

1980 May 21

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SOTERIOS A. ECONOMIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR AND DEFENCE,

Respondent.

(Case No. 352/78).

Administrative Law—Executory act—Confirmatory act—Informative act—Interdiction of applicant—Letter to respondent asking for revocation of interdiction—Reply to letter, about seven months later, after applicant had claimed a reply thereto by means of a recourse under Article 29 of the Constitution—Vital questions of mixed law and fact first examined when said reply was given—Such reply not a merely informative or confirmatory letter—But a final decision reached for the first time after a new examination of the case of the applicant as a whole—An executory decision which can be challenged by a recourse under Article 146 of the Constitution—See, also, Article 29.2 of the Constitution.

The applicant, a Major in the Army of the Republic serving on secondment in the National Guard, was interdicted by the respondent as from February 8, 1977 in relation to disciplinary offences which have been allegedly, committed by him. His interdiction was communicated to him by means of a letter dated February 8, 1977. On November 23, 1977 he sent a letter to the respondent asking for the revocation of his interdiction on the ground that the decision to interdict him was erroneous in law; and in answer to his letter and in relation to the matter of the legality of his interdiction he was on June 20, 1978 informed by the respondent that until there would be approved by the Council of Ministers Regulations in relation to those

1 serving in a permanent capacity in the Army of the Republic there would be applied the provisions of the General Orders which were applicable in relation to the Public Service.

On June 27, 1978 applicant was sent a further letter informing him that the decision to interdict him had been reached under regulation 19 of the Disciplinary Regulations of the Army of the Republic made in 1962, and that the previous letter of June 20, 1978, was being withdrawn as erroneous. Hence this recourse which has been made only in respect of the contents of the last letter, which, however, was not written in reply to applicant's letter of November 23, 1977, in the normal course of events but only after the applicant had claimed by means of a recourse a reply to his said letter, under Article 29* of the Constitution: 5 10

Counsel for the respondent has raised the preliminary objection that the said letter of the respondent dated June 27, 1978, cannot be made the subject-matter of a recourse, under Article 146 of the Constitution, because it is of a confirmatory nature, in that it confirms the decision to interdict the applicant which was communicated to him by the letter dated February 8, 1977, and that, furthermore, it is of a merely informative nature. 15 20

Held, that when the letter of the respondent of June 27, 1978 is examined as a letter written because of the provisions of Article 29, and against the background of all the relevant facts in this case, and, especially, when it is borne in mind that up to the last moment the respondent did not seem to be certain as regards the actual basis of the interdiction of the applicant on February 8, 1977, it cannot be safely held that the respondent addressed to the applicant, on June 27, 1978, a merely informative or confirmatory letter; that it was, in effect, a final decision which was reached then for the first time, after a new examination of the case of the applicant as a whole, for the continuance in force of the interdiction of the applicant, which was communicated to him on February 8, 1977, without any reasoning whatsoever, and which, apparently, was decided without a full consideration of all its legal and factual aspects; that it seems that vital questions of mixed law and fact were first examined only in June 1978; that, in these circumstances, and bearing in mind, also, the provisions of Article 29.2 of the Constitution, this 25 30 35

* Quoted at p. 224 *post*

Court has reached the conclusion that the letter of the respondent dated June 27, 1978, contains, really, an executory decision which could be challenged by the present recourse; and that, accordingly, the proceedings in this recourse have to be continued in relation to its merits.

Order accordingly.

Cases referred to:

- Economides v. Military Disciplinary Board* (1979) 1 C.L.R. 177;
Koudounaris v. Republic (1967) 3 C.L.R. 479 at p. 482;
 10 *Lardis v. Republic* (1970) 3 C.L.R. 356 at p. 359;
HadjiKyriacos and Sons Limited v. The Republic (1971) 3 C.L.R. 286 at p. 290;
Republic v. Demetriou (1972) 3 C.L.R. 219 at p. 223;
Theodorou v. The Attorney-General of the Republic (1974) 3
 15 C.L.R. 213 at p. 219;
HadjiPanayi v. The Municipal Committee of Nicosia (1974) 3 C.L.R. 366 at p. 375;
Zivlas v. The Municipality of Paphos (1975) 3 C.L.R. 349 at p. 360;
 20 *Lordos Apartotels Limited v. The Republic* (1974) 3 C.L.R. 471;
Decisions of the Greek Council of State Nos. 210/1929, 1224/1965, 2738/1968, 1114/1969, 5/1937, 229/1938, 439/1938, 1013/1966, 2250/1966, 2777/1968, 1916/1970, 3137/1970.

Recourse.

25 Recourse against the refusal of the respondent to terminate or revoke applicant's interdiction.

Applicant appeared in person.

R. Gavrielides, Counsel of the Republic, for the respondent.

Cur. adv. vult.

30 TRIANTAFYLIDIS P. read the following judgment. By means of this recourse the applicant is seeking, in effect, the annulment of the refusal of the respondent to terminate, or revoke, the interdiction of the applicant; the said refusal has, apparently, been communicated to the applicant by a letter dated June 27,
 35 1978.

The applicant, who is a Major in the Army of the Republic and is serving on secondment in the National Guard, was inter-

dicted by the respondent as from February 8, 1977, in relation to disciplinary offences which have been, allegedly, committed by him; and his interdiction was communicated to him by means of a letter dated February 8, 1977.

It appears that the applicant did not challenge by a recourse, or otherwise, his interdiction until November 23, 1977, when he sent a letter to the respondent asking for the revocation of his interdiction on the ground that the decision to interdict him is erroneous in law.

As the said letter of the applicant was sent quite a long time after there had elapsed the period of seventy-five days—(provided for in Article 146.3 of the Constitution)—from the time when he was informed of his interdiction by means of the letter of February 8, 1977, it cannot be regarded as an application for review of the decision to interdict him, which, once it was made, it would prevent, for the time being, the running against the applicant of the said period (see Conclusions from the Case—Law of the Council of State in Greece —“Πορίσματα Νομολογίας του Συμβουλίου τῆς Ἐπικρατείας”—1929–1959, pp. 256, 257).

On June 20, 1978, the applicant was informed by the respondent, in answer to his letter of November 23, 1977, and in relation to the matter of the legality of his interdiction, that until there would be approved by the Council of Ministers Regulations in relation to those serving in a permanent capacity in the Army of the Republic there would be applied the provisions of the General Orders which were applicable in relation to the Public Service.

On June 27, 1978, he was, however, sent a further letter informing him that the decision to interdict him had been reached under regulation 19 of the Disciplinary Regulations of the Army of the Republic made in 1962, and that the previous letter of June 20, 1978, was being withdrawn as erroneous.

It is correct that the present recourse has been made only in respect of the contents of the said letter of June 27, 1978, but later on, in this judgment, I shall deal, also, with the significance of the letter dated June 20, 1978, even though the applicant by the motion of relief in this case does not challenge at all the validity of such letter.

It may be stated, at this stage, for the purpose of completing the history of the events of this case, that on November 17, 1977, that is shortly before the applicant had written his aforementioned letter of November 23, 1977, he had been summoned
5 to appear before a Military Disciplinary Board, in respect of charges in relation to which he had been interdicted, and the applicant applied to this Court for an order of Prohibition preventing the said Board from dealing with such charges, but his application was refused (see *Economides v. Military Disciplinary Board*, (1979) 1 C.L.R. 177).
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Counsel for the respondent in the present case has raised, by means of the Opposition, the preliminary objections that the said letter of the respondent dated June 27, 1978, cannot be made the subject matter of a recourse, under Article 146 of the Constitution, because it is of a confirmatory nature, in that it confirms
15 the decision to interdict the applicant which was communicated to him by the letter dated February 8, 1977, and that, furthermore, it is of a merely informative nature.

It is well settled that a letter which is merely of an informative
20 nature, and does not contain a decision creating a new legal situation, is not of an executory nature and, therefore, it cannot be made the subject matter of a recourse under Article 146 (see, in this respect, *inter alia*, *Koudounaris v. The Republic*, (1967) 3 C.L.R. 479, 482, *Lardis v. The Republic*, (1970) 3 C.L.R. 356,
25 359, *HadjiKyriacos and Sons Limited v. The Republic*, (1971) 3 C.L.R. 286, 290, *The Republic v. Demetriou*, (1972) 3 C.L.R. 219, 223, *Theodorou v. The Attorney-General of the Republic*, (1974) 3 C.L.R. 213, and *HadjiPanayi v. The Municipal Committee of Nicosia*, (1974) 3 C.L.R. 366, 375).

Also, it is well established that a confirmatory act lacks
30 executory nature and, therefore, it cannot be made the subject matter of a recourse under Article 146 of the Constitution; and this is so even if it is a letter by means of which the administration signifies its refusal to revoke a previous executory act
35 (see, in this respect, *inter alia*, *Zivlas v. The Municipality of Paphos*, (1975) 3 C.L.R. 349, 360, as well as the Decisions of the Council of State in Greece Nos. 210/1929, 1224/1965, 2738/1968 and 1114/1969).

Furthermore, it cannot be said that an act is not confirmatory

because it is the outcome of a re-examination of a certain matter from its legal aspect only, in the light of the legal situation which existed when a previous executory decision in relation to it, which is being confirmed, was taken (see, in this respect, *inter alia*, *Lordos Apartolels Limited v. The Republic*, (1974) 3 C.L.R. 471, the Conclusions from the Case-Law of the Council of State in Greece, *supra*, p. 241, and the Decisions of the said Council in cases Nos. 5/1937, 229/1938, 439/1938, 1013/1966, 2250/1966, 2777/1968, 1916/1970, and 3137/1970). 5

I have now to examine, in the light of the aforementioned principles, whether the letter of the respondent to the applicant dated June 27, 1978, constitutes an executory decision, or it is merely confirmatory and informative and, therefore, not executory: A distinctly special feature of this case is that this letter was not written in reply to the letter of the applicant dated November 23, 1977, in the normal course of events, but only after the applicant had claimed by means of recourse No. 267/78—which was filed on May 30, 1978, and, eventually, withdrawn on September 25, 1978, after the receipt of the letter of the respondent dated June 27, 1978)—a reply to his said letter, under Article 29 of the Constitution; this Article reads as follows:— 10 15 20

- “1. Every person has the right individually or jointly with — others to address written requests or complaints to any competent public authority and to have them attended to and decided expeditiously; and immediate notice of any such decision taken duly reasoned shall be given to the person making the request or complaint and in any event within a period not exceeding thirty days. 25
- (2) Where any interested person is aggrieved by any such decision or where no such decision is notified to such person within the period specified in paragraph 1 of this Article, such person may have recourse to a competent Court in the matter of such request or complaint.” 30

When the aforementioned letter of the respondent of June 27, 1978, is examined as a letter written because of the provisions of Article 29, and against the background of all the relevant facts in this case, and, especially, when it is borne in mind that up to the last moment the respondent did not seem to be certain 35

as regards the actual basis of the interdiction of the applicant on February 8, 1977, with the result that an erroneous basis was referred to in the letter of June 20, 1978, and later on that letter had to be withdrawn and replaced by the letter of June 5 27, 1978, in which there was relied on an altogether different basis, I think that it cannot be safely held that the respondent addressed to the applicant, on June 27, 1978, a merely informative or confirmatory letter. It was, in effect, a final decision which was reached then for the first time, after a new examination 10 of the case of the applicant as a whole, for the continuance in force of the interdiction of the applicant, which was communicated to him on February 8, 1977, without any reasoning whatsoever, and which, apparently, was decided without a full consideration of all its legal and factual aspects. It seems that 15 vital questions of mixed law and fact were first examined only in June 1978.

In these circumstances, and bearing in mind, also, the provisions of paragraph 2 of Article 29 of the Constitution, I have reached the conclusion that the letter of the respondent dated 20 June 27, 1978, contains, really, an executory decision which could be challenged by the present recourse, and, therefore, the proceedings in this recourse have to be continued in relation to its merits.

Order accordingly.