

1987 March 4

[DEMETRIADES, J ]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

D E L KIRZIS TOURIST ENTERPRISES LTD.,

*Applicants,*

v

THE IMPROVEMENT BOARD OF YERMASOYIA,

*Respondents*

*(Case No 193/84)*

*Executory act — Confirmatory act — Rejection of application for reconsideration of a condition in a building permit — Absence of new fact — Such rejection is confirmatory of the decision, whereby the condition had been imposed*

5 *Time within which to file a recourse — Constitution, Article 146 3 — Recourse directed against a confirmatory act — Filed after the expiration of the 75 days' period from communication of the previous executory act — Recourse out of time*

10 In 1983 the applicants applied for a building permit in order to effect certain alterations and/or additions to their hotel apartments situated within the area of the respondent Improvement Board. The permit was granted, but on condition, inter alia, that the applicants should install a biological system and other systems for the removal of dirty water. The permit was issued on 2 6 83. The applicant paid the relevant fees.

15 The applicants allege that later they found out that the implementation of the said condition would cost them £35,000, and would entail the closing of the apartments for a period of six months. As a result, on 4 10 83, the applicants requested the respondent to reconsider the matter. By letter dated 7 2 84 the respondent rejected applicants' said request. Hence the present recourse.

20 Held, *dismissing the recourse* (1) The applicants did not invoke any new facts in support of their request dated 4 10 83. It follows that the sub-judice decision is confirmatory of the previous decision of the 2 6.83 and, as such, it lacks executory nature.

(2) Furthermore, in the light of the above the recourse is out of time.

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*Recourse dismissed.  
Costs against applicants.*

**Recourse.**

Recourse against the decision of the respondents to insist and not remove the condition for the installation of a biological system and other installations for the removal of dirty water in building permit No. 1136 dated 2nd June, 1983.

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*A. Stylianou (Miss)*, for the applicants.

*A. Kourides*, for the respondents.

*Cur. adv. vult.*

DEMETRIADES J. read the following judgment. The applicants are the owners of hotel apartments situated within the area of the Improvement Board of Yermasoyia, who are the appropriate authority for the issue of building permits within their area.

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The apartments of the applicants were built approximately six years before the present dispute arose. As it appears from the statement of facts of both parties, as well as from the written addresses of their counsel, the following are the undisputed facts that led to the filing of the present recourse.

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In 1983 the applicants submitted to the respondents an application for a building permit in order to effect certain alterations and/or additions to their apartments. Their application was granted subject to a number of conditions, one of which was the installation of a biological system and other installations for the removal of dirty water. The relevant permit (building permit No. 1136) imposing this condition, was issued and communicated to the applicants on the 2nd June, 1983.

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It is the allegation of the applicants that although they considered this condition oppressive, since the construction intended to be carried out related only to alterations and/or additions, they did not object to it and they paid the relevant fees. However, when they studied the matter of the implementation of the said condition, they found out that compliance with it meant an extra expense of £35,000.- plus the closing of the apartments for a period of at least six months which, undoubtedly, would have

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**3 C.L.R. D.E.L. Kirzle v. Impr. Board Yermasoyia Demetriades J.**

caused them considerable loss in their net income for that period. As a result, on the 4th October, 1983, the applicants wrote a letter to the respondents, the relevant part of which reads:

5 «Λυπούμαστε να παρατηρήσουμε ότι θεωρούμε την  
επιβολή του όρου αυτού υπερβολικά άδικη και άκαιρη  
τη στιγμή που υπάρχει σχέδιο για κατασκευή στο  
σύντομο μέλλον κεντρικού αποχετευτικού συστήματος  
που καλύπτει και την περιοχή Γερμασόγειας. Είναι  
10 άδικο να υποχρεωθούμε να υποστούμε τώρα μια τόσο  
μεγάλη δαπάνη για ένα έργο που θα αχρηστευτεί σε  
δυό το πολύ τρία χρόνια.

15 Παρακαλούμε να επανεξετάσετε το όλο θέμα και μη  
επιμένετε στο παρόν στάδιον στη κατασκευή τέτοιου  
συστήματος. Εμείς δε αναλαμβάνουμε την υποχρέωση  
να κατασκευάσουμε το σύστημα βιολογικής  
επεξεργασίας των λυμάτων της τουριστικής μονάδας  
μας αν σε κάποιο στάδιο για οποιοδήποτε λόγο  
εγκαταληφθεί η κατασκευή του κεντρικού  
20 αποχετευτικού συστήματος στην περιοχή  
Γερμασόγειας.»

25 («We regret to point out that we consider the imposition of this  
condition highly unjustified and untimely since there is a  
scheme for the construction, in the near future, of a central  
sewage system which covers also the Yermasoyia area. It is  
unjustified for us to be obliged to suffer now such great  
expense for works that will, in two to maximum three years, be  
useless.

30 We pray that you reconsider the whole matter and not insist,  
at this stage, on the construction of such a system. We  
undertake the obligation to construct the biological system of  
our touristic unit if at some stage for any reason the  
construction of the central sewage system in the Yermasoyia  
area is abandoned»).

35 By their letter dated the 7th February, 1984, the respondents  
rejected the request of the applicants, thus the present recourse,  
by which the applicants pray for a declaration that the decision of  
the respondents, communicated to them by the latter's letter dated

the 7th February, 1984, to insist on and not to remove the sub  
judice condition in the building permit No. 1136, dated the 2nd  
June, 1983, is null and void and of no effect whatsoever, being  
contrary to the law and/or the Constitution and/or being in excess  
or in abuse of power.

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The grounds of law, on which the applicants base their  
recourse, are -

(a) That the decision in question is not reasoned at all.

(b) That the decision was reached without taking all relevant  
factors into consideration, and

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(c) that the decision is oppressive and in itself is in abuse of the  
powers vested in the respondents.

The respondents oppose the recourse on a number of grounds,  
two of which I find have to be decided in the first instance. They  
are —

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(a) Was the recourse filed within the period provided by Article  
146(3) of the Constitution? And

(b) Are the contents of the letter of the respondents, dated the 7th  
February, 1984, of an executory nature or was it a confirmation of  
their decision of the 2nd June, 1983, when the sub judice  
condition was communicated to them?

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Before proceeding with the grounds of law on which the present  
recourse has been based, it is pertinent to examine, at this stage,  
the preliminary objections raised by counsel for the respondents.  
It has been submitted in this respect by him that the sub judice  
decision is not of an executory nature as it simply confirms a  
previous decision in the same matter and, therefore, it cannot be  
made the subject of a recourse under Article 146 of the  
Constitution. Also, that the present recourse is out of time.  
Reference has been made, in this respect, to the Conclusions from  
the Case-law of the Council of State in Greece, 1929 — 1959,  
where the following are stated (at p. 240):

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«Πράξεις βεβαιωτικά. Απαραδέκτως προσβάλλονται  
δι' αιτήσεως ακυρώσεως, ως στερούμεναι εκτελεστού  
χαρακτήρος, αι βεβαιωτικά πράξεις, ήτοι αι πράξεις αι

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5           εχουσαι το αυτό περιεχόμενον προς προεκδοθείσαν εκτελεστήν, επιβεβαιούσαι ταύτην, ανεξαρτήτως του αν εκδίδωται αυτεπαγγέλτως ή τη αιτήσει του ενδιαφερομένου. Ούτω είναι βεβαιωτική η πράξις η συνιστώσα απλήν επανάληψιν προγενεστέρας, ή στηριζομένη επί της αυτής πραγματικής νομικής βάσεως Πράξις δηλούσα απλήν εμμονήν της Διοικήσεως εις προηγούμενην πράξιν, έστω και μη επαναλαμβάνουσα το περιεχόμενον ταύτης, αποτελεί επίσης βεβαιωτικήν 10 πράξιν, ως λ χ. η εμμονή εις προγενεστέραν άρνησιν. Ούτω εκρίθησαν βεβαιωτικάί πράξεις η άρνησις της Διοικήσεως όπως ανακαλέση προηγούμενην εκτελεστήν πράξιν, η απόρριψις απλής ιεραρχικής προσφυγής ή αιτήσεως θεραπείας.»

15           («Confirmatory acts Unacceptably they are attacked by recourse for annulment, as lacking executory character, confirmatory acts, i e acts which have the same contents with a pre-issued executory one, confirming same, 20 irrespective of whether they are issued on the motion of the administration or on the application of the interested party. Thus confirmatory is an act which consists of a mere repetition of a previous one, based on the same factual and legal basis An act stating a mere persistence of the administration to a previous act, even though it does not repeat its contents also 25 constitutes a confirmatory act, as for instance the persistence to a previous refusal Thus the refusal of the Administration to revoke a previous executory act, the dismissal of a simple hierarchical recourse or an application for relief were considered as confirmatory acts»)

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the sub judice condition was imposed and accepted.

However, between the 2nd June, 1983, and the 4th October, 1983, when the applicants sent their letter, no new facts to be considered by the respondents were put forward by them and as a result the sub judice decision could not be anything else but a confirmation of the decision for the 2nd June, 1983. 5

In the circumstances of the case, I find that the sub judice decision is not of an executory nature but it is only a confirmation of a previous decision taken by the administrative organ to which the applicants addressed their demand.

As regards now the second issue raised by counsel for the respondents, namely that the recourse was filed out of time, it is provided by Article 146(3) of the Constitution that a recourse must be made within seventy-five days of the date when the decision or act of an administrative organ came to the knowledge of the person making the recourse. In the present case, in view of my above conclusion, I am of the opinion that this recourse was filed out of time and it must be dismissed accordingly. 10 15

In the result, this recourse is dismissed with costs.

*Recourse dismissed with costs.*