

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MODESTOS  
PITSILLOS  
v.  
MINISTRY OF  
INTERIOR,  
THROUGH  
THE DIRECTOR-  
GENERAL  
AND ANOTHER

MODESTOS PITSILLOS,

*Applicant,*

*and*

1. MINISTRY OF INTERIOR, THROUGH THE DIRECTOR-  
GENERAL;

2. REPUBLIC OF CYPRUS, THROUGH THE ATTORNEY-  
GENERAL OF THE REPUBLIC,

*Respondents.*

(Case No. 287/70).

*Elections—Parliamentary elections—Validity of such elections can be challenged only by means of an election petition under Article 145 of the Constitution and the relevant legislation—And not by recourse under Article 146 of the Constitution—Not open either to the Respondent Ministry of Interior or to the District Officer to pronounce on the validity of such elections.*

*Constitutional law—No recourse under Article 146 of the Constitution lies directed against elections to the House of Representatives—See also supra.*

*Constitutional law—Written complaints and requests addressed to the administrative authorities—Article 29 of the Constitution—No contravention thereof in the instant case—Reply given amounts to compliance with the provisions of said Article 29.*

*Recourse under Article 146—Validity of elections to the House of Representatives cannot be attacked by the recourse under Article 146.*

*Recourse under Article 146 of the Constitution—The so called decisions or acts challenged by this recourse are not executory acts or decisions—Therefore a recourse does not lie.*

This is a recourse aimed against “decisions” which according to the applicant are set out in two letters: The first is a letter of the Director-General of the Ministry of Interior dated July 31, 1970, and the second is a letter of the Acting District Officer, Nicosia, dated August 8, 1970. Both concern complaints of the applicant which were made in writing and

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refer to the parliamentary elections which took place in the Nicosia District on July 5, 1970. The applicant further contended that his said complaints were not duly investigated as required under the provisions of Article 29 of the Constitution.

Dismissing the recourse, the Court :—

*Held*, (1). The applicant could attack the validity of the parliamentary elections only by means of an election petition under Article 145 of the Constitution and the appropriate legislation ; and not by a recourse under Article 146 of the Constitution.

(2) Moreover, it was not open either to the Ministry of Interior or to the District Officer, Nicosia—even in his capacity as Returning Officer for the Nicosia District constituency—to pronounce on the validity of the said elections, because this would have amounted to the exercise of a competence vested, under the Constitution and the relevant legislation, exclusively in the Supreme Court.

(3) In any case, their said letters do not amount to executory acts which could be attacked by a recourse under Article 146 of the Constitution.

(4) In so far as Article 29 of the Constitution is concerned, I am of the view that no contravention of that Article has taken place, the applicant having been given a reply to his complaints which amounts to compliance with the provisions of the said Article 146.

*Recourse dismissed with £25  
costs against the applicant.*

Cases referred to :

*Sepos v. The Presidential Election Returning Officer* (1968)  
3 C.L.R. 82.

### **Recourse.**

Recourse against the validity of the decisions of the respondents in respect of applicant's complaints relating to the Parliamentary Elections which took place in the Nicosia District on the 5th July, 1970.

Applicant appeared in person.

*K. Talarides*, Senior Counsel of the Republic, for the respondents.

The following judgment\* was delivered by :—

TRIANTAFYLIDIS, P. : The present recourse is aimed against two “ decisions ” which according to the applicant are set out in two letters : The first in a letter of the Director-General of the Ministry of Interior, dated the 31st July, 1970, and the second in a letter of the Acting District Officer, Nicosia, dated the 8th August, 1970.

Both concern complaints of the applicant which were made in writing and refer to the parliamentary elections which took place in the Nicosia District on the 5th July, 1970.

The applicant submitted his complaints by a letter addressed to the Ministry of Interior and dated the 9th July, 1970 ; and by another letter dated the 1st August, 1970, and addressed to the Returning Officer for the Nicosia District constituency.

The applicant contends that his complaints were not duly investigated, contrary to Article 29 of the Constitution. He, also, referred to Articles 30, 85 and 172 of the Constitution.

The last three of the aforementioned articles are in my opinion entirely irrelevant for the purposes of the present case.

The applicant could attack the validity of the parliamentary elections only by means of an election petition under Article 145 of the Constitution and the appropriate legislation, and not by recourse under Article 146 of the Constitution (see *Sepos v. The Presidential Election Returning Officer* (1968) 3 C.L.R. 82). Nevertheless, the applicant has failed to do so.

Moreover, it was not open either to the Ministry of Interior or to the District Officer Nicosia—even in his capacity as Returning Officer for the Nicosia District constituency—to pronounce on the validity of the said elections, because this would have amounted to the exercise of a competence which has been vested, by the Constitution and the legislative power, exclusively in the Supreme Court.

In any case their said letters do not amount to executory acts which could be attacked by a recourse such as the present one.

In so far as Article 29 is concerned, I am of the view that no contravention of such Article has taken place. The applicant has been given a reply which amounts to compliance with the provisions of such Article inasmuch as on the one hand he was informed by the letter dated 31st July,

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\* For final judgment on appeal see p. 397 in this Part *post*.

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1970, that the Ministry of Interior did not ascertain that there had taken place any offences contrary to the electoral law and, on the other hand, it was pointed out to him, in the same letter, that he could challenge the validity of the elections before the competent Court under the law ; and by his letter of the 8th August, 1970, the Acting District Officer, Nicosia, confirmed the above and stressed that he had nothing to add to the contents of the letter of the " 3rd July " (obviously it was meant to refer to the letter of the " 31st July ") 1970.

For the above reasons the applicant cannot succeed in the present recourse, which I find to be entirely groundless.

The recourse is dismissed with £25 costs against the applicant.

*Application dismissed. Order  
for costs as above.*