

1985 August 27

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

PLATON ANTONIADES AND OTHERS,

*Applicants,*

v.

THE CHAIRMAN AND MEMBERS OF  
THE MUNICIPAL COUNCIL OF PAPHOS,

*Respondents.*

(Case No. 18/81).

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*Administrative Law—Administrative Act—Lack of competence on the part of the organ that took the sub judice decision—Effect—When decision regarded as stillborn and when decision is reviewable by the Court, lack of competence being a ground for annulment.*

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*Buildings—Application for permit to build within the Municipal area of Paphos—The Municipal Council is the authority vested with power to resolve the application—The Municipal Engineer lacks competence in the matter.*

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In 1980 the applicants applied to the Municipality of Paphos for a permit to erect a four-storey building at Paphos. By letter dated 31.10.1980 the Municipal Engineer replied that a permit could not be issued because the plans submitted conflicted with contemplated plans of the Municipality for street alignment in the area. The applicants were invited to modify their plans accordingly. The present recourse is directed against the decision embodied or reflected in the said letter. The application for the building permit was never examined by the respondents at any time prior to or subsequent to the aforementioned letter.

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The case was first considered by Demetriades J., who annulled the decision for lack of competence on the part of the Municipal Engineer to decide the matter. Applicants in their application confined their contest to lack of

merits in the reasoning of the decision. A retrial was ordered on appeal by consent of the parties.

*Held*, annulling the sub judice decision:

(1) The Municipal Engineer had no competence in the matter (there was no suggestion of any general or specific delegation of power or that such delegation was at all possible under the law) as the authority to resolve an application for a building permit is vested to the Municipal Council. 5

(2) Lack of competence on the part of the organ taking the decision does not necessarily put it beyond the reviewing process of the Court. Only in two situations the decision is properly regarded as stillborn. These are: (a) Decisions arising from usurpation of power and (b) Cases of absolute incompetence, encompassing cases of assumption of Jurisdiction wholly outside an organ's power or authority. 10 15

(3) Decisions emanating from Officials of an authority or organs to which the power to decide is entrusted by Law are in different category, termed by textbook writers, as cases of "ordinary incompetence." In this situation lack of competence does not sap the decision of executory character (as such it is liable to review), albeit the decision is liable to be set aside for lack of competence of the particular organ that took it. The sub judice decision is defective for lack of competence, as the Municipal Engineer had no competence in law to decide the application. 20 25

*Sub judice decision annulled.*

*Order for £100 costs against the respondent.* 30

**Cases referred to:**

*Hadjianastassiou v. The Republic* (1982) 3 C.L.R. 672;

*Paraskeva and Another v. The Municipal Committee of Limassol* (1984) 3 C.L.R. 54.

**Recourse.** 35

Recourse against the refusal of the respondents to

grant a building permit to applicants to erect a four-storey building at Paphos.

*G. P. Cacoyiannis*, for the applicants.

*K. Chrysostomides*, for the respondents.

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*Cur. adv. vult.*

PIKIS J. read the following judgment. In 1980 the applicants applied to the appropriate authority, the Municipality of Paphos, for a permit to erect a four-storey building at Paphos. A short while later, the Municipal Engineer replied<sup>1</sup> a permit could not be issued because the plans submitted conflicted with contemplated plans of the Municipality for street alignment in the area. And they were invited to modify them accordingly, before their application could be favourably considered. Seemingly, the department of the Municipal Engineer was responsible for the classification and initial examination of applications for building permits and only applications that were found to meet the requirements and plans of the Municipality were processed for consideration by the Council itself. Otherwise, the inaction on the part of the Municipal Council of Paphos would appear to be wholly inexcusable. For it is common ground the application for a building permit here under consideration was never examined by the respondents at any time prior to or subsequent to the aforementioned letter of the Municipal Engineer. The present recourse is directed against the decision embodied or reflected in the above letter.

The case was first considered by Demetriades, J., who annulled the decision for lack of competence on the part of the Municipal Engineer to decide the matter. The Court felt free, on authority, to notice, on its own motion, lack of competence and dismissed it accordingly. Applicants in their application mainly confined their contest to lack of merits in the reasoning of the decision. A retrial was ordered on appeal with the consent of the parties. After the occurrence of some delay because of the amendment of the title of the proceedings and matters incidental to re-

<sup>1</sup> See letter of 31.10.80.

trial, the case came before me for fresh consideration.

Having duly reflected on the issue before me, I am driven to the same conclusion as Demetriades, J., and for much the same reasons. It is beyond dispute that the body responsible in law for determining building permits for Paphos is the Municipal Council of the town. There is no suggestion that the power was generally or specifically delegated to the Municipal Engineer or that such delegation was at all feasible in law. On the contrary, counsel rightly submitted the Municipal Council is the Authority vested with authority to resolve an application for a building permit and that the Municipal Engineer had no competence in the matter. Consequently, to the extent the Municipal Engineer purported to resolve the application, his decision is vulnerable to be set aside for lack of competence. Only one question properly arises for consideration, whether his decision is at all cognizable in law because of apparent lack of competence on the part of the Municipal Engineer to decide the matter.

In *Hadjianastassiou v. The Republic*,<sup>1</sup> Triantafyllides, P., set aside a decision of the District Officer of Limassol, refusing a permit to divide land into building sites, for the reason that authority to decide vested in the Improvement Board of Ayios Athanassios and not in its chairman, the District Officer. Incompetence on the part of the official who decided a building permit was likewise found to justify the annulment of the decision in *Paraskeva And Another v. Municipal Committee of Limassol*?<sup>2</sup>. In the above case, I had occasion to examine the amenity of the Court to review decisions emanating from organs other than those specified by law. I concluded thus: "Only where lack of competence is markedly prominent, manifest one can say, should the Court conclude that no cognizable decision has come into being." Review of the principles of administrative law, relevant to the genesis of a decision, cognizable by a Court of revisional jurisdiction, suggests that lack of competence on the part of the organ taking the decision does not necessarily put it beyond the reviewing process of the Court. Only in two situations the decision is properly

<sup>1</sup> (1982) 3 C.L.R. 672.

<sup>2</sup> (1984) 3 C.L.R. 54.

regarded as stillborn and the Court may disregard it as uncreative of rights in law. These are -

- (a) Decisions that arise from usurpation of power (usurpation de pouvoir); and
- 5 (b) cases of absolute incompetence. Decisions of this category encompass cases of assumption of jurisdiction wholly outside an organ's power or authority.

Decisions emanating from officials of an authority or organs to which the power to decide is entrusted by law, 10 are in a different category, termed by textbook writers, in contrast to the above, as cases of "ordinary incompetence"<sup>1</sup>. In the latter situation lack of competence is an internal matter that does not sap the decision of executory character and as such it is liable to review, albeit liable to be set 15 aside for lack of competence of the particular organ that took the decision, as was the case in *Hadjianastassiou and Paraskeva*, supra. In the case in hand, the decision of the Municipal Engineer purported to be definitive of the rights of the applicants and sealed the fate of the application. 20 Further evidence of this is the fact that the application was never considered by the respondents. As the Municipal Engineer had no competence in law to decide the application, the decision is defective for lack of competence. And must, on that account, be set aside. Hopefully, the respondents will give due consideration to the application for 25 a building permit without further delay.

Having regard to the outcome and history of the proceedings, it is proper to adjudge the respondents to meet 30 part of the costs of the applicants fixed at £100.-. Order accordingly.

*Sub judice decision annulled.  
Order for costs as above.*

<sup>1</sup> See, Stassinopoulos — Law of Administrative Disputes, p. 210 et seq.