1988 July 23

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. ELIA HOTEL APARTMENTS LTD.,
2. LEONIDAS GEORGHIOU,

Applicants,

v.

THE MUNICIPALITY OF POLIS CHRYSOCHOUS,

Respondents.

(Case No. 1068/85).

Time within which to file a recourse under Art. 146.1 of the Constitution—Bill requiring payment of fees in respect of water supply—Protest by applicants that it is too high—Letter by respondents' chairman informing applicants' advocate that it would not be advantageous for the respondents to apply (as suggested by the said advocate) the Bye-Laws of the Municipality of Paphos—Such letter did not contain an executory, but only a confirmatory decision—Therefore, time began to run as from the date the water bill was issued.

Executory act—Confirmatory act—Spyrou v. The Republic (1983) 3 C.L.R. 354 cited with approval.

Time within which to file a recourse under Art. 146.1 of the Constitution—A matter of public policy that can be raised by the Court ex proprio motu.

Fees—What is a fee—The distinction between a "fee" and a "tax"—The fee is supposed to be based on the expenses incurred in rendering a service—Water supply—The relevant rates payable are clearly fees.

Water supply—Rates—Bye-law creating four different categories—Supply of water to "Hotel apartments" charged under the first category, i.e. domestic use, and not under the third category i.e. industrial use—Words should be given their ordinary meaning—"Domestic use" (οικιακή χρήση) is used for ordinary purposes of domestic life by occu-

pants of a dwelling-house or a building, including persons who board and lodge therein—Though hotel apartments are part of the tourist industry they are definitely not factories (εργοστάσια) or industrial premises (βιομηχανικά οικήματα).

Construction of statutes—Words should be given their ordinary meaning—Review of Authorities.

Words and phrases—Water supply for "domestic use" (οικιακή χρήση)—What is nowadays considered as "domestic use"—Water supplied to "hotel apartments"—Rightly considered as supplied for "domestic use".

The facts of this case as well as the principles applied by the Court in dismissing the recourse are sufficiently indicated in the hereinabove headnote.

Recourse dismissed.
No order as to costs.

Cases referred to:

Spyrou v. Republic (1983) 3 C.L.R. 354;

Megalemou v. The Republic (1968) 3 C.L.R. 581;

Constantinides v. E.A.C. (1982) 3 C.L.R. 798;

Apostolou and Others v. The Republic (1984) 3 C.L.R. 509;

Lami Groves Ltd. v. The Republic (1986) 3 C.L.R. 2378;

Hara Hotels v. The Republic (1987) 3 C.L.R. 618;

Loizou v. Sewage Board of Nicosia (1988) 1 C.L.R. 122;

M.J. Lousides and Sons Ltd. v. The Municipality of Limassol (1988) 3 C.L.R. 1017;

Pidgeon v. Great Yarmouth Waterworks Company [1902] 1 K.B. 310;

South-West Suburban Water Company v. Guardians of the Poor of St. Marylebone [1904] 2 K.B. 174.

Recourse.

Recourse against the decision of the respondents to impose on applicants for the months of July - October, 1985 water rates for the supply of water to the hotel apartments amounting to £1,080.75 and to disconnect the supply of water on the 18th November, 1985.

Ph. Valiantis for L.Papaphilippou, for the applicants.

A. Taliadoros for K. Chrysostomides, for the respondents:

Cur. adv. vult.

STYLIANIDES. J. read the following judgment. Applicant No.2 is the owner of hotel apartments at Polis Chrysochous.

Applicant No. 1 is managing and/or administering the said apartments, which are registered under The Hotels and Tourist (Establishment), Law, 1969 (Law No. 40/69).

The Respondents are a Municipal Corporation established by Law. They supply water.

These hotel apartments were connected with the water supply of the Respondents. There is one meter for the consumption of water for all these apartments. The water rates are paid every two months and the indication of the meter of the consumption is recorded by an employee of the authority bi-monthly. The consumption for the periods ended 9th March, 1985, 10th May, 1985 and 11th July, 1985, were 47 tons, 194 tons and 208 tons respectively.

On 11th September, 1985, the employee of the Respondent Corporation, in the ordinary execution of his duties, checked the meter and he recorded the consumption of 978 tons. The rates amounted to £625.50. On the same day applicant 1 was notified to pay this amount.

Applicant No. 2 on 18th September, 1985, by letter (Exhibit 2) informed the Respondents that as from 22nd July, 1985, the apartments in use were increased by twelve and as from 4th August, 1985, by six more, that is eighteen in all. That the bill of the water rates amounting to £625.50 was too high and not the expected one. That he found out that in the apartments, after the connection with the water supply of the Municipality, due to damage to a pipe between the first ten apartments and the new apartments, there was a leakage. As the damage was unexpected, notwithstanding the measures taken by him, he pleaded for leniency and readjustment of the bill.

The Respondents by letter dated 17th October, 1985, informed the applicants that they had to pay until 25th October, 1985, the amount of £625.50, otherwise the water supply to the above apartments would be disconnected.

On 22nd October, 1985, an advocate of Paphos addressed a letter to the Respondents on behalf of Marion Hotel, Akamas Hotel, Elia Hotel Apartments and the Camping Site, whereby he alleged that the imposition of water rates on his clients and the treatment of the hotels in the same manner as dwelling-houses were treated was legally baseless and contrary to the Bye-laws. That Bye-laws 104/85 did not provide for hotel or hotel apartments and, therefore, the Bye-laws in force before 22nd March, 1985, the date of the publication of Bye-laws 104/85, should be applied. He, further, suggested that the Bye-laws of Polis Chrysochous, in respect of water rates for hotels, be substituted by new provision identical with the one in force in Paphos Municipality.

On 26th October, 1985, the Chairman of the Municipal Committee of Polis Chrysochous informed the advocate that, if the water rates applied by the Paphos Municipality were adopted by Polis Chrysochous, this would be to the disadvantage of his clients, as the tourist period in the area of Polis Chrysochous was of limited duration two or three months per annum - but if the hoteliers desired the amendment of the relevant Bye-law, in order to incorporate therein the rates obtaining at Paphos Municipality, the

Municipal Committee of Polis would be willing to proceed in that direction.

On 11th November, 1985, the same employee of the Respondents visited these hotel apartments of the applicants and the meter showed a consumption of 751 tons. A bill for £455.25 was issued and given on same day (see Exhibit 4).

As the applicants failed to pay, the water supply to their apartments was disconnected on 18th November, 1985. This recourse ensued on 30th December, 1985. The applicants seek:-

"A. Declaration of the Court that the act and/or decision of the Municibal Corporation of Polis Chrysochous to impose water rates for the supply of water to the hotel apartments of the applicants for the months July to October, 1985 (inclusive), £1,080. 75, which was completed by letter of the Municipality dated 26th October, 1985, and the disconnection of the supply of water on 18th November, 1985, is null and void and of no effect whatsoever.

B. Declaration of the Court that the act and /or decision for the disconnection of the water supply to the hotel apartments of the applicants is void and of no legal effect whatsoever."

The Respondents objected that the letter of 26th October, 1985, does not constitute an executory administrative act which is amenable to the jurisdiction of this Court under Article 146 of the Constitution. The only administrative acts are the bills of water consumption, dated 11th September, 1985, and 11th November, 1985, which were communicated to the applicants on the date of their respective issue. On these premises the recourse for the first bill/decision is out of time, having regard to the date of the bill and the date of the filing of the recourse.

Counsel for the applicants, on the other hand, submitted that the recourse is not out of time because the letter dated 26th October, 1985, is an executory administrative act, in that it is the doc-

ument whereby the imposition of the water rates was completed for the period July - October, 1985, following a re-examination of the case after the allegations and objections of the applicants.

Before dealing with the substance of the recourse, I consider pertinent to inquire whether the recourse directed against the imposition of the rates for the period ended 11th September, 1985, is out of time.

The recourse though apparently directed against the letter or decision of 26th October 1985, it is plain from the facts on which it is based and the addresses of counsel that it is directed against and contests the validity of the imposition of the water rates for two bi-monthly periods. In Administrative Law there is a wide margin for the interpretation of the aim of the recourse. The letter of 26th October, 1985, to which reference was made above, preceded the water rate bill of 11th November, 1985, which indeed is one of the acts challenged.

It is well settled that only an executory administrative act can be attacked by recourse. The letter of 26th October 1985, does not constitute a new executory decision which can be made the subject of recourse. In *Spyrou v. Republic* (1983) 3 C.L.R. 354, at pp. 358-359 it was said:-

> "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 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 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. 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 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 con-

sideration 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."

The decision contained in the water bill of 11th September, 1985, was communicated to the applicants on the same day and nothing happened later to postpone the date of the computation of the 75 days within which a recourse has to be filed.

The provision in paragraph 3 of Article 146, that a recourse shall be made within the period of 75 days, is one of public policy and even if a respondent does not raise in his opposition this question, the Court is bound to consider it, ex proprio motu - *(Elli Megalemou v. Republic (Public Service Commission)* (1968) 3 C.L.R. 581).

In the view of the above I hold that the letter of 26th October, 1985, addressed to Georghios Kyprianides in reply to this communication of 22nd October, 1985, is not an executory act which can be made the subject of a recourse. Consequently the recourse against the act of 11th September, 1985, is out of time and, ultimately, it will be dismissed.

The remaining part of the recourse, that is that part which is directed against the water bill/decision of 11th November, 1985, and the decision to disconnect the water supply on 18th November, 1985, have to be considered by the Court.

Counsel for the applicants relied on the following grounds:-

(a) The water rates are disproportionate to the income of the applicants and constitute destructive taxation.

(b) The use of the water in hotel apartments does not constitute "domestic use", as erroneously decided by the Respondents; the apartments should be classified as falling within "industrial buildings" and the rates to be calculated on that basis.

(c) The imposition of these water rates was made under the Municipal (Amendment) No. 2 Bye-laws, 1985 (No. 104/85), which create three categories of premises and that the hotel apartments of the applicants do not fall within any of these categories and, therefore, as the Regulations do not provide for payment of rates by hotel apartments, the Respondents could not impose any rates.

(d) The sub judice decision was not reasoned.

The relevant Bye-Law under which the sub judice decision was taken is Regulation 4 of the Municipal (Amendment) Regulations of Polis Chrysochous Municipality, 1985 (No, 104/85), published in the Official Gazette of the Republic, Supplement No. III, Part I, p. 295,whereby subparagraphs (a), (b), (c), (d) of paragraph 2 of Regulation 115(z) 1931 - 1958 as amended by Regulation 2 of the Amending Regulations of the Municipality of Polis of 1977, were deleted and substituted by paragraph 2 thereof, the material part of which reads:-

"2. Ο ιδιοκτήτης ή κάτοχος οποιασδήποτε οικίας ή οικήματος που είναι εφοδιασμένο με νέρο θα πληρώνει τα ακόλουθα δικαιώματα και η πληρωμή θα γίνεται κατά διμηνία.

(α) Για οικιακή χρήση:

(ι) .....

(ιι) .....

(ιιι) .....

(ιν) .....

(ν) .....

(νι) .....

(νιι) .....

(β) Για τα σχολεία, νοσοκομεία, παιδική στέγη, εφηβικό ξενώνα, στρατόπεδα Εθνοφρουράς, φιλανθρωπικά και άλλα ιδρύματα:

(ι) 5

(ιι) .....

(γ) Για τα εργοστάσια και βιομηχανικά οικήματα:

(ι) .....

(ιι) .....

(ιιι) 10

(ιν) .....

Νοείται ότι το Συμβούλιο δύναται για μεγάλες βιομηχανικές επιχειρήσεις με αίτηση τους, να καθορίζει ειδική κλίμακα πωλήσεως νερού σε αυτές.

(δ) Για πλοία, ... 15

Νοείται ότι λογαριασμοί που επιδίδονται για πληρωμή πρέπει να εξοφλούνται στα Δημοτικά Γραφεία μέσα σε 15 μέρες από την ημερομηνία της επιδόσεως τους, διαφορετικά η υδατοπρομήθεια θα διακόπτεται χωρίς άλλη προειδοποίηση. 20

("2. The owner or occupier of any dwelling-house or premises which is supplied with water shall pay the following fees and the payment shall be made bi-monthly.

(a) For domestic use:

.....

(b) For schools, hospitals, children's home, youth hostel, camps of the National Guard, charitable and other institutions.

(c) For factories and industrial premises.

.....

(d) For ships, etc. .....

Provided that the bills served for payment must be paid off at the offices of the Municipality within 15 days from the date of their service, otherwise the water supply shall be disconnected without any other notice.")

It has to be decided whether the imposition for payment of these water rates under the Law and the Bye-law is " φόρος, τέλος η εισφορά οιασδήποτε φύσεως" (tax, duty or rate of any kind whatsoever) that comes within the provision of Article 24 of the Constitution and, if within the ambit of Article 24, then whether this fee is of destructive or prohibiting nature.

A "fee" is generally defined to be a charge for a special service rendered to individuals by some public authority and is supposed to be based on the expenses incurred in rendering the service, though in many cases the costs are arbitrarily assessed.

A "tax" is a compulsory exaction of money by public authority for public purposes enforceable by law and is not a payment for services rendered.

The reason for the payment in the case of fees is the special benefit accruing to the individual; in the case of tax, the particular

advantage, if it exists at all, is an incidental result of state action.

(See *Alecos Constantinides v. The Electricity Authority of Cyprus* (1982) 3 C.L.R. 798; *Apostolou and Others v. The Republic* (1984) 3 C.L.R. 509; *Lami Groves Ltd. v. The Republic* (1986) 3 C.L.R. 2378; *Hara Hotels v. Republic* (1987) 3 C.L.R 618; *Meropi Michael Loizou v. Sewage Board of Nicosia,* (1988) 1 C.L.R. 122; *M.J. Lo ısides & Sons Ltd. , The Municipality of Limassol,* (1988) 3 C.L.R. 1017. See, also, Fritz Fleiner - Administrative Law, 8th Edition, Greek translation by G. Stymphaliades, pp. 391-392).

The water rates in this case are clearly fees and not tax.They are paid in consideration of services rendered, that is in consideration of the supply of water.

It has not been shown that the differential as to use is arbitrary or unreasonable. It has not, further, been shown that these water rates are of a prohibitive or destructive nature or that the Bye-law under which they were imposed, or their imposition, are in any way repugnant to or inconsistent with Article 24.4 of the Constitution.

Under this Bye-law the owner or possessor of a dwelling-house or premises supplied with water shall pay the prescribed fees, which are divided in the following four categories:-

(a) For domestic use.

(b) For schools, hospitals, children's home, youth hostel, camps of the National Guard, charitable and other institutions.

(c) For factories and industrial premises.

(d) For ships, etc...

The differential in the rates is based on the use of the water supplied.

It is the submission of counsel for the applicants that the use of water in the hotel apartments is not "domestic use" but for "industrial premises".

What is the meaning of "domestic use" (οικιακή χρήση") and "industrial premises" ("βιομηχανικά οικήματα")?

Words should be given their ordinary meaning, or common, or popular sense as they are generally understood, having in mind the purpose of an enactment.

In Halsbury 's Laws of England, Fourth Edition, Volume 44, paragraph 865 we read:-

"Words are primarily to be construed in their ordinary meaning or common or popular sense, and as they would have been generally understood the day after the statute was passed, unless such a construction would lead to manifest and gross absurdity, or unless the context requires some special or particular meaning to be given to the words. Nevertheless, the time at which a statute is passed may not be relevant where it is clear that Parliament intended a word to be given its meaning from time to time in everyday usage. Where the words used are familiar and are in common and general use in the English language, it is inappropriate to try to define them further by judicial interpretation and to lay down their meaning as a rule of construction, and the only question for a court is whether the words are apt to cover or describe the circumstances in question in a particular case."

In Maxwell on Interpretation of Statutes, 12th Edition, p. 199 we read:-

"In determining either the general object of the legislature, or

the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice and legal principles should, in all cases of doubtful significance, be presumed to be the true one. 'An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available'."

More than eighty years ago, in *Pidgeon v. Great Yarmouth Waterworks Company* [1902] 1 K.B. 310, it was said at p. 314 by Lord Alverstone, C.J.:-

"Under ordinary circumstances 'domestic purposes.' in my opinion, include the use of water for the ordinary purposes of domestic life by the inmates of the house, and it is found as a fact, in the present case, that the only persons who use the water are the inmates of the house - including the persons who board and lodge in the house. Although it is true that the appellant is carrying on the business of a boarding - house keeper, he is not using the water for the purposes of his business in any proper or just sense, or in any other sense than that the water has been supplied for the domestic use of inmates of the house."

In that case the occupier of a dwelling-house carried on the business of a boarding-house keeper therein, receiving persons to board and lodge who used the water of a company. Water was used in the house for cleansing, cooking, drinking, and sanitary purposes. It was held that, having regard to the use of the water in the house, the occupier was entitled to demand a supply of water at the rates specified in the Act for a supply for "domestic purposes."

In *South-West Suburban Water Company v. Guardians of* the *Poor of St. Marylebone* [1904] 2 K.B. 174 the defendants who were the occupiers of a school within the district supplied by the plaintiffs, demanded a supply of water for domestic purposes. It was held that the school was a dwelling-house where the defen-

dants might still be entitled to a supply of water for domestic purposes.

It was said at p. 184 by Buckley, J. :-

"I think that the true result of the cases is that the words 'domestic purposes' include user, not merely for washing, drinking, flushing closets, and the like, but extend to user for what in the *Bristol Waterworks Co. v. Uren,* 15 Q.B.D. 637 were called the amenities of the house, but that the limits of such amenities must be ascertained with due regard to what is reasonable and what is the ordinary user in our day."

I am of the opinion that the meaning of "domestic use" ("οικιακή χρήση") is use of water for the ordinary purpose of domestic life by occupants of a dwelling-house or a building, including persons who board and lodge therein. It includes, inter alia, use of water for drinking, washing, cooking, sanitary purposes, watering a garden attached or around a house, washing a car and all such other amenities of present day life. It seems to me that the heating or cooling a building by the use of circulation of water, today is domestic use.

The third category is " για εργοστάσια και βιομηχανικά οικήματα". Hotel apartments may be described as part of the tourist industry, but definitely are neither a factory nor industrial premises in the sense that this expression is used in the Bye-laws.

The use made of the water by the applicants in their hotel apartments is no other than "για οικιακή χρήση" ("domestic use").

The Respondents applied the Regulations properly and the argument that the Regulations do not provide for payment of rates for water supply to hotel apartments is absurd and the Court does not lean towards absurdities.

Regarding the contention about the lack of reasoning, suffices to say that the nature of the reasoning depends upon the nature of the decision. Having regard to the nature of the decision, I hold that no further reasoning was required.

Coming lastly to the prayer for the disconnection of the water supply, the Respondents were, by the Regulations, authorized to do so, as the applicants admittedly did not pay the bills within 15 days from the date of service on them. Rightly, under the Regulation, the water supply was disconnected without any further notice.

For the foregoing reasons, this recourse is dismissed with costs to be assessed by the Registrar.

Recourse dismissed with costs.