

1985 December 13

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION.

ΕΛΕΦΘΗΡΙΟΣ ΚΟΡΑΚΙΔΕΣ,

Applicant,

v.

VINE PRODUCTS COMMISSION AND ANOTHER,

Respondents.

(Case No. 186/84).

Administrative Law—Administrative act—Reasoning—Doubtful whether reasoning can be supplemented by reference to general policy criteria of the administration—Due inquiry—Its absence leaves a gap that can never be supplemented by reference to such criteria as aforesaid.

5

The Regulation and Control of Vine Products Laws (Laws 52/65, 33/66, 77/70, 59/73) s. 5(f).

Power to control and regulate the plantation of vines is conferred by s. 5(f) of Law 52/65 as amended on a statutory body, the Board for Vine Products. In accordance with a circularised policy decision of the respondents the creation of new vineyards in traditional vine-growing areas was permitted provided it was intended to replace existing vine plantations uprooted for the purpose of replantation.

10

15

Applicant is the owner of 25 donums of land in a vine growing area that he uprooted for the purpose of replantation. Contrary to the advice he received from the Authorities he did not submit his application for replantation by 30.11.79 but did so years later on 26.11.83.

20

His application was refused. The refusal was communicated to the applicant in a printed form, evidently designed

for multiple purposes, for the reason that the Board had approved, in the meantime, new conditions and criteria. It was not stated why the application did not comply with such criteria. There is no record that an inquiry was carried out. Counsel for the respondents sought to justify the decision by reference to a policy decision embodied in a circular dated 30.6.83.

Held, annulling the sub judice decision:

(1) It is doubtful whether the reasoning of a particular decision can be supplemented by reference to general policy criteria of the Administration.

(2) The gap left by the absence of an inquiry into the application can, under no circumstances, be filled by reference to general policy criteria.

(3) In any event the policy decision as emanates from the circular of 30.6.83 was confined to vineyards to be uprooted in the future.

Sub judice decision annulled.

No order as to costs.

20 **Cases referred to:**

Vassiliou v. The Republic (1982) 3 C.L.R. 220;

Petrides v. The Republic (1983) 3 C.L.R. 216;

Kampouris v. The Republic (1983) 3 C.L.R. 1165.

Recourse.

25 Recourse against the decision of the respondents to refuse applicant's application for a permit to re-plant his vineyard.

L. Papaphilippou, for the applicant.

A. P. Anastassiades, for the respondents.

30

Cur. adv. vult.

PIKIS J. read the following judgment. Vines, their plantation and cultivation, as well as the disposal and use of

their products, are matters of concern to the public because of the importance of grapes and their by-products on the economy of Cyprus. Regulation by law and programming of the plantation of vineyards is a reflection of this interest and aims to promote the policy best conducive to the production of appropriate varieties of grapes with a view to the improvement of manufactured by-products.

Power to regulate and control the plantation and cultivation of vines is conferred on a statutory body, the Board for Vine Products, in accordance with the provisions of s. 5(f) of the Regulation and Control of Vine Products Law¹. It appears, from what may be gathered from the material before the Court, the respondents exercised their regulatory powers respecting plantation and cultivation of vines, by policy decisions laying down pertinent criteria for guidance in the exercise of their discretion. This is not an objectionable practice provided the criteria are not inflexible and do not have the effect of ousting or alienating the discretion of the Administration to act according to the intrinsic circumstances of a particular case².

In accordance with a policy decision of the respondents taken in 1978 and circularised³, the creation of new vineyards in traditional vine-growing areas was permitted provided it was intended to replace existing vine plantations uprooted for the purpose of replantation. Applicant is the owner of about 25 donums of land at Tsadha, a vine-growing area, that he uprooted for the purpose of paving the ground for the replantation of the area with vines; a fact duly verified by the Authorities. At his request the respondents furnished the applicants on 9.11.79 with an application form for a permit to replant the area with vines, advising him to submit the application by 30.11.79. He did not submit his application, as advised; he did so years later, on 26.11.83. The delay he attributed to difficulties in securing appropriate machinery for the removal of stones from his field—an excuse criticised by the respondents as slender and unconvincing.

¹ Law 52/65. See, also, amending Laws 33/66, 77/70 and 59/73.

² *Vassiliou v. Republic* (1982) 3 C.L.R. 220.

³ See Circular dated 30th June, 1983.

The application was refused. The refusal was communicated to the applicant in a printed form, a form evidently designed for multiple purposes, for the reason that the Board had approved, in the meantime, new conditions and criteria for the plantation of vineyards. Why the application conflicted with those conditions or failed to meet the new criteria, is nowhere stated or explained. Nor is there any other record of the decision of the respondents or the inquiry made into his application. Counsel for the respondents justified the decision by reference to the policy of the respondents set out in a circular of 30.6.83, and invited the Court to regard the reasoning of the sub judice decision as duly supplemented by the content of this circular.

To begin, I am in doubt whether it is ever possible to supplement the reasoning of a particular decision by reference to general policy criteria of the Administration. What the caselaw establishes¹ is that the reasoning in a particular case may be extracted or supplemented from the file of the case recording details of the inquiry made and the decision taken. Independently of this reservation, the gap left by the absence of a specific inquiry into the application can, under no circumstances, be filled by reference to general policy considerations. The Administration is dutybound to carry out in every case an inquiry with a view to eliciting the relevant facts as a prerequisite for the application of the law to the particular circumstances of the case. There is nothing to suggest that respondents did carry out any such inquiry; on the contrary, one can presume, from the absence of any record, that respondents never specifically addressed themselves to applicant's request for permission to replant his yards with vines. Further, I cannot agree that the policy decision embodied in the circular of respondents of 1983 made inevitable the dismissal of the application. As I read this circular, paragraph 2 in particular, it suggests that the application of the decision contained therein was confined to vineyards to be uprooted in the future. It does not purport to regulate permission for the plantation of vines in lands formerly

¹ See, Vassiliou v. Republic (1982) 3 C.L.R. 220; Petrides v. Republic (1983) 3 C.L.R. 216; Kampouris v. Republic (1983) 3 C.L.R. 1165.

planted with vines and uprooted for the purpose of making possible their replantation with new ones.

In the light of the above, the sub judice decision must necessarily be annulled for lack of a due inquiry and absence of reasoning. This being my conclusion I consider it unnecessary to examine and, far less, express a concluded opinion on the contention of applicant that the regulation by law of the plantation of vines offends the provisions of Article 23 of the Constitution safeguarding property rights. In the first place, no question as such of unconstitutionality of the provisions of the Control of Vine Products Law was raised. Further, as presently advised, I incline to the view that the regulation of the plantation of vineyards by law is an aspect of country planning in the interest of which limitations to property rights may be introduced, pursuant to paragraph 3 of Article 23.

In the result, the sub judice decision is annulled. Let there be no order as to costs.

Sub judice decision annulled.
No order as to costs.