

1987 December 7

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CLEANTHIS ELIA,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE DISTRICT OFFICER PAPHOS,

2. THE MINISTER OF INTERIOR,

Respondents.

(Case No. 528/86).

Register of births — Date of birth — Correction of — Judicial control — Principles applicable.

Register of births — Date of birth — Correction of — Application for — Competency — The Registration of Births and Deaths Law 85/73 — The only competent organ to deal with such an application is the District Officer.

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Reasoning of an administrative act — Concrete factors need be referred to so as to render possible judicial control — Arguments of counsel — Cannot fill the vacuum.

Misconception of fact — Doubt raised in the mind of the Court as to whether administration acted under a misconception of fact — Ground for annulment.

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Respondent 1 rejected applicant's request, which had been supported by affidavits, a copy from a school register showing that applicant enlisted in the 1st grade of the Elementary School in question for the year 1925 — 1926 and a copy of applicant's certificate of graduation from Paphos Gymnasium referring to the academic year 1937/38, to change the date of his birth recorded in the Register of Births from 28.5.22 to 19.12.20.

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The ground for rejecting the application was that respondent was not convinced by the new material produced that the date of applicant's birth referred to in his affidavit is the correct one.

Hence this recourse:

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Held, annulling the sub judice decision:(1) The law applicable in this case is the Registration of Births and Deaths Law 1973 (Law No. 85/73) as amended.

2) The only competent organ under the said law who could examine applications of this nature is respondent 1. Respondent 2, though hierarchically superior to respondent 1, has no competency in the matter.

3) This Court will not interfere, if the sub judice decision was reasonably open to respondent 1.

4) In this case, doubts were raised in the mind of the Court to the effect that respondent 1 may have acted under a misconception of fact. Indeed, it is difficult to see how a boy three years and four months old could enrol in the 1st grade of an elementary school or how a boy of 16 years old could graduate from a Gymnasium.

5) Moreover, Respondent No. 1 failed to give any reasons for ignoring the aforesaid two certificates; in fact he gave no reasoning whatever for not believing the contents of the affidavits accompanying applicant's application. Concrete factors should be mentioned in order to render possible judicial scrutiny. Arguments of counsel cannot fill the vacuum.

Sub judice decision annulled.
No order as to costs.

Cases referred to:

Skourides v. The Republic (1967) 3 C.L.R. 518;

Sofocleous v. The Republic (1972) 3 C.L.R. 56;

Zavros v. The Republic (1969) 3 C.L.R. 310;

Metalock (Near East) Ltd. v. The Republic (1969) 3 C.L.R. 351;

Droussiotis v. The Republic (1967) 3 C.L.R. 15;

The Professionals 13 Ltd. v. The Republic (1986) 3 C.L.R. 1.

25 Recourse.

Recourse against the refusal of the respondents to correct applicant's date of birth appearing in the Register of Births.

A. Stylianidou (Miss), for G. Cacoyiannis, for the applicant.

P. Clerides, for the respondents.

Cur. adv. vult.

LORIS J. read the following judgment. The applicant impugns by means of the present recourse, the decision of Respondent No. 1, set out in a letter of the latter dated 12.6.86, communicated to counsel acting for applicant on 16.6.86, whereby applicant's request for the correction of the date of his birth appearing in the Register of Births was turned down by Respondent No. 1. 5

It is the allegation of the applicant, that the date of his birth recorded in the Register of Births, kept by respondent No. 1, as the 28.5.1922 is wrong and that same should be corrected and substituted by the correct one, notably the 19th December 1920, which is recorded in his identity card. 10

Applicant, with a view to achieving the correction aforesaid, submitted through counsel, a letter to respondent No. 1, dated 28.5.86, attaching thereto in support of his application the following documents, which are appended to the present recourse: 15

(a) Applicant's own affidavit (exh. 2)

(b) An affidavit of his elderly sister namely Cleoniki Cacoyianni (born on 29.6.1902), dated 16.5.1986 (Exh. 3).

(c) An affidavit sworn by another sister of the applicant namely Galatia Ypsilanti dated 19.5.86 (Exh. 4). 20

(d) A photocopy of page 40 of the Pupils' Register of Elementary School of Polis Chrysochous for the academic year 1925-1926 (Ex. 5) wherein it is shown that the applicant enlisted in the 1st grade of the Elementary School in question on 1.10.1925 under No. 403. 25

(e) A copy of applicant's certificate of graduation of Paphos Gymnasium (Ex. 6) wherein the academic year of graduation is referred to as the year 1937/38; although applicant's date of birth does not appear in this certificate applicant is referred to as being 18 years of age. 30

On 12.6.86 Respondent No. 1 addressed to counsel acting for applicant a letter of even date, (Ex. 7) turning down the said application on the ground that «he was not convinced by the new material produced that the date of applicant's birth referred to in his affidavit is the correct one.» 35

Applicant addressed through his advocates letter dated 1.7.86 (Ex. 8) to Respondent No. 2 praying for re-examination and reconsideration of Respondent's No. 1 decision.

Respondent No. 2 addressed a letter dated 16.8.86 to advocates acting for the applicant (Ex. 9) turning down applicant's request saying that «the material produced cannot be considered as convincing proof that the date of applicant's birth recorded in the Register of Births kept in the District of Paphos is wrong.»

Before proceeding to examine the merits of the present recourse I consider it pertinent at this stage to deal, as briefly as possible, with legal issues raised by both sides.

In the first place the law applicable in this case is the Registration of Births and Deaths Law 1973 (Law No. 85/73) as amended; the Registration of Births and Deaths Law 1979 (Law No. 46/79) although published in the Official Gazette of the Republic on 1.6.1979 has not come into force as yet.

The appropriate organ, according to Law 85/73 who could examine applications of this nature and effect the necessary correction, if satisfied after correct ascertainment of the relevant facts that such correction was indicated, is respondent No. 1. Respondent No. 2 although a hierarchically superior organ is not vested with competence to that effect; and there is no provision in the Law authorising a hierarchical recourse. Of course Article 29 of our Constitution gives the right to every person «to address written requests or complaints to any competent public authority», but respondent No. 2 is not the public authority vested with competence in this particular instance. As already stated the competent authority in this case was respondent No. 1 who gave his decision of 12.6.86 (Exh. 7) and such decision was communicated to counsel acting for applicant on 16.6.86. This decision is of an executory character and it is justiciable under Art. 146 of the Constitution; and the present recourse which correctly impugns the decision of Respondent 1 only, (vide the prayer) having been filed on 25.8.86 was filed in time pursuant to the provisions of Article 146.3

Coming now to the merits of this case; as stated by Triantafyllides J. (as he then was) in the case of *Skourides v The Republic* (1967) 3 C.L.R. 518 at p. 525 such cases must be approached «fully bearing in mind that the applicant had to

«satisfy by positive evidence... that the correction sought regarding his date of birth ought to have been made, and that it is not for this Court to decide about the correct date of birth of the applicant. This Court has to leave the jub-judice

decision... stand, if such decision was reasonably open to the Committee on the material before it; provided however, that such material does not contain, or has not led to, any misconception of fact.»

In the case under consideration it must be stated at the outset that strong doubt has arisen in my mind to the effect that respondent No. 1 may have indeed acted under a misconception of fact, for the following reasons: 5

(a) Exhibit 5 attached to the recourse i.e. page 40 of the Pupils' Register of Elementary School of Polis Chrysochous, states clearly that the applicant enlisted in the 1st grade of the Elementary School in question, on 1.10.1925 under No. 403. If the applicant was born on 28.5.22 as recorded in the Register of Births kept by respondent No. 1 he must have been enlisted in the 1st grade of the Elementary School when he was only 3 years and 4 months old. 10 15

Can anybody seriously maintain that a child of 3 years and 4 months old, can follow lessons of the 1st grade of the elementary school?

(b) Ex. 6, the certificate of graduation of applicant from Paphos Gymnasium refers to the applicant as being 18 years of age when graduating the said Gymnasium at the end of the academic year 1937/38 i.e. at about June 1938. If the applicant was born on 28.5.22 as recorded in the Register of Births he would have hardly completed the 16th year, on graduation from the Gymnasium of Paphos. 20 25

Furthermore respondent No. 1 failed to give any reasons for ignoring the aforesaid two certificates; in fact he gave no reasoning whatever for not believing the contents of the affidavits accompanying applicant's application. And in this connection it must be remembered that due reasoning is an essential requirement for an administrative decision. Concrete factors upon which the administration based its decision must be specifically mentioned in such a manner as to render possible its judicial scrutiny (*Sofocleous v. The Republic* (1972) 3 C.L.R. 56 at p. 60) Furthermore the reasons must be stated clearly and unambiguously; mere repetition either in a negative form or otherwise of the text of the enactment concerned, is not enough to support the decision (*Zavros v. Republic* (1969) 3 C.L.R. 310). 30 35

The respondent in Ex. 7 says simply that «he was not convinced by the new material produced». He does not add a word as to why he was led to such conclusion. If he did not believe for instance the contents of the affidavit of the elderly sister of the applicant who
5 had opportunity to know and remember the date of applicant's birth (vide in particular paragraphs one to five in Ex. 3) he should have stated expressly the reason for disbelieving her.

In the instant case there is absolute lack of any reasoning and the material in the administrative file produced, cannot provide any. It
10 is true that an effort has been made by learned counsel appearing for the respondent to provide in his written address a reasoning for the sub-judice decision. There is ample authority though, that «arguments advanced by counsel for Respondent, during the hearing of a case, cannot really fill the vacuum existing through
15 lack of due reasons dating back to the material time» (vide *METALOCK (Near East) Ltd v. Republic (1969) 3 C.L.R. 351* at p. 359 - *Droussiotis v. Republic (1967) 3 C.L.R. 15* at p. 23, *The Professionals 13 Ltd v. Republic (1986) 3 C.L.R. 1* at p. 9)

In the result the sub-judice decision has to be annulled not only
20 on account of the strong doubt created to my mind, for the reasons above stated, that respondent No. 1 may indeed have acted under a misconception of fact, but also for the additional ground of absence of due reasoning of the sub judice decision.

For all the above reasons the present recourse succeeds and the
25 sub-judice decision is hereby annulled; in the circumstances I have decided to make no order as to costs.

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