

1986 July 22

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

PAVLOS M. SIAFTACOLAS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
(a) THE COUNCIL OF MINISTERS,  
(b) THE MINISTER OF INTERIOR.

*Respondents.*

*(Case No. 108/81).*

---

*Legitimate interest—Omission to reply—Constitution, Article 29—Reply given by the competent organ, namely the District Officer of Larnaca, after the filing of the recourse—Applicant had accepted that the District Officer was the competent organ and did not suffer any detriment by reason of any omission to reply, which would entitle him to claim damages under Article 146.6 of the Constitution after an annulling judgment of this Court—Applicant lost his legitimate interest, which must also exist at the time of the hearing—Recourse abated.* 5 10

*Treaty of Establishment—Article 2 and Appendix “O”—British Sovereign Bases—Appendix “O” is a declaration of intention by Her Majesty’s Government—Contention by applicant that under Appendix “O” the consent of the Government of Cyprus is required for any development of property within the area of a Sovereign Base—Appendix “O” nowhere contains such a provision—It does not and could not by its very nature cast any specific statutory duty on the Government of the Republic.* 15

*Streets and Buildings—Property situated within the British Sovereign Base of Dhekelia—Treaty of Establishment, Article 2 and Appendix ‘O’—Development of such property—By* 20

*some arrangement an application for building on such property should be submitted for examination to the District Officer of Larnaca.*

5 On the 27.10.80 the applicant, who is a citizen of the Republic, wrote through his counsel to the Minister of Justice, complaining that the District Officer of Larnaca, instead of transmitting the application, which had been submitted to him for the touristic development of applicant's property, situate, within the Sovereign Base Area  
10 of Dhekelia, to the British Authorities of the Bases, he requested the applicant to apply to the Water Board of Larnaca for a water supply permit for the said property.

15 It should be noted that on the 13.10.80 the applicant had complied with such request and that by letter dated 3.11.80 the District Officer informed the applicant that his request could not be granted because the property was situated outside the Water Supply Area of the Larnaca Water Board and because it was situated in an area where building construction is contrary to the Treaty of  
20 Establishment, Article 2 of Appendix "O"

25 By letter dated 24.11.80 the Ministry of Interior informed the applicant that his complaint to the Minister of Justice had been transmitted to it and that his request could not be granted as the property was situated outside the said area of water supply and within an area where construction is contrary to the said Article 2 of Appendix "O" of the said Treaty.

30 On the 1.12.80 the applicant applied to the Council of Ministers, requesting the consent of the Government to the touristic development of the said property by the construction of a hotel and/or tourist apartments.

35 By means of the present recourse, which was filed on the 16.3.81, the applicant impugns the omission to reply to his application dated 1.12.80 and/or the omission of the respondents to grant their consent for the said development of applicant's property.

There followed a correspondence between the applicant and the Ministry of Interior on the one hand and the

applicant and the District Officer of Larnaca on the other hand.

By letter dated 12.9.81 the said Ministry referred the applicant to the said District Officer, as being the competent organ to issue building permits. The applicant did so and by letter dated 29.12.81 the District Officer informed his counsel that the applicant must secure a building permit and that, therefore, he must submit the relevant application as provided by the Streets and Buildings Regulation Law. He further added that the touristic development of the said property is not possible as it is outside the said water supply area and lies in a dangerous from the military point of view area of the British Sovereign Base. 5 10

The Court found that the claims contained in certain of the applicant's letters, namely that almost all the members of the Water Board did not object to the issue of a permit for the supply of water and that the British Authorities did not object to the construction of a hotel or tourist apartments, were not accurate. 15 20

The Court, also, found that at no time did the applicant submit a proper application for a building permit and that he was merely inquiring as to what the attitude of the Government would be regarding a vague intention for the development of the said property. 25

It further appears that by some arrangement applications for building permits within the Sovereign Base of Dhekelia have to be submitted to the District Officer of Larnaca for examination.

It was contended on behalf of the applicant that before a building permit, concerning property within the Sovereign Base, is obtained, the consent of the Government is required. He based his proposition on Appendix "O" of the Treaty of Establishment and Article 54 (a) of the Constitution. 30 35

*Held, dismissing the recourse:* (1) Although nowhere in Appendix "O" there is any provision for such consent, yet, even if it existed, it could not be given on an appli-

5 cation, which vaguely refers to an intention for touristic development. Moreover, one thing is clear, that Appendix "O", does not and could not by its very nature cast any specific statutory duty on the Government of the Republic beyond the general one, cast upon every Government, to protect the rights of its citizens.

10 (2) The applicant accepted the intimation that the competent organ was the District Officer of Larnaca. It is abundantly clear that the applicant did not suffer any material detriment by reason of any failure to reply to him, which would entitle him to proceed under Article 29.2 of the Constitution and claim for relief under Article 146.6 after obtaining an annulling judgment of this Court.

15 In the light of the above, and once the matter was dealt by the competent organ and a reply was given to the applicant (Letter of District Officer dated 29/12/1981) the present recourse has been abated for lack of legitimate interest, which must also exist at the time of the hearing  
20 of a recourse.

*Recourse dismissed.  
No order as to costs.*

Cases referred to:

*Kyriakides v. The Republic*, 1 R.S.C.C. 66.

25 **Recourse.**

30 Recourse against the omission of the respondents to answer applicant's application and/or their omission to grant their consent for the touristic development of applicant's property situated within the boundaries of the British Sovereign Base Area of Dhekelia.

*A. Eftychiou*, for the applicant.

*A. Vassiliades*, for the respondents.

*Cur. adv. vult.*

35 *A. Loizou J.* read the following judgment. By the present recourse the applicant seeks: "Declaration of the

Court that the continued omission of the respondents to answer the application of the applicant dated 1st December 1980, submitted to them and/or the omission of the respondents to grant their consent, applied for by him in his application for touristic development of his property situate within the boundaries of the British Sovereign Base Area of Dhekelia, is null and void and that what was omitted ought to have been performed". 5

The applicant is a citizen of the Republic and on the 1st December, 1980, (exhibit A), applied to the Council of Ministers as follows: 10

"I wish to refer to the property under Registration No. 4847 situate in the village of Pyla, Larnaca and lying within the Dhekelia Base opposite the restaurant known as 'Fair Winds' and request from you that the Government of the Republic of Cyprus consents to the touristic development of the said property for the construction of a hotel and/or tourist apartments by virtue of Appendix 'O' to the Treaty of Establishment. 15 20

2. For that purpose you are informed that in contacts with the Authorities of the Sovereign Base Areas in Cyprus they informed me that they would have no objection to give also their consent for the construction of a hotel and/or tourist apartments on the said property. 25

3. Already the Government of the Republic of Cyprus has by virtue of Decision No. 8063, of the Council of Ministers, dated 16th August 1968, given similar consent for the same purpose regarding the intended touristic development of property situate within the Base Areas. 30

4. The construction of a hotel and/or tourist Apartment on a seaside area of Cyprus as the above does not on one hand affect the security or the strategic importance of the Bases, a fact which is proved by the willingness of the Authorities of the Sovereign Base Areas to give their consent and it helps on the other hand, the touristic development of Cyprus 35

especially after the occupation of the greatest seaside areas of Cyprus by the invading Turkish Forces.

5        5. The place where my said property is situate is opposite the restaurant known as the 'Fair Winds', of Greek Cypriot ownership which is used by tourists, holiday makers and other citizens within the Dhekelia Base. ...."

10        On the 27th October, 1980, the applicant through his counsel wrote to the Minister of Justice (exhibit 4, red 10) complaining that the steps he took through the District Officer, Larnaca for the issue of a building permit by the Authorities of the Sovereign Base Areas for a hotel or tourist apartments in the aforesaid property and although it was mentioned to him by them that they would have  
15        no objection to grant such a permit, they intimated that the application had to be submitted through the District Officer Larnaca and that his client complied with it, yet "the District Officer Larnaca before he consented to the transmission of his application to the Authorities of the Sovereign Bases Areas, asked from my aforesaid client to apply to the Water Board of Larnaca for the issue to  
20        him, first of a water supply permit for the said property." He then went on to say "that almost all the members of the Larnaca Water Board seem to realise the favourable consequences for the District of Larnaca on account of a  
25        future construction of a hotel or tourist apartments on the aforesaid property, they do not object to the issue of a permit for the supply of water".

30        I need not refer at length to the whole letter. It is sufficient to say that it concludes by saying that "it was unreasonable for the District Officer to refuse to transmit the said application to the British Authorities of the Sovereign Base Areas which are willing to grant the permit applied for".

35        On the 13th October, 1980, (exhibit Y, red 6), the applicant applied to the Water Board of Larnaca for the supply of water and on the 3rd November, 1980, the District Officer Larnaca answered the said letter of the applicant (exhibit Y, red 7), informing him that his appli-  
40        cation could not be approved as the affected properties:

(a) were situate outside the boundaries of the Water Supply Area by the Larnaca Water Board and (b) they are within the area of Dhekelia British Base in an area where the building construction is contrary to the provisions of the Treaty of Establishment, Article 2 of Appendix "O".

5

On the 24th November, 1980, in response to the letter of the 27th October, 1980, addressed to the Minister of Justice the Ministry of Interior, (exhibit Y, red 14) informed the applicant that his application had been transmitted to them as a matter falling within his competence, regarding the construction of tourist apartments or hotel, could not be approved as the affected plots were outside the Water Board, water supply area and that they were within the British Bases Dhekelia where the building construction is contrary to the provisions of the Treaty of Establishment, Article 2 Appendix "O". Furthermore the applicant was told that the District Officer Larnaca had informed the Ministry of Interior that no application had been submitted by him for the construction of a building in accordance with the provisions of the Streets and Buildings Regulation Law.

10

15

20

On the 1st December, 1980, the applicant addressed a letter (exhibit Y, red 22) earlier referred to in this judgment, to the Council of Ministers for its consent. The applicant then filed the present recourse on the 16th March, 1981.

25

There followed a correspondence between the applicant and the Ministry of Interior which is to be found in the file exhibit "Y" and on the 12th September 1981, counsel for the applicant was informed (exhibit Y, red 24) that in response to his letter of the 10th August 1981, the competence for the issue of building permits belongs to the District Officer and that the Ministry of Interior could not intervene.

30

On the 10th December, 1981, counsel for the applicant wrote to the District Officer Larnaca, (exhibit Y, red 25) attaching thereto the application of the applicant to the Council of Ministers for the granting to him of their consent for touristic development of his property and goes on

35

to say: "Although I have addressed the application of my aforesaid client to the Council of Ministers for their taking a decision, yet, the Ministry of Interior by the attached letter of the 12th September 1981, in substance refer my  
5 said client to the District Officer Larnaca to deal with the application and asked that the matter be dealt with by them."

On the 29th December 1981, the following letter (exhibit Y, red 27) was sent to counsel for the applicant, by the  
10 District Officer, Larnaca.

"I wish to refer to your letter dated 10th December 1981, by which you applied that I act so that the Government of the Republic of Cyprus consents to the touristic development of property under Regi-  
15 stration No. 124/2/1 and 125/2/1 of sheet/plan/XLI/19 village of Pyla within the British Sovereign Base Dhekelia by your client Pavlos M. Siaftacolas by the construction of a hotel and or touristic apartments and inform you that your client must secure a building  
20 permit under the Streets and Buildings Regulation Law in order to be able to construct a building of any nature and in order that such a request be examined, he must submit the relevant application as provided by the Streets and Buildings Regulations.

25 2. Irrespective of the above, I wish to bring to your knowledge that the touristic development of the aforementioned property is not possible because,

(a) it lies outside the boundaries of the area which is supplied by the Water Board of Larnaca and there is no other satisfactory and suitable water  
30 supply, and

(b) the said property lies within the dangerous, from a military point of view, area of the British Sovereign Base of Dhekelia and the building development will be detrimental to the military re-  
35 quirements of the British Authorities."

When the case was fixed for directions for the first time before another Judge of this Court on the 25th May.



1981, there was no appearance and same was adjourned to the 8th June, 1981, when no appearance again was entered by or on behalf of the other side and the case was adjourned by the Honourable Judge then handling the case sine die with instructions that the Registrar informed the parties about it. I took over the hearing of this case on the 31st October 1983, and adjourned same for directions to the 9th December 1983 on which date direction was given that the opposition be filed within one month from that day. On the 2nd February 1984, at the request of both sides the case was adjourned to the 10th March, 1984, when again counsel for the respondents informed the Court that the Ministry of Interior would be replying to the applicant's application shortly he applied for a week's adjournment, which was granted. On the 24th March, 1984, the opposition was filed. The case was fixed for hearing on the 7th June, 1984 with a direction that all relevant files and documents be made available to the applicant for inspection and be produced at the trial. On the 7th June, 1984, counsel for the applicant applied that directions be given for written addresses to be filed and the case was fixed on the 4th October 1984 to be adjourned again as no written addresses were until then filed. Directions were once more made and a condition was included therein that the case will be treated as abandoned and dismissed accordingly if there was no compliance with these directions. Indeed the case was so dismissed as abandoned but on the 31st October 1984, an application to reinstate same was made to which counsel for the respondents did not object and it was granted, with new directions for written addresses to be made. This situation depicts a problem that has to be tackled by some legislative action but I need not elaborate on this question now.

On the 5th October 1985, extension of time to file written addresses was granted with no objection on behalf of the respondents and eventually the filing of written addresses was completed on the 10th April 1986 and judgment was reserved on that date.

Before considering the case any further, I would like to observe that there are certain inaccuracies in the letter addressed by or on behalf of the applicant. The one is the

allegation not in another way substantiated that in contacts with the Authorities of the Sovereign Bases Areas he was informed that they would have no objection to give their consent for the construction of a hotel or tourist apartments on his said property. This could not be so as the District Officer of Larnaca who is the competent organ to handle such applications, informed the applicant that his property lied within the bombartment range at Dhekelia which makes it impossible for the issue of a permit for construction of a building and this apart from other considerations.

The other claim of the applicant is that almost all members of the Larnaca Water Board seemed to realise the favourable consequence for the district of Larnaca from the future construction of a hotel or tourist apartments on the said property, and that they did not object to the issue of a permit for the supply of water. This is in conflict with the official reply given to the applicant by the Chairman of the Water Board that the property in question lied outside their water supply area and consequently no permit could be issued to him.

It has also to be made clear that at no time the applicant submitted a proper application as provided for and in accordance with the Streets and Buildings Regulation Law, and the regulations made thereunder. He was merely inquiring as to what the attitude of the Government would be regarding a vague intention to deal with the future construction of either with hotel or tourist apartments without specifying anything and even without certainty as to the nature of the construction or uncertain if a building permit would be refused on either ground such as the lack of sufficient water supply or the fact that the property lied within the bombartment range of the British Forces at Dhekelia.

It appears that by some arrangement building permits for the construction within the Sovereign Bases Area of Dhekelia, with which we are concerned in this case, have to be submitted and examined by the District Officer Larnaca who must be considered for all intents and purposes

to be the competent organ to deal with them in the Republic. This is apparent from the correspondence exchanged with him by the applicant himself and from the fact that his complaint to the Minister of Justice contained in his letter of the 27th October 1980, (exhibit 4, red 10) already quoted in this judgment was referred—and the applicant was informed about it—to the Ministry of Interior which informed him by their letter of the 24th November 1980 (exhibit “Y”) as to the grounds that the applicant’s request for the Government’s consent could not be acceded to and to which reference has already been made in this judgment.

It was contended on behalf of the applicant that as the property lies within the boundaries of the British Sovereign Base Area of Dhekelia, before a building permit is obtained, the consent of the Government of the Republic that it accepts on principle the development of the property in question must be secured. That such consent is granted after cooperation of the Cyprus Government and the Authorities of the British Sovereign Bases, in Cyprus, for the purpose. This proposition was based by him on Appendix “O” to the Treaty of Establishment and Article 54(a) of the Constitution by virtue of which the Council of Ministers has the general direction and control of the Government of the Republic and the direction of general policy, having themselves an obligation to act for the protection of the interests of the applicant so that in cooperation with the Authorities of the British Sovereign Bases in Cyprus to decide if it should or not give its consent to the applicant for the development of his property subject matter of this application.

It was also argued that the various answers given until the hearing of the case to the applicant by the respondents do not constitute a reply as they had an obligation to do under Article 29 of the Constitution, but they are evasions and refusals to assume their responsibility in accordance with the provisions of Appendix “O” to the Treaty and Article 54 of the Constitution.

It was also contended that such conduct constitutes a continuing omission which can be the subject of a recourse under Article 146 of the Constitution. In support of this

proposition I was referred to the cases of *Mantovanis v. The Republic* (1966) 3 C.L.R. 108 and *Iacovides v. The Republic* (1966) 3 C.L.R. 191.

5 Furthermore it was urged by counsel for the applicant that as by its Decision No. 8063 dated 16th August 1968 the Council of Ministers, gave a similar consent to other persons for the development of their property for touristic purposes situate with the British Sovereign Base Area, their omission to do likewise in the case of the applicant consti-  
10 tuted a discrimination offending Article 28 of the Constitution.

The argument of learned counsel for the applicant starts from the wrong premise that such consent has to be given in advance to the submission of any application for a  
15 building permit. Although nowhere in Appendix "O" there is any provision for such consent, yet, even if it existed it could not be given on an application with a vague reference to the intention of touristic development by means of building a hotel or tourist apartments. There  
20 is not even certainty as to the nature of the building to be constructed.

Appendix "O" to the Treaty of Establishment is a Declaration by Her Majesty's Government regarding the Administration of the Sovereign Base Areas. It contains  
25 the main objects to be achieved as being:-

- (1) Effective use of the Sovereign Base Areas as Military Bases.
- (2) Full co-operation with the Republic of Cyprus.
- (3) Protection of the interests of those resident or  
30 working in the Sovereign Base Areas."

In paragraph 2 thereof Her Majesty's Government declared that "their intention accordingly will be", inter alia  
35 "(iv) not to set up or permit the establishment of civilian commercial or industrial enterprises, except in so far as these are connected with military requirements; (vi) not to allow new settlement of people in the Sovereign Base Areas other than for temporary purposes."

Counsel for the applicant has sought the consent of the Council of Ministers as coming within the ambit of paragraph 3 of Appendix "O" which says, "With these purposes in mind, and subject to their military requirements and security needs, Her Majesty's Government make the following declaration of intention:-" 5

*"3. Protection of Cypriot Rights*

The rights of Cypriots (and others resident in the Republic) and Cypriot communities and corporations in regard to property will be fully protected." 10

Without examining,—as it is not necessary to do so—the legal significance of the aforementioned Declaration of Intention either in the context of the relations of the Republic of Cyprus and Her Majesty's Government or in relation to the principles of Public International Law, one thing is clear, that Appendix "O" which in any event must be read as a whole, does not and could not by its very nature cast any specific statutory duty on the Government of the Republic beyond the general one possessed by any Government to protect whenever and wherever necessary the rights of its citizens. 15 20

Looking at the whole matter in the right perspective as it developed with the correspondence exchanged between the applicant and the respondents after the filing of the present recourse, (hence probably a big part of the delay in the prosecution of this case), I have come to the conclusion that the applicant accepted the intimation of the Ministry of Interior contained in their letter of the 12th September 1981, that the competence in the circumstances for the issue of building permits belonged to the District Officer Larnaca, and addressed himself for that purpose to the said officer by his letter of the 10th December, 1981, attaching thereto copy of his application to the Council of Ministers for the granting to him of their consent expressly asking him, as set out earlier in this judgment, to deal with the matter. By the reply given thereto by the said District Officer on the 29th December, 1981, the matter was duly dealt with by the competent Authority and once a reply was given to him, his present 25 30 35

recourse has been abated and cannot be pursued for lack of legitimate interest which must exist also at the time of the hearing of a recourse. (See *Tsatsos, The Application for Annulment* 3rd edition p. 51).

5 This is so, as on the material before me, it is abundantly clear that the applicant has suffered no material detriment, once for the reasons,—lack of water to say the least, he could not obtain a building permit—that would, even after a reply was given, entitle him to pursue further  
10 a recourse under Article 29.2 of the Constitution, as it cannot be said that as a result of any failure, if it existed at all at the time of the filing the recourse itself, to give him a reply within the time provided by Article 29.2 of the Constitution, he has suffered any material detriment  
15 which would entitle him to claim for relief under paragraph 6 of Article 146 after obtaining a judgment of this Court, on such omission to reply. (See *Kyriakides v. The Republic*, 1 R.S.C.C. 66 at p. 77.)

20 For all the above reasons this recourse is dismissed but in the circumstances there will be no order as to costs.

*Recourse dismissed.*

*No order as to costs.*