

BOGHOZ KASPARIAN,

Appellant-Plaintiff,

v.

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Respondent-Defendant.

(Civil Appeal No. 5146).

Public Law—Domain of public law—Claim for a declaratory judgment relating to the refusal to correct date of birth—This is a matter concerning an administrative act in the domain of public law—And, therefore, not within the competence of a District Court but of the Supreme Court on a recourse under Article 146 of the Constitution—Article 146.1 thereof.

Birth certificate—Refusal to correct date of birth—A matter in the domain of public law—See further supra.

Administrative acts or decisions—Which alone can be challenged by a recourse under Article 146 of the Constitution—Article 146.1 thereof—Act or decision in the domain of public law—See supra.

Jurisdiction—District Court—Matter in the domain of public law—See supra.

This is an appeal against the decision of the District Court of Nicosia, whereby it was held that the said Court had no jurisdiction to entertain an action by which the appellant—plaintiff in the action—was seeking a declaratory judgment to the effect that he was born in 1903, and not in 1911 as stated in the official records of the Government and, also, an order directing the correction accordingly of the said records.

The Supreme Court, dismissing this appeal by the plaintiff, upheld the judgment appealed from, holding that the matter is in the domain of public law and that, consequently, it is within the exclusive jurisdiction of the Supreme Court on a recourse under Article 146 of the Constitution.

The facts sufficiently appear in the judgment of the Court.

1973
April 19
—
BOGBOZ
KASPARIAN
v.
THE
ATTORNEY—
GENERAL
OF THE
REPUBLIC

Appeal.

Appeal by plaintiff against the decision of the District Court of Nicosia (Anastassiou, Ag.D.J.) dated the 12th January, 1973, (Action No. 336/72) whereby it was held, that the said Court had no jurisdiction to entertain an action by means of which the plaintiff was seeking a declaratory judgment to the effect that he was born in 1903 and not in 1911 as stated in the official records of the Government.

M. Christofides, for the appellant.

S. Nicolaidis, Counsel of the Republic, for the respondent.

The judgment of the Court was delivered by :—

TRIANTAFYLIDIS, P. : This is an appeal against the decision of the District Court of Nicosia whereby it was held, in dealing with a preliminary objection as to jurisdiction, that the said Court had no jurisdiction to entertain an action by means of which the appellant—plaintiff in the action—was seeking a declaratory judgment to the effect that he was born in 1903, and not in 1911 as stated in the official records of the Government and in his identity card (No. 235534) ; there was sought, further, an order directing the correction accordingly of the said records.

From the material before us it appears that the appellant had requested the appropriate authority to correct the year of his birth and that his request was rejected ; the appellant was asked to produce a judgment declaring what was the correct year of his birth.

No recourse was filed, under Article 146 of the Constitution, against the above refusal ; instead, the said action was filed and it was dismissed on the ground, *inter alia*, that the Court possessed no competence, as this was a matter concerning an administrative act in the domain of public law and that the jurisdiction in this respect was vested, under Article 146, in the Supreme Court.

Article 146.1 of our Constitution provides that :

“1. The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority

is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person”.

As it appears from “ Studies in the law of Administrative Disputes ” (“ Μελέται επί τοῦ Δικαίου τῶν Διοικητικῶν Διαφορῶν ”) 4th ed., p. 209, by Papahadjis, in a dispute such as the one in the present case the remedy is a recourse before the Council of State (Συμβούλιον τῆς Ἐπικρατείας), the relevant competence of which corresponds to the jurisdiction of our Supreme Court under Article 146.1 ; in Greece, however, since 1931 disputes of this nature are not taken before the Council of State because special legislation has been enacted placing such disputes within a special competence of the Civil Courts.

No such legislation, compatible with Article 146.1, exists in Cyprus ; therefore, we are in full agreement with the learned trial judge who has ruled that the District Court did not possess jurisdiction in the matter in question.

As a result this appeal fails and is dismissed with costs against the appellant.

Appeal dismissed with costs.

1973
April 19

—
BOGHOZ
KASPARIAN,
v.
THE
ATTORNEY—
GENERAL
OF THE
REPUBLIC