

1983 June 4

[TRIANTAFYLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MIKIS S. AGROTIS AND OTHERS.

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS AND OTHERS.

Respondents.

(Cases Nos. 98/77, 101/77, 102/77).

5 *Recourse under Article 146 of the Constitution—Abatement—Through
revocation of sub judice decision—Principles applicable—Abate-
ment not possible when applicants have been adversely affected
whilst sub judice decision was operative—Article 146.6 of the
Constitution.*

The applicants in these recourses challenged the validity of building zone Notices, affecting their properties, which were made under section 14(1) of the Streets and Buildings Regulation Law, Cap. 96.

10 *On the question whether the recourses have been abated, as
having been deprived of their subject-matter due to the fact that
the sub judice Notices have, in the meantime, been revoked:*

15 *Held, that where an act of limited duration has ceased to exist
without having produced, before ceasing to be operative, any
adverse consequences for the applicant the recourse which was
made against it is abated, because if there are no adverse conse-
quences of such an act no need to annul it, in view of the provi-
sions of Article 146.6, would arise; that as while the sub judice
Notices were operative the applicants may, quite probably have
20 been adversely affected in the sense that they were prevented
from developing their properties otherwise than subject to the
restrictions set out in such Notices; and that as in relation to
applicant in Case No. 98/77 parts of his two properties, affected
by the sub judice Notices, were compulsorily acquired, while*

such Notices were still operative; and as it cannot be excluded that the restrictions which were imposed by the sub judice Notice and which were in force at the material time in relation to the properties in question of the applicant in Case 98/77, may be a factor to be taken into account in assessing the amount of compensation payable to him in respect of the parts compulsorily acquired as aforesaid, these recourses have not been abated and should be heard further.

Order accordingly.

Cases referred to:

- Frangos v. Republic* (1970) 3 C.L.R. 312 at p. 334;
Kyriakides v. Republic, 1 R.S.C.C. 66 at pp. 74-75;
Christodoulou v. Republic (1978) 3 C.L.R. 193 at p. 197;
Platis v. Republic (1978) 3 C.L.R. 384 at p. 394;
Hapeshis v. Republic (1979) 3 C.L.R. 550;
Muliotis v. Municipality of Nicosia (1965) 3 C.L.R. 75 at pp. 94, 95;
Vafeades v. Greek Communal Chamber (1966) 3 C.L.R. 197 at p. 199;
Andreou v. Republic (1975) 3 C.L.R. 108 at p. 110;
Manglis v. Republic (Case No. 197/72 etc., not reported yet);
Decisions of the Greek Council of State Nos: 1101/1975, 1265/1956 and 701/1970.

Decision.

Decision as to whether the recourses filed against two notices in respect of building zones have been abated, as having been deprived of their subject-matter, due to the fact that they have, in the meantime, been revoked.

A. Ladas, for the applicant in Case No. 98/77.

I. Typographos, for the applicants in Cases Nos. 101/77 and 102/77.

R. Gavrielides, Senior Counsel of the Republic, for the respondents.

K. Chrysostomides, for the Municipal Committee of Paphos.

Cur. adv. vult.

TRIANTAFYLIDIS P. read the following decision. At this stage of the present proceedings I have to decide whether these recourses have been abated, as having been deprived of their

subject-matter, due to the fact that the building zones Notices, in respect of which they were made, have, in the meantime, been revoked.

5 The first of the said two Notices, against which cases 98/77 and 102/77 have been filed, was published on 7th January 1977 (No. 2 in the Third Supplement, Part I, to the Official Gazette, to be referred to hereinafter as "Notice 2/77") under section 14(1) of the Streets and Buildings Regulation Law, Cap. 96, as amended, in this respect, by the Streets and Buildings Regu-
10 lation (Amendment) Law, 1964 (Law 65/64) and by the Streets and Buildings Regulation (Amendment) (No. 2) Law, 1969 (Law 38/69).

15 Notice 2/77 was repealed and replaced by a new Notice the validity of which is not being challenged in the present proceedings and which was published on 7th August 1981, also under section 14(1) of Cap. 96 (No. 180 in the Third Supplement, Part I, to the Official Gazette, to be referred to hereinafter as "Notice 180/81").

20 The other one of the two Notices in question, against which case 101/77 has been filed, was likewise published under section 14(1) of Cap. 96 again on 7th January 1977 (No. 1 in the Third Supplement, Part I, to the Official Gazette, to be referred to hereinafter as "Notice 1/77") and was repealed and replaced by a Notice published on 31st August 1979, also under section
25 14(1) of Cap. 96 (No. 199 in the Third Supplement, Part I, to the Official Gazette, to be referred to hereinafter as "Notice 199/79"). Notice 199/79 is not being challenged in the present proceedings.

30 As this Court has constantly in the past relied on relevant principles of administrative law which were expounded in Greece (see, for example, *Frangos v. The Republic*, (1970) 3 C.L.R. 312, 334), I have been invited to hold that once the Notices against which these recourses have been made have ceased to exist the present recourses have been deprived of their subject-matter
35 and in accordance with principles applicable in Greece they have to be treated as having been abated; and I have been referred, in this respect, to the Conclusions from the Case-Law of the Council of State in Greece (Πορίσματα Νομολογίας του Συμβουλίου της Ἐπικρατείας), 1929-1959, pp. 275, 276,

Tsatsos on The Recourse for Annulment before the Council of State (Τσάτσου, 'Η Αίτησις Ἀκυρώσεως ἐνώπιον τοῦ Συμβουλίου τῆς Ἐπικρατείας), 3rd ed., p. 370, para. 188, and the Manual of Administrative Law by Spiliotopoulos (Σπηλιωτοπούλου, Ἐγχειρίδιον Διοικητικοῦ Δικαίου), 2nd ed., p. 454, para. 505—(from which it appears that the relevant principle was given also statutory effect in Greece)—as well as to the Decision of the Council of State in Greece in case No. 1101/1975 (reported in "The Constitution" (Τὸ Σύνταγμα), 1976, vol. 2, p. 77).

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Even in Greece, however, the revocation of an administrative act deprives an administrative recourse, which has been made against it, of its subject-matter only if such revocation has obliterated completely the adverse for the applicant consequences which occurred while the act was in force (see, in this respect, *inter alia*, Tsatsos *supra*, p. 371, para. 188, Spiliotopoulos, *supra*, p. 455, para. 505, subparagraph (vi), and the Decisions of the Greek Council of State in cases Nos. 1265/1956 and 701/1970).

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The position in Cyprus is somewhat different in this connection from that in Greece because as it is to be derived from the aforementioned Decision of the Council of State in Greece, No. 1101/75, an applicant whose recourse has been abated through the repeal or revocation of the act concerned can claim compensation before a civil Court for any damage suffered by him while such act was operative, whereas in Cyprus, in view of paragraph (6) of Article 146 of our Constitution, the annulment by this Court under Article 146 of the administrative act which has caused damage to the applicant is a prerequisite for a claim by him for compensation in respect of such damage; the said paragraph (6) reads as follows:

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“6. Πᾶν πρόσωπον ζημιωθὲν ἐξ ἀποφάσεως ἢ πράξεως ἢ παραλείψεως κηρυχθείσης ἀκύρου κατὰ τὴν τετάρτην παράγραφον τοῦ παρόντος ἄρθρου δικαιούται, ἐφ’ ὅσον ἡ ἀξίωσις αὐτοῦ δὲν ἰκανοποιήθη ὑπὸ τοῦ περὶ οὗ πρόκειται ὀργάνου, ἀρχῆς ἢ προσώπου, νὰ ἐπιδιώξη δικαστικῶς ἀπρὸς τὸν ὀργανισμόν αὐτοῦ ἢ ἄλλην θεραπείαν ἐπὶ τῷ τέλει, ὅπως ἐπιδικασθῆ εἰς τοῦτο δικαίαια καὶ εὐλογος ἀποζημίωσις καθοριζομένη ὑπὸ τοῦ δικαστηρίου ἢ παρασχεθῆ εἰς τοῦτο ἄλλη

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δικαία και εύλογος θεραπεία ἦν τὸ δικαστήριον ἔχει τὴν ἐξουσίαν νὰ παράσχη”.

5 (6. Any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article or by any omission declared thereunder that it ought not to have been made shall be entitled, if his claim is not met to his satisfaction by the organ, authority or person concerned, to institute legal proceedings in a Court for the recovery of damages or for being granted other remedy and to recover 10 just and equitable damages to be assessed by the Court or to be granted such other just and equitable remedy as such Court is empowered to grant”).

In *Kyriakides v. The Republic*, 1 R.S.C.C. 66, the following were stated (at pp. 74–75):

15 “The Court is of the opinion that no question of parallel legal remedies can arise through the correlation of Articles 146 and 172.

Article 172 lays down the general principle that the Republic is made liable ‘for any wrongful act or omission causing damage committed in the exercise or purported exercise of the duties of officers or authorities of the Republic’. It is clearly aimed at remedying the situation existing before the coming into force of the Constitution whereby the former Government of the Colony of Cyprus could not be sued in tort.

The principle embodied in Article 172 has been given effect, inter alia, in the Constitution by means of paragraph 6 of Article 146 in respect of all matters coming within the scope of such Article 146.

30 Therefore, in the opinion of this Court, in respect of all wrongful acts or omissions referred to in Article 172 and which acts or omission come within the scope of Article 146 an action for damages lies in a civil Court only under paragraph 6 of such Article, consequent upon a judgment of this Court under paragraph 4 of the same Article, and 35 in such cases an action does not lie direct in a civil Court by virtue of the provisions of Article 172”.

(and see, further, also, inter alia, *Christodoulides v. The Republic*,

(1978) 3 C.L.R. 193, 197, *Platis v. The Republic*, (1978) 3 C.L.R. 384, 394 and *Hapeshis v. The Republic*, (1979) 3 C.L.R. 550).

Of course, in Cyprus the principle has been duly followed, as in Greece, that where an act of limited duration has ceased to exist without having produced, before ceasing to be operative, any adverse consequences for the applicant the recourse which was made against it is abated, because if there are no adverse consequences of such an act no need to annul it, in view of the provisions of Article 146.6, would arise (see, inter alia, *Maliotis v. The Municipality of Nicosia*, (1965) 3 C.L.R. 75, 94, 95, *Vafeades v. The Greek Communal Chamber*, (1966) 3 C.L.R. 197, 199 and *Andreou v. The Republic*, (1975) 3 C.L.R. 108, 110).

It is very pertinent to refer in this respect to the judgment of *Manglis v. The Republic* (in cases 197/72 etc., not reported yet), where the Full Bench of this Court held that in circumstances which are exactly the same as those of the present cases the recourses which were made against repealed and replaced Notices published under section 14(1) of Cap. 96 had not been abated, because while the said repealed Notices were in force they seemed to have affected legitimate interests of the applicants and, also, because in each one of the new subsequent Notices, by means of which they were repealed, there was a paragraph (7) stating expressly that the earlier Notices were repealed without prejudice to anything done or omitted to be done under them; and the same paragraph (7) is to be found in the aforementioned Notices 199/79 and 180/81, which have repealed, respectively, the sub judice Notices 1/77 and 2/77.

Indeed, in the present cases while Notices 1/77 and 2/77, above, were operative the applicants may, quite probably, have been adversely affected in the sense that they were prevented from developing their properties otherwise than subject to the restrictions set out in such Notices; and in relation to the applicant in case No. 98/77 it has to be observed, also, that parts of his two properties in Paphos, which were affected by Notice 2/77 were compulsorily acquired, while such Notice was still operative and prior to its repeal by Notice 180/81 (see No. 1046 in the Third Supplement, Part 11, to the Official Gazette of 6th October 1978 and No. 80 in the Third Supple-

ment, Part II, to the Official Gazette of 18th January 1979);
and, to say the least, it cannot be excluded that the restrictions
which were imposed by Notice 2/77, and which were in force
at the material time in relation to the properties in question of
5 the applicant in case 98/77, may be a factor to be taken into
account in assessing the amount of compensation payable to
him in respect of the parts compulsorily acquired as aforesaid.

In view of the foregoing reasons I find that these recourses
have not been abated and should be heard further.

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Order accordingly.