

1987 May 20
[A LOIZOU, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KOUYOUMDJIAN (PROPERTIES) LTD ,

Applicants,

v

- 1 THE MUNICIPALITY OF STROVOLOS,
- 2 THE ATTORNEY-GENERAL OF THE REPUBLIC,

Respondents

(Case No 306/86)

Administrative Law — Legality of an administrative act — Should be judged in accordance with the law in force at the time of its taking, unless there has been an unreasonable delay on the part of the administration in dealing with relevant application

- 5 *Streets and buildings — Building permit — Decision turning down an application for — Legality of — Governed by the law in force at the time when the decision was taken, unless there has been an unreasonable delay on the part of the administration in dealing with such application*

Constitutional Law — Right to property — Constitution, Art 23 3

- 10 The applicant Company submitted on 28 12 85 an application for a permit to erect a six storey building on a plot of land situated in Strovolos On 22 1 86 there were published in the Official Gazette new building regulations On 25 2 86 the said application was turned down on the ground that the proposed building did not comply with the provisions of the new Regulations

- 15 Hence the present recourse

- 20 Held, *dismissing the recourse* (1) An administrative decision is generally issued in accordance with the law applicable at the time of its issue provided there is no unreasonable delay by the administration in determining the relevant application In this case the matter was dealt with as expeditiously as reasonably possible

(2) The application of the new zoning provisions in this case does not amount to deprivation, but only to a limitation of the applicants' right of property within the ambit of Art 23 3 of the Constitution.

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*Recourse dismissed No order
as to costs*

Cases referred to:

Lordou v. The Republic (1968) 3 C.L.R. 427;

Loiziana Hotels Ltd. v. Municipality of Famagusta (1971) 3 C.L.R. 466;

Panayiotopoulou - Toumazi v. Nicosia Municipality (1986) 3 C.L.R. 35;

Georghiou v. Municipal Committee of Lamaca (1985) 3 C.L.R. 2680. 5

Recourse.

Recourse against the refusal of the respondent to issue to applicant a building permit for the erection of a six-storey building on his property at Strovolos.

Chr. Chrysanthou, for the applicants. 10

P. Lysandrou, for the respondents.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant Company seeks a declaration of the Court that the decision of the respondents to reject its application for a building permit to erect a six-storey building on plot No. 1844, sheet plan XXI.62.E.1 in Strovolos, is null and void and of no legal effect whatsoever. 15

The applicant Company which is the owner of the above plot, submitted on the 28th December 1985, an application for a building permit to erect a six storey building on the aforesaid property. Twenty-five days later new building regulations came into force introducing restrictions as regards the height of buildings and the building ratio, which were published in Supplement III to the Official Gazette of the Republic on the 22nd January 1986, under Notification 8/86, under section 14(1) of the Streets and Buildings Regulation Law, Cap. 96, as amended. 20 25

On the 29th January 1986, a meeting was held at the Department of Town Planning to consider the matter of the applications submitted before the 22nd January 1986. It was decided, having obtained legal advice from the office of the Attorney-General, that the applications for building permits submitted between 22nd December 1985, and 22nd January 1986, be returned to the appropriate Authorities with a recommendation to reject them if they do not comply with the provisions of the said new regulations. 30 35

The application of the applicant Company was considered by the appropriate authority - in this instance being the Strovolos Improvement Board - on the 25th February 1986, and it was decided that it be rejected.

- 5 By letter dated 26th February 1986, the respondent Board notified the applicant Company that its application was rejected as the proposed plans which had been submitted did not conform with the provisions of the Law in respect of the building ratio.

- 10 The present recourse which was filed on the 30th April 1986, was filed as against the Municipality of Strovolos which had by virtue of Notification 66, published in Part III to the Official Gazette of the Republic, No. 2125 on the 21st March, 1986, under section 4 of the Municipalities Law 1985, (Law No. 111 of 1985) as amended by Laws Nos. 1, 2, and 25 of 1986), replaced the said
15 Improvement Board.

- It was argued by the applicant that the respondent wrongly applied the law as applicable on the date of the sub judice decision, but that instead it should have applied the law in force on the date of the application. The case of *Georghiou v. Municipal*
20 *Committee of Lamaca* (1985) 3 C.L.R. 2680, was cited in support. It was contended that the respondent acted thus arbitrarily and contrary to the principles of good and proper administration, because this Notification 8/86 was being given a retrospective effect.

- 25 Finally it was contended that the sub-judice decision is contrary to Article 23 of the Constitution in that it results in a deprivation of property.

- The principles pertaining the matter of the law applicable concerning the issue of building permits have been considered by
30 this Court on numerous times in the past, the basic principle being, that an administrative decision is generally issued in accordance with the law applicable at the time of its issue provided there is no unreasonable delay by the administration in determining such application. Such principles are extensively considered in the
35 cases of *Andriani Lordou v. Republic* (1968) 3 C.L.R. 427, *Loiziana Hotels Ltd., v. Municipality of Famagusta* (1971) 3 C.L.R. 466; *Panayiotopoulou - Toumazi v. Nicosia Municipality* (1986) 3 C.L.R. 35; therefore I need not repeat them. Suffice it to say that in the present case I find no unreasonable delay on behalf
40 of the administration. On the contrary they appear to have dealt

with the matter as expeditiously as reasonably possible. I would therefore conclude that the respondent correctly applied the law in force at the time of its decision. I do not consider that the case of *Georgiou (supra)* alters the legal position as explained above, as it must be taken to have been decided on the particular facts of that case.

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Finally I find that the sub-judice decision was not contrary to Article 23 as it does not amount to a deprivation of the owner's rights of property but the application of the new zoning provisions in the present case amounts to nothing more than a mere limitation or restriction which is within the ambit of Article 23.3 of the Constitution.

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For the reasons stated above, this recourse fails, and is hereby dismissed but in the circumstances there will be no order as to costs.

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*Recourse dismissed.
No order as to costs.*

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