

[TRIANTAFYLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

ANDRIANI G. LORDOU & OTHERS,

*Applicants,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE COUNCIL OF MINISTERS AND ANOTHER,

*Respondents.*

(Case No. 134/67).

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*Building—Building permits—Sections 3 and 4(1) of the Streets and Buildings Regulation Law, Cap. 96—Effect of supervening legislation on the issue of building permits—Provisions governing the grant of a building permit are those in force on the date when such matter was finally dealt with by the appropriate authority, and not those in force on the date when the relevant application was submitted—Notice of Council of Ministers prohibiting the erection of buildings of more than six storeys, published on the 25th May, 1967, under regulation 6(6) of the Streets and Buildings Regulations, as amended by the Streets and Buildings (Amendment) Regulations of 1967—Notice, as clearly derived from paragraph 5(a) thereof, intended to apply also to applications for building permits which were then pending—Section 4(1) of Cap. 96 supra indicates also that the grant of a building permit under section 3 of the Law must be governed by the legislation and regulations in force at the time such permit is to be granted—See, also, herebelow.*

*Administrative Law—General principles—Legality of administrative acts or decisions—It is a cardinal principle of Administrative Law that the legality of such acts or decisions is governed by the legislation in force at the time when they are done or taken—Principles applicable, even, to cases in which there has been a change in the relevant legislation between the submission of an application for a permit and the final administrative action thereon—All the more so, where such legislation relates, as it does in the present case, to a matter of “public order” (Δημοσίας τάξεως); and where there has been no undue and unjustifiable delay by the appropriate authority in dealing with the matter.*

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*Statutes—Construction of statutes—Section 4(1) of the Streets and Buildings Regulation Law, Cap. 96 indicates that the grant of a permit under section 3 of the Law must be governed by the legislation in force at the time when such permit is to be granted—See, also, above.*

*Building Permits—Legislation or regulations applicable thereto—Those in force at the time when such permit is to be granted—See, also, above.*

*Administrative acts or decisions—Legality—Governed by the legislation in force at the time when they are done or taken—See, also, above.*

*Legislation relating to matters of "public order" (Δημοσίας τάξεως)  
See above under Administrative Law.*

*General Principles of Administrative Law—See above under Administrative Law.*

By this recourse under Article 146 of the Constitution the Applicants complain against the refusal of the Municipality of Famagusta (Respondent 2) to issue to them a building permit for the erection, in Famagusta, of a building of twelve storeys. The refusal was based on the ground that the permit sought could no longer be granted in view of the Notice of the Council of Ministers (Respondent 1), dated the 25th May, 1967, regulating, among other things the height and storeys of new buildings in certain areas of Famagusta and fixing to six the maximum permissible number of storeys of such buildings.

The Applicants applied to Respondent 2 for the building permit in question on the 17th May, 1967. The said Notice was published by the Council of Ministers in the Official Gazette on the 25th May, 1967 (Supplement No. 3 Not. 404), under the provisions of regulation 6(6) of the Streets and Buildings Regulations, as amended by the Streets and Buildings (Amendment) Regulations of 1967, which were published in the Official Gazette on the 25th May, 1967 (Supplement No. 3 Not. 403).

The point in issue, taken at this stage by direction of the Court as a preliminary legal issue, is whether the provisions governing the grant of the building permit applied for by the Applicants should be those in force at the date when

the application for such permit was made *i.e.* on the 17th May, 1967, or those in force when such matter was finally dealt with by the Respondent in June 1967:

Section 4(1) of the Streets and Buildings Regulation Law, Cap. 96 reads as follows:

“No permit shall be granted under section 3 of this Law unless the appropriate authority is satisfied that the contemplated work or other matter in respect of which the permit is sought is in accordance with the provisions in this Law and the Regulations in force for the time being.”

It is common ground that the permit sought by the Applicants in the present case is the permit required by section 3 of Cap. 96 (*supra*) and referred to in section 4(1) of the said Law.

*Held*, (1)(a). It is a cardinal principle of Administrative Law that the legality of administrative acts is governed by the legislation in force at the time when they are made (See Conclusions from the Jurisprudence of the Greek Council of State 1969-1959 p. 160; see, also, *inter alia*, decision 1477/1956 of the Greek Council of State).

(b) The above principle applies, even, to cases in which there has been a change in the relevant legislation between the submission of an application for a permit and the administrative action thereon. See the decision of the Greek Council of State 389/1939 where it was stressed that the administration could not have acted contrary to such intervening legislation and allow something to be done which was prohibited by legislation, relating to a matter of “public order” (“δημοσίας τάξεως”) in force at the time when the relevant administrative action was taken.

(c) In this respect it might be observed that, clearly, the aforesaid Notice published on the 25th May, 1967, by the Council of Ministers (*supra*) regarding the heights and storeys of new buildings, does regulate a matter of “public order” (“δημοσίας τάξεως”).

(2)(a) From the Jurisprudence of the Greek Council of State (See decisions 1477/1956, 2091/1956 and 601/1959) a principle is to be derived, namely, that in cases like the

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present one it has to be decided first, as a matter of construction, whether the supervening new enactment was intended to be applied to applications for building permits which had already been made before the coming into effect of such enactment and which applications, at the time, were still under consideration; if this is so, then an application for a building permit has to be dealt with on the basis of the new enactment in accordance with the aforesaid cardinal principle of Administrative Law (*supra*).

(b) Coming now to section 4(1) of Cap. 96 (*supra*), there is nothing, in my view, to lead me to the conclusion that it is intended that a permit should be granted on the basis of the legislation in force when the application for such permit is made; it is, on the contrary, rather indicated that the grant of a permit must be governed by the legislation in force at the time such permit is to be granted.

(c) Likewise, I find nothing in the aforesaid Notice published by the Council of Ministers on the 25th May, 1967, (*supra*) which would indicate that it was *not intended* that its provisions, prohibiting the erection, at the area concerned, of buildings of more than six storeys, should apply to pending applications for building permits; on the contrary it is undoubtedly to be derived from paragraph 5(a) of such Notice that it was *so* intended.

(3) In this case there has been no undue and unjustifiable delay on the part of the technical services of the Municipality of Famagusta (Respondent 2) in dealing with the Applicants' application submitted on the 17th May, 1967. Therefore this case is distinguishable from the case decided by the Greek Council of State by its decision 1235/1956.

(4) For all the foregoing reasons I find that the matter regarding the grant of a building permit to the Applicants had to be governed by the legislation in force at the time their application came to be finally dealt with, after the 25th May, 1967.

The case will proceed on the remaining issues.

*Order in terms.*

Cases referred to:

*Decisions of the Greek Council of State:* 1477/1956, 398/1939,

1235/1956, 601/1959 (the latter in Digest of the Jurisprudence of the Greek Council of State, by Zacharopoulos (1953-1960, Part II p. 207);

*Decision of the French Council of State  
Syndicat départemental de la boulangerie de l' Eure et  
Consorts Simenel, of the 12th October 1956.*

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### Recourse.

Recourse against the refusal of Respondent 2 to issue to Applicants a building permit for the erection, in Famagusta, of a building of twelve storeys.

*J. Kaniklides*, for the Applicants.

*S. Georghiades*, Counsel of the Republic, for Respondent 1.

*S. Marathovouniotis*, for Respondent 2.

*Cur. adv. vult.*

The following Decision on preliminary legal issues was delivered by:-

TRIANAFYLLIDES, J.: In this case the Applicants complain, *inter alia*, against the refusal of Respondent 2, the Municipality of Famagusta, to issue to them a building permit for the erection, in Famagusta, of a building of twelve storeys; such refusal was based on the ground that the permit applied for could not be granted in view of a Notice regulating, among other things, the heights and storeys of new buildings in certain areas of Famagusta town (see the letter of Respondent 2 to the Applicants, dated the 3rd July, 1967, *exhibit 1*).

The said Notice was published, by Respondent 1, the Council of Ministers, in the official Gazette, of the 25th May, 1967, (Supplement No. 3, Not. 404), under the provisions of regulation 6(6) of the Streets and Buildings Regulations, as amended, for the purpose, by the Streets and Buildings (Amendment) Regulations of 1967, which were published on the 25th May, 1967, in the official Gazette (Supplement No. 3, Not. 403).

The Applicants applied, to Respondent 2, for the building permit in question, on the 17th May, 1967.

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As it appears from the relevant records of Respondent 2 (see *exhibit 2*) the Applicants' application was examined, first, by a Technical Assistant in the employment of Respondent 2, who reported, on the 25th May, 1967, that it was in order, but there had to be submitted certain supplementary plans and there had to be made a minor modification of the already submitted plans.

This report was made on the same date when aforementioned Notice of the Council of Ministers was published, but, apparently, at the time of making his report, the Technical Assistant concerned was as yet ignorant of it.

On the 23rd June, 1967, a further report was made, by the technical services of Respondent 2, pointing out that altogether new plans had to be submitted, so as to conform with the said Notice; according to it the maximum permissible number of storeys was six.

On the 26th June, 1967, it was decided by the Buildings Committee of Respondent 2 that, in the circumstances, the building permit, as applied for, could not be granted. As a result the letter dated the 3rd July, 1967 (*exhibit 1*), was written to the Applicants.

This recourse was, then, filed on the 15th July, 1967.

At the commencement of the hearing of this case it was directed that the issue raised by ground of law (d) in support of the recourse, namely, that "the material and decisive date respecting the fate of the application for a building permit of the Applicants is the 17th May, 1967, *i.e.* the date on which the application was filed with the Municipality of Famagusta", be heard and determined as a preliminary legal issue.

Argument was heard accordingly from all counsel on this issue.

Such issue resolves itself, in the final analysis, into the question of whether the provisions governing the grant of the building permit applied for by Applicants should be those in force on the date when the application for such a permit was made, *i.e.* on the 17th May, 1967, or those

in force when such matter was finally dealt with by Respondent 2, on the 26th June, 1967.

Before giving my decision on this preliminary legal issue, in this case, I have heard arguments, on the same issue, in cases 75/68 and 105/68, in which I am deciding such issue to-day, too.

It is a cardinal principle of Administrative Law that the legality of administrative acts is governed by the legislation in force at the time when they are made (see Conclusions from the Jurisprudence of the Greek Council of State 1929-1959 p. 160; see, also, *inter alia*, Decision 1477 (56) of the Greek Council of State).

The above principle applies, even, to cases in which there has been a change in the relevant legislation between the submission of an application for a permit and administrative action thereon; for example, in case 398(39) the Greek Council of State decided that, though a doctor had applied on the 1st June, 1937, for a permit regarding the functioning of his clinic, a decision, prohibiting such functioning, which was taken—while his application was still under consideration—on the 15th October, 1938, was valid, because it was based on legislation which was published on the 24th January, 1938, and was prohibiting the functioning of a clinic of that nature in the particular area; and it was stressed, by the Council of State, that the administration could not have acted contrary to such legislation and allow something to be done which was prohibited by legislation, relating to a matter of public order (δημοσίου τάξεως), in force at the time when the relevant administrative action was taken.

While on this point it might be observed that, clearly, the Notice published by the Council of Ministers, as aforesaid, on the 25th May, 1967, regarding the heights and storeys of buildings, does regulate a matter of public order.

The Applicants have based, mainly, their argument on the decision of the Greek Council of State in case 1235 (56), in which it was held that an application regarding a building permit had to be dealt with under the legislation in force at the time when it was made—and under which all the conditions relevant to the grant of the permit had been satisfied—and that such application was not to be governed by legislation

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which had come into effect in the meantime, after the making of the application.

A perusal of the aforementioned decision shows, at once, that the situation in that case is clearly distinguishable from the situation in the present case: There, before the coming into effect of the new legislation, there appears to have arisen a duty of the appropriate authority to issue the permit applied for, in view of the fact that the application therefor complied fully with all relevant conditions. In the present case, the application of the Applicants was submitted on the 17th May, 1967; it was studied, within reasonable time, by the technical services of Respondent 2; and on the date when the Notice in question was published the position was that the Applicants were still required to supply some further collateral plans and effect a modification to those already submitted; it could not be said that by the 25th May, 1967, the matter had ripened to such an extent that the building permit applied for by the Applicants could, and *should*, have been issued already.

In any event, in a subsequent case before the Greek Council of State, 1477(56)—where it was held that an application for a building permit, submitted before new legislation had come into effect, was rightly dealt with under such new legislation which had in the meantime come into effect—case 1235(56) was considered, and it was distinguished as having been decided on the basis of the correct interpretation and application of the specific enactment involved therein. Thus, case 1235(56), *supra*, cannot be regarded as derogating from the cardinal principle of Administrative Law regarding legality of administrative acts—to which reference has been made earlier on in this decision; such case was merely determined on the basis that the legislation properly applicable to the matter in issue therein was the earlier one, and not the later one, which on a proper construction thereof was found not to be applicable.

And the said cardinal principle was, duly, applied in case 1477(56), *supra*, and in a later decision of the Greek Council of State, 2091(56).

Lastly, it is useful to bear in mind case 601(59), which was decided, again, by the Greek Council of State, and concerned the application of a supervening legislative measure,



governing heights and number of storeys of buildings, in Salonica; this case does not seem to have been officially reported, but from a summary thereof, which is to be found in the Digest of the Jurisprudence of the Greek Council of State by Zacharopoulos (1953-1960, part II, p. 207), it appears that the Council took the view that the said legislative measure was applicable, in view of its proper construction, to applications for building permits which had been made before its taking effect.

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From the aforementioned decisions of the Greek Council of State it is to be derived that, in every such case, what has, first, to be ascertained, is the construction of the relevant legislation. In other words, it has to be decided whether a supervening new enactment was intended to be applicable to applications for building permits which had already been made before the coming into effect of such enactment and which, at the time, were still under consideration; if this is so, then an application for a building permit has to be dealt with on the basis of the new enactment, because of the aforementioned cardinal principle of Administrative Law which prescribes that an act has to be governed by the legislation in force at the time when it is made; if this is not so, then the new enactment is not applicable, and, therefore, it is not legislation which is, really, in force in relation to the particular administrative action to be taken regarding a previously made, and pending, application for a building permit.

Coming now to the construction of our own relevant legislation: it is to be noted, first, that section 4(1) of The Streets and Buildings Regulation Law, Cap. 96, reads as follows:—

“No permit shall be granted under section 3 of this Law unless the appropriate authority is satisfied that the contemplated work or other matter in respect of which the permit is sought is in accordance with the provisions in this Law and the Regulations in force for the time being”.

In my view there is nothing in the construction of section 4(1) to lead to the conclusion that it is intended that a permit should be granted on the basis of the legislation in force when the application for such permit is made; it is, on the contrary, rather indicated that the grant of a permit must

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be governed by the legislation in force at the time when such permit is to be granted.

In this respect it is useful to refer to the decision of the French Council of State, of the 12th October, 1965, in the consolidated cases of *Syndicat départemental de la boulangerie de l'Eure et Consorts Simenel*; the relevant French legislative provision, governing the issue of the building permit, appears to have been closely similar to our own section 4(1); and the Council of State took the view that the legislation governing the grant of a building permit was that which was in force at the time when such permit was to be granted.

Coming, next, to the Notice prohibiting, in this particular case, the erection, at the area concerned of Famagusta town, of buildings of more than six storeys, not only I find nothing therein which would indicate that it was *not* intended that its provisions should apply to applications for building permits which were pending, but on the contrary it is to be undoubtedly derived, from paragraph 5(a) of such Notice, that it was so intended.

For all the foregoing reasons I find that the matter regarding the grant of a building permit, on the basis of the application therefor of the Applicants, had to be governed by the legislation in force at the time when it came to be finally dealt with, after the 25th May, 1967.

Earlier on in this decision I have stated that the time taken by the technical services of Respondent 2 to study the application, for a building permit, of the Applicants—from the 17th May, 1967 to the 25th May, 1967—was a reasonable one. It must be remembered in this respect that once an application for a building permit is made the grant thereof is not automatic, even if all the necessary plans are ready and in compliance with the legislation in force at the time; the matter has still to be considered by the appropriate authority, so that, if need be, proper conditions may be imposed by it under the relevant provisions of Cap. 96, such as section 9 thereof.

Having, already, ruled that Respondent 2 had to apply the legislation in force, as from the 25th May, 1967 onwards, it follows that the legal objection taken, in this respect, to the contrary, by the Applicants fails. The case will now proceed to a hearing on the remaining issues.

*Order in terms.*