

1988 April 30

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

TOULLA TRYPHONOS AND OTHERS,

Applicants,

v.

1. THE MUNICIPALITY OF NICOSIA,

2. THE COUNCIL OF MINISTERS,

Respondents.

(Consolidated Cases Nos. 603/84, 613/84 and 614/84).

5 *Recourse for annulment—Parties—Approval by an external authority of a decision of an organ trusted with competence to decide or regulate a matter—Such approval does not remove the matter from the domain of competence of such an organ—Therefore, the organ issuing the decision to approve the decision of the competent organ should not be joined as a party to a recourse for annulment.*

10 *Constitutional Law—Right to property—Constitution, Articles 23.2 and 23.3—Limitation, in the interests of town planning—Regulatory order reducing building ratio and height of buildings—Right to use the land remained unaffected—Liberty to exploit it preserved, albeit subject to additional constraints—Complaint that such an act amounted to deprivation of the right of property unfounded.*

15 *Constitutional Law—Right to property—Constitution, Art. 23.3—Limitations—Compensation—The requirement of "prompt" compensation is not synonymous to "advance" compensation.*

Tryphonos & Others v. Nicosia M' pality (1988)

Streets and Buildings—The Streets and Buildings Regulation Law, Cap. 96, section 14(1)(d), introduced by Law 38/69—Leaves no doubt that power vests in a municipality to introduce restrictions affecting the volume, height and appearance of a building.

Acts or decisions in the sense of Art. 146.1 of the Constitution—Town planning—Zoning regulatory order—An aggregation of a series of individual administrative acts—The order is justiciable at the instance of any party adversely affected thereby. 5

Administrative act—Regulatory act (Zoning Regulatory order)—It has the attributes of an individual act in so far as justiciability is concerned, but it retains its character as far as its necessity, the usefulness, justification and reasoning are concerned - It need not be specially reasoned—The conviction of the issuing organ in its necessity is sufficient justification—Motives or wisdom of enacting it cannot be impugned before this Court save in exceptional circumstances, where the limits of legal authorization are transgressed. 10 15

Reasoning of an administrative act—Regulatory acts—Need not be specifically reasoned.

Constitutional Law—Equality—Constitution, Art. 28—Zoning regulatory order affecting building ratio and height—In the circumstances principle of equality not violated. 20

The sub judge decision is a zoning regulatory order issued by the Municipality of Nicosia under section 14(1) of Cap. 96, as amended, and approved by the Council of Ministers. The Court struck out the Council of Ministers as a party in recourse 613/84, where it had been joined as such, and, having concluded that due inquiry had been carried out prior to the issue of the sub judge decision, dismissed the recourse. In doing so the Court expounded the legal principles, which are sufficiently indicated in the hereinabove headnote. 25

Recourses dismissed. No order as to costs. 30

Cases referred to:

Hadjivassiliou v. Cyprus Organization of Athletics (1987) 3 C.L.R. 2142;

Attorney-General v. Ibrahim and Others, 1964 C.L.R. 195;

- 3 C.L.R. Tryphonos & Others v. Nicosia M' pality
Aloupas v. National Bank (1983) 1 C.L.R. 55;
- Koullapides v. The Municipality of Nicosia* (1970) 2 C.L.R. 22;
- Manglis and Others v. Republic and Others* (1984) 3 C.L.R. 351;
- 5 *Thymopoulos v. The Municipal Committee of Nicosia* (1967) 3 C.L.R.
588;
- Simonis and Another v. Improvement Board of Laxia* (1984) 3 C.L.R.
109;
- Charalambides and Others v. The Republic* (1984) 3 C.L.R. 1516;
- Bluewave Projects Ltd. v. The Republic* (1985) 3 C.L.R. 2522;
- 10 *Charalambides v. The Republic* (1984) 3 C.L.R. 1516.

Recourses.

- 15 Recourses against the validity of Zoning Regulatory Order No. R.A.A. 238/84, published on 1.9.1984 affecting the development potential and exploitation of built-up properties at Trypiotis and Ayii Omoloyites Quarters, Nicosia.

P. Ioannides, for applicant in Case No. 603/84.

N. Panayiotou, for applicant in Case No. 613/84.

C. Hadjinicolaou, for applicant in Case No. 614/84.

K. Michaelides, for respondent 1.

- 20 *M. Florentzos*, Senior Counsel of the Republic, for respondent 2.

Cur. adv. vult.

PIKIS J. read the following judgment. Toulla Tryphonos, Nicos Georghiou and Maria Markides, challenged by separate applications the validity of a Zoning Regulatory Order (R.A.A. 234/84 published on 1.9.84) affecting the development potential and exploitation of built - up properties at Trypiotis and Ayii Omoloyites Quarters, Nicosia. The Order introduced additional restrictions to those in force at the time of the publication of the Order, reducing the building ratio and height of the buildings. 5

The Order was made by the Municipality of Nicosia and approved by the Council of Ministers. One of the three applications, notably that of Toulla Tryphonos, is directed against the decision of both organs, signifying thereby that both decisions are executory and as such justiciable. The joinder of the Council of Ministers as a party to the proceedings was unjustified for reasons similar to those explained in *Hadjivassiliou v. Cyprus Organisation of Athletics* (1987) 3 C.L.R. 2142. The approval of the decision of an organ trusted with competence to decide or regulate a matter merely supplements the decision rendering it executory and justiciable at the instance of an aggrieved party. Approval by external authority is ordinarily intended to ensure external control and afford an opportunity to a central Authority to coordinate the actions of administrative organs. (See Stassinopoulos - Law of Administrative Actions, 1951 edition, p. 223; and Kyriacopoulos - Greek Administrative Law, 4th ed., Tome B', p. 110). The supplementation of the decision by the approval of an external Authority does not remove the action from the domain of the deciding body or reduce its responsibility in law for its ultimate publication. The Council of Ministers, therefore, will be struck out as a party in Recourse No. 613/84. 10 15 20 25 30

The decision at issue was taken in exercise of the powers vested in the Municipality of Nicosia by virtue of the provisions of s.14 of the Streets and Buildings Law, as amended by s.2 of Law 65/64 and, s.2 of Law 38/64. The restrictions were imposed in the interests of town planning aimed to ensure the preservation of the architectural character and colour of two old neighbourhoods of Nicosia. The area of Trypiotis within the wall city and, that of 35

Ayii Omoloyites, a suburb of the town in days past, reflected architectural trends of days long gone and a complexion worth preserving in the context of plans for the development of Nicosia.

Common issues of law and fact made necessary the consolidation of the three recourses for purposes of hearing. Furthermore, the similarity of the issues makes it possible for the Court to dispose of them by the delivery of a single judgment. This being the case we shall refer to the grounds advanced in support of annulment of the act in the three separate recourses without specifically referring to the case in which individual grounds were urged in support of annulment of the act. The grounds by reference to which the review of the decision is sought, may be summarised as follows:-

10 (A) *Defective composition of the Municipal Committee of Nicosia.*

The submission affecting this issue is hardly articulated at all. The Municipalities Law of 1964 (Law 64/64) was a measure of necessity taken in the interest of constitutional order (See inter alia, *Attorney General v. Mustafa Ibrahim and Others*, 1964 C.L.R. 195; *Aloupas v. National Bank* (1983) 1 C.L.R. 55). Some aspects of the legislation were examined and found to be in order in *Andreas Koullapides v. Municipality of Nicosia* (1970) 2 C.L.R. 22.

20 We shall concern ourselves no further with this aspect of the case disposed as I am to rule that the sub judice decision was taken by a competent organ.

(B) *Abuse of the power to impose restrictions or limitations to the use and exploitation of immovable property.*

25 The restrictions imposed are so extensive, according to this submission, as to amount in effect to deprivation of property. Consequently, the power conferred by para. 3 of article 23 to im-

pose limitations in the interest of town planning, was abused and in fact employed to achieve another objective tantamounting to deprivation of property. The submission is patently ill-founded. Not only the applicants are free to use the property in its present form; they are also at liberty to exploit it in future, albeit subject to additional limitations to those in existence at the time of the promulgation of the order, entailing further restrictions to the building ratio and the height that potential development may reach. Only where the restrictions imposed neutralise in substance the right to the use and enjoyment of property can a valid case of abuse of the power to introduce limitations be made out. The caselaw makes this proposition abundantly clear (see, inter alia, *Ioulia Manglis and Others v. Republic and Others* (1984) 3 C.L.R. 351; and *Demetrios Thymopoulos v. The Municipal Committee of Nicosia* (1967) 3 C.L.R. 588). It is worth recalling that the right to property does not carry with it an unfettered right to its development - *Simonis and Another v. Imp. Board of Latsia* (1984) 3 C.L.R. 109. This ground, too, must necessarily fail.

Another ground incidental to the use of the power to impose limitations, also untenable, is the one suggesting that the order must be annulled for failure to compensate the parties affected by the order. The constitutional requirement of prompt compensation is not synonymous with advance compensation. Moreover, the applicants are free to pursue, in case of failure to compensate them, an action before an appropriate civil court for any material loss occasioned by restrictions or limitations to the use and enjoyment of their property.

(C) *Abuse or excess of the powers vested by s.14.*

At the end of the case it was submitted on behalf of one of the applicants that s.14 does not confer power to impose building restrictions in the interest of town planning; particularly, a planning designed to preserve the character of special localities. Similar arguments were raised and resolved by the Full Bench of the Supreme Court in *Ioulia Manglis and Others v. Republic and Others*, supra. It was held that it is competent for the Municipality to

3 C.L.R. Tryphonos & Others v. Nicosia M' pality Pikiis J. impose in exercise of the powers conferred upon the body by s. 14(1) of the Streets and Buildings Law, building restrictions affecting the number of storeys, the height of the building and the material out of which it should be constructed. The plain provisions of s. 14(1)(d) (introduced by s.2 of Law 38/69) leave no doubt that power vests in a municipality to introduce restrictions affecting the volume, height and appearance of a building.

In the light of the authoritative statement of the law in *Manlis*, supra, we shall dwell no further on this aspect of the case.

10 What remains to resolve is the validity of the order on review of its merits, the theme of the issue defined below:

(D) *Invalidity of the decision for lack of adequate inquiry, the absence of proper reasoning and breach of the principle of equality, safeguarded by article 28.1 of Constitution.*

15 In order to determine the questions raised in their proper perspective, we must first address the nature of the act and legal framework. Notwithstanding its external trappings, bearing the insignia of legislation, a zoning order affecting directly individual rights to property is justiciable - *Charalambides and Others v. Republic* (1984) 3 C.L.R. 1516. An order of the species under consideration has been described as an aggregation of a series of individual administrative acts. (See also, *Bluewave Projects Limited v. Republic* (1985) 3 C.L.R. 2522). In order to complete this introduction it may be added that zoning restrictions of the nature
20 envisaged by s. 14(1) of Cap. 96 may be imposed consistently with the powers vested by the Constitution to authorities with competence to regulate town planning - *Charalambides v. Republic*. (1984) 3 C.L.R. 1516.

30 Zoning orders directly affecting individual rights, justiciable at the instance of a party adversely affected thereby, cannot be divorced from their regulatory character or the purpose they aim to achieve. Town planning orders are intended to promote a wider objective designed to serve public interest (δημόσια οφέλη).

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They are made on the basis of express statutory authorisation and, like legislation, the identification of the public interest to be served by the enactment of the order cannot be made the subject of review by courts of law. In fact, the motives or wisdom for the enactment of the order cannot be impugned before the Court, save in exceptional circumstances where the limits of legal authorisation are evidently transgressed. The judgment of the Administration for the necessity of the measure in the interest of town planning is beyond the reviewing powers of the Court. Greek caselaw and jurisprudence on the nature and implications of regulatory orders, justiciable at the instance of an aggrieved party, are reviewed by *Kyriacopoulos - Greek Administrative Law*, 4th ed., Tome C', p. 376. What emerges from the study is that regulatory administrative acts of this nature have the attributes of individual administrative acts in so far as their justiciability is concerned; while they retain their regulatory character in so far as the necessity of the measure is concerned, its usefulness, justification and reasoning. *Professor Dagtoglou* explains in his work of *General Administrative Law*, 1977 ed., Part A', p. 167 that, like general regulatory orders of an individual character need not be specifically reasoned. Their justification lies in the conviction of the appropriate authority in their necessity as measures promoting public interest in the area under consideration. Examination of the material bearing on the sub judice decision leaves no doubt that the Municipality of Nicosia did carry out a thorough inquiry into the necessity of the measure undertaken in the context of wider planning policy for the town of Nicosia. The views of the Town Planning Department were solicited, a factor in itself suggestive of the thoroughness of the inquiry. The reasons for the decision are evident from the material before the Committee and the specific reasons indicated for the adoption of the regulatory measure (see, inter alia, Minutes of the Meeting of the Municipal Committee, dated 16.8.84 and 26.4.83).

In my judgment the decision cannot be impeached either for inadequacy of the inquiry or the reasons that justified the measure, as they emerge from examination of the material before the Court.

Equally unfounded is the submission that the decision is bad for discriminatory treatment. One of the allegations made is that recent development altered to an extent the character of the areas affected by the zoning order. Obviously, the Municipality took
5 the view that notwithstanding the presence of buildings recently erected, the areas retained a sufficiently distinct character, a factor that should guide them in laying down future planning specifications. The submission, on the other hand that, the zoning was not as extensive as it ought to be, has not been substantiated. The
10 Municipality were the arbiters of the areas that merited distinct zoning and the form it should take. Nothing produced before the Court shows that they abused this power in any way.

I conclude that the recourses - each one of them - must be dismissed and so I direct.

15 The sub judice order - Order 238/64 - is hereby confirmed pursuant to the provisions of article 146.4(a) of the Constitution.

Recourses dismissed.