

1988 May 26

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

"I EKKLISIA TOU THEOU TIS PROPHETIAS".

Applicants.

v.

THE REPUBLIC OF CYPRUS, THROUGH

(a) THE CENTRAL COMMITTEE FOR THE PROTECTION
OF ABANDONED TURKISH-OWNED PROPERTIES,

(b) THE DISTRICT COMMITTEE OF LIMASSOL FOR
THE PROTECTION OF ABANDONED TURKISH-OWNED
PROPERTIES,

(c) THE MINISTER OF INTERIOR,

(d) THE DISTRICT OFFICER OF LIMASSOL,

Respondents.

(Case No. 235/87).

General principles of administrative law—One cannot approbate and reprobate the self-same act depending on the fate of one's request—Request for lease of abandoned Turkish property—When refused, applicants challenged the order of requisition whereby such properties were vested for their protection to the Committee—A classical instance of approbation and reprobation.

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Reasoning of an administrative act—Refusal to grant to applicants, a charity registered under Cap. 41 in 1983, a lease of abandoned Turkish property—Though the reply was brief and in no way explanatory of the reasons thereof, the act will be confirmed, as the dismissal of applicants' request was inevitable, because they do not qualify as displaced persons.

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The facts of this case sufficiently appear in the judgment of the Court.

Recourse dismissed.

Recourse

5 Recourse against the refusal of the respondents to lease to applicants premises or a vacant site, which were abandoned Turkish properties, to be used for erecting a building appropriate to house "The Church of the God of Prophecy".

A. Eftychiou, for the applicants.

Chr. Ioannides, for the respondents.

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Cur. adv. vult.

15 PIKIS J. read the following judgment. The applicants "The Church of the God of Prophecy" are a charity registered under the provisions of the Charities' Law - Chapter 41. As such they are a body corporate with power to own movable and immovable property. The charity was registered in the year 1983 (15th April, 1983).

20 On 29th July, 1986, the applicants petitioned the respondents, responsible for the management and administration of abandoned Turkish properties, for the lease to them of premises or a vacant site to be used for erecting a building appropriate to house "The Church of the God of Prophecy" and satisfy their needs. The Church of the God of Prophecy", it is stated in their application, has been functioning in Cyprus since 1928. As a result of the Turkish invasion the applicants were deprived of property at Nicosia and Kyrenia made inaccessible and inamenable for use for their needs; so it was alleged.

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When the attention of counsel was drawn to the fact that the applicants were inexistent as a charitable entity before 1983 he explained that the property was registered in the name of the mem-

bers of "The Church of the God of Prophecy" and was put to the uses approved by the establishment of "The Church of the God of Prophecy" before incorporation as a charity. A building was required for the needs of the charity at Limassol. Inquiries made revealed that of the 46 members of "The Church of the God of Prophecy" at Limassol 11 were displaced. The application was refused pursuant to and in exercise of the powers vested in the respondents by the rules governing the lease of abandoned Turkish property for the satisfaction of the needs of displaced persons. The reply given to the applicants was admittedly very brief and in no way explanatory of the reasons for refusal. Counsel for the respondents submitted that the refusal was inevitable; in some respects, approval of the application was beyond the powers of the respondents . The appllication for the lease of property was two-fold. For the lease of property suitable for their needs or the lease of a vacant site for development into a temple. I doubt whether the second leg of their application was within the power of the respondents to approve; assuming of course that other prerequisites were satisfied.

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To qualify for the grant of a lease of abandoned Turkish property the foremost requisite is that the applicants should be persons who were displaced as a result of the Turkish invasion. The applicants did not qualify as displaced persons; in fact they were in-existent as a corporate entity at the time of the Turkish invasion. The status of "The Church of the God of Prophecy" before incorporation and the relationship with its members were in no way explained or articulated before the Court, or the respondents for that matter. The application was solely fastened to the rights of the applicants as a separate entity. Consequently the application was doomed to failure. Even if we were to suppose that they qualified as displaced persons their application again would have to be dismissed as the authority of the respondents was primarily confined to the lease of property for the satisfaction of the needs of displaced individuals and their families.

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Notwithstanding the petition of the applicants to the respondents and explicit acknowledgement thereby of the existence of

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power in law on the part of the respondents to grant their application, in face of respondents' refusal to satisfy their request they mounted a challenge to the constitutionality of the order of requisition whereby Turkish properties vested in the Committee for the protection of abandoned Turkish properties.

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10 This is a classic instance of an attempt to reprobate an act following its earlier approbation. This is wholly impermissible. It is a settled principle of administrative law that you cannot approbate and reprobate the self-same act depending on the fate of the request. The application is dismissed. The sub judice decision is confirmed pursuant to the provisions of Article 146.4(a) of the Constitution.

Recourse dismissed.