1987 September 14

[A. LOIZOU, SAVVIDES, LORIS, STYLIANIDES, KOURRIS, JJ.]

XENIS LARKOS,

Appellant - Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTRY OF FINANCE AND OTHERS,

Respondents

(Revisional Jurisdiction Appeal No. 365).

Time within which to file a recourse — Constitution, Art. 146.3 — Whether a request for review submitted under Art. 29 of the Constitution affects the running of time — Question determined in the negative (by majority) — Dicta to the contrary in Evangelou v. Electricity Authority of Cyprus (1979) 3 C.L.R. 159 not followed

Executory act — Confirmatory act — A confirmatory act cannot be made the subject of a recourse — What acts are confirmatory — New inquiry — What constitutes a new inquiry

The appellant, who was at the time on scholarship in the U.K. and was receiving financial assistance from the Government of the Republic, applied by letter dated 5.2.69 for an increase of such assistance by £50 per month. By letter dated 1.7.69 the Department of Personnel informed the applicant that it was not possible to accede to the latter's request.

By letter dated 25.7.69 the applicant applied for reconsideration of the case. By letter dated 25.9.69 the respondent replied that there was nothing to be added to his letter of 1.7.69.

As a result the applicant filed a recourse. The recourse was filed on 6.11.69. The trial Judge dismissed it as being out of time. Hence this appeal.

Held, dismissing the appeal (A) Per A. Loizou, J., Kourris, J. concurring:

It is well settled that a confirmatory act cannot be made the subject of a recourse under Article 146 of the Constitution unless such decision has been taken «after a new inquiry» into the matter.

(A passage from Stassinopoulos «Law of Administrative Disputes» relating to the concept of «new inquiry» adopted).

b) In this case both decisions were based on the same reasoning as neither the factual nor the legal position had changed in the meantime The second decision therefore is of a confirmatory nature It cannot be considered as an omission to perform what the administration is alleged to have been legally bound to perform in as much as the express repetition of a previous refusal clearly declared constitutes a confirmatory act, subject to what has been hereinabove stated regarding the absence of new material facts or change in the legal position.

c) Article 146(3) of the Constitution is so explicit, that leaves no room for introducing into our system of Administrative Law the approach which appears to have been followed in Greece namely that an application for administrative review affects the running of time if made before its expiration.

(B) Per Savvides, J : (a) A question which poses for consideration in the present appeal is whether a written request, envisaged by Article 29 of the Constitution, addressed to the administrative authority which had taken the decision in question, inviting such authority to consider its initial decision, either suspends the running of time or entirely eliminates the time which had already run before submission of the request

b) It is settled that when there is provision under the law for a hierarchical recourse or review by a reviewing authority and the applicant exercises his right in this respect the administrative process is considered as continuing till a decision is taken by the hierarchically superior organ or by the reviewing authority.

c) The provisions of Articles 29 and 146 of our Constitution are clear enough and they do not embody any provision as to the suspension of the prescribed time for the filing of a recourse The only exception, as already mentioned, is where the law provides for either a hierarchical recourse to a hierarchically superior organ or a review by the same or another authority which makes the process a continuous process till the final decision is taken

d) In this case the letter of 25 7.69 is not a hierarchical recourse because it is not addressed to a hierarchically superior organ, and it cannot be treated as an application for review as it is not based on a statutory provision

e) Our Constitution gives sufficient time to any person aggrieved by a decision to either submit an application for a new inquiry as explained hereinabove, and if no decision is given within 30 days, he still has sufficient time to file a recourse within the time limits fixed by the Constitution or challenge the decision without availing himself of Article 29.

f) The view that a request or complaint against a decision suspends the running of time is inconsistent with the well established rule that if the new decision is confirmatory of the previous one, it is not of an executory nature and the period for filing a recourse is treated as having commenced from the time when the original decision was taken.

C) Per Loris J (a) The person aggrieved by an administrative decision may before filing a recourse under Article 146 address written complaints to the administrative organ from which the decision in question emanates

b) In case of a negative decision and if such negative decision of the administrative organ concerned, is merely confirmatory (and that would be the case if no new material facts were contained in the written complaint forwarded to it) of its original decision, the time limit envisaged by Article 146 3 in respect of the initial administrative decision should be affected by the subsequent written complaint of the person aggrieved provided of course that such a request was submitted to the administrative organ concerned prior to the expiration of the 75 days envisaged by Article 146 3

c) An application under Art 29 of the Constitution does not extinguish the time that has elapsed in the meantime, but it only suspends it temporarily, that is for a period of 30 days or if a reply was given before the expiration of the period of 30 days, for such lesser period

d) In this case time began to run once again upon expiration of 30 days as from 25 7 69 Considering the period that elapsed from such day until the filing of the recourse (73 days) and adding to it the period that had already run until 25 7 69 the conclusion is that the recourse was out of time

D) Per Stylianides J (a) The view that only executory acts or decisions, and not also, confirmatory acts or decisions, can be challenged by means of a recourse under Article 146 of the Constitution has been adopted and reiterated repeatedly in our Case - Law

b) An act is confirmatory of a previous act if the following elements are present -

(i) Identity of the issuing authority

(ii) Identity of the person or persons to whom it relates

(iii) Identity of the procedure

(iv) Identity of the reasoning, and

(v) Identity of the order

c) If a new inquiry is carried into the matter the act which contains a confirmation of an earlier one, may be made the subject to a recourse

d) In this case the reply to 20 9 69 was clearly confirmatory of the letter of 1 7 69

e) In numerous decisions this Court has said, from the early dates of the introduction in this Country of the administrative jurisdiction by Article 146 of the Constitution that Article 146 should be interpreted and applied

in accordance with the interpetation of analogous provisions by administrative tribunals in a number of European countries such as France Greece and Italy In all these countries a petition for redress analogous to the petition safeguarded in Article 29 of the Constitution affects the computation of the period within which a recourse may be made

f) The citizen has a constitutional right, bo petition to the authorities and have a written reply within 30 days Failure to take into consideration the said 30 days period in the computation of the time for the filing of a recourse, would discourage the citizen to exercise his constitutional right and would limit by 30 days the 75 days

g) A written petition for review to the competent authority suspends the period of 75 days for 30 days - the period provided in the Article 29 of the Constitution for replying to an applicant - or for such shorter period if the reply is actually given earlier.

h) The recourse in this case is out of time.

Appeal dismissed
No order as to costs.

Cases referred to:

Zivlas v. Municipality of Paphos (1975) 3 C.L R. 369,

Liasidou v Municipality of Famagusta (1972) 3 C L.R 278.

Ioannou v Republic (1982) 3 C.L.R. 1002,

Spyrou v. Republic (1983) 3 C.L.R. 354;

Goulielmos v. The Republic (1983) 3 C L R. 883,

Pieris v The Republic (1983) 3 C L R 1054;

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

Evangelou v. Electricity Authority of Cyprus (1979) 3 C.L.R. 159;

Mikrommatis v. The Republic, 2 R S C C. 125,

Economides v. The Republic (1980) 3 C.L.R 219;

Peletico Ltd v. The Republic (1985) 3 C.L R. 1582,

Kntikos v. The Republic (1985) 3 C.L.R. 2368,

Kolokassides v. The Republic (1965) 3 C.L.R. 542;

Kyprianides v. The Republic (1982) 3 C.L.R. 611.

Appeal.

Appeal against the judgment of the President of the Supreme Court of Cyprus (Triantafyllides, P.) given on the 30th August, 1983 (Revisional Jurisdiction Case No. 342/69)* whereby his recourse against the refusal of the respondents to increase appellant's financial assistance granted to him during the period of his scholarship was dismissed.

K. Michaelides, for the appellant.

M. Kyprianou, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgments were read:

A. LOIZOU J.: The appellant who at all material times was serving as a Principal Assessor in the Department of Inland Revenue was given a scholarship by the Government of the United Kingdom, in order to attend a six months' training course in Income Taxation matters. Upon submitting an application for financial assistance to the Director of Personnel he was granted C£ 135 per month as such assistance, in addition to the scholarship allowance granted to him by the United Kingdom Government. While he was away from Cyprus attending the aforementioned training course the applicant applied to the respondent by means of a letter dated 5th February 1969, asking for an increase of the financial assistance, which had been granted to him, as due to other commitments of his he had to borrow about C£50.- per month in order to meet his expenses.

In reply the department of Personnel informed the appellant by means of a letter dated the 1st July, 1969 that it had not been possible to accede to his request for the increase of the financial assistance granted to him. The applicant, however, reverted to the same matter by means of a letter dated the 25th July, 1969 and applied for a reconsideration of his case. The respondent replied by means of a letter dated the 20th September 1969 and stated that there was nothing to be added to his letter dated the 1st July 1969. As a result the applicant filed a recourse on the 6th November 1969.

* *Reported in (1983) 3 C L R 1160*

The learned trial Judge who tried the recourse upon being satisfied that the last act in the relevant «administrative process which could conceivably be found to be an executory one is the refusal to increase the financial assistance to the applicant which has been communicated to him by means of the letter dated the 1st July 1969 in relation to which the present recourse is clearly out of time under Article 146(3) of the Constitution» dismissed the recourse as being out of time He, also, held that the further reply given to the applicant on the 20th September 1969 in response to his continuing insistence for an increase of the financial assistance granted to him, «is clearly only confirmatory of what has been stated in the letter of the 1st July, 1969 and it could not be challenged under Article 146 of the Constitution»

As against the dismissal of the recourse the appellant took the present appeal on the following grounds

(a) The judgment of the trial Court to the effect that the sub judice act is confirmatory is wrong in law and in fact and violated the principles of good administration

(b) In any case even if it were to be proved that it is confirmatory the express and categorical provisions of Article 146 of the Constitution do not exclude it from the annulling control and/or its attack by recourse under Article 146

(c) The trial Court erroneously ignored the omission of the respondent to inquire into the material submitted by applicant by means of his letter dated 25th July, 1969 and reply within a month as provided by Article 29 of the Constitution

(d) Further the trial Court erroneously decided that the sub judice act was confirmatory and the recourse out of time in view of the fact that the respondent purposely replied to the applicant's application for reconsideration of the facts of the case after the lapse of seventy - five days from the 1st July 1969

Now it is well-settled that a confirmatory act cannot be made the subject of a recourse under Article 146 of the Constitution unless such decision has been taken «after a new inquiry» into the matter (see, inter alia, *Zivlas v Municipality of Paphos* (1975) 3 C L R 349, *Liasidou v Municipality of Famagusta* (1972) 3 C L R 278 *Ioannou v Republic* (1982) 3 C L R 1002, *Spyrou v The Republic* (1983) 3 C L R 354, *Goulielmos v The Republic* (1983) 3 C L R 883, *Piens v The Republic* (1983) 3 C L R 1054, *Phylaktides v The Republic* (1984) 3 C L R 1328

As to when a new inquiry exists very instructive is the following passage from Stassinopoulos «Law of Administrative Disputes» which I have adopted in the case of *Liasidou* (supra) at pp. 286-278).

«When does a new inquiry exist, is a question of fact: In general, it is considered to be a new enquiry the taking into consideration of new substantive legal or real material, and the new material is meticulously considered, for he who has been out of time in attacking an executory act, should not circumvent such a time limit by the creation of a new act, which it was issued nominally after a new enquiry but in substance on the basis of the same material.

.....

Especially there does exist a new enquiry where, before the issue of the subsequent act, there takes place consideration of newly produced material or pre-existing but unknown, which are now taken into consideration in addition, but for the first time. Similarly, it constitutes a new enquiry the carrying out of a local inspection or the collection of additional information in the matter under consideration.»

On the facts of the present case as appearing in the aforesaid two letters of the appellant, there has not been, and to my mind there ought not to be a new inquiry, because in the subsequent letter there were no new facts at all. By the sub judice decision the administration was insisting on its view not to accede to the request of the applicant to increase his financial assistance, reiterating thereby its previous decision. And in this respect I can do no more than repeat what I said in *Liasidou* (supra at pp. 287-288).

«Both decisions were based on the same reasoning as neither the factual nor the legal position had changed in the meantime. The second decision, therefore, is of a confirmatory nature. It cannot be considered as an omission to perform what the administration is alleged to have been legally bound to perform, in as much as the express repetition of a previous refusal, clearly declared, constitutes a confirmatory act, subject to what has been hereinabove stated regarding the absence of new material facts or change in the legal position. A similar approach was made by the Greek Council of State in Decision 1796/58 where it dealt with almost similar facts to those of the present case...»

For all the above reasons the learned trial Judge rightly decided that the only executory decision is the one contained in the letter

of the 1st July, 1969, in relation to which the present recourse was clearly out of time; and that the decision contained in the letter of the 20th September 1969 was clearly only confirmatory of what had been stated in the letter of 1st July 1969 and it could not be challenged under Article 146 of the Constitution.

Before concluding I would like to refer to the case of *Evangelou v. The Electricity Authority of Cyprus* (1979) 3 C.L.R. 159, in which Triantafyllides P., after finding as a matter of fact and concluding that the application in that case was out of time as having been filed after the lapse of seventy-five days from the day that the applicant came to know of the subjudice decision went on to say at p. 166;

> «So, even assuming that the applicant received the said letter by October 31, 1974, at the latest, the relevant period of seventy-five days expired on January 14, 1975, and his letter dated January 29, 1975, cannot be treated as an application for administrative review of the decision to treat his services as having been terminated, which was made within the period of seventy-five days prescribed by Article 146.3 of the Constitution, and which had it been so made it would have had the effect of suspending the running of time in relation to such period, pending either a reply to the letter of the applicant dated January 29, 1975, or until the expiry of the period of thirty days prescribed under Article 29 of the Constitution, whichever of the two happenings would occur earlier.»

And then went on to say:

> «Even if, however, I were to assume that the applicant received the letter of the respondent dated October 1, 1974, so belatedly that his application for an administrative review of the sub judice decision of the respondent, which he had put forward by means of his letter of January 29, 1975, was made within a period of seventy-five days after he had come to know of such decision, with the result that the time prescribed under Article 146.3 of the Constitution ceased running against him».

It is clear that the aforesaid was not part of the ratio decidendi of the case. But even if it was I would respectfully disagree with the view that an application for administrative review affects the running of time under Article 146.3 of the Constitution, which is so

explicit, that leaves no room for introducing into our system of administrative Law the approach which appears to have been followed in Greece.

For all the above reasons I would dismiss the appeal but in the circumstances there would be no order as to costs.

SAVVIDES J.: I agree with the reasons given by my brother Judge A. Loizou in his judgment which has just been delivered. I also agree with the result as to the outcome of the present appeal. Notwithstanding the fact that this appeal fails in any event on the ground that the recourse of the appellant was filed out of time, I consider it necessary to add a few words of my own to explain the reasons of adopting the view expressed by A. Loizou, J. in his judgment.

A question which poses for consideration in the present appeal is whether a written request, envisaged by Article 29 of the Constitution, addressed to the administrative authority which had taken the decision in question, inviting such authority to reconsider its initial decision, either suspends the running of time or entirely eliminates the time which had already run before the submission of the request.

Counsel for the appellant submitted that if prior to the expiration of 75 days for the filing of a recourse a request is made by virtue of Article 29 of the Constitution addressed to the administrative authority which had taken the decision in question, inviting such authority to reconsider its initial decision, the running of the 75 days time begins to run afresh from the day a decision is taken on such request and if no such decision is taken within 30 days then it begins to run after the expiration of 30 days. In support of his case counsel for appellant sought to rely on the decision of this Court in *Evangelou v. Electricity Authority* (1979) 3 C.L.R. 159, *Mikrommatis v. The Republic*, 2 R.S.C.C. 125 and *Economides v. The Republic* (1980) 3 C.L.R. 219; also on Stassinopoulos «The Law of Administrative Disputes» 4th Edition, pp. 208, 209 and the case law of the Greek Council of State as expounded therein.

Article 146.3 of the Constitution provides that a recourse under Article 146.1 «shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse.»

Article 29 of the Constitution provides as follows

«1 Every person has the right individually or jointly with others to address written requests or complaints to any competent public authority and to have them attended to and decided expeditiously, an immediate notice of any such decision taken duly reasoned shall be given to the person making the request or complaint and in any event within a period not exceeding thirty days

2 Where any interested person is aggrieved by any such decision or where no such decision is notified to such person within the period specified in paragraph 1 of this Article, such person may have recourse to a competent court in the matter of such request or complaint »

The provisions of Articles 29 and 146 of the Constitution leave no room for doubt as to their clear meaning and effect When a person has a complaint against a public authority or has made a request in a matter concerning him, such person is entitled under Article 29 1 to address his complaint or request to the competent public authority which has to consider and decide same within 30 days and notify its decision, which has to be duly reasoned, to the person concerned The only remedy afforded to any interested person aggrieved by such decision is expressly provided by paragraph 2 of Article 29 and is «to have a recourse to a competent Court in the matter of such request or complaint »

Article 146 embodies provisions as to the competent Court having exclusive jurisdiction to adjudicate finally on a recourse, by whom a recourse can be made, the time limits within which a recourse is to be filed and the effect of a decision given in a recourse

It is well settled by our case law that when a request or complaint is made to a public authority and no decision is taken within a month then the applicant is entitled to file a recourse for the failure of the organ to take a decision on the complaint or request He is also entitled to treat such failure as amounting to a negative decision to his request and file a recourse either against the failure to take a decision or against the negative decision

Also that when a decision is taken by a public authority and the person aggrieved applies for reconsideration, provided that there is new substantial legal or real material for reconsideration of the decision and the public authority concerned is satisfied that indeed

such material necessitates a new inquiry into the matter, it may revoke its previous decision and take a new decision after meticulously considering such material and making a new inquiry in the matter

It is further established that when an application is made for reconsideration of the case and a decision is given based on the same factual and legal basis confirming the previous one, such new decision is merely a confirmatory one and as such it can neither be the subject matter of a recourse nor in any way suspend or revive the 75 days time for challenging the original decision (see, inter alia *Zivlas* v *Municipality of Paphos* (1975) 3 C L R 349, *Ioannou* v *Republic* (1982) 3 C L R 1002, *Peletico Ltd* v *Republic* (1985) 3 C L R 1582, *Kritikos* v *Republic* (1985) 3 C L R. 2638)

It is also settled that when there is provision under the law for a hierarchical recourse or review by a reviewing authority and the applicant exercises his right in this respect, the administrative process is considered as continuing till a decision is taken by the hierarchically superior organ or by the reviewing authority

In the case of *Evangelou* v *The Electricity Authority* (supra) on which counsel for appellants sought to rely, Triantafyllides, P., held at p. 165, the following

> «It is a well settled principle of law that if a person affected by an administrative decision does not make at once a recourse against this decision, but seeks from the administrative organ which has reached it a reconsideration of the matter, this amounts to an exercise of his right to address a written request to the competent public authority—which right is safeguarded under our Constitution by means of Article 29—and, as a result, the time within which a recourse may be made against the decision complained of ceases to run
>
> The application, however, for reconsideration has to be made before the expiry of the period within which a recourse may be made against the decision concerned, and the time within which a recourse can be made commences to run afresh as from when either a reply is received or as from the expiry of the time—which under Article 29 is thirty days—within which a reply ought to have been given, in case no such reply is actually given (see Stasinopoulos on the Law of the

Administrative Disputes—Στασινοπούλου, «Δίκαιον των Διοικητικών Διαφορών» (1964), pp. 208, 209)».

The above opinion finds support in Stassinopoulos on the Law of Administrative Disputes, 1964, where at p. 208, it reads as follows:

«Διακοπή της προθεσμίας.—Συνήθως ο διοικούμενος, όταν ανακοινωθή εις αυτόν μία πράξις δυσμενής, θίγουσα τα συμφέροντα του, δεν ασκεί αμέσως αίτησιν ακυρώσεως ενώπιον του Συμβουλίου της Επικρατείας, αλλά υποβάλλει προς το διοικητικόν όργανον, το οποίον εξέδωκε την πράξιν, μίαν αναφοράν παραπόνων, την οποίαν ονομάζομεν αίτησιν θεραπείας, ή προς το ιεραρχικώς προϊστάμενον όργανον μίαν αίτησιν, την οποίαν ονομάζομεν ιεραρχικήν προσφυγήν, επειδή σκοπός αυτής είναι να θέση εις κίνησιν τον ιεραρχικόν έλεγχον, περί του οποίου ήδη ωμιλήσαμεν. Η υποβολή τοιούτων αιτήσεων είναι δικαίωμα του διοικουμένου, το οποίον το Σύνταγμα ονομάζει «δικαίωμα του αναφέρεσθαι εις τας αρχάς» και το οποίον ρυθμίζεται και υπό του Συντάγματος και υπό του ειδικού νόμου του 1914, όστις ορίζει ότι αι αρχαί υποχρεούνται ν' απαντούν εντός μηνός εις τας τοιαύτας αναφοράς, έχει δε ως συνέπειαν, ότι διακόπτει την προθεσμίαν της «αιτήσεως ακυρώσεως», η οποία ήδη έχει αρχίσει. Διά να έχη όμως τοιούτον αποτέλεσμα διακοπής, η υποβολή αιτήσεως θεραπείας ή ιεραρχικής προσφυγής, δέον να λάβη χώραν πριν εξαντληθή η εξηκονθήμερος προθεσμία της αιτήσεως ακυρώσεως. Τότε, νέα εξηκονθήμερος προθεσμία αρχίζει εκ νέου μετά παρέλευσιν μηνός από της υποβολής της αιτήσεως θεραπείας ή ιεραρχικής προσφυγής.»

(«Interruption of time: Usually the subject, when an unfavourable decision is communicated to him, does not immediately file a recourse to the Council of State, but submits to the administrative organ, which issued the act, a complaint, which we call petition for redress, or to the hierachically superior organ an application, which we call hierarchical recourse, because its object is to put in motion the hierarchical control to which we have already referred to. The subject has a right to submit such applications, which is named by the Constitution as a right to refer to the authorities and is

governed both by the Constitution and a special law of 1914, which ordains that a reply should be given to the subject by the organ concerned within 30 days. The exercise of such right entails the interruption of the time within which a recourse can be made. But such a result occurs only when the complaint or the hierarchical recourse was submitted before the expiration of the period of 60 days within which a recourse can be filed. In such a case time begins to run afresh upon expiration of one month from the submission of the petition for redress or of the hierarchical recourse.»).

The view of Stassinopoulos is based on the decisions of the Council of State in Greece in Cases 1062/67 and 1775/69 which favour the view that written applications to the administrative organ concerned for reconsideration of its initial decision, extinguish the time that has elapsed prior to the submission of an application and cause the time to run afresh as from the date a reply is given by the administrative organ in question, or from the expiration of the time within which a reply ought to have been given.

The above opinion is criticized by Professor Tsatsos in his treatise Recourse for Annulment, 3rd Edition, paragraph 43, at pp. 90 - 92, where he expresses his disagreement to the views held by the Greek Council of State and Stassinopoulos. Professor's Tsatsos view is that such an application should not extinguish the time that has elapsed prior to its submission but should only suspend same for the period of 30 days or such lesser period if a reply is actually given earlier. The reasons for his disagreement appear in the footnote at p. 92, which reads as follows: «(1) Το Συμβούλιον της Επικρατείας παγίως την αντίθετον δεξάμενον εκδοχήν, καθ' ην η προθεσμία των εξήκοντα ημερών άρχεται και αύθις υπολογιζομένη από της παρόδου του τριακονθημέρου, μη συνυπολογιζομένου και του προ της υποβολής της αιτήσεως θεραπείας διαρρεύσαντος χρόνου, αντιφάσκει προς τα υπ' αυτού ορθώς δεκτά γενόμενα ως προς τας βεβαιωτικάς πράξεις και το απαράδεκτόν της προσβολής αυτών. Βλ. και Μιχ. Στασινοπούλου, σελ. 208, Δ.Δ. Διαφορών. Ακόμη και η χρησιμοποιουμένη ορολογία εν ταις αποφάσεσι του Συμβουλίου της Επικρατείας εμφανίζει σύγχυσιν. Ούτως αφ' ενός η αίτησις θεραπείας συχνάκις ταυτίζεται προς την χαριστικήν προσφυγήν. Ορθήν χρήσιν της ορολογίας βλ. εν 21/38, και 1881/38.

Βλ ομως και παλιν την αιτησιν θεραπειας αντιπα ρατιθεμενην προς την ιεραρχικην προσφυγην εν 898/38, 680/39, 956/39, ως και το Συμπλήρωμα Νομολογιας (Ζαχαροπούλου), Ι, σελ 95, αριθ. 2343, 2347 Αφ' ετέρου οι όροι αναστολή και διακοπή της προθεσμίας συγχέονται. Βλ. 21/38, 828/38, 829/38, 2/45, 146/45, 232/39, 859/39, 555/45, εν αις γίνεται λόγος περι αναστολής αντί του ορθού, ήτοι περι διακοπης. Το Conseil d'Etat εδέχθη (βλ την απόφασιν της 26 Απριλιου 1944, Chambre syndicale des agents généraux d'Assurances des Ardennes), ότι εάν η ιεραρχική προσφυγή απορριφθή δι' αποφάσεως αποκλειστικως επικυρωτικης (purement confirmative) της πράξεως, καθ' ης η ιεραρχικη προσφυγη, δεν επερχεται διακοπη της προθεσμιας Το ζητημα εχει λεπτομερως αναλυσει ο Waline εν R D P, LXVIII σελ 487, κ ε. Παρ' ημιν η αίτησις θεραπειας διακοπτει την εξηκονθημερον προθεσμιαν, εαν συντρεχωσιν αι κατα νομον προυποθεσεις αοχετως προς το βεβαιωτικον η επικυρωτικον περιεχόμενον της απαντησεως η και της σιωπης εισετι της αρχης προς ην απευθύνεται αυτη »

(«The view that has been persistently adopted by the Council of States that the period of time begins to run afresh after the expiration of the period of 30 days, without taking into account the period that had already run until the submission of the petition for redress is inconsistent with the rightly accepted by the Council principle that a confirmatory act cannot be made the subject of the recourse See M Stassinopoulou, Law of Administrative Disputes p 208 Even the terminology used by the Council of State reveals confusion So on many occasions the petition for redress is confused with a gratis recourse Correct use of the terminology, see in cases 21/38 and 1881/38 But see the petition of redress in juxtaposition with the hierarchical recourse in cases 898/38, 680/39, 956/39, as well as Simpliroma Nomologias (Zacharopoulou) 1, p 95 Nos. 2343, 2347 On the other hand the terms 'interruption' and 'suspension' instead of the correct one of 'interruption' is used The Council d' Etat accepted (See the decision 26 44 44, Chambre syndicale des agents generaux d' Assurance des Ardennes) that if the hierarchical recourse is dismissed by a purely confirmatory

decision (purement confirmative) of the act, against which the recourse had been submitted, there does not follow an interruption of the period of time. The matter has been analysed in detail by Waline, R.D.P., LXVIII, p. 487 et seq. In Greece the petition to redress interrupts the 60 days period if the legal prerequisites are satisfied, irrespective of the confirmatory nature of the answer or even the silence of the authority to which the petition has been addressed.»).

From what emanates from the above comment of Tsatsos and also from other textbook writers in Greece, relevant applications are divided into several categories by textbook wnters. A very elucidating exposition on this matter was made by Loris, J. in *Goulielmos v. The Republic* (1983) 3 C.L.R. 883 at pp. 889, 900.

The other case on which counsel for appellant sought to rely, is the case of *Micrommatis v. The Republic* (supra). *Micrommatis* case lends no support to the argument of counsel for appellant. There, the gist of the case was whether resort to the review and revision procedure under section 42 against an assessment under section 37 of the Income Tax Law, Cap. 323, would not operate as an estoppel to a recourse to this court and whether the period of 75 days prescribed by Article 146.3 should operate from the day on which the result of the review on revision came to the knowledge of the person concerned. It was held in that case as follows at pp. 128, 129:

«The Court is of the opinion that the review and revision procedure under section 42 is not contrary to, or inconsistent with, any provision of the Constitution. Such procedure merely enables the person assessed to seek a reconsideration of the original assessment by the Commissioner and, if resorted to, such procedure amounts to nothing more than a continuation or completion of the process of assessment in the particular case.

.....

It was also contended in this Case by counsel for the Respondent that this recourse could not be entertained by this Court because it had not been made within the period prescribed by paragraph 3 of Article 146. As the Court has held, for the reasons given above, that the review and revision under section 42 of CAP 323 of the original assessment under section 37 of that Law must be regarded as a continuation or

completion of the process of assessment, it follows that the relevant date in this Case from which the period prescribed by paragraph 3 of Article 146 of the Constitution must be reckoned, is the date on which the result of the review and revision under section 42 came to the knowledge of the Applicant. In this case the Applicant was informed by the Respondent of such result by letter dated the 22nd March, 1961. The Court is, therefore, of the opinion that this recourse, the Application in respect of which was filed on the 15th April, 1961, has been made within the time prescribed by paragraph 3 of Article 146.»

The above opinion has been constantly followed by this Court and it is well established that when there is a provision in a law for a review and revision procedure, and a person takes advantage of such procedure, till its determination the procedure is treated as a continuation or completion of the act and the time does not begin to run till a final decision is taken by the reviewing authority.

I find myself unable to share the opinion expressed in *Evangelou* case (supra). As mentioned earlier, the provisions of Articles 29 and 146 of our Constitution, are clear enough and they do not embody any provision as to the suspension of the prescribed time for the filing of a recourse. The only exception, as already mentioned, is where the law provides for either a hierarchical recourse to a hierarchically superior organ or a review by the same or another authority, which makes the process a continuous process till the final decision is taken. In the present case the letter of the applicant of 25th July, 1969, is clearly not a hierarchical recourse under the law, as it is not addressed to a hierarchically superior organ. On the other hand it can not be treated as an application for review as it is not based on a statutory provision for a review of such decision. Therefore, it could not have the effect of either suspending or interrupting the running of time.

Our Consitution gives sufficient time to any person aggrieved by a decision to either submit an application for a new inquiry as explained hereinabove, and if no decision is given within 30 days, he still has sufficient time to file a recourse within the time limits fixed by the Constitution or challenge the decision without availing himself of Article 29; and if in the course of the proceedings new material emanates which is relevant and substantive to require a new inquiry, the recourse may, on the undertaking of such authority to carry out a new inquiry either be

discountinued or be kept in abeyance pending the result of such new inquiry. If I was to agree with the view that a request or complaint against a decision suspends the running of time then such view would have been inconsistent with the well established rule that if the new decision is confirmatory of the previous one, it is not of an executory nature and the period for filing a recourse is treated as having commenced from the time when the original decision was taken.

The appeal is therefore dismissed but with no order for costs.

LORIS. J.: The main question which poses for determination in the present appeal is whether the time envisaged by Article 146.3 of our Constitution, for the filing of a recourse impugning an administrative decision, is affected by a written request envisaged by Article 29 of the Constitution, addressed to the administrative authority which has taken the decision in question, inviting same to reconsider its initial decision.

Article 146.3 of our Constitution provides that a recourse under Article 146.1 «shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse.»

The «75-days time limit» envisaged by Article 146.3 of the Constitution is affected, in the sense that it is being suspended, in at least two established occasions as follows:

A. Certain Laws provide that a decision of an administrative organ can be impugned before a hierarchically superior organ by means of a hierarchical recourse, viz. Law 9/82 as amended by Law 84/84. In such a case the initial decision of the Licensing Authority does not become executory until after the lapse of 20 days from its publication, (vide s. 4 of Law 9/82 and s. 4A of Law 84/84) so that the person aggrieved may file a hierarchical recourse; and the time of 75 days starts running after the lapse of 20 days, if a hierarchical recourse is not filed, or after the publication of the decision in the hierarchical recourse.

B. There are instances where a Law, although not envisaging a hierarchical recourse, provides a review and a revision procedure of the initial decision by the same administrative organ who has given the initial decision, viz. s. 42 of the Income Tax Law Cap. 323. It was held by the then Supreme Constitutional Court in

the case of *Mikrommatis v The Republic* 2 R S C C 125 at p 129 that as

«The review and revision under section 42 of Cap 323 of the original assessment under section 37 of that Law must be regarded as a continuation or completion of the process of assessment it follows that the relevant date in this case from which the period prescribed by paragraph 3 of Article 146 of the Constitution must be reckoned is the date on which the result of the review and revision under section 42 came to the knowledge of the Applicant »

Now, when express provisions in a law (vide A above) or even provisions in a law by necessary implication (vide B above) affect the time limit of 75 days in the ways above stated, shouldn't the provisions of Article 29 of the Constitution a fortion affect the aforesaid time limit, taking into consideration that the Constitution is the Supreme law of the Land?

Unhesitatingly I am answering this question in the affirmative

Article 29 of the Constitution reads

«1 Every person has the right individually or jointly with others to address written requests or complaints to any competent public authority and to have them attended to and decided expeditiously an immediate notice of any such decision taken duly reasoned shall be given to the person making the request or complaint and in any event within a period not exceeding thirty days »

The person aggrieved by an administrative decision may, before filing a recourse under Article 146, address written complaints to the administrative organ from which the decision in question emanates, placing before it any new material which might convince the administrative organ in question to reconsider its initial decision, in which case litigation is avoided and expenses incidental thereto saved in case the said administrative organ is not satisfied with the material forwarded to it, it will turn down the written complaint, informing the person aggrieved, expeditiously and in any event within a period not exceeding 30 days, of its adherence to its initial decision

In the circumstances if the negative decision of the administrative organ concerned, is merely confirmatory (and that would be the case if no new material facts were contained in the

written complaint forwarded to it) of its original decision. I hold the view that the time limit envisaged by Article 146.3 in respect of the initial administrative decision should be affected by the subsequent written complaint of the person aggrieved, provided of course that such a request was submitted to the administrative organ concerned prior to the expiration of the 75 days envisaged by Article 146.3.

The above principle has been set out by the learned President of this Court in the case of *Evangelou v. Electricity Authority* (1979) 3 C L R. 159 at p. 165 as follows:

> «It is well settled principle of law that if a person affected by an administrative decision does not make at once a recourse against this decision, but seeks from the administrative organ which has reached it a reconsideration of the matter, this amounts to an exercise of his right to address a written request to the competent public authority - which right is safeguarded under our Constitution by means of Article 29 - and, as a result, the time within which a recourse may be made against the decision complained of ceases to run.»

Having held that the provisions of Article 29 of our Constitution should have a bearing on the time-limit of 75 days in the way above stated, I shall proceed to consider the extent of such bearing on the time limit aforesaid.

The learned President of this Court in *Evangelou* case (Supra), relying mainly on Greek Authors (Stasinopoulos on the Law of Administrative Disputes, 1964, pp 208-209) and the Decisions of the Council of State in Greece in cases 1062/1967 and 1775/1969) held that «the time within which a recourse can be made commences to run afresh as from when, either a reply is received or as from the expiry of the time - which under Article 29 is thirty days - within which a reply ought to have been given, in case no such reply is actually given.»

Article 10.1 of the Greek Constitution 1975/1986, confers on every citizen of the Greek State a right - similar to the one conferred by Article 29 of our Constitution - to apply individually or jointly with others to public authorities.

It is true that the majority of the Decisions of the Greek Council of State favour the view that such written applications to the administrative organ concerned for reconsideration of its initial

decision, extinguish the time (for filing a recourse of annulment of the initial administrative decision) that has elapsed prior to their submission and cause the time to run afresh as from the date a reply was given by the administrative organ in question or from expiration of the time of 30 days i.e. the time within which a reply ought to have been given.

Professor Th. Tsatsos in his treatise «Recourse of Annulment» 3rd Ed., paragraph 43 at pages 90-92 expresses his disagreement to the said views held by the Greek Council of State, giving his reasons thereof; Prof. Tsatsos maintains that such an application should not extinguish the time (for filing a recourse of annulment) that has elapsed prior to their submission but should only suspend same for the period of 30 days or such lesser period if a reply is actually given earlier.

Having given to the matter my best consideration I hold the view that we should adopt the opinion of Prof. Tsatsos set out above, bearing in mind in particular the fact that the time limit envisaged by our Constitution is 75 days whilst in Greece the relevant legislative provision confines the time within which a recourse of annulment may be filed, to 60 days.

As a consequence, I hold the view that *Evangelou* case (Supra) should be read subject to the modification that the time within which a recourse can be made is suspended by a written request or complaint envisaged by Art. 29 of our Constitution to the extend above mentioned, and thus the time for filing a recourse should not «commence to run afresh» as from when, either a reply is received or as from the expiry of the time within which a reply ought to have been given, in case no such reply is actually given.

Having adopted the views of Prof. Tsatsos as above, I may as well add that written applications of this nature (written requests or complaints envisaged by Art. 29 of our Constitution) will have a bearing on the time limit envisaged by Article 146.3 as above, provided they are submitted only once after the initial decision of the administrative organ in question.

(In this connection it must be borne in mind that in Greece relevant applications are divided into several categories by text-book writers, who differ in naming them - vide *Goulielmos v. Republic* (1983) 3 C.L.R. 883 at pp 899 - 900).

In the case under consideration, the appellant applied to the respondent by a letter dated 5th February 1969, asking for an increase of the financial assistance which was being granted to him by the respondent, stating that he had to borrow £50 per month in order to meet his expenses. The respondent considered his application and rejected same on the 1st July, 1969. The applicant reverted to the matter by a letter addressed to the respondent on the 25th July, 1969, applying for reconsideration of his case and again on the 20th September, 1969, the respondent rejected the second request as well, without a new inqury as it is obvious from the record before us. Therefore, in the case under consideration, the executory administrative decision of the respondent is that of the 1st July, 1969. The application of the appellant dated 25th July, 1969 which was a written request to the same administrative organ, amounts obviously to a written request made under Article 29 of the Constitution. To this application, there was no reply within 30 days as envisaged by the Constitution. This should lead the appellant to the conclusion that the administrative authority in question did not intend to answer favourably to his application and should place him on his guard to file his application for annulment within the period left from the 75 days which had already commenced to run as from the 1st July, 1969 and they were suspended by the application of the 25th July, 1969. The appellant instead filed his present recourse on the 6th November 1969. It is true that if we calculate the period of time running after the expiration of 30 days from the next day of submitting his request on the 25th July, only 73 days have elapsed up to the filing of his recourse. But the initial time for filing the recourse which commenced running on the 1st July was not extinguished altogether up to the 25th July, as I have held above. Therefore, if we add to the 73 days the initial period which commenced running on the 1st July and was suspended on the 25th July i.e. 24 more days then definitely present recourse was filed out of time.

I would therefore dismiss the present appeal, but in the circumstances I would make no order as to costs.

STYLIANIDES J.: This appeal is directed against the Judgment of the President of this Court whereby the recourse of the appellant was dismissed.

Two points are raised in this appeal:

(a) Whether the challenged act is a confirmatory or executory one; and

(b) Whether a written request to the competent Administrative Authority for reconsideration of an initial decision affects the time within which a recourse may be made against such decision

The facts of the case, as set out in the Judgment under appeal, are as follows:

The appellant at the material time was serving as a Principal Assessor in the Department of Inland Revenue; a scholarship was given to him by the Government of the United Kingdom to attend a six months training course in Income Taxation matters

Before leaving Cyprus he submitted to the respondent Director of Personnel an application for financial assistance. As a result, the appellant was granted C£135 per month as financial assistance, in addition to the scholarship allowance granted to him by the United Kingdom Government.

The appellant on 21st May, 1969, while he was away from Cyprus attending the aforementioned training course, applied to the Director of the Department of Personnel asking for an increase of the financial assistance which had been granted to him, as, due to divers commitments of his, he had to borrow about C£50 per month in order to meet his expenses.

The Department of Personnel informed the appellant, by a letter dated 1st July, 1969, that it had not become possible to accede to his request for a revision of the amount of the financial assistance granted to him. The appellant reverted to the same matter by means of a written request dated 25th July, 1969 and applied for reconsideration of his case. He was, eventually, informed by the Department of Personnel, by letter dated 20th September, 1969, that there was nothing to be added to its previous letter of 1st July, 1969.

On 6th November, 1969 the recourse was filed, whereby the following relief was sought: «Declaration that the decision of the respondents contained in the letter of 20th September, 1969, not to revise upwards by £50 the financial assistance payable to applicant during his scholarship at the United Kingdom and not to

change their decision contained in the letter of 1st July, 1969, is null and void and of no effect whatsoever»

Counsel for the respondents raised the preliminary objection that the afore letter of 20th September, 1969, is only an act of a confirmatory and not of an executory nature and therefore it could not be challenged by a recourse under Article 146 of the Constitution and that the recourse is out of time

The learned President dismissed the recourse as the further reply given to the appellant on 20th September, 1969, «is clearly only confirmatory of what had been stated in the letter of 1st July, 1969 and it could not be challenged under Article 146 of the Constitution»

In the course of his Judgment he said that the last act in the relevant administrative process which could conceivably be found to be an executory one is the refusal to increase the financial assistance of the appellant which had been communicated to him by means of the letter dated 1st July 1969 in relation to which the recourse is clearly out of time under Article 146 3 of the Constitution

The view that only executory acts or decisions, and not, also, confirmatory acts or decisions, can be challenged by means of a recourse under Article 146 of the Constitution has been adopted and reiterated repeatedly in our Case-Law - *Kolokassides v The Republic* (1965) 3 C L R 542, *Kypnanides v The Republic* (1982) 3 C L R 611, *Ioannou v The Republic* (1982) 3 C L R 1002, 1008, 1009, *Spyrou v The Republic* (1983) 3 C L R 354)

A confirmatory act or decision is an act or decision of the administration which repeats the contents of a previous executory act and signifies the adherence of the administration to a course already adopted

An act is confirmatory of a previous act if the following elements are present

(a) Identity of the issuing authority

(b) Identity of the person or persons to whom it relates

(c) Identity of the procedure

(d) Identity of the reasoning, and

(e) Identity of the order

If a new inquiry is carried into the matter, the act which contains a confirmation of an earlier one, may be subject to a recourse - (see Tsatsos - Application for Annulment. 3rd Edition, pp. 132-133; *Kyprianides v. Republic* (supra); *Goulielmos v. Republic* (1983) 3 C.L.R. 883, at pp. 894-896).

As to when a new inquiry exists, reference may be made to *Spyrou v. Republic* (supra) at pp. 358 to 359.

In the present case the appellant by letter of 21st May, 1969, requested the revision of the allowance. The decision of such request was communicated to him by letter of 1st July, 1969. In the letter of 25th July, 1969, no new facts are set out. He requested «reconsideration of his application for increased financial assistance». And the letter of the respondents of 20th September, 1969, informed him that there was nothing to add to the letter dated 1st July, 1969.

This reply is clearly confirmatory of the decision contained in the letter of 1st July, 1969. As such, is not amenable to the revisional jurisdiction of this Court under Article 146 of the Constitution.

I turn now to the second point which is of general interest.

Paragraph 3 of Article 146 of the Constitution provides that a recourse shall be made within 75 days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse. This, according to our jurisprudence, is a provision of public policy and, therefore, mandatory. This period is shorter than anyone provided in the limitation laws for actions before the civil Courts. The objective is to have speedy determination of the legality of the acts of the administration, for the better interests of the citizen, of the administration and of the people at large, so as not to leave in abeyance the challenge of the legality of the administrative acts.

It is well settled that when a law provides for a hierarchical recourse, or review by a reviewing authority and an applicant exercises his right in that respect, the administrative process is considered as continued till a decision is taken by the hierarchical and superior organ, or by a reviewing authority and the 75 days

period prescribed in paragraph (3) of Article 146 of the Constitution is computed as from this latter day.

The right to address and submit written request to the competent public authorities is safeguarded by Article 29 of the Constitution which reads:

«1. Every person has the right individually or jointly with others to address written requests or complaints to any competent public authority and to have them attended to and decided expeditiously; an immediate notice of any such decision taken duly reasoned shall be given to the person making the request or complaint and in any event within a period not exceeding thirty days.

2. Where any interested person is aggrieved by any such decision or where no such decision is notified to such person within the period specified in paragraph 1 of this Article, such person may have recourse to a competent court in the matter of such request or complaint.»

In numerous decisions this Court has said, from the early dates of the introduction in this country of the administrative jurisdiction by Article 146 of the Constitution, that Article 146 should be interpreted and applied in accordance with the interpretation of analogous provisions by administrative tribunals in a number of European countries, such as France, Greece and Italy. In all these countries a petition for redress, analogous to the petition safeguarded in Article 29 of the Constitution, affects the date of the computation of the period within which a recourse may made. In Greece, France and Italy the time within which a recourse may be made against the decision complained of, ceases to run when a written request to the competent public authority is made, provided the application for reconsideration is made before the expiry of the period within which a recourse may be made against the decision concerned; and the time within which a recourse can be made commences to run afresh either as from the date a reply is received or as from the expiry of the time within which a reply ought to have been given, in case no such reply is actually given - (see Stassinopoulos on the Law of the Administrative Disputes (1964), pp. 208-209; Dendia Administrative Law, Volume C., pp. 293-294; Kyriakopoulos Greek Administrative Law, Volume C., pp. 116 and 132 and Tsatsos Application for Annulment, 3rd

Edition, pp. 90-96).

Triantafyllides, P., in *Evangelou v. The Electricity Authority* (1979) 3 C.L.R. 159, adopted and applied the aforesaid principle. At p. 165 he said:

> «It is a well settled principle of law that if a person affected by an administrative decision does not make at once a recourse against this decision, but seeks from the administrative organ which has reached it a reconsideration of the matter, this amounts to an exercise of his right to address a written request to the competent public authority - which right is safeguarded under our Constitution by means of Article 29 - and, as a result, the time within which a recourse may be made against the decision complained of ceases to run.
>
> The application, however, for reconsideration has to be made before the expiry of the period within which a recourse may be made against the decision concerned; and the time within which a recourse can be made commences to run afresh as from when either a reply is received or as from the expiry of the time - which under Article 29 is thirty days - within which a reply ought to have been given, in case no such reply is actually given (see Stassinopoulos on the Law of the Administrative Disputes - Σταυινοπούλου, «Δίκαιον των Διοικητικών Διαφορών» (1964), pp. 208, 209).
>
> The above principles of administrative law have been applied in Cyprus in, inter alia, *Mikrommatis v. The Republic*, 2 R.S.C.C. 125, 129; and by the Decisions of the Council of State in Greece in cases 1062/1967 and 1775/1969.»

My learned brothers Loizou and Savvides declined to follow the above and radically departed both from the *Evangelou* case and from the Greek jurisprudence.

A right to address the competent public authorities was safeguarded in Greece by an ordinary statute as from 1914. This right was incorporated in Article 10.1 of the Greek Constitution of 1975. The reason that the Greek Council of State took the view set out in the *Evangelou* case (supra) is that the exercise of a right of the citizen should not militate adversely against him in the computation of time to exercise the right of recourse to the

Revisional Court

The interpretation and application of paragraph 3 of Article 146 of our Constitution should take into consideration the provisions of Article 29 of the Constitution, the right safeguarded thereby The two provisions should be interpreted and applied together The citizen has a constitutional right, both to submit petition to the authorities and have a written reply within 30 days Failure to take into consideration the said 30 days period in the computation of the time for the filing of a recourse would discourage the citizen to exercise his constitutional right and would limit by 30 days the 75 days period

Professor Tsatsos in his Treaties «Recourse of Annulment» expresses the view that a petition should only suspend the running of the period for 30 days or such lesser period if a reply is actually given earlier I adopt this view This is more consonant with the correct interpretation and application of the two constitutional provisions and takes cognizance of the right to address the public authorities I **hold** therefore the opinion that a written petition for review to the competent authority suspends the period of 75 days for 30 days - the period provided in Article 29 of the Constitution for replying to an applicant - or for such shorter period, if the reply is actually given earlier

If the written petition of a citizen is not entertained by the administration, he may resort to the Administrative Court for the annulment of the executory act or decision In the present case the executory decision which might be amenable to a recourse, is that communicated to the appellant by the letter of 1st July, 1969 He elected, however to attack the contents of the letter of 20th September, 1969, a confirmatory act

Even if we assume, by giving very wide interpretation to the relief sought in the recourse, that the appellant challenges the validity of the executory act contained in the letter of 1st July, 1969, this recourse is again out of time, as the days from 1st July, 1969, until 6th November, excluding 30 days from 25th July 1969 - the date he submitted his written request - well outnumber the 75 days peremptory period

On any view of the matter this recourse is out of time

For all the foregoing reasons this appeal fails

It is hereby dismissed, but in all the circumstances I would make no order as to costs.

KOURRIS J.: I am in agreement with the Judgment of A. Loizou, J., and for the same reasons I dismiss the appeal.

A. LOIZOU J.: In the result the appeal is dismissed with no order as to costs. 5

Appeal dismissed.
No order as to costs.