1984 December 10

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

TASSOS ZEMBYLAS,

Applicant,

v.

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

Respondent.

(*Case No.* 104/84).

Administrative Law—Executory act—Confirmatory act—When is an act confirmatory of an earlier executory decision—Foremost consideration is the content of the two acts and their effect in law—Three decisions refusing three applications for issue of a passport—All decisions identical in content and had similar effect in law—Recourse against last of these decisions—Not justiciable because such decision a confirmatory of the earlier decisions.

Three applications for the issue of a passport to the applicant, the first addressed to the Immigration Officer and the last two to the Minister of the Interior, were refused for similar reasons, that is, for default in the fulfilment of his military obligations under the National Guard Law. The decisions were issued by the Ministry of Defence to whom the Minister of the Interior, who presided over both Ministries, apparently referred the matter. Each decision was repetitive of the previous one and founded on an identical appreciation of the facts and law relevant to the case.

Upon a recourse by applicant against the last of the three series of decisions Counsel for the respondent raised the preliminary objection that this decision was not justiciable for lack of executory character because it was confirmatory of the earlier decisions.

Held, that only executory acts challenged within 75 days can be made a proper subject for judicial review; that it is a question of substance whether a given act or decision is confirmatory of an earlier one; and that the foremost consideration is the content of the acts and their effect in law; that in this case the acts were identical in content and had similar effect in law; and that, therefore, the sub judice decision is plainly confirmatory of the first two decisions and is not justiciable; accordingly the recourse must fail.

Application dismissed.

Cases referred to:

Pieris v. *Republic* (1983) 3 C.L.R. 1054;

Ioannou v. *Commander of Police* (1974) 3 C.L.R. 504;

Lordos Apartotels Ltd. v. *Republic* (1974) 3 C.L.R. 471.

Recourse.

Recourse against the refusal of the respondent to issue a passport to the applicant.

Ch. Ierides, for the applicant.

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

Cur. adv. vult.

PIKIS J. read the following judgment. Three applications for the issue of a passport to the applicant, the first addressed to the Immigration Officer and the last two to the Minister of the Interior, were refused for similar reasons, that is, for default in the fulfilment of his military obligations under the National Guard Law. The decisions were issued by the Ministry of Defence to whom the Minister of the Interior, who presides over both Ministries, apparently referred the matter. Each decision is repetitive of the previous one and founded on an identical appreciation of the facts and law relevant to the case. Applicant lodged a recourse against the last of this series of decisions taken on 31st January, 1984, a course that prompted the immediate objection of counsel for the respondents to the justiciability of the decision for lack of executory character. I am required to decide before anything else, the

validity of the objection necessitating examination of the nature of the decision under consideration, in particular whether it is of a confirmatory character. The validity of the first two decisions taken on 20th January, 1982, and 30th September, 1983, was not challenged.

As noted, passport was refused because of the failure of the applicant to discharge his military obligations. The applicant became liable to conscription in January 1980. On his application his enlistment was suspended pending the completion of his studies at the Gymnasium, then in the final year of his studies. On his application travel documents were issued to him designed to enable him to visit his sister who studied abroad and spend Easter with her. They were valid for two months. He stayed abroad eversince and followed University studies. His conduct exposed him to the charge that he used the visit to his sister as a pretext to bypass his military obligations. Whatever his intentions may have been, the palpable fact is that he failed to enlist at the expiration of the period of suspension of his call up to the National Guard and for that reason the application for a passport was consistently and repeatedly refused by the authorities.

At this juncture I am not concerned with the merits of the application or the duty of the State to issue a passport to its citizens or for that matter the circumstances under which an application may be legitimately refused. I am only required to determine whether the sub judice decision is confirmatory of both or either of the two earlier decisions.

Counsel for the Republic submitted the act plainly confirms the course earmarked by the administration by previous decision; all that the decision of 31st January, 1984, signified was adherence to the course already plotted. This proposition is indisputably correct. Nevertheless, counsel for the applicant invited the Court to take cognizance of the recourse for the reason that the decision emanated from an organ other than the one to which the application had been addressed, namely, by the Ministry of Defence, whereas the application had been made to the Minister of the Interior. Earlier on we indicated that the first application had been addressed to the Immigration Officer and the last two to the Minister of the Interior. The complaint of the applicant, as defined in the application, is

not directed against any omission or default of the Minister of the Interior to reply to an application for the issue of a passport. At issue is the correctness of the decision of the Minister in his capacity as Minister of the Interior and Defence. Hence we are asked to review the merits of the decision of 30th January, 1984, a decision identical in content and effect with the two previous ones issued on the same subject matter by the same authority.

In my judgment the sub judice decision is plainly confirmatory of the first two decisions, identical to them in every respect. In *Pieris* v. *The Republic* (1983) 3 C.L.R. 1054, the Full Bench of the Supreme Court adverted to the principles relevant to the classification of an act as confirmatory. It is a question of substance whether a given act or decision is confirmatory of an earlier one. The subject matter of the two decisions and their effect in law must, therefore, be examined in order to establish the identity, if any, between two or more decisions. As indicated in the above case "the foremost consideration is the content of the two acts and their effect in law". The acts here under review were identical in content and had similar effect in law. The issue of a passport to the applicant was refused because of his default in the discharge of his military obligations. As Cyprus and Greek caselaw establishes, the barrier to the justiciability of a confirmatory act will not be lightly lifted nor will the time bar of 75 days be allowed to be lightly circumvented or bypassed. Only executory acts challenged within 75 days can be made a proper subject for judicial review. In *Evripides Ioannou* v. *Commander of Police* (1974) 3 C.L.R. 504, it was stressed that a repetitive act does not revive the executory character of the decision unless it is the product of a new factual and legal inquiry. A new inquiry will not be deemed to have taken place unless there is a substantial reappraisal of a situation in the light of new material undiscovered or unknown at the time the first decision was taken(1).

By the very terms of his application of 27th January, 1984, the applicant acknowledged the matter under review was the subject of an earlier decision. He introduced his application

(1) *Lordos Apartotels Ltd.* v. *The Republic* (1974) 3 C.L.R. 471 *Stassinopoulos*, Law of Administrative Acts, p. 126. *Tsatsos*, Application for Annulment, 3rd Ed., p. 131.

by the following expression: "I apply once more" (αιτούμαι ξανά) indicating that his application was directed towards a reversal of an earlier decision. The application was swiftly refused without holding a fresh inquiry into the case and there ended the matter.

In view of the outcome of the case, I shall refrain from examining any other aspect of the recourse or expressing an opinion on the authority competent under the law to issue passports, their discretion in the matter or its curtailment by virtue of the provisions of Articles 13 and 20 of the Constitution.

In the light of the above, the recourse fails, it is dismissed. Let there be no order as to costs.

Recourse dismissed. No order as to costs.