

1986 December 23

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

1. ANTONIS LEMI AND ANTIS TRIANTAFYLLOIDES,
AS ADMINISTRATORS OF THE ESTATE OF THE
LATE NICOS G. KOURSOMBAS,
2. ΟΙΚΟΔΟΜΙΚΩΝ ΕΠΙΧΕΙΡΗΣΕΩΝ ΦΡΑΓΚΟΠΟΥ-
ΛΟΣ ΑΤΔ.

Applicants.

v.

1. THE DISTRICT ADMINISTRATION NICOSIA,
2. THE IMPROVEMENT BOARD OF STROVOLOS,
3. THE MINISTRY OF INTERIOR.

Respondents.

(Case No. 315/86).

Streets and Buildings—Building Permit—Law applicable—It is that in force at the time the decision was taken, unless new Law or regulations otherwise expressly provided or unless administrative authority guilty of unreasonable delay in determining relevant application.

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Immovable property—Development of—No vested right to such development—Right to expeditious determination of relevant application corresponding to duty of administration under Article 29 of the Constitution.

The applicants' application for a building permit, submitted on 8.1.1986, was turned down by the sub judge decision taken on 25.2.1986 on the ground of irreconcilability of the proposed building with new Regulations, which came into force on 22.1.1986.

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The question that arose for determination is whether the application had to be considered on the basis of the law applicable at the time of its submission.

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Held, dismissing the recourse: (1) The principles that emerge from a study of case law are the following:
5 (a) The Law applicable is that in force at the time the decision is taken, unless the new law or Regulations expressly exclude from their ambit applications submitted before their enactment.

(b) Section 4(1) of the Streets and Buildings Regulation Law, Cap. 96 is fashioned to the application and enforcement of the aforesaid principle.

10 (c) The principle under (a) above is subject to the qualification that if the administrative Authority is guilty of unreasonable delay, it cannot deny to an applicant rights that the law gave him at the time when it would have been reasonable for such Authority to determine
15 the application.

(2) The owner of a plot of land has no vested right to its development (*Simonis and Another v. Imp. Board of Latsia (1984) 3 C.L.R. 109 approved*). A right to build
20 can only be acquired under a building permit and subject to its conditions. The right of an applicant is to the expeditious determination of his application corresponding to the duty cast on the Administration by Article 29 of the Constitution.

25 (3) In the light of the above and in the absence of any suggestion of unreasonable delay, this recourse has to be dismissed.

Recourse dismissed.

No order as to costs.

Cases referred to:

30 *Georghiou and Another v. Larnaca Municipality (1985) 3 C.L.R. 2680;*

Lordou and Others v. The Republic (1968) 3 C.L.R. 427;

Loiziana Hotels Ltd. v. Municipality of Famagusta (1971) 3 C.L.R. 466;

35 *Theodorides and Others v. Ploussiou (1976) 3 C.L.R. 319;*

<i>Lemi and Others v. District Administration N'sia</i> (1986)	
<i>Philippou v. Municipality of Nicosia</i> (1972) 3 C.L.R. 50;	
<i>Koullen v. The Republic</i> (1974) 3 C.L.R. 101;	
<i>Vassiliades and Another v. District Officer of Larnaca</i> (1976) 3 C.L.R. 269;	
<i>Hadji Petrou v. Municipality of Nicosia</i> (1978) 3 C.L.R. 237;	5
<i>Agrotis v. Electricity Authority</i> (1981) 3 C.L.R. 503;	
<i>Evangelou v. Municipality of Paphos</i> (1982) 3 C.L.R. 946;	
<i>Ioannou v. The Republic</i> (1982) 3 C.L.R. 1002;	
<i>HadjiTtofi v. Improvement Board of Ayia Napa</i> (1983) 3 C.L.R. 298;	10
<i>Loizou v. The Republic</i> (1985) 3 C.L.R. 1195;	
<i>Simonis and Another v. Improvement Board of Latsia</i> (1984) 3 C.L.R. 109.	

Recourse. 15

Recourse against the refusal of the respondents to issue a building permit in respect of a building plot at Strovolos.

P. Angelides, for the applicants.

P. Lyssandrou, for respondent 2. 20

Cur. adv. vult.

PIKIS J. read the following judgment. The applicants own a building plot at Strovolos. On 8th January, 1986, they submitted an application for a building permit, designed to secure a permit for the development of the property into a six-storey building. Thirteen days later, on 22.1.86, new building regulations came in force¹ that introduced restrictions to the height of buildings in the area and reduced the building ratio. The new restrictions 25

¹ (R.A.A. 8/86—Supplement 3)

had a direct bearing on the application rendering it incompatible with the new building regulations.

5 In accordance with the standing procedure, respondents submitted the application to the Town Planning Department for their views. They promptly (3.2.86) advised its rejection on account of irreconcilability with the new regulations. Shortly afterwards, on 25.2.86, the respondents refused it for the same reasons, a decision communicated to the applicants the day following. The recourse is directed against the validity of the above decision of respondents.

15 Although counsel for the applicants acknowledged in his address that the time taken by the respondents for consideration and disposition of the application was in no sense unreasonable (abandoning allegations to the contrary made earlier), he submitted nonetheless that the decision ought to be annulled in view of the failure of the respondents to consider the application by reference to the law applicable at the time of its submission, that is, the 8th of January, 20 1986. He derived support for his submission from observations made by Demetriades, J., in *Georghiou and Another v. Larnaca Municipality*¹. The relevant passage reiterates that legislation ought not to be given retrospective effect in the absence of clear language to that end reminding in 25 essence of the presumption against construing statutes in a way impairing acquired rights.

30 Nevertheless, counsel for the applicants did concede that the proposition that an application for a building permit must be decided by reference to the law in force at the time of its submission, runs contrary and conflicts with the ratio of two decisions of the Supreme Court on the matter, namely, *Andriani G. Lordou and Others v. Republic*² and *Loiziana Hotels Ltd. v. Municipality of Famagusta*³. These decisions were, in his submission,

¹ (1985) 3 C.L.R. 2680, 2688.

² (1968) 3 C.L.R. 427—a decision of Triantafyllides, J., as he then was;

³ (1971) 3 C.L.R. 466—a decision of A. Loizou, J.

wrongly decided and invited me to overrule them. For his part counsel for the respondents submitted that the principle espoused in the above cases was followed in numerous decisions of the Supreme Court¹ and was approved by the Full Bench in *D. Theodorides and Others v. Plous-siou*². A study of the cases cited bears out the statement of counsel for the respondents. 5

The principles that emerge from a study of the case-law are the following:-

- (a) The law applicable is that in force at the time the decision is taken. This is so notwithstanding changes introduced in the law between the date of the petitioning of the Authorities and the time the decision is taken; unless the new law or Regulations expressly exclude from their ambit applications submitted before their enactment. 10 15
- (b) Section 4(1) of the Streets and Buildings Law—Cap. 96, does not justify any departure from the above principle of administrative law. On the contrary, it is fashioned to its application and enforcement. 20
- (c) The application of the rule under (a) above, is subject to the qualification that administrative Authorities must heed and dispose of a citizen's application for a building permit, expeditiously. If they are guilty of unreasonable delay, they cannot rely on changes in the law to deny to the applicant rights that the law gave him at the time when it would have been reasonable for the Authorities to determine the application. 25

In other words, the rights of the applicant must 30

¹ See, inter alia, *Philippou v. Municipality of Nicosia* (1972) 3 C.L.R. 50; 54; *Koufien v. Republic* (1974) 3 C.L.R. 101, 106; *Vassiliades and Another v. District Officer of Larnaca* (1976) 3 C.L.R. 269, 284; *Hadjipetrou v. Municipality of Nicosia* (1978) 3 C.L.R. 237, 245; *Agrotis v. Electricity Authority* (1981) 3 C.L.R. 503, 513; *Evangelou v. Municipality of Paphos* (1982) 3 C.L.R. 946, 960-961; *Ioannou v. Republic* (1982) 3 C.L.R. 1002, 1013; *Hadjittofi v. Improvement Board of Ayia Napa* (1983) 3 C.L.R. 298, 306; *Loizou v. Republic* (1985) 3 C.L.R. 1195, 1202.

² (1976) 3 C.L.R. 319, 340.

be determined in accordance with the law in force when it would be reasonable to decide the matter.

5 The pivotal point in the submission of applicants is that the owner of a building plot has a vested right to its development. This is not the case, as I had occasion to point out in *Simonis and Another v. Imp. Board Latsia*¹. A right to build can only be acquired under a building permit and then subject to its conditions. The applicant for a building permit has, of course, the right to the expeditious determination of his application corresponding to the duty cast on the Administration by Article 10 29 to take cognizance of and determine citizens' petitions expeditiously.

15 In the absence of any suggestion of unreasonable delay, and there was none in this case, the sub judice decision cannot be faulted. It was rightly decided by reference to the law applicable at the time the decision was taken. The recourse is dismissed. The sub judice decision is confirmed in accordance with Article 146.4(a) of the 20 Constitution. Let there be no order as to costs.

Recourse dismissed.
No order as to costs.

¹ (1984) 3 C.L.R. 109.