

1985 November 27

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

CHRYSOSTOMOS KOUTTOUKIS AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF INTERIOR AND/OR
THE MINISTER OF INTERIOR AND/OR
THE DISTRICT ADMINISTRATION OF NICOSIA
AND/OR
THE DISTRICT OFFICER, NICOSIA,

Respondents.

(Case No. 464/79).

Administrative Law—Administrative act—Revocation of—An administrative act, whether lawful or unlawful, is freely revocable, at any time, if there exist reasons of public interest and irrespective of whether such act created rights or not.

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Administrative Law—An organ of the administration may seek the advice of the Attorney-General on a legal point—Such advice does not constitute an interference with the discretionary powers of such organ.

On 5.9.1978 the applicants applied for a drilling permit in their plots situated at Potami village. The consent of the Director of the Water Development Department was given and as result a permit was granted to the applicants on the 18.5.1979 for the drilling of a borehole and the installation of pumping machinery in their said lands.

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By letter dated 12.10.1979 the village committees of Potami and Vyzakia protested against the granting of the

above permit, mainly on the ground that the new borehole lies between two existing boreholes in the village of Potami, i.e. the irrigation division of Artesiano and the drinking water of the two communities and the new borehole will affect both of them with the danger that the two communities will remain without drinking water. The District Officer sought and obtained the views of the Director of the Water Development Department, who, in his reply, dated 13.10.79, stated that the "existence of the communal water supply which lies at a distance of 1800 feet from the borehole of the present file was not, due to an oversight, taken into consideration and as a result our consent was given. I, therefore, request, if possible, the revocation of the permit granted."

The District Officer then sought and obtained the views of the Attorney-General, who replied that the revocation of the permit was possible.

By letter dated 15.10.79 the District Officer informed the applicants that he revoked their said permit because "due to an oversight the existence of the communal borehole... the output of which is likely to be affected... was not taken into consideration".

Hence the present recourse.

Applicants' counsel submitted that: (a) The drilling permit was not revocable. (b) The District Officer acted with the consent of the Acting Director and not with the consent of the Director of the Water Development Department. (c) The District Officer did not decide the matter himself, but referred it for advice to the Attorney-General and (d) As other permits were granted in the area the applicants had been treated discriminatory vis a vis such other persons.

Held, dismissing the recourse:

(a) As a general rule lawful administrative acts, which have created rights in favour of the citizen are not revocable, whilst unlawful administrative acts, even if they have created rights, are revocable within a reasonable time. In the case, however, of the existence of reasons of public interest, both lawful and unlawful administrative act are

freely revocable at any time, irrespective of whether they have created rights or not. The protection of water supplies constitutes a matter of public interest because water is a commodity vital to the life of the country. In the circumstances the respondents were perfectly entitled to revoke the applicants' drilling permit. 5

(2) Applicants' contention that the sub judice act is null and void because the District Officer did not act with the concurrence of the Director but only with the concurrence of the Acting Director of the Water Development Department, is unmerited. In the definition of "Director" Law 32/64 includes any officer of the Department authorised by the Director to act in this respect. In addition to the fact that an Acting Director is appointed to act in the absence of the Director, one may assume, unless the contrary is established, that the Acting Director was authorised to act under the Law. 10 15

(3) Applicants' complaint that the District Officer did not decide the matter himself, but referred it for advice the Attorney-General, is also unmerited. The Attorney-General is the legal adviser of the Government and his advice on a legal point cannot be considered as an interference with the discretionary powers of the District Officer. 20

(4) The applicants' complaint for unequal treatment has not been substantiated by the evidence adduced. 25

Recourse dismissed.
No order as to costs.

Cases referred to:

) *Charalambides v. The Republic* (1974) 3 C.L.R. 420; 30

Ioannou and Another v. The Republic (1979) 3 C.L.R. 423;

Yiangou and Another v. The Republic (1976) 3 C.L.R. 101;

Yiannaki v. The Republic (1965) 3 C.L.R. 561.

Recourse.

Recourse against the decision of the respondents whereby drilling permit No. 03028 issued to applicants was revoked.

5 *E. Efstathiou*, for the applicants.

N. Charalambous, Senior Counsel of the Republic,
 for the respondents.

Cur. adv. vult.

10 SAVVIDES J. read the following judgment. The applicants challenge the decision of the respondents dated the 15th October, 1979, by which the drilling permit, No. 03028, issued to them on the 18th May, 1979, was revoked.

 The facts of the case are briefly as follows:

15 The applicants are the owners of plots Nos. 565/3 and 565/4 of Sheet/Plan XXIX/18 situated at Potami village. On the 5th September, 1978 they applied for a drilling permit in their aforesaid plots. The consent of the Director of the Water Development Department was given and a permit, No. 03028, was issued to the applicants on the 18th
20 May, 1979, which was for the drilling of a borehole and the installation of pumping machinery, in the aforesaid plots.

 The Village Committees of Potami and Vyzakia complained against the granting of the above permit by their
25 letter to the District Officer dated the 12th October, 1979, which reads as follows (blue 11 in exhibit 1).

 "We, the undersigned village committees and inhabitants of Potami and Vyzakia strongly protest against the borehole permit which was granted in the village
30 of Potami at the locality of 'Kountouri' for the following reasons:

(a) It lies in between two existing boreholes in the village of Potami, that is, the irrigation Division Artesiano and the drinking water of the two
35 communities.

- (b) The two existing boreholes although they lie at a distance of 2,000 feet, affect each other and consequently the already sunk borehole will effect both of them with the danger that the two villages will remain without drinking water. 5
- (c) The borehole in question was first sunk in 1967 and for the reasons mentioned above and after strong protests by the inhabitants of the two communities it was forbidden to the ex owner of the land to use it. 10
- (d) The users of the said borehole are neither agriculturers nor farmers but they have misled the appropriate departments and the District Officer in order to obtain the permit for agricultural or farming purposes." 15

The District Officer sought, on the same day, the views of the Director of the Water Development Department (note 8 in exhibit 1) who in reply on 13.10.1979 (note 9 in exhibit 1) informed the District Officer as follows:

"After examination of the geological material, that is the strata extracted from drillings in the area, it seems that on the same point as in the present application a borehole was sunk in 1966 (number P. 1525, permit No. W169/65) which struck the coralliogenic limestone stratum at a depth of 360 ft. This limestone stratum forms the common water-bearing stratum of the area from which borehole number 8/64 now used for the common water supply of the villages Potami and Vyzakia, also pumps water. It should be noted that the borehole which was sunk in 1966 is now filled in and, has never been used. 20
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During the examination of this application, which was re-adjusted in 1968 to the extent of irrigating 15 donums, borehole 8/64 was not in use for the water supply of the above villages (it was used for the water supply of the said villages in 1973), the existence of the communal water supply which lies at a distance of 1800 feet from the borehole of the present file was not, due to an oversight, taken into consideration and 35

as a result our consent was given. I therefore request, if possible, the revocation of the permit granted.”

5 The District Officer then sought the views of the Attorney-General of the Republic, who replied on the same day that a revocation of the permit granted was possible under the circumstances (see note 11 in exhibit 1).

10 The District Officer, by his letter dated the 15th October, 1979, informed the applicants that he revoked the permit granted to them because “due to an oversight the existence of a communal borehole which is used for the common water supply of the villages of Potami and Vyzakia, the output of which is likely to be affected due to the fact that both boreholes lie on the same coralliogenic limestone water stratum of the area, was not taken into
15 consideration”. (Blue 2 in exhibit 1).

The applicants then filed the present recourse.

The main point that falls for consideration is whether the respondents could have lawfully revoked the permit granted by them to the applicants.

20 Counsel for applicants submitted that the permit granted constituted a lawful administrative act which cannot be revoked, especially in view of the fact that the applicants acquired rights through the act. He further submitted that even if the granting of the permit was considered to be
25 an unlawful administrative act, then, again, it is irrevocable since the applicants have acquired rights and its revocation would cause damage to them.

30 Counsel for the respondents submitted that the property of the applicants lies in an area for which the Water Supply (Special Measures) Laws of 1964-1975 and the Regulations issued thereunder apply, on the basis of which Order No. 89 was issued in 1966, for the protection of the public interest. He further submitted that the protection of water supplies is a matter of public interest and, therefore, even
35 if the issue of the permit in question was considered to be a lawful administrative act, it could be revoked for reasons of public interest.

The principles of administrative law governing revoca-

tion of administrative acts have been expounded both by Greek authors (see for example, Stassinopoulos "Law of Administrative Disputes", 4th Edition, 1964, pp. 230-233; Dactoglou "General Administrative Law" 1977, Vol. A. pp. 177-187; Conclusions from the Case Law of the Greek Council of State pp. 198 et seq.), and by our Courts (see in this respect the cases of *Charalambides v. Republic* (1974) 3 C.L.R. 420; *Ioannou and Another v. The Republic* (1979) 3 C.L.R. 423; *Yangou and Another v. Republic* (1976) 3 C.L.R. 101).

Thus, as a general rule, lawful administrative acts which have created rights in favour of the citizens, are not revocable, whilst unlawful administrative acts, even if they have created rights, are revocable within a reasonable time.

In the case, however, of the existence of reasons of public interest, both lawful or unlawful administrative acts are freely revocable at any time, irrespective of whether they have created rights or not. (See Conclusions from the Case Law of the Greek Council of State (supra) at pp. 201, 202). It is also stated in the Digest of Cases of the Greek Council of State, 1971-1975, Vol. 1, at p. 518, para. 477, that -

«... ἐφ' ὅσον συντρέχουν λόγοι δημοσίου συμφέροντος, καὶ ἡ διάφορος ἐκτίμησις ὑπὸ τῆς Διοικήσεως τῶν αὐτῶν πραγματικῶν περιστατικῶν ἀποτελεῖ λόγον ἀνάκλησεως τῆς διοικ. πράξεως ἐκ τῆς ὁποίας ἐδημιουργήθησαν δικαιώματα ἢ ὠρισμένη πραγματικὴ κατάσταση, 2413/71.»

And at page 519, para. 482:

«Ἐφ' ὅσον ἡ ἀνάκλησις ἀδείας λειτουργίας κέντρου διασκεδάσεως ἐχώρησε διὰ λόγον δημοσίου συμφέροντος, ἡ ἐνέργεια δαπανῶν καὶ ἡ ἀνάληψις ὑποχρεώσεων, ὡς ἐπικαλεῖται ὁ αἰτῶν, καὶ ἀληθεῖς ὑποτιθέμεναι, δὲν ἐκώλυον τὴν ἀνάκλησιν, 1268/74.»

The English translation is as follows:

("... if there exist reasons of public interest even the different appreciation by the administration of the same factual circumstances constitutes a ground of

revocation of the administrative act from which rights or a certain factual situation were created 2413/71").

And at page 519, para. 482:

5 ("Since the revocation of an operation licence for a place for entertainment was made for a reason of public interest, the incurring of expenses and the undertaking of responsibilities, which the applicant invokes, even if considered to be true, would not have hindered the revocation 1268/74").

10 It has been held in the case of *Yiannaki v. Republic* (1965) 3 C.L.R. 561, at p. 571, that the protection of water supplies, in any area, whether private or public, constitutes a matter of public interest because it is a commodity vital to the life of the country.

15 In the present case the respondents granted the permit by oversight of the existence of the communal borehole supplying water to the villages of Potami and Vyzakia which is a matter of public interest and that the sub judice borehole would affect such water supply. The full circumstances under which the permit in question was granted and
20 the sub judice decision taken are set out in the letters of the administration quoted above and there is no need to repeat them as they are self-explanatory.

In the light of the above I find that the respondents were
25 perfectly entitled to revoke the sub judice permit.

Another ground advanced by the applicants is that they have been treated discriminatory vis a vis other persons in that other permits were granted in the same area, and more specifically to the irrigation division "Artesiano".

30 Counsel for the respondents called one witness, an Assistant District Inspector, who gave evidence and presented the files of the administration and who was cross-examined by counsel for applicants. What has transpired from his evidence is that in the properties in question now
35 owned by the applicants, a permit was granted in 1967, for the sinking of a well and the pumping of water, which, however, was never used. After the applicants bought the property they applied and obtained in 1979 the permit in

question. The permit of the irrigation division was in existence since 1975 and water was being pumped for the irrigation of a number of fields, which now comprise 193 donums. It is, however, clear from the evidence that no other permit was issued since the sub judge permit, for the sinking of any borehole in the area and as it also appears from the file of the administration (exhibit 2) no other permit was granted to the irrigation division in question for the extension of the area to be irrigated by it, but, on the contrary, all applications to that effect were turned down. I, therefore, find that the claim of the applicants for unequal treatment is not substantiated by the evidence adduced, and, it therefore, fails.

The last point raised by counsel for applicants in his written reply is that the sub judge decision was taken by an improper organ. It is his contention that the sub judge decision should have been taken by the District Officer upon the concurrence of the Director of the Water Development Department, whilst in effect the concurrence was that of the Acting Director of the Department, and, also, that the District Officer did not decide himself but referred the matter for advice to the Attorney-General.

With due respect to counsel, I find no merit in his argument. The Attorney-General of the Republic is also the legal adviser of the Government and the District Officer merely sought his advice as to a legal point which arose during the consideration of the matter by him and this by no means can be considered as an interference with the discretionary power of the District Officer.

As to the concurrence of the Acting Director of the Water Development Department, instead of the Director himself, as counsel has put it, the definition of "Director" in the Law (Law 32/64) includes also any officer of the Department authorised by the Director to act in this respect. In addition to the fact that an Acting Director is appointed to act in the absence of the Director himself and as such he is duly authorised to perform all the duties of the Director, in accordance with the principles of good administration one may assume that the Acting Director was au-

thorised to act under the Law, unless the contrary is established, which the applicants have failed to do. Therefore, this ground also fails.

In the result, this recourse fails and is, hereby dismissed.

5 In the circumstances I make no order for costs.

Recourse dismissed.
No order as to costs.