

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

KATHELEN ANDRE HADJIPANAYI

Applicant,

and

THE MUNICIPALITY OF NICOSIA, AND/OR
THE MUNICIPAL COMMITTEE OF NICOSIA,

Respondent.

(Case No. 140/72).

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Recourse under Article 146 of the Constitution—Time within which recourse thereunder has to be filed—Paragraph 3 of Article 146—Time in this case commenced running as from the date of its publication through “public notification” as required by the relevant bye-law (infra) viz. as from the date of the formal validity of the executory decision—And not as from the subsequent date when it takes effect viz. when it comes into operation, the latter date being that of the substantive validity.

Recourse—Time—Article 146.3 of the Constitution—Decision of the respondent Committee imposing restrictions for traffic in a particular street—Decision taken under bye-law 11 of the Nicosia Municipal (Traffic) Bye-Laws 1972—Decision taken on February 26, 1972, published as prescribed on February 27, 1972—Decision to come into operation on February 28, 1972—Decision so published being an executory decision, the time of 75 days within which a recourse against said decision has to be filed commenced running as from the date of its publication (February, 27) i.e. as from the date of its formal validity—And not as from the subsequent date (February 28, supra) on which date the said decision came into operation i.e. acquired its substantive validity—Consequently, this recourse having been filed on May 13, 1972 i.e. on the 76th day as from said publication is not maintainable as being out of time.

Administrative acts or decisions—Formal validity of admini-

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strative decisions—To be distinguished from their substantive validity.

By this recourse under Article 146 of the Constitution the applicant seeks the annulment of the decision of the respondent Committee dated February 26, 1972, whereby traffic in the Ledra Street, Nicosia, has been restricted with effect as from February 28, 1972. This decision dated February 26, 1972, was duly published in its entirety in the local press on Sunday the 27th February, 1972 and came into operation on the 28th February, 1972. It is to be noted that the applicant had full knowledge of the aforesaid decision through its publication on the same day it was so published (*viz.* February 27, 1972). It is useful to point out that February of that year had 29 days. The present recourse was filed on the 13th May, 1972. It is common ground that if the calculation of the 75 days' period provided by Article 146.3 of the Constitution as being the time limit within which a recourse has to be filed, is to be made on the basis of the 27th February, 1972, then the recourse is out of time. It was argued, however, by counsel for the applicant that the calculation should commence not as from the formal validity of the *sub judice* decision (*viz.* 27th February, *supra*) but on the basis of its substantive validity, that is to say 28th February 1972, date on which it came into force (*supra*).

The learned Judge of the Supreme Court felt unable to accept the view advanced by counsel for the applicant and dismissed the recourse as being out of time.

Held, (1). There is no dispute that a "public notification" of the *sub judice* decision has taken place as required by the relevant bye-law (see *post* in the Judgment); and this was done on February 27, 1972 (*supra*). The effect of this public notification, in view of the wording of the bye-law, is that, what until then was an *internum* of the administration, it acquired legal validity upon its declaration through this public notification.

(2) This rule sets down the time from which the administrative act is capable of causing the corresponding to its contents legal change. In other words, it is the time of the commencement of its *formal validity*. Different, however, is the question

of its time duration which this change may have, that is the question of fixing the time limits within which the legal consequences of the act may commence and expire. The latter refers to the commencement and the expiration of the substantive validity of the administrative act. (See Stasinopoulos, Law of Administrative Acts, 1951, p. 368). A distinction, therefore, has to be made between the commencement of the formal validity of the administrative act (in this case February, 27) and the commencement of its substantive validity (in this case February, 28).

- (3) In the present case the publication marked the formal validity of the *sub judice* decision which is an executory one, since it contained a command whose execution was thereafter obligatory and it was not a mere expression of intention. (See Tsatsos, application for Annulment before the Council of State, 3rd edn. pp. 120 - 123). It follows that in the present case the time commenced running as from the date of publication (February, 27) of the *sub judice* executory act; the recourse is, therefore, out of time; and as such not maintainable.

Recourse dismissed.

Cases referred to :

The Holy See of Kitium and The Municipal Council of Limassol, 1 R.S.C.C. 15;

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

Recourse.

Recourse against the decision of the respondent whereby traffic in Ledra Street Nicosia has been prohibited and/or restricted since the 28th February, 1972.

C. Glykys, for the applicant.

C. Indianos, for the respondent.

Cur. adv. vult.

The following decision was delivered by :-

A. LOIZOU, J. : The applicant by the present recourse

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prays that the decision of the respondent Committee whereby traffic in Ledra Street, Nicosia has been prohibited and/or restricted since the 28th February, 1972, is in excess of the powers vested in them by virtue of the Nicosia Municipal (Traffic) Bye-Laws, 1972 and is null and void and of no effect whatsoever.

When the case came up for directions it was directed by consent of the parties that the issue that this recourse was filed out of time raised in the opposition of the respondent Committee, be dealt with as preliminary to the hearing of the case, the undisputed facts of which are as follows :-

The applicant is a lessee of the Embassy Hotel situated in Ledra Street. It consists of 67 bedrooms, centrally air-conditioned and is classified as a 1st class Hotel.

The respondent Committee by a decision published in the local press on the 12th December, 1971, had prohibited and/or restricted the circulation of vehicular traffic in Ledra Street and installed signs at suitable places in the said street indicating the prohibition or restriction of the traffic therein in conformity with the provision of Bye-Law 11(2) of the said Bye-Laws. *Exhibits* 2(a) and 2(b) are photographs of those signs.

The respondent Committee in exercise of the powers vested in them by virtue of the aforesaid Bye-Laws and with the prior concurrence of the Chief of Police, decided to and they did annul the previous Notification and by Public Notification imposed a number of restrictions for traffic in Ledra Street and to certain of its side streets as from the 28th February, 1972. The decision dated the 26th February, 1972 was published in its entirety in the local press on Sunday the 27th February, 1972. Copy of *Eleftheria* newspaper containing such Notification has been produced as *exhibit* 1. The details of these restrictions are not material for the purposes of this ruling and I need not set them out herein verbatim. Suffice it to say that, *inter alia*, for some stretches of Ledra Street, including that through which access is gained to the applicant's hotel, the circulation of motor or other vehicles was prohibited—except for taxis and vehicles for the distribution of goods—between the hours of 3.00 and 6.15 p.m. of every day except on Saturdays and Sundays

and on Saturdays from 11.00 a.m. until 1.30 p.m. In accordance with the said Public Notification the restrictions would commence as from Monday the 28th February, 1972.

The applicant had full knowledge of the *sub judice* decision through its publication as from the 27th February, 1972, the publication of the said decision and the full knowledge of same by the applicant, coinciding in this case.

The present recourse was filed on the 13th May, 1972. As the counting of the time is made in days and not in calendar months, it is useful to point out that February of that year had 29 days.

It is common ground that if the calculation of 75 days, provided for by Article 146.3 of the Constitution as being the time limit within which a recourse under the said Article of the Constitution should be filed, is to be made on the basis of the 27th day of February, then the recourse is out of time. If, however, the view advanced by learned counsel for the applicant is accepted and the calculation commences on the basis of the 28th February, that is to say, the day on which the restrictions described in the decision were to commence, then the recourse has been filed within the 75 days' period. Needless to point out that in reckoning the period of 75 days the day on which the relevant event occurred, should not be counted. (See the *Holy See of Kitium* and *The Municipal Council of Limassol*, 1 R.S.C.C. page 15 and *John Moran and The Republic*, 1 R.S.C.C. page 10).

The argument of learned counsel for the applicant advanced in support of the contention that the recourse is not out of time, has been in the first place that since the decision was to take effect on a future date, the running of the time should be calculated as from that date and not as from the date of the publication. Secondly, the decision is not final until the sign posts provided by the Regulations are installed and consequently the time should run after that was done. Thirdly, no question of the time starting to run can arise, since the restriction is of a continuous nature.

In respect of the first part of the argument, it may

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be useful to refer to Bye-Law 11(1) of the said Bye-Laws which in so far as material, reads as follows :-

“The Council (now Committee) may, from time to time, with the prior concurrence of the Commissioner of Police (now Chief of Police) by public notification —

(a)

(b) prohibit traffic other than pedestrians in any street;

(c) restrict traffic in any street.

(2) Whenever traffic in any street is prohibited or restricted, the Council shall exhibit adequate signs at all suitable places in such street, indicating the prohibition or restriction of the traffic in such street as the case may be and thereafter, subject to the provisions of paragraph (3) of this Bye-Law no person shall take drive or push any vehicle contrary to the prohibition or restriction declared or made in this Bye-Law in respect thereof.”

There is no dispute that such public notification has taken place. The effect of this public notification in Administrative Law, in view of the wording of the Bye-Law, is that, what until then was an *internum* of the administration, it acquired legal validity upon its declaration through this public notification. This rule sets down the time from which the administrative act is capable of causing the corresponding to its contents legal change. In other words, it is the time of the commencement of its formal validity. Different, however, is the question of its time duration which this change may have, that is the question of fixing the time limits within which the legal consequences of the act may commence and expire. The latter refers to the commencement and the expiration of the substantive validity of the administrative act. (See Stasinopoulos, Law of Administrative Acts (1951) page 368). A distinction, therefore, has to be made between the commencement of the formal validity of the administrative act and the commencement of its substantive validity.

In the present case the publication marked the formal

validity of the act which is an executory one, since it contained a command whose execution was thereafter obligatory and it was not a mere expression of intention. (See Tsatsos, Application for Annulment before the Council of State, 3rd Edition, pp. 120 - 123).

Under Article 146.3 of the Constitution, a recourse shall be made within 75 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. The time commenced running as from the date of its publication. The decision so published being an executory one. The exhibition of adequate signs at suitable places provided for by Bye-Law 11(2) hereinabove set out, is nothing more but an act of execution, in other words an invitation that the citizens complied with the existing executory act of the restriction of traffic. (See Conclusions of Case Law of the Greek Council of State (1929 - 1959) page 240). The fact that no new signs were placed in execution of the new decision as those already in situ were used for this purpose, does not change the position either way. The very wording of paragraph 2 of Bye-Law 11 shows that the prohibition or restriction comes into existence upon public notification and that the adequate signs are only required to be exhibited in such street for the purpose of indicating the said prohibition or restriction of the traffic.

The argument that the restriction is of a continuous nature and therefore the time starts running at the particular hour of a day when the restriction commences, cannot, in my view, stand, because as from its publication there was an executory decision, of which the applicant had full knowledge and he could, with certainty and accuracy, ascertain therefrom the damage she would suffer from the said publication.

For all the above reasons, I have come to the conclusion that the present recourse, having been filed out of time, cannot proceed, and is hereby dismissed with no order as to costs.

*Application dismissed.
No order as to costs.*

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