

[VASSILIADES, P., TRIANTAFYLIDIS, JOSEPHIDES,
STAVRINIDES, HADJIANASTASSIOU, JJ.]

1970
June 23

MILTIADES PAPADOPOULLOS,

MILTIADES
PAPADOPOULLOS

Appellant,

and

v.
REPUBLIC
(COUNCIL OF
MINISTERS)

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS,

Respondent.

(Revisional Jurisdiction Appeal No. 48).

Appeal—Appeal from a decision of a Judge of this Court given on a recourse under Article 146 of the Constitution—Pending appeal, new executory administrative decision taken by the Respondent in the same matter—The earlier administrative decision subject-matter of the said recourse has been, thus, deprived of its executory nature—Consequently, this appeal, taken against the judgment of a Judge of this Court regarding the validity of an administrative decision which, has, in the meantime, lost its executory nature—Must be treated as having been deprived of its object and should, accordingly, be struck out.

Executory act or decision—Decision taken, after a new examination and on the basis of new factors which did not exist when an earlier decision was taken in the matter—The new decision is, therefore, an administrative decision of an executory nature—Cf. supra.

Recourse under Article 146 of the Constitution—Dismissal by a Judge of this Court—Appeal to the full bench of the Supreme Court—Section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33 of 1964)—New executory decision taken by the Respondent Council of Ministers in the same matter during pendency of appeal—Effect of this development on the appeal—The appeal having been deprived of its object must be struck out—No useful analogies can be derived from the practice obtaining in the Greek Council of State sitting as appellate Court—See also supra.

Supreme Court—Jurisdiction of the Supreme Court in appeals from judgments of a Judge of this Court given on a recourse made under Article 146 of the Constitution—New executory

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administrative decision reached in the matter during pendency of such appeal—Effect of this development on the said appeal—See supra.

In this case the Appellant appeals against the decision of a Judge of this Court dismissing his recourse, made under Article 146 of the Constitution, against the refusal of the Respondent Council of Ministers to pay him expenses which he incurred in relation to an operation, for aortic valve stenosis, in the United States of America. During the hearing of this appeal, and before this Court had gone into the issue whether or not the course adopted by the trial Judge was correct, the Respondent Council of Ministers reached a new decision in the matter dated July 31, 1969. The point immediately arose as to what should be the fate of this appeal in the circumstances.

Striking out the appeal as having been deprived of its object, the Court:

Held, (1). It is plain that the new decision of the Council of Ministers dated July 31, 1969, has been reached after a new examination of the matter on the basis of new factors which were not before them previously; consequently, it is of an executory nature. There has to be examined next the effect of this development on the present appeal proceedings.

(2) Once there has been a new executory administrative decision regarding the claim of the Appellant, the earlier one—(due to which these proceedings have arisen)—has been deprived of its executory nature and can no longer be the subject-matter of a recourse for annulment (see, *inter alia*, the decisions of the Greek Council of State in cases Nos. 684/55 and 1721/55).

(3) Consequently, this appeal which is made against the judgment of a Judge of this Court regarding the validity of a decision which has, in the meantime, lost its executory nature, must be treated as having been deprived of its object and should, accordingly be struck out.

(4)(a) No useful analogy can be derived in this respect from the practice of the Greek Council of State sitting as an appeal Court; because this Court (the Cyprus Supreme Court) in an appeal of this nature derives its jurisdiction from specific provisions viz. Article 146 of the Constitution and section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33 of 1964). As we read such provisions

we cannot say that we are entitled to do anything more than decide on the correctness of the judgment given by a Judge of this Court under Article 146 regarding the validity of the administrative decision subject-matter of the recourse in which the judgment appealed from was given.

(b) There is nothing which enables us to annul, on appeal, a new executory administrative decision in the same matter, which has been reached pending the appeal.

Appeal struck out. Order for £40 costs in favour of the Appellant.

Cases referred to:

The Decisions of the Greek Council of State in cases Nos.: 684/55, 1721/55, 1321/49.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Loizou, J.) given on the 22nd November, 1968 (Revisional Jurisdiction Case No. 148/67) whereby a recourse against the decision of the Respondent refusing to reimburse Appellant for medical and other expenses incurred by him for a heart operation in the United States of America, was dismissed.

L. Clerides, for the Appellant.

S. Georghiades, Senior Counsel of the Republic, for the Respondents.

The following judgments were delivered:

VASSILIADES, P.: We think that this appeal can be disposed of on a short point, in the circumstances as they stand today. Mr. Justice Triantafyllides will deliver the first judgment, leading to the result on which the Court is unanimous.

TRIANAFYLLIDES, J.: In this case the Appellant appeals against the decision of a Judge of this Court by virtue of which there was dismissed recourse No. 148/67,* made under Article 146 of the Constitution, by the Appellant—then Applicant—against the refusal of the Respondent to pay him the expenses

* Reported in (1968) 3 C.L.R. 662.

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which he incurred in relation to an operation, for aortic valve stenosis, in the United States of America.

The learned trial Judge found that the legal background against which the refusal complained of was decided upon was an erroneous one, but that such refusal ought to be sustained for other legal reasons and, that, therefore, the recourse had to be dismissed in any case.

During the hearing of this appeal, and before this Court had gone into the issue as to whether or not the course adopted by the trial Judge was correct, the matter of the claim of the Appellant for his said expenses was placed once again before the Respondent Council of Ministers, with the consent of both sides and the approval of the Court, as the Council might be prepared to reconsider the case once it had been found that the legal background against which its original decision was reached was erroneous.

As a result the hearing of this appeal was adjourned in the meantime.

We have now before us a new decision of the Council of Ministers, which is dated the 31st July, 1969, as well as the relevant submission made to the Council by the Ministry of Health and dated the 24th July, 1969.

I have perused these two documents, which have to be read together, and had the benefit of valuable assistance by counsel on both sides, who have both submitted that the new decision of the Council is not merely confirmatory of its earlier one, which was challenged by recourse 148/67.

In my view it is clear that such decision has been reached after a new examination of the matter by the Council, on the basis of new factors, which were not before it previously, and, that, therefore, it is of an executory nature.

There has to be examined, next, the effect of this development on the present proceedings:

Once there has been taken a new executory decision regarding the claim of the Appellant, the earlier one—(due to which these proceedings have arisen)—has been deprived of its executory nature and can no longer be the subject-matter of a recourse for annulment (see, *inter alia*, the decisions of the Greek Council of State in cases 684/55 and 1721/55).

Consequently this appeal, which is made against the judgment of a Judge of this Court regarding the validity of a decision which has, in the meantime, lost its executory nature, must be treated as having been deprived of its object and should, accordingly, be struck out.

It has been submitted by counsel for the Appellant that this Court, in dealing with this appeal from a first instance judgment in a revisional jurisdiction case, should deal not only with the validity of the decision to which the first instance judgment relates, but, also, with the validity of the aforesaid new decision of the Council of Ministers in the same matter; and, in this connection, counsel contended that such a course could have been adopted by the Council of State in Greece in dealing on appeal from the decision of a first instance administrative Court.

I do not find it necessary to examine the extent of the relevant jurisdiction of the Greek Council of State, because, in my view, this Court, in an appeal of this nature, derives its jurisdiction from specific provisions viz. Article 146 and section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64) and as I read such provisions I cannot say that we are entitled to do anything more than decide on the correctness of the first instance judgment given by a Judge of this Court, under Article 146, regarding the validity of the subject-matter of the recourse in which that judgment has been given. There is nothing which enables us to annul, on appeal, a new executory administrative decision in the same matter, which has been reached pending the appeal and after the judgment in the recourse was given. I think that the only order which this Court should make is to have this appeal struck out in view of the aforementioned development pending the appeal.

VASSILIADES, P.: I agree with the proposed order. The jurisdiction of this Court emanates from Article 146 of the Constitution and is defined therein. The provisions of this Article have been discussed and interpreted by this Court in a number of cases, none of which lends support to the extended jurisdiction suggested by counsel for the Appellant at this stage of the case in hand.

To the order proposed I would only be inclined to add an order for costs in favour of the Appellant on the moral merits of his case. I would suggest an order for £40 against his costs.

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TRIANTAFYLLIDES, J.: I agree with the order as to costs.

JOSEPHIDES, J.: I agree and I have nothing to add.

STAVRINIDES, J.: I also agree.

HADJIANASTASSIOU, J.: I also agree with the judgment just delivered, but in view of the novelty of the additional point raised by counsel for the Appellant, I would like to express my own views on this issue.

During the adjournment of the hearing of this appeal, the Council of Ministers has reconsidered the position of the Appellant and reached its decision which was produced before us with the approval of this Court. The first contention of counsel for the Appellant is that the decision of the Council of Ministers is a new decision, because it was reached as a result of a new enquiry in the light of new material and was, therefore, of an executory nature.

I am in agreement with counsel that the said decision is not of a confirmatory nature, but of an executory one, because from the material before me, the Council had embarked into a new enquiry after taking into consideration new material. In my view, therefore, in the light of this new decision, the grounds of this appeal have become abortive.

The second contention of counsel is that, the jurisdiction of the Supreme Court, in its revisional appeal jurisdiction, is analogous to the jurisdiction exercised by the Greek Council of State, and that it has power to declare *null* and *void* a new decision taken by the same organ on the same subject-matter, in the circumstances amounting to an abuse of power. Counsel relies on a decision of the Greek Council of State, No. 1321/49.

With respect to counsel's argument, I find myself unable to agree to such a proposition, because the jurisdiction of the Greek Council of State sitting on appeal from the decisions of the ordinary administrative Courts is derived originally from the provisions of Article 105 of the 1927 Greek Constitution. Then Law 3713 of 1929 was enacted and under section 42 the Court's appellate jurisdiction, known in Greek "ἡ αἴτησις ἀνεπαίσθεως" was retained. In the 1952 Greek Constitution, this jurisdiction was again introduced, so that the Greek Council of State has power to declare *null* and *void* decisions of the ordinary administrative Courts on the ground that the

said decisions were taken contrary to the provisions of any law, or were made in excess or in abuse of powers.

Finally, Law 3713/1958 was enacted introducing a unitary system of appellate jurisdiction of the Council of State from the decisions of the administrative Courts, though certain exceptions to such jurisdiction still remain. See Stassinopoulos on the "Law of Administrative Differences" at p. 253 et seq.

The position in our case is made clear in paragraph 1 of Article 146 of the Constitution, which states that this Court shall have exclusive jurisdiction to adjudicate finally on a recourse involving the alleged unconstitutionality, illegality or excess or abuse of powers vested in such organ or authority or person. Moreover, the powers of this Court are to be found in s. 11 of the Administration of Justice (Miscellaneous Provisions) Law 1964. Subsection 2 is in these terms:-

"Any original jurisdiction vested in the Court under any law in force and any revisional jurisdiction, including jurisdiction on the adjudication of a recourse made against an act or omission of any organ, authority or person exercising executive or administrative authority as being contrary to the law in force or in excess or abuse of power, may be exercised subject to any Rules of Court, by such Judge or Judges as the Court shall determine:

Provided that, subject to any Rules of Court, there shall be an appeal to the Court from his or their decision."

Having given these provisions my best consideration, I regret that I find no such implied power to enable this Court to examine and to declare *null* and *void* the new decision reached by the Council of Ministers on the ground that such decision has been taken in circumstances amounting to an abuse of powers.

For the reasons I have endeavoured to explain, I would dismiss the appeal, but under the particular circumstances of this case, I am inclined to award an amount of £40 costs towards the costs of the Appellant.

VASSILIADES, P.: In the result this appeal is struck out; The Republic to say Appellant £40 towards costs.

Appeal struck out; order for costs as above.

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