

1986 September 19

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

1. MARINA GEORGHIOU PIERIDES,
2. PASCHALIS KITROMELIDES,
3. IOANNIS MICHAEL KITROMELIDES,
4. NICOLAS DEMETRIOU SMIRLIS,
5. ANGELIKI DEMETRIOU SMIRLI,

Applicants,

v.

THE MUNICIPALITY OF PAPHOS,

Respondent.

(Case No. 466/85).

Legitimate interest—Omission to reply—Constitution, Article 29—Proceeding with regard to substance of the matter in respect of which the reply had been sought—Deprives applicant of his legitimate interest in respect of the omission, unless by reason of the omission he suffered material detriment, which would entitled him to relief under the Constitution. 5

On 4.1.85 the applicants submitted to the respondents an application for the demolition of their building under Reg. Number 28919 at Paphos. As they received no reply they filed the present recourse on 19.4.85. The facts of this case have been narrated in the judgment delivered in Recourse 596/85*. Prayer (b) of this recourse has been exhausted by the judgment in the said case. 10

What remains in this recourse is to examine prayer (a) challenging the omission or refusal to reply to applicant's said application. As, however, the applicants proceeded in respect of the substance of the matter for which a reply 15

* Pierides and Others v. Municipality of Paphos (1986) 3 C.L.R. 1769.

had been sought, the question is whether they were deprived of their legitimate interest. The applicants contended by the written address of their counsel that they have suffered material damage by reason of the omission to reply in that an agreement between them and the Popular Bank of Cyprus for letting to the latter part of the building proposed to be erected could not materialize and in any event has been delayed.

Held, dismissing the recourse: (1) The right under Article 29.1 of the Constitution is one of the basic rights of any person living under the Rule of Law and where any person is aggrieved by the failure of a competent authority to comply with its requirements, such person may have a recourse to a competent Court in the matter of such request or complaint under paragraph 2 of Article 29.

(2) It has been held time and again that once a person who has not received a reply as provided by Article 29 has proceeded under Article 146 in respect of the substance of the matter for which the reply had been sought, such person is deprived of his legitimate interest in respect of the failure to reply, unless as a result of such failure he has suffered some material detriment, which would entitle him to a claim for relief under the provisions of the Constitution.

(3) In this case, leaving aside the fact that the application was for the demolition of a building and not for a building permit, applicants' allegations in respect of the material detriment allegedly caused to them by reason of the omission to reply has not been substantiated by evidence.

Recourse dismissed.
No order as to costs.

Cases referred to:

- Xenophontos v. The Republic*, 2 R.S.C.C. 89;
Kyriakides v. The Republic, 1 R.S.C.C. 66;
Pikis v. The Republic (1965) 3 C.L.R. 131;

Lambrou v. The Republic (1965) 3 C.L.R. 497;

Theophilou v. The Improvement Board of Yermasoyia,
(1985) 3 C.L.R. 2016.

Recourse.

Recourse against the refusal and/or omission of the respondents to reply to applicants application for a permit to demolish their premises under Reg. No. 28919 at Paphos. 5

Chr. Georghiades, for the applicants.

K. Chrysostomides, for the respondent. 10

Cur adv. vult.

SAVVIDES J. read the following judgment. By this recourse applicants pray for the following relief:

(a) Declaration of the Court that the omission and/or refusal of the respondent to reply to applicants' application dated 4th January, 1985 for the demolition of their premises under reg. No. 28919 plots 1176, 1177, Sheet Plans LI/2.6.VIII, 3.4.V, at Paphos, is illegal, null and void and of no effect. 15

(b) Declaration that the omission and/or refusal of the respondent to issue a demolition permit is illegal, null and void. 20

The subject-matter of this recourse is related to some extent with the subject matter in Case No. 596/85, in which judgment has just been delivered. The present recourse was filed on 19th April, 1985 before any decision was taken by the respondent on the application of the applicants whereas Case 596/85 was filed on 21st June, 1985, after the decision of the respondent Municipality refusing the grant of the permit applied for had been taken and communicated to applicants on 22nd May, 1985. 25
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The facts of the case have already been explicitly narrated in my judgment in Case 596/85 and I need not repeat them in detail. The facts, material to the present case, are briefly as follows: 35

The applicants as owners of a building at Paphos applied on 4th January, 1985 to the respondent, as the appropriate authority under the Streets and Buildings Regulation Law, Cap. 96, for the demolition of their said building. On 3th January, 1985, counsel on behalf of the applicants urged the respondent, by telegram, for the issue of the permit, the contents of which were as follows:

“Application for demolition 3/85:

You are requested to let me have an immediate written reply to the application of my clients Pierides and Others so that they may be able to exercise their rights.”

No reply was sent to the applicants neither in respect of their application nor to the above telegram of their counsel, and till the filing of the present recourse no decision was communicated by the respondent as to whether the application was granted or refused. As a result applicants filed the present recourse.

In the course of the proceedings in this recourse the decision of the respondent refusing the issue of the demolition order applied for was communicated to the applicants on the 22nd May, 1985. Such refusal was the subject matter of a recourse filed on 21st June, 1985, judgment in which has just been delivered and the outcome of which was the annulment of the decision of the respondent refusing to issue the demolition permit applied for. Therefore, the prayer under paragraph (b) of the present recourse has already been exhausted by the judgment in Case 596/85 the same issue.

What remains to be examined in the present recourse is the prayer under paragraph (a).

The legal grounds raised by the applicants in support of the present recourse are that the omission and/or refusal of the respondent Municipality violates Article 29 of the Constitution, it is contrary to the provisions of the Streets and Buildings Regulation Law and the Municipal Corporations Law and that it amounts to abuse and/or excess of power.

In fact the only ground related to prayer (a) is that the respondent acted in violation of Article 29 of the Constitution.

By his written address counsel for applicants submitted that the respondent was dutybound under Article 29.1 of the Constitution to consider and decide applicants' request expeditiously and in any event within a period not exceeding thirty days. In the present case, counsel added, there had been unreasonable delay on the part of the respondent to decide applicants' application in violation of Article 29.1 and as a result of such omission the applicants suffered pecuniary loss, as, according to their contention, on 31st January, 1985, they came into an agreement with the Popular Bank of Cyprus who were the tenants of the subject matter premises, to vacate the premises so that the applicants might demolish the building and built a new one part of which was to be let to the said Bank for £16,200.- per year.

The explanation advanced by counsel for the respondent, in his written address, is that there had been no unreasonable delay in deciding the application as the technical services of the Municipality thought it fit to ask the views of the Town Planning and Housing Department on applicants' application. As a result a letter was sent to the said Department on 25th January, 1985, a reply to which was received on 30th April, 1985 whereby the Town Planning and Housing Department recommended the prohibition of the demolition of the building on the ground that "the building presents important architectural interest and is classified among those buildings of the town which represent the architecture of a particular period of the town. Any proposed demolition will amount to a serious loss to the architectural inheritance of the town."

Concerning the question as to whether there has been unreasonable delay on the part of the respondent and an omission to decide applicants' application expeditiously as provided by Article 29.1 of the Constitution suffice it to adopt my finding in Case 596/85 to the effect that there had been unreasonable delay on the part of the respondent to determine applicants' request "expeditiously and in

any event within a period not exceeding thirty days" in violation of Article 29.1 of the Constitution.

The right under Article 29.1 is a fundamental right and liberty and is one of the basic rights of any person living under the Rule of Law. Where an interested person is aggrieved by the failure of a competent public authority to comply with the requirements of paragraph 1 of Article 29 he may have recourse to a competent Court in the matter of such request or complaint under paragraph 2 of Article 29. This right has been recognized by a line of decisions of this Court (see, inter alia, *Xenophontos and The Republic*, 2 R.S.C.C. 89 at 92; *Kyriakides and The Republic*, 1 R.S.C.C. 66; *Pikis v. The Republic* (1965) 3 C.L.R. 131; *Lambrou v. The Republic* (1965) 3 C.L.R. 497).

The question however which poses for consideration in the present case is, whether the fact that the applicants have proceeded under Article 146 in respect of the substance of the matter for which a reply had been sought, as the applicants have done by their prayer under paragraph (b) of this recourse and also by their prayer for relief in case 596/85, has deprived them of an "existing legitimate interest" under paragraph 2, of Article 146 of the Constitution.

It has been held, time and again by this Court that once a person who has not received a reply as provided by Article 29 has proceeded under Article 146 in respect of the substance of the matter for which a reply had been sought then it cannot be said that such a person continues any longer to have any existing legitimate interest as provided by paragraph 2 of Article 146, unless as a result of such failure itself *he has suffered some material detriment* which would entitle him to a claim for relief under the provisions of the Constitution.

In *Phedias Kyriakides and The Republic*, 1 R.S.C.C. 66 at p. 77 the Supreme Constitutional Court in dealing with a similar issue, held:

"In the opinion of the Court paragraph 2 of Article 29 gives, inter alia, an aggrieved person a right

of recourse to a competent Court in respect of the failure to furnish him with a reply in accordance with paragraph 1 of such Article. It is clear that, where the competent public authority, which has failed to reply as above, is one of those referred to in paragraph 1 of Article 146, then this Court is the competent Court in question and proceedings lie before it under Article 146 in respect of such failure itself to reply.

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Where, however, a person who has not received a reply as provided under Article 29, has proceeded under Article 146 in respect of the substance of the matter for which a reply had been sought then it cannot be said that such a person continues any longer to have 'any existing legitimate interest', as provided by paragraph 2 of Article 146, unless as a result of such failure itself he has suffered some material detriment which would entitle him to a claim for relief under paragraph 6 of Article 146 after obtaining a judgment of this Court under paragraph 4 of the same Article.

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Therefore such a person cannot, as a rule, claim under Article 146 a distinct and separate decision of this Court in respect of the failure to comply with Article 29 when he has proceeded in respect of the substance of the matter for which a reply had been sought.

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In the present case, as the applicant has contested by his application the substance itself of the matter in respect of which he complains that he did not receive a reply under Article 29 and as further there is no evidence showing that he has suffered any material detriment as a result of the failure itself of the District Officer to give him a written and reasoned reply, the claim of applicant for a distinct and separate decision of this Court on this issue fails."

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In my judgment in *Theophilou v. The Improvement Board of Yermasoyia* (1985) 3 C.L.R. 2016 after reiterat-

ing the above pronouncement I concluded as follows at p. 2029:

5 ".... once the applicant in the present recourse has proceeded in respect of the substance of the matter for which a reply had been sought and there is no evidence showing that he has suffered any material detriment as a result of the failure of the respondent authority to give him a written and reasoned reply, he has no longer any existing legitimate interest as provided by paragraph 2 of Article 146, amenable by 10 this recourse."

In the present case the applicants have contended by their written address that as a result of the omission of the respondent to decide their application, they have suffered 15 material detriment in that an agreement between them and the Popular Bank of Cyprus for letting to them part of the building proposed to be erected, could not materialize and in any event has been delayed.

20 Leaving aside the fact that applicants' application was not for a building permit in respect of premises proposed to be built and let to the Bank, but for a demolition permit, applicants have not called any evidence to substantiate their allegation of material detriment. In the absence of any evidence in support of such claim I find that the applicants failed to satisfy me that in fact the omission of 25 the respondent to decide their application within a reasonable time has caused them any material detriment.

In the result, in the absence of proof of material detriment and in the light of the authorities hereinabove referred to, I have come to the conclusion that once the 30 applicants have proceeded in respect of the substance of the case they have no longer any existing legitimate interest as provided by paragraph 2 of Article 146, amenable by a recourse. Therefore, prayer for relief under paragraph 35 (a) of this recourse fails and is hereby dismissed, but in the circumstances with no order for costs. As to prayer for

relief under paragraph (b) same has already been adjudicated and the substance has been exhausted by the decision in Case 596/85 and there remains no further issue for adjudication.

Recourse dismissed.
No order as to costs.

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