

1974  
Dec. 3

[MALACHTOS, J.]

—  
VERENGARIA  
AND ALECA  
PAPACOKKINO  
ETC.  
v.  
REPUBLIC  
(DISTRICT  
OFFICER  
NICOSIA)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

VERENGARIA AND ALECA PAPACOKKINO, AS  
ADMINISTRATRICES OF THE ESTATE OF THE LATE  
PANAYIOTIS PAPACOKKINO, AND/OR IN THEIR  
PERSONAL CAPACITY,

*Applicants,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE DISTRICT OFFICER NICOSIA,

*Respondent.*

(Case No. 218/72).

*Executory act or decision—What constitutes an executory act or decision—Only an executory decision is amenable within the competence of this Court on a recourse under Article 146 of the Constitution—Application for permit to pump water from borehole within a water conservation area—Referred to the Director of the Water Development Department for his concurrence under section 4 (5) of the Wells Law, Cap. 351—Director by letter requested more information as to the intended use of the borehole—Such letter whereby such information was sought is not an executory act or decision—It follows that the present recourse, directed against said so called decision of the Director contained in the letter in question, is not maintainable and has to be dismissed.*

*Administrative acts or decisions—Executory act or decision—What constitutes an executory act or decision—Recourse under Article 146 of the Constitution—See supra.*

*Recourse under Article 146 of the Constitution—Executory acts or decisions alone are amenable to the jurisdiction of the Administrative Court (now the Supreme Court) on a recourse under that Article—Article 146.1 of the Constitution—See further supra.*

The applicants in these proceedings—recourse under Article 146 of the Constitution—made an application for permit to pump water from a borehole within a water conservation area,

which application was in due course, referred to the Director of the Water Development Department for his concurrence under section 4 (5) of the Wells Law, Cap. 351. The Director by letter requested more information as to the intended use of the borehole. The applicants apparently dissatisfied filed a recourse against the so called decision contained in the afore-said letter. The learned Judge dismissed this recourse holding that the contents of the letter in question do not amount to an executory decision and cannot, therefore, be made the subject of a recourse under that Article.

The facts of the case sufficiently appear in the judgment of the learned Judge dismissing the present recourse on the ground that its subject matter is not an act or decision of an executory nature.

Cases referred to:

*Kolokassides v. The Republic* (1965) 3 C.L.R. 542 C.A. affirming decision in the first instance reported *ubi supra* at p. 549.

#### Recourse.

Recourse against the act or decision of the respondent whereby he requested certain information from the applicants with regard to the intended use by them of a borehole which had been the subject matter of an application by applicants for a permit in their name to pump water therefrom.

A. *Markides*, for the applicants.

A. *Evangelou*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

The following judgment was delivered by:-

MALACHTOS, J.: The applicants in this recourse in their capacity as administratrices of the estate of the late Panayiotis Papacokkinou, are the registered owners of a piece of land situated at Peristeronari village in the area of Morphou under Registration No. C444 dated 31.12.71 being plot 383 of Sheet XIX Plan No. 59NI. On the said plot there is a borehole (well) which was constructed by the C.M.C. Ltd., the predecessors in title of the applicants, by virtue of a Permit No. 13209 (*exhibit 3*) dated 4th April, 1958, issued to them under section 3 of the Wells Law, Cap. 351.

1974

Dec. 3

—  
VERENGARIA  
AND ALECA  
PAPACOKKINO  
ETC.

v.

REPUBLIC  
(DISTRICT  
OFFICER  
NICOSIA)

1974  
Dec. 3  
—  
VERENGARIA  
AND ALECA  
PAPACOKKINO  
ETC.  
v.  
REPUBLIC  
(DISTRICT  
OFFICER  
NICOSIA)

By letter dated 20.4.72, *exhibit 2*, the applicants applied to the respondent authority for the issue of a permit in their name to pump water from the said borehole situated in the above mentioned plot. In view of the fact that the area in which the said borehole is situated has been declared as a water conservation area by virtue of Public Instrument No. 50 published in Supplement No. 3 to the Official Gazette of the Republic No. 771, dated 16.1.70, the application of the applicants was referred to the Director of Water Development Department for his views by virtue of subsection 5 of section 4 of the Wells Law, Cap. 351. This subsection reads as follows:

“(5) The Director of Water Development Department, in giving or withholding his concurrence under this section, shall have regard to the extent to which the general water situation in the area (including its further development) or the requirements of prior users of water may be affected by the proposed well”.

The views of the Director of Water Development Department on the matter as stated in paragraph 3 of the opposition are as follows:

“As regards the issue of a permit in the name of the new owners of the existing borehole, on plot 383 S/P 19/59, the application is recommended.

From the contents of the application it appears that the use of the water in question is entirely for irrigation purposes. For this reason I must be informed which other plots the applicants intend to irrigate and what sort of plantations are going to irrigate besides the plot in which the said borehole is situated so that I will be able to make the necessary studies before I recommend the irrigation of any other plot”.

The respondent after obtaining the above views addressed a letter dated 19.5.72 (*exhibit 1*) to the applicants which reads as follows:

“I wish to refer to your letter dated 20.4.72 by which you apply for the issue of a permit to pump water from the borehole which is situated on plot 383 S/P 19/59, and to inform you that —

- (a) the area in which the said borehole is situated has been declared a water conservation area by virtue of section 4 of the Wells Law, Cap. 351;
- (b) the Director of Water Development Department, who is empowered according to section 4 of the law, requires information as to the plots of land which you intend to irrigate from the said borehole”.

1974  
 Dec. 3  
 —  
 VERENGARIA  
 AND ALECA  
 PAPACOKKINO  
 U  
 ETC.  
 v.  
 REPUBLIC  
 (DISTRICT  
 OFFICER  
 NICOSIA)

The applicants after receiving the said letter filed on the 1st day of August 1972 the present recourse claiming a declaration of the Court that the administrative act and/or decision of the respondent authority *i.e.* of the District Officer of Nicosia, contained in the letter of 19.5.72 of the said District Officer to the applicants, is *null* and *void* and of no legal effect.

One of the grounds on which the opposition is based is that the decision and/or act complained of is not an executory administrative act in the sense of Article 146 of the Constitution. When the case came on for hearing, on the application of counsel for the respondent and with the consent of counsel for applicants this point was heard first as a preliminary legal issue.

Counsel for respondent argued that the letter of the District Officer dated 19.5.72 does not contain any administrative act of an executory nature but simply requests the applicants to supply him with certain information before reaching his decision on the matter. So, the said letter contains only preparatory acts.

On the other hand, counsel for applicants submitted that the letter of the respondent, *exhibit* 1, contained an executory administrative act as the respondent decided that the borehole in question is situated within a water conservation area.

I must say from now that I find no merit in this contention. The respondent in the said letter was stating a fact and nothing more. The decision by which the area where the borehole in question is situated was declared as a water conservation area, was taken by the Council of Ministers by virtue of section 4 subsection 1 of the Wells Law, Cap. 351. This subsection reads as follows:

“4.(1) Notwithstanding anything in this or any other Law contained, where the Council of Ministers is satisfied

1974

Dec. 3

—  
VERENGARIA  
AND ALECA  
PAPACOKKINOY

ETC.

v.

REPUBLIC  
(DISTRICT  
OFFICER  
NICOSIA)

that special measures for the conservation of water in any area are necessary in the public interest, whether for the protection of public water supplies or for the protection of water supplies used for industrial, domestic or other purposes, he may make an Order defining such area and, thereupon, no permit for the sinking or construction of a well in any such area shall be issued by a District Officer and no variation or modification of any condition or restriction imposed in such permit shall be effected, save with the concurrence of the Director of Water Development Department”.

It is well established that a decision, an act or omission of any organ, authority or person exercising any executive or administrative authority, must be of an executory nature in order to be amenable within the competence of this Court under Article 146 of the Constitution. This principle has been accepted by the Full Bench of this Court in its appellate jurisdiction in the case of *Nicos Kolocassides v. The Republic* (1965) 3 C.L.R. 542.

In the judgment of the trial Judge in the above case, which was upheld, and which appears at page 549 of the report, it is stated at page 551:

“ An administrative act (and decision also) is only amenable within a competence, such as of this Court under Article 146, if it is executory (εκτελεστι); in other words it must be an act by means of which the ‘will’ of the administrative organ concerned has been made known in a given matter, an act which is aimed at producing a legal situation concerning the citizen affected and which entails its execution by administrative means (see Conclusions from the Jurisprudence of the Council of State in Greece 1929–1959, pp. 236–237).

I am quite aware that in Greece this attribute of an act, which may be the subject of a recourse for annulment, is specifically stated in the relevant legislation (section 46 of Law 3713 as codified in 1961) but in my opinion such express provision was only intended to reaffirm a basic requirement of administrative law in relation to the notion of proceedings for annulment and, therefore, such requirement has to be treated as included by implication, because of the very nature of things, in our own Article 146, though it is not expressly mentioned”.

Applying the above principles to the facts and circumstances of this case I have come to the conclusion that the contents of *exhibit 1* do not amount to an executory act or decision on behalf of the respondent. The letter, *exhibit 1*, was only a document by which information was sought by the respondent as to the intended use of the borehole in question so that to be able to decide on the matter.

For the reasons stated above I accept the submission of counsel for the respondent that the act complained of is not of an executory nature and, therefore, this recourse fails.

In the circumstances, I make no order as to costs.

*Application dismissed. No order as to costs.*

1974  
Dec. 3  
—  
VERENGARIA  
AND ALECA  
PAPACOKKINO  
ETC.  
v.  
REPUBLIC  
(DISTRICT  
OFFICER  
NICOSIA)