

1983 March 7

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDRONICOS SPYROU,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE SERVICE FOR THE CARE AND REHABILITATION  
OF DISPLACED PERSONS,

*Respondents.*

(Case No. 217/79).

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*Administrative Law—Administrative acts or decisions—Executory act—Confirmatory act—Lacks executory character and cannot be made the subject of a recourse under Article 146 of the Constitution—It may be executory if it has been taken after a new inquiry—There is a new inquiry when new substantive factual elements are taken into consideration in arriving at the subsequent decision—The previous executory act then ceases to be operative and merges into the second act—New substantive material taken into consideration in reaching the second decision and no identity of reasoning between the first and second decision—The second decision not confirmatory but a new executory administrative act in which the previous act merged—Recourse not out of time.*

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At its meeting of 23.8.1977 the respondents considered the application of the applicant for regranting to him a refugee identity card and rejected it having come to the conclusion that prior to the Turkish invasion he had been residing at Pighenia and not Morphou. The respondents examined anew at a meeting of 28.3.1979 an application by applicant for the same matter and rejected it again having come to the conclusion that prior to the Turkish invasion he had been residing at Kato Pyrgchos and not at Morphou. At the meeting this decision was taken the respondents had before them two certificates, one from the Chairman of the Village Committee of Pighenia

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and another from the Chairman of the Village Committee of Kato Pyrgchos. These certificates were new and the information or the facts certified by the issuing authorities were not before the respondents when the 1977 decision was taken.  
5 Due to this, the reasoning in the two decisions was different.

Upon a recourse by the applicant against the decision of 28.3.1979 the respondents raised the preliminary objections that the decision challenged by the recourse was confirmatory of a decision communicated to the applicant on 8.10.1977 and, therefore was not amenable to the jurisdiction of this Court under Article 146 of the Constitution and that the recourse was out of time.  
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*Held*, it is well settled that a confirmatory act lacks executory nature and, therefore, it cannot be made the subject-matter of a recourse under Article 146 of the Constitution; that an act which contains a confirmation of an earlier one, may, however, be executory and, therefore, subject to a recourse for annulment if it has been made after a new inquiry into the matter; that when new substantive factual elements are taken into consideration in arriving at the subsequent decision there is a new inquiry and the previous executory act ceases to be operative and merges into the second act; that the decision of 28.3.1979, subject-matter of this recourse, is not a confirmatory act but a new executory administrative act, in which the 1977 administrative act was merged; that the respondents had before them new substantive material—the two certificates—and furthermore there was no identity of reasoning between the first and second decision; and that, consequently, the recourse is not out of time and is maintainable,  
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30 *Order accordingly.*

Cases referred to:

- Moran v. Republic*, 1 R.S.C.C. 10 at p. 13;  
*Holy See of K'itium v. Municipal Council of Limassol*, 1 R.S.C.C. 15 at p. 18;  
35 *Protopapas v. Republic* (1967) 3 C.L.R. 411;  
*Mahdesian v. Republic* (1966) 3 C.L.R. 630;  
*Kyprianides v. Republic* (1982) 3 C.L.R. 611;  
*Kolokassides v. Republic* (1965) 3 C.L.R. 542;  
*Varnava v. Republic* (1968) 3 C.L.R. 566.

**Preliminary objection.**

Preliminary objection raised by the respondents that the applicant's recourse against the decision of the respondents rejecting applicant's application for regranting to him a refugee identity card is out of time. 5

*C. Anastasiades, for E. Efstathiou, for the applicant.*

*A. Vassiliades, for the respondents.*

*Cur. adv. vult.*

STYLIANIDES J. read the following decision. The applicant by this recourse seeks a declaration that the decision of the respondents communicated to him by letter of 29.3.1979, where- 10  
by his application for regranting to him a refugee identity card was rejected, is null and void and of no legal effect.

The respondents in the opposition raise the preliminary objections that the decision challenged by this recourse is con- 15  
firmatory of a decision communicated to the applicant on 8.10. 1977 and, therefore, is not amenable to the jurisdiction of this Court under Article 146 of the Constitution and that this recourse is out of time.

On the application of both counsel the Court directed that 20  
these objections be taken preliminary to the hearing.

At the meeting of 23.8.1977 the respondents considered the application for regranting to the applicant a refugee identity card and rejected it. They communicated their said decision 25  
by letter dated 8.10.1977 (exhibit No. 1), which reads:-

“ Η Έπιτροπή Έξετάσεως Προσφυγικής Ίδιότητος Αιτητών Ειδικών Περιπτώσεων εξήτασε κατά την συνεδρίαση της, της 23ης Αύγουστου, 1977, την αίτησιν σας δι' επαναχο- 30  
ρήγησιν τῆς προσφυγικῆς σας ταυτότητος καὶ ἐν τέλει ἀπέ-  
ριψεν αὐτήν θεωρήσασα ὡς συνήθη διαμονήν σας πρὸ τῆς  
Τουρκικῆς Εἰσβολῆς τὰ Πηγαίνεια καὶ οὐχὶ τὸ Μόρφου.”

(“The Examining Committee for the Refugee status of applicants in special cases, at its meeting of the 23rd August, 1977, has examined your application for regranting to you 35  
of your refugee identity card and has finally turned down  
same having considered as your usual residence before  
the Turkish invasion Pighenia and not Morphou”).

The respondents examined anew again at a meeting of 28.3.1979 application by the applicant for the same matter. Their decision is contained in letter of 29.3.1979, the contents of which are as follows:-

5 “ Η Έπιτροπή Έξετάσεως Προσφυγικῆς Ίδιότητος Αίτητῶν  
Ειδικῶν Περιπτώσεων τῆς ὁποίας προεδρεύω, ἐξήτασε κατὰ  
τὴν συνεδρίαν τῆς 28ης Μαρτίου, 1979, τὴν αἴτησιν σας διὰ  
ἐπαναχορήγησιν τῆς προσφυγικῆς ταυτότητος καὶ ἐν τέλει  
10 ἀπέρριψεν ταύτην θεωρήσασα ὡς συνήθη διαμονὴ σας πρὸ  
τῆς Τουρκικῆς Εἰσβολῆς τὸν Κ. Πύργον καὶ οὐχὶ τὸ Μόρφου”.

(“The Examining Committee for the Refugee status of  
applicants in special circumstances, which I preside, has  
examined at its meeting of the 28th March, 1979, your  
application for regranteeing to you of your refugee identity  
15 card and has finally turned down same having considered  
as your usual residence before the Turkish invasion K.  
Pyrghos and not Morphou”).

This is the decision challenged by this recourse.

20 At the meeting this decision was taken, two certificates were  
before the respondents: one issued by the Chairman of the  
Village Committee of Pighenia dated 8.3.1979, stating that  
applicant, though born at Pighenia village, as from 1970 he  
moved to Kato Pyrgos where he resided, and a certificate  
25 from the Chairman of the Village Committee of Kato Pyrgos  
of even date, certifying that before, upto and after the invasion  
the applicant was an inhabitant of Kato Pyrgos. These certi-  
ficates were new and the information or the facts certified by  
the issuing authorities were not before the Committee when  
the 1977 decision was taken. Due to this, the reasoning in  
30 the two decisions is different.

The Committee in 1977 declined to accept the application  
because the applicant had his usual residence at Pighenia and  
in 1979 because he had his usual residence before the Turkish  
invasion at Kato Pyrgos. The last decision was obviously  
35 based on the two certificates of 8.3.1979 which were not before  
and Committee in 1977.

It is provided in paragraph 3 of Article 146 that a recourse under that Article shall be made within a period of 75 days of the date when the decision or act, which is the subject of the recourse, was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse. This provision is mandatory and has to be given effect to in the public interest in all cases. Such view is in accordance with the interpretation of analogous provisions given by the administrative tribunals in a number of European countries and is also the view of authoritative writings on this subject—(*John Moran and The Republic (The Attorney-General and Another)*, 1 R.S.C.C. 10, at p. 13; *The Holy See of Kitium and The Municipal Council of Limassol*, 1 R.S.C.C. 15, at p. 18; *Protopapas and The Republic*, (1967) 3 C.L.R. 411; *Mahdesian and The Republic*, (1966) 3 C.L.R. 630; *Kyprianides v. The Republic*, (1982) 3 C.L.R. 611).

It is well settled that a confirmatory act lacks executory nature and, therefore, it cannot be made the subject-matter of a recourse under Article 146 of the Constitution. A confirmatory act or decision is an act or decision of the administration which repeats the contents of a previous executory act and signifies the adherence of the administration to a course already adopted; it is not in itself executory because it does not itself determine the legal position of an individual case, and this is the reason it cannot be the subject of a recourse.

An act which contains a confirmation of an earlier one, may, however, be executory and, therefore, subject to a recourse for annulment if it has been made after a new inquiry into the matter—(*Kolokassides v. The Republic*, (1965) 3 C.L.R. 542; *Varnava v. The Republic*, (1968) 3 C.L.R. 566; *Kyprianides v. The Republic*, (supra) ).

When does a new inquiry exist is a question of fact. In general, it is considered to be a new enquiry, the taking into consideration of new substantive legal or factual elements, and the used new material is strictly considered, because he who has lost the time limit for the purpose of attacking an executory act, should not be allowed to circumvent such a time limit by the creation of a new act, which has been issued formally

after a new inquiry, but in substance on the basis of the same elements. There is a new inquiry particularly when, before the issue of the subsequent act, an investigation takes place of newly emerged elements or, although preexisting, were  
5 unknown at the time and are taken into consideration in addition to others for the first time. Similarly, it constitutes new inquiry the carrying out of a local inspection or the collection of additional information in the matter under consideration.

When new substantive factual elements are taken into  
10 consideration in arriving at a subsequent decision, the second decision is not a confirmatory act but a new executory act. The previous executory act ceases to be operative—executory—and merges into the second act.

In Case No. 2032(A)/64 the second decision of the Admi-  
15 nistration was issued after the Administration obtained a document from a pension fund as to the service of the deceased. The second decision was considered by the Greek Council of State as a new executory administrative act and a recourse challenging its validity was maintainable by the Council. The  
20 time limit for filing a recourse was reckoned as from the date of the second decision.

In Case No. 2014/69 the Administration took a decision on the matter of the pension of the applicant communicated to him on 14.5.1968. On 2.9.1968 a second identical decision  
25 was taken which was brought to the knowledge of the applicant on 26.9.1968. As at the time of the second decision the Administration had before it a new certificate from the Consulate in Alexandria and other information collected by a member of the administrative authority which took the decision, the  
30 Greek Council of State held that a recourse against the second decision was formally admissible and maintainable and dismissed the allegation that the decision of 2.9.1968 was simply a confirmatory one.

In the light of the aforesaid, I have no difficulty in finding  
35 that the decision of 28.3.1979, subject-matter of this recourse, is not a confirmatory act but a new executory administrative act, in which the 1977 administrative act was merged. The respondents had before them new substantive material—the

two certificates—and furthermore there is no identity of reasoning between the first and the second decision. Consequently, the recourse is not out of time and is maintainable.

The Court will proceed to hear the substance of the case.

*Order accordingly.* 5