

1984 August 11

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ALBERT ABDEL MALEK BAGDADI ASAAD,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF INTERIOR,

*Respondent.*

(Case No. 117/83).

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*Administrative Law—Administrative acts or decisions—Executory act—Confirmatory act—Cannot be made the subject of a recourse—Administrative decision, taken subsequently to an executory administrative decision in the same matter not confirmatory if*  
5 *it is the result of a new inquiry not merely regarding the legal aspect but of a new inquiry involving the evaluation of new factors—When does a new inquiry take place—Re-examination of the case of the applicant taking place on the basis of the already existing material—Decision taken after such re-examination*  
10 *merely confirmatory of the previous decision of the administration in the same matter.*

The applicant, who resided in Alexandria in Egypt was refused re-entry in Cyprus, as an alien, on the ground that while in Cyprus he had allegedly been unlawfully in possession of gold;  
15 and was informed of this refusal by letters dated 23rd October, 1981, 1st November, 1981 and 16th October, 1982. As applicant denied the above allegation the respondent undertook to re-examine the matter and having done so he informed applicant's Counsel, by letter dated 12th January, 1983 that there continued  
20 to exist the reasons for which the entry was prohibited. Hence this recourse which was filed on the 23rd March, 1983.

*On the preliminary objection, raised in the opposition, that the recourse challenged a confirmatory act:*

*Held*, that a confirmatory act cannot be made the subject of a recourse; that an administrative decision, which is taken subsequently to an executory administrative decision in the same matter, is not confirmatory if it is the result of a new inquiry not merely regarding the legal aspect of the matter but of a new inquiry involving the evaluation of new factors; that whether or not a new inquiry has taken place does not depend on what was stated in this respect by a party to an administrative recourse, such as the present one, but what this Court, as an administrative Court, finds out to be the true situation; that as the re-examination of the case of the applicant took place on the basis of the already existing material and it was decided to insist on his exclusion from Cyprus, the sub judice decision, which was communicated to him by the letter of the 12th January 1983, was merely confirmatory of the previous decision of the administration in the same matter and, therefore, this recourse could not be made against the said confirmatory decision; and it is out of time as regards the previous decision which could be treated as being of an executory nature (p. 1532 post).

*Application dismissed.* 20

Cases referred to:

*Goulielmos v. Educational Service Committee* (1983) 3 C.L.R. 883 at p. 895;

*Demos Farm Ltd. v. Republic* (1983) 3 C.L.R. 1172 at p. 1178;

*Odysseos v. Republic* (1984) 3 C.L.R. 463 at p. 470; 25

*Decisions of the Greek Council of State Nos.:* 459/58, 1833/65 and 538/69.

**Recourse.**

Recourse against the refusal of the respondent to allow applicant, who resides in Alexandria, Egypt, to re-enter Cyprus as an alien. 30

*L.N. Clerides*, for the applicant.

*N. Charalambous*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.* 35

TRIANTAFYLIDIS P. read the following judgment. By this recourse the applicant, who resides in Alexandria, in Egypt, challenges the refusal of the respondent to allow him to re-enter Cyprus, as an alien.

5 Counsel who was acting at that time for the applicant was informed of the said refusal on the 23rd October 1981 and there ensued correspondence with the Migration Officer, who comes under the respondent Minister of Interior, in the course of which such refusal was confirmed by a letter dated the 18th November  
10 1981 and, also, by another letter dated the 16th October 1982.

As a result of further correspondence and a telephone communication between counsel for the applicant and the Director-General of the Ministry of Interior a meeting took place in the office of the said Director-General, in the presence of the  
15 Migration Officer, at which counsel for the applicant was informed that it was alleged that the applicant had, while in Cyprus, been unlawfully in possession of gold. At that meeting it was undertaken by the Director-General of the Ministry of Interior and the Migration Officer to re-examine the matter  
20 in the light of the denial by the applicant of the above allegation against him, and such denial was communicated in writing, too, to the Director-General of the Ministry of Interior.

Eventually, on the 12th January 1983, the Migration Officer addressed a letter to counsel for the applicant informing him  
25 that the matter of the entry into Cyprus of his client had been carefully re-examined but there continued to exist the reasons for which his entry was prohibited.

This recourse was filed on the 23rd March 1983 and there can be no doubt that, if by means of the letter of the 12th  
30 January 1983 there was communicated to counsel for the applicant an executory administrative decision, this recourse was filed within the time prescribed by Article 146.3 of the Constitution.

Counsel for the respondent has, however, raised the issue  
35 by the Opposition and by his written address that this recourse challenges a confirmatory act and that, therefore, it has to be dismissed.

That a confirmatory act cannot be made the subject-matter of a recourse is well settled (see, inter alia, in this respect,

*Goulielmos v. The Educational Service Committee*, (1983) 3 C.L.R. 883, 895, *Demos Farm Ltd. v. The Republic*, (1983) 3 C.L.R. 1172, 1178, and *Odysseos v. The Republic*, (1984) 3 C.L.R. 463, 470).

An administrative decision, which is taken subsequently to an executory administrative decision in the same matter, is not confirmatory if it is the result of a new inquiry not merely regarding the legal aspect of the matter but of a new inquiry involving the evaluation of new factors; and whether or not a new inquiry has taken place, as aforesaid, does not depend on what was stated in this respect by a party to an administrative recourse, such as the present one, but what this Court, as an administrative Court, finds out to be the true situation (see, in this respect, Tsatsos on the Recourse for Annulment before the Council of State—"Η Αίτηση Ακυρώσεως ενώπιον του Συμβουλίου Επικρατείας"—3rd ed., p. 136, and, also, the Decision of the Council of State in Greece in case 459/1958).

In is, furthermore, useful to note that in case 1833/1965, the Council of State in Greece held that a new decision reached after re-examination of the factors which have already been taken into account in reaching a previous executory decision is merely confirmatory of such previous decision, and not an executory one; and it was, also, held by the Council of State in Greece in case 538/1969 that the taking into account, in the course of such re-examination, of an isolated element put forward by the applicant which is not found to be material enough to lead to the revocation of the previously taken executory decision does not render the subsequent decision of the administration an executory one.

In the light of all the foregoing and having in mind that, as stated, in particular, in the relevant administrative records (see file No. A800457, entry No. 18, dated 20th December 1982) the re-examination of the case of the applicant took place on the basis of the already existing material and it was decided to insist on his exclusion from Cyprus, I am of the opinion that the sub judice decision, which was communicated to him, by the letter of the 12th January 1983, was merely confirmatory of the previous decision of the administration in the same matter and, therefore, this recourse could not be made against the said confirmatory decision; and it is out of time as regards

the previous decision which could be treated as being of an executory nature.

This recourse is, therefore, dismissed; but I will make no order as to its costs.

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*Recourse dismissed. No order as to costs.*