

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
STYLLIS XAPOLYTOS AND OTHERS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS,

Respondent,

(Case No. 94/66).

Local Government—Villages—Boundaries—Alteration of—Proclamation of the Council of Ministers extending the boundaries of a village to include part of the area of another—Validity—Non-consideration of objections raised by the village affected viz. the village part of the area of which was taken away—No sufficient enquiry into the matter—Improper exercise of discretion—The Village Authorities Law, Cap. 244, section 20—In the present case the Council of Ministers took its decision under section 20 to alter the boundaries of two villages without being informed of, and, therefore, without considering, the objections raised by the village affected—Moreover, the Council of Ministers was not informed that the village affected was to be deprived of one out of its only two inhabited areas—Thus, the Council was led to act on the basis of inadequate information and in ignorance of a very material aspect of the matter—In the result, the Council of Ministers did not act as required by proper administration of a very material aspect of the matter—In the result, the Council of Ministers did not act as required by proper administration and natural justice—Its sub judice decision is, therefore, the product of a defective exercise of the Council's discretionary powers under section 20 (supra) and has to be declared null and void as contrary to law and in excess and abuse of powers—See, also, herebelow under Administrative and Constitutional Law; Administrative Law.

Administrative and Constitutional Law—Recourse under Article 146 of the Constitution—Legitimate interest adversely affected—Article 146.2 of the Constitution—Proclamation of the Council of Ministers under section 20 of Cap. 244 (supra) extending the boundaries of a village to include part of the area of another—

The village Authority of the village so deprived of its area is entitled to file a recourse under Article 146 against such proclamation, because the interests of the village concerned are being adversely affected thereby within paragraph 2 of that Article—See, also, hereabove.

Village—Boundaries—Alteration—Section 20 of Cap. 244—See above under Local Government; Administrative and Constitutional Law.

Village authority—See above.

Legitimate interest—Legitimate interest within Article 146.2 of the Constitution—Village Authority—See above under Administrative and Constitutional Law.

Administrative Law—Discretion—Proper exercise—Defective exercise of discretion—Decision taken without proper enquiry into material factors and without considering objection raised by the party affected—And, also, in ignorance of a very material factor—Thus, the organ concerned, in the present case, the Council of Ministers acted contrary to the principles of proper administration and natural justice—And its decision, being the product of a defective exercise of the relevant discretionary powers, has to be annulled as being contrary to law and in excess and abuse of powers—See, also, above under Local Government.

Discretion—Discretionary powers—Defective exercise of—See above under Local Government; Administrative Law.

Natural Justice—Acting contrary to the principles of natural justice and proper administration—See above under Local Government; Administrative Law.

Proper Administration—Principles of proper administration—Acting contrary to such principles—See above under Local Government; Administrative Law.

Abuse and excess of powers—See above under Local Government; Administrative Law.

Excess and abuse of powers—See immediately above.

Decision—Decision taken contrary to law and in excess and abuse of powers—See above under Local Government; Administrative Law.

In this case the Applicants, who are the Chairman and Members of the Village Authority of Galini, challenge the validity of a proclamation made by the Council of Ministers, and publish-

ed in the Official Gazette on the 17th February, 1966 (Notification 75, third Supplement), under section 20 of the Village Authorities Law, Cap. 244, for the purpose of altering the boundaries of the villages of Galini and Karavostasi. By virtue of the proclamation complained of part of the inhabited area of Galini, known as "Potamos tou Kampou" quarter, has been taken away from the said village and included in the area of Karavostasi.

It was argued on behalf of the Applicants that, *inter alia*, the Council of Ministers proceeded to decide on such proclamation without having before it—so as to have an opportunity to consider them—the objections raised by the Applicants against the proposed change of boundaries; and that the Council of Ministers, thus, took the relevant decision without having been fully informed about all material factors.

On the other hand, counsel for the Respondent took the preliminary point that the Applicants are not entitled, in the light of the provisions in paragraph 2 of Article 146 of the Constitution, to make the present recourse, because no legitimate interest of theirs is being affected, as they are not going to suffer any loss due to the said proclamation.

Article 146.2 of the Constitution reads as follows:— "Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a Community, is adversely and directly affected by such decision or act or omission".

In annulling the proclamation subject-matter of the recourse, the Court:

Held, I. As to the preliminary point of alleged lack of interest within Article 146.2 of the Constitution:

(1) The Applicants are the Village Authority of the village of Galini, which by means of the *sub judice* proclamation was deprived of part of its area. It is clear that they have filed this recourse in their said capacity. It is equally clear that their case is that through the deprivation of the area concerned the interests of their village will be adversely affected.

(2) In the circumstances I have no difficulty in holding that the Applicants were, *prima facie*, entitled to file this recourse under the provisions of paragraph 2 of Article 146 of the Constitution, and it has not been established, during the proceedings,

1967
Dec. 30
—
STYLLIS
XAPOLYTOS
AND OTHERS
v.
REPUBLIC
(COUNCIL OF
MINISTERS)

that in point of actual fact the proclamation in question will not affect, in any way at all, adversely the interests of Galini village.

Held, II. On the merits:

(1) (a) The matter was decided upon by the Council of Ministers on the 3rd February, 1966, on the strength of a submission to the Council made by the Ministry of Interior.

(b) But it is apparent on the face of the said submission that there were stated therein all the reasons in favour of making the proposed proclamation; but, though it was stated in the submission that the Applicants had objected to such a course, none of their objections was mentioned therein.

(c) On the contrary, an attempt was made in the submission to present the attitude of the Applicants as being completely unjustified, on the ground that the area to be taken away was only 2/23rds of the total area of the village of Galini. Yet, the Council of Ministers was not informed, also, at the same time, of the undisputed fact that the said area to be taken away was in fact one out of the only two inhabited localities in the whole of this village. To that extent therefore, the Council of Ministers has been led to act on the basis of inadequate information and in ignorance of a very material aspect of the matter.

(2) It seems that the presentation, in the submission made to the Council by the Ministry of Interior, of the attitude of the Applicants in the matter, as being totally unjustified, did not enable the Council of Ministers to see the matter in its true light and prevented it from feeling that it should be informed of the objections raised by the Applicants.

(3) It was a matter of proper administration for the Council of Ministers to have decided, on whether or not the *sub judice* proclamation were to be made, after weighing duly all material considerations, including the objections of the Applicants; it was, moreover, a matter of natural justice, in a case of this nature, for the said objections to be duly considered by the Council of Ministers.

(4) In the circumstances, the Council of Ministers was not enabled to act as required by proper administration and natural justice; and, it was, also, led to act on the basis of an incomplete picture of the matter.

(5) As a result, the exercise of its discretionary powers under section 20 of the Village Authorities Law, Cap. 244 was a defective one and its product, the subject-matter of this recourse, has to be declared null and void and of no effect whatsoever, as being contrary to law and in excess and abuse of powers.

Subject-matter of recourse annulled, with £20 towards costs in favour of Applicants.

1967
Dec. 30
—
STYLLIS
XAPOLYTOS
AND OTHERS
v.
REPUBLIC
(COUNCIL OF
MINISTERS)

Recourse.

Recourse against the validity of a proclamation made by the Respondent under section 20 of the Village Authorities Law, Cap. 244 altering the boundaries of the villages of Galini and Karavostasi.

L. Clerides, for the Applicants.

L. Loucaides, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:

TRIANTAFYLLIDES, J.: In this Case the Applicants, who are the Chairman and Members of the Village Authority of Galini, complain against the validity of a proclamation made by the Council of Ministers, and published in the official Gazette on the 17th February, 1966 (Not. 75, 3rd Supplement), under section 20 of the Village Authorities Law, Cap. 244, for the purpose of altering the boundaries of the villages of Galini and Karavostasi. By virtue of such proclamation part of the area of Galini, known as the "Potamos-tou-Kampou" quarter, has been taken away from such village and included in the area of Karavostasi.

In these proceedings no Direction was made to notify the Improvement Board of Karavostasi, as an Interested Party, because from the material before me it did not appear that the *sub judice* proclamation was the result of a claim to that effect of such Board.

The matter was decided upon by the Council of Ministers (see its decision No. 5359 *exhibit* 2) on the 3rd February, 1966. Such decision was taken on the strength of a submission to the Council made by the Ministry of Interior (see *exhibit* 1); to *exhibit* 1 there was attached a survey map showing the area involved (see *exhibit* 1(a)).

1967
Dec. 30

—
STYLLIS
XAPOLYTOS
AND OTHERS

v.
REPUBLIC
(COUNCIL OF
MINISTERS)

A much more informative map showing such area as well as the areas of Galini and Karavostasi (*exhibit 3*) was produced in the present proceedings, but it was not before the Council of Ministers at the material time.

It has been argued by counsel for Respondent that the Applicants are not entitled, in the light of the provisions of Article 146.2 of the Constitution, to make this recourse, because no legitimate interest of theirs is being adversely affected, as they are not going to suffer any loss due to the said proclamation.

I cannot agree with this submission: The Applicants are the Village Authority of the village of Galini, which by means of the proclamation was deprived of part of its area. It is clear that they have filed this recourse in their capacity as the Village Commission of their village, Galini. It is equally clear that their case is that through the deprivation of the area concerned the interests of their village will be adversely affected. In the circumstances I have no difficulty in holding that they were, *prima facie*, entitled to file this recourse under the provisions of Article 146, and it has not been established, during the proceedings, that in point of actual fact the proclamation in question will not affect, in any way at all, adversely the interests of Galini village.

There have been various arguments put forward against the validity of the *sub judice* proclamation but I shall limit myself only to that on the basis of which, in my view, it is proper to determine this Case: This is the submission that the Council of Ministers proceeded to decide on such proclamation without having before it—so as to have an opportunity to consider them—the objections raised by the Applicants against the proposed change of boundaries; and that it, thus, was not fully informed about all material factors.

It is apparent on the face of the submission to the Council (*exhibit 1*) that there were stated therein all the reasons in favour of making the proposed proclamation; but, though it was stated in the submission that the Applicants objected to such a course, none of their objections was mentioned therein.

On the contrary, an attempt was made in the submission to present the attitude of the Applicants as being completely unjustified, on the ground that the area to be taken away from Galini was only 2/23rds of the total area of the village (0.55 of a square mile out of 6.4 square miles). Yet the Council of Ministers

was not informed, also, at the same time, of the undisputed fact that, though the area to be taken away from Galini was, indeed, 2/23rds of the total area of the village, in fact it was one out of the only two inhabited localities in the whole of this village. To that extent, therefore, the Council of Ministers has been led to act on the basis of inadequate information and in ignorance of a very material aspect of the matter.

1967
Dec. 30
—
STYLLIS
XAPOLYTOS
AND OTHERS
v.
REPUBLIC
(COUNCIL OF
MINISTERS)

That the objections advanced by the Applicants were within the knowledge of the Ministry of Interior, and that they could not have been completely devoid of substance, is to be derived from paragraph 5 of the facts set out in the Opposition; it is stated therein that the Applicants submitted their views in writing on more than one occasion, and that they were afforded, on more than one occasion, the opportunity to make representations in the matter to the District Officer and his staff, as well as to the Minister of Interior himself.

The objections raised by the Applicants must have been found, thus, recorded in the relevant file of the Ministry of Interior which, according to what has been stated to the Court by counsel for the Respondent, was in the possession of the Secretariat of the Council of Ministers, at the material time, and could be made available to the Council if called for by it. But, as further stated by counsel for the Respondent, it is a fact that the Council did not call for such file, nor did it ask for any further explanations from the responsible Minister—the Minister of Interior—when deciding on the proclamation in question.

It seems that the presentation, in the submission, of the attitude of the Applicants, in the matter, as being totally unjustified, did not enable the Council of Ministers to see the matter in its true light and prevented it from feeling that it should be informed of the objections raised by the Applicants; of course, I must make it clear that I have no doubt that the submission of the Ministry of Interior, as presented to the Council, was the product of, only, unfortunate drafting and not of any calculated intention to mislead.

It was a matter of proper administration for the Council of Ministers to have decided, on whether or not the *sub judice* proclamation were to be made, after weighing duly all material considerations, including the objections of the Applicants; it was, moreover, a matter of natural justice, in a case of this nature, for the said objections to be considered by the Council

1967
Dec. 30

—
STYLLIS
XAPOLYTOS
AND OTHERS
v.
REPUBLIC
(COUNCIL OF
MINISTERS)

of Ministers. In the circumstances already explained in this Judgment, the Council was not enabled to act as required by proper administration and natural justice; and it was, also, led to act on the basis of an incomplete picture of the matter. As a result the exercise of its discretionary powers under section 20 of Cap. 244 was a defective one and its product, the subject-matter of this recourse, has to be declared to be null and void and of no effect whatsoever, as being contrary to law and in excess and abuse of powers. I do think that the Council of Ministers acted as it did in view of the situation in which it found itself in when dealing with this matter, and I have no doubt that it will now revert to such matter without omitting to consider and examine fully all aspects thereof.

Regarding costs I have decided to award Applicants £20 towards their costs.

Subject-matter of Recourse annulled. Order for costs as aforesaid.