1986 December 5

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

COSTAS PAPASAVVAS,

Applicant,

v.

ELECTRICITY AUTHORITY OF CYPRUS,

Respondents.

(Case No. 975/85).

Executory act —Confirmatory act —Re-examination of legal framework of decision—Does not give rise to an executory act.

By letter dated 21.5.85 the respondents approved applicant's application for the reinstallation of a transformer 5 and other necessary equipment for the resupply of electricity with a view to setting in operation a water pump in land acquired by the applicant on condition that the latter should pay £2,199 towards or in satisfaction of the cost of installation. 10

By letter dated 10.7.85 addressed to the respondents the applicant objected to the condition advancing various arguments in support of the objection. By le'ter dated 10.9.85 the respondents refused applicant's said arguments. Hence the present recourse. 15

Held, dismissing the recourse: (1) A reading of the letter dated 10.9.85 reveals that it contains no executory decision, but simply explains respondents' understanding of the law and the powers given thereby.

(2) The only executory decision taken in this case was 20 that of the 21.5.85, which went unchallenged. The letter of 10.9.85 was not the offspring of a new inquiry. Neither had the applicant applied for such an inquiry by his letter of 10.7.85. Re-examination of the legal framework of a

decision does not lead to an executory act. At the highest the letter of 10.9.85 is confirmatory of the decision of 21.5.85.

Recourse dismissed.
5 *No order as to costs.*

Cases referred to:

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

Kelpis v. *The Republic* (1970) 3 C.L.R. 196.

Recourse.

10 Recourse against the decision of the respondent whereby applicant was required to pay £2,199.- towards or for the satisfaction of the cost of resupply of applicants property with electricity including the installation of a new transformer.

15 *C. Loizou*, for the applicant.

G. Cacoyannis, for the respondent.

Cur. adv. vult.

PIKIS J. read the following judgment. In 1985 applicant acquired a piece of immovable property that had a source
20 of water and was equipped with a water pump. Before the property was registered in his name, he addressed on 25th January, 1985, a letter to the Electricity Authority applying for the reinstallation of a transformer and other necessary equipment for the resupply of electricity with a
25 view to setting in operation anew the water pump. A transformer had been installed at the request of former owners of the property in 1957 and other installations necessary to make possible the operation of the water pump with electricity current. The installation fell into disuse and
30 was removed by the respondents in 1979, including the transformer, for safety reasons.

Respondents approved the application on the conditions set out in their letter of 21st May, 1985. One of the conditions required the applicant to pay an amount of £2,199.-
35 towards or for the satisfaction of the cost of resupply of

the property with electricity, including the installation of a new transformer. From the file of the case, exhibit 1, it appears that the sum claimed was based on an estimation of the cost of the installation and incidentals associated therewith. Applicant objected to the payment of the aforesaid amount (letter dated 10th July, 1985) on the ground that the decision was illegal because it was taken in excess of the powers of the respondents. He raised a number of arguments revolving on the powers of the respondents under the Electricity Legislation and contended that in view of the existence of a transformer and electricity installation in the past, respondents lacked power to charge fees referrable to the reinstallation of the transformer and electricity apparatus.

The respondents refuted the arguments of the applicant asserting a right to levy the fees claimed in exercise of the powers given them by law. They explained the removal of the pre-existing installation became necessary because of lack of use for a long time. The respondents had, in the circumstances, every right to demand the payment of the cost of installation as a condition precedent to the resupply of the property with electricity. The recourse is directed against the content of this letter premised on the assumption that it contains an executory decision justiciable under Article 146.1 of the Constitution. A reading of the content of exh. 1 immediately reveals that this letter does not record or embody any decision; it merely explains respondents' understanding of the law and powers given thereby[1] justifying the imposition of the charges set out in the decision communicated by the letter of 21st May, 1985. To the extent, therefore, that the recourse is directed against a decision contained in the aforementioned letter it is wholly misconceived.

The only executory decision of the respondents relevant to the obligations of the applicant is that of 21st May, 1985, that went unchallenged. The letter of 10th September, 1985, was not the offspring of a new inquiry as rightly

(1) The Electricity Law, Cap 170—The Electricity Dev Law, Cap. 171.

pointed out by the counsel for the respondents by reference to numerous decisions of the Supreme Court. At the highest the letter of 10th September, 1985, confirmed the decision of 21st May, 1985, not of itself productive
5 of rights in the field of public law[1].

Nor had the applicant applied for a new inquiry by his letter of 10th July, 1985. He merely questioned respondents' appreciation of their powers in law. And the reply given thereto was solely designed to reiterate respondents'
10 understanding of the law. As counsel for the respondents rightly pointed out, such re-examination of the legal framework of the decision could not give rise to an executory act[2].

For the above reasons the subject matter of the recourse
15 is non-justiciable and no need arises to probe into the merits of the case. The recourse is dismissed. Let there be no order as to costs.

Recourse dismissed.
No order as to costs.

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(1) Pieris v Republic (1983) 3 C.L.R 1054.
(2) Photis Kelpis v. Republic (1970) 3 C.L.R. 196, 203.