[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTOS MALLIOTIS AND OTHERS,

Applicants,

and

THE MUNICIPALITY OF NICOSIA,

Respondent.

(Case No. 251/62).

Administrative Law—Streets and Buildings Regulation Law, Cap. 96—Recourse against street-widening scheme—Scheme ceased to exist after the 31st December, 1962, because of the expiration of the Municipalities Laws (Continuation) Law, 1961 (Law 10/61), and cannot, therefore, be treated as an administrative act in effective existence after such date —Judgment in these proceedings which are abated does not annul, on the legal or factual merits, the subject matter of this recourse.

Streets and Buildings Regulation Law, Cap. 96 and the Constitution of Cyprus—Sections 12 and 18 to be applied modified in view of Articles 146 and 188—Contention that section 12 has ceased to be in force in so far as towns are concerned, by virtue of Article 188.2 of the Constitution, as being legislation "relating to municipalities", invalid— —"The Laws relating to municipalities" referred to in Article 188.2, are only such laws as concern municipalities specifically, and not also general legislation.

This is a recourse filed on 8.10.62 under Article 146 of the Constitution against a street-widening scheme, notice of which was published in the official Gazette, under section 12(2) of the Streets and Buildings Regulation Law, Cap. 96, on the 26th July, 1962.

The said scheme, relating to Ayios Pavlos (St. Paul) Street, Nicosia, was prepared and published by the Municipal Commission of Nicosia, the then appropriate authority for the purposes of section 12 of Cap. 96. Such Commission had been appointed, some time earlier, in the place of the Municipal Council and, by virtue of section 3(6) of Cap. 96, it became the appropriate authority under such Law.

On the 31st December, 1962, while this Case was still pending, the Municipal Commission of Nicosia ceased to exist due to the ceasing to be in force of legislation relating to the municipalities, because of the expiration of the Municipalities Laws (Continuation) Law, 1961 (Law 10/61).

Eventually, on the 29th October, 1964, it was directed that this Case should be fixed for hearing the preliminary legal issue "whether, under section 12 of Cap. 96, it is possible for a scheme, against which an objection, by way of a recourse, has been made, to become binding through the determination of such objection if, pending such determination, the authority concerned has ceased to exist". An essential part of such issue is, of course, the question whether the said scheme could continue to exist as an effective administrative act, notwithstanding the ceasing of the existence of the said authority.

Held, I. As to whether section 12 of the Streets and Buildings Regulation Law, Cap. 96 has ceased to be in force, in so far as towns are concerned, by virtue of Article 188(2) of the Constitution, because it is legislation "relating to municipalities":

(a) "The laws relating to the municipalities", referred to in Article 188(2), are only such laws as concern municipalities specifically and not, also, general legislation, such as section 12, which grants certain powers to organs of municipal administration.

(b) A function such as the widening and straightening of a street, under section 12 of Cap. 96, though it is pertaining *also* to the administration of a town, is, on the other hand, a function pertaining to the administration of all inhabited areas, towns or otherwise, and is not pertaining to or required by the special nature and necessities of the administration of towns.

(c) Section 12 of Cap. 96 was in force, as regards towns also, when the scheme, the subject of the recourse, was published in July, 1962.

II. As to whether a street-widening scheme is a legislative or an administrative act:

(a) A street-widening scheme is an administrative

act of general application—as distinguished from an individual act—and, it creates a burden on a property affected by it. *Anastassiadou and The Municipal Commission of Nicosia* (3 R.S.C.C. p. 111) followed.

(b) Such a scheme can be challenged by recourse, under 146, as soon as it has been properly published, under section 12(2) of Cap. 96. *Pelides and The Republic,* (3 R.S.C.C. p. 13, at p. 20, followed.

III. As to whether the Court can proceed to determine the objection, by way of recourse, against the street-widening scheme, the subject-matter of this Case, in view of the supervening disappearance of the organ which published it:

(a) The sub judice scheme, on the 31st December, 1962, had not reached that stage of finalization, envisaged by the requirements of proper administration, which could have enabled it to continue to exist as an effective administrative act independently of the continued existence of its administrative context and of the appropriate authority concerned, and, therefore, due to the fate of the municipal administration in Nicosia the said scheme has ceased to exist too.

(b) Through such disappearance the scheme in question ceased in fact to be what it was when published and objected to i.e. an act of the then Nicosia Municipal administration still under the proper consideration of such administration in view of the objection pending against it and its possible outcome.

(c) Though the subject of the sub judice scheme, i.e. the street to which it refers, has certainly not ceased to exist in the physical sense, it has, on the 31st December, 1962, ceased to exist in the legal sense in which it existed when such scheme was published, i.e. as a street under the control and responsibility of a municipal administration.

(d) The street concerned having ceased to exist legally as a street under the control and responsibility of a municipal administration, as it was till the 31st December, 1962, has been divested of an essential quality existing at the time of the publication of the scheme, and, as a result, the said

scheme, an act made in relation—and primarily in relation —to such quality has ceased to exist also.

(e) The Court could only confirm the scheme as an act of the nature possessed by it at the time when it was published i.e. an act made in the course of the then municipal administration in Nicosia in respect of a street under the control of the particular municipality; so such confirmation, if made now, would have been factually incongruous and legally impossible because the said municipal administration has ceased to exist, and the street, affected is no longer under its control.

(f) If, on the other hand, this recourse were to be successful on the merits, then the responsible municipal authority would no longer exist to comply with the judgment, in accordance with paragraph 6 of Article 146.

IV. On whether the Municipalities Law, 1964 *(No.* 64 *of* 1964), *which was published on the* 1st *December,* 1964, *has a bearing upon the outcome of the preliminary legal issue on which the Case has been heard:-*

(a) The new municipalities legislation, Law 64/64, enacted in December, 1964, has not been given retrospective effect and cannot affect what has already happened about two years earlier. It cannot, as enacted, revive the scheme in question which has ceased to exist long ago before its enactment. It cannot undo—and it does not purport to do so either—the radical effects of the expiration of the municipalities legislation on the 31st December, 1962 and the consequent disappearance of the administrative context of the sub judice scheme.

V. On the merits:

(a) This recourse cannot continue against such scheme because these proceedings have been consequently abated.

VI. As regards costs:

I have not deemed it proper to make any order as to costs.

Recourse cannot continue and is dismissed.

Observation: This judgment does not annul, on the

legal or factual merits, the subject-matter of this recourse. So the scheme in question may if need be, become the subject of proper action by an appropriate authority in future under sub-sections (1) and (2) of section 12 of Cap. 96.

Cases referred to:

Fuat Celaleddin and others and the Council of Ministers and others, (5 R.S.C.C. p. 102);

Pelides and The Republic (3 R.S.C.C. p. 13);

The Turkish Communal Chamber and The Council of Ministers (5 R.S.C.C. p. 59 at p. 72);

Anastassiadou and The Municipal Commission of Nicosia (3 R.S.C.C. p. 11);

Kyriakides and The Republic, (4 R.S.C.C. p. 109 at p. 114);

Chrysostomides and The Greek Communal Chamber, 1964 C.L.R. 397.

Recourse.

Recourse against the decision of the Respondents published in notification No. 960 of the Cyprus Gazette dated the 26.7.62 concerning the straightening and widening of St. Paul Str., Nicosia.

Fr. Markides with A. Triantafyllides for the applicants.

Fr. Markides, Ch. Ioannides, A. Hadjioannou, A. Triantafyllides and L. Demetriades, for the Applicants in the Cases heard together with this Case.

K.C. Talarides, Counsel of the Republic, for the District Officers of Nicosia and Paphos (by leave).

J. Potamitis, for the District Officer of Limassol (by leave).

Cur. adv. vult.

The following judgment was delivered by:-

TRIANTAFYLLIDES, J.: This is a recourse made against plans —to be referred to as a street-widening scheme—notice of which was published in the official Gazette, under section

12(2) of the Streets and Buildings Regulation Law, Cap. 96, on the 26th July, 1962. Hereinafter in this judgment publication of notice of plans under section 12(2) will be referred to, for brevity's sake, as publication of the scheme.

The said scheme, relating to Ayios Pavlos (St. Paul) street, Nicosia, was prepared and published by the municipal commission of Nicosia, the then appropriate authority for the purposes of section 12 of Cap. 96. Such commission had been appointed, some time earlier, in the place of the municipal council and, by virtue of section 3(6) of Cap. 96, it became the appropriate authority under such Law.

This recourse has been filed under Article 146 of the Constitution on the 8th October, 1962.

On the 31st December, 1962, while this Case was still pending, the municipal commission of Nicosia ceased to exist due to the ceasing to be in force of legislation relating to the municipalities, because of the expiration of the Municipalities Laws (Continuation) Law, 1961 (Law 10/61).

As held in *Fuat Celaleddin and others and the Council of Ministers and others*, (5 R.S.C.C. p. 102) with the expiration of the relevant legislation municipal administration came to an end in the towns affected, including Nicosia.

Thus, the Respondent in this Case ceased to exist on the 31st December, 1962.

Since then, interlocutory steps were being taken in the proceedings to deal with the legal consequences of the situation which had arisen, as above, and, eventually, on the 29th October, 1964, it was directed that this Case should be fixed for hearing in order to hear and determine, inter alia, the preliminary legal issue "whether, under section 12 of Cap. 96, it is possible for a scheme, against which an objection, by way of a recourse, has been made, to become binding through the determination of such objection if, pending such determination, the authority concerned has ceased to exist". An essential part of such issue is, of course, the question whether the said scheme could continue to exist as an effective administrative act, notwithstanding the ceasing of the existence of the said authority.

The District Officer Nicosia applied at the hearing to take part in the proceedings and it was directed, by consent, that

he should be allowed to participate therein, provided that his exact status in relation to the subject-matter thereof would be determined later in the light of the decision on relevant legal issues arising in the Case.

At the hearing, on the 30th November and 2nd December, 1964, this Case was heard together, on the same issue, with a number of similar cases in which the same direction had been made on the 29th October, 1964, and arguments were heard by all counsel concerned. Such a course was adopted in accordance with the accepted practice, both here and in other countries, of hearing and determining together fundamental common legal issues in administrative recourses of the same nature. (See in this respect *Pelides and The Republic*, 3 R.S.C.C. p. 13).

It is useful to refer first to the relevant legislative provisions. Section 12 of Cap. 96 reads as follows:-

> "12. (1) Notwithstanding anything contained in this Law, an appropriate authority may, with the object of widening or straightening any street, prepare or cause to be prepared plans showing the width of such street and the direction that it shall take.
>
> (2) When any plans have been prepared under subsection (1), the appropriate authority shall deposit such plans in its office and shall also cause a notice to be published in the Gazette and in one or more local newspapers to the effect that such plans have been prepared and deposited in its office and are open to inspection by the public and such plans shall be open to the public for inspection, at all reasonable times, for a period of three months from the date of the publication of the notice in the Gazette.
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> (3) At the expiration of the period set out in subsection (2), the plans shall, subject to any decision by the Governor in Council on appeal as in section 18 of this Law provided, become binding on the appropriate authority and on all persons affected thereby and no permit shall be issued by the appropriate authority save in accordance with such plans".

In view of Articles 146 and 188 of the Constitution this section is now to be applied modified, as held in the judgment in *Pelides and The Republic*, (above, at p. 19), so that

the words "three months" in sub-section (2) shall read now "seventy-five days" and the words "Governor in Council on appeal" in sub-section (3) shall read "Supreme Constitutional Court on a recourse".

The appropriate authority, mentioned in section 12, is defined in sections 2 and 3(2) (a) of Cap. 96 to be the municipal council, in relation to the area of a municipal corporation; and, as stated already, when such council has been replaced by a municipal commission, such commission is then the appropriate authority, by virtue of section 3(6).

Sub-section (2) of section 18 of Cap. 96 reads as follows:-

> "(2) Any person who objects to any plans prepared and deposited under the provisions of section 12 of this Law may, at any time within which such plans are open to inspection, appeal to the Governor in Council".

In accordance with the judgment in *Pelides and The Republic* (above), it should now be applied modified so that the words "appeal to the Governor in Council" shall read "make a recourse to the Supreme Constitutional Court". This Court now exercises the competence of the said Court under the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64).

It is convenient, at this stage, to deal with the contention, made by counsel during argument, that section 12 of Cap. 96 has ceased to be in force, in so far as towns are concerned, by virtue of Article 188(2) of the Constitution, because it is legislation "relating to the municipalities". If this would be so it would have to be held that it ceased to be in force as from the 15th February, 1961—because its provisions were not re-enacted by the Municipalities Laws (Continuation) Law, 1961 which, after extensions, expired on the 31st December, 1962.

I am of the opinion that "the laws relating to the municipalities", referred to in Article 188(2), are only such laws as concern municipalities specifically and not, also, general legislation, such as section 12, which grants certain powers to organs of municipal administration.

At the hearing before me the contention that section 12 has ceased to be in force, as being legislation relating to the municipalities, was mainly based on the following passage in the

majority judgment in *The Turkish Communal Chamber and The Council of Ministers*, (5 R.S.C.C. p. 59 at p. 72) "In the opinion of the Court, the expression 'municipalities', when used in Articles 78, 87, 89 and 173 to 177"—and consequently in Article 188(2)—"does not refer to certain existing-administrative bodies or organizations, as created and governed by any specific type of administrative legislation, nor can such Articles by any means depend in their validity on the prior creation of any specific type of municipal administration. Instead, such expression refers to any kind of administrative bodies or organizations which have been or which will be established for the administration of the factually existing 'towns' of the Republic of Cyprus, the word 'town' being understood in this connection in its natural meaning as describing, like the word 'town' in paragraph 1 of Article 173, certain places of condensed human habitation, which by their very existence require certain specific administrative functions and provisions. It should be observed, in this connection, that the motion of 'administration of towns', as referred to in the foregoing passage and as employed throughout this Decision, comprises exclusively such administrative functions as are traditionally regarded as pertaining to, and as are required by, the special nature and necessities of the administration of towns".

In my opinion a function such as the widening and straightening of a street, under section 12 of Cap. 96, though it is pertaining *also* to the administration of a town, is, on the other hand, a function pertaining to the administration of all inhabited areas, towns or otherwise, and is not pertaining to or required by the special nature and necessities of the administration of towns. Thus, the passage in question does not bear out the contention based on it in argument.

It is correct that in the same case, in a minority judgment, I had pointed out that the aforesaid passage might give rise to a contention such as the one with which I am dealing now (5 R.S.C.C. p. 94). But I stated, also, there and then, that such contention would have been "invalid" and I am still of the same view, as I have already explained.

It is also significant, in this respect, to note that when judgment was given in *Pelides and The Republic* (above), on the 21st January, 1962—long after the deadline of 15th February, 1961, which was fixed by Article 188(2)—the very

same section 12 of Cap. 96 was treated by the Supreme Constitutional Court as being in force and only modifications to it, as required because of Article 146 of the Constitution, were laid down under Article 188(4), as already stated.

I have reached, therefore, the conclusion, that section 12 of Cap. 96 was in force, as regards towns also, when the scheme, the subject of the recourse, was published in July, 1962.

It would be useful, next, to consider certain matters relating to street-widening schemes generally.

Though there is some division of opinion among courts in other countries and learned writers as to whether a street-widening scheme is a legislative or an administrative act, in Cyprus the matter appears to have been well settled by the judgment in *Pelides and The Republic* (above). There, such a scheme was clearly treated as being an administrative act, and not a legislative one. The same view has been adopted in Greece where street-widening schemes are treated as being subject to recourse to the Council of State under the competence of such Council corresponding to our Article 146.

A street-widening scheme is an administrative act of general application—as distinguished from an individual act—and, as stated also in the judgment in *Anastassiadou and The Municipal Commission of Nicosia* (3 R.S.C.C. p. 111), it creates a burden on a property affected by it.

Such a scheme can be challenged by recourse, under Article 146, as soon as it has been properly published, under section 12(2) of Cap. 96, (see *Pelides and The Republic*, (above), at p. 20).

The street-widening scheme, the subject matter of this Case, having been objected to by way of this recourse, the question has now to be resolved as to whether this Court can now proceed to determine such objection against it, in view of the supervening disappearance of the organ which published it, the Respondent, and the consequences upon the fate of such scheme that may be entailed due to the circumstances of such disappearance.

That the fate of a street-widening scheme could have been affected through the situation which arose consequent upon the expiration of legislation relating to municipalities, on

the 31st December, 1962, was recognised as a distinct probability, but was not gone into further, by the Supreme Constitutional Court, in dealing on the 10th January, 1963, with recourse 184/62, which is one of the cases which have now been heard together with this present Case on the same preliminary legal issue.

The situation which arose, through such expiration and the consequent termination of municipal administration, as from such date, is indeed a novel situation, apparently unprecedented in other countries. It is as sui generis as was found to be the similar fate of the Income Tax Law, Cap. 323, in *Kyriakides and the Republic*, (4 R.S.C.C. p. 109 at p. 114). It was a truly cataclysmic legal subsidence the effects of which have to be studied and dealt with as and when they arise. In the present recourse we are only concerned with the issue of its effect on the street-widening scheme, the subject-matter of this Case, which was published while municipal administration was still continuing.

During the hearing on this issue a lot of argument was advanced by counsel on the question whether a street-widening scheme, such as the present one, becomes binding at the end of the period provided for under sub-section (2) of section 12, now 75 days, notwithstanding the fact that objections by way of recourse have been made against it during the said period and have not yet been determined, or whether such scheme does not become binding until all the said objections have been determined.

This question appears to have arisen partly because of the wording of the directions given on the 29th October, 1964; may be they appeared based on the assumption that a scheme does not become binding until all objections against it have been determined. Such directions were certainly not intended to prejudge such a question and even at this stage I have not found it necessary to resolve it because I do not think that it is really material for the purposes of this judgment.

Whether a street-widening scheme becomes binding, in any case, at the expiration of the prescribed period, notwithstanding the existence of as yet undetermined objections against it, or whether it becomes binding only after all such objections have been determined, or whether it becomes binding in respect of properties, the owners of which have

not objected, and does not become binding in respect of properties of which the owners have objected until their objections have been determined, is in my opinion a question subsidiary and subsequent to the basic question as to whether such a scheme can survive at all the ceasing of the existence of the appropriate authority concerned.

In determining the fate of the sub judice scheme it is necessary first to examine its proper administrative context.

It has to be recognized that though the function of a municipal council, under section 12, is not a function so pertaining to, or required by, the special nature and necessities of the administration of towns as to render section 12 a law relating to the "municipalities", on the basis of *The Turkish Communal Chamber etc.* (above), it is still a function which, when exercised by a municipal authority in relation to a street in a municipal area, forms part of municipal administration, as such.

I cannot accept, in this respect, that a municipal council acts under section 12 as an appropriate authority for the purposes of State administration and not as an organ of municipal administration.

It is possible for an organ of municipal administration to be given the task of performing an administrative function as an organ of the State, and not as organ of municipal administration; but in all such instances there should exist a vital characteristic, which is absent in the case of section 12 of Cap. 96, viz. that the financial consequences of such a function burden the State and not the particular unit of municipal administration of which the organ has been given a task as an organ of the State. On the contrary, in the case of the function of a municipal Council under section 12, it is clear, from section 13 of Cap. 96, that the financial consequences of a scheme prepared by a municipal authority under section 12 burden the funds of the particular municipality. It is also relevant to note that, by virtue of section 11 of Cap. 96, public streets in a municipal area come under the control of the appropriate municipality and are repaired and maintained at its expense, and likewise, fines imposed under section 20(6) of Cap. 96—for contraventions of provisions of Cap. 96 or of regulations made thereunder—are payable to the appropriate authority concerned, in other

words to the municipality concerned, in case of a municipal area

A street-widening scheme, prepared and published by a municipal authority in relation to a public street under its control, is an act of municipal administration intended to benefit primarily the townsmen concerned and creating a corresponding burden upon the funds of the particular municipality.

In my opinion, therefore, action taken under section 12 of Cap. 96 by a municipal authority is intrinsically and inseparably part of municipal administration.

Street-widening was provided for originally in the, from time to time in force, Municipalities Laws—such as under section 27 of Law 8 of 1885 and under section 136 of Law 26 of 1930.

Then, in 1946 the Streets and Buildings Regulation Law (Law 12 of 1946, now Cap 96) was enacted providing a uniform code of legislation for building control and street construction and certain cognate subjects, including street-widening A look at the enactments repealed by Cap 96 indicates the diversity of legislative provision that existed before on relevant subjects and also shows that such diversity was largely based on the diversity of categories of immovable property that existed in the past The fact that the 1946 Streets and Buildings Regulation Law, enacted on the 15th July, 1946, was made to come into effect on the 1st September, 1946, the very same time when the Immovable Property (Tenure, Registration and Valuation) Law (now Cap 224) was due to come into effect, doing away with all the said categories of immovable property, is a clear indication that Cap 96 was a measure aimed at unifying the law in force once this would have become possible by means of the effect of Cap 224

At the same time provisions contained in Cap 96 such as sections 3(2) (a) 11, 12, 13 and 20(6), (to which reference has already been made) do show that the unification of legislative provisions effected by means of Cap 96 did not carry with it also centralization of administrative action and that the relevant matters, including street-widening, continued to remain, as before, integral parts of municipal administration in municipal areas

In the light of all the foregoing it may safely be concluded that the proper administrative context of the sub judice scheme was the then existing municipal administration of Nicosia. In view of this the disappearance from the scene not only of the municipal commission of Nicosia, which prepared and published such scheme, as an organ of the municipality, but also of the said municipal administration itself, amounts to a most decisive event affecting directly the administrative context of the said scheme.

To evaluate the effect of such an event on the fate of said scheme one has to examine the stage at which it took place. Such an examination necessitates going into the question of the ultimate finalization of a street-widening scheme.

In this respect a distinction has to be made between the stage at which a scheme becomes a final administrative act, so that a recourse may lie against it under Article 146—and this is so as soon as it has been published under section 12(2) (see *Pelides and The Republic*, above, p. 20)—and the stage of its ultimate finalization, which is reached at the end of the period prescribed in section 12(2), if no recourse is made against the scheme, or, otherwise, after the determination of all recourses that have been made against it. This ultimate finalization should not be confused with the question of when a scheme becomes binding under section 12(3)—a matter not resolved in this judgment. As it is explained later on the two matters are different and not necessarily interdependent.

By ultimate finalization I mean to describe that point in the evolution of a street-widening scheme after which such scheme becomes only a matter of routine application by the appropriate authority. For such point to be reached it is necessary that the administration should not have any longer a *causa penitentiae* in relation to the merits, desirability or feasibility of the particular scheme.

In my opinion, such point is, in any event, not reached so long as there are pending objections against a scheme by way of recourses—even assuming, without deciding it, that such a scheme has become binding, under sub-section (3) of section 12 at the expiration of the period prescribed under sub-section (2) of such section notwithstanding the fact that objections as yet undetermined are pending against it.

Until all objections have been determined the appropriate authority which has prepared and published a scheme (whether it is still composed of the same persons or is composed of other persons who hold office as normal successors in office in the same continuous administrative context) has not only the right, but also the duty, for the sake of proper administration, to reconsider the scheme in question and substitute a new scheme in its place—by taking the appropriate steps, all over again—if this were to prove necessary either in the light of the objections made against the original scheme (including the financial burden on the authority which may become apparent through such objections) or in the light of the determination by the Court of the pending objections or any of them. It has a *locus penitentiae* arising out of the existence of a proper *causa penitentiae*.

In this connection one should not be led astray by considerations such as the scheme becoming binding under subsection 12(3) on the appropriate authority. The scheme becomes binding, under section 12(3), for purposes of compliance with it in the making of related administrative acts under Cap. 96 e.g. the issue of a building permit. But such a scheme is never binding in the sense of preventing an appropriate authority from reconsidering it, at any time, and from preparing and publishing a new scheme for the street concerned. This may be done either before ultimate finalization of a scheme—as above explained—, or even after such finalization, during the stage of routine application of the scheme whenever in the future such a course may be required for town-planning progress ; in the first instance it is a matter of proper administration, in the present, in the latter instance it is a matter of further development in the future.

It is to be derived from what has been stated already that, though *after* the ultimate finalization of a street-widening scheme the existence of an appropriate authority is only necessary for its routine application and for future development, during the period after the publication of a scheme and *before* its ultimate finalization the existence and continuity of its administrative context, including the existence of the appropriate authority, are matters especially connected with the immediate evolution and completion of the administrative process involved in the scheme in question.

It will be seen, thus, that in this Case the disappearance of the administrative context of the sub judice scheme, including the appropriate authority concerned, has supervened at a crucial time in its life, before it had reached, in view of the objection—by way of recourse—against it, the point of ultimate finalization.

It should be appreciated, in this connection, that a scheme, though it is a final act (for purposes of a recourse against it) as soon as it is published under sub-section (2) of section 12, it remains, until its ultimate finalization, as above, a still evolving and incomplete administrative process, because of *the requirements of proper administration,—the paramount* consideration in administrative law.

In the circumstances, I am of the opinion, that the sub judice scheme, on the 31st December, 1962, had not reached *that stage of finalization, envisaged by the requirements* of proper administration, which could have enabled it to continue to exist as an effective administrative act independently of the continued existence of its administrative context and of the appropriate authority concerned, and, therefore, due to the fate of the municipal administration in Nicosia the said scheme has ceased to exist too.

In addition to the above considerations, I have reached the conclusion that such scheme has ceased to exist, for the following reasons too:—

First, the whole juridical situation to which the scheme was so inseparably attached at the time has ceased to exist.

Such a happening is an instance entailing the nullity of the administrative act concerned (as expounded by Professor J.M. Auby in the "Revue du droit public" 1959, pp. 456-457).

In this connection it may be useful to point out that the *position under consideration in this Case is not merely an* instance of the ceasing of the administrative competence of the authority which issued an administrative act—in which case such an event might not have necessarily influenced the valid existence of the act concerned, especially if it had given birth to acquired rights—but this is an instance of the disappearance of the whole juridical situation to which the act in question was attached viz. the whole context of municipal administration in Nicosia.

Through such disappearance the scheme in question ceased in fact to be what it was when published and objected to i.e. an act of the then Nicosia municipal administration still under the proper consideration of such administration in view of the objection pending against it and its possible outcome.

Secondly, though the subject of the sub judice scheme, i.e. the street to which it refers, has certainly not ceased to exist in the physical sense, it has, on the 31st December, 1962, ceased to exist in the legal sense in which it existed when such scheme was published, i.e. as a street under the control and responsibility of a municipal administration.

When the subject, to which an administrative act in rem—such a street-widening scheme—relates, ceases to exist physically or legally, the said administrative act ceases also to be in effective existence. (See Stasinopoulos on the Law of Administrative Acts, 1951, p. 357). The street concerned having ceased to exist legally as a street under the control and responsibility of a municipal administration, as it was till the 31st December, 1962, has been divested of an essential quality existing at the time of the publication of the scheme, and, as a result, the said scheme, an act made in relation—and primarily in relation—to such quality has ceased to exist also. (See Kyriakopoulos on Greek Administrative Law, 4th edition, volume 2, p. 401).

On the basis of all the foregoing reasoning I have reached the conclusion that the street-widening scheme in question cannot be treated as an administrative act in effective existence after the 31st December, 1962.

Any other conclusion on this point would, also, have led, in my opinion, to incongruous and impossible results. To illustrate this, let it be assumed that it were held now that the scheme in question continues to exist; then the trial of this recourse would have proceeded on the merits. But at the end of these proceedings this Court, if it came to the conclusion that the objection to the scheme was not well-founded, would have had to dismiss this recourse and "confirm" the said scheme, in accordance with Article 146(4) (a). This would have meant, however, confirming such scheme though it had, in most essential aspects, ceased to be what it was when first published.

The Court could only confirm the scheme as an act of the nature possessed by it at the time when it was published i.e. an act made in the course of the then municipal administration in Nicosia in respect of a street under the control of the particular municipality; so such confirmation, if made now, would have been factually incongruous and legally impossible because the said municipal administration has ceased to exist, and the street affected is no longer under its control.

If, on the other hand, this recourse were to be successful on the merits, then the responsible municipal authority would no longer exist to comply with the judgment, in accordance with paragraph 6 of Article 146.

This correlation of the problem under consideration to Article 146 shows that a scheme such as the one sub judice is in a different position than a scheme against which no objection was pending on the 31st December, 1962, and which had been published more than seventy-five days before such date. In the case of the latter no question of its judicial confirmation could arise after the 31st December, 1962. In view, *inter alia*, of this difference and also of the fact that a scheme in the latter *category* would necessitate the existence of an appropriate authority only in relation to its routine application and not for purposes of ultimate finalization, this judgment should not be taken as determining the issue whether or not a scheme of the latter category has continued to exist after the 31st December, 1962; I leave this issue open.

On the 30th November, 1964, when this Case was being heard, counsel raised the matter of the Bill of a Law providing for the creation of a new municipality in, *inter alia*, Nicosia; such Bill was pending then before the House of Representatives. It was submitted that the hearing should be adjourned pending the enactment of the said Bill into Law.

An adjournment was refused as I could not see then how the new Law, when it came to be enacted, would affect the preliminary legal issue under consideration. The enactment of the new Law could have been only relevant to the other preliminary legal issue pending then before the Court—and which no longer has to be gone into in view of this judgment —concerning the further procedure to be adopted if it were held, in this Case, that the street-widening scheme in question

continues to exist and this recourse should proceed to trial on the merits.

Pending the continuation of the hearing, which was adjourned for the 2nd December, 1964, the said Bill was enacted into Law, the Municipalities Law, 1964 (Law 64/64) which was published on the 1st December, 1964.

At the resumed hearing none of the counsel engaged in this Case took up any point arising out of the enactment of such Law. I have, however, examined the said Law, with a view to considering again whether it has a bearing upon the outcome of the preliminary legal issue on which this Case has been heard.

I have reached the conclusion that such Law is not properly relevant, for the following reasons, *inter alia:*—

What has been determined in this Case is the fate of the street-widening scheme concerned after the 31st December, 1962. It has been found that after such date the said scheme ceased to exist. The new municipalities legislation, Law 64/64, enacted in December, 1964, has not been given retrospective effect and cannot affect what has already happened about two years earlier. It cannot, as enacted, revive the scheme in question which had ceased to exist long ago before its enactment. It cannot *undo*—and it does not purport to do so either—the radical effects of the expiration of the municipalities legislation on the 31st December, 1962 and the consequent disappearance of the administrative context of the sub judice scheme.

In this respect it must be borne in mind that there does not exist continuity of administration between the previous and the new municipality. Had this been so, had municipal administration been continuous—even though through differently set up municipal organs due to an amendment of legislation—the street-widening scheme in question might not have ceased to exist at all, because there would not have supervened any radical event affecting its administrative context, or the legal nature of the street concerned. But there has been a break in municipal administration; it has come to a definite end indefinitely and it has been re-established *de novo* after two years. The very terms of the enactment of the new Municipalities Law indicate most significantly the radical break in municipal administration,

which has supervened; the very preamble of such Law describes the properties of the municipalities, which ceased to exist on the 31st December, 1962, as *bona vacantia*.

A submission has also been made by counsel, during the hearing, that under section 3(2) (b) of Cap. 96 the District Officer of Nicosia became the appropriate authority after the ceasing of the existence of the municipal commission. Assuming that this was so,—and without deciding it—one would still be faced with the fact that on the disappearance of municipal administration a totally different administrative context supervened with all the radical changes that go with it and, therefore, on the basis of my earlier reasoning such an event would entail again the same fatal consequences for the particular scheme at the particular time of its evolution when it occurred.

In the light of the above and in view also of the fact that the participation of the District Officer of Nicosia in these proceedings would have ceased in any case, (even if these proceedings were to continue), after the enactment of Law 64/64 and the consequent creation of a new appropriate authority under s.3(2) (a), I do not have to examine further the question of the status of such District Officer in the matter.

Having come to the conclusion that the sub judice scheme has ceased to exist, I am of the opinion that this recourse cannot continue against such scheme because these proceedings have been consequently abated.

It is well settled that a recourse cannot continue when its subject-matter has ceased to exist. (See Conclusions from the Jurisprudence of the Council of State in Greece 1929-1959 p. 275 as well as *Chrysostomides and the Greek Communal Chamber*, 1964 C.L.R. 397)

It might be observed at this stage that we are not concerned in this Case with an administrative act of limited duration which, before ceasing to have effect, has produced already permanent and continuing results. If that were so, then depending on the exact circumstances, the recourse could possibly have proceeded, irrespective of the determination of the effect of the act. In the motion for relief, however, Applicants object against an act the results of which would materialize only if the objection were to be rejected and Applicants had to apply for a building permit, with the

consequences provided for by section 13 of Cap. 96. As the said act has ceased to exist before any such results have been produced, not only has the subject-matter of the recourse disappeared but, also, no legitimate interest of Applicants is being affected.

As the proceedings have come to an end, for the reasons given in this judgment, it is not necessary to decide any other issue which arose in this Case.

Before concluding I would like to point out that this judgment does not annul, on the legal or factual merits, the subject-matter of this recourse. So the scheme in question may if need be, become the subject of proper action by an appropriate authority in future under sub-sections (1) and (2) of section 12 of Cap. 96.

I would like to express my appreciation for the valuable assistance rendered to the Court, by all counsel, in dealing with the matters I have dealt with. Resolving such problems has been made rather difficult in view of the absence of identical or closely similar precedents in other countries, with more developed administrative law jurisprudence, which would have been of great guidance value. The situation under consideration has arisen through *sui generis* developments which, I am afraid, are in themselves unprecedented in the field of administration. This Court, therefore, has had to discharge its function as an administrative Court, in resolving the said problems, by applying to the particular novel situation under consideration basic notions and general principles of administrative law. This method of adjudication is particularly necessitated in the field of administrative jurisprudence because legal situations in administrative law, unlike legal relationships in private law, are in a process of continuous evolution and quite often there arise situations which are both novel and unforeseen.

In view of the outcome of this Case, and the reasons which led to such outcome, I have not deemed it proper to make any order as to costs.

Recourse cannot continue and is dismissed accordingly. No order as to costs.