

[MALACHTOS, J.]

1972  
Mar. 16

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

COSTAS  
CH. DEMETRIOU  
AND OTHERS

COSTAS CH. DEMETRIOU AND OTHERS,

v.

*Applicants,*

REPUBLIC  
(COUNCIL  
OF MINISTERS  
AND OTHERS)

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE COUNCIL OF MINISTERS AND OTHERS.

*Respondents.*

(Case No. 201/71).

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*Recourse under Article 146 of the Constitution—Act or decision which can be challenged by a recourse—Article 146.1 of the Constitution—Abolition of a public street and confirmation of abolition by letter—An “act” or “decision” in the sense of paragraph 1, of Article 146—It is an “executory act” within the domain of public law.*

*Administrative acts or decisions—Executory act—Meaning of—Cf. supra.*

*Executory act—Meaning of—See supra.*

The facts sufficiently appear in the decision of the Court on the preliminary legal issue whether the *sub judice* act or decision is an act or decision within paragraph 1 of Article 146 of the Constitution which can be made the subject of a recourse thereunder.

Cases referred to :

*Kyriakides and The Republic*, 1 R.S.C.C. 66;

*Eleni Vrahimi and Another and The Republic*, 4 R.S.C.C. 121;

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*The Greek Registrar of Co-operative Societies etc. v. Nicos  
Nicolaidis* (1965) 3 C.L.R. 164.

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**Recourse.**

v.  
REPUBLIC  
(COUNCIL  
OF MINISTERS  
AND OTHERS)

Recourse against the decision of the respondents concerning the full or free use of Aharnon Street, Famagusta.

*J. Kaniklides*, for the applicant.

*L. Loucaides*, Senior Counsel of the Republic,  
for the respondents.

*Cur. adv. vult.*

The following decision \* was delivered by :-

MALACHTOS, J. : By this recourse, which is made under Article 146 of the Constitution, the applicants apply for :-

- (a) A declaration that the act of the respondents or either of them whereby the full and/or free use of Aharnon Street, Famagusta, or part thereof is interfered with, is in excess or abuse of powers, unconstitutional and illegal and/or against the general principles of administrative law, null and void and of no effect whatsoever, and;
- (b) a declaration that the decision of the respondents 1 and 2 to abolish that part of Aharnon Street, Famagusta, which runs between Kennedy Avenue and the beach, *i.e.* a strip of about 600 ft., is in excess or abuse of powers, unconstitutional and illegal and/or against the general principles of administrative law, null and void and of no effect whatsoever.

The respondents in their opposition allege that —

- (i) The act complained of in paragraph (a) of the application, does not amount to an executory

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\* For final judgment on appeal see p. 219 in this Part *post*.

administrative act and does not fall within the domain of public law and, consequently, cannot legally constitute the subject of a recourse under Article 146 of the Constitution; and

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- (ii) the decision complained of in paragraph (b) of the application, was never taken up to and when the opposition was filed, but merely a scheme was under consideration according to which a proposal would be submitted for the taking of a future decision by the appropriate organ, *i.e.* the Council of Ministers, for the abolition of the said street.

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On the 10th February, 1972, when this application came on for hearing before this Court, Mr. Loucaides, counsel for the respondents, informed the Court that the decision referred to in paragraph (b), of the application, was taken on the 30th December, 1971, and so, as far as paragraph (b) of the application is concerned, the application was premature.

As to paragraph (a) of the application, he submitted that his objection to that paragraph be taken as a preliminary legal issue. He conceded that there was interference by the respondents on part of Aharnon Street, the subject matter of this recourse, affecting the free passage through that street.

Mr. Kaniklides appearing for the applicants, accepted that the decision referred to in paragraph (b) of the application, was taken by the respondent No. 1 on the 30th December, 1971, *i.e.* after the filing of this application. He further agreed that the point raised in opposition to paragraph (a) of his application, be taken as a preliminary legal point because the decision of the Court on this point might dispose substantially of the whole case.

According to the statement of facts appearing in the application the interference of the respondents consists in blocking the said street with barbed wire fixed on poles posted by the beach on or about the 14th May, 1971. The length of the street in question affected is about 600 ft. and runs from Kennedy Avenue to Ayios

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Memnon beach. The respondents caused to be prepared and approved plans for the tourism development of the "Golden Sands" area, Famagusta, which plans envisage buildings to be erected on the said part of Aharnon Street. The applicants came to know about these plans upon visiting on the 10th March, 1971, the Municipal offices of Famagusta where the said plans were publicly exposed. On the next day, that is, the 11th March, 1971, they protested in writing about these plans to the Minister of Commerce and Industry, respondent 2, in this application. A copy of the said protest appears in the file of the Court and is marked "A". To their protest the applicants received a written reply dated 5th April, 1971, signed by the Director - General of the Ministry of Commerce and Industry, which reads as follows :

"I have been instructed by the Minister of Commerce and Industry to refer to your letter dated 11th March on the subject of the contemplated abolition of Aharnon Street and to inform you that the abolition of the said street is from the technical point of view absolutely necessary as this street cuts across the tourist compound to be constructed.

Consequently, I would like to inform you that in substitution for the abolished street our Ministry has proposed as a solution for the proceeding of the inhabitants of your quarter towards the sea, the construction of two vertical footpaths on both sides of the camp."

Mr. Loucaides argued that the matter complained of in paragraph (a) of the application, cannot be the subject of a recourse under Article 146 of the Constitution because it does not amount to an act or decision by any organ or authority of the Republic in the exercise of administrative or executive authority. These acts, do not fall within the domain of public law but are subject to civil law. They are not executory administrative acts. He further submitted that the remedy for any acts of the organs or authorities of the Republic which are considered illegal, are those provided under Article 172 of the Constitution and are not the subject matter of a recourse under Article 146. He also argued that the

acts complained of are in the nature of acts of execution of a decision which was purported to have been taken.

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On the other hand, Mr. Kaniklides submitted that in view of the fact that by paragraph (a) of the application the applicants attack the legality of the act of the respondents, the recourse could and should be proceeded with as far as this paragraph is concerned. Article 146 of the Constitution, paragraph 1, gives exclusive jurisdiction to the Supreme Constitutional Court, now the Supreme Court, to deal and decide on a recourse filed against any decision or act or omission of any organ or authority. He further submitted that since the other side admitted that the street in question was physically and substantially interfered with, that act is an act falling within the domain of public law and it is an executory act and not only an act of execution.

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Article 146.1 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.”

The question to be considered, at this stage, is whether the act of the respondents complained of is an act in the sense of Article 146.1 of the Constitution; in other words, whether the said act falls in the domain of public or private law. An administrative act is an emanation from a public authority and includes all unilateral authoritative acts of an authority of public administration, which have direct legal effect with the exception of legislative and judicial acts. This has been settled in a number of decisions of this Court. To quote some of them : *Phidias Kyriakides and The Republic*, 1 R.S.C.C. page 66; *Eleni Vrahimi and Another and The Republic*, 4 R.S.C.C. page 121; and *The Greek Registrar of the Co-operative Societies and/or the Commissioner*

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and *Greek Registrar of Co-operative Societies v. Nicos Nicolaidis* (1965) 3 C.L.R. page 164.

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An executory act is defined in the conclusions from the jurisprudence of the Council of State in Greece 1929—1959 pages 236—7 as “an act by means of which the will of the administration is made known on a given matter, and which aims at producing a legal situation concerning the citizen affected”.

In the light of the above I hold the view that the contents of the letter addressed to the applicants and signed by the Director-General of the Ministry of Commerce and Industry, dated 5th April, 1971, made known the will of the administration on the subject of Aharnon Street and this will was put into execution on the 14th day of May 1971. I, therefore, rule that the act of the respondents complained of is an act in the sense of Article 146.1 of the Constitution. Consequently, it is directed that this application should proceed to trial on ground A.

I must, however, make it clear that I reached this decision on the assumption that the requirements of Article 146.2 of the Constitution are satisfied, *i.e.* that the applicants are persons whose an existing legitimate interest has been adversely and directly affected by the act of the respondents.

Since this point has not been raised or argued before me I leave it open to be discussed at a later stage in these proceedings.

*Order accordingly.*