

1988 June 8

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOS KOLAKKIDES,

Applicant.

v.

THE MUNICIPALITY OF AGLANDJIA,

Respondents.

(Case No. 614/86).

5 *Administrative act—Validity of—Should be judged on the basis of the law in force at the time it was taken—Unless the new law expressly exempts applications submitted prior to its enactment—Or unless there has been unreasonable delay on the part of the administration to deal with an application before it—Building permit, application for—The period of 30 days provided for in Art. 29 of the Constitution is indicative of the duty of the Administration to act expeditiously, though it cannot be said that a period more than that constitutes always unreasonable delay—Six months elapsing between submission of application and publication of new regulations—Delay unreasonable—New regulations inapplicable.*

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15 The facts and issues raised in this recourse are sufficiently indicated from the headnote. In the light of the principles summarized in the same headnote, the Court annulled the sub judice decision, on the ground that the respondents could not, in view of unreasonable delay to deal with the application, apply, as they in fact did, new regulations that came into force six months after the submission of the application for a building permit.

Sub judice decision annulled.

No order as to costs.

Cases referred to:

20 *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;

Lemi and Others v. District Administration Nicosia (1986) 3 C.L.R. 2226; 5

The Municipal Committee of Larnaca v. Georghiou and Another (1988) 3 C.L.R. 123;

Demetriou v. District Officer Limassol (1988) 3 C.L.R. 481.

Recourse.

Recourse against the decision of the respondents whereby applicants application for a building permit was rejected. 10

M. Charalambides, for the applicants.

A. Scordis, for the respondents.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicant challenges the validity of the decision of the Respondents taken on 16th April, 1986, communicated to the applicant by letter dated 21st July, 1986, whereby his application for a building permit was rejected on the ground that it was not in accord or in compliance with the provisions of Notification under section 14(1) of the Streets and Buildings Regulation Law, Cap. 96 and Laws 14/59 - 15/83, published in the Official Gazette of 22nd January, 1986, Supplement No. III (I) ΚΑΠ 11/86. 15 20

The applicant is the registered owner of an approved building site, situate within the area of Aglandjia Municipality , Plot 1194, Block B, Sheet/Plan XXI/55.E.II, by the virtue of Registration B1239, dated 12th Nove,ber, 1963. 25

On 16th July, 1985, he submitted an application to the appropriate Authority under the Streets and Buildings Regulation Law for a permit for the erection of a building consisting of seven-storey building - shops on the ground floor and six storeys of dwelling flats on the afore described building site.

By Notification under section 14(1) of 22nd January, 1986, herein above referred to, the area is separated into various zones. The building site of the applicant is in Zone H(5) for which by the said Notification the following substantial restrictions are imposed: The building constant is reduced to 1.20:1, the number of storeys to three and the height not exceedings 37 feet.

It is the contention of the applicant that his application should have been determined on the basis of the legal status obtaining before the Notification ΚΑΠ 11/86; the Respondents' counsel rival contention is that correctly they applied the law in force at the time the sub judice decision was taken.

The matter with regard to the law applicable concerning an administrative act and specifically an application for a building permit is not devoid of authority. It was dealt in *Andriani G. Lordou & Others v. Republic (Council of Ministers and Another)* (1968) 3 C.L.R. 427; *Loiziana Hotels Ltd. v. The Municipality of Famagusta* (1971) 3 C.L.R. , 466; *Rena E. Panayiotopoullou - Toumazi v. The Municipal Committee of Nicosia* (1986) 3 C.L.R. 35; *Lemi and Others v. District Administration Nicosia* (1986) 3 C.L.R., 2226; *The Municipal Committee of Larnaca v. Meropi Georghiou and Another*, (1988) 3 C.L.R. 123 and *Anastassia N. Demetriou v. The District Officer of Limassol* (1988) 3 C.L.R. 481.

The legal position is by now well settled. In general the law applicable is that in force at the time an administrative decision is taken, unless the new law expressly excludes from its ambit applications submitted before its enactment.

Applications for building permits are not an exception, provid-

ed that there is no unreasonable delay by the Administration in determining the application of an applicant. The Administration has a duty to examine and determine expeditiously applications for building permits. If the time that elapses between the submission of the application and the date of the decision, or the date of the change of the law is not reasonable, in the circumstances, then the new law is not applicable.

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What is reasonable depends on the circumstances in each particular case, subject to the overriding principle that the Administration has a duty to act expeditiously in the interest of the individual applicant, the proper administration and the public in general. It is notable that Article 29 of the Constitution imposes a duty on public authorities to attend to and decide expeditiously petitions and give immediate notice of duly reasoned decision within a period not exceeding thirty days. This is indicative of the duty of the Administration to act expeditiously though it cannot be said that in all cases of applications of building permits the period of thirty days is the maximum permissible period.

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In the present case the application was submitted on 16th July, 1985. The Notification under section 14(1) (No. 11/86) was published on 22nd January, 1986 - more than six months later. Is that period reasonable? Was the application dealt with the reasonable diligence of proper administration?

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In *Lordou case* (supra) the application was submitted on the 17th May, 1967 and the notice of the Council of Ministers regarding the heights and storeys of building was published eight days later, on the 25th May, 1967. This short period was not considered of such an extent that the building permit applied for by the applicants could, and should, have been issued already.

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In *Loiziana Hotels Ltd. case* (supra) the applicants applied on the 16th September, 1970. On 29th January, 1971 by Notification published in the Official Gazette the area within which the property of the applicants was situate was declared tourist zone and the maximum number of storeys of buildings was limited to

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two. On 29th March, 1971 the Respondent Municipality informed the applicants that, in view of the said Notification, their application for a building permit was refused. It was held that the Respondents were guilty of unreasonable delay and that the law applicable was the law in operation before the 29th January, 1971 (before the new Notification).

In *The Municipal Committee of Larnaca* case, the applicants submitted their application on the 14th of August, 1980- the 15th being a public holiday - the changes in the law were published on the 16th of August and the Full Bench decided that the law applicable was that of the 16th, that is the law that came in force the day following the submission of the application.

In *Demetriou* case the applicant submitted her application on 29th June, 1985 for a permit to build a shop at Alassa village, Limmassol district. On 27th September, 1985 Regulatory Administrative Act 243/85 was published in the Official Gazette of the Republic, whereby the land of the applicant was included in zone "Z" entailing many restrictions, including reduction of the building constant from 2.2:1 to 0.01:1. The Respondent on 23rd November, 1985 turned down the application as it was not compatible with the provisions of the aforesaid Regulatory Order, Notification of 27th September, 1985. The Court held that the period that elapsed from the date of the filing of the application to the publication of this Notification of 27th September, 1985, almost three months, was ample time for the Respondent to examine and determine the application and the delay to do so after the 27th September, 1985, was unreasonable and, therefore, the application should be determined on the basis of the law in operation before 27th September, 1985.

In the present case some of the details regarding the steps taken in the consideration of the application are set out in the addresses. The appropriate Authority did not exercise reasonable diligence. The time that elapsed from the date of the filing of the application until the date of the Notification 11/86 was more than enough for the Administration to determine finally the application.

Any delays by Government Departments, advisers or others, cannot labour adversely to the citizen. Six months period should not be deemed as reasonable. It is unreasonably long. The fact that the sub judice decision was taken on the 16th April, 1986 and communicated to applicant by letter dated 21st July, 1986, more than three months after the date of the decision, has no direct bearing on the issue under consideration, though it may be indicative of the indifference of the employees of the appropriate Authority. To do justice to the Mayor and the Municipal Council of Aglandjia, we have to place on record that the appropriate authority at the material time was the Improvement Board of Aglandjia chaired by the District Officer of Nicosia. The Mayor and his Council resumed office in virtue of the Municipal Corporations Law, 1985 (No. 111/85) on 1st June, 1986.

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In view of the above the Respondents should have applied the Laws and Regulations in force at the time of the submission of the application.

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In the result the present recourse succeeds. The sub judice decision is hereby declared null and void. Let there be no order as to costs.

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