

[TRIANTAFYLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

IOANNIS IOANNIDES,

*Applicant,*

*and*

THE NICOSIA MUNICIPALITY,

*Respondent.*

(Case No. 16/68).

1968  
Sept. 14  
—  
IOANNIS  
IOANNIDES  
v.  
THE NICOSIA  
MUNICIPALITY

*Building—Building permit—Fence—Refusal of building permit in respect of a fence—Plans for the fence not in accordance with alignment under a street-widening scheme, published on the 29th June, 1950, and in force ever since—Fence is a “Building” in the sense of section 2 of the Streets and Buildings Regulation Law Cap. 96, and therefore, it requires a permit under the provisions of sections 3 and 4 of the said Law—Permit, as applied for, could not be granted in view of the provisions of section 12(3) of the same Law.*

*Administrative decisions—Due reasoning—Refusal of building permit—No reasons given to Applicant for such refusal—Nevertheless, decision has to be regarded as being duly reasoned, in the light of the contents of the relevant records produced in Court.*

*Reasoning—Due reasoning of administrative decisions required—See above.*

*Constitutional Law—Article 29 of the Constitution—Failure of the Respondents to reply to a written request by Applicant for reasons to be given why they have refused the building permit applied for—As the Applicant has come to Court, by this recourse, regarding the substance of the refusal of the said building permit—And as he has not established that he has suffered any material detriment through a breach, if any, of Article 29—He does not continue to have any longer an “existing legitimate interest” in this respect within Article 146.2 of the Constitution—And, thus, the Applicant cannot claim in this recourse a decision in his favour for failure of the Respondent Municipality to comply with Article 29.*

1968  
Sept. 14

—  
IOANNIS  
IOANNIDES  
v.  
THE NICOSIA  
MUNICIPALITY

*Streets and Buildings—Street-widening scheme—See above under Building.*

*Street-widening scheme—Alignment—See above under Building.*

*Alignment—See above under Building.*

*Words and Phrases—‘Building’ as defined in section 2 of the Streets and Buildings Regulation Law, Cap. 96—Fence—Fence in the present case is a “building” within section 2.*

By this recourse under Article 146 of the Constitution the Applicant complains in effect, against a decision of the Respondent Municipality, communicated to him by a letter dated the 9th November, 1967, not to issue to him a building permit in respect of a fence which the Applicant intended to build around part of his property. No reasons were given in the said letter of the 9th November for such refusal. It is, also, a fact that the Municipality failed to reply to a letter of the 5th December, 1967, whereby counsel for the Applicant was requesting to be informed of the reasons why the Municipality refused the permit applied for by Applicant.

Article 29 of the Constitution reads as follows:

1. “Every person has the right individually or jointly with other to address written requests or complaints to any competent public authority and to have them attended to and decided expeditiously; an immediate notice of any such decision taken duly reasoned shall be given to the person making the request or complaint and in any event within a period not exceeding thirty days.

2. Where any interested person is aggrieved by any such decision or where no such decision is notified to such person within the period specified in paragraph 1 of this Article, such person may have recourse to a competent court in the matter of such request or complaint.”

Dismissing the recourse the Court:—

*Held*, (1). As the Applicant has come to Court, by this recourse, regarding the substance of the Respondents’ refusal to issue to him the building permit, and as he has not established that he has suffered any material detriment through a

breach, if any, of Article 29 of the Constitution (*supra*), he does not continue to have any longer any "existing legitimate interest" in this respect within Article 146.2 of the constitution, and thus, he cannot claim in this recourse a decision in his favour for failure of the Respondents to comply with the provisions of Article 29 (See *Kyriakides and The Republic*, 1 R.S.C.C. 66, at p. 77).

(2) (a) Although no reasons were given by the Respondents in their letter of the 9th of November 1967, for their refusal to issue the building permit, nevertheless the decision itself to refuse such permit has, in my view, to be regarded as duly reasoned in the light of the contents of the relevant records which have been produced.

(b) And it is clear from such records that the refusal to issue the permit was due to the fact that the plans for the fence to be built were not in accordance with the alignment in force, under a street-widening scheme duly published on the 29th June, 1950.

(3) On the other hand, the fence in question is undoubtedly a "building" within section 2 of the Streets and Buildings Regulation Law, Cap. 96 and, therefore, it requires a permit under sections 3 and 4 of the said Law. But such permit, as applied for, could not be issued in view of the aforesaid alignment (see section 12(3) of the same Law). I have, thus, no hesitation in dismissing the recourse. There will be no order as to costs.

*Application dismissed.*  
*No order as to costs.*

Cases referred to:

*Kyriakides and The Republic* 1 R.S.C.C. 66, at p. 77;

*Thymopoulos and The Municipal Committee of Nicosia* (1967)  
3 C.L.R. 588 at p. 605.

### Recourse.

Recourse against the decision of the Respondents refusing to issue Applicant a building permit in respect of a fence, which he intended to build around part of his property.

*P. Michaelides*, for the Applicant.

*K. Michaelides*, for the Respondents.

*Cur. adv. vult.*

1968  
Sept. 14

—  
IOANNIS  
IOANNIDES  
v.  
THE NICOSIA  
MUNICIPALITY

The following Judgment was delivered by:

TRIANAFYLLIDES, J.: In this case the Applicant complains, in effect, against a decision of the Respondent Nicosia Municipality not to issue to him a building permit, in respect of a fence, which he intends to build around part of his property, shown as plot 42 on a survey map attached to the Applicant's application for the building permit, which he made on the 13th December, 1966 (see *exhibit 2*).

His application, having been rejected by the Respondent, the Applicant was informed accordingly by a letter dated the 9th November, 1967 (see *exhibit 3*).

On the 5th December, 1967, counsel acting for the Applicant wrote to the Respondent asking for the reasons on the basis of which the Applicant's application had been rejected (see *exhibit 3A*). No reply at all was given to this letter.

There is no doubt that in the Respondent's letter, of the 9th November, 1967, communicating the rejection of the Applicant's application for a building permit (*exhibit 3*), no reasons were given for such a course. It is, also, a fact that the Respondent failed to reply to the aforesaid letter of the 5th December, 1967, (*exhibit 3A*) requesting such reasons.

But, as the Applicant has, by this recourse, come to Court regarding the substance of the matter of the refusal of the building permit, and he has not established that he has suffered any material detriment through a breach—assuming there is one—of Article 29 of the Constitution, he does not continue to have any longer any "existing legitimate interest" in this respect, and, thus, he cannot claim in this recourse a decision in his favour for failure of the Respondent to comply with Article 29 (see *Kyriakides and The Republic*, 1 R.S.C.C., 66, at p. 77).

The decision, itself, of the Respondent, to refuse the application of Applicant for a building permit, has, in my view, to be regarded as being duly reasoned, in the light of the contents of the relevant thereto records, which have been produced (see *exhibit 5*); it is to be derived, clearly, from such records that the refusal to issue the permit was due to the fact that the plans for the fence to be built by the Appli-

cant were not in accordance with the new alignment, under a street-widening scheme which was published on the 29th June, 1950, and has been in force ever since.

Actually, the Applicant, himself, knew very well of this impediment to the issue of a permit, as applied for by him, because a previous application of his, in the same matter, had been dealt with likewise by the Respondent Municipality, in 1960 (see *exhibit 4*).

The fence that the Applicant seeks to be permitted to build is, no doubt, a "building" in the sense of section 2 of the Streets and Buildings Regulation Law (Cap. 96) and, therefore, it requires a permit as provided for under sections 3 and 4 of the Law; in view of the provisions of section 12(3) of the same Law, a permit, as applied for, could not be granted by the Respondent to the Applicant.

I have, thus, no hesitation in dismissing this recourse; but I do leave open—as I have left it open in the case of *Thymopoulos* and *The Municipal Committee of Nicosia* (1967) 3 C.L.R. 588 at p. 605—the question of the effect of the application of the provisions of section 13 of Cap. 96, in case the Applicant were to build on the new alignment, instead of on the old one as he has now sought to do.

In view of the most unfortunate failure of the Respondent to reply to the letter *exhibit 3A*, I have decided to make no order as to costs in this recourse.

*Application dismissed.*

*No order for costs.*

1968  
Sept. 14

—  
IOANNIS  
IOANNIDES  
v.  
THE NICOSIA  
MUNICIPALITY