

1982 August 30

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KYRIACOS MICHAEL TEKKIS AND ANOTHER,  
*Applicants.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE COUNCIL OF MINISTERS,  
*Respondents.*

(Cases Nos. 193/81 and 207/81).

*Act or decision in the sense of Article 146.1 of the Constitution—  
Which can be made the subject of a recourse thereunder—Admi-  
nistrative acts relating to the management of State Land—Fall  
within the sphere of Civil Law—Not executory administrative  
acts falling within the domain of public law—And they cannot* 5  
*be made the subject of a recourse under the above Article.*

*State land—Policy decision regarding disposal of—Administration  
possesses a very wide discretion.*

*Administrative Law—Administrative acts or decisions—Reasoning—  
The more wider is the exercise of the relevant free discretion* 10  
*the less complete is permitted to be the reasoning unless the law  
demands special or complete reasoning.*

The Council of Ministers by means of various decisions  
approved a certain policy\* regarding the disposal of hali and  
other State land. Under this policy any one who had trespassed 15  
“before the 1st June 1968 on State land and he has either planted  
it with trees or has substantially improved or developed same  
or he is the owner of adjacent property may submit an appli-  
cation to the Lands and Surveys Department for the purchase  
of such land.” 20

\* Particulars of this Policy appear at pp. 685–86 post.

By means of applications submitted in 1969 the applicants applied to the appropriate Authority for the grant and/or registration in their names of certain hali land in the area of Kornos village in the District of Larnaca. The Council of Ministers after obtaining the views of the Lands and Surveys Department, the Director of the Department of Public Works and the District Officer Larnaca, rejected the applications; and hence these recourses.

Counsel for the respondents raised the preliminary objection that the sub judice acts and/or decisions could not be the subject of a recourse for annulment as they did not constitute an executory administrative act within the meaning of Article 146 of the Constitution and they did not refer to a legal relationship of administrative law but simply to the management of the private property of the State.

*Held, (I) on the preliminary objection:*

That acts of the administration issued not in exercise of public Authority but relating to the management of the private property of the State create disputes falling within the sphere of Civil Law, and as such cannot be challenged by a recourse for annulment under Article 146 of the Constitution because as of their nature they come within the competence of the Civil Courts; that from an examination of the whole case it is clear that the subject decisions were not executory administrative acts falling within the domain of public Law and therefore within the revisional jurisdiction of the Supreme Court under Article 146 of the Constitution and as such be the subject of a recourse, as they were acts of management of the private property of the State, there being no vital public importance in the disposal of "State land other than State forests, ancient monuments and properties acquired by the Government compulsorily, the administration of which was regulated by special legislation for each category" as provided in the relevant policy decision; accordingly the recourses should fail for lack of jurisdiction.

*Held, (II) on the merits of the recourses:*

(1) That even if the subject decisions came within the domain of Public Law yet the respondents could not but possess a very wide discretion because of their nature and because of the contents of the said policy decision.

(2) That though reasoning is required, also, for acts of an authority issued in the exercise of its free discretion, the more wider is the exercise of the relevant free discretion the less complete is permitted to be the reasoning, unless the law demands special or concrete reasoning; and that in case of complete absence of reasoning there does not arise in any event nullity so long as there is not established wrong exercise of free discretion or abuse of power.

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*Applications dismissed.*

Cases referred to:

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

*Poyiadjis v. Republic* (1975) 3 C.L.R. 378;

*Georghiou v. Republic* (1981) 3 C.L.R. 591;

*Decision No. 1118/56 of the Greek Council of State.*

**Recourses.**

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Recourses against the decision of the respondents dismissing applicants' applications for the grant to them of State land.

*A. Markides*, for the applicants.

*M. Florentzos*, Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

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A. LOIZOU J. read the following judgment. By these two recourses, which have been heard together as they present common questions of law and fact, the applicants seek a declaration of the Court that the administrative decision and/or act of the respondents by which their application for the grant to them of State land was refused, communicated to them by letters dated 20th and 30th March, 1981, respectively, is null and void and of no effect whatsoever.

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The applicant in Recourse No. 193/81 and the applicant in Recourse No. 207/81, applied on the 29.9.1969 and on the 28.9.1969 respectively, to the appropriate Authority for the grant and/or registration in their names of certain Hali land in the area of Kornos village in the District of Larnaca. As it appears from the statement of facts set out in the Opposition which represent the correct situation, these applications were made in accordance with Part 'A' of the policy of the Government of the Republic for the disposal of State land. The said policy of the Government, which was approved by Decisions

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of the Council of Ministers Nos. 8624/ 8787, 6408 and 13627, dated 27th March, 1969, 29th May, 1969, 2nd March, 1967, and 25th November, 1974, respectively, and is attached to the Opposition as Appendix 'A', is entitled "Government Policy  
5 on the Disposal of Hali and other State land" and the sub-heading is "Trespass on State land made before the 1st June, 1968".

The Lands and Survey Department, as the appropriate department in accordance with para. 3 of Part 'A' of the aforesaid  
10 Policy, carried out an examination of the applications of the applicants. At the local inquiry held on the 8th March, 1977, in respect of the property subject matter of Recourse No. 193/81, it was ascertained that the applicant, as the Village Authority certified (Appendix 'B'), trespassed in 1960 on the parts of the  
15 State land under plot No. 63 of the Government Survey Plan 49/7 of the village of Kornos, of a total extent of 13 donums, one evlek and 2,000 sq. ft., as they are shown coloured yellow and grey on the plan (Appendix 'C'), by cultivating them with cereals and by planting on them 30 olive trees and 25 carob  
20 trees. It was also ascertained that the part of the State land coloured grey on the said plan is affected by the new Nicosia—Limassol road under construction.

It should be noted that this applicant is the owner of the adjacent plot of land No. 39.1/1 of Government Survey Plan  
25 49/24 of the same village, of an extent of 19 donums and 900 sq. ft. as shown coloured blue on Appendix 'C'.

At a local inquiry held on the 27th January, 1977, in respect of the subject property in Recourse 207/81, it was ascertained that that applicant as certified by the Village Authority by  
30 its certificate dated 27.1.1977 (Appendix 'B'), trespassed in the year 1960 on the parts of the State land under plot 63 of the Government Plan 49/7 of the village of Kornos for a total extent of 17 donums and one evlek, as shown coloured yellow and grey on the plan (Appendix 'C') by cultivating them with  
35 cereals and by planting on them four carob trees and ten olive trees. It was also ascertained that the part of the said State land coloured grey on the plan is affected by the new under construction Nicosia—Limassol road.

Subsequently, the Lands and Survey Department asked and

secured the views of other appropriate services of the Government, namely, The Director of the Department of Public Works (Appendix 'D'), the District Officer, Larnaca (Appendix 'E'). The Village Authority recommended the grant of the land in question, whereas the Director of the Department of Public Works and the District Officer suggested the refusal of these applications for the reason that the subject property is affected substantially by the new under construction Nicosia—Limassol trunk road. The Lands and Surveys Department agreed with these views and submitted the whole matter to the Director-General of the Ministry of Interior by a report of the Director of the Lands and Surveys Department dated 21.1.1980 (Appendix 'E').

The Ministry of Interior made a submission to the Council of Ministers for a decision on the subject. After that the matter was considered by the appropriate Committee of Ministers at its meeting held in the Ministry of Interior on 19.12.1980 and the relevant extract from its minutes is Appendix 'G', when it decided to reject both applications, as the land sought by the applications was necessary for the construction of the new Nicosia—Limassol road and for future Government and public purposes.

The Council of Ministers by its Decision No. 11.885 dated 29th and 30th January and 2nd February, 1981 (Appendix 'H'), approved the aforesaid decision of the Committee of Ministers and it reads as follows:—

“(Memorandum, Ministry of Interior 15.1.1981)

12. The Council having been informed of the decisions of the Committee of Ministers, appointed by virtue of Decisions Nos. 12.069 and 19.788 on the examined by it applications for the grant, concession, exchange, lease of State land, as well as the grant of right of passage through State land to various persons as they are set out in the minutes of the meeting of the said Committee dated 19.12.1980 attached to the memorandum of the Ministry of interior dated 15.1.1981 and approved same”.

This decision was communicated to the applicants by identical letters dated the 20th and 30th March, 1981, respectively (Appendix 'I') which read as follows:

“With regard to your Application\_\_\_\_\_ for the grant (parahorisis) to you of State land in the village of Kornos, I wish to inform you that the Council of Ministers at its meeting of 29.1.1981  
5 decided to reject your aforesaid application as it does not satisfy the criteria of Part ‘A’ of the Policy of the Government regarding the grant of State land and because the State land is necessary for the construction of the new Nicosia—Limassol road as well as for future public and  
10 government purposes.

I also inform you that the trespass which has been made on the State land must be stopped within 30 days from the date of this letter, otherwise Court proceedings will be taken against you”.

15 Part ‘A’ of the Government Policy (Appendix ‘A’) reads as follows:

*“Trespass on State land made before June 1968*

- 20 1. Anyone who trespassed before the 1st June 1968 on State land and he has either planted it with trees or has substantially improved or developed same or he is the owner of adjacent property, may submit an application for the purchase of such land. Such applications may be submitted to the Lands and Surveys Dept. until the 30th September, 1968. After the said  
25 date no application of a trespasser on State land will be accepted and the trespassers must abandon their trespass.
- 30 2. The acceptance of the application by the Lands & Surveys Dept. and the collection by it of the appropriate fees for the examination of the application, does not bind in any way the Government to grant the State land applied for.
- 35 3. All the applications will be examined on their merits at the Lands and Surveys Dept. After a local inquiry, survey, valuation and the necessary search in the L.R.O. books is made, and after the views are taken of the appropriate Village Authority, the interested Government Departments depending on its position, the category

and the use of the affected land, of any other interested Authorities and finally of the District Officer concerned the relevant recommendations with regard to application will be submitted by the Lands & Survey Dept. to the Ministry of Interior for the making of a submission to the Council of Ministers. In case of approval of the grant applied for, the purchase price will be paid cash. If, however, the grantee is poor, the payment of the purchase price may be made within eight years the latest, on payment of interest at 6% p.a. on the purchase price. The transfer of the ownership to the grantee will be made when the whole purchase price is paid off together with the interest payable.

4. The criteria on the basis of which the applications will be examined, will be specified later by the Council of Ministers (in fact they were specified as per Appendix 'D' which is attached to the written address of counsel for the respondents. It consists of four pages and I need not reproduce here verbatim for the sake of brevity).
5. This Policy applies to all State lands except State forests, ancient monuments and properties acquired by the Government compulsorily, the administration and disposition of which is governed by special legislation for each occasion''.

There follow four pages containing the Policy which will be applied for the future disposition of Hali and other State land, which I need not also reproduce here in full as we are not concerned with it.

The respondents in their Opposition raised the legal objection that the sub judice act and/or decision cannot be the subject of a recourse for annulment as it does not constitute an executive administrative act within the meaning of Article 146 of the Constitution. The challenged act and/or decision does not refer to a legal relationship of administrative law but simply to the management of the private property of the State.

It has been argued that from the letter and spirit of paragraphs 1-5 of part "A" of the aforementioned Government Policy, it becomes clear that the respondent simply wished within

the limits of the management of the private property of the State to prompt persons unlawfully trespassing on State land, to submit applications for the purpose of the purchase of the said property from the State, subject of course to certain prerequisites. Moreover that there does not exist any Law regulating the subject and that the subject decisions were not a matter of exercise of a discretion under legislation, as it was the case in *Yiangos Droushiotis v. The Republic*, (1966) 3 C.L.R. 722, where in spite of the fact that by virtue of Article 23 of the the Constitution, the right of the Republic to minerals was expressly reserved, it was held that the fact remained that once under the relevant legislation, Cap. 270, a discretion had to be exercised as to whether or not to grant a prospecting permit, such discretion had to be exercised properly. Nor the subject decisions were as in the case of *Lakis Poyiadjis v. The Republic* (1975) 3 C.L.R. p. 378, "An expression of governmental action and Policy in a matter of what may be described as vital public importance, namely the future touristic development of Troodos and as such predominantly intended to serve a public purpose".

As against the aforesaid argument, counsel for the applicants has argued that the Council of Ministers has by the aforesaid "Government Policy on the disposal of Hali and other State land", laid down general rules and/or regulations with regard to certain instances of possession of State land, not for the purpose of the management of the private property of the State but in order to serve the public interest, that is for the solution of the wider problem which arose because of the possession of State land by many individuals and consequently the subject decisions were executory administrative decisions that could be the subject of a recourse under Article 146 of the Constitution.

It has to be examined therefore whether or not this is an administrative dispute or a private one, as the first refers always to a public legal relationship, either between the public administration and the citizens, subject to it, or between the State and the other public Authorities, or between the public Authorities themselves. As stated in *Kyriakopoulos Greek Administrative Law*, 4th edition, volume 4, p. 13, para. 101, "Hence it follows that the administrative disputes are distinguishable from private disputes and also from those existing between



the administration and an individual, since in these disputes the administration acts as *fiscus*. Administrative disputes are therefore only those connected with legal relations of administrative Law, or otherwise, with relations of public authority governed by it". 5

In support of the aforesaid proposition reference is made therein to Decision No. 1118/1956 of the Greek Council of State dealing with acts of management of the private property of the State, where at p. 498, of the report in Decisions of the Greek Council of State, 1956 Volume "B" it is stated. "\_\_\_\_\_ acts of the administration issued not in exercise of public Authority but relating to the management of the private property of the State create disputes falling within the sphere of Civil Law, and as such cannot be challenged by the judicial measure of the application for annulment before the Council of State because as of their nature they come within the competence of the Civil Courts". 10  
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It is clear, from an examination of the whole case that the subject decisions were not executory administrative acts falling within the domain of public Law and therefore within the revisional jurisdiction of the Supreme Court under Article 146 of the Constitution and as such be the subject of a recourse, as they were acts of management of the private property of the State, there being no vital public importance in the disposal of "State land other than State forests, ancient monuments and properties acquired by the Government compulsorily, the administration of which was regulated by special legislation for each category" as provided by the decisions of the Council of Ministers, contained in Appendix "A", earlier referred to in this judgment. The criteria laid down in the said declaration of Policy safeguard an equality of treatment between equals and a uniformity in the approach on the question of the disposal of Government land which does not change its character inasmuch as non-discrimination is not generally speaking a principle confined only to those acts of Government that come within the domain of Public Law, but also to that conduct within the ambit of private Law, or even when the State takes it upon itself to act on an *ex gratia* basis, a matter which has been dealt with by Pikis, J., in the case of *Varnavas Georghiou v. The Republic* (1981) 3 C.L.R. p. 591. For all the above reasons 20  
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these recourses should fail. But even if, however, I were  
wrong on the issue that the subject decisions were not executory  
administrative acts, falling within the ambit of Article 146 of  
the Constitution, I would still dismiss both of them inasmuch  
5 as they were lawfully taken in accordance with the appropriate  
procedure by organs having competence in the matter after  
a due inquiry, they are duly reasoned and there has been neither  
a violation of Law nor a misconception of fact.

Needless to say that if the subject decisions came within  
10 the domain of Public Law, yet, the respondents could not but  
possess a very wide discretion because of their very nature and  
which is obvious also from paragraph 2 of Part "A" of the  
declaration of Policy, Appendix "A", where it is stated that  
15 the acceptance of the application by the Lands and Surveys  
Department and the collection by it of the fees for the  
examination of the application, does not bind in any way the  
Government to grant the State land applied for. The reasons  
for which the applications of the applicants were refused are  
20 contained in the files of the administration under numbers  
A. 972/1969 and A. 2929/1969, and they are summed up in  
the communication of the subject decision to the two applicants,  
earlier referred to in this judgment.

With regard to the alleged lack of reasoning of the subject  
25 decisions I adopt what is stated in *Kyriakopoulos* (supra),  
Volume B, p. 387, that "Reasoning is required, as it has been  
said, and for the act of an authority issued in the exercise of  
its free discretion; but for such act the reasoning is permitted  
to be less complete, the more wider is the exercise of the relevant  
30 free discretion, except if the Law demands special or concrete  
reasoning. In case of complete absence of reasoning there  
does not arise in any event nullity so long as there is not estab-  
lished wrong exercise of free discretion or abuse of power.

In the result these recourses are dismissed but in the circum-  
stances I make no order as to costs.

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*Applications dismissed. No order  
as to costs.*