

1986 November 1

[TRIANTAFYLLODES, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

THE ADMINISTRATORS OF THE ESTATE OF THE LATE
ALKIS DEMETRIOU AND OTHERS,

Applicants,

v.

1. THE MUNICIPAL COMMITTEE OF LARNACA,
2. THE MINISTER OF INTERIOR,

Respondents.

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

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- 5 *Recourse for annulment—Parties—What matters are not the parties to it, but its subject-matter—Direction in judgment that title be amended by adding a respondent—Recourse against a Street Widening Scheme made by a Municipal Committee—Treated as aiming, also, at decision of Minister of Interior dismissing applicants' objection to the scheme.*
- 10 *Administrative Law—Due inquiry—Objection under s. 18 of the Streets and Buildings Regulation Law, Cap. 96 against a Street Widening Scheme made by a Municipal Committee—Latter's views were not sought and were not taken into account by Minister of Interior in reaching the decision to dismiss the objections—Lack of due inquiry.*
- 15 *Reasoning of an administrative act—May be derived from the administrative records, provided it can emerge therefrom with certainty—Conflicting reasons in such records—Impossible to know what was the reasoning adopted—Ex post facto reasoning—Cannot supplement the reasoning of the decision.*
- 20 *Time within which to file a recourse—Recourses challenging a*

Street Widening Scheme made by a Municipal Committee treated, as filed, as being, also, directed against decision of Minister of Interior to dismiss objections filed under s. 18 of Cap. 96—As they were so treated, it cannot be said that they were filed out of time, even though decision of Minister is not expressly referred to therein. 5

By means of these recourses the applicants have challenged a street widening scheme made by the Municipal Committee of Larnaca. On 23.8.83 all these recourses, as initially made, were dismissed on the ground that the sub judge decision had lost its executory character in view of the fact that the applicants had resorted to the remedy provided for by s. 18 of Cap. 96 by objecting to the Minister of Interior, who had given a final decision, dismissing the objection. The question whether these recourses could be treated as having challenged the decision of the Minister was left open. On 1.9.84 the Court held that they could be so treated. 10 15

The decision of the Minister consists of one word: "Dismissed". In taking it he had before him a minute stating that the Director of Town Planning and Housing, the District Officer of Larnaca and the Attorney-General were recommending for various reasons the dismissal of the objections. The views of the Municipal Committee of Larnaca do not appear to have been placed before the Minister. 20 25

Held, annulling the sub judice decision: (1) What matters in an administrative recourse are not the parties to it, but its subject-matter. In order, however, to avoid even the slightest complication, it is directed that the title of the recourses be amended so that the Minister of the Interior will appear as respondent, too. 30

(2) The failure to seek and to take into account the views of the Municipal Committee of Larnaca resulted in lack of due inquiry. 35

(3) Moreover, the decision lacks due reasoning. Even though the reasoning may be derived from the administrative records, if this cannot be done with sufficient

3 C.L.R. *Demetriou v. M'pal Committee Larnaca*

certainty, the relevant decision lacks due reasoning. In view of the difference between the reasons given by the Director of Town Planning and Housing and the District Officer of Larnaca, on the one hand, and the reasons given by the Attorney-General, on the other hand, the reasoning in this case cannot emerge from the records with certainty. Furthermore, the reasoning given by the Ministry of Interior in a letter addressed to the applicants after the decision had been taken must be treated as adopted ex post facto by the Director-General of the Ministry.

(4) It cannot be said that these recourses were made out of time as far as the decision of the Minister is concerned, because as it has already been found they could be treated, as filed, as being made against the decision of the Minister as well.

Sub judice decision annulled.
No order as to costs.

Cases referred to:

Cyprus Transport Co Ltd. v. The Republic (1969) 3 C.L.R. 501;

Lambrakis v. The Republic (1970) 3 C.L.R. 72;

Lambrou v. The Republic (1970) 3 C.L.R. 75;

Christodoulou v. The Republic, 1 R.S.C.C. 1;

Alvanis v. CY.T.A. (1984) 3 C.L.R. 42;

Constantinou v. The Republic (1984) 3 C.L.R. 1548;

Savva v. The Republic (1984) 3 C.L.R. 1552;

Constantinides v. The Republic (1967) 3 C.L.R. 7;

Ploussiou v. Central Bank (1978) 3 C.L.R. 18.

Recourses.

Recourses against the validity of a street widening scheme published, by the Municipal Committee of Larnaca, in the Official Gazette, under section 12 of the Streets and Buildings Regulation Law, Cap. 96, for the straightening

and widening of Ayia Phaneromeni Avenue in Larnaca.

L. Papaphilippou, for the applicants.

G. Nicolaidis, for respondent No. 1.

Cl. Theodoulou (Mrs.), Senior Counsel of the Republic, for respondent No. 2.

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Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment. By means of these recourses the applicants have challenged the validity of a scheme which was published by the Municipal Committee of Larnaca, in the Official Gazette of the Republic, on the 5th July 1974, under section 12 of the Streets and Buildings Regulation Law, Cap. 96, for the straightening and widening of Ayia Phaneromeni avenue in Larnaca.

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On the 23rd August 1983 all these recourses, as initially made against only the decision of the Municipal Committee of Larnaca to adopt and publish the said scheme, were dismissed, because such decision lost its executory nature in view of the fact that the applicants had resorted to the remedy of objecting to the Minister of Interior, as provided for by section 18 of Cap. 96, and the Minister of Interior had given a final decision dismissing the applicants' objections.

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In dismissing the present recourses as initially made, I stated, at the time, that it was open to counsel for the applicants to consider whether it could be maintained that the aforesaid decision of the Minister of Interior might be stated as having been challenged, too, by means of these recourses.

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On the 1st September 1984, after having heard arguments from counsel, I decided to treat these recourses as being considered at, also, the decision of the Minister of Interior by means of which there were dismissed the objections of the applicants against the street-widening scheme in question, and I decided, therefore, to proceed to hear and determine each recourse accordingly.

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After my said decision of the 1st September 1984 it was not really necessary for the Minister of Interior to be joined formally, by amendment of the title of the recourses, as a party to them, since I had found that the recourses,
5 could be treated as having been aimed, also, at his decision to reject the objections of the applicants against the aforesaid street-widening scheme.

In proceedings by way of an administrative recourse what matters are not the parties to the recourse but its
10 subject-matter, that is the administrative act, decision or omission which is challenged by means of the recourse (see, in this respect, *Cyprus Transport Co. Ltd. v. The Republic*, (1969) 3 C.L.R. 501, 502, *Lambrakis v. The Republic*, (1970) 3 C.L.R. 72, 73 and *Lambrou v. The Re-*
15 *public*, (1970) 3 C.L.R. 75, 79).

In order, however, to avoid even the slightest forma complication in this respect I have no difficulty in directing even at this stage, that the title of these proceedings should be hereby amended so that the Minister of Interior will
20 appear as a respondent, too; and in doing so I follow the practice adopted in *Christodoulou v. The Republic*, 1 R.S. C.C. 1, 9.

Nor can it be said that these recourses were made out of time in so far as the aforementioned decision of the Minister of Interior is concerned because I have already
25 found that these recourses as filed could be treated as being aimed at such decision as well, even though it is not expressly referred to in them.

The decision of the Minister appears, from the official records before me, to have been reached on the 20th
30 February 1975 (see minute No. 5 in the file of the Ministry of Interior No. 27/1959/105).

The decision of the Minister consists of one word "Anoppinrovrai" ("Dismissed"): and he put his signature
35 under this word.

The Minister had before him, at that time, a minute prepared by an administrative officer in his Ministry

which is dated 19th February 1975 (see minute No. 4 in the said file).

In such minute it was stated that the Director of Town Planning and Housing, the District Officer of Larnaca and the Attorney-General were recommending, for various reasons, the dismissal of the objections; and, as a result, the administrative officer put forward to the Minister a proposal to that effect.

It is very strange, indeed, that though the objections were made against a street-widening scheme adopted by the respondent Municipal Committee of Larnaca there is no reference at all in the aforementioned minute to the views of the Committee about the fate of the objections of the applicants; and there do not appear to have been placed before the Minister of Interior any views of the said Committee in respect of such objections.

I am bound to treat the failure to seek, and to take into account, the views of the Municipal Committee of Larnaca as resulting in lack of due inquiry which rendered the exercise of the relevant discretionary powers of the Minister of Interior defective and, consequently, his sub judice decision has, in any event, to be annulled for this reason (see, in this respect, inter alia, *Alvanis v. The Cyprus Telecommunications Authority*, (1984) 3 C.L.R. 42, 46, *Constantinou v. The Republic*, (1984) 3 C.L.R. 1548, 1550 and *Savva v. The Republic*, (1984) 3 C.L.R. 1552, 1554).

Moreover, in view of the way in which the Minister dismissed the objections of the applicants with only one word, as aforesaid, it is impossible to know whether he has adopted the reasons which were given in this connection by the Director of Town Planning and Housing or by the District Officer of Larnaca, which coincided to a certain extent, or by the Attorney-General of the Republic which were of an entirely different nature; and it is well settled that even though the reasoning for an administrative decision may be derived from the relevant administrative records if this cannot be done with sufficient certainty then such decision lacks due reasoning and has to be annulled;

and this is what has happened in the present instance and, consequently, the sub judice decision of the Minister has to be annulled for this reason, too (see, in this respect, *Constantinides v. The Republic*, (1967) 3 C.L.R. 7, 13 and *Ploussiou v. The Central Bank of Cyprus*, (1978) 3 C.L.R. 18, 26).

I should point out, at this stage, that in view of the nature of the powers which are conferred by the relevant legislation on the Minister of Interior it would, normally, be expected that there would be given by him a sufficiently reasoned decision rejecting or accepting an objection against a scheme such as the present one.

I must state, too, that the reasoning given by the Ministry of Interior for the dismissal of the applicants' objections, in a letter dated the 25th February 1975, which was addressed to the applicants, cannot, in the circumstances of the present cases, be regarded as the reasoning for the sub judice decision of the Minister and must be treated as being simply reasoning adopted ex post facto administratively by the Director-General of the Ministry of Interior, as a result of the dismissal of the objections by the Minister. The said reasoning has been based on what was contained in the minute prepared by the administrative officer by whom there was referred the matter to the Minister, but, as already pointed out, the contents of such minute, in view of the references therein to different views of various organs, are not of such a nature as would render it possible to know with certainty which were the reasons adopted by the Minister in rejecting the objections of the applicants.

For all the foregoing reasons these recourses succeed against the sub judice decision of the Minister of Interior, which is hereby annulled; but with no order as to the costs of these cases.

Sub judice decision annulled.
No order as to costs.