

1983 August 23

[TRIANTAFYLIDIS, P]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THE ADMINISTRATORS OF THE ESTATE OF  
ALKIS DEMETRIOU AND OTHERS.

*Applicants*

v

THE MUNICIPAL COMMITTEE OF LARNACA.

*Respondent.*

(Cases Nos 43/75, 44/75, 48/75,  
49/75, 50/75, 51/75)

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*Administrative Law—Executory act or decision—Composite administrative act—Hierarchical recourse—Once procedure for recourse is initiated complained of administrative act loses its executory nature and can no longer be challenged by a recourse under Article 146 of the Constitution—Only the final outcome of the administrative process is of executory nature and can be challenged by a recourse—Street widening scheme published under section 12 of the Streets and Buildings Regulation Law Cap 96—Objections against the Scheme to the Minister of Interior under section 18 of the Law and rejection thereof—Recourse against original scheme—Adoption and publication of the scheme and rejection of objection constitute a composite administrative action—And only the final decision rejecting the objection could be challenged by a recourse*

15           Following the publication of a scheme by the respondent for the straightening and widening of "Ayia Phaneromeni" avenue in Larnaca, which was published in the Official Gazette under section 12 of the Streets and Buildings Regulation Law Cap 96, the applicants objected against the scheme to the Minister of Interior. The objections were considered and rejected

20           by the Minister of Interior under section 18\* of Cap 96 and the

\* Section 18 is quoted at pp 1318-1320 post

applicants were informed accordingly. There followed recourses by applicants only against the decision which was taken by the respondent Municipal Committee in relation to the above scheme.

*On the issue that as hierarchical administrative recourses were made by the applicants, by way of objections, to the Minister of Interior these recourses ought to have been made against the decision of the Minister of Interior by means of which the said objections were rejected, or, at least, against such decision too, as that decision was the last step in the relevant administrative process:*

*Held, that once the procedure of seeking a review by higher authority has been resorted to the initially complained of administrative act or decision, in respect of which such review has been sought, loses its executory nature and can no longer be challenged by a recourse under Article 146 of the Constitution; that it is only the final outcome of the administrative process, through the decision given on completion of the review, that is of executory nature and can be challenged by a recourse; that the decision of the Municipal Committee of Larnaca to adopt and publish the scheme in question and the consideration and rejection by the Minister of Interior of the objections against such scheme constitute a composite administrative action and, consequently, it is only the final decision of the Minister regarding such scheme, under section 18 of Cap. 96, which could be challenged by a recourse; that though once a recourse had been made against the said decision of the Minister there could be examined, in the course of determining such recourse, the validity of any constituent part of the relevant composite action, such as the aforementioned decision of the Municipal Committee of Larnaca regarding the scheme concerned, the said decision of the Municipal Committee of Larnaca could not be challenged on its own and directly by the present recourses as it was not the final stage of the composite administrative action of which it formed part; accordingly these recourses should be dismissed. (Question whether or not the decision regulating the objections may be treated as being challenged, also, by means of the present recourses, even though this is not stated to be so in such recourses left open and to be considered on the application of counsel for the applicants).*

*Applications dismissed.*

Cases referred to:

- Malliotis v. Municipality of Nicosia* (1965) 3 C.L.R. 75 at p. 82;  
*Pelides v. Republic*, 3 R.S.C.C. 13 at pp. 17, 18;  
*Christofides v. C.Y.T.A.* (1979) 3 C.L.R. 99 at p. 122;  
5 *Roditis v. Karageorgi* (1965) 3 C.L.R. 230 at p. 242;  
*Yerasimou v. Republic* (1978) 3 C.L.R. 36; (1978) 3 C.L.R. 267  
at p. 269;  
*Economides v. Republic* (1978) 3 C.L.R. 230 at p. 234;  
*Ioannou v. Electricity Authority of Cyprus* (1981) 3 C.L.R. 280  
10 at pp. 299–302;  
*Mitidou v. C.Y.T.A.* (1982) 3 C.L.R. 555 at pp. 577–581;  
*Decisions of the Greek Council of State Nos: 2916/1972,*  
3495/1972 and 3849/1973.

Recourses.

- 15 Recourses against the validity of the scheme for the straightening  
and widening of “Ayia Phaneromeni” avenue in Larnaca.  
*L. Papaphilippou*, for the applicants.  
*G. Nicolaidis*, for the respondents.

*Cur. adv. vult.*

- 20 TRIANTAFYLLIDES P. read the following judgment. By means  
of the present recourses, which were heard together in view of  
their related nature, the applicants challenge the validity of a  
scheme which was published in the Official Gazette of the  
Republic on the 5th July 1974 (see No. 1188), under section 12  
25 of the Streets and Buildings Regulation Law, Cap. 96, for the  
straightening and widening of “Ayia Phaneromeni” avenue in  
Larnaca.

- After the publication of the scheme in question applicant in  
case 43/75—who has died later before the conclusion of the  
30 hearing of these cases—objected on his own behalf, and as  
the advocate acting for the applicants in the other of these  
cases, against such scheme, by letters addressed, on 22nd  
November 1974 and 28th November 1974, to the Minister of  
Interior.

- 35 The above objections were considered and rejected by the  
Minister of Interior under section 18 of Cap. 96, as amended  
by section 3 of the Streets and Buildings Regulation (Amend-  
ment) Law, 1974 (Law 13/74), and the applicants were informed  
accordingly, by means of a letter dated 25th February 1975,

which was addressed to all of them through the applicant in case 43/75.

Then, the applicants filed these six recourses only against the decision which was taken by the Municipal Committee of Larnaca in relation to the aforementioned scheme. 5

Counsel for the respondent has raised the issue that as hierarchical administrative recourses were made by the applicants, by way of objections, to the Minister of Interior these present recourses ought to have been made against the decision of the Minister of Interior by means of which the said objections were rejected, or, at least, against such decision too, as that decision was the last step in the relevant administrative process. 10

The aforementioned section 18 of Cap. 96 reads as follows:

“18.—(1) Πᾶς ὅστις—

(α) δὲν ἰκανοποιεῖται— 15

(i) ἐξ ἀποφάσεως τῆς ἀρμοδίας ἀρχῆς ἐκδοθείσης δυνάμει τοῦ ἄρθρου 3, 6, 9·

ἢ

(ii) ἐκ διατάγματος ἐκδοθέντος ὑπὸ ταύτης δυνάμει τοῦ ἄρθρου 15· ἢ 20

(iii) ἐκ διατάγματος ἐκδοθέντος ὑπὸ ταύτης δυνάμει τοῦ ἄρθρου 15A·

(β) ἐνίσταται εἰς σχέδια παρασκευασθέντα ὑπὸ τῆς ἀρμοδίας ἀρχῆς δυνάμει τοῦ ἄρθρου 12,

δύναται, ἐντὸς εἴκοσι ἡμερῶν ἀπὸ τῆς εἰς αὐτὸν κοινοποιήσεως τῆς ἀποφάσεως τῆς ἀναφερομένης εἰς τὴν ὑποπαραγράφον (i) τῆς παραγράφου (α) τοῦ παρόντος ἔδαφίου ἢ τοῦ διατάγματος τοῦ ἀναφερομένου εἰς τὴν ὑποπαραγράφον (ii) τῆς αὐτῆς παραγράφου ἢ ἐντὸς ἐπτὰ ἡμερῶν ἀπὸ τῆς εἰς αὐτὸν κοινοποιήσεως τοῦ διατάγματος τοῦ ἀναφερομένου εἰς τὴν ὑποπαραγράφον (iii) τῆς αὐτῆς παραγράφου καὶ καθ' ὅσονδήποτε χρόνον καθ' ὃν τὰ σχέδια εἶναι ἐκτεθειμένα πρὸς ἐπιθεώρησιν, εἰς τὴν περίπτωσιν τῆς παραγράφου (β) τοῦ παρόντος ἔδαφίου, δι' ἐγγράφου προσφυγῆς, ἐν ἧ ἐκτείθενται οἱ πρὸς ὑποστήριξιν ταύτης λόγοι, εἰς τὸν 25 30 35

‘Υπουργὸν Ἑσωτερικῶν νὰ προσβάλη τὴν τοιαύτην ἀπόφασιν. διάταγμα ἢ σχέδια.

5 (2) Ὁ Ἑπίτροπος Ἑσωτερικῶν ἐξετάζει πᾶσαν εἰς αὐτὸν γενομένην προσφυγὴν ἀμελλητί, ἐάν δέ, εἰς οἰανδήποτε συγκεκριμένην περίπτωσιν, ἤθελε θεωρήσει τοῦτο ἀναγκαῖον ἢ σκόπιμον, ἀκούει ἢ ἄλλως δίδει τὴν εὐκαιρίαν εἰς τὸν προσφεύγοντα ὅπως ὑποστηρίξη τοὺς λόγους ἐφ’ ὧν στηρίζεται ἢ προσφυγὴ. Ὁ Ἑπίτροπος ἀποφασίζει ἐπὶ πάσης προσφυγῆς τὸ ταχύτερον καὶ κοινοποιεῖ ἀμελλητί τὴν ἀπόφασιν αὐτοῦ εἰς τὸν προσφεύγοντα:

10 Νοεῖται ὅτι ὁ Ἑπίτροπος δύναται νὰ ἀναθέσῃ εἰς λειτουργὸν ἢ ἐπιτροπὴν λειτουργῶν τοῦ Ἑπιπουργείου του ὅπως ἐξετάσῃ ὠρισμένα θέματα ἀναφεύμενα ἐν τῇ προσφυγῇ καὶ ὑποβάλλῃ εἰς αὐτὸν τὸ πόρισμα τῆς τοιαύτης ἐξετάσεως πρὸ τῆς ὑπὸ τοῦ Ἑπιπουργοῦ ἐκδόσεως ἀποφάσεως αὐτοῦ ἐπὶ τῆς προσφυγῆς.

20 (3) Ὁ μὴ ικανοποιηθεὶς ἐκ τῆς ἀποφάσεως τοῦ Ἑπιπουργοῦ δύναται νὰ προσφύγῃ εἰς τὸ δικαστήριον ἀλλὰ μέχρι τῆς ὑπὸ τοῦ Ἑπιπουργοῦ ἐκδόσεως τῆς ἀποφάσεως αὐτοῦ ἐν περιπτώσει προσφυγῆς εἰς αὐτὸν ἢ ἐν περιπτώσει μὴ προσφυγῆς εἰς αὐτὸν μέχρι τῆς παρόδου τῶν προθεσμιῶν τῶν προβλεπομένων εἰς τὸ ἐδάφιον (1) διὰ τὴν καταχώρισιν ἱεραρχικῆς προσφυγῆς. ἢ ἀποφασίς, τὸ διάταγμα ἢ τὰ σχέδια τῆς ἀρμοδίας ἀρχῆς, ὡς θὰ ἦτο ἢ περιπτώσεις, δὲν καθίστανται ἐκτελεστά”.

25 (“18.—(1) Any person who—

(a) is not satisfied—

- 30 (i) by a decision of the appropriate authority issued under section 3, 6 or 9; or
- (ii) by an order issued by the appropriate authority under section 15; or
- (iii) by an order issued by the appropriate authority under section 15A:

35 (b) objects to plans prepared by the appropriate authority under section 12.

may, within twenty days from the notifications to him of

the decision referred to in sub-paragraph (i) of paragraph (a) of this subsection, or the order referred to in sub-paragraph (ii) of the same paragraph or within seven days from the notification to him of the order referred to in sub-paragraph (ii) of the same paragraph and, in the case of paragraph (b) of this subsection, at any time within which the plans are open to inspection, by an appeal in writing to the Minister of Interior setting out the grounds in support thereof, appeal against such decision, or order or plans.

(2) That Minister of Interior shall forthwith examine every appeal made to him and if, in any particular case, he considers it necessary or expedient, he shall hear or otherwise give an opportunity to the appellant to support the grounds of the appeal. The Minister shall decide on every appeal the soonest possible and shall forthwith communicate his decision to the appellant:

Provided that the Minister may appoint an officer or a committee of officers of his Ministry to investigate certain questions arising in the appeal and submit to him the outcome of such investigation, prior to the issue by the Minister of his decision on the appeal.

(3) Any person who is not satisfied by the decision of the Minister may make a recourse to the Court, but until the decision of the Minister has been issued, where an appeal has been made to him, or, where no appeal has been made to him, until the expiration of the time limits specified in subsection (1) for the making of an appeal, the decision, order or plans of the appropriate authority, as the case may be, shall not be enforced").

It may be observed, at this stage, that section 18 of Cap. 96, as it stood prior to its repeal and re-enactment by section 3 of Law 13/74, was considered in *Malliotis v. The Municipality of Nicosia*, (1965) 3 C.L.R. 75, 82, and it was stated then that subsection (2) of section 18 had to be modified under Article 188 of the Constitution, in the light of Article 146 of the Constitution.

It cannot be said, however, that the new section 18 of Cap. 96, which was introduced by Law 13/74, as aforesaid, offends

against Article 146 of the Constitution in any way, since, in my opinion, it provides for review by means of a hierarchical recourse in a manner compatible with the said Article 146.

5 In *Pelides v. The Republic*, 3 R.S.C.C. 13, the following were stated (at pp. 17, 18):

10 “The Court takes this opportunity of stressing that though Article 146 grants it exclusive jurisdiction in administrative law matters there is nothing in such Article to prevent procedures for administrative review of executive or administrative acts or decisions from being provided for in a Law. Such review may be either—

15 (a) by way of confirmation or completion of the act or decision in question, in which case no recourse is possible to this Court until such confirmation or completion has taken place (e.g. under section 17 of CAP. 96); or

20 (b) by way of a review by higher authority or by specially set-up organs or bodies of an administrative nature, in which case a provision for such a review will not be a bar to a recourse before this Court but once the procedure for such a review has been set in motion by a person concerned no recourse is possible to this Court until the review has been completed.

25 Such review procedures, as aforesaid, are in no way contrary to, or inconsistent with, Article 30 of the Constitution because specially set-up organs or bodies of an administrative nature are not judicial committees or exceptional Courts in the sense of paragraph 1 of such Article”.

30 The above approach to the nature of the jurisdiction under Article 146 of the Constitution, as expressed in the *Pelides* case, *supra*, has been referred to with approval subsequently in our case-law, as for example in *Christofides v. Cyprus Telecommunications Authority*, (1979) 3 C.L.R. 99, 122; and, actually, in cases such as *Roditis v. Karageorghis*, (1965) 3 C.L.R. 230, 35 242, *Yerasimou v. The Republic*, (1978) 3 C.L.R. 36, and (1978) 3 C.L.R. 267, 269, and *Economides v. The Republic*, (1978) 3 C.L.R. 230, 234, it was held that once the procedure of seeking

a review by higher authority has been resorted to the initially complained of administrative act or decision, in respect of which such review has been sought, loses its executory nature and can no longer be challenged by a recourse under Article 146 of the Constitution; and that it is only the final outcome of the administrative process, through the decision given on completion of the review, that is of executory nature and can be challenged by a recourse (and see, also, in this respect, the Digest of the Case-Law of the Council of State in Greece ("Εύρετήριο Νομολογίας Συμβουλίου τῆς Ἐπικρατείας"). 1971-1975, vol. 1, pp. 105-108).

The decision of the Municipal Committee of Larnaca to adopt and publish the scheme in question and the consideration and rejection by the Minister of Interior of the objections against such scheme constitute a composite administrative action and, consequently, it is only the final decision of the Minister regarding such scheme, under section 18 of Cap. 96, which could be challenged by a recourse. Though once a recourse had been made against the said decision of the Minister there could be examined, in the course of determining such recourse, the validity of any constituent part of the relevant composite action, such as the aforementioned decision of the Municipal Committee of Larnaca regarding the scheme concerned, the said decision of the Municipal Committee of Larnaca could not be challenged on its own and directly by the present recourses as it was not the final stage of the composite administrative action of which it formed part (see, in this respect, inter alia, Conclusions from the Case-Law of the Council of State in Greece ("Πορίσματα Νομολογίας τοῦ Συμβουλίου τῆς Ἐπικρατείας"), 1929-1959, pp. 241, 242, 244, the Decisions of the Council of State in Greece in cases 2916/72, 3495/72 and 3849/73, as well as the judgments of our Supreme Court in *Ioannou v. The Electricity Authority of Cyprus*, (1981) 3 C.L.R. 280, 299-302 and *Mitidou v. Cyprus Telecommunications Authority*, (1982) 3 C.L.R. 555, 577-581).

For all the foregoing reasons these recourses, which have been made only against the initial decision of the Municipal Committee of Larnaca to adopt and publish the scheme in question, have to be, and are hereby, dismissed because they have been made only against such decision after it had lost its execu-



5 tory nature, in view of the resort by the applicants to the remedy of hierarchical recourses provided for by section 18 of Cap. 96, and had, thus, become part of the composite administrative action which culminated in the decision of the Minister of Interior in respect of such hierarchical recourses.

10 In view, however, of certain observations which I have made in the *Economides* case, supra (at p. 235), I think that it is open to counsel for the applicants to consider whether or not it is possible to be maintained, in the circumstances of the present proceedings, that the decision of the Minister of Interior rejecting the objections of the applicants to the scheme in question may be treated as having been challenged, also, by means of the present recourses, even if this was not stated expressly in such recourses (see, inter alia, in this respect, the Digest of the Case-  
15 Law of the Council of State in Greece ("Εύρετήριο Νομολογίας Συμβουλίου τῆς Ἐπικρατείας"), 1971-1975, vol.1, pp. 185-188.)

20 If counsel for the applicants applies within three months from today that the above possibility should be considered by the Court then these cases will be fixed for further arguments in this respect. Otherwise they will remain finally dismissed, but with no order as to their costs.

*Order accordingly.*