

[TRIANTAFYLIDIS, P., STAVRINIDES, L. LOIZOU,  
A. LOIZOU, MALACHTOS, JJ.]

NICOLAS YIANGOU AND ANOTHER,

*Appellants,*

v.

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

*Respondent.*

(Revisional Jurisdiction Appeal No. 161).

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5 *Administrative Law—Administrative act—Unlawful administrative  
act—Revocation—Principles applicable—Is not permissible after  
the lapse of a reasonable long period of time—But it may be  
revoked even after the lapse of reasonably long time when there  
exist reasons of public interest—And revocation automatically  
takes places ex tunc—Prospecting permit—There existed reasons  
of public interest to avoid having in force simultaneously two  
prospecting permits in respect of one and the same area—Even  
if time which has elapsed were to be found to be reasonably long,  
10 proper for the administration to revoke the said permit.*

*Revocation of unlawful administrative act—Principles applicable—  
Revocation automatically takes place ex tunc.*

15 *Administrative Law—Administrative act—Discretionary powers—Can-  
cellation of prospecting permit—After considering contents of  
legal advice from the office of the Attorney-General along with  
all relevant matters—Respondent exercised discretion in the  
matter.*

20 *Mines and Quarries (Regulation) Law, Cap. 270—Prospecting permit  
issued contrary to s. 19 of the law—Cancellation—See, also,  
under "Administrative Law".*

25 On February 27, 1971 appellant No. 1 was issued with a  
prospecting permit under the provisions of the Mines and Quar-  
ries (Regulation) Law, Cap. 270; it concerned an area of approx-  
imately one square mile in extent, in the vicinity of Kambia  
and Analiontas villages, and it related to umber and ochre.

Subsequently the respondent discovered that in relation to  
the same area there had been granted, earlier, another pros-

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pecting permit which related to umber, too, and they referred the matter to the Attorney-General of the Republic for his advice. The Attorney-General in an advice dated January 12, 1972, pointed out that due to misconception of fact, and in view of the provisions of section 19\* of Cap. 270, the prospecting permit issued to appellant was granted unlawfully and irregularly and had to be revoked. As a result the prospecting permit granted to appellant 1 was revoked by notice of the respondent Ministry dated February 7, 1972. 5

Upon appeal against the dismissal of the recourse which had been made against the decision of the respondent Minister revoking the said permit: 10

*Held*, (1) that the revocation of an unlawful administrative act is a course lawfully open to the administration and it is based on the notion of the preservation of legality; that the revocation of an unlawful administrative act is not permissible after the lapse of a reasonable period of time to be judged in the circumstances of each case; and that when there exist reasons of public interest an unlawful administrative act may be revoked even after the lapse of reasonably long time. 15 20

(2) That there existed reasons of public interest to avoid having in force simultaneously two prospecting permits in respect of one and the same area; and that, accordingly, even if the Court were to find that the time which has elapsed was reasonably long, it would still have to hold that it was proper for the administration to revoke the permit which had been granted to appellant 1 (*Pavliades v. The Republic* (1967) 3 C.L.R. 217 distinguished). 25

(3) That the revocation of even an unlawful administrative act is a matter in relation to which there exists some margin for the exercise of discretionary powers by the administration; and that it is quite clear, from a perusal of the relevant administrative records, that the *sub judice* decision was taken by the respondent Minister after considering all relevant matters, including the contents of the legal advice of the Attorney-General. 30 35

(4) That in cases of revocation of unlawful administrative acts the revocation automatically takes place *ex tunc* so as to eradicate the consequences of illegality; and that, accordingly, it cannot be found that it was not proper to revoke the prospecting permit *ex tunc* and not only *ex nunc*. 40

*Appeal dismissed.*

\* Quoted at pp. 104–105.

Cases referred to:

*Decisions of the Greek Council of State: Nos. 796/1964, 1750/1965, 1531/1966, 3027/1967, 458/1968, 424/1932, 425/1932, 3169/1968, 1026/1966, 518/1956, 47/1963, 55/1963, 430/1964, 1730/1955 and 2882/1967;*

*Charalambides v. The Republic, 1964 C.L.R. 326;*

*Paschali v. The Republic, (1966) 3 C.L.R. 593;*

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

*Pavlidis v. The Republic (1967) 3 C.L.R. 217;*

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10 **Appeal.**

15 Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Hadjianastassiou, J.) given on the 17th June, 1975 (Case No. 84/72) whereby applicants' recourse against the decision of the respondent to cancel prospecting permit No. 2380 was dismissed.

*K. Talarides, for the appellants.*

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

*Cur. adv. vult.*

20 The judgment of the Court was delivered by:—

25 TRIANTAFYLIDES, P.: The appellants complain against an in the first instance judgment\* of a Judge of this Court by means of which there was dismissed a recourse made by them against the decision of the respondent Minister of Commerce and Industry to revoke a prospecting permit granted to appellant 1 under the provisions of the Mines and Quarries (Regulation) Law, Cap. 270.

30 The application for such permit was made by appellant 1 on August 26, 1970; it concerned an area of approximately one square mile in extent, in the vicinity of Kambia and Analiontas villages, and it related to umber and ochre.

A prospecting permit No. 2380, class 'B', was issued on February 27, 1971.

35 On December 13, 1971, the company which is appellant 2, and of which appellant 1 is a director and shareholder, was formed with a view to exploiting any deposits that might be discovered

\* Reported in (1975) 3 C.L.R. 228.

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in the course of prospecting; and it is common ground that a deposit of umber was in fact located.

On December 14, 1971, appellant 1, as the holder of the prospecting permit, was asked by the Senior Mines Officer to call at his office in relation to such permit, and he was warned to dis- 5  
continue any further prospecting operations.

As it appears from a letter dated December 20, 1971, which was addressed by the Senior Mines Officer to the Director-General of the respondent Ministry, the authorities had discovered 10  
accidentally, in the course of some other administrative process, that in relation to the same area there had been granted, earlier, another prospecting permit, No. 2308, to the Cyprus UMBER Industrial Co. Ltd. That prospecting permit covered an area of two square miles in extent, approximately, and one of those 15  
two square miles was the square mile covered by the prospecting permit granted to appellant 1; and permit No. 2308 related to umber, too.

The said earlier prospecting permit was granted on September 25, 1970, for a period of one year, and was then renewed on 20  
September 25, 1971, for another six months.

When it was discovered that through some administrative error the earlier prospecting permit had not been duly marked on the relevant Lands Office maps and records, with the result that later on a prospecting permit was issued to appellant 1 in respect of part of the same area, the advice of the Office of the 25  
Attorney-General was sought on December 20, 1971, by the Senior Mines Officer; and in an advice dated January 12, 1972, it was pointed out that due to misconception of fact, and in view of the provisions of section 19 of Cap. 270, the prospecting permit issued to appellant 1 was granted unlawfully and irregularly 30  
and had to be revoked; it was, further, stated in the said advice that there might possibly arise a question of acquired rights, but that this aspect could be dealt with in due course.

As a result, the prospecting permit granted to appellant 1 was revoked by notice of the respondent Ministry dated February 7, 35  
1972, and the relevant fees were refunded to appellant 1.

Section 19 of Cap. 270, which was referred to in the advice given by the Office of the Attorney-General, reads (when modified under Article 188 of the Constitution) as follows:-

“ No prospecting permit shall be granted to any person in 40

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respect of an area for which a prospecting permit is already in subsistence, but nothing in this section contained shall be deemed to apply to any prospecting permit for oil granted under the provisions of any Law in force for the time being:

5        Provided that the Council of Ministers, if 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  
10        mineral or quarry material other than that for which the subsisting permit was granted”.

As we have pointed out during the hearing of this appeal, we are inclined to the view that the matter of the revocation of the prospecting permit in the present case cannot be treated as  
15        coming only within the narrow ambit of section 19; in our view it is governed by the general principles of administrative law applicable to such matter.

The revocation of an unlawful administrative act is a course lawfully open to the administration and it is based on the notion  
20        of the preservation of legality; the relevant principles are to be found in Stasinopoulos on the Law of Administrative Acts (1951), at pp. 398–399; and it is useful to refer, too, to the decisions of the Council of State in Greece in cases 796/1964, 1750/1965, 1531/1966, 3027/1967 and 458/1968; in particular in  
25        the decision in case 3027/1967 the following are stated as regards the revocation of unlawful administrative acts:-

“ ..... ἡ ἀνάκλησις, καὶ παρανόμου ἔτι διοικητικῆς πράξεως δὲν εἶναι ἐπιτρεπτή μετὰ τὴν πάροδον εὐλόγου χρόνου, κρινομένου κατὰ τὰς ἐκάστοτε συνθήκας, ἐὰν ἔξ αὐτῆς παρήχθη  
30        πραγματικὴ κατάστασις προστατευτέα ἐν ὄψει τῶν ἀρχῶν τῆς χρηστῆς Διοικήσεως, πλὴν ἐὰν αὕτη προεκλήθη δι’ ἀπατηλῆς ἐνεργείας τοῦ ἐνδιαφερομένου ἢ δὲν ἐτηρήθη ὑπ’ αὐτοῦ ὄρος τεθείς ἐν αὐτῇ μὲ τὴν ἐπιφύλαξιν τῆς ἀνακλήσεως ἢ συντρέχῃ λόγος δημοσίου συμφέροντος.”

35        (“... the revocation of even an unlawful administrative act is not permissible after the lapse of a reasonable period of time, to be judged in the light of the circumstances of each case, if there has been created from the beginning a situation needing protection on the basis of the principles  
40        of proper administration, unless the unlawful administra-

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tive act has been caused by fraudulent conduct of the person concerned or there has not been observed by him a condition included in the act subject to the reservation that there might be revocation or there exist reasons of public interest” ).

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As is stressed in the passage just quoted above, when there exist reasons of public interest an unlawful administrative act may be revoked even after the lapse of reasonably long time; and this is to be found, also, in other decisions of the Greek Council of State, such as those in cases 424/1932, 425/1932, 1750/1965 and 3169/1968.

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What is “a reasonable period of time” is a matter which, as pointed out in the decision of the Council of State in Greece in case 1026/1966, depends on the circumstances of each particular case; and the relevant criteria have been set out by the said Council in its decision in case 518/1956; whether or not the time which has elapsed is reasonable is a matter for the Court to decide (see, in this respect, the decisions of the same Council in cases 47/1963, 55/1963 and 430/1964).

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Actually, we are not prepared to hold, in the present case, that a reasonable period of time did, in fact, elapse between the date of the unlawful administrative act and the date of its revocation; and, in this respect, it is useful to observe, in relation to our relevant case-law, that the present case is clearly distinguishable, on the basis of its special facts, from cases such as *Charalambides v. The Republic*, 1964 C.L.R. 326 and *Paschali v. The Republic*, (1966) 3 C.L.R. 593, which have been cited to us in argument; on the contrary, it seems to us to be quite similar, in certain respects, to the case of *Antoniades and Co., v. The Republic*, (1965) 3 C.L.R. 673.

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It is, furthermore, pertinent to point out that as soon as the administrative mistake was discovered appellant 1 was notified to discontinue further prospecting operations.

In the present instance there, obviously, existed reasons of public interest to avoid having in force simultaneously two prospecting permits in respect of one and the same area and, therefore, even if we were to find that the time which has elapsed was reasonably long, we would still have to hold that it was proper for the administration to revoke the permit which had been granted to appellant 1.

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The revocation of even an unlawful administrative act is a matter in relation to which there exists some margin for the exercise of discretionary powers by the administration (see, in this respect, Stasinopoulos, *supra*, p. 423, and Delicostopoulos on Administrative Law (1972), p. 249); therefore, we cannot accept the submission of counsel for the respondent that *Pavli-  
des v. The Republic*, (1967) 3 C.L.R. 217, has established an inflexible rule that an unlawful administrative act has invariably to be revoked; in that case the issue was whether or not it was the duty of the administration to revoke erroneous computations of income tax and it must be regarded as having been decided on the basis of its own particular facts.

It has been submitted by counsel for the appellants that no discretion was, in fact, exercised at all, by the respondent Minister and that he acted on the basis of the relevant advice of the Office of the Attorney-General feeling that he was bound to revoke the permit in question. We do not share this view. In the said advice there were set out fully both the legal and other considerations which had to be taken into account; and it is quite clear, from a perusal of the relevant administrative records, that the *sub judice* decision was taken by the respondent Minister after considering all relevant matters, including, of course, the contents of the said advice.

Another point which was raised during the hearing of this appeal was whether the revocation should have been made with effect *ex tunc* or only with effect *ex nunc*, that is only from the time when the administrative mistake was discovered and without setting aside retrospectively in toto the prospecting permit.

In cases of revocation of unlawful administrative acts the revocation automatically takes place *ex tunc* so as to eradicate the consequences of the illegality (see, *inter alia*, the decisions of the Council of State in Greece in cases 1730/1955 and 2882/1967, as well as Delicostopoulos, *supra*, p. 255, Kyriacopoulos on Greek Administrative Law, 4th ed., vol. B, p. 419, the Conclusions from the Case-Law of the Council of State in Greece (1929-1959) p. 205, and Stassinopoulos, *supra*, pp. 471-472); therefore, we cannot find that it was not proper to revoke the prospecting permit in question *ex tunc*, and not only *ex nunc*.

In Stassinopoulos, *supra*, at pp. 472-474, there are set out the principles which govern the situation when an unlawful administrative act has been revoked *ex tunc* but, in the meantime, there

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have arisen, because of it, and prior to its revocation, certain rights; we need not enlarge upon such principles because we are not concerned with them in the present case; but, we must add that we do sympathize, in a certain way, with the appellants, who are not to blame for what has happened, and it is up to them to consider what other remedies may be open to them in order to try to obtain redress, either administratively or through any legal process possibly open to them, for any damages that they may have suffered; we do not, however, wish to express, in any way, any view whatsoever in this respect. 5 10

In the result the present appeal is dismissed; but, in view of the nature of the present case, we are not prepared to make an order against the appellants regarding its costs.

*Appeal dismissed. No order  
as to costs.* 15