

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. DEMETRIOS MARANGOS AND OTHERS,
2. PARASKEVAS LORDOS AND ANOTHER,

*Applicants,*

*and*

THE MUNICIPAL COMMITTEE OF FAMAGUSTA,

*Respondent.*

—  
DEMETRIOS  
MARANGOS  
AND OTHERS  
v.  
MUNICIPAL  
COMMITTEE OF  
FAMAGUSTA

(Case Nos. 287/69 and 295/69).

*Streets and Buildings (Amendment) Regulations 1967—Ultra vires the Streets and Buildings Regulation Law Cap. 96, section 19(1)—Consequently, Notice by the Council of Ministers published on May 25, 1967 under such ultra vires regulations not a valid Notice.*

*Delegated Legislation—Considerations to be borne in mind in examining whether or not such legislation is ultra vires the relevant statute—Principles applicable laid down.*

*Subsidiary Legislation—Ultra vires—See supra.*

*Statutes—Construction of—Construction of statute empowering or enabling the making of regulations—Principles applicable—Considerations to be borne in mind—State of the law at the time when the enabling statute was enacted—Its structure as a whole—The intended changes to be effected—In cases involving interference with fundamental rights or liberties such as the right to property, any doubt as to the extent and effect of the statute concerned has to be resolved in favour of the liberties of the citizen: "L*

*Ultra Vires—Subsidiary legislation—Ultra vires the relevant statute—Principles applicable in considering whether or not a regulation is ultra vires the statute—See also supra.*

*Fundamental rights and liberties—Right to property—Interference with—Doubt as to the extent or effect of any such statute has to be resolved in favour of the liberties of the citizen—See also supra.*

*Right to property—Interference with—See supra.*

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By these recourses the Applicants challenge the validity of the decision of the Respondent Municipal Committee whereby it refused the building permits, for which they have applied on July 12, 1969, on the ground that as the plans submitted showed the height and the number of buildings of each building concerned exceeded the permissible limits laid down in a Notice published by the Council of Ministers in the Official Gazette, on May 25, 1967 (under Not. 404 in the 3rd Supplement).

The issue at this stage of the proceedings was taken as a preliminary point of law; it is whether or not the aforesaid Notice 404 (limiting the height and number of storeys of buildings) as well as the relevant Regulation 6(6) (*infra*) on which the Notice in question was based, are *ultra vires* section 19(1) of the Streets and Buildings Regulation Law, Cap. 96 (Note: Section 19(1) is set out in full *post* in the judgment of the Court).

The afore-mentioned Notice under Not. 404 of May 25, 1967 was published under the provisions of regulation 6(6) of the Streets and Buildings Regulations as amended by the Streets and Buildings (Amendment) Regulations, 1967 (which were published, also, on May 25, 1967 in the Official Gazette, under Not. 403 in the 3rd Supplement). There can be no doubt that Regulation 6(6) (*supra*) was made under the enabling powers given to the Governor (now to the Council of Ministers) by section 19(1) of the said Law Cap. 96 (*supra*).

The Court finding that the aforesaid Regulation 6(6) and, consequently, the aforesaid Notice under Not. 404 based on that Regulation, are *ultra vires* section 19(1) of the Law Cap. 96:—

*Held*, (1) (a). The answer to the question whether or not subsidiary legislation such as the said Regulations is *ultra vires* depends on the true construction of the relevant statute (see Halsbury's Laws of England 3rd edition Vol. 36, p. 491 paragraph 743).

(b) In cases involving interference with a fundamental right, such as the right to property, any doubt about the extent and effect of the relevant enactment has to be resolved in favour of the liberties of the citizen (see *Fina (Cyprus) Ltd. and The Republic* 4 R.S.C.C. 26 at p. 33; *Chester v. Bateson* [1920] 1 K.B. 829, at p. 838; *Newcastle Breweries, Ltd. v. The King* [1920] 1 K.B. 854).

(c) It has also to be borne in mind the state of the law at the time when such enactment was passed and the changes intended to be effected, as well as the structure of such enactment as a whole (See *Attorney-General v. Brown* [1920] 1 K.B. 773, at p. 791).

(2) It cannot be, really, disputed that looking at the whole legislative history of the Law, Cap. 96 (*supra*) and its structure, one may not arrive at the conclusion that in 1946 when Cap. 96 was enacted the problems of height and the number of storeys of buildings were matters which were then in the fore-front of town planning; they are not even mentioned specifically in the relevant section 19(1) of Cap. 96 (*supra*) which empowers the making of Regulations for regulating other matters enumerated therein in considerable detail, even though some are definitely of less importance than height or number of storeys; also the legislation which amended after 1967, section 19(1) tends to indicate what the true context of such provision was before such legislation. (Note: see this amending legislation *post* in the judgment).

(3) In the light of the foregoing I cannot accept that it was ever intended to empower the making of a regulation such as, in 1967, Regulation 6(6) as a regulation "for the better carrying out of the provisions of this Law" as stated, obviously for matters of clearly ancillary nature—and not of so primary importance as height and number of storeys—in paragraph (i) of section 19(1) (see *post* in the judgment). In this respect useful reference may be made to the judgment of the Privy Council in the case of *Utah Construction and Engineering Property, Ltd. and Another v. Pataky* [1965] 3 All E.R. 650 (P.C.).

(4) I have, therefore, reached the conclusion that the amending Regulations published on May 25, 1967 (*supra*) were published *ultra vires* Cap. 96, and particularly section 19(1) thereof; as a result the Notices of 25 May 1967 (*supra*), published thereunder is not a valid one. It follows that to the extent to which the *sub judice* decisions of the Respondent Committee were based on such Notice they have to be declared *null* and *void* and of no effect whatsoever (see *Christodoulou and The Republic* 1 R.S.C.C. 1).

*Order accordingly.*

Cases referred to:

*Fina (Cyprus) Ltd. and The Republic*, 4 R.S.C.C. 26 at p. 33;

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*Chester v. Bateson* [1920] 1 K.B. 829 at p. 838;  
*Newcastle Breweries, Ltd. v. The King* [1920] 1 K.B. 854;  
*Attorney-General v. Brown* [1920] 1 K.B. 773 at p. 791;  
*Utah Construction and Engineering Property, Ltd. and Another*  
*v. Pataky* [1965] 3 All E.R. 650 (P.C.);  
*Christodoulou and The Republic*, 1 R.S.C.C. 1.

### Decision on a preliminary legal issue.

Decision on a preliminary legal issue, relating to the aspect of the height and number of storeys of each of the proposed buildings, raised in a recourse against the refusal of the Respondent to issue building permits to Applicants.

*L. Clerides with E. Lemonaris*, for the Applicants in Case 287/69.

*L. Clerides with J. Kaniklides*, for the Applicants in Case No. 295/69.

*N. Zomenis*, for the Respondent in Case No. 287/69.

*S. Marathovouniotis with N. Zomenis*, for the Respondent in Case No. 295/69.

*Cur. adv. vult.*

The following decision was delivered by:

TRIANAFYLLIDES, J.: At the commencement of the hearing of these two recourses—made against refusals of the Respondent to issue building permits to the Applicants—it was directed that they should be heard together regarding common legal issues, in relation to the aspect of the height and number of storeys of each of the proposed buildings.

The applications for building permits were made, in both instances, on the 12th July, 1969; they were turned down and the Applicants were informed accordingly by letters dated the 30th July, 1969 (see *exhibits 1 and 2* respectively).

The building permits were refused on, *inter alia*, the ground that the number of storeys and the height of each building concerned exceeded the legally permissible limits.

Learned counsel for the Respondent have submitted that in relation to the questions of the height and number of storeys there were applied, by the Respondent, the provisions of a Notice published, for the purpose, by the Council of Ministers, in the official Gazette, on the 25th May, 1967 (under Not. 404, in the 3rd Supplement); and that because of that Notice the building permits applied for could not be granted as the plans submitted showed that there would be exceeded the relevant limits laid down by such Notice.

The Notice was published under the provisions of regulation 6(6) of the Streets and Buildings Regulations as amended by the Streets and Buildings (Amendment) Regulations, 1967 (which were published, also, on the 25th May, 1967, in the official Gazette, under Not. 403, in the 3rd Supplement).

There can be no doubt that regulation 6(6) of the Streets and Buildings Regulations was made under the enabling powers given to the Council of Ministers by means of section 19(1) of the Streets and Buildings Regulation Law, Cap. 96.

After the said date—the 25th May, 1967—there was published, on the 21st February, 1969, the Streets and Buildings Regulation (Amendment) Law, 1969 (Law 12/69), by means of which there was added to sub-section (1) of section 19 of Cap. 96 a new paragraph, (el), enabling expressly the making of Regulations regulating the number of storeys of any building or its height, or both; no such express provision in relation to these matters existed till then in sub-section (1) of section 19.

Then on the 6th June, 1969, there was published the Streets and Buildings Regulation (Amendment) (No. 2) Law, 1969 (Law 38/69) by virtue of which the aforesaid paragraph (el) was replaced by a new paragraph (el), enabling the making of Regulations for regulating the maximum number of storeys of any building, or the maximum height of any building, or of any part thereof, or the maximum total area of all the storeys of any building taken together, or all, or any, of these matters.

On the 11th July, 1969, there were published in the official Gazette (under Not. 567, in the 3rd Supplement) the Streets and Buildings (Amendment) Regulations, 1969, by virtue of which paragraph 6 of regulation 6, under which the aforesaid Notice of the 25th May, 1967 had been published, was repealed and a new paragraph 6 of regulation 6 was enacted.

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Under such new paragraph there was published in the official Gazette, on the 8th August, 1969 (under Not. 640, in the 3rd Supplement) a new Notice, regulating the heights and the number of storeys of buildings, which is applicable, *inter alia*, to Famagusta town; such Notice was given retrospective effect as from the 17th July, 1969.

The first matter on which I have to decide is whether or not the amending Regulations that were published on the 25th May, 1967, are ultra vires section 19(1) of Cap. 96, which, with a necessary adaptation under Article 188 of the Constitution, reads as follows:-

“ 19. (1) The Council of Ministers may make Regulations to be published in the Gazette for all or any of the following purposes, that is to say -

- (a) the manner in which application for permits may be made and the terms under which such permits may be issued and for enabling appropriate authorities to prescribe forms for the purpose;
- (b) the attachment of special conditions to any permit;
- (c) providing for the means of supervision and control over streets or buildings for which permits have been granted either generally or in respect of streets or buildings in a particular area;
- (d) the minimum dimensions and shape of building plots in respect of which permits may be issued, the proportionate area of any building plot which may be built on and the distance of any building from the boundaries of the building plot;
- (e) the materials for, and manner of construction, repair, or alteration of, or the external appearance, stability, resistance to fire, ventilation, drainage, sanitation, and water supply of, buildings;
- (f) the safety of occupiers, or users of and persons resorting to, buildings;
- (g) the fees to be paid for any permit granted under this Law and the manner in which such fees are to be paid;

- (h) any matters necessary for, or incidental to, securing the observance of the Regulations made under the provisions of this Law;
- (i) generally for the better carrying out of the provisions of this Law.”

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When subsidiary legislation—such as the said Regulations—is examined with a view to deciding on a contention that it is ultra vires, the answer to this question depends, in every case, on the true construction of the relevant enabling enactment (see Halsbury’s Laws of England, 3rd ed., vol. 36, p. 491, para. 743).

If there is involved interference with a fundamental right, such as the right to property, any doubt about the extent and effect of the relevant enactment has to be resolved in favour of the liberties of the citizen (see *FINA (Cyprus) Ltd. and The Republic* 4 R.S.C.C. 26, at p. 33; *Chester v. Bateson* [1920] 1 K.B. 829, at p. 838; *Newcastle Breweries, Ltd. v. The King* [1920] 1 K.B. 854).

Also, in examining whether or not subsidiary legislation is ultra vires its parent enactment, it has to be borne, particularly, in mind the state of the law at the time when such enactment was passed and the changes which it was passed to effect, as well as the structure of such enactment as a whole (see *Attorney-General v. Brown* [1920] 1 K.B. 773, at p. 791).

It cannot be, really, disputed that, looking at the whole legislative history of Cap. 96 and its structure, one may not arrive at the conclusion that in 1946 when Cap. 96 was enacted the problems of the height and the number of storeys of buildings were matters which were then in the forefront of townplanning; they are not even mentioned specifically in section 19(1) of Cap. 96, which empowers the making of Regulations for regulating other matters enumerated therein in considerable detail, even though some are definitely of less importance than height or number of storeys; also, the already referred to legislation, which amended, after 1967, section 19(1), tends to indicate what the true context of such provision was before such legislation.

In the light of the foregoing I cannot accept that it was ever intended to empower the making of a regulation, such as, in 1967, regulation 6(6), as a regulation “for the better carrying

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out of the provisions of this Law” as stated, obviously for matters of clearly ancillary nature—and not of so primary nature as height and number of storeys—in paragraph (i) of section 19(1).

In this respect useful reference may be made to the judgment of the Privy Council in England in the case of *Utah Construction and Engineering Property, Ltd. and Another v. Pataky*, [1965] 3 All E.R. 650 (P.C.).

I have, therefore, reached the conclusion that the amending Regulations published on the 25th May, 1967, were published ultra vires Cap. 96, and particularly section 19(1) thereof; as a result, the Notice which was published thereunder, also on the 25th May, 1967, is not a valid one; and it follows that to the extent to which the *sub judice* decisions of the Respondent were based on such Notice they have to be declared to be *null and void* and of no effect whatsoever (see *Christodoulou and The Republic*, 1 R.S.C.C. 1).

It has been submitted by counsel for the Respondent that legislation which came into force after the dates of the *sub judice* decisions, and, particularly, the aforementioned Notice of the 8th August, 1969, validates the said decisions—even though reached prior to the publication of such Notice—because the Notice has retrospective effect covering the period when the decisions were reached.

Regarding this point, counsel for Respondent has referred me to no authority whatsoever; and I need to hear further argument thereon, from both sides, before deciding this issue; so I leave it open at this stage.

In the meantime these cases are to come up for mention, in the first instance, so as to enable the parties to consider the position in the light of today’s decision of mine.

*Order accordingly.*

*Note:* These cases were withdrawn, as having been arranged out of Court, on the 7th March, 1970.