[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTODOULOS KYRIAKIDES, (No. 1)

Applicant,

and

THE COUNCIL FOR REGISTRATION OF ARCHITECTS AND CIVIL ENGINEERS,

Respondent.

(Case No. 218/63).

Administrative Law—Architects and Civil Engineers—The Architects and Civil Engineers Law, 1962 (Law 41 of 1962) as amended by the Architects and Civil Engineers (Amendment) Law, 1964 (Law 7 of 1964)—Recourse against denial, by the Council set up under section 3(2) of the Law, of a permit to Applicant to become "an architect by profession" — Interim decision on legal issues.

Architects and Civil Engineers Law (supra)—Setting up of the Council for Registration of Architects and Civil Engineers after the period laid down in section 3(2) of the Law not an invalid act—Decisions of such Council valid—Retrospective operation of same section did not affect accrued rights of Applicants in these proceedings.

Natural justice—Equitable principles—Composition of the Council set up under section 3(2) of Law 41 of 1962 (supra) by members of the profession concerned and the rule "no man shall be judge in his own cause"—Functions of the Council not judicial or quasi-judicial but administrative—Rule neither involved nor infringed.

Constitutional Law—Constitution of Cyprus, Articles 11.1, 13.1, 25.1 & 2 and Law 41 of 1962 (supra), sections 7 and 9—Consideration regarding constitutionality of sections 7 and 9 in these proceedings must be limited within the context of Article 25.

This recourse, under Article 146 of the Constitution, is against the refusal, by the Respondent Council, to grant Applicant a permit to become "an Architect by profession" under the Architects and Civil Engineers Law,

1962, (Law 41/62)

A point which was taken by counsel for Applicants as affecting the validity of the administrative decisions in all such Cases which were filed in 1963, is that the Council, which was set up under the aforesaid Law for the purpose of, inter alia, registering duly qualified persons as Architects or Civil Engineers, under section 7 of the Law, and permitting duly qualified persons to become "Architects by profession" or "Building Technicians" under section 9 of the Law, was not set up within two months from the coming into force of the Law, on its enactment on the 30th May, 1962, as required by section 3(2) of such Law

The question thus arises whether the setting up of the Council as made after the two months since 30th May, 1962 had elapsed, was invalid in the first place. Otherwise there could be no possibility of any of its decisions being defective on the ground of non-compliance with the time-limit in section 3(2)

The next ground, on which the decision of the Council in this Case—and in all the other Cases now under consideration—was attacked, is that such Council consisted of members of the profession concerned and, thus, the rules of natural justice were contravened in that the members of the Council could be taken to be prejudiced and disposed to exclude Applicant from their profession in order to lessen competition therein

Held, I As regards the setting up of the Council out of time

(a) The setting up of the Council after the period laid down in section 3(2), was not an invalid act and the relevant provision of Law 7/64 (section 2), extending the period concerned up to and beyond the actual date of the setting up of the Council, must have been enacted ex *abundante cautela* Thus, no question arises of the decisions, the subject-matter of these proceedings, and of the other Cases heard together with it, being invalid on this ground

Aspri and The Republic, 4 R S C C 57, followed

II As regards the composition of the Council by members of the profession concerned·

(a) The rule allegedly contravened is the one ordain-

ing that "no man shall be judge in his own cause". The true nature of the Council must be borne in mind. It is a body set up to ensure, under sections 7 and 9, that persons practising a certain profession are properly qualified to do so. Its functions are not judicial or quasi—judicial; they are administrative.

(b) There can therefore, be no question of the Council being deemed to have any dispute—to be in cause—with an applicant for a licence to practise, under Law 41/62, so that it could be alleged that the Council or its members act as judges in their own cause; therefore, the rule of natural justice relied on could not be said to be either involved or to have been infringed.

III. As regards the constitutionality of the provisions in sections 7 and 9 of the Architects and Civil Engineers Law, 1962 (No. 41 of 1962) (as amended).

(a) As what is in issue is the validity of a Law made by the Republic, to regulate, for the first time, the practice of the profession of an architect or civil Engineer, in a matter in which the Republic definitely has its own responsibility, the opportunity should be given, at the further hearing, to the Attorney-General or any counsel on his behalf, as an *amicus curiae*, to adduce any evidence or place before the Court any other material concerning the issue *sup judice.*

(b) A detour for the sake of certainty is to be preferred to any speculative shortcut aimed at expediting the conclusion of these proceedings. So I have decided to re-open the hearing for the purpose of hearing evidence, as already explained. At such hearing this Case will again be heard together with the other Cases with which it is being heard on common legal issues and any evidence adduced in this Case will be treated as adduced also for the purposes of all such Cases. *The Mayor etc. of Nicosia and The Cyprus Oil Industries Ltd. Kyrenia;* 2 R.S.C.C. 107 and *Nicosia Police and Evgenia Georghiou* 4 R.S.C.C. p. 36, followed.

(c) Examination concerning the constitutionality of sections 7 and 9 of Law 41 of 1962 must be limited, in these proceedings, within the context of Article 25.

Order regarding resolved issues accordingly.

Cases referred to:

Aspri and The Republic (4 R.S.C.C. p. 57);

The Turkish Communal Chamber etc. and The Council of Ministers (5 R.S.C.C. p. 59);

The Mayor etc. of Nicosia and The Cyprus Oil Industries Ltd. Kyrenia (2 R.S.C.C. p. 107);

Nicosia Police and Evgenia Georghiou (4 R.S.C.C. p. 36),

Dent v. West Virginia 129 US 114.

Interim decision.

Interim decision in a recourse against the decision of the Respondent not to grant applicant's application for admission and/or enrolment as an "Architect by Profession"

A. Triantafyllides, for the applicant.

Fr. Markides, *A. Triantafyllides and A. Arghyrides*, for the applicants in Cases heard together with this Case.

L. Demetriades for the respondent and respondents in the other cases.

The following Interim Decision was delivered by —

TRIANTAFYLLIDES, J. In this Case Applicant complains that he has been denied, by the Respondent Council, a permit to become "an Architect by profession" under the Architects and Civil Engineers Law, 1962 (Law 41/62).

On the 15th September, 1964, it was directed that this Case be fixed for hearing, on legal issues arising herein, together with other Cases involving the same legal issues and pending against the same Respondent.

Such hearing took place on the 31st October, 20th November and 1st December, 1964, and counsel appearing in this Case and the other Cases were duly heard. The said other Cases are Nos. 220/63, 223/63, 226/63, 227/63, 228/63, 230/63, 231/63, 234/63, 253/63, 35/64 and 92/64.

A point which was taken by counsel for Applicants as affecting the validity of the administrative decisions in all such cases which were filed in 1963, is that the Council which was set up under the aforesaid Law for the purpose of, inter alia, registering duly qualified persons as Architects or Civil Engineers, under section 7 of the Law, and permitting

duly qualified persons to become "Architects by profession" or "Building Technicians" under section 9 of the Law, was not set up within two months from the coming into force of the Law, on its enactment on the 30th May, 1962, as required by section 3(2) of such Law.

As a matter of fact the names of the members of such Council were published in the official Gazette much later, on the 13th September, 1962, nearly four months after the enactment of the Law, but by the Architects and Civil Engineers (Amendment) Law 1964 (Law 7/64), which was enacted on the 16th April, 1964, and which by its section 8 has been given retrospective effect as from the 30th May, 1962, the period in section 3(2) of Law 41/62 was extended from two to four months, so as to render *ex post facto* within time the setting up of the Council.

It has been argued, by counsel for Applicant in this and the other related Cases, that Law 7/64 could not affect decisions reached by the Council before its enactment, when it had been set up invalidly after the expiration of the prescribed period of two months, under section 3(2) of Law 41/62 as it then stood unamended yet by such Law 7/64.

The question thus arises whether the setting up of the Council, as made after the two months since 30th May, 1962 had elapsed, was invalid in the first place. Otherwise there could be no possibility of any of its decisions being defective on the ground of non-compliance with the time-limit in section 3(2).

In this respect we have to look at the true nature of a provision such as section 3(2). Is it a provision enabling the setting up of the Council within the two months stated therein and excluding such setting up thereafter, or is it a provision aimed at causing the early setting up of the Council, i.e. within a specified short period, and not precluding compliance therewith even after the lapse of such period?

It is proper to construe section 3(2) in the context of the whole Law 41/62. In particular there must be borne in mind sections 10 and 11 thereof, laying down that within 12 months—extended to 24 months by Law 7/64—after the coming into force of Law 41/62, no person not been duly licensed under sections 7 or 9 shall be permitted to practise as a registered Architect or Civil Engineer, or as an Architect

by profession or Building Technician, as the case may be. So, it was imperative that there should not have been undue delay in setting up the Council, the licensing authority for the purposes of sections 7 and 9, and this is, in my opinion, the purpose for which the time-limit of two months was specified in section 3(2).

Thus, the said section 3(2) is not an enabling provision, expiring at the end of two months, but a directive one; after the failure to set up the Council within the specified two months the duty to do so remained and had to be discharged as soon as possible.

In my opinion the position is analogous to that in *Aspri and The Republic* (4 R.S.C.C. p. 57) where it was held (at p. 60) that the provisions in paragraphs 4(*a*) and 8(*a*) of Article 23 requiring the enactment of certain Laws within one year after the coming into operation of the Constitution did not preclude subsequent compliance therewith, after the year in question had elapsed, but on the contrary the legislature remained not only entitled but also bound to enact the said Laws even after the lapse of the said period.

In the light of what has been stated, I have reached the conclusion that the setting up of the Council after the period laid down in section 3(2), was not an invalid act and the relevant provision of Law 7/64 (section 2), extending the period concerned up to and beyond the actual date of the setting up of the Council, must have been enacted *ex abundante cautela*. Thus, no question arises of the decisions, the subject-matter of these proceedings, and of the other Cases heard together with it, being invalid on this ground.

Even if, however, the setting up of the Council as made, were to be held to be invalid as being out of time, I am of the opinion again that the sub judice administrative decision would not have to be held to be invalid too.

In the first place, the setting up of the Council has been retrospectively validated and rendered in time by Law 7/64. Such Law cannot be said to be inapplicable and invalid to the extent that it affects pending proceedings-- on the ground that it amounts to interfering with the constitutional right of recourse under Article 146—because this Law though retrospective in effect, cannot reasonably be taken as enacted in order to deal specifically with the present pending proceed-

ings; it was intended to extend generally various time-limits in Law 41/62, and in most instances this was for the benefit of all concerned.

Only if it was possible to hold that Law 7/64 was enacted for the clear purpose of disposing of the then pending recourses—which in my opinion is not so—could any question arise of it being inapplicable and invalid in the circumstances.

The relevant principles of Administrative Law, as they have evolved, are to be found expounded in the Conclusions from the Jurisprudence of the Greek Council of State, 1929-1959, (p. 225 in particular).

It is also useful to note that no question could arise of Applicants being affected in their accrued rights by the retrospective operation of section 2 of Law 7/64. They themselves applied to the Council in 1963 or 1964, after it had been set up, and they requested it to exercise its discretionary powers under Law 41/62 in their favour. They cannot be deemed as having, in the circumstances, an accrued right in the invalidity, if any, of the setting up of the Council, because nobody may reprobate and approbate at one and the same time.

Secondly—on the assumption always that the setting up of the Council were to be found to be invalid as being out of time—such factor could not be treated, in the circumstances of this Case and the other Cases under consideration, as invalidating its relevant administrative decisions; apart from the particular defect, alleged in relation to the setting up of the Council, not being of the essence of the matter and, therefore, sufficient to warrant such a course, such a view would also be contrary to the principle requiring certainty and continuity in administration, which was adopted by the Supreme Constitutional Court in the case of *The Turkish Communal Chamber etc. and The Council of Ministers* (5 R.S.C.C. p. 59). There the majority of the Court, having found that an Order made by the Council of Ministers and providing for the application of the Villages (Administration and Improvement) Law, Cap. 243, to town areas—with the consequent setting up in such towns of Improvement Boards which functioned for about four months until such Order was annulled—was void *ab initio*, had to deal also with a claim for a declaration that any decision or act purported to be taken or done by the Improvement Board of Nicosia was void; and it stated (at p. 78):

"... the Court would observe that it would not be consistent with good order and the requirements of a certain continuity and security of the legal situation, to deny legal effects to all acts, including administrative acts, which have been made prior to the publication of this Decision, under the Order purported to have been made by the Council of Ministers on the 2nd January, 1963, in the application of Cap. 243 to towns affected by the said Order. The Court found it necessary, therefore, to direct, under paragraph 5 of Article 139, that such acts are presumed to be valid. Their validity cannot be questioned merely on the ground that the Order in question has not been properly made or that Cap. 243 as a whole could not have been applied at all in the administration of the municipalities as directed by the said Order. This does not rule out, however, that such actions, in their substance, may be contrary to Cap. 243, or any other law or to the Constitution itself...".

It is true that in that Case the Court was dealing with a recourse under Article 139, under paragraph 5 of which it could give directions as "to the effect of anything done" under the sub judice Order, but in taking the view it took, as above, it upheld a principle, which when applied to the present Case, and the others heard together with it, a fortiori militates towards the conclusion that the decisions of the Respondent Council in individual cases would not have been invalidated even if the setting up of the Council was to be found to be invalid as being out of time.

For all the above reasons the complaint against the validity of the relevant decisions of the Council on the ground that they were taken by a Council set up after the relevant time-limit, as originally laid down in section 3(2), had elapsed, has to be rejected.

The next ground, on which the decision of the Council in this Case—and in all the other Cases now under consideration—was attacked, is that such Council consisted of members of the profession concerned and, thus, the rules of natural justice were contravened in that the members of the Council could be taken to be prejudiced and disposed to exclude Applicant from their profession in order to lessen competition therein.

As I understood this submission the rule allegedly con-

travened is the one ordaining that "no man shall be judge in his own cause". In my opinion such submission is not consistent with the realities of the situation. The true nature of the Council must be borne in mind. It is a body set up to ensure, under sections 7 and 9, that persons practising a certain profession are properly qualified to do so. Its functions are not judicial or quasi-judicial; they are administrative.

There can, therefore, be no question of the Council being deemed to have any dispute—to be in cause—with an applicant for a licence to practise, under Law 41/62, so that it could be alleged that the Council or its members act as judges in their own cause; therefore, the rule of natural justice relied on could not be said to be either involved or to have been infringed.

It has not been alleged that any of the members, or even all the members, of the Council had any specific interest or bias in the outcome of the particular application of Applicant to the Council. Only the general professional interest, to guard against increased competition has been alleged. But if such an interest—assuming, and not presuming, that it exists—was held sufficient to disqualify members of a profession from being duly appointed to a body regulating entry into such profession, then the absurd corollary would follow that persons foreign to the science, legitimate interests and problems of the profession in question would have to be appointed to the said body and entrusted with the task of evaluating the professional knowledge of others, when they themselves knew less than those they would be called upon to examine. By sheer force of common sense such body would have to be composed of members of the profession concerned and not of outsiders.

As Marshall on Natural Justice (1959) states (p. 112): "It is clear that the policy of the State to permit the governing bodies of professional associations to regulate, control and discipline their own members is not a new one. It is firmly rooted in common sense since such professional associations are the only bodies which can bring to bear the skilled technical knowledge which will enable a right judgment to be pronounced on a skilled technician (or a man who should be so) when his behaviour or conduct is called into question". In my opinion, the learned writer's above view

would, by proper analogy, hold good also in the circumstances of this Case and the Cases heard with it.

For the above reasons the second objection to the validity of the subject-matter of this Case, and of the other relevant Cases, has to be overruled.

The two complaints, relating to the setting up of the Council out of time and the composition of it by members of the profession concerned, are matters going to the organic validity of the action taken by the Council, irrespective of the validity of the provisions of Law 41/62 which were applied in the course thereof.

We come now to the constitutionality of the provisions in question of Law 41/62 which are sections 7 and 9, as amended by Law 7/64.

It has to be determined whether their validity is saved under paragraph 2 of Article 25, because otherwise, as they do constitute an intrusion into the right granted under paragraph 1 of the same Article, they would be unconstitutional.

Paragraphs 1 and 2 of Article 25 read as follows:—

"1. Every person has the right to practise any profession or to carry on any occupation, trade or business.

"2. The exercise of this right may be subject to such formalities, conditions or restrictions as are prescribed by law and relate exclusively to the qualifications usually required for the exercise of any profession or are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person or in the public interest:

Provided that no such formalities, conditions or restrictions purporting to be in the public interest shall be prescribed by a law if such formality, condition or restriction is contrary to the interests of either Community".

There can be no dispute that sections 7 and 9 of Law 41/62 subject the right under Article 25(1) to formalities, conditions and restrictions.

It has to be held whether or not they relate exclusively to qualifications usually required for the exercise of the particular profession, with which we are concerned, or whether or not they are necessary on any of the grounds set out in Article 25(2).

It has to be noticed that in so far as such formalities, conditions and restrictions "relate" to qualifications they must do so "exclusively" and such qualifications must be those "usually required"; and in so far as they do not relate to qualifications then they must be necessary on the grounds specified in Article 25(2). In my opinion it is clear from the wording of the whole of paragraph 2 of Article 25, including its proviso, that qualifications are dealt with only in the first half thereof, in relation to professions only, and the second half deals with matters other than qualifications; the word "or" after "profession" is disjunctive and the verb "are" that follows refers to "formalities, conditions or restrictions".

Counsel for the parties have addressed me on the constitutionality of sections 7 and 9, including their retrospectivity or interference with vested rights. I have been referred to similar legislation in Greece, United Kingdom and other countries.

In view, however, of the gravity of the matter, I have decided, before adjudicating thereon, to afford to the parties an opportunity to adduce any expert evidence which they may deem necessary for the purpose of supporting their contentions already made. Such a course has been previously usefully adopted, in determining the factual aspects of constitutionality under Article 25, in *The Mayor etc. of Nicosia and The Cyprus Oil Industries Ltd. Kyrenia* (2 R.S.C.C. p. 107) as well as in *Nicosia Police and Evgenia Georghiou* (4 R.S.C.C. p. 36), and it should likewise be adhered to now.

As it is the Applicant who attacks the validity of the relevant provisions it is for him to adduce evidence first. But, on the other hand, as it is a case of interference with a fundamental human right, it is a case where the relevant burden may shift rather easily and the Respondent should, therefore, be called upon in any case to place before the Court any evidence in support of the propriety of such provisions.

Furthermore, as what is in issue is the validity of a Law made by the Republic, to regulate, for the first time, the

practice of the profession in question, in a matter in which the Republic definitely has its own responsibility, I have decided that the opportunity should be given, at the further hearing, to the Attorney-General or any counsel on his behalf, as an *amicus curiae*, to adduce any evidence or place before the Court any other material concerning the issue *sub judice*.

I have pondered a lot before deciding to call for evidence on this issue of the constitutionality of sections 7 and 9; I have considered whether on the material before me I could have come to a definite conclusion. I have decided that a detour for the sake of certainty is to be preferred to any speculative shortcut aimed at expediting the conclusion of these proceedings. So I have decided to re-open the hearing for the purpose of hearing evidence, as already explained. At such hearing this Case will again be heard together with the other Cases with which it is being heard on common legal issues and any evidence adduced in this Case will be treated as adduced also for the purposes of all such Cases.

I have been invited by counsel to hold that sections 7 and 9 are also contrary to Article 13(1), which safeguards the freedom of movement and residence in the Republic. It was argued that this could be done on the basis of the course followed in Greece in relation to Article 4 of the Greek Constitution which safeguards personal freedom and was interpreted as comprising economic freedom, also.

Actually the same line has been adopted in the United States of America where the notion of personal freedom has been relied upon as comprising in certain cases economic freedom as well. (See *Dent* v. *West Virginia* 129 US 114).

A provision, however, in the terms of our Article 25 is not contained in either the Greek or the U.S.A. Constitutions. Once express provision has been made in Article 25 concerning the right to practise a profession or to carry on an occupation, trade or business, as well as concerning the ambit of possible formalities, conditions or restrictions to which such right may validly be subjected by law, I am of the view that it is not permissible to interpret any other Article of our Constitution—be it Article 13(1) safeguarding freedom of movement or 11(1) safeguarding personal liberty—as safeguarding the particular right already safeguarded under Article 25(1); of course the rights safeguarded under Articles

13(1) or 11(1) may also be involved, as such, in a case in which the right safeguarded under Article 25(1) is also involved, but that is a totally different proposition, with which we are not faced at present.

If it were possible to hold that Article 13(1) or Article 11(1) also safeguard the same right as Article 25(1), then the question would arise whether such same right may be subjected to restrictions or limitations in accordance with the provisions of Article 25 only or of Article 11 or of Article 13 or of all three of them. This shows clearly that once such right is safeguarded by Article 25, where the ambit of its limitation is also to be found, it is not proper, by wide interpretation, to treat it as safeguarded by any other Article where it is not expressly mentioned. In Greece and in the U.S.A. other provisions of their Constitutions, not expressly providing for a right such as the one expressly provided for under Article 25, had to be widely interpreted to fill the gap existing because of the absence of a provision such as Article 25 of our Constitution.

Our examination, therefore, concerning the constitutionality of sections 7 and 9 of the Law concerned must be limited, in these proceedings, within the context of Article 25.

This is an Interim Decision. I thought fit to state my conclusions on the issues resolved therein so as to clear the ground for the determination of the remaining main issue of constitutionality. I propose in my Decision on that issue, which will conclude the hearing of this Case, and other relevant Cases, on common legal issues, to adopt and incorporate this Interim Decision so as to have a complete Decision on all the said common legal issues.

Order regarding resolved issues accordingly.