

[ZEKIA, P., VASSILIADES, TRIANTAFYLIDIS, MUNIR AND
JOSEPHIDES, JJ.]

IN THE MATTER OF ARTICLES 28 AND 146 OF
THE CONSTITUTION

TAKIS I. HAJI MICHAEL,

Applicant,

and

THE GREEK COMMUNAL CHAMBER, THROUGH ITS
COMMITTEES :

(a) COMMITTEE FOR THE RELIEF OF PATHONTON

(b) PANCYPRIAN COMMITTEE OF ASSESSMENT OF
DAMAGE

and

(c) COMMITTEE OF SELECTION AND ADMINISTRATION,

Respondent.

(Case No. 102/62)

1963

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Administrative Law—The Compensation to those who suffered damage during the Struggle Law, 1961 (Law of Greek Communal Chamber No. 12 of 1961 : 'Ο περί 'Αποζημιώσεως των 'Υποστάντων Ζημίας κατά τον 'Αγώνα Νόμος του 1961)—A fixed sum of two hundred thousand pounds appropriated under that Law for the purpose to be distributed in accordance with the procedure and criteria laid down by the said Law No. 12/61—Among persons belonging to the Greek Community who suffered actual damage connected with the liberation struggle during the period April 1, 1955 to March 9, 1959—Recourse under Article 146 of the Constitution against a decision of the appropriate Authority under the said Law, allowing to applicant compensation thereunder alleged to be inadequate—Procedure and criteria laid down by the said Law No. 12/61 must be complied with—Applicant entitled to have his claim for compensation dealt with according to Law and on a proper exercise of the relevant discretion—Decision complained of declared null and void for non compliance with the aforesaid procedure and criteria prescribed by that Law (supra)—Sections 4, 5 (1) and (2), 6, 7 and 8 of Law No. 12/61 (supra)—It would seem that the said decision offends also against the principle of equality entrenched in Article 28 of the Constitution.

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Applicant, by his instant recourse, under Article 146 of the Constitution, complains that the respondent dealing with his application for compensation under the provisions of Law 12 of 1961, of the Greek Communal Chamber, (Περί Ἀποζημιώσεως τῶν Ὑποστάντων Ζημίας κατὰ τὸν Ἀγῶνα Νόμον τοῦ 1961), acted contrary to sections 5 and/or 6 of the said Law, (analysis whereof is to be found in the judgment of the court) and contrary to Article 28 of the Constitution, by deciding to allow to him only £200 compensation for alleged damage of over £3,000 to his property in Famagusta ; and he seeks a declaration that the decision in question is " null and void and of no effect whatsoever ".

The factual aspect of the case is as follows :

The applicant is a member of the Greek Community and a co-owner to the extent of the one third of the immovable property at Famagusta which is involved in this recourse.

In July, 1958, such immovable property consisted of a ground floor of shops with two flats built on top, by way of first floor, one of such flats being used as a residence and the other flat as the premises of " Anorthosis " Club, an unincorporated members' club.

As a result of certain explosives having been discovered in the premises of the said Club, the security forces blew up its said premises which were completely destroyed with the resulting demolition of the shops underneath and with damage being caused to the adjoining residence. In view of the fact that it was deemed by the then Government that the shops were not involved in the matter of the explosives, a compensation was paid, in respect of the destruction of such shops, amounting to £7,045 to the owners thereof ; out of this sum an amount of £259 was paid as damage caused to the residence. Eventually, such residence had to be demolished also by the owners.

The value of the upstairs premises, built on top of the shops, and including both the premises of the Club and the residence, was in the region of £10,000.

On the 16th December 1960, applicant together with his co-owners, applied to respondent for compensation in respect of damage caused to the immovable property in question due to the action of the security forces, in blowing up the

premises of "Anorthosis" Club, and stated that the compensation claimed was £10,000, in addition to the amount already received, as above, from the Government in respect of the shops.

On the 26th January, 1962, respondent addressed to applicant a letter stating that a cheque attached to such letter was the only compensation which respondent could, under the law, pay to applicant. Such cheque was for the amount of £200.

Applicant protested in writing on the 15th February, 1962, pointing out that the "Anorthosis" club, as such had received as compensation an amount of £2,000 (*Editor's Note* : out of a loss assessed by respondent at £2,180 consisting only of damage to movables), and that, therefore, granting him only £200 as compensation was not a proper decision ; he sought a further review of his case.

Respondent replied on the 17th February, 1962, stating that it was not possible for applicant to be granted anything more in view of the limited means at the disposal of the Committee for Relief and of the nature of the provisions of the relevant legislation.

The case turns on the issue whether the decision of the respondent on applicant's claim for compensation under the relevant law, was duly taken according to such law and/or to Article 28.1 of the Constitution which establishes the principle of equality, *inter alia* before the law and the administration.

Held, (1) the applicant in this case, was undoubtedly entitled to submit a claim. He was a citizen of the Republic belonging to the Greek Community which allocated part of its public funds for the purposes of the Law in question. His immovable property was damaged to the extent of over £3,000 in circumstances directly connected with the liberation struggle. He was entitled to have his claim for compensation, dealt with according to law, and on a proper exercise of the relevant discretion.

Petrides and the Greek Communal Chamber, 5 R.S.C.C. 48, at p. 53, *applied* ;

(2) Applicant's claim was in fact investigated and presumably assessed under section 4 of the Law (*supra*). But it was never classified according to section 5 (1) ; nor was it covered to the appropriate percentage according to section 5 (2). Dealing with an individual case, by re-

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ference to notional categories which the appropriate Committee had in mind but never expressly laid down—as counsel for respondent appeared to suggest—is not, in our opinion, a sufficient or proper application of the provisions of section 5 (*supra*). Such provisions had to be adhered to faithfully so that the exercise of relevant discretion of respondent—being of a very wide nature—can be properly controlled under section 8 of the said Law (*viz.* by the superior organ of the Communal Chamber mentioned in section 8), and, if need, be also judicially controlled.

(3) The decision taken by the Committee and approved by the appropriate organ of the Greek Communal Chamber in connection with applicant's claim, communicated to him by the letter of the respondents dated the 26th January, 1962, was not taken according to the law governing the matter. And must, therefore, be declared as null and void and of no effect whatsoever.

(4) Having reached this conclusion on the statutory provisions applicable to this recourse, we find it unnecessary to deal with the aspect connected with Article 28 of the Constitution, notwithstanding the merits which the claim may appear to have on that aspect in view of the unwarranted, on any consideration, very striking differentiation between the three claims for compensation arising out of the same damage-causing event *i.e.* the blowing up of the premises of "Anorthosis" Club.

Decision complained of declared null and void.

Cases referred to :

Petrides and The Greek Communal Chamber, 5 R.S.C.C. 48, at p. 53, *applied*.

Recourse.

Recourse against the refusal of the respondent to allow the applicant more than two hundred pounds as compensation or otherwise under Law 12/61 of the Greek Communal Chamber.

Fr. Markides, for the applicant.

L. Demetriades, for the respondent.

Cur. adv. vult.

ZEKIA, P.: The judgment of the court will be delivered by Mr. Justice Vassiliades.

VASSILIADES, J.: This is a recourse under Article 146 of the Constitution which gives the Supreme Constitutional Court exclusive jurisdiction to "adjudicate" on complaints that a decision (act, or omission) of "any organ, authority or person" exercising "any" executive or administrative authority is contrary to the provisions of the Constitution, or the provisions of any law. This jurisdiction is now being exercised by the Supreme Court, under the Administration of Justice (Miscellaneous Provisions) Law, 1964 (No. 33 of 1964).

The applicant herein, exercising his constitutional right to a recourse under the said Article 146, has duly brought before us for adjudication, his complaint that the appropriate body of or under the Greek Communal Chamber (the respondents herein) dealing with his application for compensation under the provisions of Law 12 of 1961, of the Greek Communal Chamber, (Περί Ἀποζημιώσεως τῶν Ὑποστάντων Ζημίας κατὰ τὸν Ἀγῶνα Νόμον τοῦ 1961) acted "contrary to sections 5 and/or 6" of the said Law, and "contrary to Article 28 of the Constitution", by deciding to allow to the applicant only £200 compensation for alleged damage of over £3,000 to his property in Famagusta. He now seeks a declaration that the decision in question is "null and void and of no effect whatsoever".

It is not in dispute that the respondents are a public authority who have taken the decision complained of, in the exercise of powers vested in them under the Law in question. The recourse is opposed on the ground that, "the act and/or decision of the respondents" was "in full accord with the spirit and letter of Law 12/61, and in particular with sections (5), (6) and (7) thereof, as well as with Article 28 of the Constitution". There was an alternative ground in respondents' opposition, that the "recourse is out of time;" but this ground was, rightly in our opinion, abandoned during the proceedings, and does not call for a decision.

In the statement of the case, drawn up after Presentation, pursuant to rule 9 (3) of the Supreme Constitutional Court Rules, which is part of the records the learned Justice who took the proceedings, gave a complete picture of the factual aspect of the case, upon which the matter was argued before us in the final hearing. So that it becomes now superfluous to repeat here the relevant facts.

The case for the applicant, which is also fully stated in the statement on record (*supra*) is that this "is a case of unequal treatment which has occurred in scandalous dis-

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regard of Article 28 of the Constitution”, in that the applicant, according to the figures available was allowed about 6% of the loss sustained (£200 out of the 1/3 of £10,000) while another claimant under the same Law, for loss arising out of the same damage-causing-factor (« Ζημιογόνου γεγονότος »), a big and apparently influential club, “The Anorthosis” of Famagusta, was compensated at the rate of about 90% of the assessed damage to its furniture and other movable effects (£2,000 out of loss assessed at £2,180); and a third claimant, the catering contractor of the said club, was compensated at the rate of 80% of his loss (or over 50% of the balance of his loss; £120 out of £400 loss, against which he had already received £200 compensation from other sources). The decision of the respondents to award him no more than £200 in the circumstances, applicant contends, violates his right to be compensated with the appropriate amount, under the law in question.

The case for the respondents is that, as the applicant was away from the Island at the time of the liberation struggle and had taken no part in it, he was not entitled to compensation; or at any rate, he was not entitled to more than £200 considering the limited amount appropriated for the purpose (a total of £200,000) which the spirit and object of the law required them (the respondents) to use primarily in cases where damage was suffered by persons who had participated in the liberation struggle. It was their responsibility to exercise discretion upon the criteria set by the law, and make differentiations between the various claimants, the respondents contend, which this court should not disturb.

So that the case turns on the issue whether the decision of the respondents on applicant's claim for compensation under the law in question, was duly taken according to law.

‘Ο περί Ἀποζημιώσεως τῶν Ὑποστάντων Ζημίας κατὰ τὸν Ἀγῶνα Νόμος, Ἀρ. 12 τοῦ 1961, was enacted by the Greek Communal Chamber and was duly published in the Official *Gazette* of the Republic, on the 11th August, 1961. (No. 80—Supplement No. 1). Its object, as it appears from the text of the statute, was to compensate persons belonging to the Greek Community who suffered actual damage connected with the liberation struggle, during the period between 1.4.1955 and 9.3.1959 (section 2). The whole enactment consists of nine short sections, sufficiently clear in their terms. A total amount of £200,000 of public funds was appropriated for the purpose, and was placed in the hands of a Statutory Committee for distribution «βάσει τοῦ παρόντος νόμου» (on the basis of the present Law). (Section 3).

The Committee's first task was to set up a Damage Assessment Body of three persons to investigate into the claims, and assess the damage suffered by each claimant. (Section 4).

The Committee was then required by sec. 5 (1) to classify the assessed losses (τὰς ἐκτιμημένας ζημίας) into different categories according to criteria set in the section ; and after such classification of the investigated and assessed losses (sect. 5 (2)), to compensate according to a percentage fixed by the Committee, «ὅποιας κατηγορίας ἤθελε θεωρήσει εὐλογον» (such classes of damage as the Committee would think reasonable) ; within, of course, the limits of the funds in their hands. All decisions, and presumably all activities, of the Statutory Committee in question, would be subject to the control and approval of the appropriate organ of the Greek Communal Chamber—(section 8).

The material section containing the statutory criteria upon which losses were to be classified, is sect. 5 which reads as follows :

«5.—(1) Ἡ Ἐπιτροπὴ ταξινομεῖ τὰς ἐκτιμημένας ζημίας εἰς κατηγορίας μὲ κριτήριον τὴν σχέσιν τοῦ ζημιογόνου γεγονότος ἢ καὶ τοῦ ζημιωθέντος προσώπου πρὸς τὴν ἐπιδιώξιν τῆς προαγωγῆς τῶν σκοπῶν τοῦ Ἀγῶνος, λαμβανομένης ὑπ' ὄψει καὶ τῆς οἰκονομικῆς καταστάσεως τοῦ ζημιωθέντος.

(2) Ἡ Ἐπιτροπὴ ἀφοῦ ταξινομήσῃ τὰς ζημίας κατὰ τὴν παράγραφον (1) τοῦ παρόντος ἄρθρου δύναται νὰ καλύψῃ κατὰ ποσοστὸν ὀριζόμενον ὑπ' αὐτῆς ὅποιας κατηγορίας ἤθελε θεωρήσει εὐλογον.»

The section speaks clearly, in our opinion, as to the manner in which the Committee described in the definition—section 2, were required to act, in dealing with the matters entrusted to them under the law. After investigating the claims in their hands, and having the damage in each case assessed, through the Damage Assessment Body (sect. 4), they were to classify the claims so ascertained, into classes (κατηγορίας) according to the criteria in sect. 5 (1) ; and after such classification, they were to fix the percentage upon which they would find the compensation payable in respect of claims falling in each class which they thought reasonable to compensate ; and they were furthermore to take into consideration the financial condition of the claimant in each case. The claimant's connection with the liberation struggle, where such was the case, would be one of the criteria in the classification of his claims.

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The applicant in this case, was undoubtedly entitled to submit a claim. He was a citizen of the Republic belonging to the Greek Community which allocated part of its public funds for the purposes of the Law in question. His immovable property was damaged to the extent of over £3,000 in circumstances directly connected with the liberation struggle. He was entitled to have his claim for compensation, dealt with according to law, and on a proper exercise of the relevant discretion (vide *Petrides v. The Greek Communal Chamber*, 5, R.S.C.C., p. 48 at p. 53).

Applicant's claim was in fact investigated and presumably assessed under section 4. But it was never classified according to section 5 (1); nor was it covered to the appropriate percentage according to sect. 5 (2). Apparently because no such classification of claims was made by the responsible statutory body; and no percentage fixed. Dealing with an individual case, by reference to notional categories which the Committee had in mind but never expressly laid down—as counsel for respondent appeared to suggest—is not, in our opinion, a sufficient or proper application of the provisions of section 5. Such provisions had to be adhered to faithfully so that the exercise of relevant discretion of respondent—being of a very wide nature—can be properly controlled under section 8 of the Law and, if need, be also judicially controlled.

It follows that the decision taken by the Committee and approved by the appropriate organ of the Greek Communal Chamber in connection with his claim, communicated to the applicant by the letter of the respondents dated the 26th January, 1962, was not taken according to the law governing the matter. And must, therefore, be declared as null and void and of no effect whatsoever.

Having reached this conclusion on the statutory provisions applicable to this recourse, we find it unnecessary to deal with the aspect connected with Article 28 of the Constitution notwithstanding the merits which the claim may appear to have on that aspect in view of the unwarranted, on any consideration, very striking differentiation between the three claims for compensation arising out of the same damage-causing event *i.e.* the blowing up of the premises of Anorthosis Club.

There will be a declaration in the terms of the motion in the recourse; with costs. Respondent to pay £60 to Applicant towards his costs.

*Decision complained of
declared null and void.
Order for costs as aforesaid.*