

1987 February 13

[SAVIDES. J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
CHRISTAKIS ROTSIDES,

Applicant.

v.

THE COMMITTEE FOR THE RELIEF OF VICTIMS,

Respondent.

AND BY ORDER OF THE COURT DATED 18.11.1986,

CHRISTAKIS ROTSIDES,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH,
THE MINISTRY OF FINANCE AS REPRESENTING
THE COMMITTEE FOR THE RELIEF OF VICTIMS,

Respondent.

(Cases No. 300/84).

Recourse for annulment — Subsidiary irregularities, such as the description of the respondent — Do not defeat the substance.

Executory act — Confirmatory act — New inquiry — When such inquiry leads to a new executory decision — It has to be conducted on the basis of new facts placed before the organ which took the original decision.

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The applicant, who, according to his allegation was injured in 1958, during the EOKA struggle, by falling from his bicycle, whilst trying to avoid arrest by the English troops, submitted an application for pension under the Dependents of Persons Who Were Killed In, And Of Victims of, the Struggle and Persons Incapacitated Therein (Pensions and Extraordinary Allowance Fund) Law, 1962.

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The Medical Board, which examined the applicant found that he had

«deformation of the spine with scoliosis and cranic disc lesion». but stated that his condition could not objectively be attributed to the fall from the bicycle.

5 As a result the applicant's said application was turned down and the applicant filed a recourse to this Court. The recourse was dismissed, but the applicant appealed. The appeal was withdrawn upon undertaking by the Attorney-General without prejudice to the respondent's rights to advise the respondent to re-examine appellant's case in the light of the facts appearing in the record of his case and any other facts, which would be placed before him by counsel for the appellant.

10 Consequently, counsel for the applicant addressed a letter to the respondent through the Attorney-General drawing respondent's attention to certain points in the medical reports and on points of law.

15 Although the material submitted by counsel could not be considered as new, the respondent referred the applicant to the Medical Board for examination and by letter dated 24.6.83 informed the applicant accordingly.

The Medical Board, after re-examination of the applicant and consideration of the history of his case and the opinion of Dr Spanos expressed on 12.12.83, decided that the condition of applicant's spine could not be attributed to the fall from the bicycle.

20 As a result the respondent re-affirmed its previous decision and informed the applicant accordingly by letter dated 29.3.84. Hence the present recourse.

25 Counsel for the respondent raised two preliminary points, namely that the recourse is directed against a non-administrative organ and that the sub judice decision is confirmatory of a previous decision.

30 Held, dismissing the recourse. (1) This Court does not allow subsidiary formalities such as the description of the respondent to defeat the substance. Moreover, in this case the title of the recourse has already been amended upon application by applicant and, therefore, there remains no substance in the first preliminary objection.

35 (2) For the result of an inquiry to amount to a new decision, such inquiry has to be conducted on the basis of new facts placed before the organ which took the original decision. In the light of this principle and the circumstances of this case, the contents of the letter of 29.3.84 do not amount to a new executory decision resulting from a new inquiry carried out on the basis of new facts.

(3) Assuming that the sub judice decision is of an executory nature, this Court reached the conclusion that in the circumstances it was reasonably open to the respondent to decide as it did.

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

Cases referred to

- Chnstodoulou v The Republic* 1 R S C C 1
- HadjiPapasyrneou v The Republic* (1984) 3 C L R 1182,
- Hyatt International v The Republic* (1985) 3 C L R 337,
- Demetrou v Distnct Officer of Limassol* (1986) 3 C L R 2086, 5
- Asaad v The Republic* (1984) 3 C L R 1529,
- Odysseos v The Republic* (1984) 3 C L R 463

Recourse.

Recourse against the decision of the respondent not to grant applicant a pension and or other benefits under the Dependants of Persons who were Killed, and of Victims of, the Struggle and Persons Incapacitated therein (Pensions and Extraordinary Fund) Law, 1962 10

L. Clendes, for the applicant

Cl. Theodoulou (Mrs.), Senior Counsel of the Republic, for the respondent 15

Cur. adv. vult.

SAVIDES J. read the following judgment. The applicant challenges the validity of the decision of the respondent, communicated to him by letter dated the 29th March, 1984, whereby his application for the grant of a pension and/or other benefits, under the Dependants of Persons who were Killed in, and of Victims of, the Struggle and Persons Incapacitated therein (Pensions and Extraordinary Allowances Fund) Law, 1962, was rejected. 20
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The applicant, according to his allegation was injured in 1958, during EOKA struggle, by falling from his bicycle, whilst trying to avoid arrest by the English troops. When he was first examined by a Medical Board in 1961, it was found that he was suffering from varicocele and was referred by the respondent to a specialist for an operation. He also received from the respondents, on six occasions, small amounts of money, ranging from £5.- to £30.- by way of medical assistance. 30

As a result of an application for pension submitted by him in 1969, the applicant was examined by the Medical Board which after referring him to Dr. Spanos, a neurosurgeon specialist and considering his opinion, recommended his admission to the 35

General Hospital for further examination, and the respondent advised him accordingly. The applicant did not follow the above recommendation and left Cyprus.

5 Upon his return, in 1973, the applicant was again examined by the Medical Board which found that he had «deformation of the spine with scoliosis and cranic disc lesion» but stated that his condition could not objectively be attributed to the fall from his bicycle. The respondent, after considering the medical report, found that the applicant could not be considered as an
10 incapacitated person for the purposes of the Law and dismissed his claim. The applicant was informed of the above decision by letter of the respondent dated the 26th July, 1973, whereupon he filed recourse No. 428/73. Whilst his recourse was pending the applicant was re-examined by the Medical Board, but the latter
15 found no reason to depart from its previous decision.

On the 8th May, 1982 the Court dismissed the applicant's recourse having reached the conclusion that the Committee properly rejected his application for pension.

20 The applicant appealed against the above judgment, but on the date of the hearing, he withdrew his appeal after certain statements were made by counsel on both sides. The record of the appellate court, in this respect, reads as follows:

25 «Mr. Clerides: We have seen the Attorney-General with my learned friend Mrs. Theodoulou today and the Attorney-General has, without prejudice to the respondent's rights, undertaken to advise the respondent to re-examine the applicant's case in the light of the facts appearing in the record of his case and of any other facts which will be placed before it by me, through counsel for the respondent, within two
30 weeks from today.

Mrs. Theodoulou states - this is so.

Mr. Clerides: In the circumstances I seek leave to withdraw this appeal.

35 *Court:* Appeal dismissed as withdrawn in the above circumstances, with no order as to its costs.»

Consequently, counsel for applicant addressed a letter to the respondent, through the office of the Attorney-General enclosing copy of the minutes of the Revisional Appeal, requesting the re-

examination of the case, bearing in mind the statements made before the appellate court and drawing the attention of the respondent to certain points appearing in the medical reports and also on questions of law

On the 24th June, 1983, the respondent addressed a letter to the applicant, stating that although the material submitted by his counsel could not be considered as new, the Committee was prepared to refer him again to the Medical Board for examination. 5

The applicant was re-examined by the Medical Board on 9.2.1984, which, after considering the history of his case and the opinion of doctor Spanos, expressed on the 12th December, 1983, came to the conclusion that his complaints in connection with his spine could not be attributed to his injury as a result of his fall from the bicycle and they had no relation with such fall. The Board further assessed his incapacity in relation to his fall from the bicycle at zero per cent. 10
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The respondent met on the 17th March, 1984 in connection with the applicant's claim but in the light of the contents of the medical report of the 9th February, 1984, decided to insist on its previous decision for the dismissal of his application for pension. Such decision was communicated to the applicant by letter dated the 29th March, 1984, the contents of which read as follows: 20

«I wish to refer to your application for the grant to you of a disability pension which has been rejected and wish to inform you as follows: 25

The Medical Board which re-examined you on 9.2.84, having considered also the opinion of the specialist neurosurgeon doctor N. Spanos, came to the conclusion that the history of your complaint both in 1961 as well as on subsequent examinations, leaves no room for doubt that the problems with your spine appeared much later than your injury and they are of an advancing and developing nature and have no relation whatsoever with your fall from the bicycle. According to the same opinion of the Medical Board the percentage of your incapacity in relation to your fall from the bicycle is 0%. 30
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2. On the basis of the above opinion of the Medical Board you understand that the Committee cannot review its previous decision whereby your application for the grant of

disability pension was dismissed.»

As a result, the applicant filed the present recourse, challenging the above decision as being null and void and of no legal effect.

5 The legal grounds advanced by his counsel in support of this recourse, are that the sub judice decision was taken without due and/or sufficient inquiry, it was the result of misconception of fact, it was taken in violation of the relevant laws and that the respondent exercised its discretion in a defective manner.

10 Counsel for the respondent raised the following preliminary objections:-

(1) The recourse is directed against the decision of a non-administrative organ and

(2) the sub judice decision is confirmatory of a previous decision and therefore, the recourse is out of time.

15 Subject to the above, she contended that the sub judice decision was properly taken in accordance with the provisions of the relevant laws.

I shall deal briefly with the first preliminary objection of the respondent.

20 In expounding on the said question, counsel for the respondent submitted that the Committee for the Relief of Victims is not an administrative organ within the ambit of Art. 146 of the Constitution. The recourse should, counsel added, have been directed against the Republic through the Pensions and
25 Extraordinary Allowances Fund established under section 3(1) of Laws 4/62 - 4/64 of the Greek Communal Chamber and Laws 6/66 - 23/84.

It is well established by a series of decided cases both of the Supreme Constitutional Court and of this court that when this
30 court is dealing with a recourse before it, it looks into the substance of the case and the act that is challenged and does not allow subsidiary formalities such as the description of the respondent to defeat the substance. (*Christodoulou and The Republic*, 1 R.S.C.C. 1; *HadjiPapasyeou v. The Republic* (1984) 3 C.L.R. 1182; *Hyatt International v. Republic* (1985) 3 C.L.R. 337;
35 *Demetrios G. Demetriou v. The District Officer of Limassol*, Case No. 401/84 in which judgment was delivered on the 22nd

December, 1986 not yet reported* and in which our case law on the matter is reviewed).

However, in the present case counsel for applicant made an application for amendment of the title so that the name of the respondent be described as «The Republic of Cyprus through the Ministry of Finance as representing the Committee for the Relief of Victims». Counsel for the respondent, very rightly, did not oppose such application and the title was amended accordingly. 5

In the result there remains no substance in this preliminary objection. 10

I will come next to consider the second preliminary objection raised by counsel for respondent, in that the sub judice decision is not an executory administrative act but is merely confirmatory of a previous decision in respect of which the present recourse is out of time. From the material before me the contention of the respondent in this respect is substantiated. 15

For the result of an inquiry to amount to a new decision, such inquiry has to be conducted on the basis of new facts placed before the organ which took the original decision. (*Asaad v. Republic* (1984) 3 C.L.R. 1529; *Odyseos v. Republic* (1984) 3 C.L.R. 463). 20

In the present case, according to the record before the appellate court, the Attorney-General without prejudice to any right of the respondent undertook to request re-examination of the case. The letter of the applicant addressed to the respondent through the Attorney-General for re-examination, does not contain any new facts other than certain legal contentions of counsel for the applicant. All other facts mentioned therein were before the respondent Committee when it took its previous decision which was the subject matter of previous unsuccessful proceedings. The respondent, very rightly, by its letter dated the 24th June, 1983, pointed out that no new facts emanated from the letter of counsel for applicant necessitating a re-examination of the case. Nevertheless, the respondent concessionally and in view of the statements made in court, consented to send the applicant for examination by a Medical Board. The result of such examination, according to the medical report of the said Board, did not reveal 25
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* Reported in (1986) 3 C.L.R. 2086.

anything new justifying departure from its previous opinion which it repeated and endorsed. When the respondent met on 17.3.84 to examine whether there was any material on the basis of which it could modify its previous decision, it rightly came to the conclusion
 5 in the light of the medical report which did not disclose any new facts in favour of the applicant and on the basis of all the material which was before it when it took its previous decision, to reaffirm its previous decision, and dismiss applicant's application.

In the circumstances of the present case I have come to the
 10 conclusion that the contents of the respondent's letter of the 29th March, 1984, do not amount to a new executory act resulting from a new inquiry carried out on the basis of new facts but is merely confirmatory of a previous decision taken by the applicant and which was the subject matter of recourse No. 428/73 which had
 15 already been dismissed by the court.

Notwithstanding my above finding and assuming that the decision complained of is of an executory nature by itself, I shall proceed to examine whether such decision was reasonably open to the respondent.

20 The respondent in this case acted all along on the basis of medical reports submitted by medical boards and specialists who examined the applicant on several occasions. Most of this material was before the trial court in Case No. 428/73 and the court found that on the basis of such material it was reasonably open to the
 25 respondent to reach its decision to reject the applicant's application. The appeal against such decision was withdrawn subject to the statements made therein, which, however, did not touch the substance of such decision. The respondent, nevertheless after the determination of the appeal, asked the
 30 applicant to submit to a medical examination by a new medical board which again came to the conclusion that his complaint concerning his spine could not be attributed to his alleged fall from his bicycle during the EOKA struggle. The finding of the medical board was based on the examination of the applicant and on all
 35 material before it and also on the medical report of Dr. Spanos who had examined the applicant earlier and in whose opinion the cause of his complaint could not be attributed to the alleged accident. The applicant did not adduce any evidence or any other material to contradict the opinion of the Medical Board or of Dr.
 40 Spanos.

Bearing all the facts of the case in mind, I find that it was reasonably open to the respondent to decide as it did, and that its decision was the result of a due inquiry and is duly reasoned. The applicant failed to substantiate his allegations in this respect and also in support of his contention that the respondent acted under any misconception of law or fact. The respondent in the circumstances of the case exercised its discretion properly and I find no reason to interfere with the exercise of such discretion. 5

In the result this recourse fails and is hereby dismissed and it is with great reluctance that I have decided to make no order for costs against the applicant. 10

*Recourse dismissed.
No order as to costs.*