

1987 February 3

[SAVVIDES J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEMETRIS STEKKOS,

Applicant,

v

**THE REPUBLIC OF CYPRUS, THROUGH
THE REGISTRATION SERVICE,**

Respondents

(Case No. 890/85)

Executory act—Confirmatory act—New decision reached after examination of material not before the respondents when an earlier executory act was taken—New decision cannot be confirmatory of the earlier act

5 *Administrative Law—Examination of material before the administration and conclusions drawn therefrom—Judicial control*

10 By letter dated 2 11 84, but dispatched to the applicant on 15 11 84, the appropriate authority informed the applicant that his application dated 20 8 84 for the reissue to him of a refugee card was refused. On 6 11 84 the applicant submitted a second application to the same effect. Annexed to the second application were various documents supporting applicant's contention that his usual place of abode before the Turkish invasion was at Famagusta. An inquiry was then carried out by the respondents, who on 23 11 84 received information that the applicant had declared his address for the purposes of social insurance contributions as being in Paralimni. On the 15 5 3 85 applicant's brother-in-law addressed to the Minister of Health a friendly letter requesting his intervention in the case. To this letter there were attached various documents in support of applicant's said contention as to his usual place of abode. The Minister sent the material forwarded to him as aforesaid to respondent 2, who by letter dated 6 8 85 informed the applicant that 20 «no new material has emanated justifying any modification of my previous decision which was communicated to you by my letter dated 2 11 84.»

Counsel for the respondents raised the preliminary objection that the sub-judice decision is confirmatory of the decision of 2 11 84

25 *Held, dismissing both the preliminary objection and the recourse (1) As the material submitted by the applicant was not before the respondents when*

they took the decision of 2 11 84, the sub judge act cannot be confirmatory of the earlier act of 2 11 84, but a new executory act reached after new examination of new material

(2) The respondents had at the time of taking the sub judge decision, the findings of their own investigations on the one hand and the documents submitted by the applicant on the other They had to consider such material and draw their own conclusions and make a finding as to the real place of applicant's residence before the Turkish invasion On the basis of such material the sub judge decision was reasonably open to them

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Recourse dismissed.
No order as to costs

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Recourse.

Recourse against the refusal of the respondents to re-issue to applicant his refugee card.

Cl. Cleanthous with A. Mappoundes, for the applicant

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A. Vassiliades for the respondents.

Cur. adv. vult.

SAVIDES J. read the following judgment. By this recourse the applicant prays for a declaration of the Court that the decision of the respondents communicated to him by letter dated the 6th August, 1985 whereby his application for the re-issue to him of his refugee card was dismissed, and/or their omission to determine Famagusta as his usual place of abode before the Turkish invasion, are null and void, illegal and of no effect whatsoever.

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The legal grounds on which the recourse is based are briefly that: - The sub judge decision was taken under a misconception of fact; it is not duly reasoned; it was taken in excess and/or abuse of power; it is illegal, as being contrary to Decision No.13503 of the Council of Ministers dated the 19th September, 1974 and it violates Article 28 of the Constitution.

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Counsel for the respondents, by his opposition, raised the preliminary objection that the sub judge decision is confirmatory of a previous decision taken on 2.11.1984 and communicated to applicant on 15.11.84. Subject to the above, it is contended that the sub judge decision was lawfully taken after a due inquiry into material facts of the case and in the proper exercise of the

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discretion of the respondents and is duly reasoned.

The decision complained of is contained in a letter dated the 6th August, 1985 from the Ministry of Interior, Registration Service, addressed to the applicant by the Registration Officer, which reads
5 as follows:

«I refer to your letter dated 5.3.1985 to the Honourable Minister of Health, in connection with your status of refugee and I regret to inform you that from the material which you have submitted, no new material has emanated justifying any
10 modification of my previous decision which was communicated to you by my letter dated 2/11/84, Ref File 43/83/III copy of which is attached herewith »

The contents of the letter of 2/11/84, reference to which is made in the above letter, read as follows:

15 «Your application for the replacement of your refugee card which was submitted to our office has been examined carefully and it has been decided that same should be rejected. As a result, your refugee card under No 9135 has been cancelled

20 2. The above decision was based on the fact that your usual residence before the Turkish invasion was in the free and not in the occupied areas.»

The facts of the case are briefly as follows:

25 The applicant was born at Paralimni village on 12 10 44 His wife was also born at Paralimni on 30 3 43. They got married on 15.10.67 and out of their marriage they got three children

30 After the Turkish invasion the applicant, on his application that he was a displaced person was issued with a refugee card on which it was mentioned that he was a «stricken person» In the meantime the applicant had moved to Athens with his family where he has been living and working for the last ten years.

35 On 20.8.84 the applicant submitted an application to the appropriate authority for the re-issue to him of a refugee card, which was refused and the refusal was communicated to the applicant by letter dated 2 11 84, reference to which has already been made.

The decision of 2.11.84 was dispatched to the applicant on 15.11.84 (red 1(c) in the file of the administration). In the meantime the applicant made another application which was received by the respondents on 6.11.84.

Annexed to such application were a declaration from the chairman of the village Commission of Paralimni and a certificate from the chairman and two members of the Village Commission of Paralimni to the effect that before and till the Turkish invasion the applicant had his usual place of abode at Kentavrou Street 320 where he was living with his father-in-law, with the exception of certain occasions when he was spending the nights at Paralimni at his house there. He also attached copies of birth certificates of his three children who were born in Famagusta and evidence of ownership of property in Famagusta.

An inquiry was then carried out by the respondents which revealed that the applicant had declared his address, in the Ministry of Labour and Social Insurance, for the purposes of social insurance contributions, as being in Paralimni. This information was received on 23.11.84 (reds 24-24C in the file).

On the 26th November, 1984, the respondent addressed a letter to the applicant requesting him to send his refugee card so that further examination of his application might be possible (red 25).

On the 7th December, 1984, another letter was addressed to the applicant by the respondent revoking the aforementioned one, because his refugee card was found attached to his previous application (presumably that of 20.8.84). Paragraph 2 of the letter of 7.12.84, reads as follows:

«I attach herewith the decision which was taken regarding your case which was sent to the address indicated in your first application.»
(Obviously referring to the decision of 2.11.84).

On the 5th March, 1985 the brother-in-law of the applicant sent a friendly letter to the Minister of Health describing himself as a relative of the Minister, bringing to his knowledge the steps that the applicant had taken for the re-issue to him of a refugee card and requesting the Minister to exercise his influence and intervene in the case and put an end to the «hardship» that his brother-in-law

suffered as a result of the refusal. To this new application there were also attached a certificate from a kindergarten in Famagusta to the effect that the elder daughter of the applicant attended same during the years 1972/1973 and 1973/1974, a certificate from the
5 chairman of the Village Commission of Kato Varoshia to the effect that the applicant was living till 1974, at Famagusta, and another certificate from the chairman of the village commission of Chlorakas, to the effect that the applicant went to live at that village as a refugee, after the invasion.

10 The Minister sent all the material submitted to him to respondent 2 for any necessary action on the matter. As a result, respondent 2 addressed to the applicant the letter of the 6th August, 1985 to the contents of which reference has already been made

15 The question which poses for consideration is whether the contents of the letter of the 6th August, 1985 amount to a new executory administrative act or whether they are merely confirmatory of a previous decision taken by the respondent and communicated to the applicant on the 2nd November, 1984.

20 After careful consideration of the contents of the file of the applicant I have come to the following conclusions:

(1) No documents were attached to the first application, of the 20th August, 1984.

(2) The material submitted by the applicant was received by respondent 2 after the date of the decision of 2.11.84.

25 (3) Although there is evidence of a form of inquiry by respondent 2 there is nothing in the file showing that a new decision was reached by the respondents after consideration of the material received by them on 6.11.84.

30 (4) The decision communicated to the applicant by letter dated 7.12.84 is the one of 2.11.84, which was taken before the submission of the said material.

(5) Part of the material submitted by the applicant by his letter dated 5.3.85 was already before the respondents since 6.11.1984 and part of it was new material submitted for the first time.

35 It is clear from the above that the material placed before the respondents by the applicant was not before them at the time when they took their decision of 2.11.84. The sub judge decision

therefore, which was taken after the submission of that material, cannot be confirmatory of the one of 2.11.84, but a new executory one, having been reached after a new examination on the basis of new material.

I will now proceed to consider the merits of the case. 5

Counsel for the respondents stated in his opposition that the reasons why the application was refused were that, after an inquiry carried out by the Registration Service, it emanated that:

(a) Immediately after the Turkish invasion a refugee card was issued to the applicant mentioning Paralimni village as the place of his displacement and classifying him as a «stricken person». 10

(b) In the electoral lists of 1973 both the applicant and his wife were registered as electors at Paralimni.

(c) In an application submitted by applicant on 4.10.73 for the issue of a passport, he declared his place of residence as being Paralimni village. 15

(d) In his social insurance cards for the years 1972-1973 and 1973-1974 he declared his residence as being Paralimni village.

The observation of respondent 2 after an inquiry into the matter as appearing at the back of the first application of the applicant is that both the applicant and his wife were registered as electors at Paralimni. This observation appears also on the second application which was received on 6.11.84. It is also stated on the first application that after an interview with the father-in-law of the applicant it was established that the applicant used as residence, both the house of his father-in-law at Famagusta and his house at Paralimni. 20 25

It had also been established that the applicant was using for social insurance purposes his address at Paralimni.

The respondents had, at the time of taking the sub judice decision, the findings of their own investigations on the one hand and the documents submitted by the applicant on the other (reference to which has already been made). The respondents had to consider that material and draw their own conclusions, and make a finding as to the real place of residence of the applicant. On the material before me, which was also before the respondents I find that it was reasonably open to them to reach the sub judice 30 35

decision, bearing also in mind that the certificate issued by the chairman of the Village Commission of Paralimni was to the effect that the applicant was living in Famagusta but was also using his house at Paralimni as residence, which in fact confirms the version of the applicant's father-in-law.

In the result this recourse fails and is hereby dismissed with no order for costs.

*Recourse dismissed.
No order as to costs.*