

1985 April 27

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

ATHINOULLA POLYCARPOU NICOLOPOULLOU—  
IORDANOU AND OTHERS,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
1. THE ATTORNEY-GENERAL,  
2. THE MINISTER OF INTERIOR,

*Respondents.*

(Case Nos. 25/80, 27/80,  
28/80, 31/80).

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*Administrative Law—Administrative acts or decisions—Executory act—Preservation Order—Made under section 38(1) of the Town and Country Planning Law, 1972 (Law 90/72)—Produces legal consequences in the sense that it prohibits the alteration of or any building operations on the properties affected except with the consent of the Minister—And is, for this reason, an executory act that can be challenged by a recourse under Article 146 of the Constitution.* 5

*Administrative Law—Administrative review—Once an applicant avails himself of the procedure for administrative review of the sub judice act, provided by the relevant Law, no recourse lies to this Court until such review has been completed.* 10

In exercise of the powers vested in him under the provisions of section 38(1) of the Town and Country Planning Law, 1972 (Law 90/72) the Minister of Interior made a preservation order with regard to certain properties belonging to the applicants by virtue of which the altera- 15

tion of the said properties or any building operation, except with the consent of the Minister were prohibited. Three of the applicants submitted objections and representations with respect to the preservation order pursuant to the provisions of section 38(3) (b) of the above Law and the Minister replied that the objections would be examined and that he would communicate with them in order to inform them as to the result of such examination. The objections are still pending before the administration. Under s. 38(3) (c) of the Law the objections are considered by the Council of Ministers which may confirm or refuse the preservation order.

Upon a recourse against the validity of the preservation order Counsel for the respondent raised the preliminary objection that the said Order was only a preparatory act and was not an executory act which could be challenged by a recourse under Article 146 of the Constitution.

*Held*, that the preservation order is of an executory nature in that it has, upon its publication, produced legal consequences in the sense it has prohibited the alteration of or any building operations on the properties affected except with the consent of the Minister and subject to such conditions as may be specified therein; that since the Law provides for administrative review of the act of the Minister; and that once the applicants in three of the recourses chose to avail themselves of this procedure no recourse will lie to this Court until such review has been completed; and that since the matter is pending before the administration the recourses of these applicants must fail; and that the applicant in the remaining recourse is directed to inform the Registrar whether he wishes that his recourse be proceeded with at this stage.

*Recourses 27/80, 28/80 and 31/80 dismissed. Directions as above regarding recourse 25/80.*

Cases referred to:

*Philippou v. Republic* (1970) 3 C.L.R. 123;

*Georghiades v. Republic* (1966) 3 C.L.R. 153;

*Vassiliou and Others v. Republic* (1969) 3 C.L.R. 417;

*Papadopoulou v. Republic*, (1984) 3 C.L.R. 332;

*Pelides v. Republic*, 3 R.S.C.C. 13.

### Recourses.

Recourses against the validity of the Preservation Order made by the respondents under the provisions of section 86 of the Town and Country Planning Law, 1972 (Law No. 90/72) affecting applicants' properties. 5

*S. Spyridakis*, for applicants in Cases Nos. 25/80, 27/80 and 28/80. 10

*I. Nicolaou (Miss)*, for applicant in Case No. 31/80.

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

*Cur. adv. vult.*

L. LOIZOU J. read the following decision. These four recourses were, on the application of the parties, heard together on the ground that they challenge the validity of the same administrative act. 15

By their respective recourses the applicants challenge the validity of the Order made, in exercise of the powers vested in him, under the provisions of s.38(1) of the Town and Country Planning Law, 1972 (Law 90/72), by the Minister of the Interior and published in Supplement No. 3 to the Gazette of the 30th November, 1979, under Not. No. 282. 20 25

The above Order is in fact a "Preservation Order" with regard to certain properties belonging to the applicants which was made under the provisions of s.38(1) of the Law which gives power to the Minister, subject to the provisions of the section, if it appears to him that it is expedient to make provision for the preservation of any particular building, or any group of buildings, or any area, of special social, architectural, historic or other interest or character or natural beauty, to make such Order prohibiting, subject to any exemptions for which provision may be made in the Order, the alteration thereof or any 30 35

building operations thereon except with the consent of the Minister and subject to such conditions as may be specified therein.

5 Sub-section (2) of the section makes provision relating to the contents of the Order and sub-section (3) in its second paragraph provides that "objections and representations with respect to such Order may be made by any person aggrieved and submitted in such manner and within such period as may be prescribed". Paragraph (c) 10 of the same section provides that "the Council of Ministers shall consider the matter and any objections and representations made with respect to the Order and may confirm such Order, either without modifications or subject to such modifications as the Council of Ministers may consider expedient, or may refuse to confirm the same;" finally the last provision of the section, relevant to these 15 proceedings, is contained in sub-section (4) which reads as follows:

20 "4. Where a Preservation Order has been confirmed by the Council of Ministers, no person shall execute any works on any immovable property to which such Order relates without first applying for, in such manner as may be prescribed, and obtaining the Minister's consent in respect thereof referred to 25 in paragraph (c) of sub-section (2) and complying with any conditions specified in such consent."

By paragraph (a) of the grounds of Law in support of his opposition to the recourses counsel for the respondents raised the preliminary objection that the recourses do not 30 challenge any executory act in that the "Preservation Order" made has not been confirmed by the Council of Ministers under s.38(4) of the Town and Country Planning Law, 1972, and the Town and Country Planning (Preservation Order) Regulations, 1976.

35 At the commencement of the hearing of these recourses it was agreed by all counsel appearing that the preliminary point of Law so raised be heard in the first instance.

It was contended by learned counsel for the respondents that the administrative act, subject of all recourses, is not 40 an executory act which could be challenged under Arti-

cle 146 of the Constitution in that it is clear from sub-section (3)(c) and (4) of s.38 of the Law that the Preservation Order does not create rights and/or obligations unless and until it is confirmed by the Council of Ministers and that the Preservation Order made by the Minister is only a preparatory act which does not impose any obligations on the applicants. 5

Learned counsel appearing for the applicants stated that they were inclined to agree with the view expressed by counsel for the respondents but that in view of the wording of the Order they had their doubts and as the 75 days time limit provided by Article 146 might elapse they thought it right to file the recourses in time. 10

In this respect it should be noted that three of the applicants had filed, presumably within the time limited by regulation 5, objections and representations with respect to the Preservation Order pursuant to the provisions of sub-section (3)(b) of s.38 and had received replies from the Minister of the Interior similar to the reply, exhibit 1, received by the applicant in Case No. 28/80, which has been produced, to the effect that the objections would be examined and that he would communicate with them again in order to inform them as to the result of such examination. The applicants who made such objections and representations are the applicants in recourses under Nos. 27/80, 28/80 and 31/80. 15 20 25

In fact the Preservation Order challenged is drafted in the form prescribed by the regulations made by the Council of Ministers under the provisions of s. 86 of the Law. 30

We are here concerned with a composite administrative act and the first question that falls for consideration in these proceedings is whether the first part thereof i.e. the Preservation Order made by the Minister is, in itself, of an executory nature in the sense that it is an act or decision by means of which the "will" of the administrative organ concerned has been made known and which, in itself, produces a direct and immediate legal result or situation consisting in the creation, modification or abolition of any legal right or obligation concerning the citizen af- 35 40

5 fected; because it is only against acts or decisions of this nature that a recourse may lie. (See, inter alia, Conclusions from the Case Law of the Greek Council of State 1929-59, pp. 236-237; Kyriakopoulos on Greek Administrative Law, 4th ed., vol. Γ p. 92; Stassinopoulos on the Law of Administrative Disputes, p. 170; *Philippou v. The Republic* (1970) 3 C.L.R. 123; *Georghiades v. The Republic* (1966) 3 C.L.R. 153 *Vassiliou and Others v. The Republic* (1969) 3 C.L.R. 417; and *Papadopoulou v. Republic* (1984) 3 C.L.R. 332.

15 Reverting now to the case in hand it seems to me to be quite clear both from the provisions of s.38(1) and 38(2)(a) as well as from regulation 3 and the Appendix to which it refers, that the Preservation Order published by the Minister is of an executory nature in that it has, upon its publication, produced legal consequences in the sense that it has prohibited the alteration of or any building operations on the properties affected except with the consent of the Minister and subject to such conditions as  
20 may be specified therein.

But in spite of my finding as above the matter, in so far as recourses 27/80, 28/80 and 31/80, in which the applicants made objections and representations in respect of the Order, does not end here. And this in view of the provisions of paragraphs (b) and (c) of sub-section (3) of section 38 which provide a procedure for administrative review of the act of the Minister and the course followed by them. For once the applicants in these recourses chose to avail themselves of this procedure no recourse will lie to this Court until such review has been completed. In the case of *Pelides v. The Republic*, 3 R.S.C.C., p. 13 the Supreme Constitutional Court had this to say: (at p. 17).

35 "The Court takes the opportunity of stressing that though Article 146 grants it exclusive jurisdiction in administrative Law matters there is nothing in such Article to prevent procedures for administrative review of executive or administrative acts or decisions from being provided for in a Law. Such review may  
40 be either-

(a) By way of confirmation or completion of the act or decision in question, in which case no recourse is possible to this Court until such confirmation or completion has taken place (e.g. under s. 17 of Cap. 96); or

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(b) by way of a review by higher authority or by specially set-up organs or bodies of an administrative nature, in which case a provision for such a review will not be a bar to a recourse before this Court but once the procedure for such a review has been set in motion by a person concerned no recourse is possible to this Court until the review has been completed."

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I think it pertinent to record that as far as I have been able to ascertain from my own research this matter is still pending before the administration but it was open to the applicants, if they had so wished, to take such other steps as are open to them with a view to expediting the procedure.

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In the light of the above recourses 27/80, 28/80 and 31/80 cannot be entertained, as being premature, and they must be dismissed.

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The applicant in the remaining recourse 25/80 is directed to inform the Registrar of this Court, by notice in writing, within fifteen days from today whether he wishes that his recourse be proceeded with at this stage.

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In the result recourses 27/80, 28/80 and 31/80 are hereby dismissed. With regard to recourse 25/80 directions as above. There will be no order as to costs.

*Order accordingly.*