

1988 April 20

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEMETRAKIS LOUCA,

*Applicant,*

v.

1. THE REPUBLIC OF CYPRUS, THROUGH THE DIRECTOR OF SPECIAL SERVICE FOR THE CARE AND REHABILITATION OF DISPLACED PERSONS,  
2. THE ATTORNEY - GENERAL OF THE REPUBLIC,

*Respondents.*

(Case No. 353/83).

*Time within which to file a recourse under Art. 146.3—No evidence that relevant letter was posted or received, whilst applicant swore an affidavit that he never received it—Time did not begin to run prior to the receipt of a copy of such letter, following an inquiry by the applicant as to the fate of his application.*

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*Executory act—Confirmatory act—A confirmatory act cannot be challenged by a recourse.*

The facts of this case sufficiently appear from the judgment of the Court

*Recourse dismissed  
No order as to costs.*

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*Cases referred to:*

*Constantinides v. The Republic* (1985) 3 C.L.R. 644;

*Markides v. The Republic*, (1984) 3 C.L.R. 1581.

**Recourse.**

Recourse against the refusal of the respondents to grant applicant a refugee identity card.

*P. Angelides*, for the applicant.

*Ch. Kyriakides, Counsel of the Republic*, for the respondents.

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*Cur. adv. vult.*

DEMETRIADES J. read the following judgment. In the present case the applicant complains against the dismissal of his application for the grant to him of a refugee identity card.

The applicant is a teacher of elementary education and comes from Peristeronopighi village of Famagusta District, which is now under the Turkish military occupation.

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During the period 1973 - 1974 the applicant and his wife, who is also a teacher, were serving as teachers at the elementary school of Lysi, another village now occupied by the Turkish Invading Forces, and were residing in a rented house at Peristeronopighi.

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It is an undisputed fact that in June 1974, that is before the Turkish invasion, the applicant removed all his belongings, that is this furniture and household effects, from Peristeronopighi to one of two houses owned by him and situated at Akropolis area of Nicosia town.

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It is the case of the applicant that the reason he removed his belongings to his house in Nicosia, which apparently was vacant, was because he intended to find a more suitable house for his family at Peristeronopighi and then take them back to that village.

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On the 16th July, 1976, the applicant applied to the first respondents for the grant to him of a refugee identity card. His said application was rejected on the 29th August, 1976, on the ground that before the Turkish invasion he was residing at Nicosia where he had removed all his household effects.

On the 25th August, 1982, the applicant applied again for the grant to him of a refugee identity card. This application of his was also rejected on the 16th November, 1982.

In August 1983 the applicant visited the office of respondent No. 1 in order to find out the fate of his application of the 25th August, 1982, as he alleged that he had never received a reply to his said application. He was then given a copy of a letter purportedly sent to him and dated the 16th November, 1982, which contained the sub judice decision against which the applicant filed the present recourse.

Counsel for the respondents raised two preliminary objections, namely that (a) the present recourse is out of time, as it was filed in violation of the provisions of Article 146.3 of the Constitution, which provide that a recourse made to the Supreme Constitutional Court on a complaint that a decision, act etc. of an administrative authority shall be made within seventy-five days of the date when the decision or act of such authority came to the knowledge of the person making the recourse, and (b) that the sub judice decision cannot be challenged as it is confirmatory of a previous one on the same matter.

Regarding the first objection, counsel for the respondents argued that the time limit envisaged by Article 146.3 of the Constitution began to run as soon as the applicant received the letter of the 16th November, 1982, which was posted to his address in Nicosia on the same day.

As no evidence was produced by the respondents showing to my satisfaction that the said letter was actually sent by them and received by the applicant, and as on the other hand the applicant

stated in his affidavit dated the 16th October, 1985, an allegation that stands uncontradicted, that he had never received such letter, I cannot but accept that the applicant came to know of the contents of the letter of the 16th November, 1982, in August 1983 when he personally inquired about the fate of his application and was given copy of that letter. In the light of my findings, I have come to the conclusion that the present recourse was filed within time.

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I now propose to deal with the second preliminary objection raised.

It is well settled that only executory administrative acts or decisions are amenable to the jurisdiction of this Court under Article 146 of the Constitution and that confirmatory acts cannot be challenged for annulment by means of a recourse (see, inter alia, *Constantinides v. The Republic*, (1985) 3 C.L.R. 644, 650, 651, and *Markides v. The Republic*, (1984) 3 C.L.R. 1581, 1583).

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From the facts and documents placed before me (see Appendices "A", "B" and "C" attached to the written address of counsel for the respondents) I have no doubt that the second application of the applicant, that is the one dated the 25th August, 1982, was based on exactly the same facts as his first application and that the sub judge decision is confirmatory of the decision reached in respect of his first application. It is to be stressed that the applicant did not reveal that he had made the same application in 1976, nor did he allege that he was not aware of its outcome.

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For the above reasons I find that the recourse must be dismissed.

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In the circumstances, I make no order as to costs.

*Recourse dismissed.  
No order as to costs.*