

1985 April 29

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

PANTELIS PANTELOURIS AND OTHERS, AS
REPRESENTATIVES OF THE INHABITANTS OF THE
VILLAGE OF ARADHIPPOU AND/OR IN THEIR
CAPACITY AS OFFICIAL REPRESENTATIVES
OF THE COMMUNITY OF ARADHIPPOU AND/OR
INHABITANTS OF THE VILLAGE OF ARADHIPPOU
AND/OR PERSONALLY,

Applicants,

v.

THE COUNCIL OF MINISTERS,

Respondents.

(Case No. 179/82).

Municipal boundaries—Extension of—At the expense of boundaries of a village—Presupposes proper consideration of the views of the village affected thereby—Objections of such village not properly placed before the Council of Ministers, the deciding body—Such omission apt to cause a misconception of facts material to the case—Decision extending Municipal boundaries annulled on account of the great likelihood of misconception of material facts—And on account of the omission of the investigating authority to record the results of their inquiry respecting the views of the village affected, rendering the outcome of the inquiry defective—And for abuse of power because the Council of Ministers failed to exercise the discretionary powers vested in it by section 5 of the Municipalities Law, 1964 and confined itself to the approval of the proposal of the Minister of Interior.

Municipalities Law, 1964 (Law 64/64)—Extension of Municipal boundaries—Section 5 of the Law—Competence for the exercise of the power envisaged thereunder vests ex-

clusively in the Council of Ministers which is the body to which the power is entrusted—Alienation or abdication of such power constitutes an abuse of power.

5 *Administrative Law—Discretionary powers—Organ competent under the Law to exercise a power alienating or abdicating such power—It abuses its power.*

Administrative Law—Misconception of fact—Great likelihood of misconception of material facts—And defective outcome of inquiry—Sub judice decision annulled.

10 On January 7, 1982, the Council of Ministers decided to extend the Municipal boundaries of Larnaca at the expense of the village of Aradhippou. When it became known that the appropriate departments of central government were considering the question of the extension of
15 the Municipal boundaries of Larnaca the local authorities of Aradhippou protested to political and administrative authorities; and the Minister of the Interior when apprised of the objections gave the assurance that plans for the severance of any part of the village of Aradhippou would
20 be abandoned and instructions were issued to the Larnaca Assistant District Officer to stop further action. Examination of the material placed before the Council of Ministers contained in the file of the case led to the conclusion that objections of the village of Aradhippou to the contemplated extension of the Municipal boundaries of Larnaca were not properly recorded.

25 Upon a recourse by the two local authorities of the village of Aradhippou—the village committee and the Improvement Board—and others it was mainly contended
30 that material facts relevant to the opposition of the village authorities to the proposed scheme were absent from the file of the case; and that the Council of Ministers failed to exercise the discretionary powers vested in it by section 5 of the Municipalities Law, 1964 (Law 64/64) because
35 it confined itself to mere approval of the course proposed by the Minister of Interior.

40 *Held*, (1) that a decision on the alteration of village boundaries necessarily presupposes proper consideration of the views of the village affected thereby; that the objections of the village of Aradhippou to the plan, a material

consideration for the decision of the respondents, were not properly placed before the deciding body; that this omission was apt to cause a misconception of facts material to the case; and that on account of the great likelihood, virtually a certainty of misconception of material facts, the decision must be annulled (p. 860 post). 5

Held, further, that the same conclusion is warranted by the omission of the investigating authority to record the results of their inquiry respecting the views of the village authorities of Aradhippou rendering the outcome of the inquiry defective. 10

(2) That in this case the Council of Ministers confined itself to approval of the recommendation of the submission of the proposal of the Minister of the Interior; that in the absence of a valid delegation of power competence for the exercise of power, envisaged by section 5 of the Municipalities Law, 1964, vests exclusively in the body to which power is entrusted by Law; that alienation or abdication of such power, total or partial, constitutes an abuse of power vitiating the legality of the decision resulting therefrom; that since there is nothing to suggest that the Council of Ministers evaluated the submission of the Ministry of the Interior by reference to the material in the file in order to arrive at their decision they abused their power by failing to exercise directly the discretionary powers vested in them by Law. 15 20 25

Per curiam:

Administrative Law requires public authorities to be consistent in their actions, a duty related to the faith it is desirable for the public to repose in public authorities. If the authority conducting an inquiry leads those likely to be affected thereby to believe that the inquiry will be abandoned or that the matter under consideration will not be pursued, it is an act of bad faith to pursue it thereafter without proper forewarning of the change of course in order to put those affected on their guard. 30 35

Cases referred to:

Improvement Board of Strovolos v. Republic (1983) 3 C.L.R. 434 at p. 443;

Xapolytos and Others v. Republic (1967) 3 C.L.R. 703;

Pantelouris and Others v. Council of Ministers (1984)
3 C.L.R. 988;

Ttooulias v. Republic (1983) 3 C.L.R. 465;

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

Recourse.

Recourse against the decision of the respondent to extend the municipal boundaries of Larnaca at the expense of Aradhippou village.

10 *E. Efstathiou with N. Stylianidou (Miss)*, for the applicants.

A. Vladimirov, for the respondents.

G. Nicolaidis, for the Municipality of Larnaca.

Cur. adv. vult.

15 **PIKIS J.** read the following judgment. The decision of the Council of Ministers of 7th January, 1982, united the community of Aradhippou in opposing the extension envisaged thereby of the municipal boundaries of Larnaca at the expense, inter alia, of the village of Aradhippou. An
20 assembly of the inhabitants authorised the local authorities of the village to challenge the validity of the decision. Following this resolution and formal decisions of the Village Committee and the Improvement Board of Aradhippou, the present recourse was filed for review of the legality of
25 the contentious decision. In evidence before me the Chairman of the Village Commission and a member of the Improvement Board, Mr. Pantelouris, explained that formal decisions were taken to prosecute the present proceedings properly recorded in the minute books of the two bodies.
30 The athletic clubs of the village joined as parties to the recourse in order, I suppose, to stress the unanimity of the inhabitants of the village to pursue the matter before justice.

35 It seems the community was in despair because of successive limitations of the territory of the village. They felt, this time, drastic steps should be taken to oppose any at-

tempt to further limit their boundaries. Their views and feelings were conveyed to the Court by the Chairman of Village Commission, Mr. Pantelouris, who together with other members of the local authorities sought to air their objections to various quarters. The delay in the trial of the case is due, in part to adjournments granted to facilitate the parties to present their case. 5

Applicants complain the sub judge decision is bad for lack of a proper inquiry and invalidated by the absence of reasoning. Their grievance is articulated by reference to the file of the case and absence therefrom of material facts relevant to the opposition of the village authorities to the proposed scheme. Further it is challenged as defective for a wholly separate reason, namely, failure to exercise the discretionary powers vested in the Council of Ministers. While s. 5 of the Municipalities Law, 1964(1) empowers the Council of Ministers to amend, extend or limit the territorial boundaries of a municipality, applicants contend the respondents failed to apply their mind to the need for extension confining themselves to mere approval of the course proposed by the Minister of the Interior. In effect the respondents, as their argument runs, abdicated the powers under s. 5, at the most sharing their exercise with the Ministry of the Interior. Lastly, the decision is allegedly fraught with bad faith stemming from failure to honour the assurances given to the representatives of the village, at some stage of the inquiry, that the project would be abandoned. 10 15 20 25

The respondents in addition to disputing the soundness of the challenge to the decision mounted by the applicants, questioned the justiciability of the recourse. In their submission, none of the applicants possessed a legitimate interest to seek judicial review of the decision under consideration. Objections to the propriety of review for lack of legitimate interest were not pressed after the reception of the evidence of Mr. Pantelouris explaining the factual background to this recourse. The two local authorities, namely, the Village Commission and the Improvement Board of the village, formally decided to question the legality of the sub judge act, a course meeting, as Mr. Pantelouris explained, 30 35 40

(1) Law 64/64.

with the vociferous approval of members of the community.

In *Improvement Board of Strovolos v. The Republic* (1983) 3 C.L.R. 434, 443 et seq., I discussed in some detail the right of a local authority to seek the review of
5 acts of the central government and decided that where their interests are prejudicially affected by a decision of central government, a recourse to the court is open to them. Further in *Styllis Xapolytos and Others v. The Republic* (1967) 3 C.L.R. 703, it was specifically decided
10 that members of a village commission possessed a legitimate interest to seek the judicial review of a decision of the Council of Ministers entailing alteration of the boundaries of the village by severance therefrom of part of its area. Very recently it was decided in *Pantelouris and*
15 *Others v. Council of Ministers* (1984) 3 C.L.R. 988, that the interest of the local authorities of village of Aradhippou to seek the review of a decision involving alteration of the boundaries of the village concerning, as in the present case, an extension of the municipal boundaries of Larnaca,
20 could not be doubted. The two local authorities stood to lose considerable sums of money from the exclusion of the projected industrial estate from the boundaries of the village⁽¹⁾.

Unlike the Boards of the local authorities, the two
25 athletic clubs of the village have no locus standi as no legitimate interest of either has been shown to be prejudicially affected by the sub judice decision; therefore, they will be struck out as parties to the proceedings. Further it is doubtful whether an assembly of the inhabitants of the
30 village has any noticeable interest of its own to propound as distinct from the interest of the local authorities to pursue the present proceedings. The decision of the assembly was more in the nature of a mandate to the local authorities, authorizing them to take up the matter before the
35 courts of Law. It is unnecessary to pursue the matter further as their interest coincides with that of the local authorities.

Having disposed of preliminary objections to the viabi-

(1) See the file of the case, in particular items under R.42, R.47, R.48, R.50.

lity of the proceedings, I shall inquire into the merits of the challenge to the legality of the decision. We may begin by noticing that the sub judge decision was in point of time the second decision affecting a limitation of the boundaries of Aradhippou with a view to extending the municipal boundaries of Larnaca for the purpose of accommodating an industrial estate. The background to these decisions and objections of the community of Aradhippou to the two projects were explained in detail in the evidence of Mr. Pantelouris. It emerges from his testimony received in order to elucidate aspects of the background to the decision that when it became known that an application of the Municipal Council of Larnaca for the extension of its boundaries was being considered by the appropriate department of central government, the local authorities of Aradhippou collectively and individually protested to political and administrative authorities making known their objections to any alteration of the village boundaries. It was pointed out that the village authorities were equipped to deal with problems likely to arise from the establishment of an industrial estate within the village, such as, maintaining proper sanitary standards and providing adequate water supply and other essential facilities. The Minister of the Interior when apprised of the objections of the applicants assured them that plans for the severance of any part of the village of Aradhippou would be abandoned and instructions were issued to the Larnaca Assistant District Officer to stop further action. Following these assurances applicants relaxed their vigilance in pursuing their objections and making their views known to other functionaries of the State. The decision taken was in flagrant violation of the ministerial undertaking. It caught them by surprise and left them powerless to react.

When Mr. Pantelouris concluded his testimony before the court, counsel for the Republic applied for an adjournment, no doubt realizing that his evidence put a different complexion on the case from that reflected by the material in the file on the case. Despite the opportunity given to the respondents to controvert the testimony of Mr. Pantelouris, no evidence whatever was adduced to contradict it. Nowhere in the file of the case is there any mention of the assurances of the Minister or explicit reference to the

strong objections of the local authorities to the plans for severance of part of the area of the village or details of the reasons of the applicants given in support of their opposition to the limitation of the boundaries of the village.

5 The submission ultimately made by the Minister in support of the extension of the municipal boundaries of Larnaca not only it failed to articulate the objections of the applicants but was apt to mislead as to the reactions of the community to the likelihood of limitation of the village

10 boundaries. It incorporated a report of the Larnaca District Officer to the effect that the severance of at least one part of the village area under (γ) constituted a natural extension of the municipal boundaries of Larnaca and as such was not expected to meet with any objections from

15 the community of Aradhippou.

The sub judge decision was founded on the submission of the Minister of the Interior to the Council of Ministers dated 9th December, 1981. The submission is divided into three parts: Firstly, it records the application of the Municipal Council of Larnaca to extend its boundaries in a manner entailing limitation of the boundaries of Aradhippou; secondly, it affirms that the proposal was studied with care and the recommendation of its approval made after consideration of the reactions of the villages affected there-

20 to (περιλαμβανομένων και των αντιδράσεων των επηρεαζομένων χωριών). Lastly, it recommends the approval of the application of the Municipal Council of Larnaca stressing, inter alia, the aforementioned observation of the Larnaca District Officer. The submission conveys a misleading picture of the inquiry, particularly with regard to the objection of the village of Aradhippou to approval of the application of the Larnaca Municipal Council. Neither the submission itself nor the file of the case give a true picture of the objections of the village to the application of the Municipal Council of Larnaca. As may be inferred from the evidence of Mr. Pantelouris the facts relevant to the views of the village authorities, particularly the objections of the village authorities to the contemplated extension and the reasons for them were not placed before the authority

30 charged by Law to decide the matter, namely, the Council of Ministers. In *Xapolytos* (supra) it was emphasized that a decision on the alteration of village boundaries necessa-

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rily presupposes proper consideration of the views of the village affected thereby.

Examination of the material placed before the Council of Ministers contained in the file of the case leads to the conclusion that objections of the village of Aradhippou to the contemplated extension of the municipal boundaries of Larnaca were not properly recorded. The omission was such that the Council might be misled as to the reaction of the village of Aradhippou to the scheme under consideration. This failure was apt to cause a misconception of facts material to the case and as explained the final submission to the Council of Ministers did not rectify the position; on the contrary it probably reinforced misapprehensions of the Council of Ministers on the matter. In sum, the objections of the village of Aradhippou to the plan, a material consideration for the decision of the respondents, were not properly placed before the deciding body; hence the material before the Council of Ministers did not reflect the true facts of the case. A failure that became all the greater because of omission to inform the Council of Ministers of assurances given by the Minister of Interior that the extension would not be implemented. Material facts were not placed before the Council of Ministers sealing the inquiry made with inadequacy. On account of the great likelihood, virtually a certainty of misconception of material facts, the decision must be annulled. The same conclusion is warranted by the omission of the investigating authority to record the results of their inquiry respecting the views of the village authorities of Aradhippou rendering the outcome of the inquiry defective.

The decision is liable to be set aside for another independent reason, namely, failure on the part of the Council of Ministers to exercise discretionary powers vested in them by s. 5 of the Municipalities Law, 1964. In the absence of a valid delegation of power, competence for the exercise of such power vests exclusively in the body to which power is entrusted by Law. Alienation or abdication of such power, total or partial, constitutes an abuse of power vitiating the legality of the decision resulting therefrom. In this case, as the decision suggests, the Council of Ministers confined itself to approval of the recommendation of the submission of the proposal of the Minister of the Interior.

There is nothing to suggest that they applied their minds to the question before them independently of the recommendation of the Ministry of the Interior. Centrainly the submission of the Ministry was a fact, a most consequential one, to which they should pay heed in arriving at their decision. But it was not the only fact they had to ponder nor was their task confined to approval or rejection of the submission. In *Tooulias v. The Republic* (1983) 3 C.L.R. 465, I discussed the subject of approval of a course as distinct from deciding its appropriateness. There is nothing to suggest in this case that the Council of Ministers evaluated the submission of the Ministry of the Interior by reference to the material in the file in order to arrive at their decision. Hence I conclude that they abused their power by failing to exercise directly the powers vested in them by Law.

Questions affecting the good faith of the administration arise as well. If the authority conducting an inquiry leads those likely to be affected thereby to believe that the inquiry will be abandoned or that the matter under consideration will not be pursued, it is an act of bad faith to pursue it thereafter without proper forewarning of the change of course in order to put those affected on their guard. Administrative Law requires public authorities to be consistent in their actions, a duty related to the faith it is desirable for the public to repose in public authorities⁽¹⁾. Provided the course signified to be followed is within the framework of their powers, sound administration requires that they adhere to it, unless proper notice and sound reasons are given justifying departure therefrom. Therefore, it could be argued, in view of the uncontradicted evidence of Mr. Pantelouris that departure from the course indicated by the Minister of the Interior rendered the decision liable to be set aside, although it is unnecessary to pronounce finally on the matter in view of the vulnerability of the decision to annulment for the other reasons earlier indicated.

⁽¹⁾ See, inter alia, *Papadopoulou v. The Republic* (1984) 3 C.L.R. 332—*Daktoglou Administrative Law A*, 1977, p. 106

For the reasons above given, the recourse succeeds, the sub judice decision is set aside. Let there be no order as to costs.

*Sub judice decision
annulled. No order as to costs.* 5