

1984 August 7

[TRIANTAFYLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THEOFANO THOMA HADJIPAPASYMEOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE DISTRICT OFFICER OF NICOSIA,

Respondent.

(Case No. 220/83).

Practice—Title of proceedings—Parties to a recourse—Recourse for annulment—Made against the act, decision or omission which is its subject-matter—Organ responsible therefor made a party to the recourse only in the sense that it is given an opportunity to be heard in relation to its outcome—Recourse against District Officer concerning a term in a building permit issued by Improvement Board—Decision complained of not taken by District Officer but by Improvement Board—Title of proceedings amended by making the Improvement Board, also, a respondent. 5

By means of this recourse, the applicant complained against a term which was included in a building permit issued by the Improvement Board of Paliometochi on the 17th March, 1983. The said permit was signed by the District Officer of Nicosia on behalf of the Improvement Board of Paliometochi. 10

In the title of the application in this recourse the respondent was described as "The Republic of Cyprus through the District Officer of Nicosia". 15

As there was raised in the Opposition the objection that the District Officer of Nicosia had never taken the decision which was challenged by this recourse counsel for the applicant applied for leave to amend the title of this case so as to add as a second respondent the "Improvement Board of Paliometochi". 20

Held, that an administrative recourse, such as the present one, which is filed under Article 146 of the Constitution, is made against the act, decision or omission which is its subject-matter and the organ responsible for that act, decision or omission is a party to the recourse only in the sense that it is given an opportunity to be heard in relation to its outcome; that the amendment of the title of the proceedings in the present case is being sought in order to bring it into full conformity with the true position regarding the subject-matter of the recourse, namely the complained of part of the building permit which was issued by the Improvement Board of Paliometochos on the 17th March 1983, and against which this recourse was filed in time, under Article 146.3 of the Constitution, on the 27th May 1983; that, consequently, the amendment of the title of the present proceedings will be allowed by making the Improvement Board of Paliometochos a respondent in this case.

Observation: It is, of course, to be understood that the District Officer of Nicosia is to be treated as a party to these proceedings not in his capacity as a separate organ of administration, but as being the Chairman of the aforementioned Improvement Board

Order accordingly.

Cases referred to:

Cyprus Transport Co. Ltd. (No. 1) v. Republic (1969) 3 C.L.R. 501 at p. 502;

Lambrou v. Republic (1970) 3 C.L.R. 75 at p. 79;

Christodoulou v. Republic, 1 R.S.C.C. 1 at p. 9;

Hadjianastassiou v. Republic (1982) 3 C.L.R. 672 at p. 674;

Lanitis Farm Ltd. v. Republic (1982) 3 C.L.R. 124 at p. 132;

Improvement Board of Strovolos v. Republic (1983) 3 C.L.R. 434.

Recourse.

Recourse against the decision of the respondent whereby a term was included in the building permit issued to the applicant on the 17th March, 1983.

E. Markidou (Mrs.), for the applicant.

A. Vladimirov, for the respondent.

Cur. adv. vult.

TRIANAFYLLIDES P. read the following decision. By means of the present recourse, which was filed on the 27th May 1983,

the applicant complains against a term which was included in a building permit issued by the Improvement Board of Paliometochos on the 17th March 1983.

The said permit is signed by the District Officer of Nicosia on behalf of the Improvement Board of Paliometochos.

In the title of the Application in this recourse the respondent is described as "The Republic of Cyprus through the District Officer of Nicosia".

As there was raised in the Opposition the objection that the District Officer of Nicosia had never taken the decision which is challenged by this recourse counsel for the applicant applied for leave to amend the title of this case so as to add as a second respondent the "Improvement Board of Paliometochos".

An administrative recourse, such as the present one, which is filed under Article 146 of the Constitution, is made against the act, decision or omission which is its subject-matter and the organ responsible for that act, decision or omission is a party to the recourse only in the sense that it is given an opportunity to be heard in relation to its outcome. This is plainly obvious not only from the provisions as a whole of Article 146 of the Constitution but, also, due to the nature of the jurisdiction created by it and the general principles of public law which are applicable to the exercise of such jurisdiction; and, useful reference, in this respect, may be made to the cases of *Cyprus Transport Co. Ltd. (No. 1) v. The Republic*, (1969) 3 C.L.R. 501, 502 and *Lambrou v. The Republic*, (1970) 3 C.L.R. 75, 79.

It is pertinent to note that in the case of *Christodoulou v. The Republic*, 1 R.S.C.C. 1, 9, the Court proceeded, on its own motion, when giving judgment, to amend the title of the proceedings so as to bring it into conformity with the true facts of the case. I have perused the Court record of the *Christodoulou* case, supra, and it appears that, initially, that recourse was filed against "Polycarpos Yorkadjis, Minister of Interior" as the respondent; but the Court amended the description of the respondent so as to become "The Republic of Cyprus, through the Collector of Customs, Nicosia" and the fact that this course was, rightly in my opinion, adopted by the Court on its own motion, when giving judgment, eloquently illustrates

that what really matters in a recourse under Article 146 is its subject—matter and that the description of the respondent is a subsidiary formality.

5 I have been referred by counsel for the respondent to the case of *Hadjianastassiou v. The Republic*, (1982) 3 C.L.R. 672, 674, where it did not appear that the administrative action which had been challenged by that recourse had emanated from the Improvement Board of Ayios Athanassios which was the competent organ, but only from the District Officer of Limassol
10 who did not seem to have acted as the Chairman of the said Board. In the present case, however, it is quite clear that the District Officer of Nicosia acted on behalf of the Improvement Board concerned and, therefore, this case is clearly distinguishable from the *Hadjianastassiou* case, *supra*.

15 It may be usefully observed, too, that in the case of *Lanitis Farm Ltd. v. The Republic*, (1982) 3 C.L.R. 124, 132, it was held by A. Loizou J. that the addition of the Agricultural Insurance Organization as a party to the proceedings at the late stage of delivering his judgment would contravene the provisions
20 of Article 146.3 as regards the time within which an administrative recourse may be filed. But in the *Lanitis Farm Ltd.* case, *supra*, there had not been challenged by the recourse, when it was filed, any act or decision of the said Organization and, therefore, its belated addition as a respondent coupled
25 with an amendment of the motion for relief so as to enable the applicant to challenge action taken by such Organization would, indeed, have resulted in a contravention of the provisions of Article 146.3. Consequently, that case is, also, distinguishable from the present one and, indeed, it clearly indicates
30 the significance of the subject—matter of a recourse under Article 146 of the Constitution.

I have been referred by counsel for the respondent to the case of *The Improvement Board of Strovolos v. The Republic*, (1983) 3 C.L.R. 434, where Pikis J. examined the nature of an
35 Improvement Board when considering the possibility of a recourse being filed against the Republic by an Improvement Board as an organ of local administration. I do not think that the views which were expressed by Pikis J. on the said occasion on an issue with which I am not now dealing should

lead me to the conclusion that the amendment applied for in the present proceedings should not be allowed.

In my opinion the amendment of the title of the proceedings in the present case is being sought in order to bring it into full conformity with the true position regarding the subject-matter of the recourse, namely the complained of part of the building permit which was issued by the Improvement Board of Paliometochos on the 17th March 1983, and against which this recourse was filed in time, under Article 146.3 of the Constitution, on the 27th May 1983.

I have, consequently, decided to allow the amendment of the title of the present proceedings by making the Improvement Board of Paliometochos a respondent in this case.

Before concluding I should observe that in the light of all the foregoing it is, of course, to be understood that the District Officer of Nicosia is to be treated as a party to these proceedings not in his capacity as a separate organ of administration, but as being the Chairman of the aforementioned Improvement Board.

Order accordingly.