matter, so that if such inquiry had taken place then the resulting decision would have been of an executory nature and could be made the subject matter of a recourse (see, in this respect, *Vafeadis v. The Republic*, 1964 C.L.R. 454, *Kythreotis v. The Republic* (1965) 3 C.L.R. 437, *Police Association and Others v. The Republic* (1972) 3 C.L.R. 1, the Conclusions of the Case-Law of the Greek Council of State, 1929-1959, p. 241 and Stassinopoulos on the Law of Administrative Disputes—Στασινόπουλου, Δίκαιον Διοικητικῶν Διαφορῶν—4th ed., p. 176).

In the light of the foregoing principles of law, as well as of the facts of this case, I am of the view that the contents of the letter of the 6th November, 1971 (*exhibit 1*) were merely a confirmation of a previously taken decision in the matter, as contained in *exhibit 5* (dated the 5th May, 1971), and repeated in *exhibit 2* (dated the 25th October, 1971), and, therefore, as no recourse could be made in respect of the contents of *exhibit 1*, and as the recourse is out of time in respect of *exhibits 5* and *2*, it has to be dismissed as being out of time.

In all the circumstances of this case I am not prepared to make any order as to costs against the applicant.

Application dismissed. No order as to costs.

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