

1985 November 15

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION.

RENA E. PANAYIOTOPOULOU-TOUMAZI,

Applicant,

v.

THE MUNICIPAL COMMITTEE OF NICOSIA.

Respondents.

(Case No. 580/84).

5 *Legitimate interest—Failure to reply within the time limited
by Article 29 of the Constitution—If applicant proceeds
with the substance of the matter and if he does not suffer
by reason of such failure a detriment, which if the omission
to reply is annulled under Article 146.4 of the Constitu-
tion, would entitle him to relief under Article 146.6, he
does not continue to possess a legitimate interest as re-
gards the omission to reply—If applicant has suffered such
a detriment, he does possess a legitimate interest to pursue
10 the recourse against the omission of the authority to reply
to him.*

15 *Time within which to file a recourse—Omission—Distinction
between a non-continuing and a continuing omission—
Application for a building permit—The omission to reply
to such an application is of a continuing nature—There-
fore, this recourse, which was filed 22 months after the
application for the building permit was submitted to the
respondents, is not out of time.*

20 *Constitutional Law—Articles 29 and 146.1, 146.2, 146.3,
146.4 and 146.6 of the Constitution.*

On 14.1.83 the applicant submitted to the respondents,
as the competent authority, an application for a building

permit on plot 202 in Nicosia. No reply was given to the applicant for almost 22 months and on 1.11.84 the applicant filed this recourse impugning both the omission of the respondents to determine the application (Prayer A in the Recourse) and the omission of the respondents to issue the building permit applied for (Prayer B in the Recourse.).

By their opposition the respondents raised the following preliminary objections, namely: (a) Since the applicant proceeded in respect of the substance of the matter for which a reply had been sought and since she has not suffered any detriment by respondents' failure to reply to her application, the applicant does not possess a legitimate interest as regards the omission in Prayer A of the recourse, (b) that since there was no decision existing at the time of the recourse refusing the applicant's application, the Court cannot grant the relief claimed in Prayer B of the recourse and (c) that the recourse is out of time.

It should be noted that on 7.12.84 a notice for the compulsory acquisition of plot 202 was published in the official Gazette. Counsel for the applicant admitted that due to the omission to issue the permit applied for and/or to reply to the applicant, the applicant has suffered material detriment.

The objections hereinabove referred to were heard as preliminary points of law.

Held, dismissing the preliminary objections:

(1) Article 29 of the Constitution embodies the right of the citizen to refer to the authorities. The authority, if the matter is within its competence, should decide the matter and communicate a duly reasoned decision within a period not exceeding 30 days to the person addressing the written request to the authority. A person aggrieved by the failure to furnish him with a reply as aforesaid has a right of recourse to a competent Court. If the authority, which fails to reply, is one of those referred to in Article 146.1 of the Constitution, then this Court is the competent Court.

(2) Where a person, who has not received a reply as provided by Article 29 of the Constitution, proceeds under

Article 146 in respect of the substance of the matter for which a reply has been sought, such person does not continue to have a legitimate interest as regards the failure to reply unless by reason of such failure such person suffered some material detriment which would entitle him to relief under Article 146.6 of the Constitution. The wording of the relief sought is not material as it is upon the Court to determine the relief to be granted. An applicant who complains of an omission is entitled to the relief provided for in Article 146.4 (c) of the Constitution.

In view of the above the first two preliminary objections have to be dismissed.

(3) As the omission to determine the applicant's application for a building permit was a continuing one, this recourse is not out of time.

Order accordingly.

Cases referred to:

- Kyriakides v. The Republic*, 1 R.S.C.C. 66;
Lambrou v. The Republic (1969) 3 C.L.R. 497;
Republic v. Nishiotou (1985) 3 C.L.R. 1335;
Cullen v. The Republic (1974) 3 C.L.R. 101;
Moran v. The Republic, 1 R.S.C.C. 10;
Marcoullides v. The Greek Communal Chamber, 4 R.S.C.C. 7;
Mourtouvanis and Sons Ltd. v. The Republic (1965) 3 C.L.R. 108;
Moustafa v. The Republic, 1 R.S.C.C. 44;
Papasavva v. The Republic (1973) 3 C.L.R. 467.

Recourse.

Recourse against the omission of the respondents to de-

termine applicant's application whereby she applied for a building permit on her property at Nicosia.

A. Skordis, for the applicant.

A. Indianos, for the respondents.

Cur. adv. vult. 5

STYLIANIDES J. read the following judgment. The applicant by this recourse seeks:-

«(A) Δήλωσιν ότι η παράλειψις του καθ' ου να επιληφθή ή/και αποφασίση επί της αιτήσεως της αιτητριάς ημερομηνίας 14.1.1983 Αρ. 13/83 δια της οποίας αυτή αιτείται άδειαν οικοδομής επί του τεμαχίου αρ. 202 Φ/Σχ. XXI/45.6.11. Σύμπλεγμα «C» εις Λευκωσίαν, εντός της αρμοδιότητος του καθ' ου, και/ή όπως γνωστοποιήση, δεόντως ητιολογημένην, την τοιαύτην απόφασιν του προς την αιτήτριαν, είναι άκυρος, παράνομος και εστερημένη παντός αποτελέσματος 10 15

(B) Δήλωσιν ότι η παράλειψις του καθ' ου να εκδώση άδειαν οικοδομής συμφώνως τη αιτήσει της αιτητριάς ημερομηνίας 14.1.83 ανωτέρω, είναι άκυρος και παράνομος και εστερημένη παντός αποτελέσματος και/ή δήλωσιν ότι παν ότι παρελήφθη δέον όπως διενεργηθή υπό της αρμοδίας αρχής». 20

("(a) Declaration that the omission of the respondents to determine the application of the applicant dated 14.1.83 No. 13/83 whereby she applied for a building permit for Plot No. 202, Sheet/Plan XXI/45.6.11, Block "C" in Nicosia, within their competence, and/or to communicate a duly reasoned decision to the applicant, is null and void, unlawful and of no effect whatsoever. 25 30

(b) Declaration that the omission of the respondents to issue a building permit in accordance with the application of the applicant dated 14.1.83 hereinabove is void, unlawful and of no effect whatsoever and/or declaration that whatever has been omitted should have been performed by the appropriate authority"). 35

The respondents in the opposition raised the following preliminary objections:-

5 "1. (a) Prayer (A) of the application must be dismissed on the ground that since the applicant has not received any reply and since there is no evidence showing that she has suffered any material detriment as a result of the failure itself and since she has proceeded in respect of the substance of the matter for which a reply had been sought, she has not any existing legitimate interest and/or she is not entitled to a distinct and separate decision and/or relief of the Court on the above issue.

10 (b) Prayer (B) of the application must also be dismissed on the ground that since there was no decision existing at the time of the recourse refusing the application for the issue of a building permit, the Court cannot grant the relief claimed therein.

20 2. The present recourse was filed out of time, i.e. contrary to Article 146.3 of the Constitution, as it was not filed within 75 days from the date that the alleged omission came to the knowledge of the applicant".

On the application of both counsel the Court directed to dispose the aforesaid as preliminary points of law.

25 The applicant is the owner of a building site shown on the D.L.O. map as Plot 202, Sheet/Plan XXI/45.6.11, Block "C", in Nicosia. The respondents are the appropriate authority under the Streets & Buildings Regulation Law, for the issue of building permits.

30 On 14.1.83 the applicant submitted to the respondents an application for a building permit attaching thereto all drawings and other documents required under the law and the regulations. No reply was given to the applicant for almost 22 long months and on 1.11.84 the applicant filed this recourse.

35 On 7.12.84 a notice of compulsory acquisition of the aforesaid building site was published in the Official Gazette of the Republic under Notificaton No. 2015.

Counsel for the respondents admitted in the course of the hearing that the applicant, due to the omission of the respondents to issue the building permit applied for and/or to reply within 30 days and/or at all, has suffered material detriment, including, inter alia, fees and expenses for the preparation and submission of architectural drawings, increase of the cost of construction of the proposed building from 14.1.83 until today, loss of the free use and/or use and development of the building site; the value of the building site was adversely affected; the machinery for the deprivation of her property by compulsory acquisition was set in motion, as the respondents' delay and omission was deliberate in order to achieve the acquisition of this property.

Article 29 of the Constitution reads as follows:-

"1. Every person has the right individually or jointly with others to address written requests or complaints to any competent public authority and to have them attended to and decided expeditiously; an immediate notice of any such decision taken duly reasoned shall be given to the person making the request or complaint and in any event within a period not exceeding thirty days.

2. Where any interested person is aggrieved by any such decision or where no such decision is notified to such person within the period specified in paragraph 1 of this Article, such person may have recourse to a competent Court in the matter of such request or complaint".

This embodies the right of the citizen to refer to the authorities. The authority, if the matter is within its competence, has an obligation, under the Constitution, to attend to the matter, decide expeditiously and communicate a duly reasoned decision within a period not exceeding 30 days to the person addressing the written request to the authority.

Paragraph 2 of Article 29 gives, inter alia, an aggrieved person a right of recourse to a competent Court in respect

of the failure to furnish him with a reply in accordance with paragraph 1 of such Article. It is clear that, where the competent public authority, which has failed to reply as above, is one of those referred to in paragraph 1 of Article 146, then this Court is the competent Court in question and proceedings lie before it under Article 146 in respect of such failure itself to reply—(*Kyriakides v. The Republic*, 1 R.S.C.C. 66, 77; *Andreas Lambrou v. The Republic*, (1969) 3 C.L.R. 497; *Republic v. Nishiotou*, (1985) 3 C.L.R. 1335, 1347).

It is common ground that the respondents are the competent authority for the issue of building permits and that a decision whether or not to issue a building permit is a decision which can be the subject-matter of a recourse under Article 146.1 of the Constitution. Where, however, a person who has not received a reply as provided under Article 29, has proceeded under Article 146 in respect of the substance of the matter for which a reply had been sought, then it cannot be said that such a person continues any longer to have "any existing legitimate interest", as provided by paragraph 2 of Article 146, unless as a result of such failure itself he has suffered some material detriment which would entitle him to a claim for relief under paragraph 6 of Article 146 after obtaining a judgment of this Court under paragraph 4 of the same Article—(*Kyriakides* case (*supra*) and subsequent caselaw, including *Inez Cullen v. The Republic*, (1974) 3 C.L.R. 101).

In the present case the respondents had a duty to deal with and decide expeditiously on the application of the applicant. Instead of doing so, they started consultations with Government departments on whether it was advisable to construct a road on the building site of the applicant and/or to compulsorily acquire it.

It is common ground that this omission resulted in material detriment to the applicant. The applicant by praying relief (b) in respect of the substance of the matter, for which the reply had been sought, in the light of the foregoing continues to have an existing legitimate interest. Therefore, she is not precluded from applying for relief for the wrong-

ful omission under Article 29 and for the substance of the matter.

The wording of the relief, as sought, is not material and it is upon the Court at the final stage of this recourse to determine the relief to be granted to the applicant. An applicant who complains for omission is entitled to the relief provided for in Article 146.4 (c) that reads:- 5

“4. Upon such a recourse the Court may, by its decision -

(a) 10

(b)”

(c) declare that such omission, either in whole or in part, ought not to have been made and that whatever has been omitted should have been performed”. 15

In view of the aforesaid, the objections taken under paragraphs 1 (a) and (b) of the opposition fail as the applicant, in the circumstances of this case, was entitled to claim relief by recourse both against the omission under Article 29 and on the substance of the matter. 20

The last objection is based on paragraph 3 of Article 146 of the Constitution which reads as follows:-

“3. Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse”. 25

The period of time provided for in the said paragraph is mandatory and has to be given effect to in the public interest in all cases—(*John Moran v. The Republic*, 1 R.S.C.C. 10; *Joyce Marcoullides v. The Greek Communal Chamber*, 4 R.S.C.C. 7, 10; *Mourtouvanis & Sons Ltd. v. The Republic*, (1965) 3 C.L.R. 108). 30

We are not concerned about “decision” or “act” but only with “omission”. A distinction must be made between a non-continuing omission (e.g. the failure of a competent 35

authority to issue a permit in respect of something to be done on a particular date) and an omission which is of a continuing nature—(*Hassan Mustafa v. The Republic*, 1 R.S.C.C. 44, 47; *Lefki Papasavva v. The Republic*, (1973)

5 3 C.L.R. 467).

I have given this issue careful consideration and I am of the opinion that, inasmuch as the nature of the complaint in respect of which this recourse has been made is an omission to determine an application for a building permit and such omission was still continuing on the date on which this recourse was filed, the matter should be regarded as a continuing omission for the purposes of paragraph 3 of Article 146 of the Constitution and I hold that this recourse is not out of time.

10 In the light of the above the objections raised in paragraphs 1(a) and (b) and 2 of the opposition fail.

The case is fixed for hearing of the remaining issues.

Order accordingly.