

1987 March 11

{PIKIS, J.}

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
ATHINA VAKANA AND OTHERS, *Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF COMMUNICATIONS AND WORKS,
Respondent.
(Case No. 725/86).

Legitimate interest — Need not spring from private rights — Origin — Interest of applicant should be directly affected because of specific prejudice, financial or moral — Whether in a particular case an applicant's interest is more prominent than the interest of the general public is a question of fact — Closure of part of a street — Owners or occupiers of property abutting onto it entitled to challenge the decision by a recourse under Article 146. 5

Streets and buildings — Streets — Closure of a street — The Public Roads Law, Cap. 83 — Section 4 — Publication of relevant decision of Director of Public Works — A necessary prerequisite for the exercise of his power thereunder.

Applicants, who own and occupy houses and shops at Androcleous Street within Mesa Yitonia municipality, seek the annulment of the decision to close a small part at the northern side of Androcleous Street. 10

Counsel for the respondents supported the closure as a legitimate exercise of the powers vested in the Director of Public Works by s. 4 of the Public Roads Law, Cap. 83, whereas counsel for the applicants submitted that the matter is within the exclusive competence of the Municipality, in view of sections 84(e), 88(c) and 89 of the Municipalities Law 111/85. 15

Counsel for the respondents questioned, also, the legitimacy of the interest of the applicants to seek judicial review of the closure in question. In support of her submission counsel referred to the right of access to a highway under the common law. 20

Held, *annulling the sub judice decision*: (1) Publication of a decision of the Director of Public Works for the closure of a road, is, as a matter of fair interpretation of section 4 of Cap. 83, a prerequisite for the valid exercise of the powers vested thereby. As no such publication was made in this case, it 25

becomes unnecessary to decide the issue of competency

- 5 (2) The interest contemplated by Article 146 2 of the Constitution need not
 spring from private rights. It originates from the general interest of the public
 in the legality of administrative action, though the applicant must be directly
 affected by the action in question because of specific prejudice financial, or
 moral resulting thereby. Whether the interest of an applicant is more
 prominent than the interest of the members of the public at large is a question
 of fact. The interest of owners or occupants of property abutting a street to use
 10 such street is more prominent than the interest of the general public. It follows
 that the applicants have a legitimate interest.

Sub judice decision annulled

No order as to costs

Cases referred to

Pitsillos v C B C (1982) 3 C L R 308

15 Recourse.

Recourse against the decision of the respondent to close part of
 Androcleous Street at its northern end, within Mesa Yitonia
 Municipality in the wider Limassol area.

A. S. Angelides, for the applicants

- 20 *G. Frangou (Mrs.), for the respondent.*

Cur. adv. vult.

- 25 PIKIS J read the following judgment: Applicants own and
 occupy houses and shops at Androcleous Street within Mesa Yitonia
 Municipality in the wider Limassol area. A new road, namely,
 Fasoula Street, has been constructed near the northern boundary
 of Androcleous Street in furtherance to a scheme to create a road
 linking the area with the centre of Mesa Yitonia and provide a road
 artery bypassing the town of Limassol. Only recently, on 20th Jan-
 30 uary, 1987, was Fasoula Street opened to traffic, though road
 works have not been fully completed. As a result of the con-
 struction of the road and the acquisition of immovable property
 precedent to and associated therewith, a temporary unofficial
 access from Androcleous Street (northern side) to Fasoula Street
 was created.

The applicants and seemingly other owners of property situated on Androcleous Street too, made representations demanding that access should be established to Fasoula Street from the northern end of Androcleous Street. Consideration was given to the request and a meeting was held to look into the matter. After further study, it was decided to refuse the request in the interest of traffic safety. Following this decision, part of Androcleous Street (a small area) at its northern end was blocked, as well as adjacent private property acquired for purposes connected with the construction of Fasoula Street.

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At first I was led to believe that the grievance of applicants, ventilated by this recourse, was the closure of access to Fasoula Street. Reading the address made in support of the application for a provisional order, my impression was not, it seems to me, unjustified. Subsequently, in the course of final address of counsel for the applicants, it was made clear the complaint raised for review is confined to the closure of part of Androcleous Street at its northern end. This was clarified to me in response to questions designed to elicit whether the applicants have a legitimate interest to question the non-creation of access from Androcleous to Fasoula Street. Seemingly Fasoula Street has not yet been registered as a public road. Counsel also explained that the present recourse does not seek to challenge the erection of barriers on private property adjacent to the northern end of Androcleous Street designed alongside with the blockage of Androcleous Street to bar the temporary unofficial access from Androcleous to Fasoula Street. Be it noted that such private property abutting the northern side of Androcleous Street was acquired for purposes associated with the construction of the new road. The sole issue, therefore, is the legality of the action of the respondents to close Androcleous Street, a small part at its northern side.

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Counsel for the respondents supported the closure as a legitimate exercise of the powers vested in the Director of Public Works by s.4 of the Public Roads Law, Cap. 83. Counsel for the applicants doubted the applicability of s. 4 to roads within the boundaries of a municipality and argued that the use of streets within the boundaries of a municipality, including their closure, is a matter exclusively within the competence of the appropriate municipality, in view of the provisions of sections 84(e), 88(c) and 89 of the Municipalities Law (Law 111/85). Furthermore, he submitted that

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the decision complained of set out in Exhibit 1 (letter of 30.10.86) to whatever extent it invokes the powers of the Director of Public Works is invalid in the absence of a publication in the Gazette as specifically required by the provisions of that enactment.

- 5 Section 4 of the Public Roads Law, Cap. 83, does, as a matter of fair interpretation of its provisions, stipulate publication of a decision of the Director of Public Works for the closure of a road as a prerequisite for the valid exercise of the powers vested thereby. Only through notice in the Gazette can the Director of Public
- 10 Works validly exercise the powers given by s.4 of Cap.83. Consequently, the sub judice decision has no sound foundation and as such cannot be supported in law.

- That being the case, it becomes unnecessary to decide whether the Director acted in usurpation of the powers of the Municipality
- 15 and whether power to close roads within the boundaries of a municipal area vests exclusively in the Municipal Authority.

- Counsel for the respondents questioned the legitimacy of the interest of the applicants to seek judicial review of the decision to close part of Androcleous Street. She supported her submission
- 20 by reference to the nature of the right of access to a highway under the common law*. First we are not concerned, as it transpired in the course of the proceedings, with access to Fasoula Street, nor are we concerned with the protection of a private right from interference.

- 25 The interest contemplated by Art. 146.2 necessary to legitimize a recourse need not spring from prejudice to private rights. It originates from the general interest of members of the public in the legality of administrative action in the domain of public law. Though to be justiciable the applicant must be directly affected by
- 30 the decision because of specific prejudice resulting from administrative action. ** Prejudice may be of financial or moral character. Whether the interest of a particular applicant is more prominent than the interest of members of the public in general in the legality of administrative action, is a question of fact. It seems to me that

* Halsbury's Laws of England, 4th Ed., Vol. 21, paras 120-121.

** See, *inter alia*, *Pitsillos v. C.B.C.* (1982) 3 C.L.R. 308.

the interest of owners or occupants of property in the amenity to use every part of the street onto which their property abuts, is more prominent than that of members of the general public, because of financial repercussions and particular inconvenience arising from the limitation of their public law right to use every part of the particular public road. In Greece, it has been acknowledged that citizens of a municipality have a legitimate interest to question changes in the lay out of a square*. Whether a similar complaint would be justiciable under Art. 146.2 need not be decided in this case. It suffices for the purposes of the present recourse to decide that owners or occupants of property of a particular street have a legitimate interest to seek the review of administrative decision entailing the closure of part of the street onto which their property abuts.

For the reasons given above, the recourse succeeds to the extent that it challenges the closure of a small part of Androcleous Street at its northern end. To that extent, the decision is, pursuant to the provisions of Art. 146.4(b), declared null and void and of no effect whatsoever. Let there be no order as to costs.

Sub judice decision partly annulled. No order as to costs.

* See conclusions from the decisions of the Greek Council of State, 1929-1959, p.259 and Case 1543/57.