

1982 September 25

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MODESTOS PITSILLOS,

*Applicant.*

v.

1. THE DISTRICT OFFICER OF NICOSIA,
  2. THE IMPROVEMENT BOARD OF AY. DHOMETIOS,
- Respondents.*

(Case No. 458/81).

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*Practice—Recourse for annulment—Competent organ involved in sub  
 judice decision the Improvement Board of Ayios Dhometios  
 respondent 2—District Officer, Respondent 1, involved not as a  
 separate competent organ of the administration but only as the  
 Chairman of the Improvement Board—Once Improvement Board  
 made a respondent, District Officer could not have been made a  
 separate respondent—Village (Administration and Improvement)  
 Law, Cap. 243.* 5

*Time within which to file a recourse—Article 146.3 of the Constitution  
 —Running of time—Applicant afforded opportunity to lodge  
 objection against administrative decision—Lodging such an  
 objection and receiving a reply thereto—Time begins to run from  
 the date of such reply—Which amounts to an executory act.* 10

The applicant was on the 30th July, 1981 given notice by the  
 respondent Improvement Board about the imposition on him  
 of property tax and of refuse collection fees. On the notice  
 there was an endorsement stating that an objection could be  
 lodged until the 31st August, 1981. On the 18th August the  
 applicant addressed a letter to the respondent District Officer  
 objecting against the tax and fees in question and the District  
 Officer rejected his objection by letter dated the 22nd September,  
 1981. Hence this recourse which was filed on the 3rd De-  
 cember, 1981. 15 20

On the preliminary questions whether

(a) The District Officer could be made a separate respondent.

(b) The recourse was out of time.

5 (c) The above letter of the 22nd September, 1981 was merely confirmatory of the decision of the Board which had been communicated to the applicant by the notice of the 30th July, 1981.

10 *Held*, (1) that the competent organ in this connection was, in accordance with the relevant provisions of the Villages (Administration and Improvement) Law, Cap. 243, only the Improvement Board of Ayios Dhometios and that the District Officer was involved in the matter not as a separate competent organ of the administration but only as the Chairman of the Improvement Board; that, consequently, once the Improvement Board is a respondent the District Officer could not have been made a separate respondent and to that extent this recourse cannot succeed and had to be dismissed accordingly.

20 (2) That since by the endorsement on the notice of 30th July 1981 the applicant was afforded the opportunity to lodge an objection till 31st August 1981, and since the applicant did, in fact, object on 18th August 1981, and the final decision of the respondent Board was communicated to him on 22nd September 1981, after the examination of his objection, it has to be found  
25 that the relevant administrative action which is complained of by the applicant was not clothed with finality prior to 22nd September, 1981 and consequently the seventy-five days' period has to be regarded as running from that date; therefore, the present recourse is not out of time (see, in this respect, inter  
30 alia, *Nedim v. The Turkish Communal Chamber*, 5 R.S.C.C.1, 7).

(3) That as the final decision of the Board, after consideration of the objection of the applicant, was the one communicated by the letter of 22nd September, 1981 it is clear that by the said letter there was communicated an executory, and not a merely confirmatory, decision of the respondent Board (see, inter alia, *Economides v. Republic* (1980) 3 C.L.R. 219, 225).

*Order accordingly.*

Cases referred to:

*Nedim v. The Turkish Communal Chamber*, 5 R.S.C.C.1 at p.7;

*Paschali v. The Republic* (1966) 3 C.L.R. 593 at p. 602;

*Economides v. The Republic* (1980) 3 C.L.R. 219 at p. 225.

**Recourse.**

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Recourse against the imposition on applicant, by respondent 2, of property tax and of refuse collection fees.

Applicant appeared in person.

*E. Odysseos*, for the respondents.

*Cur. adv. vult.* 10

TRIANTAFYLIDIS P. read the following judgment. By means of the present recourse the applicant challenges the imposition on him, by the respondent Improvement Board of Ayios Dhometios, of property tax amounting to C£5 and of refuse collection fees amounting, also, to C£5.

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The applicant is the owner of a house, in which he is residing, at Ayios Pavlos, within the area of the Improvement Board of Ayios Dhometios.

On 30th July 1981 the applicant was given notice from the said Improvement Board that he had to pay the aforementioned tax and fees. On the notice there was an endorsement stating that an objection could be lodged until 31st August 1981.

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On 18th August 1981 the applicant addressed a letter to the respondent District Officer of Nicosia objecting against the tax and fees in question and the District Officer, in his capacity as Chairman of the Improvement Board of Ayios Dhometios, informed the applicant, on 22nd September 1981, of the rejection of his objection.

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— The applicant, under section 54(1) of the Villages (Administration and Improvement) (Amendment) Law, 1969 (Law 31/69), could have filed within fourteen days an appeal to the Minister of Interior against the final decision of the respondent Board which was communicated to him, as aforesaid, on 22nd September 1981, but he failed to do so and he filed the present recourse.

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At this stage of the hearing of this case arguments were heard

only as regards preliminary issues which were raised by counsel for the respondents and in this judgment I shall, therefore, deal with such issues only:

5 The first contention of counsel for the respondents was that the respondent District Officer of Nicosia was not involved at all in his capacity as District Officer in the administrative action which is the subject-matter of this recourse. It is clear that the competent organ in this connection was, in accordance with the relevant provisions of the Villages (Administration and Improvement) Law, Cap. 243, only the Improvement Board of Ayios Dhometios and that the District Officer was involved in the matter not as a separate competent organ of the administration but only as the Chairman of the Improvement Board; consequently, once the Improvement Board is a respondent the District Officer could not have been made a separate respondent and to that extent this recourse cannot succeed and has to be dismissed accordingly.

10 It has been submitted further that this recourse as against the respondent Improvement Board is out of time.

20 As has already been stated in this judgment the applicant was first called upon to pay the tax and fees in question on 30th July 1981; and if the period of seventy-five days within which, as prescribed by Article 145.3 of the Constitution, this recourse had to be filed is regarded as running from the said date then this recourse which was filed on 3rd December 1981 would be clearly out of time. But, since by the endorsement on the notice of 30th July 1981 the applicant was afforded the opportunity to lodge an objection till 31st August 1981, and since the applicant did, in fact, object on 18th August 1981, and the final decision of the respondent Board was communicated to him on 22nd September 1981, after the examination of his objection, it has, in my opinion, to be found that the relevant administrative action which is complained of by the applicant was not clothed with finality prior to 22nd September 1981 and consequently the seventy-five days' period has to be regarded as running from that date; therefore, the present recourse is not out of time (see, in this respect, inter alia *Nedim v. The Turkish Communal Chamber*, 5 R.S.C.C. 1, 7, *Paschali v. The Republic*, (1966) 3 C.L.R. 593, 602 and *Economides v. The Republic*, (1980) 3 C.L.R. 219, 225.).

For the same, as above, reasons there cannot be upheld the contention of counsel for the respondents that the letter sent to the applicant on 22nd September 1981 by the District Officer as Chairman of the Improvement Board is merely confirmatory of the decision of such Board which had been communicated to the applicant by the notice of 30th July 1981 and, therefore, it is not of an executory nature and it cannot be challenged by a recourse such as the present one. 5

As the final decision of the Board, after consideration of the objection of the applicant, was the one communicated by the letter of 22nd September 1981 it is clear, in my view, that by the said letter there was communicated an executory, and not a merely confirmatory, decision of the respondent Board (see, in this respect, inter alia, *Economides*, supra, 223, 224, and Conclusions from Case-Law of the Council of State in Greece —Πορίσματα Νομολογίας του Συμβουλίου της Ἐπικρατείας —1929–1959, pp. 236–241). 10 15

In the light of all the foregoing it is held that this recourse has to be heard as regards its merits, but as against the respondent Improvement Board only. 20

*Order accordingly.*