1988 September 24

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DESPINA KALISPERA,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF INTERIOR,
2. THE DISTRICT OFFICER OF NICOSIA AS CHAIRMAN OF THE IMPROVEMENT BOARD OF YERI,
3. THE IMPROVEMENT BOARD OF YERI,

AND AS AMENDED BY ORDER OF THE COURT DATED 23.2.1984

DESPINA KALISPERA

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF INTERIOR,
2. THE DISTRICT OFFICER NICOSIA,

Respondents.
(Case No. 180/83).

General principles of administrative law—Validity of an administrative act—It should be judged on the basis of the law in force at the time of its issuance, unless there has been unreasonable delay on the part of the administration to perform what it was duty bound to perform before the change of the law—In this case the delay was unreasonable.

On 24.11.81 the applicant applied for the division of her property at Yeri village into building sites. The land in question was outside the water supply area of the village. The application was finally dismissed by a decision dated 18.1.83 on the ground that the division does not contribute to the unification or betterment of existing housing settlements, neither does it supplement the road network of the area but on the contrary it constitutes a scattered development.

Held, annulling the sub judice decision:

(1) From the contents of the sub judice decision it is obvious that the application of the applicant was turned down on grounds that were introduced by the provisions of Law 80/82* which came into force long after the application for the division of her property was submitted by the applicant.

(2) The validity of an administrative act should be judged in principle on the basis of the law existing at the time of its issue, unless there has been an omission or unreasonable delay on the part of the administration to perform within a reasonable time what it was duty bound to do before the change of the law.

(3) In this case the delay was unreasonable. No further particulars had been asked of the respondents and there was no suggestion that the permit could be refused on any ground other than those introduced by Law 80/82 in December, 1982. This law should not be applied.

Sub judice decision annulled.
Costs against respondents.

Cases referred to:

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

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

Panayiotopoullou-Toumazi v. The Municipal Committee of Nicosia (1986) 3 C.L.R. 35;

Pierides and Others v. The Municipality of Paphos (1986) 3 C.L.R. 1769;

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

Municipal Committee of Larnaca v. Georghiou (1988) 3 C.L.R. 123.

* Section 9(4)(a) of Cap. 96 as amended is quoted at pp. 1790-1792 post.

Recourse.

Recourse against the refusal of the respondents to grant applicant a division permit in respect of her property at Yeri village.

St. Panayides, for the applicant.

M. Florentzos, Counsel of the Republic, for the respondents.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. The applicant challenges the decision of the respondents communicated to her by letter dated the 22nd February, 1983, by which her application for the division of her property at Yeri was refused.

The applicant is the owner of immovable property under plot No. 609 of Sheet/Plan XXX. 24.W.1, Part B, situated at Yeri village. On or about the 24th November, 1981, the applicant submitted to the appropriate authority, which, by Cap. 96 of the Laws of Cyprus, is the District Officer of Nicosia, an application for the division of her said property into eight building sites. As the property of the applicant was outside the water supply area of the village, the applicant indicated a private borehole as a source for the supply of water to the proposed building sites.

The application of the applicant was examined by an Assistant District Inspector of the Office of the District Officer of Nicosia who submitted a report on the 17th November, 1981. His report is attached to the Opposition and is Appendix B'. The application was then referred for further examination to the District Officer of the Department of Town Planning and Housing who, by his report dated the 15th January, 1982, suggested that the application ought to be examined by the special Committee which had been set up by a decision of the Minister of Interior for the purpose of deciding whether the proposed development of the property was desirable or not.

The Special Committee, which was composed of the District

Officer, the Director of the Department of Town Planning and Housing and the Director of the Water Development Department, met on the 12th November, 1982, and decided to refer the application to the Director of the Department of Town Planning and Housing for consideration from the town planning point of view (Appendix D' to the opposition). The Director considered the application on the 14th December, 1982, and suggested its dismissal on the ground that the development neither contributed to the unification or betterment of existing housing settlements, nor did it supplement the road network of the area under development, but constituted a scattered development which was undesirable and ought to be avoided (Appendix E' to the Opposition).

The Committee finally met on the 18th January, 1983, and decided to dismiss the application. The grounds for which the application was rejected were identical with the views expressed by the Director of the Department of Town Planning and Housing (see Appendix ΣΤ' to the Opposition). As a result, the District Officer (respondent No.2) by letter dated the 22nd February, 1983, informed the applicant that her application was rejected for the said reasons. The applicant then filed the present recourse by which she challenges the above decision.

Counsel for the applicant mainly argued that the grounds on which the application was dismissed did not exist at the time when the Director of the Department of Town Planning and Housing suggested its dismissal (14.12.1982), since they were introduced by Law 80/82, which was published in the Official Gazette of the Republic on the 23rd December, 1982. He further submitted that the application ought to have been considered in the light of the Law applicable at the time of its submission, that is section 9 of Cap. 96, in view of the considerable delay by the respondents in determining the application, which delay resulted to the detriment of the applicant. In the alternative, counsel argued that the development of the applicant's property would in fact contribute to the unification of the property with the existing then housing settlements and would have supplemented the existing road network.

Counsel further submitted that the provisions of section 9 of Cap. 96, as was amended by Law 80/82, could not be applied in the case of the applicant as that amendment provided that the Council of Ministers, for the purpose of the implementation of the provisions of the amendment, had, by Order which was to be published in the Official Gazette of the Republic, to issue necessary and desirable directions. He lastly argued that the sub judice decision was not duly reasoned and was reached without a due inquiry into the matter.

The sub judice decision reads as follows:

"I refer to your application for a division permit of your plot No. 609 Sh./Pl XXX. 24.W.1, Part 'B' at Yeri, into 8 building sites and to inform you that the aforesaid plot is within Zone Γ1 which was defined by Not. 3 of 5.1.79, the building ratio of which is 0:10:1 and lies at a considerable distance from the boundaries of the housing zone which was defined by the above Notification

The division of the aforesaid plot into building sites does not contribute to the unification or betterment of existing housing settlements, neither does it supplement the road network of the area but on the contrary it constitutes a scattered development.

For the above reasons your application is dismissed."

Section 9(4) (a) of the Streets and Buildings Regulation Law, Cap. 96, which has been introduced by Law 80/82, reads as follows:

"(4) (α) Ουδεμία άδεια θα εκδίδεται υπό της αρμοδίας αρχής δι' έργον προβλεπόμενον υπό της παραγράφου (α) ή (γ) του εδαφίου (1) του άρθρου 3, αναφορικώς προς οιανδήποτε γαίαν κειμένην εκτός περιοχής υδατοπρομηθείας, εκτός εάν η αρμοδία αρχή, αφού λάβη την συμβουλήν του Διευθυντού του Τμήματος Πολεοδομίας και Οικήσεως (εν

τοις εφεξής εν τω παρόντι εδαφίω καλουμένου 'ρηθείς Διευθυντής'), ικανοποιήται πλήρως ότι τούτο θα συμβάλη εις την ενοποίησιν ή την βελτίωσιν υφισταμένων οικισμών ή την συμπλήρωσιν του οδικού δικτύου εντός των υπό ανάπτυξιν περιοχών ή εις ενδεδειγμένην τουριστικήν ή άλλην ενιαίαν ανάπτυξιν.

Διά τους σκοπούς εκπληρώσεως της ως προείρηται προϋποθέσεως το Υπουργικόν Συμβούλιον διά διατάγματος αυτού, δημοσιευομένου εις την επίσημον Εφημερίδα της Δημοκρατίας, θα εκδίδη τας αναγκαίας ή επιθυμητάς οδηγίας και θα αναθεωρή ταύτας οσάκις αι περιστάσεις μεταβάλλωνται.

Νοείται ότι η αρμοδία αρχή, μετά σύμφωνον γνώμην του ρηθέντος Διευθυντού, δύναται εάν ούτω επιβάλλη το δημόσιον συμφέρον, τη εγκρίσει του Υπουργικού Συμβουλίου, να μη απαιτή εφαρμογήν της ανωτέρω προϋποθέσεως, ως ήθελε κρίνει σκόπιμον, λογιζομένων των ειδικών περιστάσεων εκάστης περιπτώσεως."

("(9.(4)(a) No permit will be issued by the appropriate authority for any work provided by paragraph (a) or (c) of subsection (1) of section 3, in respect of any land situated outside a water supply area, unless the appropriate authority, after obtaining the advice of the Director of the Department of Town Planning and Housing (hereinafter in this section referred to as the 'said Director'), is completely satisfied that this will contribute to the unification or the betterment of existing housing settlements or the supplementing of the road network within the areas under development or to an approved tourist or other uniform development.

For the purpose of fulfilling the aforesaid consideration the Council of Ministers by order published in the Official Gazette of the Republic, shall issue the necessary or desirable directions and shall revise same whenever the circumstances are changed:

Provided that the appropriate authority, upon the concurrent

opinion of the said Director, may if the public interest so requires, with the Council of Ministers' consent, not require application of the above consideration, as it may deem fit, having regard to the special circumstances of each case.")

From the contents of the sub judice decision it is obvious that the application of the applicant was turned down on grounds that were introduced by the provisions of Law 80/82, which came into force long after the application for the division of her property was submitted by the applicant.

What has to be decided in the present case is what law had to be applied in considering the sub judice application. That is whether the legal situation applicable was that which existed at the time of the issue of the sub judice decision or the one existing at the time of the submission of the application for the division of the property in question.

The same question came up for consideration in the cases of *Lordou & others v. The Republic*, (1968) 3 C.L.R. 427 and *Loiziana Hotels Ltd. v. The Municipality of Famagusta*, (1971) 3 C.L.R. 466, where it was held that the validity of an administrative act should be judged in principle on the basis of the law existing at the time of its issue, unless there has been an omission or unreasonable delay on the part of the administration to perform within a reasonable time what it was duty bound to do before the change of the law. The principles emanating from the above cases have been accepted and reiterated in the cases of *Panayiotopoulou-Toumazi v. The Municipal Committee of Nicosia*, (1986) 3 C.L.R. 35; *Pierides and Others v. The Municipality fo Paphos*, (1986) 3 C.L.R. 1769; *Lemi and Others v. District Administration Nicosia*, (1986) 3 C.L.R. 2226 and, also, in the Full Bench case of the *Municipal Committee of Larnaca v. Meropi Georghiou and Another* (1988) 3 C.L.R. 123.

I now come to see what are the facts of this case and how these can fit into the principles emanating from the decided cases to which I have referred above.

The sub judice decision was reached fourteen (14) months after the application was submitted and during this period it does not appear from the file of the administration that the applicant was asked to supply the appropriate authority with any additional particulars or information to those contained in his application.

There is no allegation on the part of the respondents that, at any time during the period between the time the application was submitted and the date the sub judice decision was taken, the permit would not be issued on grounds other than those introduced by Law 80/82. Although the application of the applicant was referred to the Special Committee as early as the 15th of January, 1982, the said Committee did not meet to consider it until the 12th November, 1982, when it decided to refer it to the Director of Town Planning and Housing for his views who, in doing so, applied the provisions of Law 80/82, which was about to be enacted. The Committee finally met on the 18th January, 1983, when it dismissed the application by adopting the suggestion of the "Director" and applying the provisions of the new amending Law (80/82) which was enacted on the 23rd December, 1982.

Having set out the facts of the case as I found them, I consider that the delay on the part of the respondents to deal with the application of the applicant was considerable and unreasonable in the circumstances of the case, and that as a result the legal status applicable in the present case should be that prevailing before the 23rd December, 1982.

In view of my above finding I feel that it is unnecessary for me to deal with the other issues raised.

In the result, this recourse succeeds and the sub judice decision is hereby annulled with the costs of the proceedings in favour of the applicant.

The costs to be assesed by the Registrar.

Sub judice decision annulled with costs in favour of applicant.