

1984 December 20

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PETROS MATSOUKAS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTRY OF INTERIOR,
2. DISTRICT OFFICER OF LARNACA, AS CHAIRMAN OF THE COMMITTEE FOR THE ADMINISTRATION OF TURKISH-OWNED PROPERTIES,
3. COMMITTEE FOR THE ADMINISTRATION OF TURKISH-OWNED LAND OF PETROFANI,

Respondents.

(Case No. 247/82).

Act or decision in the sense of Article 146.1 of the Constitution—
Which can be made the subject of a recourse thereunder—Communal Committee, set up by decision of the Council of Ministers administering abandoned Turkish Cypriot properties, requisitioned
5 under section 4 of the Requisition of Property Law, 1962 (Law 21 of 1962) (as amended by Law 50/1966)—Is an organ or authority exercising executive or administrative authority and its acts or decisions other than those within the domain of private Law, come within the scope of Article 146.1 of the Constitution—
10 Decision of Committee rejecting applicant's tender for disposition of property administered by it is an administrative decision within the domain of public law and as such amenable by a recourse under the above Article.

15 *Tenders—A recourse can be made against an administrative decision concerning tenders.*

For the protection, preservation and better administration of abandoned properties belonging to Turkish Cypriots who were forced to abandon them and move to the areas occupied

by the Turkish forces which invaded Cyprus, the Council of Ministers in the exercise of its powers under section 4 of the Requisition of Property Law, 1962 (Law 21 of 1962) as amended by Laws 50 of 1966 and 61 of 1975, decided to requisition, in the public interest, "all movable and immovable property situated anywhere, and belonging to Turkish Cypriots which was abandoned by them as a result of their being moved to the areas occupied by the Turkish Forces". As a result, a requisition order was made which was published in Supplement No. III of the official Gazette of the Republic of the 11th September, 1975, under Notification 671. By virtue of the same order the Central Committee for the protection of such properties which was set up was authorised, in furtherance of the objects of the requisition order to take immediate possession of such properties, reap and collect its produce and dispose of same. A Central Committee for the administration of such properties as well as District Committees for the Districts of Nicosia, Larnaca, Limassol and Paphos and regional or Communal Committees for regions or villages, were set up and their composition defined by a decision of the Council of Ministers No. 14.202 of the 18th August, 1975. Respondent 3 was a Communal Committee set up by virtue of the aforesaid decision of the Council of Ministers. The agricultural land of Turks in the areas—Athienou—Petrofani—Louroutzina was let by such Committee for the purpose of cultivation of cereals to the Co-operative Society of Athienou in 1981. After the reaping of such cereals respondent 3 invited tenders for the disposition of the stems of cereals which were left in the said properties. Applicants tender was rejected by respondent 3 and hence this recourse.

On the preliminary objection raised by respondents, that the act and/or decision challenged did not fall within the domain of Public Law and/or that it was not an executory administrative act and/or that the prerequisites of Article 146 of the Constitution were not satisfied;

Held, that respondent 3 is an organ set up by the Council of Ministers for implementing the purposes of public benefit set out in the requisition orders for the implementation of which the Council of Ministers had deemed necessary to make such orders; that, therefore, respondent 3 is an organ or authority exercising executive or administrative authority and its acts

or decisions, other than those which are within the domain of private law, come within the scope of paragraph 1 of Article 146 of the Constitution; that it is well-settled in administrative law that a recourse can be made against an administrative decision concerning tenders and that an administrative decision is to be treated as separable from any contract entered into by the administration as a result thereof (dictum of Triantafyllides. P. in *Koumnas & Sons v. Republic* (1972) 3 C.L.R. 542 at p. 546 adopted); that bearing in mind the functions and status of respondent 3, the sub judice decision of respondent 3 is an administrative decision within the domain of public law and as such amenable by a recourse under Article 146.1 of the Constitution; accordingly the preliminary objection must fail.

Preliminary objection dismissed.

15 Cases referred to:

Tekkis and Another v. Republic (1982) 3 C.L.R. 680;

Greek Registrar of Co-Operative Societies v. Nicolaidis (1965) 3 C.L.R. 164 at pp. 170, 171;

20 *Stamatiou v. Electricity Authority of Cyprus*, 3 R.S.C.C. 44 at pp. 45, 46;

Ethnicos v. K.O.A. (1984) 3 C.L.R. 831;

Galanos v. C.B.C. (1984) 3 C.L.R. 742;

Koumnas & Sons Ltd. and Another v. Republic (1972) 3 C.L.R. 542 at p. 546.

25 **Recourse.**

Recourse against the decision of the respondents to accept the tenders of the interested party for the letting of agricultural land belonging to Turks in the areas of Athienou-Petrofani-Louroudjina.

30 *L. Papaphilippou*, for the applicant.

Chr. A. Ioannides, for the respondents.

Cur. adv. vult.

SAVVIDES J. read the following judgment. Applicant is a merchant of Athienou village. Respondent 3 is a Communal Committee appointed by the Government to administer properties belonging to Turks who, as a result of the Turkish invasion, were forced by their leaders to move to the Turkish occupied areas and abandoned their properties which were situated within the area controlled by the Republic of Cyprus. The agricultural land of Turks in the areas—Athienou—Petrofani—Louroutzina was let by such Committee for the purpose of cultivation of cereals to the Co-operative Society of Athienou in 1981. After the reaping of such cereals respondent 3 invited tenders for the disposition of the stems of cereals which were left in the said properties.

According to the facts as alleged by the respondents, respondent 3 received three tenders, one coming from the applicant for C£3,150.—the second from one Michael Halavas or Zavros for C£2,300.—and the third from the Cow Breeders Association of Athienou village (Syndesmos Ageladotrofon Athienou) for C£3,150.—. Copies of such tenders were annexed to the Opposition. The tenders of the applicant and that of the Cow Breeders Association of Athienou were submitted on 20.5.1982. Out of the three tenders, respondent 3 accepted that of the Cow Breeders of Athienou and rejected the tender of the applicant and that of Michael Halavas. As a result, applicant filed the present recourse challenging such decision.

It is the contention of the applicant that the Cow Breeders Association of Athienou never submitted a tender and that the only tenders submitted were his and that of Michael Halavas and that he was assured by both respondents 2 and 3 that his tender was the highest and was to be accepted. On the above assumption he filed the present recourse and he advanced the following grounds of law in support of same:—

- (1) The respondents acted in violation of the principles of good administration and/or in apparent misconception of facts and/or in abuse and/or excess of power, in that:
 - (a) They ignored the fact and/or they acted in contravention of the conditions on the basis of which they asked for tenders for the disposition of the stems of 4,400 donums of land, which conditions did not

allow them to dispose of the said stems to persons who did not submit tenders in sealed envelopes.

- 5 (b) They ignored the fact and/or they acted in contra-
vention of the terms on the basis of which they invited
tenders which did not give them the option to refuse
to accept the highest tender.
- (c) They ignored the fact that the tender of the applicant
was the highest.
- 10 (d) They ignored the fact that the Cow Breeders Asso-
ciation of Athienou did not submit a tender in time
or at all.
- (e) They ignored the original statement by the Cow Bre-
ders Association of Athienou that they were not inter-
15 ested to buy the said stems.
- (f) They ignored the agreement between them and the
said Association by virtue of which they gave to the
said Association other consideration for its non-
participation in the said tenders.
- 20 (g) They contravened their assurances to the applicant
that his tender was to be accepted as being the highest
one made within the prescribed period.

(2) The sub judice decision is devoid of any legal or any
reasoning.

25 The application was opposed by the respondents and the
following grounds of law have been advanced in support of
their opposition:-

- 30 (1) A preliminary objection, that the act and/or decision
challenged does not fall within the domain of Public
Law and/or that it is not an executory administrative
act and/or that the prerequisites of Article 146 of the
Constitution are not satisfied.
- (2) Without prejudice to the said preliminary objection,
they contend that the sub judice act and/or decision was
35 lawfully taken in accordance with the provisions of the
Constitution and the law.

- (3) That the sub judge decision was taken after all relevant facts were taken into consideration and was not taken in abuse and/or in excess of powers or otherwise.

By his written address counsel for the applicant relied on the facts alleged by him in his recourse which may be briefly summarized in that the applicant submitted his tender on the 20th May, 1982, for C£3,150.—and that the only tender which was submitted within the said period was the one by Michael Zavros for C£2,300.—and that the Cow Breeders Association of Athienou never submitted any tender in this respect. Also that after the opening of the tenders, respondents 2 and 3 orally told the applicant that his tender was the highest and that in view of this fact it had to be accepted.

Counsel for the respondents by his written address reiterated his preliminary objection raised in the opposition that the act challenged by this recourse is within the domain of private law and, therefore, cannot be the subject matter of a recourse. It was his contention that once the Turkish owned properties had been requisitioned by the Government of the Republic, they came in the possession of the Government and therefore their administration is a matter of administration of a right within the domain of private and not of public law. In support of his contention he relied on the authority of *Kyriacos Michael Tekkis and another v. The Republic* (1982) 3 C.L.R. 680. Subject to his preliminary objection he denied the allegations of counsel for applicant.

In contesting the preliminary objection, counsel for applicant submitted that the sub judge decision is an executory administrative act within the domain of public law, being an administrative decision, and is to be treated as separate from any contract entered into by the administration as a result thereof.

When the case was fixed for hearing of evidence and clarifications both counsel jointly applied that the preliminary objection raised by the respondents be determined as a preliminary point of law before any evidence was called concerning the factual issues. The Court approved such course and as a result the question of law which I have to decide at this stage is whether the decision of respondent 3 to accept a tender is

a decision of an administrative nature within the domain of public law.

To answer the question posing for consideration before me I have first to examine the character of the organ which took the decision and whether such organ was acting in the particular case in the capacity of an authority exercising any executive or administrative function, and also the nature and character of the act in question.

The following test was laid in *The Greek Registrar of the Co-operative Societies v. Nicos A. Nicolaides* (1965) 3 C.L.R. 164 (a Full Bench case) by Munir, J. at pp. 170, 171:-

“In the opinion of the Court it is primarily the nature and character of a particular act or decision which determines whether or not such act or decision comes within the scope of paragraph 1 of Article 146 of the Constitution. Such an issue is one which must be decided on the merits and in the circumstances of each particular case and having due regard to such relevant factors as the office and status of the organ, authority, person or body performing such act or taking such decision, as well as to the circumstances and context in which such act was performed or decision taken. As pointed out by the learned Judge in his Ruling _____ the ‘same organ may be acting either in the domain of private law or in the domain of public law, depending on the nature of its action’. Ultimately, what is the important and decisive factor in this respect is the nature and character of the particular function which is the subject-matter of a recourse”.

Triantafyllides, J. (as he then was) whose decision in the first instance was affirmed on appeal in the above case, had this to say in his judgment (*ibid* at pp. 173, 174):

“In determining preliminary objection (1) I have to decide whether the exercise of the particular power, under rule 89, has resulted in a decision or act in the domain of public law or in the domain of private law. If the latter is the case then it is clear that no recourse lies under Article 146, in view of the nature of the competence under such Article (see *HadjiKyriacou and HadjiApostolou*, 3 R.S.C.C.

p. 89 at p. 90 and *Valana and The Republic*, 3 R.S.C.C., p. 91 at p. 93).

The same organ may be acting either in the domain of private law or in the domain of public law, depending on the nature of its action. This is clearly stated in the afore- 5
said two cases of *HadjiKyriacou and Valana* and has been, also, recognised under the jurisprudence of the Greek Council of State (See Conclusions from the Jurisprudence of the Council of State 1929–1959, p. 126).

The function of Respondent under rule 89 is one which, 10
in my opinion, has as its primary object the promotion of a public purpose viz. the proper functioning of co-operative societies. Such an object has been treated as a characteristic of an act or decision in the domain of public law in *Valana and the Republic* (above) ----- 15

For all the above reasons I have reached the conclusion that an act or decision of the Respondent under rule 89, having as its primary object the promotion of a public purpose, being an unilateral authoritative pronouncement and being, also, an instance of governmental control of co- 20
operative societies, is an act or decision in the domain of public law and subject to the competence under Article 146”.

Reference is made in the above case, inter alia, to the case of *John Stamatiou and The Electricity Authority of Cyprus*, 3 25
R.S.C.C. p. 44 and in particular to the following dictum in the decision of the Court at pp. 45, 46 which was reiterated and adopted:

“Whatever the general and predominant character of the Respondent might precisely be it is only relevant for the 30
purposes of this case to consider whether, in relation to the particular function which is the subject-matter of this recourse, the Respondent was acting in the capacity of an ‘organ, authority or person, exercising any executive or administrative authority’ in the sense of paragraph 1 35
of Article 146”.

(see also in this respect, inter alia, the recent decisions of the Full Bench of this Court in *Ethnicos v. K.O.A. and another*,

K.O.P. v. K.O.A. and Another (1984) 3 C.L.R. 831, *Galanos v. C.B.C.* (1984) 3 C.L.R. 742).

5 With the above principles in mind, I am coming firstly to examine the nature and status of the organ which took the sub justice decision, respondent 3 in this case, and, secondly, the nature and character of the sub justice decision.

10 For the protection, preservation and better administration of abandoned properties belonging to Turkish Cypriots who were forced to abandon them and move to the areas occupied by the Turkish forces which invaded Cyprus, the Council of
15 Ministers in the exercise of its powers under section 4 of the Requisition of Property Law, 1962 (Law 21 of 1962) as amended by Laws 50 of 1966 and 61 of 1975, decided to requisition, in the public interest, "all movable and immovable property,
20 situated anywhere, and belonging to Turkish Cypriots which was abandoned by them as a result of their being moved to the areas occupied by the Turkish Forces". As a result, a requisition order was made which was published in Supplement No. III of the official Gazette of the Republic of the 11th
25 September, 1975, under Notification 671. By virtue of the same order the Central Committee for the protection of such properties which had been set up was authorised, in furtherance of the objects of the requisition order to take immediate possession of such properties, reap and collect its produce and dispose of same.

A Central Committee for the administration of such properties as well as District Committees for the Districts of Nicosia, Larnaca, Limassol and Paphos and regional or Communal
30 Committees for regions or villages, had already been set up and their composition defined by a decision of the Council of Ministers, No. 14.202, of the 18th August, 1975, published in the official Gazette of the 29th August, 1975 under No. 51.

Respondent 3 is a Communal Committee set up by virtue of the aforesaid decision of the Council of Ministers.

35 A supplementary requisition order was made by the Council of Ministers, which was published in the official Gazette of the 14th November, 1975, in respect of all movable and immovable property belonging to Turkish Cypriots and not used by them personally, for any of the following objects of public benefit:

- (a) Housing purposes;
- (b) The supply or maintenance or development of supplies and services necessary for life or promoting the welfare or entertainment of the public;
- (c) for the better utilization of such properties in the public interest. 5

At the same time the Central Committee for the protection of such properties was empowered to deal with such properties accordingly.

It is clear, from the above, that respondent 3 is an organ set up by the Council of Ministers for implementing the purposes of public benefit set out in the requisition orders, for the implementation of which the Council of Ministers had deemed necessary to make such orders. Therefore, respondent 3 is an organ or authority exercising executive or administrative authority and its acts or decisions, other than those which are within the domain of private law, come within the scope of paragraph 1 of Article 146 of the Constitution. 10 15

Having found as above, the next question which I have to examine is whether the sub judice decision is one within the domain of public or private law. 20

In *George D. Koummas and Sons Ltd. and Another v. The Republic (Cyprus Potatoes Marketing Board)* (1972) 3 C.L.R. 542, Triantafyllides, P. in allowing the recourse of the applicants against the rejection of their tender by the respondent and annulling the decision of the respondent in that respect, had this to say at p. 546: 25

“It is well-settled in Administrative Law that a recourse can be made against an administrative decision concerning tenders and that such an administrative decision is to be treated as separable from any contract entered into by the administration as a result thereof (see inter alia, the Decisions of the Greek Council of State in cases 531/49, 432/58 and 1828/67, as well as the judgment of this Court in *Medcon Construction v. The Republic* (1968) 3 C.L.R. 535). 30 35

If the consideration of tenders takes place in a manner contrary to the principles of free competition or in an

irregular manner affecting its outcome then the relevant administrative decision has to be annulled (see, inter alia, the Conclusions from the Case Law of the Council of State in Greece—"Πορίσματα Νομολογίας του Συμβουλίου της Επικρατείας" 1929-1959 case 1965/47 at p. 430 and cases 2028/47, 2029/47, at p. 431).

I fully adopt the above dictum and in the circumstances of the present case, bearing in mind the functions and status of respondent 3, I have come to the conclusion that the sub
10 justice decision of respondent 3 is an administrative decision within the domain of public law and as such amenable by a recourse. The case of *Tekkis and Another v. The Republic* (1982) 3 C.L.R. 680 on which counsel for applicant sought to rely is distinguishable from the present case as the issue in
15 that case is not relevant to the issue in the present case.

In the result the preliminary objection raised by counsel for the respondent fails and is hereby rejected. The hearing of the case will, as a result, proceed on the merits.

As to the costs of the hearing on the preliminary issue, I
20 leave it open, to deal with it after the hearing of the case on its merits, is concluded.

Order accordingly.