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[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

—
NICOLAOS
YIANGOU
AND ANOTHER
v.
REPUBLIC
(MINISTER OF
COMMERCE
AND INDUSTRY)

1. NICOLAOS YIANGOU,
2. ETERIA TAYLON LTD.,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF COMMERCE AND INDUSTRY,

Respondent.

(Case No. 84/72).

Administrative Law—Administrative Acts—Revocation—Principles applicable — Illegal administrative act — Whether Administration bound to revoke it—Its revocation valid if effected within a reasonable time—Prospecting permit—Issued contrary to s. 19 of the Mines and Quarries (Regulation) Law, Cap. 270—Revocation of, made within a reasonable period of time in the circumstances of this case—A valid one.

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Administrative Law—Administrative decision—Due reasoning—Decision revoking prospecting permit issued contrary to section 19 of Cap. 270—Duly reasoned—But even if it is not, such reasoning can be supplemented from the official records.

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Mines and Quarries (Regulation) Law, Cap. 270—Prospecting permit—Issued contrary to s. 19 of the Law—Cancellation—Discretionary powers of the Minister in effecting cancellation properly exercised in the circumstances of this case—Sections 20 and 23 of the Law not applicable.

15

The applicants challenge the validity of the decision of the respondent to cancel a prospecting permit which was issued to them on the 27th February, 1971, under the provisions of the Mines and Quarries (Regulation) Law, Cap. 270.

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The reasons for the *sub judice* decision appear in a letter addressed to the first applicant, dated the 7th February, 1972, which, so far as relevant, runs as follows:

5 " I have been directed by the Minister of Commerce and
Industry to refer to the letter addressed to you by the
Senior Mines Officer, No. E.A.2380 dated 14th December,
1971, on the above subject, and to inform you that the
Minister of Commerce and Industry having considered
carefully the whole matter, decided to cancel the prospecting
10 permit No. 2380 which was granted to you because same
was issued in respect of an area of land which had already
been covered by another prospecting permit and in respect
of the same quarry materials.

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2. ”.

The relevant section is section 19 of Cap. 270 which reads
as follows:

15 “ No prospecting permit shall be granted to any person in
respect of an area for which a prospecting permit is already
in subsistence provided that the Minister may,
if satisfied that by so doing the rights or interests of the
holder of a prospecting permit in respect of the area shall
20 not be prejudicially affected, grant a prospecting permit in
respect of the same area to any person other than such
holder, but for a mineral or quarry material other than
that for which the subsisting permit was granted”.

The following issues arose for consideration in this recourse.

- 25 (a) Whether the Minister, having regard to all the material
before him, was bound to revoke the second illegal
permit.
- (b) Whether the administrative act was duly reasoned.
- (c) Whether the respondent Minister carried out a proper
inquiry and exercised properly his discretionary powers
under the provisions of s. 19 of Cap. 270.
- 30 (d) Whether sections 20 and 23 of Cap. 270 could be
applied by the Minister.

35 *Held*, 1 (a) Under the principle of administrative legality, the
administration must act in accordance with the Law, because
otherwise it runs the risk of having its decision annulled by the
Administrative Court; and the principle of administrative
legality also implies that the administration should be able to
cancel or revoke an administrative act that has been illegally
issued.

(b) No administrative act validly made and creating rights in favour of a citizen can be revoked thereafter (see *Paschali v. Republic* (1966) 3 C.L.R. 593); but an administrative act made on a mistaken assumption (as in this case), may be revoked or cancelled on the ascertainment of true facts. (See *Georghiou v. The Republic* (1968) 3 C.L.R. 411). 5

(c) In view of the fact that the Jurisprudence of the Greek Council of State is to the effect that the administration is not bound to revoke its illegal acts, I have come to the conclusion that the Minister was not bound to revoke the administrative act complained of, in spite of the fact that such administrative act was made on the mistaken assumption or belief that there was no previous prospecting permit issued to the applicant. 10

(d) “Where the irregularity of an administrative act is due to the action of the Administration and is not due to any fraudulent conduct of the person concerned, then such act is irrevocable after the lapse of a reasonable period of time; what is a reasonable period being determined in the light of the circumstances of each particular case”. (See *Paschali case (supra)* at p. 609; Kyriakopoulos on Greek Administrative Law, 4th ed. vol. 3 p. 182; Stassinopoulos on Discourses in Administrative Law (1957) p. 325). 15 20

(e) Having applied the principles formulated both by the Jurisprudence of the Greek Council of State and by our own Supreme Court, and taking into consideration all the facts and circumstances, particularly that the administration, when issuing the prospecting permit to the applicant was acting under a misconception of the fact that no previous permit was issued to another person in the same area and for the same material, I have come to the conclusion that the revocation of the prospecting permit of the first applicant (illegally issued) was made within a reasonable time in the circumstances of this case. (Cf. *Paschali case (supra)* at pp. 609 and 610). 25 30

2. The *sub judice* decision is duly reasoned, but even if it is not, such reasoning can be supplemented from the official records (see *Papadopoulos v. The Republic* (1968) 3 C.L.R. 662 at p. 674). 35

3 (a) The Minister in making up his mind whether or not to revoke the prospecting permit had before him all the facts, and circumstances relating to the two permits, as well as that 40

5 the first applicant during his prospecting works had discovered material of the species of ochre and umber. In reading the correspondence exchanged between the Senior Mines Officer and the Director-General, it leaves very little room for doubt that the Minister did carry out a proper inquiry, and, therefore, I think that the argument of counsel cannot stand in view of the facts which were before the Minister.

10 (b) And once the Minister had before him all the facts showing that both prospecting permits were in respect of the same area and for the same mineral or quarry material, I find myself unable to agree with counsel that the Minister did not exercise properly his discretionary powers.

15 4 (a) Section 20 of Cap. 270 cannot be invoked once the applications for the prospecting permit were not received by the Minister on the same day and because the second permit was issued under a misconception of the real facts.

20 (b) I do not agree with counsel's submission that, because applicant found ochre and umber materials, the provisions of s. 23 of Cap. 270 should be applied by analogy and that the Minister in exercising his discretionary powers ought to have weighed more in his mind, on the side of the applicants, the factor of the discovery of such materials. Having perused s. 23, which deals with the grant of a mining lease, I have come to the conclusion that it cannot be invoked by analogy, because
25 it deals with a different topic, and in any event, as already held, the Minister in exercising his discretionary powers, had in mind that this applicant had discovered umber and ochre materials.

Application dismissed.

30 Cases referred to:

Droushiotis v. The Republic (1966) 3 C.L.R. 722 at p. 729;

Saranti v. The Republic (1974) 3 C.L.R. 338, at p. 342;

Antoniades & Co. v. The Republic (1965) 3 C.L.R. 673, at p. 682;

Paschali v. Republic (1966) 3 C.L.R. 593 at p. 609, 610;

35 *Georgiou v. The Republic* (1968) 3 C.L.R. 411;

Myrriotis v. The Republic (reported in this Part at p. 58 ante);

Papadopoulos v. The Republic (1968) 3 C.L.R. 662 at p. 674.

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Recourse.

Recourse against the decision of the respondent to cancel a prospecting permit which was issued to applicant under the provisions of the Mines and Quarries (Regulation) Law, Cap. 270.

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K. Talarides with X. Syllouris, for the applicants.

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

Cur. adv. vult.

The facts sufficiently appear in the judgment* delivered by: 10

HADJIANASTASSIOU, J.: In these proceedings, under Article 146 of the Constitution, the applicants seek to challenge the decision of the Minister of Commerce and Industry in cancelling the prospecting permit No. 2380, which was communicated to the first applicant by a letter of the Director-General of the Ministry concerned on February 7, 1972. 15

Although the ownership of the minerals and quarry materials vests in the Republic of Cyprus, yet the control of all quarries vests in the Council of Ministers, and prospecting shall be lawful only when a prospecting permit is granted, now by delegation, by the Minister of Commerce and Industry, under the provisions of Part III of the Mines & Quarries (Regulation) Law, Cap. 270. The Minister, therefore, may grant to any person applying therefor in the prescribed manner and on payment of the prescribed fees, a prospecting permit; and under subsection (2) of s. 13 of the Law: 20 25

“A prospecting permit shall be in the prescribed form and shall be subject to such terms and conditions as the (Minister) may determine;”

Under subsection (3): 30

“a prospecting permit shall not be transferable and any right or interest conferred thereby shall not be assignable except with the previous consent of the (Minister)”;

and under subsection (4):

* For final judgment on appeal see (1977) 7-8 J.S.C. 1301 to be reported in due course in (1976) 3 C.L.R.

“ a prospecting permit shall remain in force for one year from the date thereof, unless previously cancelled under the provisions of this law, but it may be renewed by the (Minister) in the prescribed manner.”

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5 By s. 14(1) it is provided that

“ The holder of a prospecting permit shall have the right to enter upon and prospect on any Government land and subject to subsection (2), on any private land comprised in the permit. And for this purpose he may, whilst engaged
10 in *bona fide* prospecting, drill, dig trenches, sink shafts and generally make the necessary excavations, but shall not take any steps which may have the object or direct result of minerals being won.”

15 Furthermore, section 19, in order to protect the rights or interests of the holder of a prospecting permit, lays down that:

“ No prospecting permit shall be granted to any person in respect of an area for which a prospecting permit is already in subsistence..... provided that the (Minister) may, if
20 satisfied that by so doing the rights or interests of the holder of a prospecting permit in respect of the area shall not be prejudicially affected, grant a prospecting permit in respect of the same area to any person other than such holder but for a mineral or quarry material other than that for which the subsisting permit was granted”.

25 The facts are these:—

On August 26, 1970, the first applicant applied to the Council of Ministers through the Senior Mines Officer for a prospecting permit for an area of one square mile and for quarry material brown umber (*ohra feochomata*) (blue 1, *exhibit* 3). He then
30 visited the L.R.O. in order to obtain a survey plan showing the area of Kambia with the object of leaving those plans with the Senior Mines Officer, the reason being that both these two departments have agreed between them that the master plan should be kept with the department of the L.R.O., in order to
35 keep free the area from other candidates who might apply for the same area. On the same date, the first applicant paid an amount of 500 mils and later, an amount of £21. The said application was made in accordance with the Mines and Quarries Regulations 1958, and particularly with Regulation 4.

On November 12, 1970, the Senior Mines Officer, before making up his mind whether to recommend the application of the applicant, wrote a letter to Cyprus Mines Corporation of Skouriotissa in these terms:— (Blue 6, *exhibit 3*).

“ Mr. Nicolas Yiangou of Klirou has applied for Prospecting Permit No. 2380 (Class B) to prospect for umber and ochre over an area of one square mile as outlined in red on the attached plan, most of which falls within your Mathiati Mining Lease (No. XVI) and Class A Prospecting Permits Nos. 2180 and 2181. 5 10

2. I should be grateful to know whether you would raise objection to granting this permit provided that your rights and interests will not be prejudicially affected, as early as possible”.

On November 16, 1970, the Cyprus Mines Corporation in reply to the Senior Mines Officer, said that they had no objection to a prospecting permit class B being issued to Mr. Nicolaos Yiangou of Klirou, most of the area of which falls within their Mathiati mining lease No. XVI, provided their rights and interests are not prejudicially affected. (Blue 7). There was further correspondence by the Senior Mines Officer, and on February 18, 1971, by his letter addressed to the Director-General of the Ministry in question, he recommended the granting of a permit. (Blue 8). 15 20

On February 27, 1971, the Minister granted to the first applicant a prospecting permit No. 2380 class B for one year for the material of umber and ochre. There was an additional term to the effect that because the area applied for in the application for a prospecting permit was both within the area and the prospecting permits under Nos. 2180 and 2181, class A of E.M.E. and C.M.C., it was made clear that the rights of these companies should not be prejudicially affected by that permit. (Blue 11). 25 30

On December 14, 1971, the Senior Mines Officer addressed a letter to the first applicant regarding his prospecting permit No. 2380, inviting him to visit him in his office on December 18, 1971, in order to inform him of his decision regarding the fate of that permit, and in order to exchange views on the same subject; and in paragraph 2, he concluded as follows:— 35

“ You are instructed to stop the prospecting works until further notice”. (Blue 15). 40

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In the meantime, the Senior Mines Officer addressed another letter (blue 16) to the Director-General of the Ministry informing him that by mistake two prospecting permits were granted with regard to the same materials, and over the same area, with the result that one of the two holders might have to claim damages. He goes on to explain that originally the said prospecting permit class B No. 2308, was issued to Cyprus Umber Industrial Co. Ltd., on September 25, 1970, (application made as from September, 1969), regarding an area of 2 sq. miles for umber, sienna, ochre and bentonitis materials. Furthermore, he explained that the mistake was due to the omission of the Department of the Lands and Surveys to mark on the plans attached to the application of Nicolaos Yiangou, the previous prospecting permit; and that the said mistake was discovered recently when they were preparing the survey plans for the purpose of considering a new application for a prospecting permit regarding the same area. The Senior Mines Officer goes on to explain that the second holder of the prospecting permit (Nicolaos Yiangou) has discovered umber at a point of the area covered by his prospecting permit, and was alleging that he had reached an agreement with others for the disposal of the same materials.

On December 20, 1971, the Senior Mines Officer, apparently realizing his difficulties, addressed a letter to the Attorney-General seeking legal advice regarding the existence of the two prospecting permits over the same area. (Blue 17).

On January 12, 1972, a Senior Counsel of the Republic in reply, said *inter alia*:-

“ The first administrative act issued, that is to say, the first permit granted, constitutes undoubtedly a legal administrative act. The second permit granted constitutes an unlawful administrative act as it was granted not only under a misconception of fact, which misconception is connected with a legal provision, but also contrary to the provision of s. 19 of the Mines and Quarries (Regulation) Law, Cap. 270, where it is expressly provided that no prospecting permit shall be granted in respect of an area for which a prospecting permit is already in subsistence. Furthermore, the relevant provision in the proviso of the same section shows that the granting of a second permit in respect of the same area regarding the same mineral or quarry material is not permitted.

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Regarding the first permit granted which constitutes the valid and legal act, I am of the opinion that the revocation of it is not imposed or dictated by accepted lawful reasons; regarding the second permit; which as it has been stressed, constitutes an illegal act, its revocation is at first permitted.

5

In spite of the fact that the aforesaid act might have created personal rights, the satisfaction of which the person entitled might possibly demand, nevertheless, these rights do not constitute an obstacle for the appropriate authority to revoke the said illegal act, for the purpose of the legal order, and the removal of the illegality.

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In view of the aforesaid, I am of the opinion that the second licence be revoked”.

Pausing here for a moment, I think it is necessary to deal also with the prospecting permit No. 2308 (class B) granted to the Cyprus Umber Industrial Co. Ltd. of Larnaca. It appears from the file (exhibit 4) that this company applied under the Mines and Quarries Regulations 1958, for a prospecting permit to the Senior Mines Officer since September 14, 1969. The approximate area sought was 2 square miles, and the materials for which the applicant desired to prospect were umber, sienna, ochre, bentonite, green earth. The area sought was Kambia-Analiontas.

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On January 9, 1970, because the area in question partly covered the area belonging to another company, the Senior Mines Officer addressed a letter to the Hellenic Mining Co. Ltd. in these terms:-

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“ We have received an application for a prospecting permit class B for umber, ochre, bentonite and green earth over an area which partly covers your mining lease No. XVI P.Ps. 2180 and 2181 as shown in plan attached. Could I have your views on the issue of this prospecting permit”.
(Blue 7 in exhibit 4).

30

Furthermore, the Senior Mines Officer addressed once again a letter to the Cyprus Mines Corporation to the same effect, and although the latter company did not object (blue 10) the Hellenic Mining Co. in reply said that for technical reasons it was not possible to agree to the granting of a prospecting permit. (Blue 9).

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5 On August 17, 1970, the Senior Mines Officer addressed a new letter to the Hellenic Mining Co. Ltd., requesting a re-examination of the case of the Cyprus Umber Industrial Co. Ltd. (blue 11), and finally the said Hellenic Mining Co. gave their consent for the granting of a prospecting permit to the said company on certain conditions which I need not refer to. (Blue 13).

10 On September 19, 1970, the Senior Mines Officer addressed a letter to the Director-General of the Ministry, informing him that the consent of the interested companies were given regarding the granting of a prospecting permit to the Cyprus Umber Industrial Co. Ltd. (blue 14); and on September 25, a permit was granted by the Minister of Commerce and Industry to the said company for a period of one year. (Blues 16 and 17).

15 On September 15, 1971, the Senior Mines Officer, addressed a letter to the Director-General of the Ministry, regarding the renewal of the prospecting permit No. 2308 class B, and said:-

20 “The above prospecting permit is due for a six monthly renewal as from 25th September, 1971. The holder, Cyprus Umber Industrial Co. Ltd. have applied for the renewal, and we recommend the renewal.

25 The Prospecting Permit area overlaps part of 2 mining leases and some prospecting permit area; but they have been issued for other minerals, and there is included a clause whereby the priority of the older holder is safeguarded.

I enclose 2 copies of the prospecting permit for signature of the renewal and revenue stamps for the value of 40 mils for stamping the renewal”.

30 On September 24, 1971, the Director-General in reply to the Senior Mines Officer, informed him that the Minister approved the renewal of prospecting permit No. 2308 for a further period of 6 months as from September 25, 1971 (blue 24).

35 On February 14, 1972, the Cyprus Umber Industrial Co. Ltd. addressed a letter to the Senior Mines Officer in these terms:-

“For your information, and as per our letter of the 17th January last, the results of our efforts are very good and we expect starting work again on a bigger scale very soon

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this month. The yellow umber of this permit as well as the brown one are very good and very essential for our industry. (Blue 37).”

Reverting to the prospecting permit No. 2380, the Director-General addressed an urgent letter to the Senior Mines Officer, pointing out to him that the Ministry is of the view, that they have to act in accordance with the suggestions of the Legal Department which are included in the letter of the Senior Counsel of the Republic, under No. CE89/1933/2 of 12th January, 1972. He further pointed out that any correspondence exchanged on this subject, with the interested persons, was imperative to be placed in advance before the Legal Department for approval. (Blue 19 in *exhibit* 3).

On February 9, 1972, the Senior Mines Officer addressed a letter to the first applicant informing him that he intended to inspect the area covered by the prospecting permit 2380 in order to confirm the results of his prospecting, because, no doubt, he was aware that once the prospecting permit No. 2380 was revoked, the applicant would have inevitably raised the question of damages.

On February 7, 1972, the Director-General of the Ministry of Commerce and Industry addressed a letter to the first applicant in these terms:-

“ *Prospecting permit No. 2380.*

I have been directed by the Minister of Commerce and Industry to refer to the letter addressed to you by the Senior Mines Officer, No. E.A.2380 dated 14th December, 1971, on the above subject, and to inform you that the Minister of Commerce and Industry having considered carefully the whole matter, decided to cancel the prospecting permit No. 2380 which was granted to you because same was issued in respect of an area of land which had already been covered by another prospecting permit and in respect of the same quarry materials.

2. The amount of rent paid by you for the said permit will be refunded to you through the Accountant-General”.

The applicant, feeling aggrieved because of the revocation of his prospecting permit and because he incurred considerable expenditure, filed the present recourse, and in the application

he raised these four points of law:— (1) That the decision attacked in this recourse is not duly reasoned; (2) that the said decision was taken contrary to ss. 13 (4) and 18 of the Mines and Quarries (Regulation) Law, Cap. 270; (3) that it was cancelled contrary to the well-established principles of revocation that, administrative acts, should be revoked within a reasonable time from the date of their issue; and (4) that the said permit could not legally be revoked once the applicant obtained certain vested rights out of the prospecting permit No. 2380.

Counsel on behalf of the respondent filed the opposition which was based on four points of law: (1) That the prospecting permit of the applicant No. 2380, was rightly revoked because it was issued contrary to s. 19 of the Mines and Quarries (Regulation) Law; (2) that the said decision is duly reasoned; (3) that the said decision was taken after a proper consideration of the facts, circumstances and other material of the case; and (4) that the applicant company lacked legitimate interest because it derived no right from the revoked permit.

Regarding the renewal of a prospecting permit, in accordance with paragraph 6 of the Mines and Quarries Regulations, 1958, “upon application being made to the (Minister) through the inspector, at least one month before a prospecting permit is due to expire, the (Minister) may renew such prospecting permit for one or more periods of 6 months up to a maximum period of 3 years in the case of a class A permit and one year in the case of a class B permit”; and under paragraph 7, “subject to the consent of the (Minister) the holder may transfer or assign any right or interest in his permit on payment of the appropriate fees prescribed in the Second Schedule to these Regulations”.

There is no doubt that both the quarry materials which are covered by the prospecting permit of the first applicant as well as those which are covered by the prospecting permit of the interested party, excluding the pentonitis, belong to the general category of the umber and ochre. (See paragraph 6 (b) of the Mines and Quarries Regulations, 1958).

I think it is not in dispute that in accordance with the requirements of ss. 13 (4) of our law, and paragraph 6 of the Regulations, the Minister of Commerce has a discretionary power, which he has to exercise in accordance with the principles

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of administrative law, whether to renew a prospecting permit. In exercising his discretionary power, the Minister is bound to take into consideration at the time of the renewal of the said permit, the existing facts and circumstances and if there was no change, then in my view, the Minister is bound, for the reasons stated earlier, to renew such permit. If, however, new facts and circumstances come to light, the Minister has to take into consideration the new position, and after considering carefully all the new facts and circumstances, as well as the public interest, he will decide whether to grant or refuse such permit; (see Decision 294/1933 of the Greek Council of State) or to grant such a permit with certain conditions which would have been necessitated because of the new situation. (Decision 1631/55 of the Greek Council of State).

In *Droushiotis v. The Republic* (1966) 3 C.L.R. 722, the Court, dealing with the question of discretionary powers of the Minister, said at p. 729:-

“ Though it is correct that by virtue of Article 23 of the Constitution the right of the Republic to minerals is expressly reserved, the fact remains that once, under the relevant legislation (Cap. 270) a discretion has to be exercised, as to whether or not to grant a prospecting permit, such discretion has to be exercised properly”.

I have indicated what would have been the position had the first applicant decided to apply for the renewal of his prospecting permit which was due to expire within a period of three months, and I shall now deal with the grounds of his complaint regarding the revocation of the permit.

There is no doubt, as it has been shown from the correspondence exchanged between the Senior Mines Officer and the Director-General of the Ministry, that all facts and other material, viz., that the first applicant found ochre and umber materials, were before the Minister when he took his decision to revoke the prospecting permit illegally issued to the applicant, due entirely to the mistake of the administration.

The first question to be decided in this recourse, is whether the Minister, having regard to all the material before him, was bound to revoke the second illegal permit. Under the principle of administrative legality, the administration must act in accordance with the law, because otherwise it runs the risk of having

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its decision annulled by the Administrative Court. This principle, of course, ensures that the administration obeys the rule of law. It is said judicially that all powers and authority must be exercised in accordance with the law, and a person
5 who is invested with power is not thereby exempted from the law, but is authorised by the law to exercise that power in the manner and for the objects contemplated by the law. If he acts outside that authority, he acts illegally, and the Courts of law will treat his act as they would any other illegal act. With
10 this in mind, the principle of administrative legality also implies that the administration should be able to cancel or revoke an administrative act that has been illegally issued. As Professor Forsthoff states in his book, *The Administrative Act 1963* at p. 29 under Article 20 of the Basic Law of the Federal Republic
15 of Germany, “the administration is responsible for the legality of its actions. This responsibility implies the obligation to cancel, even without a review having been applied for, an administrative act which is inconsistent with the law, that is to say, because the legal prerequisites of such an act are obviously
20 non-existent. It appears further, that the Courts, in spite of what has been said earlier, have shown a tendency to follow another principle according to which an administrative act which is contrary to law, can only be repealed on the grounds of overwhelming public interest. This position was reached by
25 the French Council of State in the case of *Arrêt Dame Cachet* of 3rd November, 1922, (See *Les Grands Arrêts de la Jurisprudence Administrative*, Sirey, 1956 p. 147)”.

Furthermore, apparently the authors on administrative law proceeded further and pointed out as a general principle that
30 administrative decisions in favour of a citizen cannot subsequently be revoked. Thus, in the *Cachet* case, the *Council d’Etat* came to the view that the administration had no legal power to rescind a decision that had vested legal rights in the plaintiff. (See *Kyriakopoulos on the Greek Administrative Law*, 4th edition, Vol. 3 at p. 181; *Stasinopoulos on Discourses on Administrative Law 1957* at p. 323; and *Decision 590/34 of the Greek Council of State*).

Of course, notwithstanding this general principle, it should be noted that there are exceptions to it, particularly so
40 because revocation of earlier administrative acts may be expressly authorised by legislation. (See *Conclusions from the Jurisprudence of the Greek Council of State, 1929–1959* at p.

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199 et seq.). Under the provisions of our s. 18 of the Mines and Quarries (Regulation) Law, Cap. 270.

“ the (Minister) may cancel any prospecting permit if, in his opinion, its holder fails to comply with or observe any of the provisions of this law or any regulations made thereunder or any term or condition of such permit”.

However, I should have added that the facts of this case do not fall within the provisions of s. 18 of our law, because the first applicant did not fail to comply with or observe any provisions of this law or, indeed, any term or condition of his permit and, therefore, the revocation of the administrative act was effected under the general principles formulated by our Supreme Court (Cf. *Saranti v. Republic* (1974) 3 C.L.R. 338, at p. 342).

Whilst on this point, I think the Cyprus case of *Antoniades & Co. v. The Republic of Cyprus through the Minister of Finance* (1965) 3 C.L.R. 673 is an example regarding the exception of the general principle referred to earlier in this judgment, that an administrative decision in favour of a citizen cannot subsequently be revoked, unless revocation is expressly authorised by legislation. The Court had this to say in *Antoniades* case at p. 682:-

“ it is to be observed first that this is a case where revocation of earlier administrative action is expressly regulated by the particular Legislation, s. 155 (1), and, therefore, it might well be said that it is not governed by the general principles of Administrative Law which govern such a matter in cases where the revocation is not based on a Law, but is made on the basis of such general principles”.

Furthermore, regarding this very same point, when the legislation is silent, the position is put by Stasinopoulos in his textbook on Discourses on Administrative Law, op. cit. at p. 258 as follows:-

“ *Revocation of Administrative Acts* ”

Our laws do not regulate by general rules this matter, when the revocation of administrative acts is permitted. This matter is regulated by general principles which have been formulated through the jurisprudence of the Council

of State. In accordance with those principles, there is a distinction between revocation of legal and revocation of illegal administrative acts. The legal administrative acts, from which certain rights were created in favour of the governed, are not revoked. But the illegal administrative acts from which a favourable situation has also been created for the governed are revoked, not after the lapse of a considerable time, but within a reasonable time”.

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See also *Iro Paschali v. The Republic of Cyprus through (1) The Public Service Commission and (2) The Minister of Finance* (1966) 3 C.L.R. 593, which supports the principle that no administrative act validly made and creating rights in any person can be revoked thereafter. It appears further, as an exception to the general principle, that an administrative act made on a mistaken assumption (as in this case), may be revoked or cancelled on the ascertainment of true facts. (*Georghiou v. The Republic* (1968) 3 C.L.R. p. 411).

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Having reviewed some of our own cases, and in view of the fact that the Jurisprudence of the Greek Council of State follows in effect that the administration is not bound to revoke its illegal acts, I have come to the conclusion that the Minister was not bound to revoke the administrative act complained of, in spite of the fact that such administrative act was made on the mistaken assumption or belief that there was no previous prospecting permit issued to the first applicant. See the textbook of Delikostopoulos on Administrative Law, 1972, at p. 249, who, after stating that although in France the opinion is that the administration is bound sometimes to revoke its illegal administrative acts, nevertheless, he takes the view that the position prevailing in Greece that the administration is not bound is the better view. See also the authorities quoted under note (45), the Decisions of the Greek Council of State, 264/51, 1801/58, 2318/53 and 1079/54.

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There is no doubt that even illegal acts from which a citizen has derived certain benefits (until revoked) continue to remain in force and produce legal results (Greek Council of State 117/1949, 1935/1952), and by the long passage of time from their issue a new real position is created which although it had not legally arisen, it must not be upset in accordance with the principles of good administration (Greek Council of State 472/1934), because of the long passage of time. (Greek Council of State 962/1935, 1502/1957, and 1978/1959). See also Deli-

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kostopoullos on Administrative Law op. cit. at p. 250, who takes the view that the passage of a long period of time, makes the administrative act issued, although illegal, non revocable. See Stasinopoulos on the Law of Administrative Acts at pp. 420, 424 et seq. See also Conclusions from the Jurisprudence of the Greek Council of State 1929–1959 at p. 202 adopting the same principle.

In *Paschali v. The Republic* (1966) 3 C.L.R. 593, the Court, dealing with this point had this to say at p. 609:—

“ it is well-settled that, where the irregularity of an administrative act is due to the action of the Administration, and is not due to any fraudulent conduct of the person concerned, then such act is irrevocable after the lapse of a reasonable period of time;—what is a reasonable period being determined in the light of the circumstances of each particular case. (See Kyriakopoulos, *supra*, vol. 3, p. 182; Stassinopoulos (1957) *supra*, p. 325). Also in Decisions 720/1930 and 439/1934 of the Greek Council of State it has been held that the revocation of even an illegal administrative act, effected after the lapse of what is a reasonable period of time in the circumstances of the particular case, is—unless the illegal act was made due to the fraudulent conduct of the person concerned—an invalid act itself, as contrary to the notions of proper administration and to the good faith which should govern relations between the Administration and those subject to it”.

Having applied in the case in hand the principles formulated both by the jurisprudence of the Greek Council of State and by our own Supreme Court, and taking into consideration all the facts and circumstances, particularly that the administration, when issuing the prospective permit to the first applicant was acting under a misconception of the fact that no previous permit was issued to another person in the same area and for the same material, I have come to the conclusion that the revocation of the prospecting permit of the first applicant (illegally issued) was made within a reasonable period of time in the circumstances of this case. (Cf. *Iro Paschali v. The Republic of Cyprus* (*supra*) at pp. 609 and 610). Having reached this view, I can now deal with the next point, namely whether the administrative act is duly reasoned.

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5 I think I can dispose of this point by saying that although I have taken the view in a number of cases that the absence of due reasoning is by itself a ground for invalidating the particular decision (*Myrtiotis v. The Republic (Educational Service Commission)*), reported in this Part at p. 58 *ante*), nevertheless, in the case in hand the decision of the Minister in revoking the prospecting permit of the first applicant, in my view, is duly reasoned, but even if it is not, such reasoning can be supplemented from the official records (*Papadopoulos v. The Republic* 10 (1968) 3 C.L.R. 662 at p. 674), and particularly from the correspondence exchanged between the Senior Mines Officer and the Director-General of the Ministry concerned. There is no doubt that in the letter of the Senior Mines Officer all the facts and circumstances relating to the case in hand have been 15 placed clearly and unambiguously, and no doubt the Minister had before him all the correspondence exchanged. Having taken the view that the decision of the Minister is duly reasoned, I would dismiss this contention of counsel.

20 The other question is whether the Minister exercised properly his discretionary powers under the provisions of s. 19 of the law. Counsel on behalf of the applicants contended that the Minister in revoking the prospecting permit of the first applicant was so influenced by the legal opinion given by the Senior Counsel of the Republic, that he failed to inquire into the facts and circumstances regarding the two permits, with the result 25 that he failed to exercise properly his powers given to him under the aforesaid s. 19 of the law.

30 I have considered very carefully this contention of counsel, and I have no doubt that the Minister, in making up his mind whether or not to revoke the prospecting permit of the first applicant, had before him all the facts and circumstances relating to the two prospecting permits, as well as that the first applicant during his prospecting works had discovered material of the species of ochre and umber. If there was any doubt 35 about it, in reading the correspondence exchanged between the Senior Mines Officer and the Director-General, it leaves very little room for doubt that the Minister did carry out a proper inquiry, and, therefore, I think that the argument of counsel cannot stand in view of the facts which were before the Minister. 40

I think I should further state that assuming that the Minister considered also the provisions of the aforesaid section, once

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the Minister had before him all the facts showing that both prospecting permits were in respect of the same area and for the same mineral or quarry material, I find myself unable to agree with counsel that the Minister, in revoking the prospecting permit of the first applicant, did not exercise properly his discretionary powers under s. 19. In my view, the Minister had to act under the provisions of that section which lays down that he (the Minister) is entitled to grant a second permit for a mineral or quarry material other than that for which a subsisting permit was granted to the interested party. No doubt, the purpose of s. 19, as I have shown earlier, is to protect the rights or interests of the holder of a prospecting permit, and the issuing of a second permit for the same mineral or quarry material would inevitably affect prejudicially the rights of the holder, that is to say, of the interested party. I would go further and state that had the Minister acted otherwise, he would have acted contrary to the express provisions of s. 19, and for these reasons I would dismiss this contention of counsel, even if the two prospecting permits were issued not for exactly the same area, but overlapping.

The next complaint of counsel was that the Minister failed to consider the provisions of s. 20, but with respect to counsel's argument, I think his contention is untenable because this section cannot be invoked once the applications were not received by the Minister on the same day and because the second one was issued under a misconception of the real facts.

Finally, it was urged upon me by counsel on behalf of the applicants that because the first applicant found ochre and umber materials the provisions of s. 23 should be applied by analogy, and that the Minister in exercising his discretionary powers—once there were two prospecting permits—the factor of the discovery of such materials ought to have weighed more in the mind of the Minister on the side of the applicants.

Having perused s. 23 which deals with the grant of a mining lease, I have come to the conclusion that this section cannot be invoked by analogy, because that section deals with a different topic, and in any event, as I said earlier, in exercising his discretionary power, had in mind that the first applicant had discovered umber and ochre materials. I think, in any event, the purpose of this section is that even if the prerequisites referred to in subsection 1 of section 23 were in existence, again the Council of Ministers were not bound to grant to an

5 applicant a mining lease, because the discretionary power of the Council would have been turned into a binding competence instead of *pouvoir discretionnaire* (Cf. *Vedel Droit Administratif* pp. 282-284). Of course, the purpose of the aforementioned permit was to stop the exercise of the discretionary power of the Council of Ministers in case those prerequisites are not in existence, and not to create an obligation to the Council for granting an application for a mining lease in case those prerequisites are not in existence.

10 I think I should have added that the formation of the Taylon Company (the second applicant in this recourse) was for the exploitation of the umber and ochre materials found by the first applicant, who became also one of the directors of this company.

15 For the reasons I have endeavoured to explain, and because the Minister did take into consideration all the facts and circumstances of this case, I have come to the conclusion that the Minister, in taking the decision to revoke the said prospecting permit of the first applicant, did not exercise his discretion in a
20 defective manner, and I do not think that I am justified in interfering with his discretion. The recourse, therefore, fails and is dismissed, but in view of the nature of this case, I do not propose making an order for costs.

Recourse dismissed with no order as to costs.

25 *Application dismissed.*
No order as to costs.