

1974
Jan. 28

[TRIANTAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEMETRIOS
PAPADEMETRIOU
v.
GOVERNMENT OF
THE REPUBLIC
THROUGH THE
ATTORNEY-
GENERAL
AND OTHERS

DEMETRIOS PAPADEMETRIOU,

Applicant,

and

1. THE GOVERNMENT OF THE REPUBLIC OF CYPRUS,
THROUGH THE ATTORNEY-GENERAL,
2. THE COUNCIL OF MINISTERS OF THE GOVERNMENT
OF THE REPUBLIC OF CYPRUS,
3. THE COUNCIL FOR REGISTRATION OF ARCHITECTS
AND CIVIL ENGINEERS,

Respondents.

(Case No. 251/70).

*Administrative Law—Recourse under Article 146 of the Constitution—
Executory act—Confirmatory act—It cannot be made the subject
of a recourse under the said Article—Rejection of applicant's
application for registration as an architect, because his qualifica-
tions were not among those provided under s. 7 of Law 41/62—
Refusal to reconsider question of his qualifications as no new
elements existed justifying such a course—Amounts to an act of a
confirmatory nature which cannot be made the subject of a re-
course.*

After the enactment of the Architects and Civil Engineers Law, 1962 (Law 41/62) the applicant applied to the Board for the Registration of Architects and Civil Engineers to be registered as an architect, under the provisions of the said law. His application was turned down by the board, because the institutions from which he had obtained his qualifications were not amongst those approved by the Council of Ministers under s. 7 of the above law. After a similar application by applicant was refused by the Council of Ministers on June 9, 1967, applicant continued complaining in writing about what he considered to be unjust treatment of his case on the part of the Appropriate Authorities.

In view of applicant's complaints the Director-General of the Ministry of Interior wrote to the Board on May 4, 1970 asking if in the opinion of the Board there was any room for reconsideration of the matter of the Applicant's qualifications.

On June 18, 1970, the Board replied that no reconsideration was possible as no new elements existed justifying such a course. Applicant was informed accordingly by letter dated June 27, 1970.

After receiving this letter he filed the present recourse, which he, eventually, withdrew in so far as respondent 3 is concerned.

The remaining respondents objected that the aforesaid letter of June 27, 1970 did not contain a new executory decision, which could be attacked by recourse, but that it was merely informatory, and, also, confirmatory of the decision of the Council of Ministers of June 9, 1967, in respect of which the present recourse was clearly out of time, in view of the provisions of Article 146.3 of the Constitution.

Held, (1) A confirmatory act, which signifies adherence of the administration to a course already adopted, is not of an executory nature and, therefore, it cannot be made the subject of a recourse under Article 146 of the Constitution (see *Kolokassides v. The Republic* (1965) 3 C.L.R. 542, *Ktenas and Another (No. 1) v. The Republic* (1966) 3 C.L.R. 64, *Varnara v. The Republic* (1968) 3 C.L.R. 566); and, in my opinion, the contents of the letter of June 27, 1970, in respect of which the present recourse has been made, amount, indeed, to an act of a confirmatory nature and nothing more.

Application dismissed.

Cases referred to:

Kolokassides v. The Republic (1965) 3 C.L.R. 542;

Ktenas and Another (No. 1) v. The Republic (1966) 3 C.L.R. 64;

Varnara v. The Republic (1968) 3 C.L.R. 566.

Recourse.

Recourse against the decision of the respondents not to approve, for the purpose of the Architects and Civil Engineers Law, 1962 (Law 41/62), the institutions from which the applicant obtained certain academic qualifications.

Chr. Mitsides, for the applicant.

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L. Loucaides, Senior Counsel of the Republic, for respondents No. 1 and No. 2.

I. Loizidou, (*Mrs.*), for respondent No. 3.

Cur. adv. vult.

The following judgment was delivered by:—

TRIANTAFYLLIDES, P.: By this recourse the applicant seeks, in effect, a declaration of the Court that “the decision” of the Council of Ministers, respondent 2, dated June 27, 1970, not to approve, for the purposes of the Architects and Civil Engineers Law, 1962 (Law 41/62), the institutions from which the applicant obtained certain academic qualifications, is *null* and *void*.

The applicant filed an earlier recourse, No. 184/66, based on similar grounds as the present recourse, but he withdrew it because there had not yet been taken a decision by the Council of Ministers on his application that his qualifications should be treated as equivalent to those mentioned in section 7 of Law 41/62.

As they emerge from the material before me (including the relevant file of the Ministry of Interior, *exhibit 5*), the salient facts of this case are as follows:

The applicant was practising the profession of architect and civil engineer in Cyprus since 1936. After the enactment of Law 41/62 the applicant applied to the Board for the Registration of Architects and Civil Engineers to be registered, under the provisions of the said Law, as an architect. The relevant provision of Law 41/62 is section 7, the material parts of which read as follows:—

“7.—(1) A person shall be entitled to be registered as an Architect if he satisfies the Board that he is of good character, and that —

- (a) he is the holder of a diploma or degree in architecture of the Ethnikon Metsovion Polytechnion of Athens or of the Istanbul Teknik Universitesi; or
- (b) he is the holder of a diploma or degree in architecture of such other University or Institution of a standard equivalent to those mentioned in paragraph (a) above

as may from time to time be approved by the Council of Ministers on the advice of the Board and, until the Board is constituted, by the Council of Ministers, by notification published in the Official Gazette of the Republic; or

- (c) he is an associate member or fellow of the Royal Institute of British Architects;
- (d) he is the holder of a qualification which is recognised by the Royal Institute of British Architects for exemption from their final examination and has had at least one year's practical experience acquired after obtaining such qualification:

.....
(2) A person shall be entitled to be registered as a Civil Engineer if he satisfies the Board that he is of good character, and that -

- (a) he is the holder of a diploma or degree in civil engineering of the Ethnikon Metsovion Polytechnion of Athens or of the Istanbul Teknik Universitesi; or
- (b) he is the holder of a diploma or degree in civil engineering of such other University or Institution of a standard equivalent to those mentioned in paragraph (a) above as may from time to time be approved by the Council of Ministers on the advice of the Board and, until the Board is constituted, by the Council of Ministers, by notification published in the Official Gazette of the Republic; or
- (c) he is an associate member or member of the Institution of Civil Engineers in London;
- (d) he is the holder of a qualification which is recognised by the Institution of Civil Engineers in London for exemption from their examination 'A' and 'B' and has had at least one year's practical experience acquired after obtaining such qualification:

.....”

The relevant academic qualifications, at the material time, of the applicant appeared to have been obtained from:-

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- (a) The Bennett College, in Sheffield.
- (b) The American School, in Chicago.
- (c) The Chambers College, in London.
- (d) The National Institute of Engineering, in London.
- (e) The British Institute of Engineering Technology, in London.

The application of the applicant was turned down by the Board, because the institutions from which the applicant had obtained his qualifications were not amongst those approved by the Council of Ministers under section 7 of Law 41/62.

He, then, applied to the Council of Ministers, on April 25, 1966, for the requisite approval.

The Council of Ministers, by decision No. 6727, dated June 9, 1967 (see *exhibit 1*) decided, on the advice of the Board, to refuse such approval.

The applicant was informed, by letter dated June 16, 1967, about the decision of the Council of Ministers (see *exhibit 2*).

After receipt of this letter the applicant continued complaining in writing about what he considered to be unjust treatment of his case on the part of the appropriate authorities.

In view of the applicant's complaints, the Director-General of the Ministry of Interior wrote to the Board on May 4, 1970 (see *exhibit 4 (a)*) asking if in the opinion of the Board there was any room for reconsideration of the matter of the applicant's qualifications.

On June 18, 1970, the Board replied (see *exhibit 4 (b)*) that no reconsideration was possible as no new elements existed justifying such a course, but that the Board was willing to enrol the applicant as a "Licensed Architect by Profession", under section 9 of Law 41/62, if the applicant wished to submit an application for this purpose.

By letter of June 27, 1970 (see *exhibit 3*) the Director-General of the Ministry of Interior informed the applicant that it was not possible for the Council of Ministers to review its previous decision regarding his case.

After receiving this letter the applicant filed the present recourse, which he, eventually, withdrew in so far as respondent 3 is concerned.

It has been objected to on behalf of the remaining respondents (1 and 2) that the aforesaid letter of June 27, 1970, does not contain a new executory decision, which could be attacked by recourse, but that it was merely informatory, and, also, confirmatory of the decision of the Council of Ministers of June 9, 1967, in respect of which the present recourse is clearly out of time, in view of the provisions of Article 146.3 of the Constitution.

I am of the view that the respondents' objection should be sustained because, as already held in other cases, a confirmatory act, which signifies adherence of the administration to a course already adopted, is not of an executory nature and, therefore, it cannot be made the subject of a recourse under Article 146 of the Constitution (see *Kolokassides v. The Republic* (1965) 3 C.L.R. 542, *Ktenas and Another (No. 1) v. The Republic* (1966) 3 C.L.R. 64; *Varnava v. The Republic* (1968) 3 C.L.R. 566); and, in my opinion, the contents of the letter of June 27, 1970, in respect of which the present recourse has been made, amount, indeed, to an act of a confirmatory nature and nothing more.

As a result this recourse fails and has to be dismissed accordingly; but, I do not think that I should make an order of costs against the applicant.

Recourse dismissed; no order as to costs.

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