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[TRIANTAFYLLOIDES, J.]

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STYLLIS  
XAPOLYTOS  
AND OTHERS  
v.  
REPUBLIC  
(COUNCIL OF  
MINISTERS)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

STYLLIS XAPOLYTOS AND OTHERS,

*Applicants,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE COUNCIL OF MINISTERS,

*Respondent.*

(Case No. 247/68).

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*Administrative Law—Local Government—Village—Boundary of—Alteration—Proclamation to that effect by the Council of Ministers—Whereby a specified area was taken out of a given village area and incorporated into another—The Village Authorities Law, Cap. 244 section 20—Fact that original representations of Applicants against such alteration were not before the Respondent Council of Ministers does not vitiate the sub judice proclamation, as all objections put forward by them (Applicants) were already before the Respondent by means of the record of a previous recourse made by the same Applicants for the annulment of a previous proclamation—See also herebelow.*

*Administrative Acts—Retrospectivity—Rule against retrospectivity—When departure therefrom is allowed—In the present case the circumstances would not allow such departure—And the proclamation complained of could not be made to take effect at a date prior to its publication—See also herebelow.*

*Retrospectivity of administrative acts—Rule against—First administrative act annulled by the Supreme Court—New decision taken by the administration based on new facts—It cannot, therefore, be made retrospectively—It will take effect as from the date of its publication.*

*Village—Boundary—Alteration—See above.*

*Boundary—Village area—Alteration—See above.*

*Village Authorities—The Village Authorities Law, Cap. 244, section 20—See above.*

By this recourse the Applicants who are the members of the Village Commission of Galini challenge a proclamation dated the 9th May 1968, and published by the Respondent Council of Ministers, acting, under section 20 of the Village Authorities Law, Cap. 244 on the 24th May, 1968. By virtue of the said proclamation an area known as "Potamos tou Kambou quarter" was taken out of the village of Galini and incorporated into the village area of Karavostassi. An earlier proclamation to the same effect was annulled by the Supreme Court on the 30th December, 1967 on the ground that the Council of Ministers had taken their decision without having duly before them the objections raised by the Applicants against such a course (see *Xapolytos and Others v. The Republic* (1967) 3 C.L.R. 703).

The proclamation complained of was made with retrospective effect as from the date of the coming into operation of the aforesaid first proclamation (i.e. April 1, 1966) which was annulled as set out above.

*Held*, (1). The Council of Ministers had before them all material considerations in relation to the objections raised by the Applicants as well as all other relevant factors. Consequently they were entitled to take the decision complained of.

(2)(a) It was not possible, however for the *sub judice* proclamation to be made with retrospective effect i.e. as from the date of the coming into operation of the previous proclamation (already annulled in December 1967 (*supra*)) the 1st April 1966.

(b) This was not an instance where the previous proclamation had been annulled in such circumstances as would permit giving retrospective effect to the new proclamation; there did not exist in this respect the conditions enabling departure from the rule against non-retrospectivity of administrative acts (see Conclusions from the Jurisprudence of the Greek Council of State 1929-1959 p. 197 and particularly the Decision of the Greek Council of State 543/1954).

(c) Therefore the *sub judice* proclamation should be annulled in so far as it has been made to take effect as from the 1st April, 1966; and it will take effect as from the date it was published in the Official Gazette viz. 24th May 1968 (see *Morsis*

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v. *The Republic* (1965) 3 C.L.R. 1; and the Decision of the Greek Council of State 543/1954 *supra*).

*Recourse dismissed; but sub judice proclamation annulled in so far as it takes effect from April 1, 1966 and before May 24, 1968.*

Cases referred to:

*Morsis v. The Republic* (1965) 3 C.L.R. 1;

*Xapolytos and Others v. The Republic* (1967) 3 C.L.R. 703;

*Decision of the Greek Council of State No. 543/1954 reported in Conclusions from the Jurisprudence of the Greek Council of State 1929–1959 p. 197.*

**Recourse.**

Recourse against the decision of the Respondent altering the boundaries of a village authority by taking out of the village area of Galini an area known as “Potamos tou Kambou quarter” and incorporating it into the village area of Karavostassi.

*L. Clerides*, for the Applicant.

*L. Loucaides*, Counsel of the Republic, for the Respondent.

*K. Michaelides*, for the Interested Party the Karavostassi Improvement Board.

*Cur. adv. vult.*

The following judgment was delivered by:—

TRIANTAFYLLIDES, J.: By this recourse the Applicants—who are the members of the Village Commission of Galini—complain against a proclamation, published by the Respondent Council of Ministers, in the official Gazette, on the 24th May, 1968, (Not. 330, Third Supplement), by virtue of which an area specified therein and known as “Potamos-tou-Kambou quarter” was taken out of the village area of Galini and incorporated into the village area of Karavostassi.

The said proclamation was published under section 20 of the Village Authorities Law, Cap. 244.

An earlier proclamation, to the same effect, which was published, in the official Gazette, on the 17th February, 1966 (Not. 75, Third Supplement), was annulled by the judgment given, on the 30th December, 1967, by this Court in the case of *Xapolytos v. The Republic* (recourse 94/66, between the same parties as the present one; see *exhibit 2*, and (1967) 3 C.L.R. 703); the ground for annulment being that the Council of Ministers had decided upon the making of that proclamation without having duly before it the objections raised by the Applicants against such a course.

After the annulment of the first proclamation, the matter was placed once again before the Council of Ministers by means of a submission dated the 2nd May, 1968 (see *exhibit 1*); there were attached, *inter alia*, to such submission, a copy of recourse 94/66—in which the objections of the Applicants to the relevant proclamation were set out—and a copy of the judgment in such recourse. In the body of the submission, itself, the aforesaid objections of the Applicants were commented upon by the Ministry of Interior, which had prepared the submission.

On the 9th May, 1968, the Council of Ministers reached decision 7714 (see red 59 in *exhibit 3*), as a result of which the *sub judice* proclamation was made.

Learned counsel for the Applicants has submitted that the Respondent Council had again decided the matter without having properly before it all relevant considerations.

Having paid due regard to all his arguments on this point, I cannot find myself in agreement with him: On the material before the Court it is quite clear that all relevant factors were placed before the Council of Ministers, by means of the contents of the submission made to it for the purpose, and of the appendices thereto.

It is correct that the Council did not have before it the written representations made by the Applicants against the proposed alteration of the boundaries of the respective village areas; such representations were made before the commencement, in December 1963, of the still current anomalous situation in this country; and as a result the relevant file of the administration is still not available, because it is in the records of the office of the District Officer, Nicosia, which were left behind in the Turkish quarter of Nicosia.

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Had the matter remained at that, I would have agreed with counsel for the Applicants that it was the duty of the appropriate authorities, before submitting again the subject to the Council of Ministers, to give a chance to the Applicants to make their representations afresh, so as to have on record, and available, the substance of the relevant objections.

But, as it appears from a letter dated 8th February, 1968, addressed to the Director-General of the Ministry of Interior by the District Officer, Nicosia (see reds 39–40 in *exhibit 3*) the Applicants, subsequently to December, 1963, did repeat orally their objections to the said District Officer, and all the main points of such objections were the same as those set out in recourse 94/66; and a copy of this recourse was attached, as an appendix, to the submission made to the Council of Ministers on the 2nd May, 1968.

Thus, the fact that the originally made—before December 1963—representations of the Applicants were not available, when the *sub judice* decision was reached by the Council of Ministers, did not prevent at all the Council from having before it all material considerations in relation to the objections raised by the Applicants; and, for this reason it was unnecessary to invite the Applicants to make their representations afresh—before the Council would deal again with the matter—once it was clear that the objections put forward by the Applicants were already on record by virtue of recourse 94/66, which was duly attached to the relevant submission.

On the other hand, another argument advanced by counsel for the Applicants is a valid one: namely, that it was not possible for the *sub judice* proclamation to be made with retrospective effect, as from the date of coming into effect of the proclamation annulled due to recourse 94/66, namely, the 1st April, 1966.

This was not an instance where the previous proclamation had been annulled in such circumstances as would permit giving retrospective effect to the new proclamation; there did not exist, in this respect, the conditions enabling departure from the rule against non-retrospectivity of administrative acts (see Conclusions from the Jurisprudence of the Greek Council of State 1929–1959 p. 197, and particularly Decision 543(54) of the Greek Council of State).

From the material before me, and especially by comparing the respective submissions, it is clear that before making the

*sub judice* proclamation the Council of Ministers did consider for the first time the objections raised by the Applicants, which had not been previously placed before the Council; also, there was before the Council a new factor—a most material one—which had come in existence since the previous proclamation had been made, namely, that the Interested Party had already started implementing a scheme to provide the Potamos-tou-Kambou quarter with drinking water facilities (see paragraph 4(b) in *exhibit 1*); thus, a new decision was reached in an entirely new context.

I am of the view, therefore, that the *sub judice* proclamation should be annulled in so far as it has been made to take effect as from the 1st April, 1966; and, therefore, it can only be of effect as from the date when it was published in the official Gazette, namely, from the 24th May, 1968 (see *Morsis v. The Republic* (1965) 3 C.L.R. 1 and Decision 543(54), *supra*).

Regarding costs, as the Applicants have been only partly successful, I have decided to award to them, and against Respondent, only a part of their costs, which I assess at £10.

*Recourse dismissed but sub judice proclamation annulled in so far as it takes effect from 1.4.66 and before 24.5.68; order for costs as aforesaid.*

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