IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CYTECHNO LTD.

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS,

Respondent.

(Case No. 89/73).

Mines and Quarries (Regulation) Law, Cap. 270—Prospecting permit —Renewal—A matter within the unfettered discretion of the Administration—Section 13(4) of the Law.

Words and Phrases—"May" in section 13(4) of the Mines and Quarries (Regulation) Law, Cap. 270.

Administrative Law—Administrative discretion—Self-binding of by the Administration—Principles applicable—Application to renew prospecting permit under s. 13(4) of the Mines and Quarries (Regulation) Law, Cap. 270—Respondent Council seeking and obtaining opinions of two experts, on certain matters, before deciding on the application—Respondent Council under no duty, in the circumstances of this case, either to act on the basis of experts opinions or give special reasons why they disregarded them—As there was never anything to suggest that the Council was binding itself to accept these opinions.

Administrative Law—Administrative decision—Due inquiry—Proper deliberations—Decision of Council of Ministers refusing renewal of prospecting permit under s. 13(4) of Cap. 270—Taken after consideration of a relevant submission to the respondent Council—And the placing of all available material at its disposal—And after an inquiry which lasted over two years and the views of all Government Departments concerned and those of the applicants had been sought—And after the holding of a meeting under the chairmanship of the President of the Republic where minutes were kept and the views expressed were recorded—Is a decision taken after proper deliberations and a due inquiry—The change in

the composition of the Council of Ministers during the year the decision was taken and shortness of period between the said submission and the meeting at which the sub judice *decision was taken cannot be said to exclude the possibility of proper deliberations and due inquiry.*

Administrative Law—Collective Organ—Deliberations of—Exchange of views and the swaying of vote a legitimate objective in the deliberations of a collective organ and not contrary to law.

Administrative Law—Administrative decision—Legality—Determined on the basis of the factual situation existing at the time it is taken—Decision refusing application for renewal of prospecting permit under s. 13(4) *of Cap.* 270*—Fact that there was delay in the taking of the decision from the date of the application does not, in the circumstances of this case, affect the validity of the* sub judice *decision.*

Mines and Quarries Regulation Law, Cap. 270*—Prospecting permit—Renewal—Section* 13(4) *of the Law—Change in the factual situation which existed at time of issue of permit—Justifies the adoption of a new policy when considering application for renewal.*

Administrative Law—Administrative decision—Expediency of—Not subject to the control of an administrative Court.

Administrative Law—Administrative decision—Judicial Control—Principles applicable—Appreciation by Administration of factual allegations or elements not subject to judicial control.

Administrative Law—Policy—Change in the factual situation—Whether it justifies change of policy

The applicants were the holders of 5 prospecting permits which were assigned to them by their previous owner and were transferred and registered in their name in July 1967 with the consent of the respondents in accordance with the provisions of section 13(3) of the Mines and Quarries (Regulation) Law, Cap. 270.

Thereafter the applicants carried out, at a considerable cost systematic prospecting and engaged for the purpose experts from the Geological Department and from abroad. The outcome of this prospecting was that Cyprus could, in a short time, acquire and have functioning a second asbestos mine of great significance.

Applicants strictly complied with the requirements of the Mines and Quarries (Regulation) Law, Cap. 270 and the relevant

regulations and had the said prospecting permits renewed; but when they applied for their renewal for the last time the respondents refused to accede to their application.

Hence the present recourse. The *sub judice* refusal was taken on the 9th November 1972 and reads as follows:

> " The Council of Ministers examined the application for the renewal of prospecting permits of the company CYTECHNO LTD. in the area of Troodos (Pasa Livadhi) for the purpose of finding asbestos and after detailed examination of all the documents placed before it and facts and information given at this meeting and after exhaustive discussion of the subject and careful weighing of all the present existing circumstances it considered that the said renewal would not have been in the public interest and decided on the basis of the provisions of the Mines and Quarries (Regulation) Law, Cap. 270 and Law 5/65 that the said application be refused".

Before taking the *sub judice* decision the Council of Ministers decided to recall experts from abroad to consider the matter, especially with reference to the pollution of the water, and advise accordingly the Government. As a result of this decision two experts were secured through the United Nations Development Programme who after examining the matter reported that there were methods of avoiding pollution of the atmosphere and of the water.

The question of renewal of the prospecting permits was first examined by the Council of Ministers at a meeting on the 5th and 6th April, 1971 and when taking the *sub judice* decision the respondent Council of Ministers had before it a submission dated the 7th November, 1972 which was prepared by the Ministry of Commerce and Industry. To this submission there were attached summaries of the reports of the above two experts, summaries of the reports of the various Departments on the proposed exploitation of the asbestos resources of the area in question and on the effect which the creation of a new asbestos mine would have on the touristic development of the Troodos area and on the water supply of certain villages. The answers of the Attorney-General of the Republic to three questions* put to him were, also, incorporated in the submission.

The matter had also been examined at a meeting held under

* See these questions at p. 418 *post*.

the chairmanship of the President of the Republic, who after hearing the views of the Departments concerned, postponed the taking of the decision so that the views of the applicant company would be studied.

Counsel for the applicants contended:

(a) That the administration had only a fettered competence in the matter and that it was bound to renew the prospecting permit so long as its holder complied with the law and the terms of the permit if any.

Counsel argued in this connection that the word "may" in the context of section 13(4) of Cap. 270 means "shall".

(b) That once the Council of Ministers thought fit or necessary to ask for the opinions of experts, they had a duty either to act on the basis of those opinions or give special reasons why they disregarded them.

(c) That there were insufficient deliberations and no proper and due inquiry was carried out, because although the matter was considered over a long period of time, there had been a change in the composition of the Council of Ministers and no sufficient time elapsed between the submission, which is dated the 7th November, 1972 and the decision taken on the 9th November, 1972, for a matter, which the respondents conceded to be of exceptional character and they took it from the competence of the Senior Inspector of Mines into their own hands as a matter to be dealt with by the highest executive organ of the Republic.

(d) That the President of the Republic swayed the vote in the Council of Ministers and unduly influenced them by his personal views.

(e) That in the absence of any change of the factual position the respondents had no choice but to revew the prospecting permit.

In support of this contention counsel referred to a relevant advice* of the Attorney-General of the Re-

* See this advice at p. 427 *post*.

public where it was stated, *inter alia*, that in the exercise of its administrative discretion the Council of Ministers should take into consideration the existing situation at the time of the renewal.

(f) That several of the fears or arguments advanced in case of renewal were alleviated by the subsequent inquiry carried out and in particular by the views expressed by the experts.

Held, (I) on contention (a) above:

That though the word "may" is usually used as suggesting permission and as implying a discretion in some cases it has been held to have a compulsory force and as being in a sense imperative; that in the context of section 13(4) of Cap. 270 the word "may" does not call for such modification of its meaning and cannot be read as casting a mandatory duty on the administration; and that the administration in issuing or renewing a prospecting permit has, by law, an unfettered discretion (p. 422 *post*). (See also, Kyriacopoullos, the Greek Administrative Law, 4th Ed. Vol. A p. 206).

Held, (II) on contention (b) above:

(1) That though when the administration on its own free will subjects its administrative discretion to forms and limitations not imposed and not provided for by the law as a choice of means to form an opinion, a matter which is not objectionable, it cannot thereafter ignore arbitrarily such opinions as same would constitute inconsistent, arbitrary, and, therefore, wrong exercise of discretion (see Stasinopoullos The Law of Administrative Acts, 1951 p. 333) in this case there was never anything to suggest that the Council of Ministers was binding itself to accept those opinions.

(2) That once the opinions of the experts were placed before the Council of Ministers, the Council should be taken to have not only considered them and given them the proper weight, in the absence of any indication to the contrary, but also, to have drawn their own conclusions therefrom, in the light of the material before them; that the two experts speak only of the fact that the damage to the environment may be minimized, but they do not evaluate the consequences to the touristic development of the island and the situation envisaged by them in case mining operations are allowed in the area in the ideally controlled conditions envisaged by them; and that, accordingly, the whole matter

of reasoning should be examined in the context of the whole decision and not as an instance in which a particular reasoning could have existed in respect of the opinions of these experts.

Held, (III) on contention (c) above:

That there is nothing on record to suggest that no proper deliberations took place; that all available material was placed at the disposal of the members of the Council of Ministers and the shortness of period between a submission made to the Council and the meeting at which a decision is taken cannot be said that it excludes the possibility of proper deliberation and due inquiry; and that, on the contrary, if there is something characteristic in this case is the depth of the inquiry made which lasted for over two years because, as it appears from the material in the file, the views of all Government Departments were sought, a meeting was held under the chairmanship of the Prēsident of the Republic, minutes were kept, views expressed and recorded and the views of the applicant company were sought before the matter came for determination by the Council of Ministers.

Held, (IV) on contention (d) above:

That there is nothing on record to suggest any undue influence; that this Court is not prepared to accept that the exchange of views and the swaying of vote is not a legitimate objective in the deliberations of a collective organ; and that the fact that one of the members of such an organ sways the views of others, is not contrary to Law (p. 426–427 *post.*)

Held, (V) on contention (e) above:

(1) That the legality of administrative decisions is determined on the basis of the factual situation existing at the time such decisions are taken; that in the circumstances of this case the fact that there was a delay in the taking of the decision from the date the application was made, does not affect the validity of the decision, as it is obvious that the period was reasonably necessary to ascertain the situation as existing at the time of the application and same did not amount to undue and unjustifiable delay that brought about any change whatsoever in the factual situation as between the date of the application and the date the *sub judice* decision was reached.

(2) That on the material on record there appear to have been changes since the time of the last renewal that justified the new approach because the idea that these areas were already attra-

ctive to tourism and considered as capable of some touristic development took, in the meantime, a concrete form which justified the adoption of a new definite policy and the reversal of an existing situation with the obvious financial consequences to others, which has to be sufficiently justified and which is so justified from the material in the file.

Held, (VI) on contention (f) above:

(1) That the question of tourism, the views about its injurious affection and the destruction of the environment and the overburdening of the new road to Troodos do not seem to have disappeared because of the views of the experts; that once there is the project of touristic development of the area, it cannot be said that there could not be a change of policy, nor can it be said that there is no reasoning clear and unambiguous in the file which justifies the *sub judice* decision; and that there are indeed sufficient and cogent reasons to be found in the file as to why the renewal was not called for in the public interest.

(2) That a decision is not declared void merely because there existed before the administrative organ in question facts which were contrary to their conclusion, if there were also, at the same time, facts which supported their conclusion; that this Court cannot interfere with regard to the weight that has been given by the administration to certain facts; that the appreciation by the administration of factual allegations or elements and of the material in the file, is not subject to judicial control, so long as there does not exist a misconception of fact or law, or abuse of power, nor is subject to judicial control the appreciation of the weight of the real facts constituting the reasoning (see Zacharopoullos, Symbliroma Nomologhias, (1935–1952), Vol. 1, p. 42, paras. 264 and 288 and the Decisions of the Greek Council of State from which this principle is drawn).

(3) That having gone through all the material, this Court has come to the conclusion that the decision is clearly and cogently reasoned and arrived at after a proper, in the circumstances, inquiry and after proper weight was given to all material facts; that the fact that there was no renewal with conditions, does not affect the legality of the decision; that in the opinion of the Attorney-General the possibility of renewing with conditions was intimated; and that the recourse will, accordingly, be dismissed.

Application dismissed.

Per curiam: (1) The financial loss which has been borne by the applicants in prospecting in the area is not within the ambit of this inquiry.

(2) The expediency of the *sub judice* decision is not subject to the control of an administrative Court.

Cases referred to:

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

Lambrou v. *Republic* (1970) 3 C.L.R. 75 at p. 80;

Decisions of the Greek Council of State Nos. 46/1930, 308/1931, 878/1932, 294/1933, 1631/1951, 2060/57, 1220/59, 736/60.

Recourse.

Recourse against the refusal of the respondent to renew five prospecting permits held by the applicants.

Fr. Markides, with *G. Pelaghias*, *K. Talarides* and *A. Markides*, for the applicants.

L. Loucaides, Deputy Attorney-General of the Republic, for the respondent.

Cur. adv. vult.

The following judgment* was delivered by:-

A. LOIZOU, J.: The applicant Company, registered as such in Cyprus with limited liability and carrying at all material times prospecting and mining in Cyprus and elsewhere, seeks, by the present recourse, a declaration that the decision of the respondent dated the 9th November, 1972 by which they refused to renew five prospecting permits Nos. 2154, 2219, 2082, 2074 and 2083 which expired on the 8th January, 1970, 9th November, 1969, 19th September, 1969, 23rd July, 1969 and 19th September, 1969 respectively, held by them, is null and void and of no effect whatsoever.

The *sub judice* decision No. 11840 (*exhibit* 'B' 1) communicated to the applicant Company on the 22nd January, 1973, reads as follows:-

" The Council of Ministers examined the application for the renewal of prospecting permits of the Company CYTECHNO Ltd. in the area of Troodos (Pasa Livadhi) for the purpose of finding asbestos and after detailed

* An appeal has been lodged against this judgment which is still pending.

examination of all the documents placed before it and facts and information given at this meeting and after exhaustive discussion of the subject and careful weighing of all the present existing circumstances, it considered that the said renewal would not have been in the public interest and decided on the basis of the provisions of the Mines and Quarries (Regulation) Law, Cap. 270 and Law 5/65 that the said application be refused".

The application is based on the following grounds of Law:

" (1) The *sub judice* decision is contrary to the provisions of the Mines and Quarries Regulation Law, Cap. 270, particularly section 13 thereof, in that, the Applicants having duly complied with all the relevant Mines and Quarries Regulations, it was not open to the Respondents to refuse the renewal of the aforesaid prospecting permits, who were bound to renew such permits under section 13(4) of the said statute.

(2) Subject and without prejudice to the above, the *sub judice* decision must be annulled in that it is not duly reasoned, if at all, and/or in that the reasoning, if any, behind such decision is arbitrary and/or inadequate and/or erroneous in fact and/or in law and/or extraneous to the matter.

(3) Subject and without prejudice to the above, the decision complained of is contrary to law, i.e. contrary to the general and well settled principles of administrative law and in excess and abuse of powers, in that, *inter alia*, it is the produce of a defective exercise of the relevant discretionary powers, if any, vested in the respondents. It will be submitted in support, *inter alia*, that:

(A) the decision complained of was taken:

(a) Under a misconception of fact and/or law;

(b) and/or without sufficient deliberations and in a manner inconsistent with all notion of proper administration;

(c) and/or without the proper due inquiry into, and evaluation of, the relevant factors and considerations;

(d) and/or without the Respondents taking properly and duly into account or giving proper weight to relevant and material factors or considerations,

(B) And/or the Respondents failed to consider the matter from all its material aspects and/or ignored material factors and considerations, and/or did not give proper weight to such factors or considerations, whereas they gave undue weight to certain factors and/or took into account irrelevant and immaterial considerations and factors.

(4) The decision complained of is contrary to the principle of equal treatment as safeguarded in Article 28 of the Constitution".

These prospecting permits were originally issued—the one as far back as 1955—to a certain Mr. Nicos Kalimeras of Nicosia, who, in the year 1967 and for valuable consideration including, *inter alia*, an amount of £20,000, assigned them to the applicant Company in whose name they were transferred and registered on the 25th July, 1967, with the previous consent of the respondent, in accordance with the provisions of section 13(3) of the Mines and Quarries Regulation Law, Cap. 270. The applicant Company thereafter, carried out, at a considerable cost systematic prospecting and engaged for the purpose, experts from the Geological Department, as well as from abroad, including a team of experts from Bulgaria, an Italian mining geologist, a team of Russians and a team of Canadian experts. A detailed reference to their work is to be found in the various reports and documents produced as *exhibits* and which are duly summed up in the letter of the Senior Mines Officer of the 10th November, 1969, *exhibit* 'A' (b). The outcome of this work is more than encouraging and the safe conclusion could be drawn that Cyprus could, in a short time, acquire and have functioning, and in full production, a second asbestos mine of great significance. (See, *inter alia*, the submission to the Council of Ministers, *exhibit* 'C' and paragraph 3 of the Note of the Attorney-General of the Republic attached to the minutes of the proceedings of the Council of Ministers dated the 5th and 6th April, 1971, *exhibit* 'N').

The applicants who claim to have strictly complied with the requirements of Cap. 270 and the relevant regulations, had these prospecting permits renewed and eventually they applied for their renewal for the last time.

The question of renewal of these prospecting permits was examined by the Council of Ministers at its meeting of the 5th and 6th April, 1971, the relevant documents having been produced in a bundle as *exhibit* 'N'. In the said submission, paragraphs 8 and 9, it is stated that the Ministers, of Finance and Commerce and Industry, were of the opinion that in view of the seriousness of the subject, it would be expedient, before a final decision was taken, to engage an expert firm to study the whole subject from all angles and advise the Government accordingly. The proposal of the Minister of Commerce and Industry, at whose instance the matter was submitted, was to invite the Council of Ministers to decide whether in the light of the circumstances, a technical firm should be recalled. The Council of Ministers decided (Decision No. 10377, *exhibit* 'N'), "that the Government should recall, the soonest possible, experts to consider same, especially with reference to the pollution of the water, and advise accordingly the Government". There preceded this submission an examination of the matter at a meeting held under the chairmanship of His Beatitude the President of the Republic, who, having heard the views of the Departments concerned, postponed the taking of the decision, so that the views of the applicant Company would be studied.

In furtherance of this agreement the Government secured the services, through the United Nations Development Program, of one hydrologist and one mining engineer with wide experience in asbestos mining. Their reports were lodged with the secretariat of the Council of Ministers and summaries thereof were attached to the submission, (*exhibit* 'C') which was made by the Ministry of Commerce and Industry on the 7th November, 1972. Attached to the said submission were also the summaries of the reports of the various Departments which expressed their views on the proposed exploitation of the asbestos resources of the area in question. In fact, these reports were prepared as a result of a decision taken at a meeting of representatives of the said Departments that took place at the Ministry of Commerce and Industry on the 3rd September, 1969, to be followed by a subsequent meeting of the 6th February, 1970. At both these meetings the advisers on tourism of the Ministry were also present. Also attached to the submission were the minutes of the meeting which was held at the Presidential Palace under the chairmanship of His Beatitude the Archbishop and President of the Republic, on the 6th October, 1970 with regard to the same subject.

As stated in the submission (*exhibit* 'C' para. 3) the Senior Mines Officer raised in time, the question of the renewal of the five prospecting permits. In the meantime, however, the question of the touristic development of the Troodos area arose, and there was the possibility that this would be affected by the creation of the new asbestos mine. It was also considered possible that the water supply of certain villages of the areas of Pitsilia, Marathassa and Solea might be affected too, as well as the aquifer of areas further down in the valley. Hence, these matters were studied by the Departments concerned and there was no unanimity on the points raised. Efforts, on the other hand, to make possible the co-existence of both the touristic and mines industries were without positive results.

The answers of the Attorney-General of the Republic to three questions put to him, were incorporated in the submission. These questions were the following:

(a) If the Council of Ministers could refuse the renewal of the prospecting permits.

(b) If it could refuse the granting of mining leases, given that the prospecting permits have already been issued.

(c) Which would be the financial consequences to the Republic as a result of such refusal.

Further, in the submission (para. 9) the arguments given in favour of the renewal of the permits were the following:

(a) From the operation of the asbestos mine the economy of the Island would benefit yearly with a substantial amount of foreign exchange.

(b) Even under circumstances of full employment the engagement of labour force by the new asbestos mine would be welcome in view of the anticipated restriction of the work in other mining companies.

In para. 10 thereof, on the other hand, the Ministry of Commerce and Industry, is reported to have given the following views:

" Since the time of the granting of the prospecting permits, there has arisen, especially during the last few years, a new situation which, in the public interest, demands their non-renewal. Such new situation arose, *inter alia*, on account,

(a) of the recent, at a great scale, agricultural development of the Solea area which will be endangered, if, in any way, by the operation of the asbestos mine, the surface and underground waters, as it is feared, are affected, as well as from the dust which will be caused by the operation of the asbestos mine and will be carried by the winds and for the prevention of which there cannot be a complete certainty.

(b) The recently noticed great touristic development of the villages of Kakopetria and Galata.

In the hotel industry of these two villages for which loans by the Government have been given, an amount of about one million Pounds has been invested. The operation of the proposed asbestos mine will cause incalculable damage to the tourism of the two villages.

(c) The already decided major touristic development of Troodos on international prototypes in accordance with technoeconomic and town planning studies made in recent years. The operation of an asbestos mine in Troodos would mean a complete abandonment of these plans, first step to their realisation, as well as for the development of the mountain tourism in general, has been the construction of the recently completed new touristic road of Astromeritis to Troodos at a considerable cost.

(d) The realisation of the plans under preparation, for the construction of dams in Solea for further agricultural development of the area and the prevention of the destruction, on account of exhaustion of the underground waters of lower areas, will face difficulties and problems by the operation of the asbestos mine on account of the possible pollution of rain water".

Considerable material in the form of Government reports, policy statements and communiques have been produced on behalf of the applicant Company regarding the efforts of the Government to revive what has been described as a decayed mining industry and the importance of the industrial develop-

ment in the economy of Cyprus and that the operation of a new mine, if permit is given to that effect, will contribute immensely to the implementation of the economic policy of the Government.

Before dealing with the legal issues raised and the able arguments advanced by both sides, I consider it useful to quote, verbatim, section 13 of the Mines and Quarries (Regulation) Law, Cap. 270, which reads:

" 13.(1) The Governor may grant to any person applying therefor in the prescribed manner and on payment of the prescribed fees a prospecting permit.

(2) A prospecting permit shall be in the prescribed form and shall be subject to such terms and conditions as the Governor may determine.

(3) 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 Governor.

(4) 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 Governor in the prescribed manner.

(5) Any person prospecting without a prospecting permit or any holder of a prospecting permit who fails to comply with or contravenes any of the terms or conditions of his prospecting permit shall be guilty of an offence".

Relevant provisions regarding the renewals of prospecting permits are to be found in the Mines and Quarries Regulations, 1958, Supplement No. 3 to the official Gazette No. 4160 (p. 529) and in particular regulation 6, which reads as follows:

" Upon application being made to the Governor through the Inspector, at least one month before a prospecting permit is due to expire, the Governor may renew such prospecting permit for one or more periods of six months up to a maximum period of three years in the case of a Class A permit and one year in the case of a Class B permit".

Strictly speaking, regarding two of the prospecting permits,

the question was one of renewal under section 13(4) of the Law hereinabove set out, whereas for the remaining three, it was one of issuing new permits under sub-section (1) of section 13, as the period of three years set out in regulation 6 was due to expire shortly.

In view of this, learned counsel for the respondent has argued that once in respect of some of them it was a matter of a new permit being issued in which case a change of policy could more readily be invoked than in cases of renewal and since all five permits related to one compact area—an area of one thousand square donums—the administration was entitled to invoke the new policy in respect of the whole area as there could not be one policy in respect of one part and different in respect of another, in the same locality.

The respondent, however, have all along treated the issue as one of renewal and made no such differentiations; they were, in a wider sense, renewals as one should not lose sight of the fact that these prospecting permits had been kept in existence continuously in some way or another, for fifteen years prior to the applications in question. If any differentiation should be made in such instances, same must refer to the case of an application for the granting of a new prospecting permit by a person unconnected with the relevant area and not when an application is made by somebody who has already carried out prospecting in the area and who, because of the time limits set out in regulation 6 his application should be treated in strict sense, as an application for a new permit.

As already stated, the whole matter was treated and determined by the respondent as one transaction, and this is how the matter should be approached in this recourse.

With regard to the first ground of law relied upon by the applicants, it has been submitted that the administration has only a fettered competence in the matter; that is to say, it is bound to renew such a prospecting permit so long as its holder complies with the law and the terms of the permit, if any, and that the word "may" in the context of sub-section (4) of section 13 means "shall". This is borne out also from the wording of section 18 whereby the Council of Ministers "may cancel any prospecting permit if in their 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".

Although the word "may" is usually used as suggesting permission and as implying a discretion, in some cases, it has been held to have a compulsory force and as being in a sense imperative, as it is the case with such words or expressions, as "must" "shall be lawful", "shall have power" etc. but in the context of section 13(4) the word "may" does not call for such modification of its meaning and cannot be read as casting a mandatory duty on the administration. There are not particular conditions in this subsection which the law requires to be complied with in respect of a renewal, which is left by the law to the administration to be decided as a matter of discretion. Section 18 does not carry the case for the applicants any further, as again, the word "may" there, implies a discretion and not an obligation on the part of the administration to cancel a prospecting permit in case there is a failure to comply with or observe the law or the terms of the permit. Moreover, one should not lose sight of the fact that the matter of a renewal relates to the administration of the private property of the State, according to Article 23.1 of the Constitution, whereby "the right of the Republic to .... minerals .... is reserved". But as stated, however, in *Droushiotis* v. *The Republic*, (1966) 3 C.L.R. p. 722, at p. 729, "the fact remains that once under the relevant legislation, Cap. 270 a discretion has to be exercised .....such discretion has to be exercised properly".

As pointed out in Kyriacopoulos, the Greek Administrative Law, 4th Ed. Vol. A, p. 206, such expressions as "may", "permitted", "entitled to", on principle give to the administration unfet ered discretion. Yet, certain provisions which state that the administration may, or is permitted to take certain action, intend to bind the administration; therefore, it follows that only by looking at the meaning of the law it may be decided in each concrete case, if the administration has unfettered discretion or if, on the contrary, same is fettered. In any event, as decided repeatedly by the Greek Council of State, "where in the law there is no clear and imperative obligation for the administration, and when in doubt, one leans in favour of the discretionary power". (See Kyriacopoulos (*supra*), p. 205 and Decisions Nos. 46/30, 308/31 and 878/32).

In the light of the above and having looked at the law as a whole and the purpose which is meant to serve, I have come to the conclusion that the administration in issuing or renewing a prospecting permit has, by law, an unfettered discretion. In

such a case, however, the considerations that may legitimately be taken into account by the administration in exercising such a discretionary power are again a matter for the discretion of the administration, provided, however, that it does not act in abuse of power or on facts that are not accurate or on material which is not supported by the facts. Pertinent may be a quotation, in this respect, from Odent Contentieux Administratif (1965–1966) Edition, p. 1255, a passage also quoted by the Attorney-General in his opinion to the Council of Ministers, *exh.* 'L', which, somehow freely translated into English, reads:

> " When neither the Law nor the Regulations fix the conditions for the exercise of an administrative power and when the nature of things does not require that certain conditions are fulfilled the appropriate authority assesses in a discretionary way the consequences to be drawn from the correct facts ..... In all these cases the administrative authority has a truly discretionary power because the judicial control that can be exercised with respect to the reasons of its action, is confined to a mistake of law, misconception of fact and abuse of powers".

Needless to say that in circumstances like the present one, which do not call for reference to the exceptions to the rule, the burden of proof for the existence of reasoning falls on the administration which has to place before the Judge the elements necessary for such proof. (See *Lambrou* v. *The Republic* (1970) 3 C.L.R. p. 75 at p. 80 and Stasinopoullos The Law of Administrative Disputes, 1960, p. 229). The question, however, whether sufficient reasoning has been disclosed will be examined when the corresponding ground of law is dealt with.

Grounds 2 and 3 were argued by Mr. Markides in the alternative, subject to and without prejudice to ground 1 under the general heading of defective exercise of discretion—if any—or the exercise of such a discretion in a manner contrary to law, that is to say, the settled principles of administrative law and in excess and abuse of powers. Ground 3 was referred to as setting out the particulars for the said defective exercise of discretion and I need not reproduce them as they have already been set out verbatim in this judgment.

I shall deal with them in the order I find it more convenient and I take first the complaint that once the Council of Ministers

thought fit or necessary to ask for the opinions of experts, they had a duty either to act on the basis of those opinions or give special reasons why they disregarded them. This refers to decision No. 10377 (*exh.* 'N') of the Council of Ministers of the 6th April, 1971 whereby it was decided to recall experts to consider the question, especially with reference to the pollution of water and advise accordingly the Government. As a result of this, the two experts were secured through the United Nations Development Programme and in the summary of the report (*exh.* 'F') of Mr. Dixey, a hydrological consultant, it is stated that, "the fears expressed so far of possible harmful effects on the surface and groundwater resources of the area from the technical point of view, are largely or wholly groundless, since they are based in part on a misinterpretation of the hydro-geological factors involved and largely on the out-of-date practices of the early phase of asbestos mining at Troodos-practices which are in fact now avoided". And concluded his report by stating, "provided the mining activities of the Company are well planned and executed under proper control, no adverse effect of the asbestos mining on water supplies need be anticipated. The existing legislation gives the Council of Ministers complete freedom in issuing a Mining Lease as well as powers to determine same after continued breach on the part of the Lessee of the terms and conditions of the Mining Lease. In view of what is stated above and provided that before actual mining begins the Water Development is consulted, Mr. Dixey does not see any reason of objecting to the renewal of the prospecting permits".

The other expert was Mr. Hebron, a mining consultant. A summary of his report is to be found in *exhibit* 'F'. He is also of the opinion that there are methods of avoiding pollution of the atmosphere and the pollution of streams and "the answer to what can be done to minimize damage to the easthetic value of the area, is that new designs make an effort to impair a pleasing appearance to all the buildings and the plant site. An effort should also be made to preserve the trees between the buildings on the site. It is pointed out that the proposed mining area will be definitely smaller than the area now covered by prospecting permits". And concluded his report by suggesting that "at the time of renewing the prospecting permits the Company should be made aware of the Government's concern as regards environmental factors and advised of the design requirements which can be summarised as follows:

(a) The plant design will be satisfactory in respect of atmospheric dust inside the plant, taking note of international regulations and future standards to be adopted by the Industry.

(b) Dust abatement measures will be taken to avoid damage or loss of use of neighbouring regions.

(c) The waste disposal areas will be designed so as not to pollute streams and to minimize the easthetic damage by using a valley site when possible."

It is true that when the administration on its own free will subjects its administrative discretion to forms and limitations not imposed and not provided for by the law as a choice of means to form an opinion, a matter which is not objectionable, it cannot thereafter ignore arbitrarily such opinions as same would constitute inconsistent and arbitrary, therefore, wrong exercise of discretion. (See Stasinopoulos The Law of Administrative Acts, 1951, p. 333). It may do so, however, by giving reasons for doing so. But in this case there was never anything to suggest that the Council was binding itself to accept those opinions. It was in the form of further information and as part of the wider inquiry carried out by the Government in the matter and the opinion of experts and at that, on matters which were not to be the sole criteria upon which the ultimate decision would be reached. Once they were placed before the Council of Ministers, the Council of Ministers should be taken to have not only considered them and given them the proper weight, in the absence of any indication to the contrary, but also, to have drawn their own conclusions therefrom in the light of the totality of the material before them. None of them was an expert on tourism, and yet, the question of tourism was one of the major factors considered in the course of the inquiry made prior to reaching the *sub judice* decision. The two experts speak only of the fact that the damage to the environment may be minimized, but they do not evaluate the consequences to the touristic development of the island and the situation envisaged by them in case mining operations are allowed in the area in the ideally controlled conditions envisaged by them. Therefore, the whole matter of reasoning should be examined in the context of the whole decision and not as an instance in which a particular reasoning could have existed in respect of the opinions of these experts.

The next point to be considered, relates to the claim that there were insufficient deliberations and no proper and due inquiry was carried out, because, although the matter was considered over a long period of time, there had been a change in the composition of the Council of Ministers and no sufficient time elapsed between the submission which is dated the 7th November and the decision taken on the 9th November, 1972, for a matter, which the respondent conceded to be of exceptional character and they took it from the competence of the Senior Inspector of Mines into their own hands as a matter to be dealt with by the highest executive organ of the Republic.

It was argued that the new eight members who, admittedly, had become Ministers since the 6th of April of that year, could not become conversant with a subject within such a short time.

There is nothing on record to suggest that no proper deliberations took place. On the contrary, all available material was placed at the disposal of its members, and the shortness of period between a submission made to the Council of Ministers and the meeting at which a decision is taken, cannot be said that excludes the possibility of proper deliberation and due inquiry. On the contrary, if there is something characteristic in this case, is the depth of the inquiry made which lasted for over two years, as it appears from the material in the file. The views of all Government Departments were sought, a meeting was held under the chairmanship of the President of the Republic, minutes were kept, and views expressed at such meetings were recorded; further the views of the applicant Company were sought before the matter came for determination to the Council of Ministers.

Related to this matter is the argument that the President of the Republic swayed the vote in the Council of Ministers and unduly influenced them by his personal views. There is nothing on record to suggest any undue influence and I am not prepared to accept that the exchange of views and the swaying of vote is not a legitimate objective in the deliberations of a collective organ; the fact that one of the members of such an organ sways the views of others, is not contrary to law. If anything, as it appears from the minutes of the meeting of the 6th October, 1970 (*exh.* 'E' p. 4), "his Beatitude mentioned that he heard carefully the views of the interested Departments and that he will hear the views of the interested Company before referring the matter to the Council of Ministers for the taking of a final

decision". Furthermore, in the same minute (p. 3), it was recorded that although himself was reluctant and leaned in favour of a non-granting of the permits, yet, he did not want to influence members of the Council of Ministers which would be called to take the relevant decision. He is then recorded to have given reasons for his views which were, the pollution of the water, the dust and the pollution of the atmosphere, the destruction of the majestic view, the use of the new road to Troodos by the asbestos mine and mainly the psychological factor, that is, the reactions which, in all probability, would come from the inhabitants of the area.

The next argument advanced by Mr. Markides is that in the absence of any change of the factual position, the respondent had no choice but to renew the prospecting permit. In support of this proposition, reference was made to the advice of the Attorney-General of the Republic (*exh.* 'L' p. 6), where it is stated that "in the exercise of its administrative discretion the Council of Ministers should take into consideration the existing situation at the time of the renewal. If it has not changed from the one existing at the time of the issuing of the permit, then I am inclined to the view that the permits must be renewed. If, however, it changed and in the meantime there arose matters of public interest not existing at the time the permit was granted, the Council of Ministers must take into consideration the new created situation and if, in its judgment after weighing carefully all facts existing at the time of the renewal, such renewal would not be in the public interest to be granted, then it may refuse same (see Greek Council of State, Dec. No. 294/1933) or to grant same under such conditions or other restrictions which the new situation would demand (in particular, see Conclusions of M. Letourneur in Receuil des arrêts du Conseil d' Etat, 1954, p. 308 and compare Greek Council of State 1631/551)".

There was, however, disagreement with this opinion in another respect, in the sense that the crucial time according to Mr. Markides is not the time of granting the permit but the last renewal and that the crucial point was the date upon which they applied and not the date they decided the matter. On the other hand, Mr. Loucaides on behalf of the respondent, has argued that the material time with regard to the factual situation should be that existing at the time of the decision.

The legality of administrative decisions is determined on the basis of the factual situation existing at the time such decisions

are taken. (See Zacharopoullos, Symbliroma Nomologias (1953–1960), Vo. 1, A–K p. 575, para. 109 and the Decisions of the Greek Council of State, 609, 2060/57, 351, 1220/59 and 736/60).

Needless to say that in the circumstances of this case the fact that there was a delay in the taking of the decision from the date the application was made, does not affect the validity of the decision, as it is obvious that the period was reasonably necessary to ascertain the situation as existing at the time of the application and same did not amount to undue and unjustifiable delay that brought about any change whatsoever in the factual situation as between the date of the application and the date the *sub judice* decision was reached. But there is one more issue arising in connection with this point, whether as from the last renewal of the permits in question there had been such a change in the meantime, that justified the new approach. It appears from the submission (*exh.* 'C', para. 3) that the Senior Mines Officer raised in time the question of the renewal of the said five prospecting permits, but in the meantime there arose the question of touristic development of the area of Troodos, with the possibility of its being affected by the creation of a new asbestos mine. Further, there had been in the meantime, agricultural and touristic development of the Solea area and of the villages of Kakopetria and Galata, where there was an investment of a substantial amount of money—including loans from Government—in their hotel industry. So, on the material in the record, there appear to have been changes during that time. The idea that these areas were already attractive to tourism and considered as capable of some touristic development or used for the purpose in the past, took, in the meantime, a concrete form which justified the adoption of a new definite policy and the reversal of an existing situation with the obvious financial consequences to others, which has to be sufficiently justified and which is so justified from the material in the file.

The next point is that several of the fears or arguments advanced in case of renewal were alleviated by the subsequent inquiry carried out and in particular by the views expressed by the experts. The question of tourism, however, the views about its injurious affection and the destruction of the environment and the overburdening of the new road to Troodos do not seem to have disappeared and once there is the project of touristic development of the area, it cannot be said that there could not be

a change of policy, nor can it be said that there is no reasoning clear and unambiguous in the file which justifies the *sub judice* decision. There are indeed sufficient and cogent reasons to be found in the file as to why the renewal was not called for in the public interest.

A decision is not declared void merely because there existed before the administrative organ in question, facts which were contrary to their conclusion, if there were also, at the same time, facts which supported their conclusion. This Court cannot interfere with regard to the weight that has been given by the administration to certain facts. The appreciation by the administration of factual allegations or elements and of the material in the file, is not subject to judicial control, so long as there does not exist a misconception of fact or law, or abuse of power, nor is subject to judicial control the appreciation of the weight of the real facts constituting the reasoning. (See Zacharopoullos, Symbliroma Nomologhias, (1935–1952), Vol. 1, p. 42, paras. 264 and 288 and the Decisions of the Greek Council of State from which this principle is drawn).

Having gone through all the material, I have come to the conclusion that the decision is clearly and cogently reasoned and arrived at after a proper, in the circumstances, inquiry and after proper weight was given to all material facts. The fact that there was no renewal with conditions, does not affect the legality of the decision. In the opinion of the Attorney–General the possibility of renewing with conditions was intimated.

I have endeavoured to answer the elaborate arguments advanced by Mr. Markides in his admirable address to the Court, and if I have failed to make specific reference to any of them, that is not out of disrespect to him, but it should be taken as having been answered in the course of this judgment without dealing or specifically referring to it.

There remains now to refer to the financial loss which has been borne by the applicants in prospecting in the area, a matter that has given me grave concern, but it is not within the ambit of this inquiry to pronounce on its legal aspect, but one may refer, in this connection, also to section 23 of the Mines and Quarries (Regulation) Law, Cap. 270 whereby, it is provided that when there is more than one applicant for a mining lease the person who had carried adequate prospecting operation in the area shall be preferred.

Before concluding, I would also like to say that the expediency of the decision is not subject to the control of an administrative Court. As stated in Odent (*supra*), at p. 1273,

> " It is a general proposition that the fact that a decision would have regrettable consequences, does not constitute a ground for its annulment. It is considered in fact that if the Court controlled the expediency of an administrative act it would not have confined itself to a control of the legality of the act, but it would have substituted its own judgment for that of the administration and therefore we would have had the result of the Court acting as an administrative authority. The impossibility therefore, of the administrative Court to control the expediency aspect of the administrative decisions is absolute and has no exceptions".

For all the above reasons and having considered the totality of the material before me and the arguments advanced, the present recourse is dismissed, but in the circumstances I make no order as to costs.

Application dismissed. No order as to costs.