1988 January 28

[TRIANTAFYLLIDES, P., SAVVIDES, LORIS, STYLIANIDES, KOURRIS, JJ.]

THE MUNICIPAL COMMITTEE OF LARNACA,

Appellant-Respondent

v.

1. MEROPI GEORGHIOU,
2. ANDROULLA SOCRATOUS,

Respondents-Applicants.
(Revisional Jurisdiction Appeal No.546).

Administrative act—Legality of—Legal status on the basis of which it should be judged—It is that in force at the time it is taken, unless there has been unreasonable delay on the part of the Administration to issue the act in question—The correct general principles emanate from the decisions in Lordou and Another v. The Republic (1968) 3 C.L.R. 427, Loiziana Hotels Ltd. v. The Municipality of Famagusta (1971) 3 C.L.R. 466, Pierides and Others v. Paphos Municipality (1986) 3 C.L.R. 1769—Application for building permit filed on 14.8.80—New building regulations published on 16.8.80—Decision to refuse the permit as being incompatible with new regulations communicated to respondents by letter dated 12.6.81—As the 15th of August is a Public Holiday, the decision could not in any event be taken before the new regulations were published—It follows that the delay in this case is immaterial.

On 14.8.80 the respondents applied for a building permit. On 16.8.80 the relevant regulations changed. The application was not in accord with the new regulations. However, the appellants did not give any reply to the application of the appellants till the 12.6.81, when they informed the respondents that the application was turned down as the proposed building was not in accordance with the new Regulations.

The respondents challenged the decision by a recourse to this Court. A Judge of this Court annulled the decision on the ground that the legal status on which the application should have been decided was that in force when

the same was filed, i.e. the Regulations in force as on the 14.8.80.

Hence this appeal.

Held, *allowing the appeal*: (1) The general principles concerning the legal status, which has to be applied in respect of an application of this nature, emanate from the decisions in *Lordou and Others v. The Republic* (1968) 3 C.L.R. 427, *Loiziana Hotels Ltd. v. The Municipality of Famagusta* (1971) 3 C.L.R. 466 and *Pierides and Others v. Paphos Municipality* (1986) 3 C.L.R. 1769. This Court adopts the views expressed in these decisions.

(2) It follows that the questions to be determined are: (a) Whether there was a delay on the part of the appellant to decide the respondents' application, and

(b) Whether the delay was such as to amount to an omission which could have been put right by applying the law as it was when it should have been determined and not as the law stood at the time the decision was actually taken.

(3) It is undisputed that the reply to the respondents' application was given on 12.6.81. There was not, however, any request from the respondents praying for an early reply to their application. Irrespective of the fact that considerable time had elapsed from the time the application was submitted until the time when it was refused, the fact is that as from the 16th August, 1980, that is, very shortly after the submission by the respondents of their application, the law had already changed, making the grant of a permit on the basis of the plans submitted impossible.

(4) As the 15th of August is a public holiday, the application was made on the 14th and the new regulations published on the 16th, it is obvious that the appellants, however diligently they might have acted, could not determine the application before the 16th of August 1980. Therefore, the inevitability of the refusal of such application was apparent to the respondents from the date of the publication of new building Regulations.

(5) Bearing in mind all the circumstances, the fact that there was a delay on the part of the appellant to communicate its decision to the respondents is immaterial, as in view of the legal status created on 16.8.1980 the issue of the building permit as applied for by respondents was impossible.

Appeal allowed.
No order as to costs.

Cases referred to:

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

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

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

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Demetriades, J.) given on the 7th December, 1985 (Revisional Jurisdiction Case No. 268/81)* whereby appellant 's refusal to grant a building permit to the respondent was annulled.

G.M. Nicolaides, for appellant.

L. Papaphilippou, for respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by Mr. Justice Savvides.

SAVVIDES J.: This is an appeal against the judgment of a Judge of this Court in the exercise of the original jurisdiction of this Court, in Recourse No. 268/81, whereby he annulled a decision of the appellant refusing the grant of a building permit to the respondents.

The appellant is the Municipal Corporation of Larnaca, which at the material time was operating through an appointed Municipal Committee and which was the appropriate authority under the Streets and Buildings Regulation Law, Cap. 96 and its subsequent amendments by Laws 14 of 1959 to 25 of 1979, for

* *Reported in (1985) 3 C.L.R. 2680.*

the issue of building permits within Larnaca town.

The respondents are the registered co-owers of a building site under plot 177 Sheet /Plan XL64 EII, Block H, Skala, Phaneromeni Quarter, Larnaca. On this building site there stands a two-storeyed building.

On the 14th August, 1980, the respondents submitted an application to the appellant for the issue to them of a building permit for the reconstruction of their said building by converting the ground floor into shops and the addition to it of two more floors with two flats on each. The height of the intended building would be 46 feet: the total extent of the covered area of the building would be 11,360 sq. ft. and the covered area of each floor was to be 50% of the total area of the building site.

Before the respondents' application was considered and a decision taken by the appellant and in fact on the 16th August, 1980, the next working day from the date of their application (the 15th August, 1980 being a public holiday) the new Building Regulations regulating the area of building sites to be covered by constructions, the number of storeys of each building to be erected as well as its height, were published in the official Gazette of the Republic (see Not. 234, Third Supplement, Part I, dated 16th August, 1980) and came into force as from the date of such publication.

It is common ground that the property of the respondents is situated within the area described under item No. 6 of the above Notification in which the height of buildings cannot exceed 37 feet and the number of floors is limited to four.

Furthermore, the total building area cannot exceed 50% of the total extent of the building site.

The respondents received no reply to their application till the 12th June, 1981, when the appellant informed them by letter that their application was refused as the proposed building was not in

accordance with the new Building Regulations.

As a result respondents filed Recourse No. 268/81 in the Supreme Court challenging the sub judice decision.

The learned trial Judge who heard such recourse came to the conclusion that the sub judice decision should be annulled and made an order accordingly. In concluding his judgment he had this to say: *(See Georghiou and Another v. The Municipal Committee of Larnaca* (1985) 3 C.L.R. 2680 at p. 2688).

"In my view, a statute that takes away rights already acquired cannot, unless its language as such plainly requires that construction, be held to have a retrospective effect. This view of mine, I feel, tallies with another principle of administrative law, namely that when a decision of an administrative organ is held by a Court of Law to be null and void, it must be re-examined by that organ on the basis of the facts and the law existing at the time the decision annulled was taken.

As it appears from the contents of the letter dated the 12th June, 1981, containing the sub judice decision, the respondents rejected the application of the applicants on the ground that it did not comply with the Building Regulations in force on that date and in particular with Notification 234. It is, therefore, clear that the respondents failed, even as late as that date, to examine the application of the applicants and see whether the plans, specifications etc. submitted by them complied with the Building Regulations in force on the date their application was lodged. In view of this I find that the sub judice decision should be declared null and void and of no effect.

By this decision of mine it is obvious that I disagree with the judgments delivered by my learned colleagues in the cases of *Lordou* and *Loiziana*, supra, as well as the Decisions of the Greek Council of State on which my brother Judges based their judgments."

The appellant filed the present appeal challenging the above decision. Counsel for appellant argued that the learned trial Judge erred in law in disagreeing with (a) the Judgments of the Supreme *Court in Lordou & Others v. The Republic* (1968) 3 C.L.R. 427 and *Loiziana Hotels Ltd. v. The Municipality of Famagusta* (1971) 3 C.L.R. 466 and (b) the relevant decisions of the Greek Council of State, and in holding that the application, subject matter of the recourse should be examined and determined on the basis of the Building Regulations in force on the date the application was lodged.

The sole question which poses for consideration in the present appeal is whether when an application is made for a building permit and subsequently to the date of the submission of the application there is a change in the law or the regulations governing the issue of a permit, such application has to be considered on the basis of the law or regulations in force at the time of the submission of the application or on the basis of the law and regulations in force at the time when the application is actually considered and decided upon.

This question came for consideration before the Supreme Court in a series of cases all of which were dealt with by a single judge and none of them came on appeal before the Full Bench.

In *Andriani Lordou and Others v. The Republic* (supra) the applicants were challenging the refusal of the Municipality of Famagusta to issue to them a building permit for the erection in Famagusta of a building of twelve storeys, which refusal was based on the ground that the permit sought could no longer be granted in view of a Notice of the Council of Ministers regulating among other things the height and storeys of new buildings in certain areas and fixing to six the maximum permissible number of storeys of such buildings. Triantafyllides, J. (as he then was) said the following at pp. 433, 434: -

" The above principle applies, even, to cases in which there has been a change in the relevant legislation between the

submission of an application for a permit and administrative action thereon; for example, in case 398(39) the Greek Council of State decided that, though a doctor had applied on the 1st June, 1937, for a permit regarding the functioning of his clinic, a decision, prohibiting such functioning, which was taken -while his application was still under consideration -on the 15th October, 1938, was valid, because it was based on legislation which was published on the 24th January, 1938, and was prohibiting the functioning of a clinic of that nature in the particular area; and it was stressed, by the Council of State, that the administration could not have acted contrary to such legislation and allow something to be done which was prohibited by legislation, relating to a matter of public order (δημοσίας τάξεως), in force at the time when the relevant administrative action was taken.

While on this point it might be observed that, clearly, the Notice published by the Council of Ministers, as aforesaid, on the 25th May, 1967, regarding the heights and storeys of buildings, does regulate a matter of public order.

The applicants have based, mainly, their argument on the decision of the Greek Council of State in case 1235 (56), in which it was held that an application regarding a building permit had to be dealt with under the legislation in force at the time when it was made and under which all the conditions relevant to the grant of the permit had been satisfied and that such application was not to be governed by legislation which had come into effect in the meantime, after the making of the application.

A perusal of the aforementioned decision shows, at once, that the situation in that case is clearly distinguishable from the situation in the present case: There, before the coming into effect of the new legislation, there appears to have arisen a duty of the appropriate authority to issue the permit applied for, in view of the fact that the application therefor complied fully with all relevant conditions. In the present case, the

application of the Applicants was submitted on the 17th May, 1967; it was studied, within reasonable time, by the technical services of Respondent 2; and on the date when the Notice in question was published the position was that the Applicants were still required to supply some further collateral plans and effect a modification to those already submitted; it could not be said that by the 25th May, 1967, the matter had ripened to such an extent that the building permit applied for by the Applicants could, and should, have been issued already."

And after making reference to decided cases of the Greek Council of State, went on as follows (pp. 435, 436) :-

"From the aforementioned decisions of the Greek Council of State it is to be derived that, in every such case, what has, first, to be ascertained, is the construction of the relevant legislation. In other words, it has to be decided whether a supervening new enactment was intended to be applicable to applications for building permits which had already been made before the coming into effect of such enactment and which, at the time, were still under consideration; if this is so, then an application for a building permit has to be dealt with on the basis of the new enactment, because of the aforementioned cardinal principle of Administrative Law which prescribes that an act has to be governed by the legislation in force at the time when it is made; if this is not so, then the new enactment is not applicable, and, therefore, it is not legislation which is, really, in force in relation to the particular administrative action to be taken regarding a previously made, and pending, application for a building permit.

Coming now to the construction of our own relevant legislation it is to be noted, first, that section 4(1) of The Streets and Buildings Regulation Law, Cap. 96, reads as follows:-

'No permit shall be granted under section 3 of this Law

unless the appropriate authority is satisfied that the contemplated work or other matter in respect of which the permit is sought is in accordance with the provisions in this Law and the Regulations in force for the time being'.

In my view there is nothing in the construction of section 4 (1) to lead to the conclusion that it is intended that a permit should be granted on the basis of the legislation in force when the application for such permit is made; it is, on the contrary, rather indicated that the grant of a permit must be governed by legislation in force at the time when such permit is to be granted.

In this respect it is useful to refer to the decision of the French Council of State of the 12th October, 1965, in the consolidated cases of Syndicat départemental de la boulangerie de 1' Eure et Consorts Simenel; the relevant French legislative provision, governing the issue of the building permit, appears to have been closely similar to our own section 4(1); and the Council of State took the view that the legislation governing the grant of a building permit was that which was in force at the time when such permit was to be granted."

The matter was further considered in *Loiziana Hotels Ltd.v. The Municipality of Famagusta* (supra) in which the facts were briefly as follows:-

The applicants applied on the 16th September, 1970, to the respondents for a building permit for the erection of a five-storey building. Complying with suggestions made on two occasions by the Municipal Engineer, the applicants submitted corrected plans on November 16th and 21st, 1970, which were examined on the 2nd December, 1970, and after the views of the Public Works and the Fire Service Department were obtained the file of the applicants was examined by the technical department of the respondents and on December 28th, 1970, the said department recommended the granting of a building permit. It was common ground that by December 28th, 1970, the applicants' case was

ripe for decision, everything being in order by then, and that, had their application been dealt with before the 29th January , 1971, the building permit applied for would have been issued as a matter of course. On 29th January, 1971, by Notification published in the official Gazette the area within which the property of the applicants was situated, was declared "a tourist zone" by the respondents acting in the exercise of powers vested in them by the Streets and Buildings Regulation Law, Cap. 96 (as amended by Laws 65/64 and 38/69) the effect of which was that the maximum number of storeys of buildings was limited to two. The respondents by letter dated March 29th, 1971 addressed to the applicants, informed them that in view of the aforesaid Notification their application of September 16th, 1970, for a building permit was refused. The applicants filed a recourse against such refusal and they were successful in having such refusal annulled. A. Loizou, J. after making reference to the case of *Andriani Lordou & Another* (supra) said the following at p.471:-

> "On the facts of the present case as hereinabove set out the first point for determination is whether the said delay of the respondents in deciding the applicant's application for a building permit was such as to amount to an omission which could have been put right by applying the law as it was when it should have been determined and not as the law happened to be at the time the decision was actually taken. Reference has already been made to the case of *Andriani Lordou*, supra."

and after reviewing Decisions Nos 1235/56 and 1477/56 of the Greek Council of State, went on as follows at pp. 472,473:-

> "From the aforesaid exposition of the law, as it is established both here and in Greece, it appears that independently from the construction of the relevant legislation, the general principle that the validity of an administrative act is determined on the basis of the legal status existing at the time of its issue, is subject to the exception that the pre-existing legislation is applicable when there has been an omission on

the part of the administration to perform within a reasonable time what it was duty bound to do before the change of the law.

The unreasonable delay by the respondent in determining the application of the applicant and their subsequent application of the law as it was on the 15th March, 1971, amounts, to my mind, to a misdirection as to the law applicable and in fact to an excess and abuse of power. The law applicable is the law as it was before the 29th January, 1971, under which it is common ground the permit could be issued as a matter of course."

The above cases were considered in the case of *Pierides & Others v. Paphos Municipality* (1986) 3 C.L.R. 1769 and the principles emanating therefrom were followed.In the said case, in which an application for a demolition permit was refused by the Municipality of Paphos, it was held as follows at pp. 1781. 1782:-

"A careful consideration of the legal authorities on the matter and in particular the dicta in the cases of *Loiziana* and *Lordou* and the authorities referred to therein I am inclined to agree with the exposition of the law in *Loiziana* case the facts of which bear more resemblance with the facts in the present case rather than the facts in *Lordou* case. I adopt the principle emanating therefrom that the general principle that the validity of an administrative act is determined on the basis of the legal status existing at the time of its issue, is subject to the exception that the pre-existing legislation is applicable when there has been an omission on the part of the administration to perform within a reasonable time, what it was duty bound to do before the change of the law.

The facts in *Lordou* case are distinguishable from the facts in *Loiziana* case. In *Lordou* case the applicants filed their application for the erection of a multi-storey building on the 17th May, 1967, and whilst the application was in the process

of examination, without any undue delay on the part of the respondent and only a few days later, that is on the 25th May, 1967, there was a change in the law which restricted the respondents from issuing the permit applied for. *Lordou* case was decided on the basis of the findings of the Court that there had been no undue and unjustifiable delay on the part of the technical service of the respondent Municipality and on that basis the Court drew a distinction between that case and decision 1235/1956 of the Greek Council of State.

On the basis of my findings of law as above I am now coming to consider whether in the present case there has been undue and unjustifiable delay on the part of the respondent to deal with applicants' application....."

and it concluded as follows at p. 1787:-

"From the exposition of the law, as hereinabove explained and the adoption of the view that the general principle that the validity of an administrative act is determined on the basis of the legal status at the time of its issue is subject to the exception that the pre-existing legislation is applicable when there has been an omission on the part of the administration to perform within a reasonable time what it was duty bound to do before the change of the law, I find that in view of such unreasonable delay on the part of the respondent to determine the application, and, in the circumstances explained above, the law applicable was the law in force before the 3rd May, 1985, under which, it is common ground, the permit could be issued as a matter of course."

We share the views expressed in the above cases as to the general principles concerning the legal status which has to be taken into consideration when an application of this nature has to be determined.

On the facts of the present case as hereinabove explained the questions for determination are-

(a) Whether there was a delay on the part of the appellant to deside the respondents' application, and

(b) Whether the delay was such as to amount to an omission which could have been put right by applying the law as it was when it should have been determined and not as the law stood at the time the decision was actually taken.

It is an undisputed fact that though the application of the respondents was submitted on the 14th August, 1980, the reply of the appellant refusing the building permit was given on the 12th June, 1981. There was not, however, any request from the respondents praying for an early reply to their application. Irrespective of the fact that considerable time had elapsed from the time the application was submitted until the time when it was refused, the fact is that as from the 16th August, 1980, that is , very shortly after the submission by the respondents of their application, the law had already changed, making the grant of a permit on the basis of the plans submitted impossible. There is no doubt, bearing in mind the fact that the application was submitted on the 14th August, 1980, and the 15th August was a public holiday, that the appellant could not, whatever diligence it might have exercised, have considered and determined such application before 16.8.1980. Therefore, the inevitability of the refusal of such application was apparent to the respondents from the date of the publication of new Building Regulations.

Bearing in mind all the circumstances, the fact that there was a delay on the part of the appellant to communicate its decision to the respondents is immaterial, as in view of the legal status created on 16.8.1980 the issue of the building permit as applied for by the respondents was impossible.

For all the foregoing reasons we find that the matter regarding the grant of a building permit on the basis of the application of the respondents had to be governed by the legislation in force on the 16th August, 1980 on the basis of which the application had to be dealt with and was in fact so dealt with.

In view of the above finding the decision of the appellant was properly taken and it must be upheld.

The appeal is therefore allowed and the decision of the trial Court is set aside. There will be no order for costs.

Appeal allowed. 5
No order as to costs.