

1987 February 28

(TRIANTAFYLLOIDES, P)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KYRIACOS PAPADOPOULOS,

*Applicant,*

v

THE WATER BOARD OF NICOSIA,

*Respondent*

(Case No 897/85)

*Executory act — Confirmatory act — Informative act — An act confirmatory of an earlier one or of informative nature cannot be challenged by a recourse*

By letter dated 27 6 85 the respondent demanded from the applicant £5,400 - an amount described as estimated expenses and fees in respect of the Water Supply to the property of applicant at Strovolos

5

On 13 8 85 the applicant sought the revision of the said amount By letter dated 22 8 85 respondent informed applicant that the decision was based on Regulations published on 24 5 85

Hence this recourse which was filed on 23 10 85

Held, dismissing the recourse (1) The letter of 27 6 85 communicated to the applicant what and why he was being called upon to pay The contents of the letter of 22 8 85 were confirmatory of the earlier decision as well as of informative nature

10

(2) An act confirmatory or informative cannot be challenged by a recourse The executory decision in this case was communicated on 27 6 85 The recourse is out of time

15

*Recourse dismissed  
No order as to costs*

*Cases referred to*

*Pitsillos v The Republic* (1985) 3 C L R 2819,

*Chrysanthou v. The Republic* (1986) 3 C L R 1128,

*Phylaktides v The Republic* (1984) 3 C L R 1328

20

**Recourse.**

Recourse against the decision of the respondent to demand from applicant the payment of an amount of C£5,400 for the water supply to applicant's property at Strovolos.

5 *P. Angelides*, for the applicant.

*G. Triantafyllides*, for the respondent.

*Cur. adv. vult.*

10 TRIANTAFYLLIDES P. read the following judgment. By means of the present recourse the applicant challenges the decision of the respondent Water Board to demand from him the payment of an amount of C£5,400 for the water supply to a property of the applicant at Strovolos.

15 On 27 June 1985 the respondent demanded from the applicant the payment in advance of the aforesaid amount, which was described as being the estimated expenses and fees in respect of the water supply to the property of the applicant.

The applicant sought on 13 August 1985 the revision of the water supply fees, because in his view they were too high and agreed to pay part of the expenses concerned.

20 Respondent informed the applicant, by a letter dated 22 August 1985, that the decision regarding the fees payable by him had been reached on 7 June 1985 in accordance with Regulations which were published in the Official Gazette on 24 May 1985 and were put into force as from 1 January 1985.

25 Then the applicant objected on 30 August 1985 against the amount of the water supply fees and the respondent by a letter dated 21 September 1985 reiterated its already taken earlier stand in this matter.

30 Counsel for the respondent raised by his Opposition two preliminary objections, namely (a) that the present recourse is out of time, since it was filed on 23 October 1985, and (b) that the decision challenged by this recourse is not executory, but confirmatory of an earlier one against which no recourse was filed in time by the applicant.

35 Counsel for the applicant submitted that as no reasons were contained in the letter of the respondent dated 27 June 1985 the

**Triantafyllides P. Papadopoulos v. Water Board of Nicosia (1987)**

sub judice decision was communicated properly only on 22 August 1985 and, therefore, the limitation period of seventy-five days prescribed under Article 146.3 of the Constitution must be computed as from that date.

From the correspondence between the applicant - through his counsel - and the respondent it is obvious that right from the beginning, when the letter dated 27 June 1985 was sent to him, the applicant knew what, and why, he was being called upon to pay. 5

By means of the letter of 13 August 1985 there were not communicated to the respondent any not already known facts justifying a new inquiry into the matter by the respondent. 10

In my view contents of the letter of the respondent dated 22 August 1985 were only of an informative nature and there were also confirmed, by means of such letter, the contents of the earlier letter of the respondent dated 27 June 1985. It cannot, therefore, be found that the letter of 22 August 1985 conveyed a decision of an executory nature. 15

Acts of an informative nature, not being executory, cannot be challenged by a recourse under Article 146 of the Constitution (see, inter alia, *Pitsillos v. The Republic*, (1985) 3 C.L.R. 2819 and *Chrysanthou v. The Republic*, (1986) 3 C.L.R. 1128). 20

Also an act of a confirmatory nature, not being executory, cannot be challenged by a recourse under Article 146 of the Constitution (see, inter alia, *Phylaktides v. The Republic*, (1984) 3 C.L.R. 1328 and *Chrysanthou v. The Republic*, supra). 25

In the present case I have no doubt that the executory decision of the respondent was communicated to the applicant on 27 June 1985 and, as such decision was not challenged by means of a recourse within the period of seventy five days prescribed by Article 146.3 of the Constitution, the present recourse is out of time, in relation to it. 30

In the light of all the foregoing this recourse has to be dismissed; but with no order as to its costs.

*Recourse dismissed.* 35  
*No order as to costs.*