

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

SPYROS COLOCASSIDES ESTATE LTD.,  
AND ANOTHER,

*Applicants,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF FINANCE,
2. THE SEWAGE BOARD OF NICOSIA,

*Respondents.*

—  
SPYROS  
COLOCASSIDES  
ESTATE LTD.  
AND ANOTHER  
v  
REPUBLIC  
(MINISTER OF  
FINANCE  
AND ANOTHER)

(Cases Nos. 87/75 and 88/75).

*Time—Within which a recourse may be filed—Article 146.3 of the Constitution—Running of time—Publication of the decision—Time begins to run from the date of publication—Recourse against decisions imposing sewage fees—Decisions published in the Official Gazette—Nature and contents of publication—Sufficient for the purposes of the aforesaid Article—Time prescribed thereunder began to run from date of publication—Recourses out of time as they have not been filed within 75 days from publication—Pissas (No. 1) v. Electricity Authority of Cyprus (1966) 3 C.L.R. 634 distinguished.*

*Administrative Law—Executory administrative acts—Acts of execution—Imposition of sewage fees—Demand notes calling applicants to pay such fees—Acts of execution.*

The applicants in these recourses challenged the validity of the decision of the respondents to impose or collect sewage fees from them for the years 1973 and 1974. The sewage rates were imposed by the Sewage Board of Nicosia, respondent 2, in exercise of their powers under section 30(1) (b) of the Sewage Systems Law, 1971 and regulations 32 and 33 of the Sewage Systems Regulations, 1973. The rates for the year 1973 were imposed by a Notification published in the Official Gazette of the 20th July, 1973 and the rates for 1974 were imposed by a Notification published in the Official Gazette of the 11th April, 1974. In these Notifications the rates, the places and the time of payment were specified. The rates were

1977

Aug. 10

—  
SPYROS  
COLOCASSIDES  
ESTATE LTD.  
AND ANOTHER

v.  
REPUBLIC  
(MINISTER OF  
FINANCE  
AND ANOTHER)

fixed by reference to the assessed value of the properties as shown in the title deeds. The Notifications made reference to maps deposited in the Office of the Sewage Board, established under the Sewage Systems Law, 1971, which showed the properties which could be served by the sewage works constructed during each phase. 5

The applicants did not pay within the time specified in the said Notifications and on the 7th May, 1975 a demand note was sent to each of them by the Inland Revenue Collection Office calling upon them to pay within fifteen days. Hence these recourses which were filed on the 26th June, 1975. 10

The respondents raised the preliminary objection that the recourses were out of time as they have not been filed within 75 days from the date of imposition of the annual sewage rates as provided in Article 146.3\* of the Constitution; and, also, that the collection of the annual sewage rates was an act of execution and not an executory administrative act. Consequently no recourse could be filed against the decision to collect such rates. 15

Counsel for the applicants contended that the said publication was not a sufficient publication either for the purpose of Article 146 of the Constitution or for the purpose of the Sewage Systems Law of 1971. 20

Counsel submitted in this connection that the publication was vague in one material part *i.e.* it did not specify under which phase any particular taxpayer came and so on reading it one did not understand what the exact amount imposed on him was unless and until he inspected the plans; but as there was no indication either in the law or in the notices that the inspection of the plans would reveal under which phase a taxpayer came, and as a result the applicants first became aware that they had been taxed after they received the standard demand notes and they filed their recourses within the period of 75 days thereafter time did not begin to run until the receipt of the demand notes and, therefore, the recourses were not out of time. 25  
30  
35

Counsel for the respondents submitted that the relevant Notification contained all necessary ingredients and that the present cases were distinguishable from the case of *Pissas* (*No.*

\* Quoted at pp. 209-210 *post*.

1977  
Aug. 10

SPYROS  
COLOCASSIDES  
ESTATE LTD.  
AND ANOTHER

v.  
REPUBLIC  
(MINISTER OF  
FINANCE  
AND ANOTHER)

5 1) *v. Electricity Authority of Cyprus* (1966) 3 C.L.R. 634 and that consequently time began to run from the publication of the notices imposing the tax and as the recourses were filed long after the expiration of 75 days after such publications the recourses were out of time.

10 *Held*, (1) (*on the question whether the recourses were out of time*) that it is not correct that the said publications did not reveal their contents clearly or that the applicants could not have known that their properties were included in the area served by the system or that they could not, with reasonable diligence, find out the phase to which their properties belonged and, therefore, the rates applicable; that in this respect the present cases are distinguishable from the *Pissas* case (*supra*); that, therefore, the time of 75 days prescribed by Article 146.3 of the Constitution began to run from the date of the publication of the relative notices imposing the rates; and that, accordingly, both recourses are clearly out of time and cannot be entertained by the Court.

20 (2) (*On the question whether the demand notes are acts of execution or executory administrative acts*) that demand notes are acts of execution; that having regard to the wording of the motion for relief in each recourse the relief sought is not based or directed at such demand notes but at the Notifications determining and imposing the rates; and that, therefore, the crucial issue for the determination of these proceedings is not the nature of the demand notes but the question of time limit.

25 *Application dismissed.*

Cases referred to:

30 *Pissas (No. 1) v. Electricity Authority of Cyprus* (1966) 3 C.L.R. 634 at p. 638;

*HjiPanayi v. Municipality of Nicosia* (1973) 3 C.L.R. 329;

*HjiCostas v. The Republic* (1974) 3 C.L.R. 1.

Recourses.

35 Recourse against the decision of the respondents to impose and collect sewage dues for the years 1973 and 1974.

*A. Triantafyllides*, for the applicants.

*Cl. Antoniadis*, Counsel of the Republic, for respondent No. 1.

1977  
Aug. 10

—  
SPYROS  
COLOCASSIDES  
ESTATE LTD.  
AND ANOTHER  
v.  
REPUBLIC  
(MINISTER OF  
FINANCE  
AND ANOTHER)

*K. Michaelides*, for respondent No. 2.

*Cur. adv. vult.*

The following decision was delivered by:-

L. LOIZOU, J.: The applicants in these two recourses, which were heard together as they involve identical issues, seek a declaration that the decision of the respondents to impose or collect sewage fees from them for the years 1973 and 1974 is *null* and *void* and of no effect whatsoever.

The sum involved in the first recourse (No. 87/75) is £601.075 and in the second (No. 88/75) £694.-

The grounds of law upon which both applications are based are the following:

“1. Respondents are not entitled to impose or collect sewage fees as the sewage scheme has been abandoned and/or frustrated.

2. Due to the abandonment and/or frustration of the sewage scheme the very basis of the imposition and collection of the sewage fee has disappeared.

3. The decision of the respondents complained of is contrary to Articles 24 and 28 of the Constitution.

4. In any case applicants allege that the amount imposed on them is exorbitant, arbitrary and unjustified”.

By their opposition the respondents in both recourses, *inter alia*, raise the preliminary objection that the recourses are out of time as they have not been filed within 75 days from the date of the imposition of the annual sewage rates as provided in Article 146.3 of the Constitution and also that the collection of the annual sewage rates is an act of execution and not an executory administrative act and consequently no recourse lies against the decision to collect such rates.

When the recourses came up for hearing all counsel appearing for the parties applied to the Court that these objections be heard as a preliminary issue.

The relevant facts for the purposes of these issues are briefly as follows:

1977.  
Aug. 10

—  
SPYROS  
COLOCASSIDES  
ESTATE LTD.  
AND ANOTHER  
v.  
REPUBLIC  
(MINISTER OF  
FINANCE  
AND ANOTHER)

5 The sewage rates the subject of these recourses, were imposed by the Sewage Board of Nicosia, respondent 2, in exercise of their powers under s. 30(1) (b) of the Sewage Systems Law, 1971 (No. 1/71) as amended by Law 24/72 and regulations 32 and 33 of the Sewage Systems Regulations 1973 which were made by the respondent Board under s. 49 of the law.

10 The rates for the year 1973 were determined and imposed by the Board by Notification 164 published in Supplement No. 3 to the Gazette of the 20th July, 1973. By the said Notification it was also provided that such rates should be paid to the Inland Revenue Collection Office  
15 not later than the 30th September, 1973. The date of payment was "for technical reasons" subsequently extended to the 30th November, 1973 by Notification 246 published in Supplement No. 3 to the Gazette of the 12th October, 1973.

20 For the year 1974 the rates were determined and imposed by the Board by Notification 124 published in Supplement No. 3 to the Gazette of the 11th April, 1974, by which it was likewise provided that such rates should be paid to the Inland Revenue Collection Office not later  
25 than the 30th September, 1974. In view of the then prevailing conditions the Board, by Notification 260 published in Supplement No. 3 to the Gazette of the 27th September, 1974, extended the time for payment of the one half of each annual rate to the 30th November, 1974.

30 The applicants did not pay within the time specified in the notices and on the 7th May, 1975 a demand note which is a standard form similar to *exhibit* 1 was sent to each of them by the Inland Revenue Collection Office calling upon them to pay within fifteen days.

35 Both recourses were filed on the 26th June, 1975.

Article 146.3 of the Constitution which governs the time limit within which a recourse must be filed reads as follows:

"146.3 Such a recourse shall be made within seventy-

1977.

Aug. 10

—

SPYROS  
COLOCASSIDES  
ESTATE LTD.  
AND ANOTHER  
v.  
REPUBLIC  
(MINISTER OF  
FINANCE  
AND ANOTHER)

five 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”.

It is clear from the wording of this paragraph and it was so held in *Pissas (No. 1) v. The Electricity Authority of Cyprus* (1966) 3 C.L.R. p. 634, a case cited by both sides on the issue of whether the recourses are out of time, that in case of publication of the decision or act time begins to run, for the purposes of the said paragraph, from the date of publication, irrespective of when the act or decision in question came to the knowledge of the person concerned.

As to the nature of the publication for the purposes of Article 146.3 Mr. Justice Triantafyllides, as he then was, had this to say at p. 638:

“Publication for the purpose of setting in motion the time within which a recourse may be filed has to be such publication as would state in full and clearly the contents of the act or decision concerned. This principle has been adopted in Greece (see Conclusions from the Jurisprudence of the Greek Council of State, 1929-1959 p. 251) and is, in my opinion, equally applicable in Cyprus because the relevant Greek and Cyprus provisions are, in this respect, in *pari materia*, and such principle is a widely accepted principle of Administrative Law in relation to computing the time within which a recourse, such as the present one, may be made, after publication”.

These two recourses were filed long after the expiration of 75 days from the publication of the notices imposing the rates but it was submitted by learned counsel for the applicants that such publication was not sufficient publication either for the purposes of Article 146 of the Constitution or for the purposes of The Sewage Systems Law of 1971. In his submission the publication in question was not sufficient publication for the purposes of Article 146.3 in that it was vague in one material part *i.e.* it did not specify under which phase any particular taxpayer came and so on reading it one did not understand what the exact amount imposed on him was unless and

1977  
Aug. 10

—  
SPYROS  
COLOCASSIDES  
ESTATE LTD.  
AND ANOTHER  
v.  
REPUBLIC  
(MINISTER OF  
FINANCE  
AND ANOTHER)

until he inspected the plans; but as there was no indication either in the law or in the notices that the inspection of the plans would reveal under which phase a taxpayer came, and as a result the applicants first became aware that they had been taxed after they received the standard demand notes and they filed their recourses within the period of 75 days thereafter, time did not begin to run until the receipt of the demand notes and, therefore, the recourses were not out of time.

Learned counsel for the respondents, on the other hand, submitted that the relevant notifications contained all necessary ingredients and that the present cases were distinguishable from the *Pissas* case (*supra*) and that consequently time began to run from the publication of the notices imposing the tax and as the recourses were filed long after the expiration of 75 days after such publications the recourses were out of time and could not be entertained by the Court.

It is, therefore, pertinent to examine the nature and contents of the relevant publications.

By Order made under section 3 of the Sewage Systems Law 1971 in consultation with the Municipal Committee of Nicosia, and published under Notification 39 in Supplement No. 3 to the Gazette of the 22nd January, 1971, the Council of Ministers defined the area coming within the provisions of the Sewage Systems Law and established the Municipal Committee of Nicosia for the time being as the Sewage Board of the area. Such area comprises the whole area which lies within the municipal limits of Nicosia and certain parts of Strovolos and Eylendjia. In the Order reference is made to maps where the said areas are clearly defined.

As stated earlier on, the rates were imposed by Notification 164 published in Supplement No. 3 to the Gazette of the 20th July, 1973 in respect of the year 1973 and Notification 124 published in Supplement No. 3 to the Gazette of the 11th April, 1974 in respect of the year 1974. In these Notifications the rates, the place and the time of payment are specified. With regard to the rates in particular they are fixed by reference to the assessed value of the properties as shown in the title deeds but the rates of char-

1977

Aug. 10

—  
SPYROS  
COLOCASSIDES  
ESTATE LTD.  
AND ANOTHER

v.

REPUBLIC  
(MINISTER OF  
FINANCE  
AND ANOTHER)

ges are not uniform; they are higher for the properties situated within the area covered by the first phase. The Notifications, however, make reference to maps deposited in the office of the Board which show the properties which can be served by the sewage works constructed during each of the two phases.

It is not, therefore, in my view, correct to say that the said publications did not reveal their contents clearly or that the applicants could not have known that their properties were included in the area served by the system or that they could not, with reasonable diligence, find out the phase to which their properties belonged and, therefore, the rates applicable. And in this respect the present cases are clearly distinguishable from the *Pissas* case referred to earlier on. See also *Hji Panayi v. The Municipality of Nicosia* (1973) 3 C.L.R. 329 and *Hji Costas v. The Republic* (1974) 3 C.L.R. 1.

Having come to this conclusion I must hold that the time of 75 days prescribed by Article 146.3 of the Constitution began to run from the date of the publication of the relative notices imposing the rates and that, therefore, both recourses are clearly out of time and cannot be entertained by the Court.

With regard to the question whether the demand notes are acts of execution or executory administrative acts I am clearly of opinion that they are the former. But I am inclined to the view, having regard to the wording of the motion for relief in each recourse that the relief sought is not based or directed at such demand notes but at the notifications determining and imposing the rates and that, therefore, the crucial issue for the determination of these proceedings is not the nature of the demand notes but the question of time limit.

In the result these recourses fail and must be dismissed as having been filed out of time.

With regard to costs I think that each applicant should pay £20.- towards the costs of respondent 2.

*Applications dismissed.  
Order for costs as above.*