

1988 April 28

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

E.A. HADJIOANNOU AND ELECTROACOUSTIC SUPPLY CO. LTD. .

Applicants.

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTRY OF FINANCE,

2. THE MINISTRY OF COMMERCE AND INDUSTRY,

Respondents.

(Case No. 422/79).

5 *Executory act—Confirmatory act—New act to the same effect, but taken after a new inquiry, is not confirmatory, but executory—First act loses, in such a case, its executory character—What constitutes a new inquiry, is a question of fact—When newly emerged elements or, though pre-existing the former act, were unknown to the administration, are taken into consideration for the first time, there is a new inquiry*

10 The facts of this case appear from the judgment. As the Court found that a new act to the same effect as the sub judice act was issued after a new inquiry, the recourse was struck out on the ground that the sub judice act lost its executory character.

*Recourse struck out.
No order as to costs.*

Cases referred to:

Mylonas v. Educational Service Committee (1982) 3 C.L.R. 880;

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

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

Papadopoulos v. The Republic, (1970) 3 C.L.R.169.

Recourse.

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Recourse against the act or decision of the respondents whereby they refused to grant relief to applicants from import duty on the equipment necessary for the manufacture of radio cassettes in Cyprus.

P. Polyviou, for the applicants.

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

Cur. adv.vult.

STYLIANIDES J. read the following judgment. By this recourse the applicants sought a declaration that the act or decision of the respondents dated 24/9/1979 and 29/10/1979, by which they refused to grant relief to the applicants from import duty on the equipment necessary for the manufacture of radio cassettes, etc. , in Cyprus, and/or their omission to grant such relief is null and void and of no effect whatsoever.

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The applicants applied for exemption from import duty from the importation of radio cassettes. Their such application was considered in the light of the provisions of The Customs and Excise Duties Law, 1978, (Law No. 18/78) and such application was rejected. The letter of 24/9/1979 by the Ministry of Finance and the letter of 29/10/1979 by the Ministry of Commerce and Indus-

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try communicated this negative decision to the applicants- (see Exhibits 1 and 2).

This recourse, which was before another Judge, was adjourned a number of times on the ground that the matter was to be
5 reconsidered by the authorities.

On 14/1/1980 the applicants sent to the Director-General of the Ministry of Finance two documents- a letter and a report of operation of the cassette manufacture-Exhibits 3 and 3A. The first two paragraphs of this letter read:-

10 "We must thank you very much for the interview you have granted us on 5th January 1980, and we are particularly happy that during the discussions it became apparent a misunderstanding which existed regarding the operation and status of
15 our cassette industry, which resulted in your refusal to grant us reliefs from import duties on the machinery, equipment and master tapes necessary for our operation."

Your willingness to reconsider your decision in the light of the facts stated is most appreciated and complying with the suggestion to provide you with further details, enclosed please
20 find mode of operation, together with machines and equipment necessary for the proper operation of our most sophisticated and highly technical industry."

On 11/7/1980 the Ministry of Finance informed the applicants that "your case has been reconsidered but could not be entertained"- (see Exhibit 5).
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On 4/3/1981 counsel for the applicants submitted a letter of request to the Ministry of Finance with copy to the Ministry of Trade and Industry and the Customs Department. The first paragraph of this communication runs as follows:-

30 "Further to our conversation on 19 February and in pursuance of our undertaking to set out the basic facts of our client's

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case so you may be able to proceed to its executive reconsideration prior to the hearing of the matter before the Supreme Court on 2.5.81, we wish to inform you of the following:"

Further down there is a long paragraph on the factual aspect, placing facts before the Administration, and there are some paragraphs on the legal aspect. 5

On 28/5/1981 the Ministry of Finance sent the following letter:-

"I am directed to refer to previous correspondence ending with your letter No. 442/79 of 2nd May, 1981 in connection with case No. 442/79 and to inform you that the claim submitted by Mr. E. HadjiIoannou for conditional relief from import duty on plant and equipment for the manufacture of cassettes, it was reconsidered by this Ministry and it was decided not to review the previous decision taken." 10 15

This Court, in view of the aforesaid documents, reopened the case and invited argument from counsel as to the legal effect of the re-examination and the new decisions of the Administration.

Counsel for the applicants submitted that there was no new executive act, but there was only a confirmatory one. 20

Counsel for the respondents said that a review of the old decision, subject matter of the recourse, took place and that new material was put before the Administration, but he did not want, as he stated, to take unfair advantage over the applicants. After the adjournment of the case on his own motion, he gave a slightly different version. 25

Whether a new decision is simply confirmatory, or a new executive act, the law is settled. (See *Charalambos Mylonas v. Educational Service Committee* (1982) 3 C.L.R. 880; *Spyrou v. The Republic* (1983) 3 C.L.R. 354). 30

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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; it is not in itself executory because it does not itself determine the legal position of an individual case, and cannot, therefore, be the subject of a recourse. An act which contains a confirmation of an earlier one is an executory one if it has been made after a new inquiry into the matter - (*Kolokassides v. The Republic* (1965) 3 C.L.R., 542; *Mylonas and Spyrou* (supra)).

10 When does a new inquiry exist is a question of fact.

The taking into consideration of new substantive legal and factual elements, not used before, amounts to a decision reached after a new inquiry. There is a new inquiry when, before the issue of the subsequent act, an investigation takes place of newly emerged elements or although pre-existing - were unknown to the administration at the first decision - are taken into consideration in addition to others, but for the first time. When new substantive factual elements are taken into consideration in arriving at a subsequent decision, the second decision is not a confirmatory act but a new executory act.

Having gone through the documents before me, I find that a new inquiry took place. In my view it is clear that the new decisions have been reached after the re-examination of the matter by the Administration, on the basis of new factors and, therefore, they are of an executory nature.

Once there has been taken a new executory decision, regarding the claim of the applicants, the earlier one - (due to which these proceedings have arisen) - has been deprived of its executory nature and can no longer be the subject - matter of a recourse for annulment - (see, inter alia, the Conclusions of the Greek Council of State 1929 - 1959, pp. 241-242; *Miltiades Papadopoulos v. Republic (Council of Ministers)* (1970) 3 C.L.R. 169).

Consequently, this recourse which challenges the validity of a

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decision which has, in the meantime, lost its executory nature,
must be treated as having been deprived of its object, and should,
accordingly, be struck out.

In the result, this recourse is struck out with no order as to
costs.

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*Recourse struck out with
no order as to costs.*