

1988 February 23

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. MICHALAKIS SERGIDES,
2. VASSO SAVVIDOU,

Applicants,

v.

THE CYPRUS TOURISM ORGANISATION,

Respondent.

(Case No. 217/87).

Hotel and Tourist establishment—The Registration of Non - Licensed Establishment Law, 1982 (47/82), section 4—The time limit is not directory, but mandatory.

5 *Constitutional Law—Right to property—Constitution, Art.23—Control of premises used by the public as hotel or tourist establishment—Does not amount to deprivation of property.*

Constitutional Law—Equality—Constitution, Art. 28—Does not exclude reasonable differentiations.

10 By means of this recourse the applicants challenge the decision, whereby their application for the registration of non licensed establishments, submitted under section 4 of Law 47/92, was turned down on the ground that such application was made after the expiration of the time limit provided in the aforesaid section (Six months from the coming into operation of Law 47/82).

15 Counsel for the applicants submitted that the time limit is directory, and not mandatory, that it is arbitrary and so short that it amounts to discrimination, contrary to Art. 28 of the Constitution, and, that, the applicants were deprived of their property, contrary to Art. 23 of the Constitution.

Held, dismissing the recourse: (1) The provisions of section 4 of Law 47/82, a law intended to regulate the registration of non licensed tourist establishments, are mandatory. No proviso exists under section 4 to empower the respondent in exceptional circumstances to ignore or relax the time limit fixed by that section.

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(2) The control of premises erected for the purpose of being used by the public in general as hotel or tourist establishments is not a deprivation of the right of owners to utilize their properties.

(3) Reasonable differentiations do not amount to discriminatory treatment.

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*Recourse dismissed.
Costs against applicants.*

Recourse.

Recourse against the refusal of the respondent to register property belonging to applicants as non-licensed establishments in accordance with the provisions of the Registration of Non-Licensed Establishments Law, 1982 (Law No. 47/82).

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A. Eftychiou, for the applicants.

A. Dikigoropoulos, for the respondent.

Cur. adv. vult. 20

SAVVIDES J. read the following judgment. By the present recourse the applicants challenge the decision of the respondent communicated to them under cover of a letter dated 20.3.87 addressed to their counsel, refusing the registration of property belonging to the applicants as non-licensed establishments in accordance with the provisions of section 4 of Law 47/82.

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The applicants are owners of non-licensed establishments in the sense of section 4 of the Registration of Non-Licensed Establishments Law, 1982 (Law No. 47/82) at Poli (Chrysochous) Paphos. On 13.10.86 the applicants applied for the registration of the said premises as non-licensed

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establishments in accordance with the provisions of the Law. On 5.3.1987 the Board of the respondent considered the above application and having taken into consideration the report of the General Manager of the Organization and the oral opinion of its legal adviser, decided to reject the application, on the ground that it had been filed out of time. The above decision was communicated to the applicants, through their counsel, by letter dated 20.3.1987, the contents of which read as follows:-

"I refer to your letter dated 13.10.86 by which you submitted applications on behalf of your clients Michalakis Sergides and Vasso Savvidou for the registration of their non-licensed establishments at Poli (Chrysochous) on the basis of Law 47/82.

(2) The Administrative Board of the Organisation examined the applications of your clients and decided not to accept same for the following reasons:

(a) According to the provisions of section 4 of Law 47/82 the owner or authorised agent of any existing or under construction non-licensed establishments should, within six months from the date of the coming into operation of the Law, submit to the Organisation an application for the registration of such establishments.

(b) The aforesaid Law (47/82) came into force on the 8th October, 1982 and, therefore, the relevant applications for registration of non-licensed establishments should have been submitted until the 8th of April, 1983.

(c) It emanates from the above, that the applications of your clients for registration of their non-licensed establishments were submitted out of time."

As a result, the applicants challenged the sub judice decision. The grounds of law advanced in support of the recourse, are the following:-

The sub judge decision in wrong in that:

(a) It was taken in violation and/or wrong application and interpretation of the law for the Registration of Non-Licensed Establishments, 1982 - 1985 (Laws 47/82 and 79/85) and in particular sections 4 and 2 of the above laws respectively.

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(b) It violates Article 28.1 of the Constitution as a discrimination is created against the applicants in comparison with other persons who submitted similar applications which were approved.

(c) It violates Article 23 of the Constitution, as the applicants are restricted to use and/or dispose immovable property belonging to them, without the prerequisites of sub-paragraph 3 of Article 23 of the Constitution being satisfied.

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(d) It was taken in abuse and/or excess of power.

(e) It was not duly reasoned.

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(f) It was taken under a misconception of fact and law.

(g) It was taken by an incompetent organ not properly constituted.

In expounding on the above grounds of law, counsel for applicants submitted that the limit fixed by the law is only directory and not mandatory or imperative, as the object of the legislation was not to deprive persons who had already erected premises or had premises under construction, of the right to have them registered as non-licensed establishments, by not complying with a mere formality concerning time limit. The provision for time limit, counsel argued, is arbitrary, bearing in mind the short period allowed for submitting an application and thus a discrimination is created in violation of Article 28 of the Constitution against the applicants vis a vis other owners of similar non-licensed establishments which existed or were under

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5 construction before the coming into operation of the law and
which had been registered as such. Furthermore, he submitted
that the applicants are deprived of their right to use and/or dispose
of their property, contrary to the provisions of Article 23 of the
Constitution. Counsel further argued that the reasoning of the sub
10 justice decision is insufficient and the decision was reached after
consultations between the members of the respondent who failed
to carry out a due inquiry and examine the applications of the
applicants on their substance and proceeded to dismiss same on
the basis of time limit without considering their merits. He
15 concluded by submitting that the sub justice decision was taken by
an organ which was not properly constituted and it was not
therefore competent to decide the case.

15 Counsel for the respondent submitted that the said decision
was properly taken in accordance with the provisions of the law.
The respondent, counsel submitted, could not have overlooked
the express provision of the law as the time limit for submitting
an application, as otherwise, it would have acted ultra vires the
law. The provision of section 4, counsel submitted, is clearly
20 mandatory and no right is given to the respondent to make any
relaxation in this respect. He concluded his address by submitting
that the sub justice decision does not in any way violate Article 23
of the Constitution, in that section 4 of Law 47/82 does not
impose any restrictions or limitations on applicants' property but,
on the contrary, it affords the opportunity to owners of property
25 to have such property developed in accordance with the
provisions of the law. Furthermore it does not amount to unequal
treatment contrary to Article 28 of the Constitution, as the
provisions contained therein do not exclude reasonable
differentiations which have to be made in view of the intrinsic
30 nature of things.

The whole question turns upon the construction of the
provisions of section 4 of Law 47/82 which provides as follows:-

4. "Ο ιδιοκτήτης ή ο εξουσιοδοτημένος αντιπρόσωπος
παντός υφισταμένου ή υπό ανέγερσιν μή αδειούχου κατα-

λύματος οφείλει όπως, εντός έξι μηνών από της ενάρξεως ισχύος του παρόντος Νόμου, υποβάλει προς τον Οργανισμό αίτηση εγγραφής του τοιούτου καταλύματος."

("The owner or the authorised agent of any existing or under construction non-licensed establishments must, within six months from the date of the coming into operation of this Law, submit to the Organisation an application for the registration of such establishment").

The object of the law, as clearly stated in the heading and its context, is to provide for the registration of non-licensed establishments providing sleeping accommodation for the purpose of exercising control over such premises.

Section 9 of Law 47/82 provides that the provisions of the law apply only to non-licensed tourist establishments which were in operation or were under construction immediately before the coming into operation of the law.

Having heard the arguments advanced and bearing in mind all the material before me, I am inclined to accept the submission of counsel for the respondent that the provisions of section 4 of Law 47/82, a law intended to regulate the registration of non-licensed tourist establishments, are mandatory. No proviso exists under section 4 to empower the respondent in exceptional circumstances to ignore or relax the time limit fixed by that section and therefore it rightly dismissed the applications. The allegation of counsel for the applicants that the respondent was not at the material time properly constituted has not been substantiated.

Finally, the argument of counsel for the applicants that the sub judge decision is not duly reasoned cannot be maintained. There is sufficient reasoning in the letter addressed to counsel for applicants embodying the sub judge decision in which full reasons are given for the refusal of the respondent to register the said establishments and which is clearly based on the fact that the applications were submitted out of time. Such reasoning is further

5 supplemented by the material contained in the minutes of the
meeting at which the sub judge decision was taken, copy of
which has been produced. I find also that the contention of
counsel for applicants that there is violation of either Articles 23
or 28 of the Constitution as unsubstantiated. The control of
premises erected for the purpose of being used by the public in
general as hotel or tourist establishments is not a deprivation of
the right of owners to utilize their properties. As to Article 28, it
has been repeatedly held by this Court that reasonable
10 differentiations do not amount to discriminatory treatment.

In the result this recourse fails and is hereby dismissed with
costs in favour of the respondent.

*Recourse dismissed with costs
in favour of respondent.*