

1981 December 19

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.

S. RAFTIS CO. LTD.

*Applicants,*

v.

THE MUNICIPALITY OF PAPHOS,

*Respondent.*

(Case No. 416/81).

5 *Act or decision in the sense of Article 146 of the Constitution—Proceedings and judgments of Criminal Courts—And execution of judgments and enforcement of punishments, including demolition orders—Do not come within the ambit of the above Article and cannot be made the subject of a recourse thereunder.*

10 The Applicant Company and its Manager were tried before the District Court of Paphos on a charge of starting the erection of a building contrary to the Streets and Buildings Regulation Law, Cap. 196; they were found guilty of the offence charged and sentenced to pay a fine and a demolition order was made directing them to pull down everything referred to in the charge-sheet, unless a permit was obtained within two months from that date. There followed an application to the appropriate Authority for a building permit and when same was refused the applicants challenged the validity of the refusal by a recourse under Article 146 of the Constitution; and they, also, applied for a provisional order, under rule 13 of the Supreme Constitutional Court Rules, 1962, ordering the suspension of the execution of the demolition order until the trial and final determination of the recourse.

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*On the application for a provisional order:*

*Held*, that the proceedings and the judgments of civil and criminal Courts and the sentences imposed in criminal cases are judicial acts and do not come within the ambit of Article

146 of the Constitution; that likewise the execution of such judgments and the enforcement of punishments are a corollary of the judicial process and in any event are so closely connected with judicial acts that do not come within the ambit of the said Article (see *White Hills Ltd., and Others v. The Republic* (1970) 3 C.L.R. 132 at p. 134); that, therefore, this Court does not possess competence under Article 146 of the Constitution to entertain the subject matter of this application for a provisional order; accordingly the application should fail. 5

*Application dismissed.* 10

Cases referred to:

- Antoniou v. The Republic* (1975) 3 C.L.R. 169;  
*District Officer Nicosia v. Georghios HjiYiannis*, 1 R.S.C.C. 79;  
*Kyriakides v. The Republic*, 1 R.S.C.C. 66;  
*Xenophontos v. The Republic*, 2 R.S.C.C. 89; 15  
*Pitsillos v. Aristodemou* (1969) 3 C.L.R. 226 at p. 230;  
*White Hills Ltd. and Others v. The Republic* (1970) 3 C.L.R. 132 at p. 134.

**Application for a provisional order.**

Application for a provisional order suspending the execution of the order of demolition issued by the District Court of Paphos until the final determination of this recourse and/or until the filing of opposition and trial of this application. 20

*L. Kythreotis*, for the applicant.

*K. Chrysostomides*, for the respondent. 25

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. The applicant Company and its Managing Director were prosecuted before the District Court of Paphos on a charge of starting the erection of a building contrary to sections 3(1)(b) (f) (3), 20(3)(5)(4) 3A(3) of the Streets and Buildings Regulation Law, Cap. 96, Laws 14/59, 67/63, 6/64, 13/74, and of the Criminal Code, Cap. 154 section 20. 30

The particulars of the offence were that on or about the 1st July 1981 and thereafter at Kato Paphos they unlawfully started excavations for the foundations and placed columns with the intention of constructing a hotel on plot 80/3 sheet/plan 51/10, 35

under registration number 3734, the property of the present applicant Company without prior permit of the appropriate authority, i.e. the Municipality of Paphos.

5 On the 29th October, 1981, both the applicant Company and its Managing Director were found guilty of the offence charged and were sentenced to £70.- fine each, the joined payment of £70.- costs of prosecution and a demolition order was issued ordering them to pull down everything referred to in the charge-sheet, unless a permit was obtained within two  
10 months from that date.

On the 4th November 1981 an appeal was filed against the aforesaid conviction and sentence, which is still pending. The applicant Company had applied on the 6th June 1980 to the respondent Municipality, which is the appropriate authority  
15 under the Streets and Buildings Regulation Law, Cap. 96 for a permit to built a building to be known as Hotel "Melina I"

By letter dated the 19th May 1981, the Municipal Engineer informed the applicant Company that for a number of reasons, stated therein, no building permit would be issued. The applicants claimed to have complied with the Municipal Engineer's  
20 observations and resubmitted "new plans and or drawings and or calculations". By letter dated the 21st October, 1981, the respondent Municipality informed the applicant Company that in view of the letter of the Director of the Department of Antiquities under number 53/47/25, dated 6th October 1981, as to  
25 its objections to permit the erection of any building on the said plot, the building permit applied for would not be issued. It based, as it stated therein, its decision on the Streets and Buildings Regulation Law, Cap. 96 and the Regulations and the Antiquities Law, Cap. 31 and on the judgment of the Supreme Court (His Honour Justice Malachtos) in the case of *Antoniou v. The Republic* (1975) 3 C.L.R. p. 169. As against this refusal  
30 communicated to them by the aforesaid letter, the applicant Company filed the present recourse seeking hereby:—"A declaration that the act and/or decision of the Respondents whereby under written communication dated the 21.10.1981 Respondents rejected Applicants application for a building permit for the  
35 Erection of a Hotel known as Melina Hotel on plot 80/3 Sheet/ Plan LI.10 Kato Paphos is null and void and of no effect whatsoever as having been made and/or taken contrary to the pro-  
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visions of the Law and/or the constitution and/or in excess and abuse of their powers if any”.

Together with this recourse it also filed this application for the issue of a provisional order, ordering “the suspension of the execution of the order of demolition issued by the District Court of Paphos in Criminal Case 2015/81 until the trial and final determination of this recourse of the applicant and/or until the filing of opposition and trial of this interlocutory application”.

The application is based on rule 13 of the supreme Constitutional Court Rules 1962 and the grounds upon which the provisional order is sought are set out in paragraph 4 of the affidavit filed in support of this application. They are the following:

- (a) The period of two months as in section 20 subsection (3) paragraph (a) of Cap. 96, provided, is unconstitutional as offending Article 12.3 of the Constitution, 15
- (b) The refusal of the Municipality of Paphos to issue the relevant building permit is manifestly illegal as violating the provisions of Cap. 96. 20
- (c) It will cost to the applicant Company (if the demolition ordered is carried out) irreparable financial damage.
- (d) The rights of no one will be affected adversely by the issuing of the order applied for.
- (e) The suspension of the execution of the order of demolition will not cause obstacles to the smooth functioning of the administration and justice and in no way causes detriment to the public interest. 25

The first question that arises in this case is whether the subject matter of this application for provisional order comes within the ambit of Article 146 of the Constitution in which case only this Court has jurisdiction to adjudicate on it under the said article. 30

No doubt a demolition order made under section 20 subsection 3 paragraph (a) of Cap. 96 amounts to a punishment under Article 12.3 of the Constitution. This was held to be so in a number of cases *inter alia* *The District Officer Nicosia and* 35

*Georghios HadjiYiannis of Akaki*, 1 R.S.C.C. p. 79. This was a case where the constitutionality of this provision was examined in a reference to the Supreme Court under Article 144 of the Constitution and not in a recourse under Article 146 thereof.

- 5 The revisional jurisdiction of this Court under Article 146 of the Constitution is confined to decisions and acts or omissions of any organ, authority or person exercising any executive or administrative authority and does not extend to other acts that do not come within this category. In the case of *Phedias*  
 10 *Kyriakides and The Republic*, 1 R.S.C.C. p. 66, it was held that acts of the police manifestly necessary to lead up to and closely interwoven with prospective criminal proceedings, did not constitute an exercise of "executive or administrative authority" within the meaning of Article 146 of the Constitution.
- 15 A fortiori punishments imposed by Courts in the exercise of their criminal jurisdiction and their execution do not constitute an exercise of "executive or administrative authority" within the meaning of the said Article.

- Also in the case of *Charilaos Xenophontos and The Republic*  
 20 2 R.S.C.C. p. 89 it was held that the exercise of the authority of the Attorney General to institute criminal proceedings was not within the ambit of Article 146.1 of the Constitution as being closely related to judicial proceedings in criminal cases and therefore this Court had no jurisdiction in the matter.

- 25 In the case of *Modestos Pitsillos v. Elias Aristodemou* (1969) 3 C.L.R. p. 226, Hadjianastassiou, J. at p. 230 had this to say:-

- 30 "With regard to the true construction of paragraph 1 of Article 146, it becomes very clear, in my view, from what I have already said, that the jurisdiction of this Court is confined only and exclusively to matters concerning a decision, act or omission of any organ, authority or person exercising executive or administrative authority and has no jurisdiction or competence to deal with the decision of the Appeal Court, complained of in this recourse, because  
 35 it is a judicial decision and, therefore, cannot be made the subject of a recourse to this Court under the said Article 146 of the Constitution".

No doubt the proceedings and the judgments of civil and

criminal Courts and the sentences imposed in criminal cases are judicial acts and do not come within the ambit of Article 146 of the Constitution. Likewise the execution of such judgments and the enforcement of punishments are a corollary of the judicial process and in any event are so closely connected with judicial acts that do not come within the ambit of the said Article. See *White Hills Ltd., and others v. The Republic* (1970) 3 C.L.R. p. 132 at p. 134 and where reference is made also to *Xenofontos and The Republic* 2 R.S.C.C. 89.

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The attempt made by learned counsel for the applicant Company to differentiate between the order as such and the suspension of the time limit sought hereby after the lapse of which and in case of failing to obtain a building permit, the order could be enforced, cannot stand as it is contrary to the principles hereinabove enunciated.

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For all the above reasons I have come to the conclusion that I do not possess competence under Article 146 of the Constitution to entertain the subject matter of this application for a provisional order which should therefore fail. But this, however, pronouncement does not refer to the subject matter of the recourse proper which is the refusal to issue a building permit and which as such, is an executory administrative act falling within the ambit of Article 146 of the Constitution.

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In the result the application for a provisional order is dismissed with no order as to costs as none have been claimed.

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*Application dismissed. No order as to costs.*