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[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KATHELEN
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HADJIPANAYI
v.
MUNICIPAL
COMMITTEE
OF NICOSIA

KATHELEN ANDRE HADJIPANAYI,

Applicant,

and

THE MUNICIPAL COMMITTEE OF NICOSIA,

Respondent.

(Case No. 46/72).

Administrative acts and decisions—Which alone can be made the subject of a recourse under Article 146 of the Constitution—Executory acts alone can be challenged by such recourse—Acts of mere informative character are not executory—They are a mere expression of intention on the part of the administration as contradistinguished from a declaration of its will—Will aiming at, and producing by its expression, legal results—So called decision in the instant case imposing restrictions for traffic—Publications in the local press and a statement by the Chairman of the respondent Municipal Committee giving details of such so called decision few days before a decision was actually reached and duly published as required by the relevant statute—Such so called decision (viz. the subject matter of the present recourse) is not an executory decision liable to be attacked by the recourse—It is merely an act of an informative character outside the ambit of Article 146.1 of the Constitution—Recourse, therefore, not maintainable.

Executory act or decision—What is an executory act or decision—Definition—Executory act as contradistinguished from an act of mere informative character or from a mere expression of intention as opposed to a declaration of the administrative organ's will aiming at producing legal results—Cf. supra.

Act of merely informative character—See supra.

This is a recourse under Article 146 of the Constitution whereby the applicant seeks to challenge the validity of a so called decision of the respondent Municipal Committee of Nicosia, in relation to the use and crossing by motor cars and other vehicles

of the Ledra Street, Nicosia, dated December 6 or 7, 1971, and published in the local press of December 7 and 8, 1971. This alleged decision proved to be a mere declaration of intention of an informative character as distinct from an executory decision. Actually the executory decision to prohibit or regulate traffic, other than use by pedestrians, in Ledra street aforesaid was taken by the respondent Committee on December 11, 1971 (and not on the 6th or 7th of December as alleged by the applicant) and was published in the local press on the following day, December 12, 1971.

That being the position the learned Judge dismissed the recourse in *limine* on the sole ground that the so called decision complained of, not being an executory decision but merely an act of an informative character, is outside the ambit of Article 146.1 of the Constitution, which means that it cannot be made the subject of a recourse for annulment under that Article.

Held, (1) Not any acts emanating from the administration but only executory acts or decisions of the administration can be made the subject of a recourse for annulment (see Conclusions from Case—Law of the Greek Council of State 1929–1959, p. 236). This principle has been adopted by the Full Bench of this Court in its appellate jurisdiction in the case of *Nicos Kolokassides v. The Republic* (1965) 3 C.L.R. 542.

(2) (a) An executory act or decision is an “act by means of which there is expressed the will of the administrative organ, which aims at producing legal results..... and which entails its immediate enforcement through administrative channels” (see: Conclusions of the Case—Law etc. at p. 237, *supra*).

(b) The main element of the notion of an administrative executory act is the production of a legal result, consisting in the creation, modification or abolition of a legal situation, *i.e.* rights and liabilities of administrative character of those governed (see in this respect the decisions of the Greek Council of State in Case Nos. 950/1954 and 1866/1967).

(c) Acts of an administrative authority which are only of an informative nature are not executory. Also, a mere expression of intention of the administration—as contradistinguished from an expression of its will—does not amount to an executory act (see: Conclusions of the Case—Law etc. at pp. 238 to 239, *supra*).

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(3) In the present case the publications in the local press of the 7th and 8th of December 1971, as well as the statements made by the Chairman of the respondent Committee at the press conference of December 7, 1971, do not amount to administrative executory acts or decisions. They are acts of preparation of an informative nature and the Chairman expressed only the intention of the administration in the matter. The decision that produced legal results was the one taken by the respondent Municipal Committee on December 11, 1971, and published in the local press of December 12, 1971 and was put into effect on December 13, 1971.

Recourse dismissed. No order as to costs.

Cases referred to:

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

Decisions of the Greek Council of State Nos. 950/54 and 1866/67.

Cf. Conclusions from the Case-Law of the Greek Council of State 1929-1959, pp. 236, 237 and 238 to 239.

Recourse.

Recourse against the decision of the respondent Municipal Committee of Nicosia taken on the 6th or 7th December, 1971, in relation to the use and crossing of motor cars and other vehicles of Ledra street.

C. Glykys, for the applicant.

C. Indianos, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:-

MALACHTOS, J.: The applicant in this recourse, which is made under Article 146 of the Constitution, claims a declaration of the Court that the decision taken by the respondent on the 6th or 7th December, 1971, in relation to the use and crossing by motor cars and/or other vehicles of the Ledra Street, which was at first published in the local press as a mere piece of news and/or by public notification as provided by Bye-Law 11(1) of the Nicosia Municipal (Traffic) Bye-Laws 1952 to 1956 and afterwards published in the local press by the then Chairman of the respondent Committee, Mr. Kythreotis, in a

press conference, which was convened and took place in the presence of the Members of the respondent Committee as well as in the presence of the Chief of Police Mr. Antoniou, and Mr. Ioannides of the Town Planning Department, is *null* and *void* and of no legal effect whatsoever.

According to the allegations of the applicant the decision of the respondent Committee complained of, appeared in two publications of the local newspaper "Phileleftheros" of the 7th and 8th December, 1971, copies of which are attached thereto. The publication of the 7th December reads as follows:-

"As from the 12th December the circulation of private vehicles in the central commercial streets of Nicosia, *i.e.* Ledra, Onasagoras and Trikoupki, will be experimentally prohibited. To this prohibition only the urban buses of Nicosia and the taxis that are serving the mass circulation of the public and tourists, will be exempted. This decision of the Municipal Authority of the capital is expected to be announced at a press conference today by the Chairman of the Municipal Committee, the District Officer of Nicosia, Mr. Kythreotis. A spokesman for the Municipal Committee of Nicosia has made it clear that these measures are not introduced due to the Christmas holidays. They are experimental measures which will be implemented by analogy to the degree of their success. The circulation of the urban buses and taxis and, particularly, of the former, will be allowed in view of the approved regular routes by the Licensing Authority and of the parking places created in the said three streets".

The publication of the 8th December reads as follows:

"Part of Ledra Street is converted on the basis of an experimental scheme for the use of pedestrians only. The above decision was taken by the Nicosia Municipal Committee and was announced yesterday at a press conference by its Chairman Mr. Kythreotis.

THE STATEMENT OF MR. KYTHREOTIS:

Among other things Mr. Kythreotis stated:

- (a) The circulation of traffic on the part of Ledra Street which is situated between Regina Street and Alexander the Great Street, will be prohibited.

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Between these two streets special arrangements will be made for the pedestrians and only vehicles for instant needs will be allowed to circulate;

- (b) Vehicles entering the town from Metaxas Square will follow the following route: Metaxas Square, Regina Street, Vassilios Voulgaroktonos Street, Alexander the Great Street and Ledra Street. For this purpose Alexander the Great Street is declared one-way street with an easterly direction.
- (c) The traffic will be allowed to proceed across Ledra Street in Apollo and Arsinoe Streets;
- (d) All parts of Ledra Street from Hippocrates Street up to Apollo Street and from Arsinoe Street up to Lykourgos Street, the circulation of vehicles will be allowed only for purposes of serving the shops and other premises and for extraordinary requirements. For this purpose that part of Hippocrates Street between Onasagoras and Ledra Streets will be declared one-way street in the opposite direction from the existing one, *i.e.* a westerly direction;
- (e) On the part of Ledra Street between Regina and Hippocrates Streets, Apollo and Arsinoe Streets, Lykourgos and Alexander the Great Streets, only pedestrians will be allowed to circulate and there will be placed, benches and flower pots for the benefit of the pedestrians and the improvement of the appearance of the area;
- (f) Since the parking of vehicles in Ledra Street is already prohibited, the proposed measures will not affect in any way the number of motor vehicles which might park within the central area of the town. Since during the holidays the congestion of traffic in the centre of the town is great, the public is advised to use, as far as possible, the existing parking places in the vicinity of the central area and proceed on foot to the centre or to make use of the urban buses' ”.

The applicant was, at the material time, a lessee of the Embassy Hotel which is situated in Ledra Street. According to

her allegations most of her clients were tourists who, due to the decision of the respondent Committee to prohibit the circulation of motor vehicles in the said street, cancelled their reservations and so her business has been prejudicially affected.

The grounds of law on which the application is based may be summarised as follows:

The decision of the respondent Committee was taken in abuse and/or in excess of powers vested in them by virtue of Bye-Law 11 of the Nicosia Municipal (Traffic) Bye-Laws 1952 to 1956. This Bye-Law reads as follows:

“ 11.–(1) The Council may from time to time, with the prior concurrence of the Commissioner of Police, by public notification –

- (a) declare any street or part thereof as a street for one way traffic for vehicles and animals;
- (b) prohibit traffic other than pedestrian in any street;
- (c) restrict traffic in any street.

(2) Whenever a street is declared as a street for one way traffic or whenever traffic in any street is prohibited or restricted, the Council shall exhibit adequate signs at all suitable places in such street indicating the direction, prohibition or restriction of the traffic in such street, as the case may be, and, therefore, subject to the provisions of paragraph (3) of this bye-law, no person shall take, drive, ride or push any vehicle or shall ride or lead any animal or shall push any bicycle, perambulator or hand-driven vehicle in such street contrary to the direction, prohibition or restriction declared or made under this bye-law in respect thereof.

(3) No prohibition or restriction made under the provisions of subparagraph (b) or (c) of paragraph (1) of this bye-law shall prevent any person from using any vehicle, perambulator or animal in any street in respect of which the prohibition or restriction has been made, for the purpose of taking any person or merchandise to or from any premises or place situated in any part of such street or for any other purpose necessary for or incidental to the ordinary use of any such premises or place”.

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The respondent Committee in their opposition, besides their allegation that the decision was lawfully taken under the relevant legislation, they raised the following two grounds of law which, on the application of counsel for respondent and with the consent of counsel for applicant, were heard as preliminary legal issues:

- (a) the act and/or decision complained of, as it is described in the application and the exhibits attached thereto, does not constitute an executory act as such act and/or decision is legally non existent; and
- (b) in the alternative, and without prejudice to the above allegation, the respondent alleges that the present recourse has been abated prior to the service of the application on the respondent since the act and/or decision complained of was cancelled by a subsequent decision of the respondent published on 27.2.72 and/or was revoked and/or because a new act was issued regulating in another way the subject matter of this recourse.

Counsel for respondent argued that the act complained of as published in the newspaper "Phileleftheros" of the 7th and 8th December, 1971 is not an executory act but an act of preparation and of an informative nature. The decision to prohibit traffic, other than pedestrians, in Ledra Street was taken on the 11th December, 1971 and not on the 6th or 7th December, 1971, as alleged in the application and was published in the local press the next day. A copy of "Eleftheria" newspaper of the 12.12.71 in support of this allegation of counsel for the respondent was produced in Court as *Exhibit 1*. The said publication is as follows:

" NICOSIA MUNICIPALITY

It is announced for the information of the public that the Municipal Committee of Nicosia, in exercising the powers vested in it by virtue of the Nicosia Municipal (Traffic) Bye-Laws and with the concurrence of the Chief of Police, has declared one way streets, restricted and prohibited circulation of traffic as from next Monday the 13th December, 1971, in the following streets, as mentioned in detail hereinbelow:

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1. The circulation of motor cars or vehicles is entirely prohibited in the following specified parts of Ledra Street:-
 - (a) that part of the above street from its junction with Regina Street up to its junction of Hippocrates Street;
 - (b) that part of it from its junction with Apollo Street up to its junction with Arsinoe Street; and
 - (c) that part of the same street from its junction with Lykourgos Street up to its junction with Alexander the Great Street.
2. The circulation of motor vehicles or other vehicles in parts of the following streets is prohibited, with the exception of taxis and of vehicles for distribution of goods only, towards the directions described below:-
 - (a) part of Hippocrates Street, from its junction of Onasagoras Street up to its junction with Ledra Street, towards the direction of Ledra Street;
 - (b) part of Ledra Street from its junction with Hippocrates Street up to its junction with Apollo Street to the direction of Apollo Street;
 - (c) part of Ledra Street from its junction with Arsinoe Street up to its junction with Lykourgos Street towards the direction of Lykourgos Street.
3. The one way direction of Alexander the Great Street from its junction with Vassilios Voulgaroktonos Street up to its junction with Ledra Street is hereby cancelled and the same part of Alexander the Great Street is declared a one way street with traffic direction from Vassilios Voulgaroktonos Street towards Ledra Street.
4. The one way direction of Hippocrates Street from its junction with Onasagoras Street, up to its junction with Ledra Street, is hereby cancelled and this part

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of the said street is declared as one way street with traffic direction towards Ledra Street.

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BY THE NICOSIA MUNICIPALITY

In Nicosia the 11th December, 1971".

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It is not in dispute that the respondent Committee cancelled the above decision by a new one which was taken on 26.2.72 and was published in the local press the next day. The relative part of this publication in "Eleftheria" newspaper of 27.2.72, exhibit 2, is as follows.

" NICOSIA MUNICIPALITY

It is announced that the Municipal Committee of Nicosia, in exercising the powers vested in it by virtue of the Nicosia Municipal (Traffic) Bye-Laws and with the concurrence of the Chief of Police, decided to cancel, and by this Notice cancels, the Notification which was published in the local press on 12.12.71, for the circulation of vehicles and pedestrians in Ledra Street and its side streets, and to impose the following restrictions as from next Monday 28th February, 1972:

- 1.
- 2.
3.
4.
- 5

BY THE NICOSIA MUNICIPALITY

In Nicosia the 26th February, 1972".

Counsel for the respondent further submitted that even if we assume that the decision or act complained of was an executory one and, therefore, the applicant could file a recourse under Article 146 of the Constitution, then again the recourse has been abated as at the time of the hearing the act or decision complained of had ceased to exist

As stated in the Conclusions from Case-Law of the Greek Council of State 1929-1959, page 236, to a recourse for annulment is not subjected any act emanating from an administrative organ, acting as such, but only executory acts This principle

has been adopted by the Full Bench of this Court in its appellate jurisdiction in the case of *Nicos Kolokassides v. The Republic* (1965) 3 C.L.R. 542.

In considering, therefore, the argument of counsel for respondent as regards the first ground of law we must see what constitutes an executory act in administrative law.

An executory act as defined in the Conclusions of Case-Law of the Greek Council of State 1929-1959 at page 237, is an "act by means of which there is expressed the will of the administrative organ, which aims at producing legal results concerning those governed and which entails its immediate enforcement through administrative channels".

The main element of the notion of an administrative act is the production of a legal result, consisting in the creation, modification or abolition of a legal situation, *i.e.* rights and liabilities of administrative character of those governed. (See in this respect the decisions of the Council of State in Greece in Cases 950/54 and 1866/67).

Acts of an administrative authority which are only of an informative nature are not executory. Also, a mere expression of intention of the administration—as contradistinguished from an expression of its will—does not amount to an executory act. (See Conclusions of Case-Law of the Greek Council of State 1929-1959 at pages 238 to 239).

In the present case the publications in the local press of the 7th and 8th December, 1971, as well as the statements made by Mr. Kythreotis at the press conference convened on 7.12.71, do not amount to administrative executory acts. They are acts of preparation and of informative nature and Mr. Kythreotis expressed only the intention of the administration on the matter.

The decision that produced legal results was the one taken by the respondent Municipal Committee on 11.12.71 and was published in the local press on 12.12.71 and was put into effect on 13.12.71. Only as against this decision a recourse could be made under Article 146 of the Constitution.

As regards the second ground of law, in view of my decision on the first ground, I consider it unnecessary to pronounce on it.

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In the light of the foregoing this recourse fails and it is dismissed.

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There will be no order as to costs.

*Application dismissed. No
order as to costs.*