

1983 November 26

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
NEARCHOS PETRIDES AND OTHERS.

Applicants.

v.

- THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF COMMUNICATIONS AND WORKS,
 2. THE DEPUTY REGISTRAR OF ROAD TRANSPORT,
- Respondents.*

(Cases Nos. 141/78, 144/78, 156/78,
157/78, 162/78, 178/78,
223/78, 251/78, 316/78,
317/78, 348/78).

Administrative Law—Administrative acts or decisions—Revocation—Possible under the principles of administrative Law or when there is express or implied statutory provision about revocation—No such provision existing in this case—And necessary material for the purpose of examination of question whether revocation possible under principles of administrative Law lacking—Directions for hearing to proceed for purposes of adducing such material—Whether fraudulent conduct of applicants establishes reasons of Public interest militating in favour of revocation.

10 The applicants in these recourses challenged decisions of the respondents by means of which there were revoked licences permitting them to use motor vehicles of theirs as taxis.

15 The main common reason for revoking the licences was that though the motor vehicles in question had been licensed for use as taxis, that is as public service motor vehicles, they were, in fact, being used by the applicants, as private motor vehicles.

The sub judge decisions were based on the Supplies and Services (Licensing of Public Service Motor Vehicles) Order, 1972 ("Order 18/72"), made under Defence regulation 55(2)

of the Defence Regulations. It was common ground that in Order 18/72 there was not to be found any express provision enabling the revocation of a licence issued by virtue of that order.

Held, that though no express or implied provision about revocation is to be found in Order 18/72 the licences which were issued to the applicants could be revoked provided such a course was permissible under the relevant general principles of administrative law; that since the ground on which the licences were revoked was treated as establishing a reason of public interest militating in favour of the revocation of the licences in question; that since this reason of public interest is not one unconnected with any conduct on the part of the applicants but that it is related to the use by them of the motor vehicles in respect of which such licences were issued; that since fraudulent conduct of the person concerned may be a ground for the revocation of an administrative act; that since no revocation of such an act is possible if a person who was not involved in the fraudulent conduct has acquired bona fide, by virtue of that act, certain rights; and since an administrative decision revoking an earlier administrative act which was induced by fraudulent conduct must be duly reasoned so as to sufficiently establish the existence of the conduct which is relied on as a ground for revocation it follows that it has to be examined whether or not in each one of these cases the licence which was issued to the applicant concerned could be validly revoked on the basis of the principles of administrative law; that since the Court does not have before it as yet all the necessary material for the purpose of an examination as aforesaid, and as no arguments have been duly advanced in this connection, the hearing of these cases has to proceed further in the light of this interim judgment.

Order accordingly.

Cases referred to:

- A. & S. Antoniadis & Co. v. Republic* (1965) 3 C.L.R. 673 at p. 682;
- Michaelides v. Attorney-General of the Republic* (1978) 3 C.L.R. 285 at p. 300;
- Curzon Tobacco Co. Ltd. v. Republic* (1979) 3 C.L.R. 151 at p. 157;
- Yiangou v. Republic* (1976) 3 C.L.R. 101 at p. 105;
- Republic v. Saranti* (1979) 3 C.L.R. 139 at p. 143;

(Licensing of Public Service Motor Vehicles) Order 1972 (No. 18, Third Supplement, Part I, to the Official Gazette of the Republic dated 28th January 1972, to be referred to hereinafter as "Order 18/72"). It is common ground that in Order 18/72 there is not to be found any express provision enabling the revocation of a licence issued by virtue of that Order, but counsel for the respondents has argued that the right to revoke such a licence is to be derived by necessary implication from the provisions of Order 18/72. 5

The main common reason that was put forward for revoking the licences which had been issued to the applicants was, in each case, that though the motor vehicle in question had been licensed for use as a taxi, that is as a public service motor vehicle, it was, in fact, being used by the applicant concerned as a private motor vehicle. 10 15

One of the issues that was raised on behalf of the applicants was that Order 18/72 was invalidly made because Defence Regulation 55(2), under which such Order was made, was not in force at the material time since the Defence Regulations, including the aforesaid regulation 55(2), are to be found in the First Schedule to the Supplies and Services (Transitional Powers) (Cyprus) Order 1946, which, allegedly, ceased to be operative in Cyprus before Order 18/72 was made. After, however, it was held in the case of *Cyprus Cement Company Limited v. The Republic*, (1983) 3 C.L.R. 709, and affirmed on appeal in the case of *Vassiliko Cement Works Ltd. v. The Republic*, (1983) 3 C.L.R. 719, that the Defence Regulations have continued to be in force, it cannot be found, in the present instance, that Order 18/72 was invalidly made under Defence Regulation 55(2) as contended by counsel for the applicants. 20 25 30

As has been already pointed earlier on in this judgment in Order 18/72 there does not exist any express provision permitting the revocation of a public service licence; nor can, in my opinion, be held that the power of revocation of such a licence is to be derived by implication from any one of the provisions of Order 18/72. 35

From our case-law it appears that the revocation of a particular administrative act may be expressly regulated in such a manner by specific legislative provision as to exclude the application of general principles of administrative law govern- 40

ing revocation of administrative acts which would otherwise have been applicable (see, for example, *A. & S. Antoniadis & Co. v. The Republic*, (1965) 3 C.L.R. 673, 682, *Michaelides v. The Attorney-General of the Republic*, (1978) 3 C.L.R. 285, 300 and *Curzon Tobacco Co. Ltd. v. The Republic*, (1979) 3 C.L.R. 151, 157); or that a relevant express legislative provision may be so framed that the aforesaid general principles of administrative law are applicable, too, in conjunction with such legislative provision (see, for example, *Yiangou v. The Republic* (1976) 3 C.L.R. 101, 105 and *The Republic v. Saranti* (1979) 3 C.L.R. 139, 143); or if there does not exist at all in the statute concerned any express legislative provision enabling the revocation of an administrative act made under it then the relevant general principles of administrative law are applicable (see, for example, *Louca v. The Permits Authority*, (1981) 3 C.L.R. 190, 194).

Though no express or implied provision about revocation is to be found in Order 18/72 there can be no doubt, in my opinion, that the licences which were issued to the applicants could be revoked provided such a course was permissible under the relevant general principles of administrative law, which have been expounded in case-law of our Supreme Court already referred to in this judgment, and, also, in cases such as *Puschali v. The Republic*, (1966) 3 C.L.R. 593, 609, and *Georghion (No. 2) v. The Republic*, (1968) 3 C.L.R. 411, 419).

In the sub judice decisions it is stated that the licences concerned were revoked for reasons of public interest; and, indeed, public interest is a recognized ground on the basis of which, in a proper case, an administrative act may be revoked (see, for example, the *Saranti* case, supra).

As has already been stated in this judgment the main common ground on which the licences relating to the motor vehicles of the applicants were revoked was that such vehicles were being used as private motor vehicles instead of as public service motor vehicles, namely taxis; and it seems that the said ground was treated as establishing a reason of public interest militating in favour of the revocation of the licences in question.

It appears, therefore, on the basis of the material at present before me, that the reason of public interest which was invoked in support of the revocation of the licences which had been

issued to the applicants is not one unconnected with any conduct on the part of the applicants but that it is related to the use by them of the motor vehicles in respect of which such licences were issued.

In the *Paschali* case, *supra* (at p. 609), it was indicated that fraudulent conduct of the person concerned may be a ground for the revocation of an administrative act; and, indeed, it appears to be well established that an administrative act may be revoked, even after the lapse of a long time, if it has been brought about by fraudulent conduct of a person who claims a benefit under it (see, for example, in this respect, the Decisions of the Council of State in Greece in cases 1423/1964, 2104/1965, 2751/1967, 2321/1968, 2202/1971 and 2410/1971).

Of course, the principle which permits the revocation of an administrative act which has been induced by fraudulent conduct is subject to certain limitations, such as the rule that no revocation of such an act is possible if a person who was not involved in the fraudulent conduct has acquired bona fide, by virtue of that act, certain rights (see, for example, the aforesaid Decision of the Council of State in Greece in case 2321/1968) and, also, the rule that an administrative decision revoking an earlier administrative act which was induced by fraudulent conduct must be duly reasoned so as to sufficiently establish the existence of the conduct which is relied on as a ground for revocation (see, for example, the aforesaid Decisions of the Council of State in Greece in cases 2202/1971 and 2410/1971).

In the light of the foregoing it follows that it has to be examined whether or not in each one of these cases the licence which was issued to the applicant concerned could be validly revoked on the basis of the principles of administrative law which have already been referred to in this judgment, as well as of any other relevant principle of administrative law.

Since I do not have before me as yet all the necessary material for the purpose of an examination as aforesaid, and as no arguments have been duly advanced in this connection, the hearing of the cases has to proceed further in the light of this interim judgment, either jointly or separately, as may be directed in due course.

Order accordingly.