

1981 April 22

[A. Loizou, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

TAKIS MICHAEL AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF INTERIOR,

2. THE DIRECTOR OF LANDS AND SURVEYS,

Respondents.

(Cases Nos. 193/80, 194/80,
195/80, 326/80).

5 *Immovable property—Transfer—Factors rendering it likely to endanger or affect public safety within section 3 of the Immovable Property (Temporary Provisions) Law, 1970 (Law 49/1970)—Not recorded in the relevant file—Absence of such record prevents the Court from controlling the exercise of discretion by the respondent—And renders his refusal to transfer defective for lack of due reasoning.*

10 *Administrative Law—Administrative acts or decisions—Reasoning—Due reasoning—Material on which respondent relied in reaching sub judice decision not recorded—Absence of such record prevents Court from controlling exercise of discretion by the administration—And renders sub judice decision defective for lack of due reasoning.*

15 Each applicant had by a contract purchased from Brikent Estates Co. Limited a building site and duly deposited the contract with the Land Registry Office for specific performance purposes. When they presented themselves with the vendor Company at the District Lands Office and asked for the transfer and registration of the respective plots in their names the District Lands Officer refused to accept the transfer; and his
20 decision was recorded to be as follows:

“The transfer was refused on the strength of the provisions

of the Immovable Property (Temporary Provisions) Law, 1970 (Law No. 49 of 1970) and particularly under section 3* thereof”.

Upon a recourse against the refusal to accept the transfer:

Held, that under section 3 of Law 49/70 the Director has 5
to form his opinion and therefore exercise his discretion on
the basis of factors or material given to him by the Minister
and which would show that the proposed acquisition by the
intended transferee of the subject property is likely to endanger
or in any way affect the public safety; that it is then that if 10
so satisfied he will not permit the acceptance of such declaration
of transfer; that there does not exist any record of the factors or
material which the Minister gave to the Director in the present
case; that the absence of such records prevents this Court
to perform its duties for the judicial control of the administrative 15
discretion of the Director in this instance; that, in fact, the
absence of such records renders the *sub judice* decision defective
inasmuch as it lacks due reasoning; that such reasoning, if
it existed, would reveal the factors on account of which the
administration came to the *sub judice* decision, which in this 20
way is easier to be judged by the public opinion and for its
control by an Administrative Court (see Tsatsos on the Recourse
for Annulment before the Council of State 3rd edition p. 233);
accordingly the *sub judice* decision must be annulled (*Georghi-*
ades v. Republic (1980) 3 C.L.R. 486 adopted). 25

Sub judice decision annulled.

Cases referred to:

Georghiades v. Republic (1980) 3 C.L.R. 486.

Recourses.

Recourses against the decision of the respondents not to 30
accept the transfer of building-sites in the names of the appli-

* Section 3 provides as follows:

“Notwithstanding the provisions of the Immovable Property (Transfer and Mortgage) Law, 1965, whenever upon the production to a District Lands Office or sub-office of a declaration of intended transfer of immovable property, the Director considers on the basis of factors given to him by the Minister that the proposed acquisition of the said immovable property by the intended transferee is likely to endanger or in any way affect the public safety, the Director shall not permit the acceptance of such a declaration by the appropriate officer of the said office, or sub-office, except if and when the Minister to whom the matter is submitted by the Director consents to it”.

cants by virtue of contracts which had been deposited with the hand Registry for specific performance.

N. Cleanthous, for the applicant.

5 *R. Gavrielides*, Senior Counsel of the Republic, for the respondents.

A. LOIZOU J. read the following judgment. These four recourses have, upon direction made with the consent of the parties, been heard together as they present common questions of law and fact.

10 Each applicant, had by a contract purchased from Brikent Estates Co., Limited a building-site duly described in the statement of facts set out in each recourse. Each such contract was deposited with the Land Registry for specific performance under The Specific Performance Law, Cap. 232 as amended
15 by Laws number 50 of 1970 and 96 of 1972.

On the 30th April 1980, the applicants and the vendor company presented themselves to the District Lands Office Larnaca and asked for the transfer and registration of the respective plots in their names from the vendor company
20 having submitted all necessary documents and having offered to pay all necessary fees as provided by the relevant legislation in force at the time. The District Lands Officer at Larnaca refused to accept the transfer.

On the 7th May 1980 the managing director of the vendor
25 company addressed the following letter to the officer in charge of the District Lands Office at Larnaca:

The decision of the District Lands Officer to refuse the transfer is recorded to be as follows:

"Dear Sir,

30 Re: Brikent Estates Co. Ltd.

Further to our visit to your offices on the 30th April 1980, present Messrs I.Y. Taskent Chairman & Managing Director of above Company, S. Panayiotou Director/Secretary, Nicos Cleanthous, Director, Demetrakis Georghiades, Sotiris Maziris and Takis Michael, Buyers, to
35 transfer the deed No. J217 Plot 209 to Mr. Demetrakis Georghiades as per our contract of sale dated the 30.12.77

and registered with you, with all forms ready for the transfer, both yourself and your assistant Mr. Papaefthymiou you called us to your office and you said the following:

‘Sorry we do not allow any transfer of deeds from Briken Estates Co. Ltd. to any buyer, as per instructions from our head office in Nicosia’. You also said to the buyers that our company is willing and is fully prepared to transfer the deeds and in no way our Company or its Director or their representatives are to be blamed for the non transfer taking place.

Sir, our Company is strongly protesting to the refusal of your office to deal with the affairs of our Company and issue deeds to the name of our buyers. This is against the principles of the Constitution in Cyprus and the rights of the Cypriots Greeks and Turks.

Please take notice that if within two weeks you do not give us a positive answer that you are prepared to deal with the transfer of Deeds, we shall issue a Court procedure in the Supreme Court according to our rights and constitution in Cyprus”.

The decision of the District Lands Officer to refuse the transfer is recorded to be as follows:

“The transfer was refused on the strength of the provisions of the Immovable Property (Temporary Provisions) Law No. 1970, (Law No. 49 of 1970) and particularly under section 3 thereof”.

Counsel for the respondent further stated that there was no record of particulars as to what were the data or factors which the Minister gave to this officer regarding this case. The aforesaid section reads as follows:

“Ανεξαρτήτως παντός διαλαμβανομένου εν τῷ περὶ Μεταβιβάσεως καὶ Ὑποθηκεύσεως Ἀκινήτων Νόμῳ τοῦ 1965, ὡςάκις ἐπὶ τῇ προσαγωγῇ εἰς Ἐπαρχιακὸν Κτηματολογικὸν Γραφεῖον ἢ παράρτημα, δηλώσεως σκοπούμενης μεταβιβάσεως ἀκινήτου ἰδιοκτησίας ὁ Διευθυντὴς κρίνη, βάσει δεδομένων παρασχεθέντων αὐτῷ ὑπὸ τοῦ Ὑπουργοῦ, ὅτι ἢ σκοπούμενη κτήσις τῆς τοιαύτης ἀκινήτου ἰδιοκτησίας ὑπὸ τοῦ προτιθεμένου δικαιοδόχου ἐνδέχεται νὰ θέσῃ εἰς κίνδυνον ἢ καθ’ οἷονδῆποτε τρόπον νὰ ἐπηρεάσῃ τὴν δημοσίαν ἀσφάλειαν, ὁ Διευθυντὴς δὲν ἐπιτρέπει τὴν παρὰ τοῦ ἀρμοδίου λειτουργοῦ τοῦ εἰρημένου Γραφείου ἢ παραρτή-

ματος άποδοχήν τής τοιαύτης δηλώσεως, έκτός εάν και άφού ό Υπουργός, εις τόν όποϊον τό θέμα ύποβάλλεται ύπό τοϋ Διευθυντοϋ, συγκατατεθῆ εις τοϋτο”.

The unofficial English translation of same reads as follows:

- 5 “Notwithstanding the provisions of the Immovable Property (Transfer and Mortgage) Law, 1965, whenever upon the production to a District Lands Office or sub-office of a declaration of intended transfer of immovable
10 property, the Director considers of the basis of factors given to him by the Minister that the proposed acquisition of the said immovable property by the intended transferee is likely to endanger or in any way affect the public safety,
15 the Director shall not permit the acceptance of such a declaration by the appropriate officer of the said office, or sub-office, except if and when the Minister to whom the matter is submitted by the Director consents to it”.

- The term “Director” is defined in section 2(c) of the said Law as meaning “the Director of the Department of Land and Surveys of the Ministry of Interior and includes a District
20 Lands Officer and any other officer appointed by the Director for all or any of the purposes of this Law, either generally or for any particular purpose”.

- Upon such refusal the first three recourses were filed together with recourse number 192/80 which was filed by the same applicant as the one in recourse number 326/80. Recourse number
25 192/80 was heard and determined and the judgment delivered therein is reported as *Demetrakis Georghiades v. The Republic* (1980) 3 C.L.R. p. 486, whereby the decision of the District Lands Officer to refuse the transfer was annulled.

- 30 On the 29th September 1980 the applicant in this recourse asked once more for the said plot to be transferred and registered in his name, having gone through all necessary formalities, but the Director of the Land Registry at Larnaca refused to accept the transfer on the same ground as before hence
35 the filing of this recourse. As against the judgment in recourse number 192/80 an appeal was filed to the Full Bench of this Court under section 11 of the Administration of Justice (Miscellaneous Provisions) Law 1964, Law No. 33 of 1964, but same was withdrawn by the Republic on the 27th February 1981.
40 I have been asked, however, to pronounce once more on the

same issues as those raised and determined by me in the case of *Georgiades v. The Republic (supra)*.

As no arguments have been advanced against my approach in that case I see no reason why to depart from them. At p. 490 I had this to say:

“As it appears from the aforesaid provisions the Director, as defined, has to form his opinion and therefore exercise his discretion on the basis of factors or material given to him by the Minister and which would show that the proposed acquisition by the intended transferee of the subject property is likely to endanger or in any way affect the public safety. It is then that if so satisfied he will not permit the acceptance of such declaration of transfer.

It is unfortunate, therefore, that there does not exist any record of the factors or material which the Minister gave to the Director in the present case. The absence of such records prevents me to perform my duties for the judicial control of the administrative discretion of the Director in this instance. In fact the absence of such records renders the *sub judice* decision defective inasmuch as it lacks due reasoning. Such reasoning, if it existed, would reveal the factors on account of which the administration came to the *sub judice* decision, which in this way is easier to be judged by the public opinion and for its control by an Administrative Court (see Tsatsos on the Recourse for Annulment before the Council of State 3rd edition p. 233).”

On reflection I find the aforesaid approach equally applicable to the facts of the present cases.

For all the above reasons I have come to the conclusion that the subject decisions should be annulled but in the circumstances I make no order as to costs in the first three recourses but I award £40.—against the respondents in recourse number 326/80, who was compelled by the circumstances to come to Court for the second time.

Having reached this conclusion it becomes unnecessary to examine the other grounds of Law relied upon by the applicants in these recourses.

*Sub judice decision annulled.
Order for costs as above.*