

1982 February 18

[A. LOIZOU J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LANITIS FARM LTD., AND ANOTHER,
Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS,
Respondents.

(Cases Nos. 276/78, 277/78).

Act or decision in the sense of Article 146.1 of the Constitution—Regulatory act—Individual executory administrative act—Distinction—A regulatory act is one creating legal rights of a general application, it is addressed to everybody, and is valid without limitation as to place and time—It cannot be made the subject of a recourse under the above Article—Order by the Council of Ministers under section 16 of the Agricultural Insurance Law, 1977 (Law 19/77)—Prescribing table grapes as compulsorily insured under the Law—Imposition of premium in application of the Order—Imposition not challenged by recourse—But recourse against validity of the Order—Said order a regulatory act and cannot be made the subject of a recourse. 5 10

Practice—Amendment of claim in the notion for relief in the recourse and addition of new party—Not allowed because it would amount to allowing applicants to achieve a contravention of Article 146.3 of the Constitution. 15

By an order made by the Council of Ministers, under section 16* of the Agricultural Insurance Law, 1977 (Law 19/77), which was published in the Official Gazette of the 5th May,

* Section 16 provides as follows:
“The Council of Ministers shall, by Order to be published in the Official Gazette of the Republic, prescribe the agricultural products, the insurance whereof shall be compulsory for all insured persons”.

1978, table grapes were prescribed as compulsorily insured as from the 1st January, 1978; and by virtue of regulation 3 of the Agricultural Insurance Regulations, 1977, made under section 33 of Law 19/77, the premiums payable by the insured persons to the Agricultural Insurance Organization* ("the Organization") were fixed at 2% of the value of the gross income derived from the table grapes. The applicant companies as producers of table grapes were, by letters of the Chairman of the Board of the Organization, asked to pay a sum of about £8,730 as premiums. The applicant companies objected to the payment of the above sum and on June 15, 1978 they filed the above recourses by means of which they prayed for a declaration that the Order of the Council of Ministers dated 5th May, 1978, prescribing table grapes as compulsorily insured, was "null and void and devoid of legal effect for the reason that it was issued by virtue of section 16 of the Agricultural Insurance Law 1977 (Law No. 19 of 1977), which section, read together with sections 15 and 17 of the said law, conflicts to Articles 23, 24 and 25 of the Constitution and for that reason are unconstitutional and null and void".

The respondents in both recourses were "the Republic of Cyprus, through the Council of Ministers" and the Organization has not been made a party.

Counsel for the respondents raised the preliminary objection that the order challenged by these recourses did not constitute an executory administrative act but a regulatory act of a legislative content which could not be as such challenged by a recourse under Article 146 of the Constitution.

The decision imposing the aforesaid sum as premium was taken in pursuance of the provisions of Law 19/77 and of the Order of the Council of Ministers which is challenged by these recourses and though such decision gave applicants a legitimate interest to challenge it by a recourse, they chose to challenge the Order of the Council of Ministers and not the individual executory administrative acts whereby the law was applied.

Held, that regulatory acts of a legislative content, whether

* The Agricultural Insurance Organization was established by section 4 of Law 19/77, was a body Corporate having all the attributes thereof, and was under the supervision of the State.

issued by the Council of Ministers or other administrative organs, cannot be directly challenged before the Supreme Court as not satisfying the prerequisites of Article 146 of the Constitution; that a regulatory act is the act creating legal rules of a general application, which is addressed to everybody, is valid without limitation as to place or time and may be applied on a multitude of relations and objects; that the very nature of the order challenged by this recourse comes clearly within the category of regulatory acts and therefore it cannot be made the subject of a recourse under Article 146.1 of the Constitution; accordingly the recourses must be dismissed. 5 10

Held, further, that the position, however, would have been different had the applicants by their present recourses challenged the application on them, of the Law and the order in question which had been made by the assessment of the premiums payable in their respective particular cases, by the Agricultural Insurance Organization, an independent organ in the State which is not a party to these proceedings; that amendment of the claim in the motion for relief so as to challenge the imposition of the premiums in question and the addition of the organization as a party to these proceedings is not possible because it would amount to allowing the applicants to achieve a contravention of Article 146.3 of the Constitution. 15 20

Applications dismissed. No order as to costs. 25

Cases referred to:

Kourris v. Supreme Council of Judicature (1972) 3 C.L.R. 390 at p. 400;

Sophoclis Demetriades and Son and Another v. The Republic (1969) 3 C.L.R. 557; 30

Demetrios Philippou and Others v. The Republic (1970) 3 C.L.R. 129;

Paralimni Bus Company Ltd. v. The Republic (1967) 3 C.L.R. 559.

Recourses. 35

Recourses against the validity of the order of the Council of Ministers No. 80 dated 5.10.1978 whereby table grapes were prescribed as compulsorily insured.

P. Cacoyannis, for the applicants.

A. Pappasavvas, Counsel of the Republic, for the respondent. 40

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By these two
recourses which, by direction of the Court made with the consent
of the parties, have been heard together as they present common
questions of law and fact, the applicant companies pray for
5 "a declaration that the order of the Council of Ministers No.
80, dated 5th May, 1978, which was published in Supplement
No. 3 to the Official Gazette of the Republic on the 5th May,
1978, is null and void and devoid of legal effect for the reason
that it was issued by virtue of section 16 of the Agricultural
10 Insurance Law 1977, (Law No. 19 of 1977), which section, read
together with sections 15 and 17 of the said law, conflicts to
Articles 23, 24 and 25 of the Constitution and for that reason
are unconstitutional and null and void. Moreover the said
order is in any event ultra vires as made with retrospective effect
15 as from the 1st January, 1978."

In the course of arguing the cases, learned counsel for the
applicant companies abandoned Article 24 and added Articles
26 and 30 (1) and (2), as likewise offended by the order challenged
hereby.

20 The aforesaid Order was prescribing, inter alia, the table grapes
as compulsorily insured as from the 1st January 1978, and was
made under the provisions of section 16 of Law No. 19 of
1977, (hereinafter to be referred to as the Law) which provides
that "The Council of Ministers shall, by Order to be published
25 in the Official Gazette of the Republic, prescribe the agricultural
products, the insurance whereof shall be compulsory for all
insured persons".

This Law was published in the Official Gazette of the Republic
No. 1351 dated the 6th May 1977, and by notification of the
30 Council of Ministers under No. 141 published in Supplement
No. 3(1) to the Official Gazette No. 1357 of the 10th June 1977.
All its provisions were put into force as from that date, except
sections 15 to 23 and section 35. Also by notification No.
172 published in Supplement No. 3(1) to the Official Gazette
35 No. 1368, dated 1st August 1977, sections 15 to 17 and sections
21 to 23, were put into force as from 1st August 1977, and
sections 18 to 20 and 35 were put into force as from 1st January
1978.

The Agricultural Insurance Regulations of 1977 made under

section 33 of the Law were published in Supplement No. 3(1) to the Official Gazette of the Republic No. 1366 dated 29th July 1977. In accordance with regulation 3 the premiums payable by the insured persons to the Organization were fixed on a percentage of the value of the gross income derived from the insured agricultural products for the table grapes. This percentage was 2%. Also in accordance with regulation 4(2) the premiums are paid before the period that there exist a danger for damage to occur to the insured product on account of unavoidable natural causes and in any event not later than the first of every year, unless the Board of the Organization would otherwise decide to fix a different date for anyone cultivation. 5 10

The object of the agricultural insurance is stated in section 3 of the Law. 15

“3. The object of the agricultural insurance is the promotion of the national economy and the welfare of the persons occupied in agriculture—

(a) by the improvement of the conditions of economic stability in agriculture through a sound and integrated system of agricultural insurance; 20

(b) by the grant of the means for carrying out research and for acquiring beneficial and useful experience in planning, establishing and operating such system of insurance; 25

(c) by the payment of compensation for damage caused to agricultural products as a consequence of specific unavoidable natural causes”.

By section 4 of the said Law there was established an Organization to be known as “the Agricultural Insurance Organization which shall be a body corporate having all the attributes thereof, shall be under the supervision of the State, exercisable through the Minister, and shall exercise the functions entrusted thereto by this or any other Law”. 30

The functions of the Organization are defined in section 5 of the Law and no doubt the operation of the whole insurance scheme is in the hands of this Organization, which, as described in section 4, is a corporate body having all the attributes thereof. 35

The respondents, however, in both recourses are "the Republic of Cyprus through the Council of Ministers", and the said independent Organization or organ in the State has not been made a party. In view of this and the fact that by the identical prayers for relief in the two recourses what is challenged is the order of the Council of Ministers therein referred to, the respondents have raised the objection that the said order does not constitute an executory administrative act but a regulatory act of a legislative content and consequently could not be as such challenged by a recourse under Article 146 of the Constitution.

It may be relevant to refer, however, to the facts of the case which are not really disputed and which are set out in the application, in the opposition and all the relevant documents and correspondence produced as exhibits.

The two applicant companies are the owners of large areas of vineyards in the District of Limassol, which they cultivate and produce both table grapes and grapes for wine production for sale in Cyprus and for export.

After some correspondence between the Chairman of the Board of the Agricultural Insurance Organization and the two applicant Companies regarding the purchase of table grapes and their export, the applicant Company in recourse No. 276/78 was asked, by letter dated the 17th May 1978, to pay the sum of £4,401.607 mils premiums. Attached to the said letter there was a copy of a communique issued by the Organization on the 10th May 1978, to the effect that by virtue of regulation 4(2), the 31st day of May, 1978, was fixed as the date prior to which there should have been paid the due premiums by the producers of table grapes in order to cover possible damage which occurred or was to occur within the year 1978. By letter dated the 12th May 1978, the applicant Company in recourse No. 277/78 was also informed about the aforesaid communique and its contents and in compliance thereto they ought to pay prior to the 31st day of May 1978, the premiums due in respect of table grapes, which in their case amounted to £4,329.556 mils. The aforesaid two amounts of premiums were arrived at on the basis of the quantity of table grapes exported in 1977.

By letters dated the 27th May 1978, and the 18th May, 1978,

the two applicant Companies objected to the payment of the aforesaid sums raising a number of points, including the unconstitutionality of sections 15, 16 and 17 of the Law. There followed a correspondence which contained the legal stand of the two applicant Companies on the subject and eventually on the 15th June 1978, these two recourses were filed. 5

It is obvious from the aforesaid brief statement of the facts that there followed the order of the Council of Ministers challenged by this recourse, an individual executory administrative act, applying on the two applicant Companies the Law and imposing on them burdens that gave them a legitimate interest to challenge such acts by a recourse under Article 146 of the Constitution. Nevertheless the applicant Companies chose to challenge only the Order and not the individual executory administrative acts, whereby the Law was applied. 10 15

The very nature of the Order in question does not come within the ambit of Article 146 of the Constitution, as in substance it was a regulatory act of a legislative nature of a general application. The test of the distinction between regulatory and individual acts is not an easy one. As stated by Stassinopoulos in his Law on Administrative Acts (1951) at p. 105: 20

“ Ὅθεν τὸ κριτήριον εἶναι οὐσιαστικόν, διὰ τοῦτο δὲ καὶ περισσότερο δυσκαθόριστον. Προσπάθεια καθορισμοῦ τῶν θεμάτων, ἅτινα, ὡς ἐκ τῆς φύσεως αὐτῶν, ἀνήκουν εἰς τὴν κανονιστικὴν ἐξουσίαν καὶ ὀριοθεσίας μεταξὺ τῶν θεμάτων τούτων καὶ τῶν θεμάτων τῆς νομοθετικῆς λειτουργίας, ἀποτελεῖ μεταίσιπνίαν, ὡς ἄλλωστε καὶ ἡ ἀπόπειρα ὅπως καθορίσῃ τις μετ’ ἀπολύτου ἀκριβείας, ποῦ ἀρχεται καὶ ποῦ τελευτᾷ ἐκάστη τῶν λειτουργιῶν τῆς Πολιτείας. 25

Περιεχόμενον τῆς κανονιστικῆς πράξεως ὡς καὶ τοῦ νόμου εἶναι ἡ θέσις κανόνος δικαίου, θέσιν δὲ κανόνος δικαίου, ἀποτελεῖ ὁ καθορισμὸς ἐκείνου, ὅπερ δέον νὰ ἰσχύῃ ὡς δίκαιον διὰ πάντα, παρὰ τῷ ὅποιῳ ὑφίσταται πραγματικὴ κατάστασις συγκεντροῦσα χαρακτηριστικὰ γνωρίσματα γενικῶς προσδιοριζόμενα. Οὕτως ἀναμφισβήτητον ἐσωτερικὸν γνώρισμ τῆς κανονιστικῆς πράξεως εἶναι ἡ γενικότης. Ἐν τῇ γενικότητι ἔγκειται κυρίως τοῦτο, ὅτι τὸ νομικὸν περιεχόμενον τῆς πράξεως δὲν ἐξαντλεῖται διὰ μιᾶς καὶ μόνης ἐφαρμογῆς, διὰ μιᾶς καὶ μόνης παροχῆς, ἀλλὰ διατηρεῖ τὴν δύναμιν 30 35

5 ἵνα προκαλῆ νέα ἐφαρμογὰς, ἐπὶ τῶν ἀορίστων καὶ μελλουσῶν περιπτώσεων, αἵτινες συγκεντροῦσι τὰς ὑπὸ τῆς πράξεως τεθείσας γενικῶς προϋποθέσεις. Οὕτως ὁ ἰδεώδης τύπος τῆς κανονιστικῆς πράξεως εἶναι ἡ πράξις, ἡ ἀπευθυνομένη πρὸς πάντας, ἰσχύουσα ἄνευ τοπικοῦ ἢ χρονικοῦ περιορισμοῦ καὶ δυναμένη νὰ ἐφαρμοσθῆ ἐπὶ πληθῶς σχέσεων καὶ ἀντικειμένων”.

This in English reads:

10 “Hence the test is a substantive one and for that more difficult to ascertain. Efforts to specify the subjects which as of their nature belong to the regulatory authority and to place boundaries between these matters and the matters of legislative function, are futile as also is to attempt to specify with absolute accuracy where it commences and
15 and where each of the functions of the State ends.

The content of the regulatory act as well as of the law is the establishment of legal rules and such situation of a legal rule constitutes the specification of that, which must be valid as law for everyone, in respect of whom
20 there exists a factual situation concentrating characteristic features generally specified. So an undoubtedly internal characteristic of the regulatory act is the generality. In its generality lies mainly this, that the legal content of the act is not exhausted by one and only allegation, by one and only grant, but it retains its force to provoke new applications, on the undefined and future situations, which have the general prerequisites set out by the act. Consequently the ideal type of the regulatory act is the act which is addressed to everybody, is valid without limitation
25 as to place or time and may be applied on a multitude of relations and objects”.

The order, subject-matter of this recourse, comes clearly within this category of regulatory act creating legal rules of a general application, which is addressed to everybody, is valid
35 without limitation as to place or time and may be applied on a multitude of relations and objects.

In Cyprus, the applicability of Article 146.1 has as a rule been decided mainly on the basis of the essential nature of the decision, act or omission being challenged. The nature of the

organ, authority or person from which a decision or act emanated, or which was allegedly guilty of an omission, has been treated as a relevant, but not always necessarily decisive, consideration in determining the essential nature of such decision, act or omission (see the case of *A. Kourris and The Supreme Council of Judicature* (1972) 3 C.L.R., p. 390, at p. 400 et seq. and the authorities therein cited). 5

Consequently regulatory acts of a legislative content whether issued by the Council of Ministers or other administrative organ cannot be directly challenged before the Supreme Court as not satisfying the prerequisites of Article 146 of the Constitution and this is the position regarding the order challenged by these two recourses. Support for this approach can also be derived from what was decided in the cases, inter alia, of *Police and Hondrou*, 3 R.S.C.C. 82; *Sophoclis Demetriades & Son and Another v. The Republic* (1969) 3 C.L.R., p. 557; and *Demetrios Philippou & Others v. The Republic* (1970) 3 C.L.R., 129; hence both fail and they should be dismissed accordingly. 10 15

The position, however, would have been different had the applicants by their present recourses challenged the application on them, of the Law and the order in question which had been made by the assessment of the premiums payable in their respective particular cases, by the Agricultural Insurance Organization, an independent organ in the State which is not a party to these proceedings. 20 25

Before concluding I would like to mention that I have considered the possibility of amending the claim in the motion for relief in the recourses and the addition of the said Organization as a party to these proceedings, but I have come to the conclusion that that would amount to allowing the applicants to achieve in fact a contravention of Article 146.3 of the Constitution. Had the applicants today filed separate recourses against the said acts, which would, by an amendment be made subject matters of the present proceedings, adding thereto also a new party, such recourses would have been clearly outside the 75 days time limit provided for by paragraph 3 of Article 146 of the Constitution. Support for this proposition can be found 30 35

in the case of *Paralimni Bus Company Ltd., v. The Republic*
(1967) 3 C.L.R. p. 559.

Having reached this conclusion the determination of the
recourses on the merits becomes unnecessary.

- 5 For all the above reasons both recourses are dismissed but
in the circumstances I make no order as to costs

*Applications dismissed. No order
as to costs.*