

— ANDREAS TRIMIKLINIOTIS,

*Appellant,*

ANDREAS  
TRIMIKLINIOTIS

v.

v.

THE DISTRICT OFFICER OF LIMASSOL,

DISTRICT  
OFFICER  
LIMASSOL

*Respondent.*

(Criminal Appeal No. 3616).

---

*Building—Certificate of approval—Conviction for occupying and using a building in respect of which no certificate of approval had been issued—Section 10(1) of the Streets and Buildings Regulation Law, Cap. 96—No building permit ever obtained in relation to the construction of the said building—Not possible in law to convict as aforesaid—Requirement to be issued with certificate of approval presupposes existence of a building permit.*

5  
10 The appellant was convicted of the offence of occupying and using a building in respect of which no “certificate of approval” had been issued contrary to section 10(1) of the Streets and Buildings Regulation Law, Cap. 96.

15 From the evidence adduced it was quite clear that the appellant never obtained a building permit in relation to the construction of the building in question.

20 The Court of Appeal after reviewing the legislative history of the said section, which was originally s. 10 of Law 12 of 1946 and received its present day form, as s. 10 of Cap. 96 in the 1959 (Revised) Edition of the Laws of Cyprus, through an amendment introduced by s. 4 of Law 44/1954:

25 *Held,* (1) It was all along the intention of the legislator to require the issuing of a certificate of approval in respect of a structure for which a building permit had been granted; but, at no time was the notion of a certificate of approval divorced from that of a previously issued building permit in respect of the structure  
30 concerned.

1975  
June 9

ANDREAS  
TRIMIKLINIOTIS

v.

DISTRICT  
OFFICER  
LIMASSOL

(2) We, therefore, could not agree with counsel for the respondent that we can treat sub-section (1) of s. 10 of Cap. 96 as creating on its own an independent offence unconnected with the previous existence of a building permit; to adopt such a view, in the absence of clear language to this effect, would be contrary to the principles applicable to the construction of a penal provision. (See Maxwell on Interpretation of Statutes, 12th ed. pp. 239 et seq.).

(3) The appellant having never obtained a building permit we are of the view that it was not possible in law to convict him, as aforesaid, because the requirement to be issued with a certificate of approval presupposes the existence of a building permit in respect of the structure concerned. (*Pilgram v. Dean*, reported in the London "Times" of the 23rd January, 1974 distinguished).

*Appeal allowed.*

Cases referred to:

*Pilgram v. Dean* (reported in the London "Times" of the 23rd January, 1974).

**Appeal against conviction.**

Appeal against conviction by Andreas Trimikliniotis who was convicted on the 10th January, 1975 at the District Court of Limassol (Criminal Case No. 5852/74) on two counts of the offences of occupying and using a building in respect of which no certificate of approval had been issued contrary to section 10(1) of the Streets and Buildings Regulation Law, Cap. 96 and was sentenced by Korfiotis, D.J. to pay £1.- fine on each count with £12.- costs and he was further ordered to demolish the building within two months unless a building permit was obtained in the meantime.

*A. E. Georghiades* with *S. Stavrinides*, for the appellant.

*Gl. Michaelides*, for the respondent.

The judgment of the Court was delivered by :-

TRIANAFYLLIDES, P.: In this case the appellant was convicted on charges, under section 10(1) of the Streets

and Buildings Regulation Law, Cap. 96, of occupying and using a building in respect of which no "certificate of approval" had been issued.

1975  
June 9

ANDREAS  
TRIMIKLINIOTIS

v.

DISTRICT  
OFFICER  
LIMASSOL

It is quite clear, on the basis of the evidence adduced, 5 that the appellant never obtained a building permit in relation to the construction of the building in question; that being so, we are of the view that it was not possible in law to convict him, as aforesaid, because the requirement to be issued with a certificate of approval pre- 10 supposes the existence of a building permit in respect of the structure concerned; the certificate of approval is issued by the authority which has granted the permit on being satisfied that the conditions of such permit have been complied with.

15 Our above view is strengthened by the legislative history of section 10 of Cap. 96, which was originally section 10 of the Streets and Buildings Regulation Law, 1946 (Law 12/46), and it read as follows :-

20 "10. Where the work or other matter in respect of which a permit has been granted under the provisions of section 3 of this Law has been completed to the satisfaction of the appropriate authority, such authority shall furnish the holder with a certificate of approval of the work or other matter in respect 25 of which the permit has been granted :

Provided that the appropriate authority, where it so thinks fit, may furnish the holder of the permit with a certificate of approval for part only of the work or matter".

30 The above provision became later section 10 of the Streets and Buildings Regulation Law, Cap. 165 in the 1949 (Revised) Edition of the Laws of Cyprus. Subsequently by section 6 of the Streets and Buildings Regulation (Amendment) Law, 1950 (Law 10/50), the then 35 existing section 10 of Cap. 165 was repealed and replaced by a new section which read as follows :-

40 "10. The holder of a permit shall, not later than twenty-one days from the completion of the work or matter in respect of which the permit has been granted under the provisions of section 3 of this Law, notify the appropriate authority of such completion and

1975  
June 9

ANDREAS  
TRIMIKLINIOTIS

v.

DISTRICT  
OFFICER  
LIMASSOL.

such authority, if satisfied that the work or matter has been duly completed in accordance with the permit, shall furnish the holder with a certificate of approval of the work or other matter in respect of which the permit has been granted :

5

Provided that the appropriate authority may, where it so thinks fit, furnish the holder of the permit with a certificate of approval for part only of the work or matter”.

Later, by section 4 of the Streets and Buildings Regulation (Amendment) Law, 1954 (Law 44/54), section 10 was amended once again and there was introduced for the first time the provision which is sub-section (1) of what is now section 10 of Cap. 96 in the 1959 (Revised) Edition of the Laws of Cyprus; such section 10 reads as follows :-

10

15

“10.(1) No person shall occupy or use, or cause, permit, or suffer any other person to occupy or use, any building unless and until a certificate of approval has been issued in respect thereof by the appropriate authority.

20

(2) The holder of a permit shall, not later than twenty-one days from the completion of the work or matter in respect of which the permit has been granted under the provisions of section 3 of this Law, notify the appropriate authority of such completion and such authority, if satisfied that the work or matter has been duly completed in accordance with the permit, shall furnish the holder with a certificate of approval of the work or other matter in respect of which the permit has been granted :

25

30

Provided that the appropriate authority may, where it so thinks fit and is satisfied that all requirements of this Law and the Regulations in force for the time being are complied with, furnish the holder of the permit with a certificate of approval for part only of the work or matter”.

35

The above review of the legislative history of the provision concerned shows that it was all along the intention of the legislator to require the issuing of a certificate of approval in respect of a structure for which

40

1975.  
June 9

ANDREAS  
TRIMIKLINIOTIS

v.

DISTRICT  
OFFICER  
LIMASSOL

a building permit had been granted; at first—in the course of the evolution of the law—the duty to issue such certificate was cast on the appropriate authority which had granted the building permit; later on, the holder of the building permit was burdened with the duty of seeking the certificate from the said authority; and, eventually, it was made an offence to occupy or use a building unless and until a certificate had been issued; but, at no time was the notion of a certificate of approval divorced from that of a previously issued building permit in respect of the structure concerned.

We, therefore, could not agree with counsel for the respondent that we can treat sub-section (1) of section 10 of Cap. 96 as creating on its own an independent offence unconnected with the previous existence of a building permit; to adopt such a view, in the absence of clear language to this effect, would be contrary to the principles applicable to the construction of a penal provision (see Maxwell on Interpretation of Statutes, 12th ed., pp. 239 et seq.). In our view the proper course in the present case was for the appellant to have been prosecuted for committing the offence of building without a permit, contrary to section 3(1)(b) of Cap. 96.

Before concluding we might add that in *Pilgram v. Dean* (reported in the London "Times" of the 23rd January, 1974) it was held, indeed, that "it is no defence to a charge of failing to exhibit an excise licence on a car to say 'I have no licence to exhibit', and a motorist may be convicted of the offences of using an unlicensed car and failing to exhibit a licence on it arising out of a single incident": but, that view was reached on the basis of the texts of the legislative provisions concerned and, in particular, of section 12(4), read in conjunction with section 8, of the Vehicles (Excise) Act, 1971. As was observed by Lord Widgery C.J., section 8 provided for the liability to pay duty and breach of that section did not result in the payment of a fine in the conventional sense, but in the imposition of an excise penalty; on the other hand, section 12(4) provided that "without prejudice to section 8" any person using in public a vehicle without there being exhibited in the prescribed manner a licence was liable

1975  
June 9

ANDREAS  
TRIMIKLINIOTIS

v.

DISTRICT  
OFFICER  
LIMASSOL

to a fine. Thus the legislative provisions involved in the case of *Pilgram, supra*, appear to be materially different from those involved in the present case, which is, therefore, distinguishable from the *Pilgram* case.

For the above reasons this appeal is allowed and the appellant's conviction is set aside, together, of course, with the punishment which was imposed as a result of it. 5

*Appeal allowed.*