

1985 May 17

[L. Loizou, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

PETROS K. PITTAS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTRY OF INTERIOR AND/OR  
THE DISTRICT ADMINISTRATION AND/OR  
THE DISTRICT OFFICER OF NICOSIA,

*Respondents.*

(Case No. 161/77).

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*Recovery of Compensation for Injury to Property Law, 1962  
(Law 37/62)—Notice about the damage under section 4  
of the Law—Death of animal caused by persons unknown  
—Owner notified both the Chairman of the Village Com- 5  
mission and the Police immediately after he received the  
report of the Veterinary Services regarding the cause of  
death—Substantial compliance, in the circumstances of  
the case, with the requirements of the above section 4—  
Cases where damage is caused to trees, plants and crops 10  
distinguished—Sections 5, 6, 7, 8 of the Law not applic-  
able.*

The applicant resides at Eylendja and was, at the ma-  
terial time, the owner of a mare, eight months pregnant.  
On the 5th November, 1976, the applicant found his mare  
dead in the stable in the yard of his house and applied 15  
to the Department of Veterinary Services in order to as-  
certain the cause of the mare's death. A laboratory exami-  
nation was carried out by the above department and in  
its report dated the 8th December, 1976 it was stated  
that the cause of death was "parathion poisoning". Ap- 20  
plicant received the report on the 10th December, 1976.  
On the same date, i.e. on the 10th December, 1976, he

handed an undated letter to the Chairman of the village Commission of Eylendja reporting the death of his mare attached to which was copy of the report of the Central Veterinary Laboratory as to the cause of death, for the purpose of setting in motion the procedure for the recovery of compensation in accordance with the provisions of The Recovery of Compensation for Injury to Property Law, 1962 (Law 37/62); and on the following day he reported the matter to the police.

10 The District Officer of Nicosia turned down his application for payment of compensation under the above Law, because he failed to notify, as soon as possible, about the event, the Chairman of the Village Commission and the Police, as provided by s. 4\* of the above Law.

15 *Upon a recourse by the applicant:*

*Held*, that since the damage to applicant's mare was caused by persons unknown; and that since he could not, on the 5th November, 1976, and before the 10th December, 1976, claim compensation under the Law since the cause of death of his mare was not known to him and he could not, therefore, have known whether such death was the result of the act of an unknown person or persons, or that it was not due to natural causes; and that since he notified both the Village Commission and the police immediately after he received the report of the Veterinary Services he had, in the circumstances of the case, substantially complied with the requirements of section 4; and that, accordingly, the sub judice decision must be annulled.

30 *Held, further*, that sections 5, 6, 7, 8 of Law 37/62 do not affect the position because a distinction must be made between the present case and of cases where the damage is caused to trees, plants, crops etc.

*Sub judice decision annulled.*

35 **Recourse.**

Recourse against the refusal of the respondents to exa-

\* Section 4 is quoted at p. 1124 post.

mine and/or pursue any further applicant's application for the payment to him of compensation in respect of his mare.

*S. Mamantopoulos* for *E. Efstathiou*, for the applicant.

*R. Gavrielides*, Senior Counsel of the Republic, for the respondents.

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*Cur. adv. vult.*

L. LOIZOU J. read the following judgment. The applicant prays for a declaration that the decision of the respondents communicated to him on the 21st March, 1977, by which he was informed that his application for payment of compensation could not be examined and/or pursued any further, is void, unlawful and of no legal effect.

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The applicant resides at Eylendja and was, at the material time, the owner of a mare, eight months pregnant. On the 5th November, 1976, he found his mare dead in the stable in the yard of his house and applied to the Department of Veterinary Services in order to ascertain the cause of the mare's death. A laboratory examination was carried out by the above department and in its report dated the 8th December, 1976 (exhibit 1) it is stated that the cause of death was "parathion poisoning". Applicant received the report on the 10th December, 1976.

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On the same date i.e. on the 10th December 1976, the applicant handed an undated letter to the Chairman of the Village Commission of Eylendja reporting the death of his mare attached to which was copy of the report of the Central Veterinary Laboratory as to the cause of death, for the purpose of setting in motion the procedure for the recovery of compensation in accordance with the provisions of The Recovery of Compensation for Injury to Property Law, 1962. On the following day the applicant reported the matter to the police. He was informed by the village Commission, by letter dated 14th December, 1976, (exhibit 4) that the matter was under examination in co-operation with the District Officer of Nicosia.

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Having received no other reply the applicant addressed, through his advocate, on the 17th March, 1977, a reminder to the District Officer (exhibit 2) who, by his letter dated the 21st March, 1977 (exhibit 3) informed the applicant as follows:

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"I wish to refer to your undated application trans-

mitted to us by the Chairman of the village Commission of Eylendja, by which you apply for payment of compensation for a mare of yours which, as you allege, was poisoned by unknown persons and to inform you that your said application cannot be pursued any further, because you failed to notify, as soon as possible, about the event, the Chairman of the village Commission of your village and the police, as provided by s. 4 of The Recovery of Compensation for Injury to Property Law, No. 37/62; the report made by you both to the Chairman of the village Commission of Eylendja as well as to the police was made after the lapse of more than one month from the date of the death of your said animal.”

15 The applicant filed the present recourse against the above decision.

Counsel for the applicant argued that the respondents have misinterpreted section 4 of Law 57/62 and that the obligation to give information as soon as possible arises after the owner becomes aware of the fact that the damage was caused by unknown persons. The applicant did not know that his mare was poisoned until the 10th December, 1976, and his obligation under section 4 arose only as from that date.

25 Counsel for the respondents, on the other hand, argued that the procedure laid down by the Law was not followed by the applicant and as a result the provisions of the Law could not be put into motion and, also, that section 4 does not make knowledge of the cause of death a necessary prerequisite but that, in any case, the applicant should, at least, have suspected that the animal had died from an unnatural cause and complied with the provisions of section 4.

35 Law 57 of 1962 is a Law imposing on the inhabitants of any village, collectively, the obligation to pay compensation for any damage or destruction caused to property within the village, by persons unknown or animals undetected in accordance with the procedure laid down therein.

40 The relevant part of section 4 of the Law reads as follows:

“When damage or destruction is caused to any property by persons unknown or by undetected animals ..... and the complainant desires to obtain compensation under this Law, he or some other person on his behalf, shall, as soon as possible, give notice in writing about the damage or destruction to the Chairman or any two members of the Commission of the village within the boundaries of which the property to which the damage or destruction has been caused is situated, and to the police or gendarmerie at the nearest police or gendarmerie station....”.

It is not in dispute that the applicant's mare died from poisoning. Although counsel for the respondents suggested that it was possible that the poison might have been administered to the animal by the applicant himself, such statement was a mere supposition not supported by the slightest indication. Besides, the respondents did not dispute, in their sub judice decision, the fact that the damage was caused by persons unknown. The only ground they put forward for not pursuing the application of the applicant is that he did not report the matter as soon as possible, as provided in section 4 of the Law. Therefore, what has to be decided, is whether the applicant acted in accordance with the prescribed procedure or whether his delay was such as to disentitle him from claiming compensation under the provisions of the Law bearing always in mind that each case has to be considered and decided in the light of its own particular facts and circumstances.

In the present case the applicant could not, on the 5th November, 1976, and before the 10th December, 1977, claim compensation under the Law since the cause of death of his mare was not known to him and he could not, therefore, have known whether such death was the result of the act of an unknown person or persons, or that it was not due to natural causes. Nor is this like the case of damage to trees, plants or crops or other similar property where as soon as the owner sees the damage he should know that it was caused by some person or animal unknown. In the case of destruction of an animal, as in the present case, unless it is found shot or slaughtered, the owner cannot be in a position to know whether it died

from natural causes or as a result of a malicious act by somebody.

5 There is no dispute that the applicant notified both the village Commission and the police immediately after he received the report of the Veterinary Services. It is, therefore, my view that the applicant has, in the circumstances of the case, substantially complied with the requirements of section 4.

10 With regard to the argument of counsel for the respondents that the provisions of the Law and more particularly of sections 5, 6, 7 and 8 could not be complied with, because of the delay of the applicant in reporting the matter, I think that, here again, a distinction must be made  
15 between the present case and of cases where the damage is caused to trees, plants, crops etc. In the latter cases the provisions of sections 5 and 6, which provide for inspection and assessment of the damage, cannot be complied with unless a local inspection takes place and as soon as possible after the damage is caused. In the present case, however,  
20 where the fact of the death and the cause of it are not disputed, the only thing that had to be ascertained was the damage i.e. the value of the mare, for which a local inspection by the persons mentioned in section 5 was hardly necessary as such damage could have been assessed by them or any other person or persons appointed  
25 by them at some subsequent time without the necessity of seeing the corpse at the place of death. Nor would a local inspection have helped to ascertain the cause of death which, in any case, is not disputed.

30 As to sections 7 and 8 they make provision for the duties of the Chairman of the village Commission to prepare lists of the inhabitants liable to pay compensation and for objections by such inhabitants against such lists.

35 In the light of all the above I find that, in the circumstances of the case, the delay of the applicant to report the matter to the authorities concerned was not unreasonable

nor does it take his case outside the scope of the Law by rendering its provisions inoperative.

In the result this recourse succeeds and the sub judice decision is annulled.

*Sub judice decision annulled. 5*  
*No order as to costs.*