

1986 January 10

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

THEOCHARIS LAZAROU,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE COUNCIL OF MINISTERS,

*Respondents.*

(Case No. 343/78).

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*Acts or decisions in the sense of Article 146 of the Constitution  
—Public Law—Decision to grant immovable property of  
Government to interested party, whilst applicant was in  
possession of it in virtue of a lease agreement, made  
5 between applicant and the District Officer of Limassol—  
Not capable of being challenged by a recourse.*

*Recourse for annulment—Powers of Court—May examine  
ex proprio motu issue whether sub judice decision can be  
challenged under Article 146 of the Constitution.*

10 The applicant was in possession of certain Government  
property in virtue of a contract of lease concluded in  
December, 1971 between him and the District Officer of  
Limassol.

15 On 1.3.78 the Council of Ministers decided to grant  
the said property, on certain conditions, to Mufulira Ltd.  
As a result the applicant, who was required to evacuate  
the property in question, filed this recourse.

20 There was consensus among counsel appearing for the  
parties that the sub judice decision is in the domain of  
public law,

*Held, dismissing the recourse:* (1) This Court is entitled to examine ex proprio motu the issue as to whether a recourse could be filed against the sub judice decision.

(2) Applying the principles emanating from the case law to the facts and circumstances of this case, this Court reached the conclusion that the sub judice decision is not capable of being the subject of a recourse under Article 146 of the Constitution.

*Recourse dismissed.*

*No order as to costs.*

**Cases referred to:**

*HajiKyriakos v. Hadjiapostolou*, 3 R.S.C.C. 89:

*Valana v. The Republic*, 3 R.S.C.C. 91:

*Antoniou v. The Republic* (1984) 3 C.L.R. 323;

*Mahlouzarides v. The Republic* (1986) 3 C.L.R. 2342.

**Recourse.**

Recourse against the decision of the respondents to grant to the interested party the immovable property under plot 82, S/P. LVII/14 situated at Pissouri village, while the said property had been leased to the applicant and a building permit was issued to him.

*L. Clerides*, for the applicant.

*N. Charalambous*, Senior Counsel of the Republic, for the respondents.

*M. Christofides*, for the interested party.

*Cur. adv. vult.*

MALACHTOS J. read the following judgment. In this recourse, which is made under Article 146 of the Constitution, the applicant claims, as stated therein, a declaration of the Court that the decision of the respondents, which has been communicated to the applicant by letter dated 2.6.1978, of the District Lands Officer of Limassol, to grant to Mufulira Ltd. Company, the immovable pro-

erty under Plot 82, S/P LVII/14, situated at Pissouri vil-  
lage. while the said property had been leased to the appli-  
cant and a building permit was issued to him dated  
2.12.1976, should be declared null and void and of no  
5 legal effect whatsoever.

The following are the relevant facts of the case:

By its Decision, dated 1.3.78, the Council of Ministers  
approved, among other things, the grant to Mufulira Ltd.  
Company a piece of land with a store standing on it situated  
10 at Pissouri Gulf of an extent of 2 evleks, and 200 sq. ft.  
being plot 82 of the village S/P LVII/14, at the price of  
£1,800.- under the following terms and conditions:-

- 15 (a) that the said immovable should merge in the other  
immovable property of the said company under Plot  
93 of S/P LVII/14;
- 20 (b) that the said company should complete the erection  
of tourist establishments on the said immovables and  
put them into operation within a period of four years  
from the time the said decision would be communi-  
cated to them; and
- 25 (c) that the said company should pay to Theocharis La-  
zarou of Pissouri, the applicant in this recourse, any  
compensation to be assessed by the District Officer  
of Limassol in respect of any repairs he had carried  
out in connection with the premises standing on the  
granted government property.

It should be noted here that Theocharis Lazarou was in  
possession of the granted property under a contract of lease  
concluded in December, 1971 between him and the District  
30 Officer of Limassol.

Subsequently, the District Officer of Limassol assessed  
the compensation to £1,100.- and the applicant was informed  
accordingly. In view of the fact that the applicant refused  
to receive the said compensation and evacuate the said  
35 property, he was notified by the District Lands Officer of  
Limassol by letter dated 2.6.78, by the Director of Lands  
and Surveys by letter dated 14.7.78 and by the District

Officer of Limassol by letter dated 15.7.78, to stop interfering with the said immovable property.

As a result the applicant on the 12th August, 1978, filed the present recourse.

One of the submissions of counsel for applicant in support of his case is that the decision complained of to grant the property, the subject matter of this recourse, to the interested party amounted in law to an abuse of power, because the Government decided to grant it to the interested party by virtue of section 2 of Government Lands Law, Cap. 221 and section 18 of the Immovable Property Tenure, Registration and Valuation) Law, Cap. 224, at a time when Government well knew that it had contractual relations with the applicant and was, therefore, estopped from making a grant of property which had already been leased to the applicant with the right to make certain building alterations in the premises by virtue of a building permit. 5  
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Although there is a consensus among counsel appearing for the parties that the sub judice decision falls in the domain of public law, yet, in view of the arguments of counsel and the other material placed before me, I feel bound, as I am entitled to do, to examine ex proprio motu the issue as to whether a recourse under Article 146 of the Constitution could be filed against the said decision. 20  
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The question of distinction between the domain of public and private law was examined in a series of cases of this Court starting from the case of *Hadjikyriakos v. Hadjirostopolou*, 3 R.S.C.C. 89, *Valana v. The Republic*, 3 R.S.C. 91, up to the recent decision in *Antonioni v. The Republic* (1984) 3 C.L.R. 323. In the most recent case of *Ahlouzarides v. The Republic*, a Revisional Jurisdiction Appeal No. 452, issued on the 9th December, 1985\*; and not reported yet, reference is made, with approval, by the full Bench of this Court, to the following passage from *Antonioni* case, supra: 30  
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“The ascertainment of the rights of citizens to immovable property is primarily of interest to the par-

Reported in (1985) 3 C.L.R. 2342.

ties immediately affected thereby. The public has but a remote interest in the matter.

5           The Supreme Court was alive to the conceptual  
difficulties inherent in drawing the dividing line be-  
tween acts of administration in the domain of public  
law on the one hand and in the domain of private  
10           law on the other. In one sense the public is inte-  
rested in every decision of the administration. Under-  
lying the above decision is the appreciation by the  
Court that the degree of interest on the part of the  
public in actions of the administration varies in pro-  
15           portion to the extent to which such decisions are  
likely to affect the public or sections of it. The Supreme  
Constitutional Court adopted a practical test to  
chart the line of demarcation between decisions in the  
domain of public and private law. It revolves round  
20           the primary object of the act or decision. If the de-  
cision is primarily aimed to promote public purpose  
falls in the domain of public law; otherwise in that of  
private law. Naturally the public has a livelier interest  
in public purposes.”

25           Applying the above principles to the facts and circum-  
stances of the present case, I have come to the conclusion  
that it falls in the domain of private law and not of public  
law and that the decision complained of is not capable of  
being the subject of a recourse under Article 146 of the  
Constitution.

30           This recourse, therefore, fails and is dismissed but in  
the circumstances I make no Order as to costs.

*Recourse dismissed.  
No order as to costs.*