

1984 February 22

[TRIANTAFYLIDIS, P., HADJIANASTASSIOU, A. LOIZOU, MALACHTOS,
SAVVIDES, LORIS JJ.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KRATINOS CHARALAMBIDES AND OTHERS,

Applicants,

v.

1. THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS,
2. THE MUNICIPALITY OF POLIS TIS CHRYSOCHOUS,
3. THE MUNICIPALITY OF LARNACA,

Respondents.

(Cases Nos. 436/79, 437/79, 310/80,
338/80, 355/80, 362/80, 364/80,
381/80).

*Act or decision in the sense of Article 146.1 of the Constitution—
Which can be made the subject of a recourse thereunder—Notices
under section 14(1) of the Streets and Buildings Regulation Law,
Cap. 96 (as amended)—They can be challenged by a recourse
under the above Article as being acts of an administrative, and
not of legislative, nature.*

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The sole issue in these recourses was whether Notices, which were published under section 14(1)* of the Streets and Buildings Regulation Law, Cap. 96 (as amended) amounted to acts or decisions by organs exercising executive or administrative authority and, therefore, they could be challenged by the present recourses, which were filed under Article 146.1 of the Constitution, or whether they were delegated legislation, which was the product of the exercise of legislative power and they could not be so challenged.

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* Section 14(1) is quoted at pp. 1518–1519 post.

Held, that the Notices which are the subject-matter of these proceedings could be challenged by the present recourses, under Article 146.1 of the Constitution, as being acts of an administrative, and not of legislative, nature.

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Order accordingly.

Cases referred to:

Francis v. Attorney-General (1971) 3 C.L.R. 134 at p. 136;

Manglis and Others v. Republic (1984) 3 C.L.R. 351;

Demetriades and Son v. Republic (1969) 3 C.L.R. 557;

10 *Kourris v. Supreme Council of Judicature* (1972) 3 C.L.R. 390
at pp. 400, 401, 408, 409, 411, 412, 443, 461, 462;

Pankyprios Syntechnia Dimosion Ypallilon v. Republic (1978)
3 C.L.R. 27 at pp. 30, 31;

15 *Lanitis Farm Ltd. v. Republic* (1982) 3 C.L.R. 124 at pp. 131,
132;

Sofroniou v. Municipality of Nicosia (1976) 3 C.L.R. 124.

Recourses.

20 Recourses against the notices published under the Streets
and Buildings Regulation Law, Cap. 96 whereby certain res-
trictions were imposed in relation to the areas described in the
notices as "tourist zones".

A. Pandelides, for applicants in Case Nos. 436/79, 437/79.

A.S. Angelides, for applicants in Case Nos. 310/80, 338/80,
364/80, 381/80.

25 *A. Poetis*, for applicant in Case No. 355/80.

A. Panayiotou, for applicant in Case No. 362/80.

M. Florentzos, Counsel of the Republic with *A. Vassiliades*,
for respondent 1.

K. Chrysostomides, respondent 2.

30 *G. Nicolaidis*, for respondent 3.

Cur. adv. vult.

TRIANAFYLLIDES P. read the following judgment of the Court. These cases were heard together, as test cases, in view of their nature, on the common issue of whether Notices which were published under section 14(1) of the Streets and Buildings Regulation Law, Cap. 96, as amended, in this respect, by the Streets and Buildings Regulation (Amendment) Law, 1964 (Law 65/64) and by the Streets and Buildings Regulation (Amendment) (No. 2) Law, 1969 (Law 38/69), amount to acts or decisions by organs exercising executive or administrative authority and, therefore, they can be challenged by the present recourses which were filed under Article 146.1 of the Constitution, or whether they are delegated legislation, which is the product of the exercise of legislative power and they cannot be so challenged.

Case 436/79 has been filed against Notices Nos. 213 and 214 which were published on the 14th September 1979 (in the Third Supplement, Part 1, to the Official Gazette); case 437/79 against only the aforesaid Notice No. 213; and cases 310/80, 338/80, 355/80, 362/80, 364/80 and 381/80 against Notice No. 234 which was published on the 16th August 1980 (in the Third Supplement, Part 1, to the Official Gazette).

Notice No. 213 appears, from the manner in which it has been framed, to have been published, with the approval of the Council of Ministers, in the exercise of the powers vested in the respondent Municipality of Polis tis Chrysochous by virtue of paragraphs (a), (b) and (d) of section 14(1) of Cap. 96, whereas Notice No. 214 appears to have been likewise published under only paragraph (c) of section 14(1), above; and Notice No. 234 appears to have been published, with the approval of the Council of Ministers, in the exercise of the powers vested in the respondent Municipality of Larnaca by virtue of paragraph (d) of the said section 14(1).

The relevant provisions of section 14(1) of Cap. 96, modified under Article 188 of the Constitution, read as follows:

“14.(1) The appropriate authority may, with the approval of the Council of Ministers, by notice to be published in the Gazette, define zones—

(a) within which buildings for special trades or industries

may or may not be erected or which shall be reserved exclusively for residential or other purposes;

- 5 (b) reserved exclusively for use as tourist zones within which buildings of special character, type, design, external appearance and generally having such features as may conform with the general appearance and use of the area;
- (c) within which buildings of a lesser value than that specified in the notice shall not be erected;
- 10 (d) within which the maximum number of storeys of buildings, or the maximum height of buildings or any part thereof, or the maximum total area of all storeys of buildings taken together, or all or any of the foregoing, shall be regulated”.

15 In the case of *Francis v. Attorney-General*, (1971) 3 C.L.R. 134, it was contended that a Notice published under section 14(1) of Cap. 96, by means of which certain building restrictions were imposed in relation to two areas described in the Notice as “tourist zones” was not a legislative act and, therefore,
 20 it could be challenged directly by recourse under Article 146 of the Constitution. It is useful to quote the following part from the judgment given in the *Francis* case, *supra* (at p. 136):

25 “It has been contended by counsel for respondents that the recourse should be dismissed because the decision challenged, *viz.* the Notice in question, does not yet affect adversely and directly any existing legitimate interest of the applicants, in the sense of Article 146.2 of the Constitution. He has, also, submitted that the Notice is a legislative act and, therefore, could not be challenged,
 30 itself, by a recourse under Article 146.

35 Having considered both these two issues I am of the view that the Notice, in view of its nature, is an exercise of executive or administrative authority, in the sense of Article 146.1; and that it is not a legislative act outside the ambit of the said Article. The present case is distinguishable from the case of *Police and Hondrou*, 3 R.S.C.C. 82, where an Order made by the Council of Ministers—under section 6 of the Betting Houses, Gaming Houses

and Gambling Prevention Law, Cap. 151—declaring a certain game to be a game for the purposes of the said section, was treated as an exercise of delegated legislative powers.

Moreover, I am of the opinion that, in their capacities as owners of properties within the zones defined in the sub judge Notice, the applicants possess an existing legitimate interest which is being adversely and directly affected by mere publication of the Notice, as such publication is inevitably bound, in view of the restrictions imposed by it, to affect, inter alia, the economic value of their properties. 5 10

I think that my decision regarding the two aforementioned matters is duly supported by relevant case-law in Greece (see the decisions 1867/1966, 783/1967, 785/1967, 235/1968 and 2936/1968 of the Greek Council of State)". 15

In *Manglis and another v. The Republic*, (cases 197/72 etc., not reported yet)* in the majority judgment of the Full Bench of this Court it is stated that Notices published under section 14(1) of Cap. 96 constitute administrative action. 20

As was pointed out in the *Manglis* case, supra, Notices published under section 14(1) of Cap. 96 do not have to be placed for approval before the House of Representatives, as has to be done with Notices published by the Council of Ministers under regulation 6(6) of the Streets and Buildings Regulations, which was made under section 19(1) of Cap. 96. 25

Having carefully considered the arguments advanced by counsel, in writing and orally, in relation to the issue on which we have now to pronounce, we are of the opinion that the nature of the Notices in question has to be determined in the light of the legislative provisions under which they were published, bearing in mind, also, in view of the wording in Article 146.1 of the Constitution, the nature of the organs from which they have emanated (see, inter alia, *Demetriades and Son v. The Republic*, (1969) 3 C.L.R. 557, *Kourris v. The Supreme Council of Judicature*, (1972) 3 C.L.R. 390, 400, 401, 408, 409, 411, 30 35

* Now reported in (1984) 3 C.L.R. 351.

412, 443, 461, 462, *Pankyprios Syntechnia Dimosion Ypallilon v. The Republic*, (1978) 3 C.L.R. 27, 30, 31 and *Lanitis Farm Ltd. v. The Republic*, (1982) 3 C.L.R. 124, 131, 132).

5 Each one of the said Notices may be described as being both the sum total of individual administrative acts and an administrative act of a general content (see, in this respect, inter alia, Dagtoglou on General Administrative Law (Δαγτόγλου "Γενικό Διοικητικό Δίκαιο") 1977, Volume A, p. 58).

10 Useful reference, by way of analogy, may be made, too, to the nature of street widening schemes, prepared and published under section 12 of Cap. 96, which have been treated by this Court, on more than one occasion, as administrative acts against which a recourse under Article 146 may be made (see, inter alia, *Sofroniou v. The Municipality of Nicosia*, (1976)
15 3 C.L.R. 124).

In the light of the foregoing we are of the view that the Notices which are the subject-matter of these proceedings could be challenged by the present recourses, under Article 146.1 of the Constitution, as being acts of an administrative, and not of
20 legislative, nature.

Order accordingly.