

[TRIANTAFYLIDIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

ANTONAKIS PAPPOUS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE COMMISSIONER OF INCOME TAX,
2. THE GREEK COMMUNAL CHAMBER, AND/OR
3. THE REPUBLIC, THROUGH THE ATTORNEY-GENERAL AS SUCCESSOR TO THE GREEK COMMUNAL CHAMBER,

Respondents.

(Case No. 154/64).

1966
Jan. 17, 31
—
ANTONAKIS
PAPPOUS
and
THE REPUBLIC OF
CYPRUS,
THROUGH
1. THE COMMISSIONER OF INCOME
TAX
2. THE GREEK
COMMUNAL
CHAMBER,
AND/OR
3. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

Income Tax—Assessment—Objection—Notice of determination of objection finalizing the assessment—Refusal of the Commissioner of Income Tax to go again into the matter so finalized is not an “act” in the sense of paragraph 1 of Article 146 of the Constitution, i.e. it is not an “executory act” and, therefore, cannot be made the subject of a recourse under that Article—Recourse dismissed as not being within the time prescribed by paragraph 3 of Article 146.

Administrative Law—“Act”—What is an “act” in the sense of Article 146, paragraph 1, of the Constitution—“Executory act”—Meaning—Only an “executory act” can be made the subject of a recourse under Article 146—Time within which the recourse has to be filed—Provisions of Article 146.3 relating to the matter have to be enforced in the public interest.

On divers dates in 1963 and 1964, the applicant was assessed to income tax in respect of the years of assessment 1959 to 1963. He duly objected against the said assessments and the notices of determination of his objections, by means of which the Commissioner of Income Tax (Respondent No. 1) finalized the assessments in question, are all dated the 14th September, 1964; it is against these notices that this recourse under Article 146 of the Constitution has been filed. On the 21st September, 1964, the applicant wrote to the Commissioner a letter by which he referred to the said notices of the 14th September and proceeded to say that he objected against them on the ground that

1966
Jan. 17, 31

ANTONAKIS
PAPPOUS
and

THE REPUBLIC OF
CYPRUS,
THROUGH
1. THE COMMISSIONER OF INCOME
TAX
2. THE GREEK
COMMUNAL
CHAMBER,
AND/OR
3. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

his income as computed for the years of assessment concerned, was not in accordance with the realities of things. On the 6th November, 1964, the Commissioner (respondent No. 1) replied to the applicant by a letter informing him that he (the Commissioner) has no power to re-examine his case and that if applicant felt aggrieved he could take the matter to the Supreme Court of the Republic. The applicant filed the present recourse on the 12th December, 1964, *i.e.* after the expiration of the 75 days period prescribed by paragraph 3 of Article 146 of the Constitution, which period began to run on the 21st September, 1964, at the latest, because the applicant by his said letter of that date acknowledges having received the notices of determination in question of the 14th September. Counsel for applicant argued, however, that this recourse is within time because it is aimed at the aforesaid letter of the Commissioner dated the 6th November, 1964, and such act is an "act" in the sense of paragraph 1 of Article 146 of the Constitution.

Paragraph 1 of Article 146 of the Constitution provides:

"The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person".

Paragraph 3 of the same Article 146 provides:

"Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse".

In dismissing the recourse the learned Justice:-

Held, (1) this recourse is aimed at the notices of determination dated the 14th September, 1964. There can be no dispute, therefore, that this recourse having been filed on the 12th December, is out of time and cannot be entertained on this ground.

(2) It has been argued, however, that this recourse

1966
Jan. 17, 31

—
ANTONAKIS
PAPPOUS
and

THE REPUBLIC OF
CYPRUS,
THROUGH

1. THE COMMISSIONER OF INCOME
TAX

2. THE GREEK
COMMUNAL
CHAMBER,
AND/OR

3. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

is within time because it is aimed at the aforesaid letter of Respondent No. 1 of the 6th November, 1964, and that such act is an "act" in the sense of Article 146.1. But this recourse is not aimed at all at the aforementioned letter of the 6th November, itself. All that is stated in that letter is that the Commissioner (respondent No. 1) refused to revert to the case of the applicant and the applicant by the motion of relief in this Application is not challenging this stand of respondent No. 1, as such, but is proceeding directly against the aforesaid assessments themselves in respect of which this recourse is clearly out of time.

Mikromatis and The Republic 2 R.S.C.C. 125, at p. 129, distinguished.

(3) In any event, it is well settled that an act is an "act" in the sense of Article 146.1 of the Constitution, only if it is an executory act; (*vide Kolocassides and The Republic*, (1965) 3 C.L.R. 542). In my opinion the said letter of the Commissioner (respondent No. 1) of the 6th November, 1964, is not of such nature. It is not an act aimed at producing a legal situation concerning the applicant and entailing its execution by administrative means (*vide* Conclusions from the Jurisprudence of the Council of State in Greece 1929-1959 pp. 236-237). It is, therefore, not executory and cannot be made, as such, the subject of a recourse under Article 146 of the Constitution.

(4) In the circumstances this recourse cannot proceed and has to be dismissed as being out of time under Article 146.3 of the Constitution, the provisions of which have to be enforced in the public interest (*vide Moran and The Republic* 1 R.S.C.C. 10).

Recourse dismissed.

Cases referred to:

Kolocassides and The Republic (1965) 3 C.L.R. 542 followed;

Mikromatis and The Republic 2 R.S.C.C. 125, at p. 129, distinguished;

Moran and The Republic 1 R.S.C.C. 10.

Recourse.

Recourse against the validity of five finalized income tax

1966
Jan. 17, 31

ANTONAKIS
PAPPOUS
and
THE REPUBLIC OF
CYPRUS,
THROUGH
1. THE COMMISSIONER OF INCOME
TAX
2. THE GREEK
COMMUNAL
CHAMBER,
AND/OR
3. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

assessments raised against the applicant in respect of the years of assessment 1959, 1960, 1961, 1962 and 1963.

Chr. Mitsides, for the Applicant.

G. Tornaritis, for the Respondents.

Cur. adv. vult.

The following judgment was delivered by:—

TRIANTAFYLIDIS, J.: By this recourse Applicant challenges the validity of five finalized income tax assessments raised against him in respect of the years of assessment 1959, 1960, 1961, 1962 and 1963.

When this recourse came up before the Court for Mention on the 11th January, 1966, it was fixed for Hearing on the 17th January, 1966, on the issue only of whether or not it is out of time, under Article 146(3) of the Constitution.

Such course was adopted as such issue has been raised by paragraph 1 of the grounds of law in the Opposition of Respondent No. 1.

The relevant facts are as follows:—

The Applicant was originally assessed in respect of the aforementioned years of assessment by assessments raised on divers dates in 1963 and 1964, the last relevant date in this respect being the 17th July, 1964.

Applicant objected against the said assessments and the notices of determination of his objections, by means of which Respondent No. 1 finalized the assessments in question, are all dated the 14th September, 1964; it is against these notices that this recourse has been filed (*vide* the motion for relief in the Application).

On the 21st September, 1964, Applicant wrote to Respondent No. 1, a letter, which is *exhibit 1* in this Case, by which he referred to the said notices of the 14th September, 1964 and proceeded to say that he objected against them on the ground that his income, as computed for the years of assessment concerned, was not in accordance with the realities of things and, therefore, the assessments as raised were not proper.

On the 6th November, 1964, Respondent No. 1 wrote

back to Applicant a letter, which is quoted in paragraph 3 of the facts alleged in the Application, by which Applicant was informed that Respondent No.1 had no power to re-examine his case and that if Applicant felt aggrieved he could take the matter to the Supreme Court of the Republic—as he had already been informed by means of each one of the notices of the 14th September, 1964.

There can be no dispute that the recourse, having been filed on the 12th December, 1964, is out of time as regards the aforesaid notices of determination of objections dated 14th September, 1964, because it has been filed more than 75 days afterwards.

Counsel for Applicant has alleged, however, that this recourse is within time because it is aimed at the above letter of Respondent No.1, dated the 6th November, 1964, and such act is an “act” in-the sense of Article 146.

It is well settled that an act is an “act” in the sense of Article 146(1), only if it is an executory act; (*vide Kolocassides and The Republic* (1965) 3 C.L.R. p. 542). In my opinion the letter of the 6th November, 1964, is not of such nature; it is merely a refusal to go again into the question of the assessments made against Applicant, after his objections had been finally determined according to law. It is not an act aimed at producing a legal situation concerning Applicant and entailing its execution by administrative means (*vide Conclusions from the Jurisprudence of the Council of State in Greece, 1929-1959 pp. 236-237*). It is, therefore, not executory and cannot be made, as such, the subject of a recourse under Article 146.

Furthermore, this recourse is not aimed at all at the aforementioned letter of the 6th November, 1964, itself: All that is stated in the said letter is that Respondent No. 1 refused to revert on to the case of Applicant and Applicant by the motion of relief in the Application is not challenging this stand of Respondent No. 1, as such, but is proceeding directly against the relevant assessments themselves—in respect of which this recourse, as already stated, is clearly out of time.

Counsel for Applicant has, also, referred me, *inter alia*, to the dicta in *Mikromatis and The Republic* (2 R.S.C.C. p. 125, at p. 129) to the effect that the review and revision of an original assessment must be regarded as a continuation

1966
Jan. 17, 31
—
ANTONAKIS
PAPPOUS
and
THE REPUBLIC OF
CYPRUS,
THROUGH
1. THE COMMIS-
SIONER OF INCOME
TAX
2. THE GREEK
COMMUNAL
CHAMBER,
AND/OR
3. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

1966
Jan. 17, 31

ANTONAKIS
PAPPOUS
and

THE REPUBLIC OF
CYPRUS,
THROUGH

1. THE COMMIS-
SIONER OF INCOME
TAX

2. THE GREEK
COMMUNAL
CHAMBER,
AND/OR

3. THE REPUBLIC,
THROUGH THE
ATTORNEY-
GENERAL AS
SUCCESSOR TO
THE GREEK
COMMUNAL
CHAMBER

or completion of the process of assessment. But such review and revision came to an end by means of the notices of determination of objections of the 14th September, 1964, and then time began to run against Applicant. In *Mikromatis and The Republic (supra)* it is stated "...it follows that the relevant date in this Case from which the period prescribed by paragraph 3 of Article 146 of the Constitution must be reckoned, is the date on which the result of the review and revision under section 42 came to the knowledge of the Applicant". And in the present case it is clear that the notices of the 14th September, 1964, came to the knowledge of Applicant at the latest on the 21st September, 1964, when he wrote *exhibit 1* in relation to them i.e. more than 75 days before the 12th December, 1964.

In the circumstances this recourse cannot proceed and has to be dismissed as being out of time, under Article 146(3), the provisions of which have to be enforced in the public interest (*vide Moran and The Republic* 1 R.S.C.C. p. 10).

Regarding costs it is hereby directed that Applicant shall pay £10 costs to Respondents; previous orders of costs in his favour, of the 25th June, 1965, and 2nd October, 1965, remain unaffected.

*Recourse dismissed. Order
for costs as aforesaid.*