

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION  
DEMETRIOS S. PAPADEMETRIOU,

*Applicant,*

*and*

THE BOARD FOR REGISTRATION OF ARCHITECTS  
AND CIVIL ENGINEERS,

*Respondents.*

DEMETRIOS S.  
PAPA-  
DEMETRIOU  
v.  
BOARD FOR  
REGISTRATION  
OF ARCHITECTS  
AND CIVIL  
ENGINEERS

(Case No. 133/77).

*Administrative Law—Recourse for annulment—Not directed against any particular decision, act or omission of the Administration—Whether prima facie frivolous—Article 134.2 of the Constitution.*

5 *Constitutional Law—Recourse for annulment—Prima facie frivolous—Article 134.2 of the Constitution.*

*Time—Recourse under Article 146.1 of the Constitution—Directed against decision taken many years before filing thereof—Cannot be entertained—As it was not made within the time (75 days) provided by Article 146.3 of the Constitution.*

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*Administrative Law—Confirmatory act—Cannot be made the subject of a recourse.*

On June 22, 1964 the applicant submitted an application to the respondents for registration as an architect and civil engineer in accordance with section 7 of the Architects and Civil Engineers Law, 1962 (Law 41/62). On July 15, 1964 the respondents rejected his application on the ground that his qualifications were not of the standard required by s. 7(1) or (2) of the Law. As against this decision applicant filed various recourses which were eventually withdrawn by him. By means of the present recourse, which was filed on May 2, 1977 the applicant claimed the following relief:

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(a) An order of the Court ordering the respondents to register the applicant as civil engineer and architect;

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(b) an order of the Court ordering the respondents to

1977

Nov. 15

—  
DEMETRIOS S.  
PAPA-  
DEMETRIOU  
v.  
BOARD FOR  
REGISTRATION  
OF ARCHITECTS  
AND CIVIL  
ENGINEERS

issue and grant to the applicant a licence of civil engineer and architect on payment by the applicant of the prescribed fees; and

- (c) an order of the Court that the applicant possesses the required qualifications to be registered as civil engineer and architect since 1963.

Respondents contended that no recourse lies against them as there exists no decision, act or omission, emanating from them which can be made the subject matter of a recourse under the provision of Article 146\* of the Constitution.

*Held, (after stating that the remedies claimed were not directed against any particular decision, act or omission of the respondents and they could be dealt with under Article 134.2 of the Constitution and that applicant was heard because he was appearing in person)* that the applicant is complaining against the original decision of the respondents dated July 15, 1964 and in such a case this recourse cannot be entertained as it was not made within the time provided by Article 146.3 of the Constitution; that, moreover, even if it could be assumed that the recourse was directed against any subsequent decisions of the respondents on the same subject, these subsequent decisions were confirmatory of the original one and they could not be made the subject matter of a subsequent recourse; and that, accordingly, the application must be dismissed.

*Application dismissed.*

Cases referred to:

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

**Recourse.**

Recourse for, *inter alia*, an order of the Court ordering the respondents to register the applicant as civil engineer and architect.

Applicant in person.

*I. Loizidou (Mrs.)*, for the respondents.

*Cur. adv. vult.*

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\* Quoted at pp. 413-414 *post*.

The following judgment was delivered by:-

MALACHTOS, J.: The applicant in this recourse, which is filed under Article 146 of the Constitution, claims, as stated therein, the following remedies:

- 5 (a) An Order of the Court ordering the respondents to register the applicant as civil engineer and architect;
- (b) an Order of the Court ordering the respondents to issue and grant to the applicant a licence of civil engineer and architect on payment by the applicant of the prescribed fees; and
- 10 (c) an Order of the Court that the applicant possesses the required qualifications to be registered as civil engineer and architect since 1963.

15 The opposition is based on only one legal ground, namely, that the applicant is not entitled to be registered as civil engineer or architect since no new administrative act or decision was taken or published and so Article 146 of the Constitution does not apply. In other words, no recourse lies against the respondents as there exists no decision, act or omission, emanating from them which can be the subject matter of a complaint under the provisions of Article 146 of the Constitution. This Article reads:-

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25 "146.1 The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of the Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person.

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2. Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a Community, is adversely and directly affected by such decision or act or omission.

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3. Such a recourse shall be made within seventy-five days of the date when the decision or act was

1977  
Nov. 15

—  
DEMETRIOS S.  
PAPA-  
DEMETRIOU  
v.  
BOARD FOR  
REGISTRATION  
OF ARCHITECTS  
AND CIVIL  
ENGINEERS

1977  
Nov. 15

—  
DEMETRIOS S.  
PAPA-  
DEMETRIOU  
v.  
BOARD FOR  
REGISTRATION  
OF ARCHITECTS  
AND CIVIL  
ENGINEERS

published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse.

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The history of this case is as follows:

The applicant on 22nd June, 1964, submitted to the respondents, who are the Board for Registration of Architects and Civil Engineers, established under section 3 of the Architects and Civil Engineers Law, 1962, (Law 41/62), an application to be registered as an architect and civil engineer. His application was accompanied by certificates showing his qualifications.

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On 15th July, 1964, the applicant's application was examined by the respondents and was rejected on the ground that his certificates were not of the standard required by section 7(1) or 7(2) of Law 41/62, as amended by Law 7/64. Such decision was communicated to the applicant on 20th July, 1964.

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Section 7 of Law 41/62 reads 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

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(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

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- (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:

10 Provided that if any such person satisfies the Board that he has been unable to be admitted to the office of any Registered Architect or Registered Civil Engineer in Cyprus for the purpose of acquiring such practical experience, such person shall be entitled to acquire such practical experience at the office of an Architect or Civil Engineer in the public service of the Republic.

15 (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 -

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- (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
  - 25 (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
  - 30 (c) he is an associate member or member of the Institution of Civil Engineers in London;
  - 35 (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:
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1977  
Nov. 15

DEMETRIOS S.  
PAPA-  
DEMETRIOU  
v.  
BOARD FOR  
REGISTRATION  
OF ARCHITECTS  
AND CIVIL  
ENGINEERS

Provided that if any such person satisfies the Board that he has been unable to be admitted to the office of any Registered Architect or Registered Civil Engineer in Cyprus for the purpose of acquiring such practical experience, such person shall be entitled to acquire such practical experience at the office of an Architect or Civil Engineer in the public service of the Republic".

The applicant on 28th July, 1964, filed Recourse No. 92/64 against the respondent Board and claimed a declaration that the decision of the respondents contained in their letter of the 20th July, 1964, by which they decided not to grant applicant's application for admission or enrolment as an architect and civil engineer, was *null* and *void* and of no effect whatsoever. In view of the fact that certain legal issues arising in the said Recourse were the same as those arising in Recourse No. 218/63, and ten other similar cases, it was directed by the trial Judge that all these cases should be heard together on these legal issues.

After hearing all parties concerned in the above cases, the trial judge on the 11th December, 1965, issued his decision on the legal points involved.

The applicant as against this decision filed Revisional Appeal No. 8, which was heard by the Full Bench of this Court and was determined on the 30th June, 1966. The judgment of the trial Judge is reported in the (1965) 3 C.L.R. 167 and the judgment of the Full Bench is reported in (1966) 3 C.L.R. 671. In delivering the judgment of the Full Bench Mr. Justice Vassiliades, as he then was, had this to say, at page 675:

"Besides expressing the Court's full appreciation for the assistance received from all learned and able counsel who addressed us, I do not propose dealing here with any part of their submissions which have been considered and discussed by Mr. Justice Josephides in the judgment just delivered in *Kyriakides'* case (Rev. Appeal No. 9).

Following as we do, in this case, the judgment in *Kyriakides'* case for the same reasons as those stated therein, we arrive at the same result. We allow the

1977.  
Nov. 15

DEMETRIOS S.  
PAPA-  
DEMETRIOU  
v.  
BOARD FOR  
REGISTRATION  
OF ARCHITECTS  
AND CIVIL  
ENGINEERS

cross-appeal of the Board; and we dismiss the appeal. The attack on the validity under the Constitution, of section 7 and 9 of the Architects and Civil Engineers Law in their form at the material time, fails for the purposes of this recourse. The record shall now be returned to the learned Judge who has been dealing with the matter so far, for further consideration and decision on the merits, if the applicant still thinks that his remedy lies in these proceedings; and not in establishing, in due course, that his numerous and various qualifications as described in his application are 'of standard equivalent to those' provided in the statute, or those declared as such, by the appropriate authority.

There will be Judgment in this appeal (Revisional Appeal, No. 8) and orders accordingly. With no order as to costs in the appeal".

After the case was sent back to the trial Court and on 10th September, 1966, counsel appearing for the applicant applied and obtained leave to withdraw the recourse and the court made an order striking out the recourse with no order as to costs.

On the 31st August, 1970, the applicant filed Recourse No. 251/70 on the same subject matter against —

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 and

3. The Council for Registration of Architects and Civil Engineers, the present respondents, claiming in effect a declaration of the court that the decision of the Council of Ministers, respondent No. 2, dated 27th June, 1970, not to approve for the purpose of the Architects and Civil Engineers Law 1962, the institutions from which the applicant obtained certain academic qualifications, was *null* and *void*. The applicant also claimed a declaration of the court that respondent No. 3 in advising respondents No. 2 to dismiss his application for registration, were wrong. It must be noted here that the applicant on 27th July, 1966, filed against the Council of Ministers and the respondent

1977

Nov. 15

DEMETRIOS S.  
PAPA-  
DEMETRIOU  
v.  
BOARD FOR  
REGISTRATION  
OF ARCHITECTS  
AND CIVIL  
ENGINEERS

Board Recourse No. 184/66 claiming against the Board in that recourse a declaration that the decision of the respondents not to approve the applicant's degrees under section 7(1) (b) of Law 41/62, is *null and void*.

On 3rd December, 1966, Counsel appearing for the applicant applied for leave to withdraw that recourse and so the trial Judge made an Order striking it out. The reasons for withdrawing the said recourse were that there had not yet been taken a decision by the Council of Ministers on his application that his qualifications should be equally treated as those mentioned in section 7 of the Law.

On the 18th February, 1971, the applicant withdrew his recourse against the respondent No. 3 Board. It was objected on behalf of the remaining two respondents that the applicant in that recourse was not attacking an executory decision, which could be attacked by a recourse, and this point was heard and determined by the court in that recourse against the applicant. The judgment of the Court was issued on the 28th January, 1974, and is published in the (1974) 3 C.L.R. 28.

On 2nd February, 1973, applicant submitted to the respondents another application for registration as an architect and civil engineer. This new application was considered by the respondents who by their letter dated 5th May, 1973, informed the applicant that in view of the fact that no new material was placed before them compared with his previous application for registration as architect and civil engineer their previous negative answer applied.

On the 13th April, 1973, applicant filed Recourse No. 134/73 against the omission of the respondents to reply to applicant's application dated 2nd February, 1973.

By their opposition to Recourse No. 134/73 the respondents alleged, *inter alia*,

- (a) that they gave their reply to the applicant's application of 2nd February, 1973, by their letter dated 5th May, 1973;
- (b) that there was no new decision on the part of the respondents as no new material was placed before



them by applicant for consideration and in any case by their letter dated 5th May, 1973, the respondents confirmed their previous decision.

5 On the 18th October, 1973, the Recourse 134/73 was withdrawn with costs against the applicant.

On the 18th July, 1973, applicant filed Recourse No. 263/73 against the decision of the respondents contained in their letter dated 5th May, 1973, mentioned above.

10 On the 12th July, 1976, counsel appearing for the applicant, and in the presence of the applicant, applied for leave to withdraw Recourse No. 263/73. Leave was granted and this Recourse was struck out.

As it appears from the record of proceedings counsel appearing for applicant made the following statement:

15 "At this stage, after explaining to my client the legal position my client will apply to the Council of Ministers under section 7(1) (b) and 7(2) (b) of the Law so that his qualifications will be recognised according to the Law, and reserves his right to file a new  
20 recourse if the decision of the Council of Ministers does not satisfy him.

Applicant who understands the situation has expressed his thanks to the Court and states now himself that he will apply to the Council of Ministers.

25 Applicant applies for leave to withdraw the present recourse".

30 It is clear from the application filed in this recourse on the 2nd May, 1977, that the remedies claimed are not directed against any particular decision, act or omission of the respondents, and, therefore, could be dealt with under the provisions of Article 134.2 of the Constitution which provides that when a recourse appears to be *prima facie*  
35 *frivolous* the court may, after hearing arguments by or on behalf of the parties concerned, dismiss such recourse without a public hearing if satisfied that such recourse is, in fact frivolous. However, in view of the fact that the applicant was appearing in person he was given all *latitude* and he was heard with all patience both on relevant

1977  
Nov. 15

—  
DEMETRIOS S.  
PAPA-  
DEMETRIOU  
v:  
BOARD FOR  
REGISTRATION  
OF ARCHITECTS  
AND CIVIL  
ENGINEERS

1977

Nov. 15

DEMETRIOS S.  
PAPA-  
DEMETRIOU  
v.  
BOARD FOR  
REGISTRATION  
OF ARCHITECTS  
AND CIVIL  
ENGINEERS.

and irrelevant matters. As it appears from his address to the court the applicant is complaining against the original decision of the respondent Board dated 15th July, 1964, by which his application to be registered as an architect and civil engineer was rejected on the ground that his certificates were not of the standard required by section 7(1) and 7(2) of the Law.

In such a case this recourse cannot be entertained by this court as it was not made within the time provided by Article 146.3 of the Constitution.

But even if we assume that this recourse is directed against any subsequent decisions of the respondents on the same subject, these subsequent decisions were confirmatory of the original one and, therefore, cannot be the subject matter of a subsequent recourse. (See in this respect *Varnava v. The Republic* (1968) 3 C.L.R. 566).

This recourse, therefore, fails and is hereby dismissed.

On the question of costs I make no order.

*Application dismissed.*

*No order as to costs.*