

1966  
June 20, 27

—  
ANANIAS  
MAHDESIAN  
and  
THE REPUBLIC  
OF CYPRUS,  
THROUGH  
THE  
COMMISSIONER  
OF INCOME TAX

[TRIANTAFYLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

ANANIAS MAHDESIAN,

*Applicant.*

and

THE REPUBLIC OF CYPRUS, THROUGH  
THE COMMISSIONER OF INCOME TAX,

*Respondent.*

(Case No. 148/65).

*Limitation of Actions—The Limitation of Actions (Suspension) Law 1964, (Law No. 57 of 1964)—“Action”, “period of limitation”, “any provision of legislative nature”—Definition and meaning—Section 2 of the said Law—Provisions of the said Law not applicable to proceedings taken under Article 146 of the Constitution—See, also, herebelow.*

*Constitutional Law—Administrative Law—Article 146 of the Constitution—Recourse thereunder—Time within which such recourse has to be filed : seventy-five days etc. etc. —Article 146, paragraph 3 of the Constitution—Not affected by the provisions of the Limitations of Actions (Suspension) Law, 1964 (Law No. 57 of 1964)—That Law is not and could not be applicable to proceedings under Article 146 of the Constitution. See, also, under Administrative Law, below.*

*Administrative Law — Constitutional Law — Recourse under Article 146 of the Constitution—Time within which such recourse has to be filed—Such period of time does not run where the person concerned is prevented by “force majeure” from making such a recourse for annulment.*

*Force Majeure—See immediately above.*

*Constitutional Law—“Act of necessity”—Conceivably, a mere Law cannot alter the provisions of the Constitution or interfere therewith, otherwise than as a measure of necessity.*

By this recourse the applicant challenges, *inter alia*, the validity of certain assessments of income tax raised on the 21st December, 1963. It is not disputed that the applicant came to know of the assessments in question more than seventy-five days before he filed the present recourse and that such recourse has to be filed within a period of seventy-five days, as provided by Article 146, paragraph 3, of the

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Constitution. But counsel for the applicant has submitted that this period within which a recourse has to be filed, stands suspended as from the 21st December, 1963 until such date as may be fixed in future, under the provisions of the Limitation of Actions (Suspension) Law, 1964 (Law No. 57 of 1964).

The learned justice in rejecting this submission made by counsel for the applicant :—

*Held*, (1) having perused the contents of Law No. 57 of 1964 (*supra*), including its long title and the definition of "action" in section 2 thereof, as well as the definition of "period of limitation" in the same section, I have reached the conclusion that it was not, and could not have been, intended to apply to proceedings under Article 146 of the Constitution. It is clear, that it was intended to apply to civil proceedings only, not including proceedings of the special revisional jurisdiction created by Article 146.

(2) I quite agree that the Constitution is, indeed, part of the legislation in force in a country, but I cannot accept that the expression "any provision of a legislative nature" in the definition "period of limitation", in section 2 of the said Law 57/64, can be interpreted so as to include Article 146 of the Constitution; in the first place it would be, normally, unconstitutional to interfere with the provisions of Article 146 by a mere Law: but even if this could be done by such Law as a measure of necessity, I would have required an express intention to suspend indefinitely the running of the period under Article 146, paragraph 3, as a measure of necessity, before proceeding to treat the provision of Law 57/64 (*supra*) as affecting the provisions of Article 146, paragraph 3.

*Order in terms.*

*Per curiam*: It may be recalled that it is well settled in Administrative Law that a period such as the one prescribed by Article 146, paragraph 3 of the Constitution, does not run in a case where the person concerned is prevented by "force majeure" from making a recourse for annulment.

### **Recourse.**

Recourse against income tax assessment raised on Applicant for the years of assessment 1957-1960.

*A. Triantafyllides*, for the Applicant.

*M. Spanos*, Counsel of the Republic, with *Chr. Paschalides*, for the Respondent.

*Cur. adv. vult.*

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The following Decision was delivered by:—

TRIANAFYLLIDES, J.: On the 19th February, 1966, it was directed that the preliminary legal issues raised by the Opposition in this Case should be heard first. Such issues are those raised by paragraphs 3 and 4 of the grounds of law in the Opposition; the remaining grounds of law in the Opposition are issues going to the merits of the recourse.

At the hearing before this Court on the 20th June, 1966, counsel for Applicant conceded that claim (d) in the motion for relief, relating to the steps taken for collection of the income tax involved, is a claim which cannot properly be made under Article 146, in that such steps are not of an executory nature, but only acts of execution, and, therefore, such claim (d) is dismissed accordingly as not well-founded.

Likewise counsel for Respondent do not appear to seriously dispute that claims (a) and (b) in the motion for relief, relating to the refusal of Respondent to accept and consider the objections made by Applicant against the assessments in relation to the years of assessment 1957-1960—as such refusal is set out in the letter dated 9th August, 1965 (*exhibit 1*)—are within time, in view of the fact that this recourse was filed on the 18th August, 1965.

There remains to be decided whether claim (c) of the motion for relief, challenging directly the validity of the said assessments, which were raised on the 21st December, 1963, is out of time, in view of the fact that more than a year and a half elapsed since then and until the filing of the present recourse; such a recourse has to be filed within a period of seventy-five days, as provided for by Article 146(3) of the Constitution.

It is not disputed that Applicant came to know of the assessments in question more than seventy-five days before he filed the present recourse. But counsel for Applicant has submitted that under the provisions of the Limitation of Actions (Suspension) Law, 1964. (Law 57/64), the period laid down by virtue of Article 146(3), within which this recourse had to be filed, stands suspended as from the 21st December, 1963 and until such date as may be fixed in future, under the provisions of Law 57/64, by the Council of Ministers.

Having perused the contents of Law 57/64, including its long title and the definition of “action” in section 2 thereof, as well as the definition of “period of limitation” in the same section, I have reached the conclusion that it was not, and

could not have been, intended to apply to proceedings under Article 146.

It is clear, in my view, that it was intended to apply to civil proceedings only, not including proceedings of the special revisional jurisdiction created by Article 146.

I quite agree that the Constitution is, indeed, part of the legislation in force in a country, but I cannot accept that the expression "any provision of a legislative nature" in the definition of "period of limitation", in section 2 of Law 57/64, can be interpreted so as to include Article 146: in the first place, it would be, normally, unconstitutional to interfere with the provisions of Article 146 by a mere law such as Law 57/64; but even if this could be done by such Law as a measure of necessity, I would have required that there should have appeared in the said Law an express intention to suspend indefinitely the running of the period under Article 146(3), as a measure of necessity, before proceeding to treat the provisions of Law 57/64 as affecting the provisions of Article 146(3).

It may be recalled that it is well-settled in Administrative Law (see Conclusions from the Jurisprudence of the Greek Council of State 1929-1959) that a period, such as the one prescribed by Article 146(3), does not run in a case where the person concerned is prevented by "force majeure" from making a recourse for annulment. No such allegation has, however, been put forward by Applicant in this Case, to the effect that "force majeure" prevented him, in this particular case, from filing this recourse earlier, and he relies only on the generic effect of the provisions of Law 57/64, which as already found, are not applicable to the period prescribed under Article 146(3).

In the circumstances I hold that claim (c) in the motion for relief in this recourse is out of time and it is dismissed accordingly.

The hearing of this recourse will proceed with regard to claims (a) and (b) in the motion for relief. I have to make it clear that should in the course of such hearing appear that the administrative process, of making the assessments in question against Applicant, has not been finally concluded, and that there are any further steps to be taken in the matter by Respondent, then, of course, the dismissal as above of claim (c) will not amount to a *res judicata*, barring a recourse against the said assessments as they may be eventually made.

*Order in terms.*