

1976 September 9

[TRIANTAFYLIDIS, P.]

DR. G.N. MARANGOS LTD.,

Applicant,

v.

1. THE MUNICIPALITY OF FAMAGUSTA,
2. THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS,

Respondents.

(Case No. 3/72).

5 *Administrative Law—Executory act—Confirmatory act—A confirmatory act is not of an executory nature and it cannot be made the subject of a recourse—Refusals to grant building permit and communication of refusals to applicant—Respondent reverting to the matter again, at the instance of applicant, making no new inquiry and only confirming its earlier decisions refusing such permit—Latter refusal only confirmatory of the earlier decisions and not an executory one so that it could be challenged by this recourse—Moreover recourse out of time in that the said earlier*
10 *decisions could not be attacked within time by this recourse.*

15 The respondent Municipality refused applicant's application for a building permit and its refusal was communicated to him by letter of September 8, 1970. After receiving this letter applicant submitted new plans but by its letter of May 29, 1971 the respondent Municipality informed applicant that it refused to examine such plans because they were not in accordance with the relevant legislative provisions.

20 The respondent reverted once again to the application of applicant and refused it by its letter of December 13, 1971. It was clear from the contents of this letter that on this occasion the respondent did nothing more than to confirm its earlier decision to refuse such permit which had been communicated initially, by the said letter of September 8, 1970 and which had, also, been confirmed by the aforesaid letter of May 29, 1971.

On the question whether the present recourse, filed on January 5, 1972, could proceed against the decision of the respondent Municipality, which was communicated to the applicant by the said letter of December 13, 1971, and by means of which he was refused a building permit:

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Held, (1) that a confirmatory decision is not of an executory nature and it cannot be made the subject of a recourse; that in view of the refusal of the respondent Municipality to examine the new plans it is clear that there has been no new inquiry in the matter of a nature which could have rendered the decision communicated by means of the letter of December 13, 1971, an executory one, and not only a confirmatory one.

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(2) That, therefore, in so far as the recourse is directed against the decision of the respondent Municipality which was communicated by means of the letter dated December 13, 1971, has to be dismissed as being out of time, in that the said decision confirms earlier decisions which could not be attacked within time by the present recourse, and, also, because such decision is only confirmatory of the said earlier decisions and not an executory one so that it could be challenged by the present recourse.

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Application dismissed.

Cases referred to:

Ktenas and Another (No. 1) v. The Republic (1966) 3 C.L.R. 820 at pp. 73, 75; and on appeal (1966) 3 C.L.R. 820 at p. 826;

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Papaleontiou v. The Republic (1966) 3 C.L.R. 557 at p. 560;

Vassava v. The Republic (1968) 3 C.L.R. 566 at pp. 574, 575;

Ioannou v. The Grain Commission (1968) 3 C.L.R. 612 at p. 616;

Mezalemou v. The Republic (1968) 3 C.L.R. 581 at p. 589;

Kelias v. The Republic (1970) 3 C.L.R. 196 at pp. 202, 203;

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The Police Association and Others v. The Republic (1972) 3 C.L.R. 1 at pp. 30, 31;

Liasidou v. The Municipality of Famagusta (1972) 3 C.L.R. 278 at pp. 280-287;

Salamis Holding, Limited v. The Municipality of Famagusta (1974) 3 C.L.R. 344 at p. 350;

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Lordos Apartotel, Limited v. The Republic (1974) 3 C.L.R. 471 at pp. 473-475;

Ioannou v. The Commander of Police (1974) 3 C.L.R. 504 at p. 508;

Decisions of the Greek Council of State in cases 2742/67 and 2242/70.

5 **Recourse.**

Recourse against the refusal of the respondents to issue a building permit to the applicant.

J. Kaniklides, for the applicant.

M. Papas, for respondent 1.

10 *L. Loucaides*, Deputy Attorney-General of the Republic, for respondent 2.

Cur. adv. vult.

15 TRIANTAFYLIDIS P. read the following judgment. At this stage in these proceedings I have to decide, on the basis of arguments advanced as regards a preliminary legal issue, whether this recourse can proceed against a decision of the respondent Municipality by means of which the applicant was refused a building permit; such decision was communicated to the applicant by a letter dated December 13, 1971, (*exhibit 1*).

20 Before proceeding any further I should mention that in so far as respondent 2 is concerned this recourse has been withdrawn, in the course of the hearing of arguments on the said preliminary issue, and it, therefore, has been dismissed to that extent.

25 Counsel for the respondent Municipality has submitted that the refusal in question is a confirmatory decision, and, consequently, it could not have been made the subject matter of the present recourse; and, also, that in so far as such recourse is aimed at any other previous administrative acts of the respondent Municipality, regarding the same matter, the recourse is
30 out of time.

I think that the latter of the above two submissions is, in any event, well-founded, because the immediately previous decision of the Municipality was communicated to the applicant by a letter dated May 29, 1971, and as this recourse was filed only
35 on January 5, 1972, it is out of time in relation to such decision; and, of course, in relation, too, to any other decision communicated to the applicant even earlier than May 29, 1971.

That a confirmatory decision is not of an executory nature

and it cannot be made the subject matter of a recourse has been laid down in a number of cases, such as *Ktenas and another (No. 1) v. Republic*, (1966) 3 C.L.R. 64, 73, 75, and on appeal (1966) 3 C.L.R. 820, 826, *Papaleontiou v. The Republic*, (1966) 3 C.L.R. 557, 560, *Varnava v. The Republic*, (1968) 3 C.L.R. 566, 574, 575, *Ioannou v. The Grain Commission*, (1968) 3 C.L.R. 612, 616, *Megalemou v. The Republic*, (1968) 3 C.L.R. 581, 589, *Kelpis v. The Republic*, (1970) 3 C.L.R. 196, 202, 203, *The Police Association and others v. The Republic*, (1972) 3 C.L.R. 1, 30, 31, *Liasidou v. The Municipality of Famagusta*, (1972) 3 C.L.R. 278, 285-287, *Salamis Holdings Limited v. The Municipality of Famagusta*, (1974) 3 C.L.R. 344, 350, *Lordos Apartotels Limited v. The Republic*, (1974) 3 C.L.R. 471, 473-475, *Ioannou v. The Commander of Police*, (1974) 3 C.L.R. 504, 508 (and see, also, Tsatsos on the Recourse for Annulment, 3rd ed., pp. 131-141, and the decisions of the Greek Council of State in cases 2742/67 and 2242/70).

It is clear from the contents of the letter of December 13, 1971, that though the respondent Municipality had reverted once again to the matter of the application of the applicant for a building permit, it only, in the end, did nothing more than to confirm its earlier decision to refuse such permit, which had been communicated, initially, by a letter dated September 8, 1970 (*exhibit 2*), and which had, also, been already confirmed by the aforesaid letter of May 29, 1971 (*exhibit 4*).

It is true that the applicant had submitted new plans after receiving the letter of September 8, 1970, but, as it appears from the letter of May 29, 1971, the respondent Municipality had refused to examine such plans, because it was of the view that they were not in accordance with the relevant legislative provisions.

In view of the refusal of the respondent Municipality to examine the new plans it is clear that there has been no new inquiry in the matter of a nature which could have rendered the decision communicated by means of the letter dated December 13, 1971, an executory one, and not only a confirmatory one (see, *inter alia*, in this connection, the cases of *Kelpis*, *The Police Association*, *Liasidou*, *Lordos Apartotels Ltd.* and *Salamis Holdings Ltd.*, *supra*).

In the light of all the foregoing this recourse, in so far as is directed against the decision of the respondent Municipality

which was communicated by means of the letter dated December 13, 1971, has to be dismissed as being out of time, in that the said decision confirms earlier decisions which could not be attacked within time by the present recourse, and also, because
5 such decision is only confirmatory of the said earlier decisions and not an executory one so that it could be challenged by the present recourse.

Application dismissed.