

1983 December 17

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.

GEORGHIOS A. VARDA,

*Applicant.*

v.

THE MINISTER OF INTERIOR, THROUGH  
THE ATTORNEY-GENERAL OF THE REPUBLIC,

*Respondent.*

(Case No. 343/82).

*Administrative Law—Administrative acts or decisions—Executory acts—Confirmatory acts—Time within which to file recourse—Article 146.3 of the Constitution.*

In 1975 the applicant was allotted for purposes of cultivation an abandoned Turkish Cypriot property at Mamonia village, consisting of two vineyards of an extent of 15 and 10 donums, respectively. In February 1982 a Committee, which was set up for the purpose, decided to take from applicant this allotment and give it to two other displaced families as he was not cultivating it himself but he was subletting it persistently to others. Applicant was informed of this decision by letter dated the 26th February 1982. There followed protests by applicant against this decision in response to which respondent informed him by letter dated 31st March, 1982 that the lot was withdrawn because he was subletting same and another person was exploiting it in contravention of the criteria laid down for the allotment of Turkish Cypriot land. It was, however, decided to pay to him the expenses of cultivation which he had incurred and which amounted to C£300. There followed other protests by applicant and at a meeting of the Sub-Committee which took place on the 23rd June 1982 the request of the applicant for allotment of vineyards of an extent of 15 donums was examined and it was decided to insist on the original decision because applicant did not satisfy the criteria. Applicant was informed

of this decision by letter dated the 9th July 1982 which he received on the 15th July, 1982. As against this last decision applicant filed the above recourse on the 23rd August 1982.

5        *Held*, that the first executory administrative decision which could be the subject of a recourse under Article 146 of the Constitution, was the one communicated to the applicant by the letter of the respondent dated 26th February 1982; that a recourse as the present one filed on the 23rd August 1982, is out of time as Article 146.3 of the Constitution prescribes a 10        a 75 days time limit within which such a recourse had to be filed; that as, however, there appears to have been at the request of the applicant a reconsideration of the matter and a new decision was taken by which the respondent had decided to pay to the applicant the costs incurred by him for the cultivation of 15        the property in question, amounting to £300 the time limit would be considered as commencing to run from the date such decision was communicated to the applicant by their letter of the 31st March 1982 but again the recourse is out of time; that no doubt the decision communicated to the applicant by the letter 20        of the 9th July 1982, is a confirmatory decision of the first one or in any event is a decision that is not challenged by the present recourse; that even if it were to be considered that this decision is an original executory one hereby challenged, the recourse would still be dismissed as the applicant has been found not to 25        satisfy, through his conduct of subletting, the criteria set for the allotment of such properties, namely that he was not residing in the village where they lie and that he was subletting them; that nothing has been established to render the sub judice decision as being contrary to law or taken under a misconception of 30        fact or law, or in abuse or excess of power; accordingly the recourse must fail.

*Application dismissed.*

#### **Recourse.**

35        Recourse against the decision of the respondent whereby the allotment to applicant, for the purposes of cultivation, of abandoned Turkish Cypriot property at Mamonia village was withdrawn.

*P. Philippou*, for the applicant.

*Chr. Ioannides*, for the respondent.

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*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. The applicant, aged 30 and single, is a displaced person from Myrtou and resides with the family of his father in a Turkish Cypriot house at Mouttalos quarter, Paphos. He works as a regular labourer with the Grain Commission earning about C£170.- per month. 5

In 1975 he was allotted for the purposes of cultivation an abandoned Turkish Cypriot property at Mamonia village, consisting of two vineyards of an extent of 15 and 10 donums respectively. This allotment was renewed yearly until a Sub-Committee set up by the respondent and acting obviously on his behalf, at their meeting of the 10th February, 1982, decided to take from him this allotment and give it to two other displaced families as he was not cultivating it himself but he was subletting it persistently to others. His claim that he needed it to supplement his income was found not to stand as he himself had admitted to the Assistant District Officer of Paphos that his only income from the said allotment was the rent he collected through sub-letting it and which amounted to C£100.- per year. The applicant was informed of this decision of the respondents by letter dated the 26th February, 1982, (Appendix 'B' attached to the written address filed on behalf of the applicant). 10  
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There followed protests by him against this decision and requests for reconsideration of same addressed both to the District Officer Paphos and to the respondent. In response to a telegraphic protest, dated 15th March, 1982, the respondent wrote to him on the 31st March, 1982 (blue 23 in exhibit 'A' or appendix 'A' attached to the address filed on behalf of the applicant) and informed him that, in response to his aforesaid telegram by which he was protesting for the withdrawal of the allotment of the property at Mamonia and by which he was asking for a re-examination of the subject on the ground, as he alleged, that he was in need of the income from the said lot, that the Committee for Review and Redistribution of Turkish Cypriot Properties, decided to withdraw the lot because he was subletting same and another person was exploiting it in contravention of the criteria laid down for the allotment of Turkish Cypriot land. Furthermore that his allegation that he needed the income was dismissed but that the said Committee had decided to pay to him the expenses of cultivation which he had incurred and which amounted to C£300. 25  
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More protests and requests for a reconsideration of the sub  
judice decision of the respondent followed which culminated  
in a letter of his advocate dated the 22nd April, 1982, and to  
which the respondent replied by letter dated the 9th July,  
5 1982,—and to the contents of which reference will shortly be  
made—and received by the applicant on or about the 15th July,  
1982. Although in the written address of counsel reference  
is made to this letter and copy of which was thought to have  
been attached to the application as appendix 'A', such letter  
10 was never appended thereto but instead the letter of the  
respondent of 31st March, 1982, was filed and so marked.

In view of this discrepancy which I noticed when preparing  
my judgment, I thought it necessary to reopen the case and call  
for the production of the whole relevant file of the administration  
15 and also for the production of a copy of this letter as I thought  
they were essential or might be helpful to the determination of  
this case.

Indeed the file has been produced as exhibit 'A'. A perusal  
of the file has disclosed, inter alia, that the amount of C£300.—  
20 which was to be paid to the applicant for the expenses of culti-  
vation of the said property incurred by him before the lot was  
withdrawn, was to be paid by the families to which the two  
vineyards were allotted as follows:—

C£180.— by Andreas Lyssandrou who accepted the 15  
25 donums of vineyard and who paid same for the  
benefit of the applicant, and

C£120.— by Argyroulla Michael who did not, however,  
accept the lot.

The letter of the 22nd April 1982, (exhibit A, blue 45) was  
30 written by the applicant's counsel and addressed to the District  
Officer Paphos in his capacity as administrator of Turkish  
Cypriot properties and it was to the effect that he had  
instructions to file a recourse to the Supreme Constitutional  
Court against their decision to withdraw the lot which had been  
35 assigned to his client and that in order to avoid trouble  
and expenses and possibly the risk of a judgment annulling  
their decision and the whole system of requisition and admi-  
nistration of Turkish properties, the said decision should be  
revoked in order to lift the injustice.

A reply to the aforesaid letter is contained in a letter dated the 9th July 1982, (exhibit A—blue 32) in which it is stated that the subcommittee at its meeting of the 23rd June 1982, examined the request of the applicant for allotment of vineyards of an extent of 15 donums from those let to a certain Christos Michael and decided to insist on its original decision for allotment of part of the lot which was withdrawn, at Mamonia, of an extent of 10 donums, because he does not satisfy the criteria. 5

It appears that at various meetings of the counsel of the applicant with officials at Paphos, some kind of a compromise had been reached which the applicant however rejected. 10

Also more and more protests continued to be made even to this time but I shall not deal with them as they add or subtract nothing from the issues before me. Suffice it to say that the recourse as per the endorsement for relief set out in the application is against the act or decision of the respondent to withdraw the allotment as being null and void and of no effect as in form and substance unlawful. 15

The first point raised on behalf of the respondent is that this recourse is out of time and therefore it ought to be dismissed. 20

As it appears from all the available material, the first executory administrative decision which could be the subject of a recourse under Article 146 of the Constitution, was the one communicated to the applicant by the letter of the respondent dated 26th February 1982. (Appendix B). 25

I need hardly say that a recourse as the present one filed on the 23rd August 1982, is out of time as Article 146.3 of the Constitution prescribes a 75 days time limit within which such a recourse had to be filed. As, however, there appears to have been at the request of the applicant a reconsideration of the matter and a new decision was taken by which the respondent had decided to pay to the applicant the costs incurred by him for the cultivation of the property in question, amounting to £300, I would consider the time limit as commencing to run from the date such decision was communicated to the applicant by their letter of the 31st March 1982, (Appendix A), which 30 35

must have been received by the applicant before the 2nd April 1982, judging from his cable of protest of that date addressed to the Central Committee for the Administration of Turkish Cypriot Properties.

- 5     No doubt the decision communicated to the applicant by the letter of the 9th July 1982, (exhibit A---blue 32) is a confirmatory decision of the first one or in any event is a decision that is not challenged by the present recourse, but even if I were to consider that this decision is an original executory one hereby challenged,
- 10    I would still dismiss the recourse inasmuch as the applicant has been found not to satisfy, through his conduct of subletting, the criteria set for the allotment of such properties, namely that he was not residing in the village where they lie and that he was subletting them.
- 15    As against this aspect of the case nothing has been established to render the sub judice decision as being contrary to law or taken under a misconception of fact or law, or in abuse or excess of power.

20    For all the above reasons this recourse is dismissed, with no order as to costs.

*Recourse dismissed with  
no order as to costs.*