[TRIANTAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CYPRUS FLOUR MILLS CO. LTD. AND ANOTHER,

Applicants,

and

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

Respondents.

(Cases Nos. 256/65, 257/65).

Recourse under Article 146 of the Constitution—Additional grounds or reasons for annulment—Can be put forward in the course of the proceedings in such recourse "as the justice of the case may require"—No time limit prescribed by legislation after which they cannot be advanced—Rule 19 of the Supreme Constitutional Court Rules, 1962.

Practice—Recourse under Article 146 of the Constitution—Additional grounds or reasons may in a proper case be allowed—See supra.

Held, (1) In Cyprus the established practice seems to be that, in a proper case and subject to the necessary safeguards for the protection of the other side, additional grounds or reasons for annulment are allowed to be put forward in the course of the proceedings in a recourse under Article 146 of the Constitution "as the justice of the case may require"; this practice has developed in accordance, largely, with rule 19 of the Supreme Constitutional Court Rules, 1962; and there does not exist here any time-limit prescribed by legislation after which additional reasons or grounds cannot be advanced.

(2) All the more so, that in the present case the said additional grounds or reasons (lack of reasoning) are put forward as being directly connected with the substantial validity of the subject matter

of this recourse (and not its "formal validity"). (*See* Σταυινοπούλου Δίκαιον τῶν Διοικητικῶν Πράξεων, 1951, σελὶς 216).

Order accordingly.
Leave granted.

Cases referred to:

Medcon Construction and Others v. *The Republic* (1968) 3 C.L.R. 535.

Decision.

Decision on an objection made by counsel for the respondents to the effect that counsel for the applicants could not rely in argument on the further grounds regarding which he had given notice earlier at this stage of the proceedings as they were not set out in the applications in the recourses, as initially drafted and filed.

A. Triantafyllides, for the applicants.

K. Talarides, while being Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following decision was delivered by:-

TRIANTAFYLLIDES, P.: In these two cases, which were heard together, the Supreme Court, in the exercise of its revisional appellate jurisdiction, has ordered * that there should be a new trial before a judge of the Court, as regards the issue of the validity of a decision of the respondents which was communicated to the applicants by a letter dated 7th October, 1965 (*exhibit* 1) and was confirmed by a letter dated 4th December, 1965 (*exhibit* 3); it was, also, held by the Supreme Court that the refusal of the respondents to disclose to the applicants the contents of the report of an ad hoc Committee, on the basis of which the said decision was taken, amounted to a contravention of Article 29 of the Constitution and that it was up to the respondents to re-examine their stand in relation to this matter and to disclose material

* Vide (1970) 3 C.L.R. 48.

data, to the extent necessary in order to meet the requirements of Article 29.

As a result, the trial of these cases was resumed and in the course therewith there was produced, *inter alia*, a relevant decision of the Council of Ministers, dated 3rd February, 1966 (*exhibit* 6(a)) and a letter of counsel for the respondents to counsel for the applicants dated 26th February, 1971 (*exhibit* 6) by means of which particulars were given concerning an earlier decision of the Council of Ministers in the same matter which was reached in September, 1965; there was, also, produced the aforementioned report of the ad hoc Committee (*exhibit* 5).

After the production of the above documents counsel for the applicants gave written notice regarding further grounds on which he was intending to rely in these recourses, namely that —

> "1. Applicants will allege that the whole administrative process leading up to the decision complained of, is fatally defective due to the absence of any duly taken and reasoned decision of the respondents or either of them. (*Medcon Construction and Others* v. *Republic* (1968) 3 C.L.R. 535).
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> 2. Applicants could not have known of the defect of the administrative process at any earlier stage, such defect having become apparent after the production of the relevant documents *exhibits* 6 and 6(a).
>
> 3. In any case such a point can and should be raised and decided by the Court *ex proprio motu*."

Grounds (2) and (3) are not separate grounds but ancillary to ground (1).

At a later stage counsel for the respondents produced before the Court further documents, namely a submission (No. 444/65) to the Council of Ministers dated 5th July, 1965 (*exhibit* 7), a decision of the Council dated 8th July, 1965 (*exhibit* 8) by virtue of which there was set up a Committee consisting of the Ministers of Commerce, Finance, Justice and Labour for the purpose of considering the matter in question and reporting to the Council, a letter dated 24th July, 1965, from the

Minister of Finance to the Minister of Commerce (*exhibit* 9) copy of which was placed before the said Committee, a subsequent submission to the Council of Ministers (No. 872/65) dated 22nd December, 1965 (*exhibit* 10), a decision of the Council of Ministers dated 22nd December, 1965 (*exhibit* 11), copies of notes kept in relation to the meetings of the aforementioned Ministerial Committee on the 21st July, 1965 and 11th August, 1965, respectively, (put in as *exhibits* 12 and 12(a)) and a table of relevant statistics (*exhibit* 13); *exhibits* 12, 12(a) and 13 were found in the relevant file of the Ministry of Justice.

When counsel for the applicants relied in argument on the further grounds regarding which he had given notice as stated earlier, counsel for the respondents objected that these grounds could not be argued at this stage of the proceedings as they were not set out in the applications in the recourses, as initially drafted and filed.

What I have in effect to decide is whether the applicants will be allowed to argue and rely on the further ground (1) above.

In Greece, as it appears from Tsatsos on Recourse for Annulment before the Council of State—Τσάτσου, Ἡ Αἴτησις Ἀκυρώσεως Ἐνώπιον τοῦ Συμβουλίου τῆς Ἐπικρατείας—3rd ed., p. 362, paragraph 179, it is possible to put forward further grounds in support of the recourse for annulment, but in Greece it is laid down by legislation that they should be communicated within a certain time-limit before the hearing of the recourse concerned.

In France, as it appears from Odent on Contentieux Administratif, 2nd ed., 1970/71, pp. 859 - 860, it is possible to put forward further grounds for annulment provided that they are of the same category (*i.e.* they relate either to the "external legality" or to the "internal legality", as the case may be, of the *sub judice* act) as those originally put forward by the recourse; this is so in accordance with the principle adopted in the case of *Intercopie* and in other case-law referred to by Odent, *supra*.

In Cyprus the established practice seems to be that, in a proper case and subject to the necessary safeguards for the protection of the other side, additional grounds or reasons for annulment are allowed to be put forward in the course of the proceedings in a recourse "as the justice of the case may require"; this practice has developed in accordance, largely, with rule 19 of the Supreme Constitutional Court Rules; and there does not exist here any prescribed by legislation time-limit after which additional reasons or grounds cannot be advanced.

Bearing all the foregoing in mind and in view of the particular circumstances of these two cases, as well as the very special course of the present proceedings (as set out hereinbefore), I am of the view that counsel for the applicants should be allowed to argue the proposed further ground for annulment.

I would point out that this is not a case in which it is sought to argue that the *sub judice* decision is invalid due to lack of reasoning as a formality prescribed by any enactment, but it is a case in which the lack of reasoning is put forward as being directly connected with the substantial validity of the subject matter of the present proceedings (see the distinction made by Stassinopoulos in the Law of Administrative Acts—Σταυινοπούλου, Δίκαιον τῶν Διοικητικῶν Πράξεων—(1951) σ. 216); in other words, the absence of reasoning is not put forward as a matter of formal validity (or "external legality"), but as a matter of substantial validity (or "internal legality") and, therefore, even if the stricter approach adopted in France were to be followed, again counsel for applicants would have been entitled to argue the further ground for annulment in question, because the substantial validity of the subject matter of these recourses has been in issue all along, even since they have been filed.

Order accordingly.