

1987 October 16

[PIKIS, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IPPOCRATIS STAMATIOU,

Applicant,

v

- 1 THE MUNICIPAL COMMITTEE OF AGLANDJIA,
- 2 THE COUNCIL OF MINISTERS,

Respondents

(Case No 377/86)

*Administrative act — Legality of — Law applicable — Chnstoforou and Others v
Municipal Committee of Ayios Dhometos (1987) 3 C L R 1464 followed*

*Constitutional Law — Right to property — Constitution, Art 23 — The Regulatory
Administrative Act* 10/86 — Not incompatible with Art 23 — Chnstoforou
and Others v Municipal Committee of Ayios Dhometos (1987) 3 C L R 1464 followed* 5

Applicant's application dated 6 12 85 for a building permit was turned
down by a decision, communicated to the applicant by letter dated 11 4 86
on the ground that the building envisaged was not compatible with new
building regulations promulgated on 22 1 86 10

Hence this recourse

Held, that for the reasons expounded in *Chnstoforou and Others v
Municipal Committee of Ayios Dhometos (1987) 3 C L R 1464* the sub
judice decision must be annulled

Sub judice decision annulled 15

Cases referred to

*Chnstoforou and Others v Municipal Committee of Ayios Dhometos
(1987) 3 C L R 1464*

* *The Act contains building regulations*

Recourse.

Recourse against the decision of the respondents to reject applicant's application for the erection of a twelve storey building.

N. Ioannou (Mrs.), for the applicants.

5 *A. Scordis, for respondent 1.*

N. Charalambous, Senior Counsel of the Republic, for respondent 2.

Cur. adv. vult.

10 PIKIS J. read the following judgment. Identical issues pose for determination in this recourse as those raised in case 378/76 in which judgment was given earlier today. The crucial issue affects the legal regime by reference to which the sub judice decision shall be taken and secondly the constitutionality of building regulations affecting the Municipality of Aglandjia promulgated on 21st
15 January, 1986*.

Applicant petitioned the authorities on 6th December, 1985 for a building permit. Their application was accompanied by architectural plans envisaging the erection of a twelve-storey building, a height permitted by the Building Regulations in force at
20 the time of the submission of the application. It took the Administration a long time to decide the fate of the application and longer still to communicate it to the applicant. Following the advice of the Town Planning Department to reject the application founded on the new Building Regulations, a negative decision was
25 communicated to the applicant on 11.4.86. In case 378/86** decided earlier today, it was explained that whereas the action of the Administration should be governed by the rules of law in force at the time the decision is taken, this principle is in Cyprus subject to an important constitutional qualification, the one enacted by
30 Article 29 of the Constitution. And in as much as a mandatory obligation is cast upon the Administration to determine a citizen's petition within 30 days, a corollary of that rule is that any delay on their part to fulfil and discharge this constitutional duty cannot be allowed to operate to the detriment of the citizen. Necessarily, an

* *Administrative Regulatory act 11/86.*

** (1987) 3 C.L.R. 1464.

application to the authorities must promptly be heeded and determined in accordance with the legal regime in force within the 30 day period ordained by the Constitution as the maximum period the Administration can take to decide the matter. Throughout the period of 30 days following the submission of the application for a building permit on 6th December, 1985, the law in force relevant to buildings were the regulations other than those that guided the Administration in taking the sub judge decision. Consequently, their decision is bad for misconception of the law and as such it must be annulled. 5 10

The contention on the other hand that the new regulations are bad for breach of the provisions of Article 23 was likewise a subject for decision in case 378/86. A similar fate must attend this submission as its counter part in the other case and for the same reasons. It is dismissed. 15

In the result, the recourse succeeds, the sub judge decision is declared to be wholly void pursuant to the provisions of Article 146.4(b) of the Constitution.

*Sub judge decision
annulled.* 20