

1983 March 18

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEMETRIOS ARGYROU AND OTHERS,

Applicants.

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF INTERIOR AND/OR DISTRICT OFFICER NICOSIA AND,
2. THE MINISTER OF AGRICULTURE AND NATURAL RESOURCES,
3. THE WATER BOARD OF NICOSIA,

Respondents.

(Case No. 275/82).

Administrative Law—“Omission” in the sense of Article 146.1 of the Constitution—Means an omission to do something required by Law—Provision of water outside the area of supply of the Water Board of Nicosia—Within the power of the Council of Ministers, under section 43 of the Water Supply (Municipal and Other Areas) Law, Cap. 350—Such powers delegated to a Ministerial Committee—Therefore Minister of Agriculture had no power or duty under the Law to do any act in respect of supply of water—There is no “omission” on his part in the sense of the above Article.

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Administrative Law—Administrative acts or decisions—Executory act—Meaning—Application for the supply of water dealt with by appropriate authority (the Water Board of Nicosia) under the Law and refused—No recourse against such refusal—Subsequent application to Minister of Interior not a hierarchical recourse because there is no provision for such a recourse in the relevant Law, the Water Supply (Municipal and Other Areas) Law, Cap. 350—Subsequent letter of District Officer refusing

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application, written in his capacity as District Officer and not as chairman of the Water Board, of an informatory nature—And cannot be made the subject of a recourse under Article 146.1 of the Constitution.

5 On 26.11.1980 the applicants as owners of a piece of land outside the area of the Nicosia Water Board applied to the Ministry of Agriculture (“respondent 2”) for the supply to them of water from the water supply of Nicosia in order to enable them to partition their land into building sites. On 29.11.1980 they
10 were informed that as they were displaced persons (“respondent 2 approves (‘έγκρίνει’) their application”. Following an application by applicants dated 19.3.1981, to the appropriate authority for the division of the land in question into building sites same was submitted to the Water Board of Nicosia for
15 its views. The water board at its meeting of 10.9.1981, declined to accept for the time being the application due to dearth of water and as the property was situated outside the area of the Water Board. Applicants were informed of this decision by letter dated 16.9.1981 but they did not challenge it by a recourse.
20 On 15.3.1981 applicants applied to the Minister of Interior stating their problem and expressing their belief that he would solve it.

On the 23rd April, 1982, the District Officer Nicosia, in reply to applicants’ above application of 19.3.1981 informed them by
25 letter* that their application cannot be acceded to due to scarcity of water.

Hence this recourse whereby there was sought:

30 “(a) The annulment of the decision and/or act of respondent No. 1, the Minister of the Interior, and/or the District Officer of Nicosia dated 23.4.1982 received by the applicants on 27.4.1982 whereby they rejected the application for the supply of domestic water to applicants’ land shown on D.L.O. plans as Plot 222, Sheet/Plan XXI/61.W.I, of Strovolos; and,

* The letter is quoted at pp. 481-482 post.

- (b) Declaration that the omission of the respondents, and particularly the Minister of Agriculture and Natural Resources, to supply water for domestic purposes for the aforesaid land is null and void, and what has been omitted should have been performed". 5

The Nicosia Water Board was established under the Water Supply (Municipal and Other Areas) Law, Cap. 350. The duties and powers of the Board are set out in Part III of the Law. Section 12(2)(e) provides that the Board may supply water for any purpose to any area outside the area of supply, if by such supply the water in the area of supply is not likely to be diminished or affected. 10

Part VI of the Law empowers the Water Board of Nicosia to undertake duties with respect to the provision of water supplies outside its area of supply for and on behalf of the Government but such power or duty may be undertaken only with the consent of the Council of Ministers and subject to such terms and conditions as the Council of Ministers shall approve—(section 43 of Cap. 350). These powers of the Council of Ministers were delegated to the Ministers of the Interior and Agriculture. 15 20

Held, (I) with regard to the recourse against respondent 2:

That, an "omission" in the sense of paragraph 1 of Article 146 of the Constitution means an omission to do something required by law, as distinct from the non-doing of a particular act or the non-taking of a particular course as a result of the exercise of discretionary powers (see Stassinopoulos *The Law of Administrative Disputes*, 4th edition, (1964) p. 195; *Cyprus Tannery v. The Republic* (1980) 3 C.L.R. 405; *Greek Council of State Case Nos. 1137/63, 91/62 and 1862/63*); that the Minister of Agriculture respondent 2, had no power or duty under the law; he was not required by law to do any act in respect of the supply of water to the applicant from the supply of the Nicosia Water Board because the Council of Ministers delegated its powers under s.43 of Cap. 350 to a Ministerial Committee; accordingly the alleged omission of the Ministry of Agriculture does not come within the ambit of "omission" in Article 146 of the Constitution. 25 30 35

(II) *On the question whether the letter of 23.4.1982 is an executory administrative act:*

5 That an administrative act and decision is only within the competence of this Court under Article 146 if it is executory, i.e. an act by means of which the will ("ή βούλησις") of the administrative organ concerned has been made known in a given matter, an act which is aimed at producing a legal situation concerning the citizen affected and which entails its execution by administrative means—(*Conclusions from the Jurisprudence*
10 *of the Council of State in Greece, 1929–1959, at pp. 236–237*); that the appropriate authority for the water supply in this particular case is the Nicosia Water Board; that since the application of the applicants dated 15.9.1981, to the Minister of Interior is not and could not be a hierarchical recourse as there is no provision in the Law that an appeal lies from the decision of
15 *the Nicosia Water Board to the Minister of the Interior* the Minister of the Interior had no competence in the matter; that since the letter of the District Officer dated 23.4.1982 was written in his capacity as District Officer and not as Chairman of the Nicosia Water Board, it is of inforamatory nature. It might be considered as a confirmatory act if it was written by him in his capacity as Chairman of the Nicosia Water Board; and that therefore this Court has no competence to entertain this recourse against the acts, decisions or omissions challenged by this
20 recourse as they fall outside the ambit of Article 146.1 of the Constitution. The decision of the Nicosia Water Board communicated to the applicants on 16.9.1981 could not be made now the subject of a recourse as the time-bar is an unsurmountable obstacle; accordingly the recourse should fail.

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Application dismissed.

Cases referred to:

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

Vrachimi and Another v. Republic, 4 R.S.C.C. 121 at p. 123;

Cyprus Tannery v. Republic (1980) 3 C.L.R. 405;

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Decisions of the Greek Council of State Nos.: 1137/63, 91/62 and 1862/63.

Recourse.

Recourse against the decision at the respondents whereby they rejected applicants' application for the supply of domestic water to applicants' land at Strovolos.

A. S. Angelides, for the applicants. 5

N. Charalambous, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicants by this recourse seek:- 10

“(a) The annulment of the decision and/or act of respondent No. 1, the Minister of the Interior, and/or the District Officer of Nicosia dated 23.4.82 received by the applicants on 27.4.82 whereby they rejected the application for the supply of domestic water to applicants' land shown on D.L.O. plans as Plot 222, Sheet/Plan XXI/61.W.1, of Strovolos; and, 15

(b) Declaration that the omission of the respondents, and particularly the Minister of Agriculture & Natural Resources, to supply water for domestic purposes for the aforesaid land is null and void, and what has been omitted should have been performed”. 20

The respondents raised the objection that the act or decision complained of are not executory and/or they are inforamatory and are not amenable to the jurisdiction of this Court. 25

The applicants are displaced persons. They agreed to purchase a piece of land situate in the vicinity of Strovolos, Chryseleoussa Quarter, Plot 222, Sheet/Plan XXI/61.W.1, Block “E”. This piece of land is outside the area of the Nicosia Water Board. 30

On 26.11.80 they applied to the Ministry of Agriculture & Natural Resources for the supply of water from the water supply of Nicosia in order to enable them to partition the aforesaid plot into three building sites.

On 29.11.80 they received a reply signed on behalf of the Director-General of that Ministry, informing them that, as they were displaced persons and as water had already been supplied in the past to the adjoining Plot 220, the Ministry of Agriculture decided to "έγκρίνει" their application in spite of the policy not to supply water for the division of land in areas outside the water supply of Nicosia into building sites.

The applicants on 19.3.81 submitted Application No. D.480/81 to the appropriate authority for the division of the land in question into three separate sites. A site-plan and the aforesaid letter from the Ministry of Agriculture were attached to the said application.

The usual procedure for the examination of applications for division was followed and the file was referred, inter alia, to the Water Board of Nicosia. This is necessary in view of the provisions of ss. 3 and 9, as amended by Law 13/74 of the Streets & Buildings Regulation Law, Cap. 96. At its meeting of 10.9.81 the Water Board of Nicosia declined to accept, for the time being, the application of the applicants due to dearth of water and as the property was situated outside the area of the Water Board. On 16.9.81 this decision was communicated to the applicants, copy of which is Blue 6 in the file D.480/81. It reads as follows:-

"Αναφέρομαι εις την αίτησιν σας δια παροχήν νερού εκτός των όρίων ύδατοπρομηθείας και λυπούμαι να σας πληροφορήσω ότι δέν δύναται να γίνη άποδεκτη, τουλάχιστον κατά την δύσκολον, λόγω του γνωστού προβλήματος λειψυδρίας, ταύτην περίοδον.

"Η αίτησις σας θα επανεξετασθή εις χρόνον ευθετώτερον".

(" I refer to your application for the supply of water within the limits of the waterboard and regret to inform you that it cannot be approved, at least during this difficult, due to the well known scarcity of water, period.

Your application will be re-examined in due course").

That decision was not challenged before the administrative Court.

By letter dated 15.9.1981 they applied to the Minister, stating their problem and expressing their belief that he would solve it. It is not mentioned in this letter that at the time they were conversant of the decision of the Nicosia Water Board but the reasonable inference from perusal of this letter is that they might have been aware. Counsel for the Republic submitted that either through leakage or through informal information they knew of the decision of the Water Board. Be that as it may, on 9.11.1981 the letter of the applicants of 15.9.1981 was sent to the Ag. District Officer for his views.

On 27.11.1981 the Ag. District Officer informed by letter (Blue 14 of exhibit No. 1) the Director-General of the Ministry of the Interior that the plot of the applicants is outside the area of the Water Board of Nicosia and that the applicants were displaced persons. He made reference to the "consent" ("συγκατάθεσις") given by the Ministry of Agriculture and Natural Resources and the negative decision of the Nicosia Water Board due to the known problem of the scarcity of water. He mentioned further that there were many similar cases and in his opinion it was objectively impossible to supply water to the said plot of the applicants.

On 23.3.1982 the Minister of the Interior sent letter, Blue 14A, to the District Officer, Chairman of the Nicosia Water Board, with regard to the applications for supply of water outside the area of the Water Board of Nicosia. There were 16 applications, six of which had "the consent" ("βεβαίωσις") of the Ministry of Agriculture. I consider pertinent to quote seriatim the material paragraph of this letter:-

"Τὸ δικαίωμα παραχωρήσεως νεροῦ ἐκτὸς τῶν ὁρίων τῆς ὑδατοπρομηθείας, ἀνήκει στὸ Συμβούλιο Ὑδατοπρομηθείας. Τὸ δικαίωμα τοῦτο διέπεται ὑπὸ τοῦ ἐδαφίου 2(εἰ) τοῦ ἀρθροῦ 12 τοῦ περὶ Ὑδατοπρομηθείας (Δημοτικαὶ καὶ ἄλλαι περιοχαὶ) Νόμου, Κεφ. 350. Τὸ Συμβούλιο ὁμως δεσμεύεται ὑπὸ τοῦ Νόμου καὶ τότε μόνο δύναται νὰ παραχωρήσει νερὸ ἐκτὸς τῶν ὁρίων τῆς περιοχῆς τῆς εὐθύνης του ἐὰν καὶ ὅταν ὑπάρχει διαθέσιμη ποσότης νεροῦ. Μὲ τὴν ἔλλειψη νεροῦ ποὺ παρατηρεῖται στὴ Λευκωσία (κατὰ 25% λιγότερο ἀπὸ τὶς σημε-

ρινές ανάγκες τῆς περιοχῆς ὑδρεύσεως) καὶ ἔχοντας ὑπόψη τὶς πρόνοιες τοῦ νόμου χωρὶς ἀμφιβολία τὸ Συμβούλιο δὲν μπορεῖ νομικῶς νὰ παραχωρήσει νερὸ ἐκτὸς τῶν ὁρίων τῆς περιοχῆς ὑδρεύσεως.

5 Κατὰ συνέπεια πιστεύω πὼς καμμιά ἀπὸ τὶς αἰτήσεις θάπρεπε νὰ ἰκανοποιηθεῖ”.

10 (“The right of granting water outside the limits of the water-board vests on the waterboard. This right is governed by sub-section 2(e) of section 12 of the Water Supply (Municipal and Other Areas) Law, Cap. 350. The Council is bound by the law and it can grant water outside the limits of the area under its responsibility only if and when there is available a quantity of water. With the scarcity of water observed in Nicosia (by 25% less than today’s needs of the water supply area) and having in mind the provisions of the law undoubtedly the Council cannot grant lawfully water outside the limits of the water supply area.

20 Therefore I believe that none of the applications should have been satisfied”).

On 23rd April, 1982, the District Officer in his capacity as such sent to the applicants the letter, subject-matter of this recourse which reads as follows:-

25 “ Ἐπιθυμῶ νὰ ἀναφερθῶ στὴν αἴτησή σας ἡμ. 19.3.1981 σχετικὰ μὲ τὴν παροχὴ ποσῆμου νεροῦ στὸ τεμάχιο σας μὲ ἀρ. 222, Φ/Σχ. 21/61.W.I. στὸ Στρόβολο, γιὰ τὸ διαχωρισμὸ οἰκοπέδων, καὶ νὰ σᾶς πληροφρήσω ὅτι τὸ δικαίωμα παραχωρήσεως νεροῦ ἐκτὸς τῶν ὁρίων τῆς ὑδατοπρομήθειας ἀνήκει στὸ Συμβούλιο Ὑδατοπρομήθειας. Τὸ δικαίωμα τοῦτο διέπεται ὑπὸ τοῦ ἐδαφίου 2(ε) τοῦ ἀρθροῦ 12 τοῦ περὶ Ὑδατοπρομήθειας (Δημοτικαὶ καὶ Ἄλλαι Περιοχαὶ) Νόμου, Κεφ. 350. Τὸ Συμβούλιο ὁμῶς δεσμεύεται ἀπὸ τὸ Νόμο καὶ τότε μόνον δύναται νὰ παραχωρήσει νερὸ ἐκτὸς τῶν ὁρίων τῆς περιοχῆς τῆς εὐθύνης του ἂν καὶ ὅταν ὑπάρχει διαθέσιμη ποσότητα νεροῦ.

35 2. Μὲ τὴν ἔλλειψη νεροῦ ποὺ παρατηρεῖται στὴ Λευκωσία

κατά 25 % λιγότερο από τις σημερινές ανάγκες της περιοχής ύδρευσεως) και έχοντας υπόψη τις πρόνοιες του Νόμου, ήτις από πάνω αίτησή σας δεν μπορεί να ικανοποιηθεί”.

“I wish to refer to your application dated 19.3.1981 regarding the supply of drinking water to your plot under No. 222, Sh/Plan 21/61.W.I. at Strovolos for the division into building sites and to inform you that the right to grant water outside the limits of the water supply vests on the Water Board. This right is governed by sub-section 2(e) of section 12 of the Water Supply (Municipal and Other Areas) Law, Cap. 350. But the Council is bound by the Law and it can grant water outside the limits of the area under its responsibility only if and when there is available a quantity of water.

2. With the scarcity of water observed in Nicosia (25% less than today's needs of the water supply area) and having in mind the provisions of the law your above application cannot be satisfied”).

Christofides, one of the applicants, on 31.3.1982 addressed a letter to the Minister of the Interior on the same matter. This letter was transmitted by the Director-General of the Ministry to the Ag. District Officer of Nicosia, directing him to reply to this applicant, bearing in mind the contents of the letter of the Ag. District Officer of 27.11.1981 and the letter of the Minister No. 162/81 of 23.3.1982. Thereupon the Ag. District Officer, on 11.5.1982, sent to applicant Christofides a letter identical to that of 23.4.1982 above referred to.

The Nicosia Water Board was established under the Water Supply (Municipal and Other Areas) Law, Cap. 350. The duties and powers of the Board are set out in Part III of the Law. Section 12(2)(e) provides that the Board may supply water for any purpose to any area outside the area of supply, if by such supply the water in the area of supply is not likely to be diminished or affected.

Part VI of the Law empowers the Water Board of Nicosia to

undertake duties with respect to the provision of water supplies outside its area of supply for and on behalf of the Government but such power or duty may be undertaken only with the consent of the Council of Ministers and subject to such terms and conditions as the Council of Ministers shall approve—(section 43 of Cap. 350). These powers of the Council of Ministers were delegated to the Ministers of the Interior and Agriculture.

At a meeting held on 4.2.1981, at which the Minister of Agriculture and the Minister of the Interior as well as officials of their respective Ministries participated, it was decided that the procedure to be followed for the implementation of the provisions of s.43 of the Water Supply (Municipal and Other Areas) Law, Cap. 350, was that the applications for supply of water outside the area of the Nicosia Water Board should firstly be submitted to the Nicosia Water Board and, if the Nicosia Water Board, after consideration of each case, was of the view that the application was justified, then such application to be submitted to the Minister of the Interior for examination by the Ministerial Committee, i.e. the Minister of the Interior and the Minister of Agriculture; if the decision of the Nicosia Water Board was negative, the applications to be dismissed without reference to the Ministers.

It is clear from the above that the appropriate authority for the supply of water is the Water Board of Nicosia. It has the power and the duty to supply water outside the area of supply under s.12(2)(e), if by such supply the water in the area of supply is not likely to be diminished or affected; under s.43, with the consent of the Ministerial Committee and subject to such terms and conditions, as they shall approve, to supply water in an area not being within the area of its jurisdiction.

It is well established that a decision, act or omission of any organ, authority or person exercising any executive or administrative authority, must be of an executory nature in order to be amenable to the competence of this Court under Article 146 of the Constitution. (See, inter alia, *Nicos Kolokassides v. The Republic*, (1965) 3 C.L.R. 542).

A “decision” or “act” in the sense of paragraph 1 of Article

146 must be such as would directly affect a right or interest, protected by law, of a particular person ascertainable at the time of taking such decision or doing such act. (*Eleni Vrahimi & Another v. The Republic*, 4 R.S.C.C. 121, at p. 123).

An administrative act and decision is only within the competence of this Court under Article 146 if it is executory, i.e. an act by means of which the will (“ἡ βούλησις”) of the administrative organ concerned has been made known in a given matter, an act which is aimed at producing a legal situation concerning the citizen affected and which entails its execution by administrative means—(*Conclusions from the Jurisprudence of the Council of State in Greece, 1929–1959*, at pp. 236–237).

An “omission” in the sense of paragraph 1 of Article 146 of the Constitution means an omission to do something required by law, as distinct from the non-doing of a particular act or the non-taking of a particular course as a result of the exercise of discretionary powers—(*Stassinopoulos—The Law of Administrative Disputes*, 4th edition, (1964) p. 195; *Cyprus Tannery v. The Republic*, (1980) 3 C.L.R. 405; *Greek Council of State Cases No. 1137/63, 91/62 and 1862/63*).

The Minister of Agriculture had no power or duty under the Law; he was not required by law to do any act in respect of the supply of water to the applicant from the supply of the Nicosia Water Board. The Council of Ministers delegated its powers under s.43 of Cap. 350 to a Ministerial Committee.

It is significant that three different words were used for the description of the act of the Ministry of Agriculture set out in the document of 29.11.1980: “ἔγκρισις”, “συγκατάθεσις” και “βεβαίωσις”. Having regard to all the documentary material before me, I have come to the conclusion that it was no more than a recommendation to the Board. The supply of water to areas outside the area of the Nicosia Water Board from the water supply is within the exclusive competence of the Nicosia Water Board. The Water Board had before it the document of 29.11.1980 emanating from the Ministry of Agriculture. In exercise of their powers under s.12(2)(e) they decided not to accede to the request of the

applicants due to scarcity of water. They further stated that the application would be re-examined at a more appropriate time, obviously when the water condition would improve. The alleged omission of the Ministry of Agriculture does not come
5 within the ambit of "omission" in Article 146 of the Constitution.

Does the letter of 23.4.1982 of the District Officer constitute an executory administrative act? The appropriate authority for the water supply in this particular case is the Nicosia Water Board. The application of the applicants dated 15.9.1981
10 is not and could not be a hierarchical recourse as there is no provision in the Law that appeal lies from the decision of the Nicosia Water Board to the Minister of the Interior. The Minister of the Interior has no competence on the matter.

In *Greek Council of State Case No. 420/68* it was held that
15 a document containing the views of the Central Service of the Ministry of Communications was not an executory act and could not constitute the subject of a recourse for annulment, as the appropriate authority for the renewal of circulation licences of motorcars was the District Service.

In *Case No. 754/66* the act of the Minister, expressing the views of the Ministry on the subject of the legality of a building permit, was considered not to be an executory act as the Ministry was not the competent authority. The same was held about
20 the reply of the Ministry of Public Works to the Technical Services of a district in which the opinion of the Ministry about
25 the issuing of a building permit was expressed.

In *Case No. 301/69* it was held that a document containing information and the views of the Director of a Fund on the subject of pension, which was within the competence of another
30 organ, was only of informatory nature and not executory. (See also *Cases No. 479/66, 896/66 and 1113/66*).

In *Case No. 1282/67* the letter of the Director of T.S.A., whereby it was made known to the applicant that his request for revision of a decision for his pension could not be satisfied,
35 was considered as only of informatory nature and was not an executory act as the appropriate organ was the Board of the Fund.

I considered carefully the letter of the District Officer of 23.4.1982. This was written in his capacity as District Officer and not as Chairman of the Nicosia Water Board. It is of informative nature. It might be considered as a confirmatory act if it was written by him in his capacity as Chairman of the Nicosia Water Board. It does not state anywhere that a new application for supply of water to the applicants will not be examined in the future; it only confirms that due to the present scarcity of water—25% less than the present needs of the population within the area of the Water Board—and the provisions of the Law, the request of the applicants cannot be satisfied. I see no difference between the contents of this letter and the decision of the Board as set out in the letter of 16.9.1981.

The attitude of the Administration—both the Nicosia Water Board, which is the appropriate organ, the District Officer and the two Ministries—is rather favourable to the applicants. They want to help them in their plight but unfortunately the dearth of water does not permit them to accomplish their wishes. A favourable examination of an application is not to be considered as imposing a duty, if such a duty is not provided by law. I hope that when the water situation permits, the Board, in exercise of its powers either under s.12(2)(e) or under s.43, will help these displaced persons.

In view of the aforesaid, this Court has no competence to entertain this recourse against the act, decision or omission challenged by this recourse as they fall outside the ambit of Article 146.1 of the Constitution. The decision of the Nicosia Water Board communicated to the applicants on 16.9.1981 could not be made now the subject of a recourse as the time-bar is an unsurmountable obstacle.

This recourse fails and is hereby dismissed but in all the circumstances I make no order as to costs.

Recourse dismissed with no order as to costs.