1986 December 23

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

FANI IOANNOU AND ANOTHER,

Applicants,

v

THE CYPRUS TOURISM ORGANISATION,

Respondents.

(Case No. 360/86).

Acts or decisions in the sense of Article 146.1 of the Constitution—Test of justiciability—Intrinsic invalidity of decision due to failure to observe internal procedures governing the decision making process—Does not render the decision non-reviewable—Dismissal of applicants' application by an officer of the respondents without proper authorization by the competent organ of the respondents—The decision is reviewable—Annulled for lack of competence.

Recourse for annulment—Abatement —Revocation of a sub judice decision or acknowledgment of its invalidity—Does not of itself put an end in the proceedings.

Recourse for annulment—Practice —Costs —Principles applicable.

The applicants submitted to the respondents an application for a certificate of suitability for the development of their building site in Ayia Napa into Hotel apartments. The respondents turned down the application. The rejection was communicated to the applicants in a letter addressed to them on behalf of the Director-General of the respondents.

As a result the applicants filed the present recourse. During the proceedings it was revealed that the aforesaid

letter was written by an officer of the respondents without proper authorization by the Board or the organs entrusted with authority to deal with applications of the kind in question. The respondents stated that they are not supporting the decision challenged by this recourse and maintained that such decision is not a decision in any sense of the word.

Held, annulling the sub judice decision: (1) The decision challenged had all the outward characteristics of an executory administrative act. The test of justiciability are the outward implication of an act, not its intrinsic invalidity. Intrinsic invalidity of an act due to failure to observe internal procedures in the decision making process does not render the decision non-reviewable. On the contrary judicial review is aimed, inter alia, to elicit the circumstances leading to a decision.

(2) Revocation of the sub judice decision or acknowlegment of its invalidity does not of itself put an end to the proceedings. (*Kikas and others* v. *The Republic* (1984) 3 C.L.R. 852 adopted).

(3) The sub judice decision emanated from a wholly incompetent organ and has, therefore, to be annulled.

Sub judice decision annulled.
Costs against respondents.

Cases referred to:

Hadji Anastassiou v. *The Republic* (1982) 3 C.L.R. 672;

Paraskeva and Another v. *The Municipal Committee of Limassol* (1984) 3 C.L.R. 54;

Antoniades and Others v. *Municipal Council of Paphos* (1985) 3 C.L.R. 1695;

Kikas and Others v. *The Republic* (1984) 3 C.L.R. 852;

Frangos and Others v. *The Republic* (1982) 3 C.L.R. 53;

Booksellers Association v. *The Republic* (1985) 3 C.L.R. 1171.

Recourse.

Recourse against the dismissal of applicants' application for a certificate of suitability for the development of their land into hotel apartments.

A. S. Angelides, for the applicants.

A. I. Dikigoropoulos, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. The applicants are the owners of a building site at Ayia Napa. They submitted an application to the respondents for a certificate of suitability for its development into hotel apartments. The application was made in the prescribed form in accordance with the provisions of the Hotels and Touristic Establishment Laws(1) and regulations made thereafter. It was handed in on 20th March, 1986.

Four days later the respondents dismissed their application for the reason that it failed to meet the requirements of the regulations(2). The rejection was communicated in a letter addressed to the applicants on behalf of the Director-General, the chief-executive of the respondents. They were informed that the extent of their plot was below the minimum envisaged by the regulations as a prerequisite for the development of property into hotel apartments. The decision was challenged by the present proceedings for a variety of reasons, including lack of due inquiry and excess and abuse of the powers vested in the respondents by law.

Respondents opposed the application claiming the decision was a valid exercise of the powers of respondents. The case was mentioned to the Court for directions on 19th September, 1986. On the joint application of the parties directions were given for the submission of written addresses within the time limited in the order of the Court. Thereafter applicants sought to inspect the file of the case preliminary to preparing their address. The file was not

(1) 1974-1985
(2) Section 12, Hotels and Touristic Establishment (General Regulations) 1985.

made available to them, seemingly because it was discovered that applicants' petition for a permit was never dealt with by the appropriate organs of the respondents. Apparently initiative for the letter written on behalf of the Director-General was taken by an officer of the respondents without proper authorization by the Board or the organs entrusted with authority to deal with applications for the approval of building sites for touristic purposes. The truth of the matter was disclosed to the applicants by a letter of counsel for the respondents dated 20th October, 1986. It was intimated to applicants that the sub judice decision was not a decision in the sense of Article 146 informing them that their application would be properly considered the soonest. On a written motion of the applicants the time for filing their address was extended. Respondents, on the other hand, submitted no address in support of their opposition reiterating before the Court they are not supporting the decision challenged in the proceedings maintaining it is not a decision in any sense of the word. Counsel for the applicants, on the other hand, invited the Court to annul the decision, subject-matter of the proceedings, claiming a right to pursue the proceedings to the end as a proper safeguard for the exercise of the rights vested them under Article 146.6 to pursue an action for damages. He further invited the Court to award them costs, a suggestion opposed by counsel for the respondents.

To begin, the decision challenged had all the outward characteristicts of an executory administrative act and as such was justiciable under Article 146.1 of the Constitution. Information about the decision emanated from the chief executive organ of the Board presumed to be the mouthpiece of the respondents. In point of fact the decision was owned by the respondents and espoused as a valid administrative act in their opposition. Its invalidity came to the fore in the course of these proceedings as a result of the exercise of the undoubted right of the applicants to inspect administrative records bearing on the sub judice decision. A series of decisions(1) of the Supreme Court esta-

(1) Hadjianastassiou v The Republic (1982) 3 C.L.R. 672 Paraskeva and Another v. Municipal Committee of Limassol (1984) 3 C.L.R. 54.

blishes that every decision emanating from a body or authority trusted with power or discretion to decide the matter is cognizable for purposes of judicial review. The test of justiciability are the outward implications of the act, not its intrinsic validity. In *Antoniades and Others* v. *Municipal Council of Paphos*(1) it was pointed out that only in two situations can a decision be wholly disregarded as stillborn:

(a) where it arises from manifest usurpation of power, or where

(b) it derives from an organ absolutely incompetent to take the decision.

Intrinsic invalidity of a decision because of failure to observe internal procedures in the decision making process does not render the decision non-reviewable. On the contrary judicial review is aimed, inter alia, to elicit the circumstances leading to the decision and scrutiny of the legality of the action.

Revocation of the decision or acknowledgment of its invalidity does not of itself put an end to the proceedings. The applicant has a right to seek a declaration of annulment, a prerequisite for the exercise of the right to raise an action for damages under Article 146.6 of the Constitution. The matter was discussed and decided in *Kikas and Others* v. *The Republic*(2). There is no need to repeat the reasoning associated with the decision in the above case. Save to mention that in my judgment it reflects a correct principle of the law.

In the light of the acknowledgment of the respondents that the decision originated from a wholly incompetent organ of the respondents the sub judice decision must be annulled and it is so ordered.

Costs

Unike civil proceedings costs do not, as a rule, follow the outcome of the case. Costs are at large the Court

(1) (1985) 3 C.L.R. 1695.
(2) (1984) 3 C.L.R. 852.

having an unfettered discretion in the matter. The principles relevant to the exercise of the discretionary powers of the Court in this area were discussed in a number of cases (See, inter alia, *Frangos and Others* v. *The Republic*(1) *Booksellers Association* v. *The Republic*(2). I feel I can only exercise my discretion in one way, that is, by ordering the respondents to pay the costs of the applicants.

In the result the sub judice decision is annulled. Respondents are adjudged to pay the costs.

Sub judice decision annulled. Respondent to pay costs.

(1) (1982) 3 C.L.R. 53.
(2) (1985) 3 C.L.R. 1171.