

1987 October 16

[PIKIS J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
CHRISTOFOROS ANDREA CHRISTOFOROU AND OTHERS,

Applicants,

v

- 1 THE MUNICIPAL COMMITTEE OF AY DHOMETIOS,
- 2 THE COUNCIL OF MINISTERS,

Respondents

(Case No 378/86)

Administrative act — Legality of — Law applicable — The law in force at the time the decision is taken unless the Administration was guilty of an unreasonable delay — This is a question of fact and degree, but, in view of Article 29 of the Constitution, rules of law introduced after the effluxion of the 30 day period cannot be applied

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Constitutional Law — Right to petition the Authorities — Constitution, Art 29 — The threefold obligation of the Administration thereunder — A necessary implication of Art 29 is that rules of law introduced after the 30 day period cannot be applicable to the administrative action in respect of the relevant request or petition

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Streets and buildings — Building permit — Law applicable — See Administrative act — Legality of, ante

Constitutional Law — Right to property — Constitution, Art 23 — The Regulatory Administrative Act 10/86 — Not incompatible with Art 23 — *Simonis and Another v Impr Board of Latsia* (1984) 3 C L R 109 adopted*

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On 4 11 85 the applicants applied for a building permit in respect of an erection of a five-storey building on their land at Ay Dhometios. The building envisaged by the plans in question conformed to building regulations in force at the time of lodgment of the aforesaid application.

* The Act contains building regulations

3 C.L.R. Christoforou v. M' pal C' ttee Ay. Dhometios

By letter dated 10 4 86 the respondents communicated to the applicants their decision to turn down the said application on the ground that the relevant plans were not compatible with the new building regulations, which had been promulgated on 22 1 86

5 The sub judge decision is challenged on two grounds (a) misconception of the law, namely the building regulations by reference to which their application for a permit ought to have been decided, and (b) unconstitutionality of the new building regulations for breach of the provisions of Article 23

10 Held, annulling the sub judge decision (1) The legal regime by reference to which administrative action should be taken, is the one obtaining at the time the decision is taken This rule is subject to an important qualification namely that the time at which the decision is taken must be reasonable having regard to the date on which the authorities were petitioned to heed a citizen's request

15 (2) What is a reasonable time is ordinarily a question of fact or degree In Cyprus however, the time within which the Administration must act is laid down in Article 29* of the Constitution Article 29 casts a three-fold obligation upon the Administration namely (a) to heed the petition expeditiously, (b) to determine the petition expeditiously and (c) to communicate its decision duly reasoned, as administrative decisions must be, the latest within 30 days

20 (3) The necessary implication of Art 29 is that the law applicable for the determination of a request or petition made to the authorities should be that obtaining within the 30 day period If the law changes within the 30 day period and the authorities are not guilty of unjustified delay, they may be guided by the legal regime introduced by the amendments to the law But under no circumstances can they determine a request or petition in accordance with rules of law introduced subsequently to the effluxion of the 30 day period

25 (4) In the light of the aforesaid principles and of the facts of this case the sub judge decision must be set aside The principles expounded in *Simonis and Another v Impr Board of Latsia*, (1984) 3 C L R 109 provide a conclusive negative answer to the submission relating to the constitutionality of the new building regulations

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35 *Sub judge decision annulled*

Cases referred to

Lemi and Others v District Administration Nicosia (1986) 3 C L R 2226,

* Quoted at p 1468 post

- Lordou and Others v. Republic* (1968) 3 C.L.R. 427;
Loiziana Hotels v. Municipality of Famagusta (1973) 3 C.L.R. 466;
Philippou v. The Municipality of Nicosia (1972) 3 C.L.R. 50;
Ioannou v. The Republic (1982) 3 C.L.R. 1002;
HjiTofi v. Improvement Board of Ayia Napa (1983) 3 C.L.R. 298; 5
Loizou v. Republic (1985) 3 C.L.R. 1195.
Simonis and Another v. Impr. Board of Latsia (1984) 3 C.L.R. 109.

Recourse.

Recourse against the decision of the respondents whereby applicants' application for a building permit for the erection of a five-storey building was rejected. 10

N. Ioannou (Mrs.), for applicants.

E. Odysseos, for respondents 1.

N. Charalambous, Senior Counsel of the Republic, for respondents 2. 15

Cur. adv. vult.

PIKIS J. read the following judgment. The applicants are co-owners of a plot of land at Ayios Dhometios they purchased in 1984 for the purpose of developing it into a block of flats. After the completion of preliminary work an application was submitted to the Municipality of Ayios Dhometios for a building permit. The application was accompanied by architectural plans on the basis of which a building permit was sought for the erection of a five-storey building. The application was submitted on 4th November, 1985. It is acknowledged that the building envisaged by the plans conformed to building regulations in force at the time of the lodgement of the application. Following the petition of the owners the matter was left in the hands of the appropriate authority for study and decision. 20 25

On 22nd January, 1986, new building regulations were promulgated* replacing those in force at the time of the 30

* *Regulatory Administrative Act 10/86.*

submission of the application for a permit. The new regulations provided for a limitation of the height of buildings and curtailment of the building ratio. The maximum height that a building could reach under the new regulations was four storeys, making the five-
5 storey building that the owners applied for permission to build incompatible with the new regulations. The application of the owners was decided in March by reference to and in accordance with the new building regulations. The application was rejected and building permission was withheld. The decision was
10 communicated to the owners on 10th April, 1986, more than 4 months after the submission of the application for a permit; whereupon, the applicants raised the present proceedings seeking review of the legality of the action of the respondents.

The sub judge decision is challenged on two grounds: (a)
15 misconception of the law, namely the building regulations by reference to which their application for a permit ought to have been decided; and (b) unconstitutionality of the new building regulations for breach of the provisions of Article 23. The case for the applicants in this connection is that the new building
20 regulations imposed unacceptable limitations to the right of ownership incompatible with Article 23.

Determination of the first ground entails identification of the legal regime by reference to which the application for a permit should be decided. The pertinent question is whether the
25 administration should be guided by the regulations applicable at the time the application was made or those introduced on 22.1.85. I had to answer a similar question in the case of *Antonis Lemi and Others v. District Administration, Nicosia** and had opportunity to review the principles relevant to the rules of law that should
30 govern administrative action. After review of the relevant case law**, I concluded that the legal regime by reference to which administrative action should be taken, is the one obtaining at the time the decision is taken. But, as I pointed out, the rule is subject to an important qualification. The time at which the decision is
35 taken must be reasonable having regard to the date on which the

* (1986) 3 C.L.R. 2226.

** *Andriani G. Lordou and Others v. Republic*, (1968) 3 C.L.R. 427, (*Triantafyllides J.*, (as he then was)); *Loiziana Hotels Ltd. v. Municipality of Famagusta*, (1973) 3 C.L.R. 466 (A. Loizou, J.); *Philippou v. The Municipality of Nicosia*, (1972) 3 C.L.R. 50; *Ioannou v. The Republic*, (1982) 3 C.L.R. 1002; *HjiTiofi v. Improvement Board of Ayia Napa*, (1983) 3 C.L.R. 298; *Loizou v. Republic*, (1985) 3 C.L.R. 1195.

authorities were petitioned to heed a citizen's request, a rule designed to ensure sound administration and prevent abuse of power. What is a reasonable time is ordinarily a matter of fact and degree. In Cyprus, however, the time within which the Administration must act is laid down in the Constitution 5
constraining the authorities to heed a citizen's petition or request and dispose of it in the manner ordained in Article 29 of the Constitution. Article 29(1) provides:

«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.» 10
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Article 29 casts a three-fold obligation upon the Administration as a necessary condition for the observance and safeguard of a fundamental human right of the petitioner (a) to heed the petition expeditiously; (b) to determine the petition expeditiously and (c) to communicate its decision duly reasoned as administrative 20
decisions must be, the latest within 30 days. By a necessary implication of the provisions of Article 29 the law applicable to the determination of a request or petition made to the authorities should be that obtaining within the 30 day period. If the law changes within the 30 day period and the authorities are not guilty of 25
unjustified delay, they may be guided by the legal regime introduced by the amendments to the law. But under no circumstances can they determine a request or petition in accordance with rules of law introduced subsequently to the effluxion of the 30 day period. Any other approach to the problem 30
would unavoidably result in defeating the fundamental right safeguarded by Article 29 and in allowing the Administration to operate outside the framework of the Constitution.

In this case, the Administration was clearly in breach of its duty to decide the application for a permit within 30 days resulting in 35
abuse of the power vested in them, in that they determined the application of the owners by reference to principles other than those in force within the time limited by the Constitution for decision taking. Hence the decision must be set aside.

The submission, on the other hand, that the new regulations are 40
unconstitutional for alleged breach of the right to property

safeguarded by Article 23, cannot be sustained. Leaving aside objections to the justiciability of this aspect of the case on account of alleged failure to heed the time limit set by Article 146.3, I believe that the principles expounded in *Simonis and Another v. Imp. Board of Latsia**, provided a conclusive negative answer to the submission raised.

For the reasons indicated above, the recourse succeeds. The sub judge decision is hereby declared to be wholly void pursuant to the provisions of Article 146.4(b).

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*Sub judge decision
annulled.*

* (1984) 3 C.L.R. 109.