IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

BYRON CHRYSANTHOU AND ANOTHER,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH THE DISTRICT OFFICER OF PAPHOS AND ANOTHER,

Respondents.

(Case No. 48/68).

Administrative and Constitutional Law—Recourse under Article 146*—Acts or decisions which can be made the subject of such recourse—They must be within the domain of public law—Acts or decisions within the domain of private law are outside the ambit of Article* 146 *of the Constitution—Acts or decisions of any organ or authority or person exercising executive or administrative authority within paragraph* 1 *of Article* 146*—Decision of the Respondents regarding the leasing of certain agricultural lots in the Akhelia Chiftlik, a government property certainly not destined for use by the general public, such as, for example, a road—In the ordinary course of events the management of such government property would fall outside the ambit of Article* 146*—In so far as it would be management such as that carried out by any private owner—But in the particular circumstances of the present case, the decision not to lease to the Applicant the agricultural lots in question was a step of an organ of administration—Namely, of the Respondent* 1 *acting in the course of the management of Governmental property for purposes of general public interest and in a manner falling within the domain of public law, and not of private law—Consequently, the* sub judice *decision can be challenged by a recourse under Article* 146 *of the Constitution.*

Public and private law—Management of Governmental property—Decision regarding the leasing of agricultural lots in the area of Akhelia Chiftlik—In the circumstances of this case such decision is within the domain of public law and, consequently, the present recourse under Article 146 *of the Constitution can be entertained by the Court. See, also, above.*

Recourse under Article 146 of the Constitution—Public law—Private law—Acts or decisions, which can be challenged by means of such recourse—See above.

By this recourse under Article 146 of the Constitution the Applicants challenge the validity of the first Respondent's decision that certain agricultural lots in the Akhelia Chiftlik—a government property—should not be sub-leased to them.

The Applicants were in the past sub-lessees of such lots and both of them were selected, afresh, as sub-lessees. But, eventually, as they refused to move back to their village, Ayia Varvara (wherefrom they had moved to Yeroskipou during the current anomalous situation in Cyprus) Respondent 1 decided that the agricultural lots destined for the Applicants should not be sub-leased to them, and the said lots were sub-leased to others, instead. The decision of Respondent 1 has been, allegedly, based on a criterion laid down by decision 6996 of the Council of Ministers, namely, that preference should be given to the permanent residents of certain villages, including Ayia Varvara and Yeroskipou; the Applicants were apparently treated for the purposes as temporary residents of Yeroskipou, and as permanent residents of Ayia Varvara who refused to resume their residence there.

At the commencement of the hearing of this case, counsel for the Respondents has raised as a preliminary legal issue, the objection which is set out in ground of law (1) in the opposition, namely, that this recourse could not be made because the decision challenged thereby is a matter within the domain of private law and, consequently does not amount to the exercise of executive or administrative authority within the ambit of Article 146 of the Constitution.

The Akhelia Chiftlik, together with other Chiftliks in the Paphos District, were compulsorily acquired by the government in 1949 because it was "desirable in the public interest" to acquire these lands, and the rivers by which they are irrigated, "for the purposes of improving those lands by means of irrigation works..." and with a view to remedying the "inherent fault of 'absentee landlordism' ". Later, on November 30, 1961, the Council of Ministers, by its decision 1388, decided to retain permanently the Chiftliks in question "for their continued improved cultivation and the proper utilization of the water, in the public interest."

Paragraph 1 of Article 146 of the Constitution reads as follows:

> "1. 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."

Overruling the objection raised by counsel for the respondents, the Court:

Held, (1). Akhelia Chiftlik is government property not destined for use by the general public; such as, for example, a road. It is government property the management of which would ordinarily fall outside the ambit of Article 146, in so far as it would be management such as that carried out by a private owner.

(2) But it is recognized in Administrative Law that the management of government property of such nature, may, in certain circumstances, be carried out in such a manner as to cease to amount to the management of private property only, and to become management the main characteristic of which is the furtherance of purposes of public nature, and, in such a case and to that extent, such management takes the character of a public fuction or service (see Stasinopoulos, the Civil liability of the State 1950, at p. 197) and the two examples given regarding management of State lands for public purposes, are the relief of landless persons and the better use of uncultivated areas. See, also, Kyriakopoulos "Greek Administrative Law", 4th ed. Vol. III p. 103 and the decision of the Greek Council of State 211/29, (1929 vol. p. 599, at p. 602).

(3) In the light of all the material before me, at this stage, in the present proceedings, and of the aforesaid principles of law, I have no difficulty in arriving at the conclusion that the *sub-judice* decision was a step taken by an organ of the administration, namely, Respondent 1, in the course of the management of governmental property for purposes of general public interest and in a manner falling within the domain of public law, and not of private law, Respondent

1 acting in the matter as representing the government not only in its capacity as owner, but also as the Administration.

(4) The case, therefore, shall proceed to a hearing on the remaining issues. Costs in cause, but in no case against Applicants.

Order in terms.

Cases referred to:

Decision of the Greek Council of State 211/29 (1929 Vol. p. 599, at p. 602).

Recourse.

Recourse against the validity of the decision of Respondent 1 that certain agricultural lots in the Akhelia Chiftlik, a government property, should not be sub-leased to Applicants.

Chr. Demetriades, for the Applicants.

K. Talarides, Senior Counsel of the Republic, for the Respondents.

Cur. adv. vult.

The following Decision on the preliminary legal issues was delivered by:-

TRIANTAFYLLIDES, J.: At the commencement of the hearing of this case, counsel for the Respondents has raised, as a preliminary legal issue, the objection which is set out in ground of law (1) in the Opposition, namely, that this recourse could not be made because the decision challenged thereby does not amount to the exercise of executive or administrative authority within the ambit of Article 146 of the Constitution.

He has based this objection on the argument that the Akhelia Chiftlik—which is involved in these proceedings—is Government property which is owned and managed by the Republic in the same manner as a private landowner, and, therefore, any decision of the Respondents, regarding the leasing to the Applicants of agricultural lots out of the area of such Chiftlik, does not constitute a decision in the realm of public law, so as to be amenable to the jurisdiction under Article 146; in effect, counsel for Respondents has objected to the jurisdiction of this Court under Article 146, in respect of the present case.

I have heard at length arguments from both counsel on this point; and certain admitted facts have been placed before the Court, with a view to assisting the Court to arrive at a correct conclusion regarding the true nature of the *sub judice* decision, which was communicated to the Applicants by letters dated the 5th December, 1967 (*exhibit* 1).

The Akhelia Chiftlik, together with other Chiftliks in the Paphos District, were compulsorily acquired, by the Government, in 1949 because it was "desirable in the public interest" to acquire these lands, and the rivers by which they are irrigated, "for the purposes of improving those lands by means of irrigation works and by such other measures as may be necessary to secure the proper cultivation of those Chiftliks and the proper utilization of the waters of the aforesaid rivers.

It is, further, not in dispute that:-

> The decision to acquire was made because of the inherent fault of 'absentee landlordism' and the consequent sub-leasing to individuals, who merely exploited the land and water for personal profit without any incentive to maintain and develop the properties in accordance with sound conception of good husbandry. Intelligent crop rotation based on Agricultural knowledge was non-existent, cultivation was haphazard, the land was severely weed infested and the valuable water was disposed of to the higher bidder for any purpose whatsoever, within or without the concerned farmjng area.
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> It was the intention of Government to provide the necessary capital to bring back fertility to the land, by presenting an opportunity to selected landless cultivators, under a properly safeguarded tenancy agreement, who had the knowledge and means, to work the land for their own benefit and that of the community as a whole".

Later, on the 30th November, 1961, the Council of Ministers, by decision 1388, decided to retain permanently the Chiftliks in question "for their continued improved cultivation and the proper utilization of the water, in the public interest".

The object of leasing agricultural lots, in Akhelia Chiftlik, for the settlement of small-holders, was achieved by leasing

such Chiftlik to The Akhelia Chiftlik Co-operative Society Ltd., which was formed for the purpose, and which in its turn sub-leased such lots to tenants, approved by Government; in this connection there was set up Respondent 2, which is composed of Respondent 1, the Paphos District Inspector of Co-operatives and the Paphos District Agricultural Officer.

As the lease of, *inter alia*, Akhelia Chiftlik was coming to an end on the 30th September, 1967, the Council of Ministers considered proposals of Respondent 2 for the future leasing of the Chiftlik, and in the light of such proposals it decided on the 7th September, 1967, by decision 6996 (see *exhibit* 2), to lease such Chiftlik to the aforementioned Co-operative for a period of two years, as from the 1st October, 1967; it, further, adopted certain criteria regarding the selection of prospective sub-lessees, which, in substance, show that the above-referred to policy of the Government regarding the lands in question was being maintained unchanged.

The new lease of the Akhelia Chiftlik is *exhibit* 3 in these proceedings.

The Applicants were in the past sub-lessees of agricultural lots in the Akhelia Chiftlik. As it appears from a list attached to *exhibit* 3, both of them were selected, afresh, as sub-lessees of agricultural lots in such Chiftlik. But, eventually, as they refused to move back to their village, Ayia Varvara, —(wherefrom they had moved to Yeroskipou during the current anomalous situation in Cyprus)—Respondent 1 decided that the agricultural lots destined for the Applicants should not be sub-leased to them, and the said lots were sub-leased to others, instead.

The decision of Respondent 1 has been, allegedly, based, (see the Opposition) on a criterion laid down by decision 6996 of the Council of Ministers (*exhibit* 2), namely, that preference should be given to the permanent residents of certain villages, including Ayia Varvara and Yeroskipou; the Applicants were apparently, treated, for the purpose, as temporary residents of Yeroskipou, and as permanent residents of Ayia Varvara who refused to resume their residence there.

As a result this recourse was filed.

It is not in dispute that the Akhelia Chiftlik is not property of Government which is destined for use by the general public; such as, for example, a road.

It is Government property the management of which would ordinarily fall outside the ambit of Article 146, in so far as it would be management such as that carried out by a private owner.

But it is recognized in Administrative Law that the management of Government property of such a nature, may, in certain circumstances, be carried out in such a manner as to cease to amount to the management of private property only, and to become management the main characteristic of which is the furtherance of purposes of public nature, and, in such a case and to that extent, such management takes the character of a public function or service. This view is taken by Stasinopoulos, in "The Civil Liability of the State" (1950) at p. 197; and actually two of the examples given by Stasinopoulos, regarding management of State lands for public purposes, are the relief of landless persons and the better use of uncultivated areas.

Furthermore, Kyriakopoulos in "Greek Administrative Law" (4th ed. vol. III, p. 103) points out that in the course of the management of privately owned Government property there may take place certain administrative acts, falling outside the realm of civil law, and done in a manner governed by principles pertaining to public law; in this respect reference is made to Decision 211(29) of the Greek Council of State (1929 vol. p. 599, at p. 602).

In the light of all the material before me, at this stage, in the present proceedings, and of the aforesaid principles of law, I have no difficulty in arriving at the conclusion that the decision, which is the subject-matter of this case, was a step taken by an organ of administration, namely, Respondent 1, in the course of the management of Governmental property for purposes of general public interest and in a manner falling within the domain of public law, and not of private law.

The agricultural lots in question are not being sub-leased by the Co-operative concerned to just the higher bidder, at public auctions, solely for profit purposes—(in which case, again, the objects of proper cultivation and irrigation

thereof could have been ensured by appropriate conditions in the relevant leases)—but they are being sub-leased to persons falling in certain categories, according to criteria laid down by the Council of Ministers, which show beyond doubt that the primary purpose of the leasing of these lots is agricultural reform in the public interest; and the last word of the choice of the sub-lessees lies with Respondent 1, as representing Government; Government not only its capacity as owner, but also as the Administration.

Thus, the preliminary objection of counsel for the Respondents cannot be sustained; the case shall proceed to a hearing on the remaining issues.

Regarding the costs of the hearing of this preliminary legal issue they shall be costs in the cause, but in any case not against the Applicants.

Order in terms.