

(1988)

1988 April 4

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

E. & V. FLYING DOLPHINS LIMITED,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS,

Respondent.

(Case No. 97/86).

Acts or decisions in the sense of Article 146 of the Constitution—Order of Council of Ministers varying previous orders relating to controlled areas for the purposes of the Rent Control Laws—A regulatory act of a legislative content—Not justiciable under Article 146—Recourse dismissed.

The facts of this case appear sufficiently from the judgment of the Court. 5

Recourse dismissed.

No order as to costs.

Cases referred to:

Lanitis Farms Ltd. v. The Republic (1982) 3 C.L.R. 124; 10

Nicosia Race Club v. The Republic (1984) 3 C.L.R. 791.

Recourse.

Recourse against the validity of the Order of the Council of Ministers No. 2/86 whereby previous orders of the Council of

Ministers published on 8.8.75 and 8.7.77 were varied so as to exclude the areas referred to in the Appendix to Order No. 2/86 from the operation of the Rent Control Laws.

L. Papaphilippou, for the applicant.

5 *N. Charalambous*, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

10 LORIS J. read the following judgment. The present case revolves on the validity of the Order issued by the Council of Ministers and published under No. 2/86 (in Supplement No. 3 of the Official Gazette of the Republic under No. 2103 dated 10.1.86), whereby previous Orders of the Council of Ministers published on 8.8.75 and 8.7.77 (declaring areas therein mentioned as "controlled" for the purposes of the Rent Control Laws) were varied so as to exclude the areas referred to in the Appendix to No. 2/86 from the operation of the Rent Control Law.

15 Learned counsel appearing for the respondent raised the preliminary objection that the Order challenged by means of the present recourse does not constitute an executory administrative act envisaged by Article 146 of the Constitution, but it is in substance and in fact a Regulatory act of a legislative content, which cannot be challenged as such, under Article 146 of the Constitution.

25 The alleged legitimate interest of the applicant company in challenging the validity of the aforesaid Order, is the bearing that the Order will have in the resolution of a dispute between the applicant company and the Cyprus Tourism Organisation, in connection with the possession of three shops situated within the Larnaca Marina; in spite of the fact that Cyprus Tourism Organisation is directly involved in the dispute in question, the Organisation has not been made a party to the present proceedings; this is abundantly clear from the title of the present recourse which de-

scribes the Respondent in this case as "The Republic of Cyprus through the Council of Ministers".

Turning now to the consideration of the preliminary objection of learned counsel appearing for the Respondent; having carefully gone through the sub-judice Order and having considered same in the light of the decisions in *Lanitis Farms Ltd., v. The Republic* (1982) 3 C.L.R. 124 and *Nicosia Race Club v. The Republic* (1984) 3 C.L.R. 791, I hold the view that the Order in question does not come within the ambit of Article 146 of the Constitution, as in substance it was a regulatory act of a legislative content. And as stated in the case of *Lanitis Farm Ltd. (supra)* at page 132 "Consequently regulatory acts of a legislative content whether issued by the Council of Ministers or other administrative organ cannot be directly challenged before the Supreme Court as not satisfying the prerequisites of Article 146 of the Constitution and this is the position regarding the order challenged by these two recourses. Support for this approach can also be derived from what was decided in the cases, inter alia, of *Police and Hondrou*, 3 R.S.C.C. 82; *Sophoclis Demetriades & Son and Another v. The Republic* (1969) 3 C.L.R. p. 577; and *Demetrios Philippou & Others v. The Republic* (1970) 3 C.L.R. 129".

In the result the preliminary objection is sustained.

Having reached this conclusion, I consider it unnecessary to determine the recourse on its merits; present recourse is accordingly dismissed. Let there be no order as to costs.

*Recourse dismissed.
No order as to costs.*