1988 December 12

[A. LOIZOU, P., DEMETRIADES, PIKIS, PAPADOPOULOS, HADJITSANGARIS, CHRYSOSTOMIS, JJ.]

MARIOS ELIA PANAYIDES AND OTHERS,

Appellants-Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF COMMUNICATIONS AND WORKS,

Respondents.

(Revisional Jurisdiction Appeal No. 754).

Time within which to file a recourse—Infancy—Whether period of 75 days suspended during applicant's infancy—Question determined in the negative.

Recourse for annulment—Infancy—Not an incapacitating factor for the institution of a recourse.

Time within which to file a recourse—The provision of Article 146.3 of the Constitution is mandatory.

This is an appeal from a judgment of a Judge of this Court, whereby appellant's recourse was dismissed, as having been filed out of time. The question raised was whether appellants' infancy ought to have been treated as suspending the running of the period of 75 days (Constitution, Art. 146.3).

Held, *dismissing the appeal:* (1) A recourse for the review of administrative action is not solely an instrument for the protection of the rights of the injured party. It is also aimed to restore legality and ensure sound administration, a matter in which the interest of the pursuer and the wider public coincide. It would be intolerable to allow the administrative process to remain in a state of flux for any period longer than it is absolutely necessary to take action for its judicial review.

(2) The wording of para.3 of Art. 146 leaves no doubt as to the peremp-

tory character of its provisions. Infancy, which in any event , has never been treated as an incapacitating factor for the institution of a recourse, does not suspend the running of the period.

Appeal dismissed.
No order as to costs.

Cases referred to:

Moran v. The Republic, 1 R.S.C.C. 10;

Markoullis v. The Republic, 4 R.S.C.C. 7;

Protoparas v. The Republic (1967) 3 C.L.R. 411;

Ploussiou v. Central Bank (1982) 3 C.L.R. 230;

Shiafkallis v. Cyprus Theatrical Organization (1984) 3 C.L.R. 1382;

Mahdessian v. The Republic (1966) 3 C.L.R. 630;

Hadjigregoriou v. The Republic (1976) 3 C.L.R. 163;

Yialousa Savings Bank Ltd. v. The Republic (1977) 3 C.L.R. 25.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyrpus (Savvides , J.) given on the 21st October 1987 (Revisional Jurisdiction Case No. 609/84)* whereby appellant's recourse against the order of acquisition affecting, their property was dismissed.

E. Panayides, for the appellants.

M. Tsiappa (Mrs.), for the respondents.

Cur. adv. vult.

* *(Reported in (1987) 3 C.L.R. 1253).*

A. LOIZOU, P. The judgment of the Court will be delivered by Pikis J.

PIKIS J.: The foremost issue in this appeal is the amenity of the Court to review the action complained of, namely, an order of acquisition, in the light of acknowledged failure on the part of the applicants to seek its review within the 75-day period laid down in para.3 of Art. 146. The trial Court dismissed the recourse for failure to raise it within the time limit specified in para 3. Earlier the Court had determined, in the light of incontrovertible evidence that the acquisition had come to the knowledge of the applicants soon after its publication in 1978. The recourse for the review of the action complained of was mounted in 1984, some six years after the applicants had gained knowledge of the decision to acquire their property compulsorily.

Counsel for the appellants,who we may notice incidentally is their father, submitted that failure to challenge the decision within the period envisaged bu para. 3 of Art. 146 is excusable on account of the fact that they were under age at the time of the aquisition. Two of the applicants, co-owners of the property, are still minors, whereas the remaining two have since become of age. In support of his submission counsel referred us to the provisions of s. 19 of the Guardianship of Infants and Prodigals Law, Cap. 277, and the limitations imposed thereby to the rights of the guardian of the property of minors to make dispositions of their property without the order of a competent civil Court. Furthermore, he argued, it would be a violation of the human rights of the minors to expect them to exercise a right to litigate before attaining maturity. Counsel for the respondents supported the decision of the trial Court. She submitted that the provisions of s.8 of the Limitation of Actions Law - Cap. 15 - have no application to the time limit set by the Constitution for the judicial review of administrative action. In accordance with the provisions of s. 8, Cap. 15, the period of limitation does not run for as long as the vestee of a right is under the age of 18.

Unlike a private law action, a recourse for the review of ad-

ministrative action is not solely an instrument for the protection of the rights of the injured party. It is also aimed to restore legality and ensure sound administration, a matter in which the interest of the pursuer and the wider public coincide. As Professor Tsatsos observes in his work on the Principles Applicable to the Review of Administrative Action with a View to its Annulment (Third Edition, p. 64). it would be intolerable to allow the administrative process to remain in a state of flux for any period longer than it is absolutely necessary to take action for its judicial review. It must be appreciated that only acts encompassed in the domain of public law are amenable to review under Art. 146. Their vindication is subject to the rule entrenched in para. 3 of Art. 146 of the constitution requiring that any challenge to administrative action must be made within 75 days.

The wording of para. 3 of Art. 146 leaves no doubt as to the peremptory character of its provisions. It is couched in mandatory terms and provides "Η προσφυγή ασκείται εντός 75 ημερών" (a recourse shall be made within 75 days). Moreover the context in which para. 3 appears, namely, the time within which the review of administrative action may be sought reinforces the grammatical and etymological implications of its provisions (See, inter alia, *John Moran v. The Republic,* 1 R.S.C.C. 10; *Markoullis v. Republic,* 4 R.S.C.C. 7; *Andreas Protopapas v. Republic* (1967) 3 C.L.R. 411; *Ploussiou v. Central Bank* (1982) 3 C.L.R. 230; *Shiafkallis v. Cyprus Theatrical Organization* (1984) 3 C.L.R. 1382). Mere contemplation of the implications of allowing or suffering relaxation of the 75-day, period, would make one desist from such a course. Certainty in the administrative process would be seriously impaired with far reaching consequences for the sustenance of the rule of law and the rights and obligations of parties affected by administrative action.

In Greece the time limit for an application to the Council of State to annul administrative action is regulated by law (s.19, Law 92/61); it ordains a shorter period still than the 75-day period provided by para. 3 of Art. 146 for the institution of legal proceedings for the review of administrative action; and provides

that a recourse to the Court must be made within 60 days. The time limit set by the statute for the initiation of proceedings has been held to be mandatory, admitting of no exception or relaxation save in the case of force majeure, that is, the occurrence of events that put it beyond the reach of the party prejudiced by administrative action to raise a recourse personally or through a representative (See *"Conclusions of the Greek Council of State* (1929-1959), p. 256 and *Tsatsos.* "Application for Annulment before the Council of State" 3rd Ed. , p. 97). Force majeure has been acknowledged in Cyprus too as a cause preventing the activation, so long as it lasts, of the time limit set by para. 3 Art. 146 *(Mahdesian v. Republic* (1966) 3 C.L.R. 630: *Hadjigregoriou v. Republic* (1976) 3 C.L.R. 163; *Yialousa Savings Bank Ltd. v. Republic* (1977) 3 C.L.R. 25). On no occasion has infancy been treated as an incapacitating factor for the institution of a recourse to annul administrative action.

The facts of the case do not require us to debate force majeure as an incapacitating factor or the nature of the facts that would qualify as force majeure. What we must resolve is whether any valid excuse has been made for the non institution of the present proceedings within the 75-day period. And as none has been established we are disposed, in agreement with the learned trial Judge, to dismiss the proceedings as untimely.

Hence the appeal is dismissed. Let there be no order as to costs.

Appeal dismissed.
No order as to costs.