1979 June 28

[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU, HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, JJ.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOULIA MANGLIS AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE COUNCIL OF MINISTERS,
2. THE MINISTER OF INTERIOR,
3. THE DISTRICT OFFICER OF LIMASSOL,
4. THE DIRECTOR OF THE DEPARTMENT OF TOWN PLANNING AND HOUSING,
5. THE YERMASOYIA IMPROVEMENT BOARD,

Respondents.

(*Cases Nos.* 197/72, 224/72, 236/72, 244/72, 303/72, 340/72, 367/72).

Streets and Buildings Regulation Law, Cap. 96—*Notices by "Appropriate Authorities", under section* 14(1) *of the Law, defining zones within which building restrictions can be imposed—Not ultra vires the Law—And not unconstitutional—Repeal by the aforesaid Notices of an earlier Notice made by the Council of Ministers, a hierarchically superior organ, cannot be invalidated on the strength of "the theory of the formal hierarchy of administrative acts" because such repeal was expressly authorised by the hierarchically superior organ, the Council of Ministers—Said repeal not effected in contravention of section* 29(*a*) *of the Interpretation Law, Cap.* 1.

Constitutional Law—Right to property—Article 23 *of the Constitution —Notices, under section* 14(1) *of the Streets and Buildings Regulation Law, Cap.* 96, *defining zones within which building restrictions can be imposed—Not unconstitutional.*

The above recourses challenged the validity of two Notices

("Notices 116 and 117") which were published under section 14(1) of the Streets and Buildings Regulation Law, Cap. 96 (as amended). The said two Notices were published, respectively, by the District Officer of Limassol and by the Improvement Board of Yermasoyia as the "appropriate authorities" for the purposes of the above section 14(1).

On August 8, 1969, there was published, by the Council of Ministers, with the approval of the House of Representatives, a Notice ("Notice 640") under regulation 6(6) of the Streets and Buildings Regulations, imposing certain building restrictions in relation to specified areas in all the Districts of Cyprus, with effect as from July 17, 1969. The House of Representatives modified the said Notice before approving it and the building restrictions in question related, inter alia, to the heights and the number of storeys of buildings.

The two sub judice Notices, ("Notices 116 and 117") were published with the approval of the Council of Ministers but without having been placed before the House of Representatives for approval, inasmuch as no such requirement is to be found in the said section 14. By means of these two Notices there were imposed, in relation to certain areas in the Limassol District, much more extensive building restrictions than those which were imposed by means of Notice 640; and para. 7 of both Notices 116 and 117 repealed Notice 640 as well as earlier Notices which had been published under section 14(1) of Cap. 96.

Counsel for the applicants contended:

(a) That Notices 116 and 117 were ultra vires, mainly because, allegedly, section 14(1)(d) of Cap. 96 empowers only the defining of zones within which building restrictions can be imposed solely by the Council of Ministers under section 19(1) of the same Law.

(b) That Notices 116 and 117 were unconstitutional.

(c) That it was not possible for the "appropriate authorities" concerned, acting under section 14(1) of Cap.96 to repeal, even with the consent of the Council of Ministers Notice 640, which had been published by a hierarchically superior organ, namely the Council of Ministers, under regulation 6(6), which was made under section 19(1) of Cap. 96.

Regarding contention (c) above Counsel relied on "the theory of the formal hierarchy of administrative acts".

Held, per Triantafyllides, P., Stavrinides, L. Loizou, A. Loizou and Malachtos JJ. concurring and Hadjianastassiou J, dissenting. that Notices 116 and 117 are not ultra vires because it would be unreasonable to hold that, for example, under paragraph (b) of section 14(1) it is permissible to define zones for purposes of tourism, and in relation to such zones there can be imposed by the "appropriate authority" itself, under the same section 14(1), very drastic building restrictions regarding the type of buildings which can be erected therein, and yet under paragraph (d) of the said section 14(1) there can merely be defined zones in relation to which the "appropriate authority" cannot itself impose, under section 14(1), rather less drastic building restrictions concerning the heights, the number of storeys and the areas of the buildings to be constructed therein (pp. 359-360 post).

(2) That Notices 116 and 117 are not unconstitutional because (a) they involve restrictions or limitations of the exercise of the right of property, imposed by law, in the interest of town and country planning and for the development and utilization of properties to the promotion of the public benefit, in the sense of Article 23.3 of the Constitution; (b) they make detailed provisions for putting into effect restrictions or limitations of the right of property within the framework laid down by a Law - in this instance section 14 of Cap. 96 - and they are, therefore, within the requirements of constitutionality which were expounded in *Police v. Hondrou,* 3 R.S.C.C. 82, 85-86; (c) the restrictions or limitations imposed by means of the two Notices in question are not so patently unreasonable or arbitrary as to be treated as having exceeded the limits of the relevant discretionary powers; and, once this is so, it is not within the competence of this Court to embark on an evaluation of the correctness of such Notices from the scientific point of view; that further the sanctity of the right of property, to the extent to which such right is constitutionally protected by means of Article 23 of the Constitution, is not violated by the said Notices because:- (i) In any individual case in which the restrictions or limitations imposed by them materially decrease the economic value of the affected property the owner of such property is entitled to compensation under Article 23.3. (ii) In any individual case in

which the said restrictions or limitations entail such drastic consequences that they amount in effect to "deprivation", in the sense of paragraphs (2) and (4) of Article 23, then the operation, to that extent, of the sub judice Notices 116 and 117 has to be treated as being unconstitutional (see, inter alia, in this connection, the case of *The Holy See of Kitium v. The Municipal Council of Limassol,* 1 R.S.C.C. 15, 28).

(3) That what has actually taken place in the present instance cannot be invalidated on the strength of "the theory of the formal hierarchy of administrative acts" because it is quite clear that the hierarchically superior organ, the Council of Ministers, expressly authorized a hierarchically subordinate organ, the local "appropriate authorities" concerned, to impose, by their Notices 116 and 117, as a part of a more comprehensive town and country planning scheme, restrictions which went far beyond those imposed by its own Notice 640; and, consequently, such Notice had to be described as having been "repealed" to that extent.

Held, further, that the "repeal", in part, of Notice 640 by the sub judice Notices 116 and 117 was not effected in contravention of section 29(a) of the Interpretation Law, Cap. 1.

Order accordingly

Cases referred to:

Marangos and Others v. Municipal Committee of Famagusta (1970) 3 C.L.R. 7;

Loiziana Hotels Ltd. v. Municipality of Famagusta (1971) 3 C.L.R. 466 at p. 473;

Police v. Hondrou, 3 R.S.C.C. 82 at pp. 85-86;

Holy See of Kitium v. Municipal Council of Limassol, 1 R.S.C.C. 15 at p. 28.

Recourses.

Recourses against the validity of two notices published in the official Gazette under section 14(1) of the Streets and Buildings Regulation (Amendment) Law, 1964 (Law 65/64) and by the Streets and Buildings Regulation (Amendment) (No. 2)

Law, 1969 (Law 38/69) whereby in certain specified areas of Limassol more extensive building restrictions were imposed

A. Triantafyllides with *A. Magos*, for the applicants in cases 197/72 and 236/72.

Chr. Demetriades, for the applicant in case 224/72.

A. Anastassiades with *E. Theodoulou*, for the applicant in case 244/72 and with *N. Anastassiades*, for the applicant in case 303/72.

S. Lambrianides, for the applicant in case 340/72.

P. Pavlou for the applicant in case 367/72.

L. Loucaides, Deputy Attorney-General of the Republic, for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P.: I shall deliver a judgment with which, as I am informed, the other Judges on this Bench, except Mr. Justice Hadjianastassiou who is going to deliver his own judgment, agree.

These seven recourses, made under Article 146 of the Constitution, were heard together on common legal issues relating to the validity of two Notices which were published on June 17, 1972 (see No. 116 and No. 117 in the Third Supplement, Part I, to the Official Gazette), under section 14(1) of the Streets and Buildings Regulation Law, Cap. 96, as amended, in this respect, by the Streets and Buildings Regulation (Amendment) Law, 1964 (Law 65/64) and by the Streets and Buildings Regulation (Amendment) (No. 2) Law, 1969 (Law 38/69).

The present cases were being heard together with nine similar recourses 243/72, 247/72, 306/72, 328/72, 330/72, 337/72, 339/72, 343/72, 345/72) which have been withdrawn before the delivery of this judgment.

The aforesaid two Notices were published, respectively, by the District Officer of Limassol and by the Improvement Board of Yermasoyia as the "appropriate authorities" for the purposes of section 14(1), above.

They were repealed, and replaced, by two new Notices, which were published on January 8, 1974, again under section 14(1) of Cap. 96 (see No. 1 and No. 2 in the Third Supplement, Part I, to the Official Gazette). These new Notices have, also, been

challenged by means of recourses, which have already been heard and in respect of which judgment will be delivered today, too.

It is common ground that though the 1972 Notices were repealed by the 1974 Notices, the present recourses, which were made against the 1972 Notices, have not been abated, because while the said Notices were in force, between 1972 and 1974, they may have affected legitimate interests of the applicants. Moreover, paragraph 7 of each of the two 1974 Notices states expressly that the 1972 Notices were repealed without prejudice to anything done, or omitted to be done, under them.

It is useful to review, at this stage, the relevant legislative history, which is as follows:-

(i) On May 25, 1967, the Council of Ministers, acting under section 19(1) of Cap. 96, amended regulation 6(6) of the Streets and Buildings Regulations (see No. 403 in the Third Supplement to the Official Gazette), and published, on the same date, a Notice, under such regulation, imposing restrictions in respect of the heights and the number of storeys of buildings (see No. 404 in the Third Supplement to the Official Gazette). Eventually, this Notice was, on January 12, 1970, declared to be invalid in *Marangos and others* v. *The Municipal Committee of Famagusta*, (1970) 3 C.L.R. 7, on the ground that the aforementioned amendment of regulation 6(6) was ultra vires section 19(1) of Cap. 96.

(ii) In the meantime, and with effect as from January 3, 1969, there were amended, by the Streets and Buildings Regulation (Amendment) Law, 1969 (Law 12/69), sections 14(1) and 19(1) of Cap. 96, by the addition thereto, respectively, of new paragraphs (d) and (c1), empowering the imposition of restrictions regarding the heights and the number of storeys of buildings.

(iii) Section 14(1), above, had been previously amended by Law 65/64 which introduced in it a new paragraph (b), and as a result the then existing paragraph (b) was renumbered as paragraph (c); the said new paragraph (b) empowers the creation of zones for purposes

of tourism and the imposition, in relation thereto, of certain building restrictions.

(iv) On June 6, 1969, Law 12/69 was repealed by the Streets and Buildings Regulation (Amendment) (No. 2) Law, 1969 (Law 38/69) and there were enacted by means of it new paragraphs (d) and (e1), of sections 14(1) and 19(1), respectively, of Cap. 96, enabling the imposition of more extensive than before building restrictions. There was, also, added to section 19 of Cap. 96 a new subsection (3) providing that any Regulations to be made under such section must be placed before the House of Representatives for approval; and it should be noted that similar provision had, also, been made, earlier, by means of section 4(2) of Law 12/69.

(v) On July 11, 1969, regulation 6(6) of the Streets and Buildings Regulations was amended once again, in the exercise of the powers under the amended, as above, section 19(1) of Cap. 96 (see No. 567 in the Third Supplement to the Official Gazette). By means of sub-paragraph (a) of the new regulation 6(6) the Council of Ministers was empowered to publish Notices imposing building restrictions, and in sub-paragraph (b) of such regulation there were reproduced, in substance, the aforementioned provisions of subsection (3) of section 19 of Cap. 96, so that any Notice to be published under sub-paragraph (a) has to be placed, also, before the House of Representatives for approval.

(vi) On August 8, 1969, there was published, by the Council of Ministers, with the approval of the House of Representatives, a Notice (to be referred to hereinafter in this judgment as "Notice 640") under regulation 6(6), above, imposing certain building restrictions in relation to specified areas in all the Districts of Cyprus, with effect as from July 17, 1969 (see No. 640 in the Third Supplement to the Official Gazette). It is to be noted that the House of Representatives modified the said Notice before approving it (see its minutes of July 31, 1969, at p. 1260). The building restrictions in question relate, inter alia, to the heights and the number of storeys of buildings.

(vii) Then, on June 17, 1972, the two sub judice Notices, No. 116 and No. 117 (to be referred to hereinafter in this judgment as "Notice 116" and "Notice 117") were published under section 14(1) of Cap. 96, with the approval of the Council of Ministers (see its Decision No. 11.489 of June 15, 1972), but without having been placed before the House of Representatives for approval, inasmuch as no such requirement is to be found in the said section 14. By means of these two Notices there were imposed, in relation to certain specified areas in the Limassol District, much more extensive building restrictions than those which were imposed by means of Notice 640; some of these restrictions are of the same nature as those provided in Notice 640 and some relate to other matters not regulated by means of Notice 640.

By paragraph 7 of both Notices 116 and 117 there was repealed Notice 640, as well as earlier Notices which had been published under section 14(1) of Cap. 96 (see No. 404 in the 1955 Subsidiary Legislation, No. 63 in the 1960 Subsidiary Legislation, and No. 250 in the Third Supplement to the 1962 Official Gazette), in so far as they relate to the areas affected by Notices 116 and 117.

The said two Notices 116 and 117, in relation to which there appears to have taken place due compliance with all essential formalities, constitute administrative action which comes within the ambit of the relevant powers which were vested, under section 14 of Cap. 96, in the "appropriate authorities" concerned and were exercisable with the approval of the Council of Ministers (see *Loiziana Hotels Ltd.* v. *The Municipality of Famagusta* (1971) 3 C.L.R. 466, 473).

The validity of the aforesaid Notices has been challenged on, inter alia, the ground that they were ultra vires, mainly because, allegedly, section 14(1)(d) empowers only the defining of zones within which building restrictions can be imposed solely by the Council of Ministers under section 19(1) of the same Law.

The above contention cannot be upheld - (even though at first sight it might appear to be plausible in view of the words "shall be regulated" ("θά ρυθμίζωνται") in paragraph (d) of

subsection (1) of section 14, as well as in view of the apparent duplicity of the relevant procedures, namely that under section 14(1) and that under section 19(1) of Cap. 96) - because it would be, indeed, unreasonable to hold that, for example, under paragraph (b) of the said section 14(1) it is permissible to define zones for purposes of tourism, and in relation to such zones there can be imposed by the "appropriate authority" itself, under the same section 14(1), very drastic building restrictions regarding the type of buildings which can be erected therein, and yet under paragraph (d) of the said section 14(1) there can merely be defined zones in relation to which the "appropriate authority" cannot itself impose, under section 14(1), rather less drastic building restrictions concerning the heights, the number of storeys and the areas of the buildings to be constructed therein; and that no differentiation as regards the extent of the powers under paragraphs (b) and (d) of section 14(1) is possible appears to be, also, the inevitable conclusion to be drawn from the provisions of section 14(2).

Moreover, it would be unreasonable to hold that for the Council of Ministers to be enabled to impose under section 19(1) of Cap. 96 building restrictions regarding heights, the number of storeys and the areas of buildings, it is necessary for the "appropriate authority" to define, first, with the consent of the Council of Ministers, under section 14(1)(d) of Cap. 96, the zones within which the Council of Ministers may subsequently impose such restrictions under the said section 19(1).

It is perhaps pertinent to observe, at this stage in this judgment, that it may possibly appear to be rather odd that in respect of the imposition of quite similar building restrictions the scrutiny of the House of Representatives is required under section 19 only, and not, also, under section 14 of Cap. 96.

It must be assumed, however, that the House of Representatives, when providing by one and the same enactment (initially by Law 12/69, and later on by Law 38/69) for different procedures under sections 14 and 19, respectively, of Cap. 96, chose deliberately to exclude from its scrutiny Notices to be published under section 14, whereas it expressly provided for such scrutiny in cases of Regulations to be made under section 19 and of Notices to be published under such Regulations; and the most

probable reason for this differentiation appears to be that what is done under section 19 may be treated as delegated legislation, whereas what is done under section 14 amounts to administrative action only.

Also, another possible reason for the said differentiation is that the restrictions under section 19 may be imposed as part of a comprehensive town and country planning scheme for the whole of Cyprus, such as is, for example, the aforementioned Notice 640, whereas restrictions under section 14 are laid down by a local "appropriate authority" and can, therefore, be only of a limited territorial application; and it is, also, clear from the opening words of sub-paragraph (a) of regulation 6(6) of the Streets and Buildings Regulations, which was made under section 19 of Cap. 96, (and under which the aforementioned Notice 640 was published) that the imposition of building restrictions under such regulation is not an exclusive procedure in this connection.

In any event, as this Court cannot control legislative policy, it cannot refuse to treat as effective a statutory provision, such as section 14 of Cap. 96, merely because that provision seems, prima facie, to be a perhaps peculiar mode of legislating, so long as it is not unconstitutional or otherwise invalid.

As regards the issue of the constitutionality of Notices 116 and 117, which were published under section 14, above, there should be stressed, mainly, the following:-

(a) They involve restrictions or limitations of the exercise of the right of property, imposed by law, in the interest of town and country planning and for the development and utilization of properties to the promotion of the public benefit, in the sense of Article 23.3 of the Constitution (see, also, the *Loiziana* case, supra).

(b) They make detailed provisions for putting into effect restrictions or limitations of the right of property within the framework laid down by a Law - in this instance section 14 of Cap. 96 - and they are, therefore, within the requirements of constitutionality which were expounded in *Police v. Hondrou*, 3 R.S.C.C. 82, 85-86.

(c) The restrictions or limitations imposed by means of the two Notices in question are not so patently unreason-

able or arbitrary as to be treated as having exceeded the limits of the relevant discretionary powers; and, once this is so, it is not within the competence of this Court to embark on an evaluation of the correctness of such Notices from the scientific point of view.

(d) The sanctity of the right of property, to the extent to which such right is constitutionally protected by means of Article 23 of the Constitution, is not violated by the said Notices because:-

(i) In any individual case in which the restrictions or limitations imposed by them materially decrease the economic value of the affected property the owner of such property is entitled to compensation under Article 23.3.

(ii) In any individual case in which the said restrictions or limitations entail such drastic consequences that they amount in effect to "deprivation", in the sense of paragraphs (2) and (4) of Article 23, then the operation, to that extent, of the sub judice Notices 116 and 117 has to be treated as being unconstitutional (see, inter alia, in this connection, the case of *The Holy See of Kitium v. The Municipal Council of Limassol*, 1 R.S.C.C. 15, 28).

It is necessary to deal, next, in this judgment, with the fact that the aforementioned Notice 640 was "repealed" by means of paragraph 7 of each one of the two sub judice Notices 116 and 117.

This was not really an instance of repeal in the true sense, but merely a mode of rendering inoperative the relevant provisions of Notice 640 in so far as they were applicable to the particular areas to which the aforesaid two Notices relate.

What has, in effect, happened was that the local authorities concerned, acting as the "appropriate authorities" under section 14 of Cap. 96 imposed, in view of special local conditions, with the consent of the Council of Ministers, more extensive building restrictions in respect of the particular areas in question, in the place of the less drastic restrictions which were initially provided for by Notice 640 (and see, also, in this connection, inter alia,

Vedel on Droit Administratif, 5th ed., 1973, pp. 297-298 and p. 789).

It is to be noted that Notice 640 imposed restrictions of the kind envisaged, mainly, by paragraphs (d) and (e1), respectively, of sections 14(1) and 19(1) of Cap. 96, whereas Notices 116 and 117 imposed restrictions envisaged by practically all four paragraphs of section 14(1). Consequently, the partial "repeal" of Notice 640 by means of Notices 116 and 117 assumes, when it is viewed in the light of the foregoing, even more clearly its true significance, namely that Notice 640 was rendered inoperative in relation to the particular areas concerned so that there could be imposed in respect thereto more comprehensive restrictions.

We were invited to hold that it was not possible for the "appropriate authorities" concerned, acting under section 14(1), above, to repeal, even with the consent of the Council of Ministers Notice 640, which had been published by a hierarchically superior organ, namely the Council of Ministers, under regulation 6(6), which was made under section 19(1) of Cap. 96; and reliance has been placed, in this respect, on the "theory of the formal hierarchy of administrative acts". In our opinion, however, what has actually taken place in the present instance cannot be invalidated on the strength of the said theory because it is quite clear that the hierarchically superior organ, the Council of Ministers, expressly authorized a hierarchically subordinate organ, the local "appropriate authorities" concerned, to impose, by their Notices 116 and 117, as a part of a more comprehensive town and country planning scheme, restrictions which went far beyond those imposed by its own Notice 640; and, consequently, such Notice had to be described as having been "repealed" to that extent.

It is to be observed, too, that the "repeal", in part, of Notice 640 by the sub judice Notices 116 and 117 was not effected in contravention of section 29(a) of the Interpretation Law, Cap. 1, which reads as follows:

> "29. Where any Law confers power on any authority to make any appointment or to make or issue any public instrument, the following provisions shall, unless the contrary intention appears, have effect with reference to the making, issue and operation of such instrument -

(a) the instrument may be at any time amended, varied, rescinded, or revoked by the same authority and in the same manner by and in which it was made;

....".

As a matter of fact the said "repeal" took place with the approval of the same organ, that is the Council of Ministers, which had published Notice 640; and, in any event, section 29(a) is an enabling provision, applicable only "unless the contrary intention appears" and in the present instance such contrary intention is to be clearly derived from all the relevant explicit provisions of Cap. 96.

Nor can it be said that in issuing or approving, respectively, the Notices 116 and 117 either the "appropriate authorities" concerned or the Council of Ministers were labouring under any misconceptions of fact or of law, as regards Notice 640, because the said organs had clearly in mind their common object, namely to introduce in respect of the particular areas in question building restrictions going beyond those already applicable to, inter alia, such areas by virtue of Notice 640.

Our attention has been drawn to the fact that when the relevant submission was prepared by the "Ministry of Interior", on June 14, 1972, seeking the approval of the Council of Ministers for Notices 116 and 117, there was not then in office the Minister of Interior, who was appointed on June 16, 1972, that is on the date prior to the publication of such Notices. We cannot find any material irregularity in this connection, especially when it is borne in mind that the said Notices were published with the approval of the Council of Ministers as a collective organ and not with the separate approval of each individual Minister participating in it.

Before concluding we would like to observe that in the particular circumstances in which Notices 116 and 117 were published there was no possibility of making a comprehensive study of the financial implications of their implementation, because such implications depended on many unforeseeable developments in the near and distant future. So it cannot be held that there was lack of due inquiry in this respect. The Government must be presumed to have decided to meet whatever would be the cost entailed in implementing the restrictions in question, by paying

compensation under Article 23.3 of the Constitution or by acquiring, whenever necessary, compulsorily certain properties. The position, in this connection, is radically different from the adoption of a street-widening scheme for a particular street, in which case it is usually feasible to estimate the reasonably necessary extent of the financial consequences of the scheme.

It remains to be seen whether, on the basis of this judgment, each one of the present cases, which have been heard together, is to be treated as having been fully disposed of in respect of all the issues arising therein or whether any one of them has to be heard further on any issue still remaining undetermined.

As regards the hearing of these cases till now we shall not make any order as to costs.

HADJIANASTASSIOU J.: I regret that I find myself in full disagreement with the majority judgment in this very important case and I shall proceed to give my own views.

The applicant Ioulia Manglis applied to the Court for the following relief:

(a) Declaration that the Regulations and/or Notification published under Not. 2 of the Cyprus Gazette No. 1064 Supplement No. 3 dated 8.1.1974 are null and void and of no effect whatsoever and/or that the aforesaid regulations and/or notification are, in so far as they relate or affect in any way Applicant's property and/or in so far as same relate to Zone "B3" of the Schedule attached thereto, null and void and of no effect whatsoever.

(b) Declaration that the decision of the Respondents contained in exh. 2 attached hereto, to implement and/or apply the above mentioned regulations in dealing with an application for a building permit by Applicant and/or their decision to deal with and/or examine such an application on the basis of the above Regulations and not on the basis of the legislative status prevailing before the enactment of the said Regulations, is null and void and of no effect whatsoever.

Indeed, the present application is based on the following grounds of law:-

(1) The restrictions or limitations imposed by the relevant regulations and/or notification are not warranted by Art. 23.3 of the Constitution and, in any case, no compensation has been tendered or paid therefor.

(2) The relevant regulations and/or notification amount to restriction in the exercise of the business of real estate, such restrictions being outside the ambit of Art. 25.2 of the Constitution.

(3) The relevant regulations and/or notification are discriminatory in contravention of Art. 28 of the Constitution.

(4) The regulations and/or notification are ultra vires in that (1) they conflict with the provisions of the Streets and Building Regulations and (2) they are outside the ambit of Cap. 96 and more particularly s.14 and 19 of Cap. 96.

(5) By the said regulations and/or notification respondents purport to exercise legislative power contrary to Art. 54 of the Constitution and s.19 of Cap. 96.

(6) The said regulations are in abuse of powers being entirely unjust, unreasonable and arbitrary and they have not been preceded by any proper study.

(7) Respondents failed to take into account and/or weigh properly or at all, all relevant and material factors.

The following facts are relied upon in support of the present applications:-

(1) Applicant is the owner of land 51/2 donums in extent situated at locality Zintilis Potamos tis Yermasoyias. Yermasoyia No. 18996.

(2) The regulations and/or notification complained of affect quite substantially the economic value of that property because while before their publication, applicant could build about 110 flats she can now do only a negligible development and of a specified nature. Applicant thus suffers very substantial damages running into several

hundreds of thousands of pounds. In spite of this no compensation has been tendered or paid.

Indeed, there were a further 7 recourses made under Article 146 of the Constitution and they were heard together and on common issues under s.14(1) of the Streets and Buildings Regulation Law, Cap. 96 as amended in this respect, by the Streets and Buildings Regulation (Amendment) Law, 1964, (Law 65, 64) and by the Streets and Buildings Regulation (Amendment) (No. 2) Law, 1969 (Law 38/69). The present cases were being heard together with nine similar recourses (243/72, 247/72, 306/72, 328/72, 330/72, 337/72, 339/72, 343/72, 345/72) which have been withdrawn before the delivery of this judgment. The aforesaid two notices were published, respectively, by the District Officer of Limassol and by the Improvement Board of Yermasoyia as the "appropriate authorities" for the purposes of section 14(1), above. Later on they were repealed and replaced by two new notices which were published on January 8, 1974 again under s.14(1) of Cap. 96. These new notices have also been challenged by means of recourses.

On March 2, 1974, counsel appearing for the applicant Ioulia Manglis, addressed a letter to the Yermasoyia Improvement Board and had this to say:-

"On behalf of our client Mrs. Ioulia Manglis of Nicosia, we beg to refer to the following:

(1) Our client is the owner of immovable property Reg. No. 18996 plots 129/1 and 130/2 Sh/pl. No. LIV/52 in Yermasoyia.

(2) The above property comes under Zone "B3" of the Streets and Buildings Regulations published on 8.1.1974 under Notification No. 1 of the Cyprus Gazette No. 1064.

(3) Before the publication of the above Regulations our client commenced the preparation of plans for the erection of 170 flats covering a total area of 172,600 sq. ft. i.e. 220% of the area of her said property.

(4) Under the new Regulations, our client can build only a very small building.

(5) Our client wished to submit a formal application for building permit supported by the usual architectura plans for the construction of 170 flats by covering 220% of the area i.e. 172.600 sq. ft. provided that you will b willing to examine her application on the legislative statu prevailing before the enactment of the said Regulation i.e. without taking into account the said Regulation which, our client considers as null and void.

(6) On the other hand, if, as we understand from you practic after 8.1.1974 you will examine our client's applicatio on the basis of the Regulations, then please let us kno so that our client may not undergo the very substantia expense of completing the architectural plans for 17 flats.

(7) It is therefore, necessary, at this stage to request you t communicate to us your decision as to whether, in examin ing our client's proposed building application after th enactment of the said Regulations you will conside yourselves bound by them and examine such an applica tion on their basis or not.

(8) As you may realise if you do not give us a concrete an unequivocal answer to the above question and if ou client proceeds with the completion of her plans for 17 flats, only to be told thereafter that her plans are i contravention of the Regulations, we shall be holdin both the Improvement Board as well as you personall liable for all the cost which will be thus thrown away o account of any failure on your part to give us, at thi stage, a definite reply to our client's above request.

(9) A similar letter was addressed to you when the origina regulations of 17.6.1972 were published and, at that time you replied that you were going to deal with any appli cation to be submitted by our client under the legislativ statutes prevailing after the enactment of the Regulations We, therefore, call upon you to reply to this letter a well, because, after the enactment of the new Regulations it has become necessary to address this communication to you".

On March 14, 1974, counsel for the applicant had this to say:-

"Further to our letter of the 2nd March 1974, addressed to you on behalf of our client Mrs. Ioulia Manglis, we would mention that the number of the relevant notification is Notification No. 2 and not 1 as it has been incorrectly stated.

We should be much obliged to have your reply to our above mentioned letter the soonest possible, and in any case, not later after the lapse of the 30 days from the 2nd of March as provided in the Constitution".

On 31st July, 1974, Mr. Loucaides, counsel appearing for the respondent, opposed the application and his opposition was based on the following legal points:

"(1) The sub judice notification and regulations cannot form the subject matter of a recourse under Article 146 of the Constitution because they amount to acts of a legislative nature;

(2) Applicant does not fulfil the prerequisites of paragraph 2 of Article 146 of the Constitution relating to existence of existing legitimate interest which is directly effected since no application for erection of any building on her property affected by the said notification has ever been made;

(3) In any case, the said acts were taken lawfully on the basis of all material elements and facts".

The validity of the aforesaid notices 116 and 117 has been challenged on the ground that they were ultra vires mainly because allegedly s.14(1)(d) empowers only the defining of zones within which building restrictions can be imposed solely by the Council of Ministers under s.19(1) of the same law.

Speaking for myself and adopting the strong and able argument of counsel for the applicant, Mr. A. Triantafyllides, it is clear to me that it was not possible for the appropriate authorities concerned acting under s.14(1) above to repeal, even with the consent of the Council of Ministers, notice 640 which has been published under reg. 6(6) and which was made under

s.19(1) of Cap. 96. Counsel further argued and reliance has been based in this respect on the theory of the formal hierarchy of administrative acts.

On the contrary, in the opinion of the majority it was accepted that what has actually taken place in the present instance cannot be invalidated on the strength of the said theory and because it was quite clear that the hierarchically superior organ, i.e., the Council of Ministers, expressly authorized a hierarchically subordinate organ, the local appropriate authorities concerned to impose by their Notices 116 and 117 as a part of a more comprehensive town and country planning scheme, restrictions which went far beyond those imposed by its own Notice 640, and consequently, such Notice has to be described as having been repealed to that extent.

With the greatest respect to the majority, I find myself in complete disagreement and I am of the opinion that the restrictions and/or limitation are not warranted by Article 23.3 of the Constitution and in any case, no compensation has been tendered or paid therefor.

With this in mind, I have reached the conclusion that the recourse in the present case succeeds but in the particular circumstances, I am not making an order for costs.

Recourses dismissed by majority with no order as to costs.