

1983 August 30

[TRIANTAFYLIDIS, P ]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

XENIS LARKOS,

*Applicant,*

v

THE REPUBLIC OF CYPRUS, THROUGH

- 1. THE MINISTER OF FINANCE,
- 2. THE DIRECTOR OF PERSONNEL,

*Respondents.*

(Case No. 342/69)

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*Administrative Law—Executory act—Confirmatory act—Only executory acts or decisions can be challenged by means of a recourse under Article 146 of the Constitution and not, also, confirmatory acts.*

The applicant, a public officer on scholarship abroad, applied to the respondents for an increase of the financial assistance which had been granted to him. The respondents turned down his application by their letter dated 1st July, 1969 but the applicant reverted to the same matter and applied for a reconsideration of his case. The respondents by means of their letter dated 20th September, 1969 informed him that there was nothing to be added to their letter of 1st July, 1969. And hence this recourse which was filed on the 6th November, 1969

*On the preliminary objection of the respondents that the recourse was out of time*

This objection was based, in effect, on the contention that the aforementioned letter of 20th September 1969 was only an act of a confirmatory, and not of an executory, nature and, therefore, it could not be challenged by a recourse under Article 146 of the Constitution

*Held, that only executory acts or decisions, and not, also,*

confirmatory acts or decisions, can be challenged by means of a recourse under Article 146 of the Constitution; that the last act in the relevant administrative process which could conceivably be found to be an executory one is the refusal to increase the financial assistance to the applicant which has been communi-  
 5 cated to him by means of the letter dated 1st July 1969, in relation to which the present recourse is clearly out of time under Article 146.3' of the Constitution; that the further reply given to the applicant on 20th September 1969, in response to his continuing  
 10 insistence for an increase of the financial assistance granted to him, is clearly only confirmatory of what has been stated in the letter of 1st July 1969 and it could not be challenged under Article 146 of the Constitution; accordingly the recourse should fail.

15 *Application dismissed.*

Cases referred to:

*Makrides v. Republic* (1967) 3 C.L.R. 147 at p. 151;

*Cacoyiannis v. Republic* (1980) 3 C.L.R. 39 at p. 42;

20 *Kolokássides v. Republic* (1965) 3 C.L.R. 549 at p. 551; and on appeal (1965) 3 C.L.R. 542;

*Ioannou v. Republic* (1982) 3 C.L.R. 1002 at pp. 1008, 1009;

*Georghiou v. Republic* (1982) 3 C.L.R. 828 at p. 836;

*Mylonas v. Educational Service Committee* (1982) 3 C.L.R. 880 at p. 887.

25 **Recourse.**

Recourse against the refusal of the respondents to increase the financial assistance granted to applicant during the period of his studies in London on a scholarship which was given to him by the Government of the United Kingdom.

30 *L. Papaphilippou*, for the applicant.

*M. Kyprianou*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

35 TRIANTAFYLIDIS P. read the following judgment. This case has been heard by another Judge of this Court who, before the delivery of the reserved judgment, has retired.

In view of the evolution, in the meantime, of the case-law of our Supreme Court, to which reference will be made in this

judgment, it seemed possible that the applicant might not pursue this recourse further. As, however, he has insisted that the reserved judgment should be delivered I will proceed, with the consent of counsel for both parties, to determine this case myself on the basis of the record before me, in accordance with the practice which has already been adopted, in this respect, on past occasions (see, inter alia, *Makrides v. The Republic*, (1967) 3 C.L.R. 147, 151 and *Carayiannis v. The Republic*, (1980) 3 C.L.R. 39, 42). 5

By means of this recourse the applicant challenges, in effect, the refusal of the respondents to increase the financial assistance granted to the applicant during the period of his studies in London on a scholarship which was given to him by the Government of the United Kingdom. 10

The applicant was, at all material times, serving as a Principal Assessor in the Department of Inland Revenue and the scholarship was given to him in order to enable him to attend a six months' training course in income taxation matters. 15

Before leaving Cyprus the applicant submitted to the respondent Director of Personnel an application for financial assistance. 20

As a result the applicant was granted C£135 per month as financial assistance in addition to the scholarship allowance granted to him by the United Kingdom Government.

The applicant, while he was away from Cyprus attending the aforementioned training course, applied to the Director of the Department of Personnel asking for an increase of the financial assistance which had been granted to him, as due to divers commitments of his he had to borrow about C£50 per month in order to meet his expenses. 25 30

The Department of Personnel informed the applicant, by a letter dated 1st July 1969, that it had not become possible to accede to his request for a revision of the amount of the financial assistance granted to him, but the applicant reverted to the same matter and applied for a reconsideration of his case. 35

He was, eventually, informed by the Department of Personnel,

by a letter dated 20th September 1969, that there was nothing to be added to its previous letter of 1st July 1969. As a result the present recourse was filed on 6th November 1969.

5 Counsel for the respondents raised the preliminary objection that this recourse is out of time. His submission was based, in effect, on the contention that the aforementioned letter of 20th September 1969 is only an act of a confirmatory, and not of an executory, nature and, therefore, it could not be challenged by a recourse under Article 146 of the Constitution.

10 Counsel for the applicant argued at that time that, in any case, even a confirmatory act could be made the subject-matter of a recourse under the said Article 146 and, also, that it was wrongly held by case-law of our Supreme Court (such as *Kolocassides v. The Republic*, (1965) 3 C.L.R. 549, 551—and  
15 see, also, on appeal (1965) 3 C.L.R. 542) that there exists a requirement that in order that an act or decision could come within the ambit of the jurisdiction under Article 146 it should be of an executory nature.

20 The view that only executory acts or decisions, and not, also, confirmatory acts or decisions, can be challenged by means of a recourse under Article 146 of the Constitution has been adopted and reiterated repeatedly in our case-law and recently, too, in, inter alia, *Ioannou v. The Republic*, (1982) 3 C.L.R. 1002, 1008, 1009, *Georghiou v. The Republic*, (1982) 3 C.L.R. 828,  
25 836, *Mylonas v. The Educational Service Committee*, (1982) 3 C.L.R. 880, 887.

30 From the material before the Court, and especially from the relevant, already referred to, correspondence between the parties to these proceedings, I am satisfied that the last act in the relevant administrative process which could conceivably be found to be an executory one is the refusal to increase the financial assistance to the applicant which has been communicated to him by means of the letter dated 1st July 1969, in relation to which the present recourse is clearly out of time under Article  
35 146.3 of the Constitution.

The further reply given to the applicant on 20th September 1969, in response to his continuing insistence for an increase

of the financial assistance granted to him, is clearly only confirmatory of what had been stated in the letter of 1st July 1969 and it could not be challenged under Article 146 of the Constitution.

Thus, this recourse fails and is dismissed; but I shall not make any order as to its costs. 5

*Recourse dismissed with no order  
as to costs.*

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