

1987 July 6

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LOUKIS KRITIOS,

Applicant,

v.

1. THE MUNICIPALITY OF PAPHOS, THROUGH THE MUNICIPAL COUNCIL OF PAPHOS,
2. THE REPUBLIC OF CYPRUS, THROUGH
 - (a) THE MINISTER OF INTERIOR,
 - (b) THE CENTRAL COMMITTEE FOR THE PROTECTION OF ABANDONED TURKISH OWNED PROPERTIES,
 - (c) THE DISTRICT OFFICER OF PAPHOS,
 - (d) THE DISTRICT COMMITTEE OF PAPHOS FOR THE PROTECTION OF ABANDONED TURKISH OWNED PROPERTIES,

Respondents.

(Case No. 137/83).

Streets and Buildings — Building permit — The Streets and Buildings Regulation Law, Cap. 96, section 5 — Effect of.

Recourse for annulment — Abatement — Administrative act of limited duration (such as a building permit) — Expiration of — In the light of Art 146.6 of the Constitution, the recourse is abated only when the act did not produce any adverse consequences for the applicant. 5

Damages — Constitution, Art. 146.6 — The annulment of an administrative act is a pre-condition for the recovery of damages resulting therefrom.

After the disposal of certain preliminary points of law (see *Kritiotis v. Municipality of Paphos and Others* (1986) 3 C.L.R. 322) the recourse proceeded in respect of the issue of the validity of the building permit issued by respondents 1 for the erection of a building on plot 609 of Paphos Town on the limited ground specified in the aforesaid judgment. 10

It must be noted that the sub judice permit, which had been issued on 30.12.82, expired after the lapse of one year from the date of its issue (Section 5 of Cap. 96). The permit was not renewed. Moreover, nothing was done to implement it. 15

5 Held, *dismissing the recourse* (1) It is clear from the wording of section 5 of Cap 96 that a building permit is an administrative act of limited - one year's duration. It can be renewed after its expiration, if the case falls within the proviso which presupposes that the work or other matter for which a permit was issued must commence. If the work has not commenced within a year from the issue of such permit, then it cannot be renewed, one has to apply afresh for the purpose of obtaining an entirely new building permit.

10 (2) Existence of legitimate interest of an applicant is a condition precedent of the annulment jurisdiction of the Administrative Court. The required interest of the applicant must continue to subsist on the date of the hearing of the recourse as well.

15 (3) When the subject matter of a recourse ceases to exist and the continuance of the recourse serves no purpose, the recourse is abated. In general it is abated when the *sub judice* act is revoked expressly or by implication, or on the expiry of the validity of the administrative act. The principle has been consistently followed and applied that where an act of limited duration has ceased to exist without having produced, before ceasing to be operative, any adverse consequences for the applicant, the recourse, which was made against it is abated, because if there are no adverse consequences of such an act, no need to annul it would arise, in view of the provisions of Article 146.6

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(4) In this case the permit expired long ago. There were no adverse consequences to the applicant. No useful purpose will be served by advertng to the ground on which its annulment was sought.

25 *Recourse struck out as abated*
No order as to costs

Cases referred to

- 30 *Chilimintri v The Municipal Corporation of Famagusta* (1969) 3 C.L.R. 159,
Siman (No 1) v The Municipality of Famagusta (1972) 3 C.L.R. 78,
Sevens Estates v Nicosia Municipality (1985) 3 C.L.R. 1732,
Chrysostomides v The Greek Communal Chamber through the Disciplinary Council of the Elementary School-Teachers, 1964 C.L.R. 397,
35 *Avgoloupi v The Minister of Interior* (1985) 3 C.L.R. 1525,
Malliotis v The Municipality of Nicosia (1965) 3 C.L.R. 75,
Vafeades v The Greek Communal Chamber (1966) 3 C.L.R. 197,
Andreou v The Republic (1975) 3 C.L.R. 108,

Irrigation Division «Katzilos» v. The Republic (1983) 3 C.L.R. 1068;

Agrotis v. The Republic (1983) 3 C.L.R. 1397;

Salem v. The Republic (1985) 3 C.L.R. 453.

Recourse.

Recourse against the decision of respondents No. 1 to issue a building permit for the erection of a building on plot 609 of Paphos town and the decision of respondent No. 2 for the allotment of plot 609, owned by Turkish Cypriots, to the interested party and not to allot the whole or part of the said plot 609 to the applicant. 5

K. Tasiades, for the applicant. 10

K. Chrysostomides, for respondent 1.

Chr. Ioannides, for respondent 2.

L. Clerides, for interested party.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicant by this recourse sought the following reliefs:- 15

1. The annulment of a building permit issued by the Respondents No. 1 - The Municipality of Paphos - on 30/12/82, for the erection of a building on plot 609 at Paphos town.

2. The annulment of the decision of Respondents No. 2 for the allotment of plot 609, owned by Turkish Cypriots, to the interested party; and, 20

3. The annulment of the decision of Respondents No. 2 not to allot the whole or part of the said plot 609 to the applicant to be used by him in connection with his restaurant business. 25

The respondents and the interested party raised in their opposition certain points of law, which were disposed of by the Court preliminarily. The Court dismissed reliefs 2 and 3 on the grounds that the applicant had no legitimate interest as he was not a displaced person and that the recourse was out of time. (*Loukis Kritiotis v. The Municipality of Paphos and Others* (1986) 3 C.L.R. 322.) 30

With regard to relief 1 the Court decided that the applicant by simply being owner of adjacent land had no legitimate interest to impugn the sub judice building permit if his rights, in respect of the 35

neighbouring immovable, were not adversely and directly affected. He had no legitimate interest to attack the validity of the sub judice building permit on the ground of the alleged violation of Regulation 5 of the Streets and Buildings Regulations, or that it is
5 contrary to and in excess of the purposes set out in the Order of the Requisition and the provisions of the Constitution and the Requisition of Property Law, 1962 (Law No. 21/1962) relating to requisitions.

In the statement of facts - paragraphs 7, 8 and 9 - there are
10 certain allegations about adverse affectation of the applicant's property by the erection of the building authorized by the sub judice building permit; these allegations combined with the legal ground relating to other infringements of the Streets and Buildings
15 Regulation Law, Cap. 96 and the Regulations made thereunder, on the face of them create a legitimate interest for the applicant and this Court has jurisdiction to consider the validity of the subject building permit on the aforesaid ground only.

The recourse proceeded for the relief No. 1 on the limited ground stated hereinabove.

20 The building permit attacked was issued by the appropriate Authority, the Municipality of Paphos on 30/12/82. The duration of a building permit is for one year from the date of the issue thereof. The relevant statutory provision is Section 5 of the Streets and Buildings Regulation Law, Cap. 96, which reads as follows:-

25 *5. A permit shall be valid for one year from the date of the issue thereof:

30 Provided that, if the work or other matter is not completed within that period, the permit shall be renewable at any subsequent time if not conflicting with any Regulations in force at the time of such renewal, upon payment of the fee prescribed for the original permit or of two pounds whichever is the less. The permit so renewed shall be valid for one year from the date of renewal.*

35 It is clear from the wording of this Section that a building permit is an administrative act of limited - one year's - duration. It can be renewed, after its expiration, if the case falls within the proviso which presupposes that the work or other matter for which a permit was issued must commence. If the work has not commenced within a year from the issue of such permit, then it

cannot be renewed; one has to apply afresh for the purpose of obtaining an entirely new building permit. (*Loulla A. Chillimintri v. The Municipal Corporation of Famagusta* (1969) 3 C.L.R. 159; *Nina Siman (No. 1) v. The Municipality of Famagusta* (1972) 3 C.L.R. 78 and *Severis Estates v. Nicosia Municipality* (1985) 3 C.L.R. 1732.)

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In the present case the sub judge building permit issued on 30/12/82 expired after the lapse of the prescribed year and was not operative on 30/12/83. It was not renewed. From the statement of all counsel nothing was done by the interested party or indeed by anyone in reliance of this building permit. No work at all for the building authorized commenced.

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The Court of its own motion raised the point whether, in view of the above, the applicant ceased to be possessed with the legitimate interest and hence this recourse has been abated. The subject matter of the recourse has ceased to exist.

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In this country Article 146, paragraph 2 of the Constitution provides that a recourse may be made by a person whose any existing legitimate interest is adversely and directly affected. Existence of interest of an applicant is a condition precedent of the annulment jurisdiction of the Administrative Court. The required interest of the applicant must continue to subsist on the date of the hearing of the Recourse as well. (*Kyrtakos Chrysostomides v. The Greek Communal Chamber through the Disciplinary Council of the Elementary School-Teachers*, 1964 C.L.R. 397, 402; *Georghios Avgoloupi v. The Minister of Interior* (1985) 3 C.L.R. 1525.)

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When the subject matter of a recourse ceases to exist and the continuance of the recourse serves no purpose, the recourse is abated. In general it is abated when the sub judge act is revoked expressly or by implication, or on the expiry of the validity of the administrative act. (Jurisprudence of the Council of State in Greece 1929 - 1959, page 275.)

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Under Article 146.6 of the Constitution a person is only entitled to seek compensation after he obtains a judgment in annulment proceedings before the Administrative Court. Therefore, if he suffered any damages from the sub judge administrative act, though it ceased to exist after the filing of the recourse, he is entitled to have the recourse determined as a Judgment of the Court *under* paragraph 4 of the Article 146 is a *sine qua non* to a claim for damages before a Civil Court, *under* Article 146.6.

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In Greece the position is lucidly stated in Tsatsos - Application for Annulment, 3rd edition, page 370-372, Spiliotopoulos - Manual of Administrative Law, 2nd edition, page 454. In Spiliotopoulos we read:-

- 5 «505. Η δίκη καταργείται (Ν.Δ 170/1973 Άρθρον 32), πλην της περιπτώσεως ελλείψεως υποκειμένου και λόγω ελλείψεως αντικειμένου εις τας ακόλουθους περιπτώσεις:
- (i)
- 10 (ii)
- (iii).....
- (vi) λήξεως της ισχύος της διοικητικής πράξεως χωρίς να παραμένουν διοικητικής φύσεως συνέπειαι (Σ.Ε. 3958/1978).»

- 15 («505. The trial is abated (Law 170/73 Section 32), except in the case of lack of subject and due to lack of object in the following circumstances:
- (i)
- (ii)
- 20 (iii)
- (vi) expiry of the validity of the administrative act without there remaining results of administrative nature (Greek Council of State, case No. 3958/1978.».)

- In Cyprus the principle has been consistently followed and
 25 applied that where an act of limited duration has ceased to exist without having produced, before ceasing to be operative, any adverse consequences for the applicant the recourse which was made against it is abated, because if there are no adverse consequences of such an act no need to annul it, in view of the
 30 provisions of Article 146.6 would arise. (See, inter alia *Malliotis v. The Municipality of Nicosia* (1965) 3 C.L.R. 75, 94, 95; *Vafeades v. The Greek Communal Chamber* (1966) 3 C.L.R. 197, 199; *Andreou v. Republic* (1975) 3 C.L.R. 108, 110; *Irrigation Division «Katzilos» v. The Republic* (1983) 3 C.L.R. 1068; *Agrotis v. The Republic* (1983) 3 C.L.R. 1397 and *Salern v. The Republic* (1985) 3 C.L.R. 453.)

In the present case the sub judice building permit expired long ago and it was not renewed. It ceased to exist and no results were

produced; no adverse consequences remained to the applicant when it was operative and therefore revocation of the act would serve no purpose; no useful purpose will be served by adverting to the ground on which the annulment of the sub judice building permit was sought.

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In the result this recourse is struck out as abated, but, in the circumstances of the case I make no order as to costs.

*Recourse struck out
as abated. No order as
to costs.*

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