

1986 May 30

[TRIANTAFYLIDIS, P., MALACHTOS, LORIS,
STYLIANIDES AND KOURRIS, JJ.]

MANOLIS CHRISTOFI AND OTHERS,

Appellants-Applicants.

v.

NINA IACOVIDOU,

Respondent.

(Civil Appeals Nos. 7063, 7065, 7069).

Eviction Order—Writ of possession—Civil Procedure Rules, 0.43A—Function of the Court in granting leave to issue a writ of possession—Character of—Judicial, not ministerial—Therefore, the relevant order is reviewable for lack of jurisdiction by certiorari and prohibition.

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Civil Procedure—The Civil Procedure Rules, 0.59, r. 1—Costs, award of—A Judicial, not a ministerial act.

Prerogative Orders—Constitution, Article 155.4—Power of the Supreme Court thereunder—Does not extend to matters falling within the ambit of Article 146—Judicial act, definition of—Ministerial act—Distinction between a judicial and a ministerial act—Classification depends on nature of act.

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Prerogative Orders—Prohibition—Lack of jurisdiction apparent on the face of the record—In such a case prohibition lies as a matter of right, irrespective of the conduct of the parties, such as acquiescence or delay in applying for the order—Prohibition lies not merely to prevent the making of an order, but also, should it arrive after the making of such order, its enforcement—Rent Control Court had no such jurisdiction—Sections 4(1) and 32 of Law 23/83, and 0.35, rr. 22-26, 0.40, r. 5, and 0.43A of the Civil Procedure Rules—Interpretation Law, Cap. 1, s. 10(2), has

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no bearing in these cases—Orders for Certiorari and Prohibition granted.

5 *The Rent Control Law 23/83—Rent Control Court—Jurisdiction of—Ss. 4(1) and 32 of said Law—Said Court does not have jurisdiction to enforce judgments or orders of other Courts.*

The Civil Procedure Rules—0.1, r. 1, 0.35 rr. 22-26, 0.40, r. 5, 0.43A, 0.48 and 0.59, r. 1.

10 *Words and Phrases: “Pending Judicial Proceedings” in s. 32(1) of The Rent Control Law 23/83—“Pending appeal” in s. 32(2) of the same law—“Court” or “Judge” in 0.43A of the Civil Procedure Rules.*

15 *Prerogative Orders—Certiorari—Except when application is made on behalf of the Attorney-General, it does not lie as a matter of course—Yet, when application is made by a party grieved, it should be granted ex debito justitiae.*

20 *Rent Control—Eviction orders made by the Court set up under s. 4(1) of The Rent Control (Business Premises) 17/61—Appeals filed by tenants eventually dismissed—When the Rent Control Law 23/83 came into operation, the hearing of the appeals had been concluded, but the reserved judgments had not been delivered—Such appeals were not “pending” in the sense of s. 32(2) of Law 23/83—After the dismissal of said appeals the Rent Control Court for*
25 *Limassol-Paphos granted leave upon ex parte application under 0.43A of the Civil Procedure Rules to issue writs—Rent Control Court had no such jurisdiction.*

30 *The respondent is the owner of shops situated at Aneartisias Street, in Limassol. The appellants were separate tenants of the said shops. The tenancies became statutory under the provisions of The Rent Control (Business Premises) Law 17/61.*

35 *In three separate actions in 1975 the Court, established under s. 4(1) of the said law, issued judgments ordering the appellants to vacate the premises and deliver up possession to the respondent.*

The appellants appealed against the said judgments.

Stay of execution was made operative until determination of the appeals.

The hearing of the appeals was concluded before the coming into operation of Law 23/83. The judgment was delivered on 20.11.84. The appeals were dismissed. Endorsed copies of the orders of ejectment were duly served on the appellants. 5

On 12.1.85 upon ex parte application by the respondent based on Order 43A of the Civil Procedure Rules the Rent Control Court of Limassol-Paphos, established under s. 4(1) of Law 23/83 granted leave with costs in favour of the Landlord to enforce the judgments by a writ of possession. 10

Pursuant to such leave writs of possession were issued. Their execution was suspended from 15.1.85 until 31.3.85 by reason of the provisions of the Temporary Suspension of Execution of Certain Orders for Ejectment Law 6/85. 15

After the expiration of the said period steps were taken by the appellants and on 25.4.85 the parties were before the Legal Committee of the House of Representatives. A document was signed there and then, whereby the appellants undertook to vacate the premises by 31.8.85. 20

Two days before the 31.8.85 the appellants applied to this Court for leave to apply for an order of certiorari, quashing the decision/order/ruling of the Rent Control Court dated 12.1.85 and the said writs of possession and for an order of prohibition prohibiting such Court and/or the appropriate bailiff from executing the said writs of possession. Leave was granted* and the relevant applications for such orders were filed. A Judge of this Court dismissed the applications** on the following grounds, namely that the order of the Rent Control Court dated 12.1.85 was a ministerial and not a judicial act, that such Court was the competent Court to take cognizance of the applications under Order 43A and that, even if the act was of a judicial character, amenable to review, he would be dis- 25 30 35

* See Iacovidou v. Christofi (1985) 1 C.L.R. 533.
** See In re Manoli Christofi (1985) 1 C.L.R. 692.

inclined to entertain the application for prohibition associated with the application for certiorari to quash the order impugned in view of the conduct of the appellants that disentitled them to the relief sought.

5 Hence the present appeals.

Held, allowing the appeal and granting the Orders for Certiorari and Prohibition: (1) Certiorari exists to correct error of law where revealed on the face of an order or decision, or irregularity, or absence of, or excess of jurisdiction where shown. An order of prohibition is an order directed to an inferior Court which forbids that Court to continue proceedings therein in excess of jurisdiction or in contravention of the Laws of the land. The power of this Court to issue prerogative orders derives from Article 155.4 of the Constitution, but extends only to such matters which are not within the jurisdiction of Article 146. Judicial proceedings and acts of public authorities, which are closely related to judicial proceedings, are not within the ambit of Article 146. A ministerial act is amenable to the jurisdiction of Article 146.

(2) The distinction between a judicial and a ministerial act is essential. The classification of an act depends on the nature of the decision itself, though the status of the issuing body is an indicator of the powers exercised. A judicial act is one issued by a Judge or Court and which involves exercise of discretion or judgment. It is an act by a Court touching the rights of parties or property brought before it. An administrative or ministerial act may have some of the characteristics of a judicial act. Though it may require exercise of discretion and due inquiry, it does not become a judicial act. When the decision is that of a Court, then, unless the Judge is acting in a purely ministerial capacity, it is clearly under a duty to act judicially and the act is a judicial act.

(3) The Order of the Rent Control Court was made upon ex parte application under Order 43A of the Civil Procedure Rules. An applicant is not entitled as a matter of course to leave. He must file an affidavit as to facts. The Court has power to direct that the other party be

granted opportunity to attend and oppose the application (0.43A, r. 1 and 0.48). The Court must be satisfied on affidavit that there is sufficient ground for giving leave and, if so satisfied, it has to exercise its discretion. This is a judicial function and not a ministerial one. The act is judicial. Furthermore in the Order of 12.1.85 the Rent Control Court awarded costs in favour of the landlord. The costs of and incident to any proceedings are in the discretion of the Court or Judge (0.59, r. 1 of the Civil Procedure Rules). The award of costs is plainly a judicial act.

(4) The jurisdiction of the inferior Courts in this Country is derived from and must be traced in the statute establishing it. The jurisdiction of the Rent Control Court established by Law 23/83 is delineated by s. 4(1) of the said law; relevant to jurisdiction is also s. 32.

The present cases do not fall within the ambit of s. 4(1) because they do not refer to disputes arising out of the application of "this Law". They were not pending cases on the coming into operation of this Law. The appeals were not even pending appeals in the sense of s. 32(2) because such section "cannot be interpreted so widely as to affect rights of parties in appeals in which judgment had been reserved before its enactment" (*Municipality of Limassol v. Avraam* (1985) 1 C.L.R. 518). Cases completed before the enactment of Law 23/83 fall outside the ambit of the jurisdiction of the Rent Control Law.

Writs of execution on judgments or orders of the Supreme Court in appeals are issued out of the Court appealed from and the same applies where an appeal is dismissed (0.35, rr. 22-26; see, also 0.40, r. 5). The Rent Control Court is neither the Court nor the Judge referred to in 0.43A, as "Judge" should be a Judge or a Court having jurisdiction or power under the Law for the time being in force (0.1, r. 2). Section 10(2) of Cap. 1 has no bearing in the present proceedings.

(5) In the present cases the fact of the lack of jurisdiction of the Rent Control Court is apparent on the face of the record. When such defect is not patent, but apparent, no question of discretion arises, because the applicant is entitled, as a matter of right, to the order sought for. It is the duty of this Court to keep inferior Courts within their jurisdiction. This is a matter of public order and when the defect is apparent on the face of the record the order of prohibition ought to be treated as *ex debito iustitiae*, irrespective of the conduct of the parties, such as acquiescence or delay in applying for prohibition. An application for prohibition "is never too late so long as there is something left for which to operate upon" (Per R.S. Right in *Re London Scottish Permanent Building Society* [1983] 61 L.J.Q.B. 112, 113). An order of prohibition is not merely to prevent the making of an order should it arrive in time, but also to prevent the execution of an order should it arrive after it had been made.

(6) *Certiorari*, except when applied for on behalf of the Attorney-General, is not an order of course; yet where the application is by a party grieved, it ought to be treated as *ex debito iustitiae* (*Regina v. Justices of Surrey* [1870] L.R.Q.B. 466 cited with approval).

Appeals allowed. Orders for Certiorari and Prohibition granted. No order as to costs.

Cases referred to:

R. v. Northumberland Compensation Appeal Tribunal, ex parte Shaw [1952] 1 K.B. 338;

R. v. Electricity Commissioners [1924] 1 K.B. 204;

Ramadan v. Electricity Authority of Cyprus and Another, 1 R.S.C.C. 49;

Vassiliou and Another v. The Police Disciplinary Committees (1979) 1 C.L.R. 46;

Economides v. Military Disciplinary Board (1979) 1 C.L.R. 177;

- Christofi and Others v. Iacovidou (1986)
- In Re Droushiotis* (1981) 1 C.L.R. 708;
- Frangos v. Medical Disciplinary Board and Others* (1983)
1 C.L.R. 256;
- Kyriakides v. Republic*, 1 R.S.C.C. 66;
- Xenophontos v. Republic*, 2 R.S.C.C. 89; 5
- Hetherington v. Security Export Co.* [1924] A.C. 988;
- Painter v. Liverpool Oil Gas Light Company*, 111
E.R. 478;
- R. v. Lewes Justices* [1971] 2 All E.R. 1126;
- R. v. Brentford Justices, ex-parte Catlin* [1975] 2 All 10
E.R. 201;
- Wilson v. Colchester Justice* [1985] 2 All E.R. 97;
- Police v. Athienitis* (1983) 2 C.L.R. 194;
- Thompson v. Shiel* [1840] 3 Ir. Eq. R. 135;
- Municipality of Limassol v. Avraam* (1985) 1 C.L.R. 518; 15
- Papaconstantinou v. Spartacos* (1985) 1 C.L.R. 202;
- Buggin v. Bennett*, 4 Burr. 2037;
- Worthington v. Jeffries* [1875] L.R. 10 C.P. 379;
- Ellis v. Fleming and Another* [1876] C.P.D. 237;
- Farquharson v. Morgan* [1894] 1 Q.B. 442; 20
- In Re Birch*, 119 E.R. 617;
- Jones v. Owen* [1848] 18 L.J. Q.B. 8; 12 J.P. 747;
- Acworth v. Dowsett* [1848] Cox M. & H. 118; 12 J.P.
Jo. 324;
- Re London Scottish Permanent Building Society* [1893] 25
61 L.J. Q.B. 112;
- Estate and Trust Agencies (1927) Ltd. v. Singapore Im-
provement Trust* [1937] 3 All E.R. 324;

1 C.L.R. **Christofi and Others v. Iacovidou**

R. v. North, Ex-Parte Oakey [1927] 1 K.B. 491;

Regina v. Justices of Surrey [1870] L.R. Q.B. 466;

R. v. Straford [1940] 2 K.B. 33;

5 *R. v. St. Edmundsbury and Ipswich Diocese (Chancellor) and
Another, ex-parte White and Another* [1947] 2 All
E.R. 170;

Lambrianides v. Michaelides, 23 C.L.R. 49;

Attorney-General of the Republic v. Christou, 1962
C.L.R. 129;

10 *Kyriakides v. Hilimindri* (1963) 2 C.L.R. 171;

Ex-Parte Efrossini Michaelidou (1969) 1 C.L.R. 118;

Yerolemides v. Municipality of Nicosia (1985) 1 C.L.R.
104;

In Re Psaras (1985) 1 C.L.R. 561;

15 *In Re Psaras* (1985) 1 C.L.R. 604.

Appeals.

20 Appeals by applicants against the judgment of a Judge of
the Supreme Court of Cyprus (Pikis, J.) dated the 14th No-
vember, 1985 (Applications Nos. 58/85, 59/85 and 60/85)
whereby their applications for orders of certiorari and
prohibition were dismissed.

P. Pavlou, for the appellants. .

Ph. Pitsillides, for the respondent.

Cur. adv. vult.

25 **TRIANAFYLLIDES P.:** The judgment of the Court will be
delivered by Mr. Justice Stylianides.

30 **STYLIANIDES J.:** These appeals are directed against a
judgment of a Judge of this Court whereby he dismissed
the applications of the appellants for orders of certiorari and
prohibition.

The respondent is the owner of shops situated at Ancartissias Street, in Limassol. The appellants were separate tenants of the said shops. Their tenancy became statutory under the provisions of the Rent Control (Business Premises) Law, 1961 (Law No. 17/61).

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In three separate actions in 1975 the Court, established under s. 4(1) of Law No. 17/61, issued judgments ordering the appellants to vacate the premises and deliver up possession to the owner (respondent in these proceedings). Execution was suspended by the same Court for a period of 10 months, 1 year, respectively. The tenants appealed to the Supreme Court against the said judgments. Stay of execution was, following the appeals, made operative until the determination of the appeals.

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The hearing of the appeals was concluded before the coming into operation of the Rent Control Law, 1983 (Law No. 23/83) and judgment was reserved. The Rent Control Law, 1983 (Law No. 23/83) came into force on 22nd April, 1983.

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In view of the provisions of s. 32(2) of that Law, the Supreme Court directed that the parties to the appeals should be notified that if any party wished to be heard, before the delivery of the said judgment, in relation to the effect, if any, regarding the outcome of those appeals, of the provisions of s. 32(2) of Law No. 23/83, such party should apply, in writing, to the Registry of this Court accordingly. No party had, however, taken such a step and the Supreme Court proceeded and delivered judgment on 20.11.84. The appeals were dismissed. Notwithstanding the dismissal of the appeals, the appellants continued to occupy the premises. Endorsed copy of the orders of ejectment were duly served on the appellants.

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On 9.1.85 the "three cases" were transferred before the Rent Control Court of Limassol-Paphos, established under s. 4(1) of the Rent Control Law, 1983 (Law No. 23/83) and were renumbered 7/85, 8/85 and 9/85 by the registry of that Court. Ex-parte application was made in each case on 12.1.85 under 0.43A of the Civil Procedure Rules for

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leave to enforce the judgment by a writ of possession. On 12.1.85 the said Court granted leave with costs.

5 Pursuant to such leave writs of possession were issued. Execution of the aforesaid writs of possession was suspended from 15.1.85 until 31.3.85 as they fell within the ambit of the Temporary Suspension of Execution of Certain Orders for Ejectment Law, 1985 (Law No. 6 of 1985).

10 In April, after the lapse of the said period, out-of-Court steps were taken by the appellants and on 25.4.85 the parties were before the Legal Committee of the House of Representatives. A document in the form of letter was signed there and then. The appellants thereby undertook to vacate the premises and deliver up possession until 31.8.85.

15 Two days before 31st August all three appellants moved this Court for leave to apply for certiorari to bring up and quash the decision/order/ruling issued by the Rent Control Court on 12.1.85 and the writ of possession and order of prohibition prohibiting the Rent Control Court of Limassol-Paphos and/or the appropriate bailiff from executing the said writ of possession. Leave was granted by a Judge
20 of this Court exercising jurisdiction under s. 11 of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33/64).

25 Pursuant to such leave identical Applications No. 58/85, 59/85 and 60/85 for issue of the aforesaid prerogative orders of certiorari and prohibition, cast in identical terms, were filed by the appellants. The applications were taken together. The first instance Judge in a considered judgment dismissed the applications. He held that the order of the
30 Rent Control Court was a ministerial and not a judicial act; that the Rent Control Court was the competent Court to take cognizance of the applications under 0.43A for leave to issue execution in the present cases. He added further that even if the act was of a judicial character, amenable to review, he would be disinclined to entertain the
35 application for prohibition associated with an application for quashing the order impugned by certiorari in view of the conduct of the appellants that disentitled them to

the relief sought. Hence these appeals which were taken together by this Court.

The questions that pose for determination are:-

1. Is the act of the Rent Control Court, whereby leave was given for the issue of the writ of possession under 0.43A, r. 1, of the Civil Procedure Rules, a judicial or a ministerial one? 5
2. Had in these cases the Rent Control Court jurisdiction to issue the complained of act, subject-matter of these applications? 10
3. Is the order of prohibition, if the lack of jurisdiction by the inferior Court is apparent on the face of the proceedings, a discretionary remedy? And, lastly,
4. Has the conduct of the appellants disentitled them of the remedies of the prerogative orders sought? 15

The primary purpose of judicial review by means of prerogative orders is to ensure that the inferior tribunals operate within the limits of their jurisdiction and exercise their powers within the limits set by law.

Certiorari exists to correct error of law where revealed on the face of an order or decision, or irregularity, or absence of, or excess of, jurisdiction where shown. The control is exercised by removing an order or decision, and then by quashing it—(Per Lord Justice Morris in *R. v. Northumberland Compensation Appeal Tribunal, ex-parte Shaw*, [1952] 1 K.B. 338, at p. 357). 20 25

An order of prohibition is an order directed to an inferior Court which forbids that Court to continue proceedings therein in excess of jurisdiction or in contravention of the Laws of the land. Atkin, L. J., in *R. v. Electricity Commissioners*, [1924] 1 K.B.D. 204, said:- 30

“Both writs of prohibition and certiorari are of great antiquity, forming part of the process by which the King’s Courts restrained courts of inferior jurisdiction from exceeding their powers. Prohibition re- 35

5 strains the tribunal from proceeding further in excess of jurisdiction: certiorari requires the record or the order of the court to be sent up to the King's Bench Division, to have its legality inquired into, and, if necessary, to have the order quashed. It is to be noted that both writs deal with questions of excessive jurisdiction, and doubtless in their origin dealt almost exclusively with the jurisdiction of what is described in ordinary parlance as a court of justice. But the operation of the writs has extended to control the proceedings of bodies which do not claim to be, and would not be recognized as, courts of justice. Wherever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs".

20 The power of this Court to issue prerogative orders is set out in paragraph 4 of Article 155 of the Constitution. By Article 146 a separate system of administration of justice was introduced. This introduced the jurisdiction of continental courts, the older system of which functions in France. A ministerial act is justiciable and amenable to this jurisdiction. A judicial act of an inferior Court cannot be made the subject of a recourse under Article 146. It is reviewable on appeal before a superior court and/or subject to the appropriate prerogative orders. The power of this Court to issue prerogative orders extends only to such matters which are not within the jurisdiction of Article 146. The two jurisdictions are mutually exclusive—(*Ramadan v. Electricity Authority of Cyprus and Another*, 1 R.S.C.C. 49; *Vassiliou and Another v. The Police Disciplinary Committees*, (1979) 1 C.L.R. 46; *Economides v. Military Disciplinary Board*, (1979) 1 C.L.R. 177; *In Re Droushiotis*, (1981) 1 C.L.R. 708; *Frangos v. Medical Disciplinary Board and Others*, (1983) 1 C.L.R. 256).

40 Judicial proceedings and acts of public authorities, which are closely related to judicial proceedings, such as the exercise of discretion of the Attorney-General to institute criminal proceedings, are not within the jurisdiction

created by Article 146—(*Phedias Kyriakides v. Republic*, 1 R.S.C.C. 66; *Xenophontos v. Republic*, 2 R.S.C.C. 89).

The distinction between a judicial and a ministerial act is essential. The classification of an act is not based on the character of the organ issuing it but on the nature of the decision itself though the status of the issuing body is an indicator of the nature of the powers exercised.

A judicial act is one issued by a Judge or Court and which involves exercise of discretion or judgment. It is an act by a Court touching the rights of parties or property brought before it. An administrative or ministerial act may have some of the characteristics of a judicial act. Though it may require exercise of discretion and due inquiry, it does not become a judicial act.

When the decision is that of a Court, then, unless the Judge is acting in a purely ministerial capacity, it is clearly under a duty to act judicially.

In *Hetherington v. Security Export Co.*, [1924] A.C. 988. Lord Backmaster in delivering the opinion of the Privy Council said:-

“It is well established that, if the issue of a distress warrant involves a judicial act, it is subject to the procedure by which an excessive exercise of jurisdiction can be brought up and challenged. If, on the other hand, it is a mere ministerial act following on the exercise of powers possessed by other people, then the writ of certiorari is not the proper remedy to apply”.

The issue was whether certiorari would lie to bring into the Supreme Court of the Province a distress warrant signed by the Secretary—Treasurer for an amount so assessed and whether his act was a ministerial or a judicial one. Lord Backmaster, in delivering the opinion of the Board, held that such act was ministerial as the Provincial Secretary-Treasurer possessed only the power of saying whether the sum already assessed should be recovered by a warrant or by proceedings in the Courts and no more. The Privy Council

cited, however, with approval the following extract from the judgments of the Canadian Court:-

5 "In the present case the Court has thought that the Provincial Secretary-Treasurer was in fact entrusted by the statute with the duty of inquiring into the precedent facts. In the words of Duff J., (1923) S.C.R. 557, 565: 'The statute cannot contemplate the issue of the warrant without inquiry of the Secretary-Treasurer into the facts; an enquiry which, though not
10 judicial in the sense that his decision is binding, is judicial in the sense that it aims at ascertaining the facts with a view to a possible proceeding in the nature of an execution, the issue of which execution rests in his discretion.' Again Brodeur J., who agreed with Duff J., says: 'Before issuing this distress warrant
15 the Secretary-Treasurer had to satisfy himself that the appellant company had in its possession a certain quantity of liquor, that it had property rights in the liquor kept, that it was liable for the tax claimed, that there had been a demand for payment and default on the part of the debtor and that the law which he had as a minister of the Crown to carry out was within the competency of the Legislature.'

25 If their Lordships thought that the inferences contained in these extracts were well founded they would agree with the conclusions of law which follow therefrom".

30 Hundred and fifty years ago it was established that the issue by the magistrates of a warrant of execution for the recovery of rent due to an oil gas light company was a judicial act and not ministerial as the Justices could not have issued their warrant without having determined some point—(*Painter v. Liverpool Oil Gas Light Company*, 111 E.R. 478, at p. 483).

35 In *R. v. Lewes Justices*, [1971] 2 All E.R. 1126, it was held that the issue of a witness summons under s. 77 of the Magistrates' Court Act, 1952, is a judicial act and the Appeal Court did set aside such witness summons by means

of an order of certiorari to quash. Lord Parker, C.J., said at p. 1132:-

“For my part I am prepared to accept that this could be done by way of certiorari, and for this reason, that before the justice of the peace has jurisdiction to issue a witness summons he must be satisfied, as the witness summons itself states, that in the case of documents the proposed witness is likely to be able to produce documents likely to be material evidence. On an ex-parte application he so finds and issues a witness summons”.

A magistrate in England has the power to issue either a summons to accused or a warrant. The issue of such warrant is a judicial act. In *R. v. Brentford Justices, ex-parte Catlin*, [1975] 2 All E.R. 201, 207, Lord Widgery, C.J., said:-

“It must however be remembered that before a summons or warrant is issued the information must be laid before a magistrate and he must go through the judicial exercise of deciding whether a summons or warrant ought to be issued or not”.

A Magistrate Court when issuing a warrant committing a defaulter of payment of fine to prison is performing a judicial act and not only a ministerial or administrative one—(*Wilson v. Colchester Justices*, [1985] 2 All E.R. 97).

The act of a Judge under Sections 37 and 43 of the Criminal Procedure Law, Cap. 155, directing or refusing the filing of a charge is a judicial and not an administrative act—(*Police v. Athienitis*, (1983) 2 C.L.R. 194, at 231).

The order of the Court granting leave for the issue of a warrant of possession and the order for payment of costs were made in an ex-parte application under 0.43A of the Civil Procedure Rules. It reads:-

“1. - (1) Where a judgment or order of a Court for the recovery or delivery of possession of any immovable property is sought to be enforced by a writ of possession, the writ may be issued by leave of

the Court or a Judge obtained on an ex-parte application by the plaintiff supported by an affidavit. The affidavit shall be in Form 39C and the writ in Form 39D.

5 (2) Such leave shall not be given unless it is shown that all persons in actual possession of the whole or any part of the property have received such notice of the proceedings as may be considered sufficient to enable them to apply to the Court for relief or otherwise".

10 An applicant is not entitled as a matter of course to leave. He must file an affidavit as to facts, as prescribed in Form 39C. The Court may not determine the ex-parte application but direct that the other party be granted opportunity to attend the Court and oppose the application. This

15 flows from the wording both of 0.43A, r. 1, and of 0.48, which governs applications under the Civil Procedure Rules in general.

20 The Court before granting leave for the issue of a warrant of possession must be satisfied on affidavit that there is sufficient ground for issuing it and it must in every case be a question for the Court to decide whether in fact sufficient grounds do exist. Then he has to exercise his discretion judicially. This is a judicial function and not a

25 ministerial one. As earlier said, when the decision is that of a Court, then unless the Judge is acting in a purely ministerial capacity, it is clearly under a duty to act judicially and his act is a judicial one.

30 It is noteworthy that an application for the issue of a writ of seizure and sale of movables is presented to the Registrar and is issued without prior exercise of a discretion by the Judge by way of leave or otherwise.

35 There are a number of cases in which leave of a Judge or Court is necessary under the Rules of Court. Examples are the lapse of 6 years since the judgment or date of the order sought to be executed or where any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to

execution may apply to the Court or a Judge for leave to issue execution accordingly - (0.40, r. 8).

In the order of 12.1.85 the Rent Control Court awarded costs in favour of the landlord.

The costs of and incident to any proceeding are in the discretion of the Court or Judge - (0.59, r. 1). 5

The exercise of the discretion to award costs in this case is plainly a judicial act.

In view of the aforesaid, the function exercised by the Rent Control Court is a judicial one and the act is not ministerial but judicial. 10

By "jurisdiction" it is meant the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute under which the Court is constituted. Jurisdiction must be acquired before judgment is given— (*Thompson v. Shiel*, [1840] 3 Ir. Eq. R. 135). 15

The jurisdiction of the inferior Courts in this country is derived from and must be traced in the statute establishing them. 20

By the Rent Control Law, 1983 (Law No. 23/83), s. 4(1), a new Court was set up. The jurisdiction of this Court is delineated by the provisions of s. 4(1). It reads as follows:-

«4. - (1) Καθιδρύονται Δικαστήρια Ελέγχου Ενοικιάσεων ο αριθμός των οποίων δεν θα υπερβαίνει τα τρία επί σκοπώ επιλύσεως, μεθ' όλης της λογικής ταχύτητας, των εις αυτά αναφερομένων διαφορών των αναφερομένων επί οιοδήποτε θέματος εγειρομένου κατά την εφαρμογήν του παρόντος Νόμου συμπεριλαμβανομένου παντός παρεμπίπτοντος ή συμπληρωματικού θέματος». 25 30

("4 (1) There shall be established Rent Control Courts, the number of which shall not be more than three, for the purpose of determining with all reasonable speed the disputes referred to them arising with regard to any matter raised in the application of this 35

Law including any incidental or supplementary matter”).

The material part of s. 32, which is also relevant to jurisdiction, reads:-

5 «32. - (1) Ἀπασαί αι εκκρεμούσαι κατά την ημερο-
 μηνίαν ενάρξεως της ισχύος του παρόντος Νόμου δι-
 καστικάί υποθέσεις μεταφέρονται και καταχωρούνται
 παρά τη Γραμματεία του δυνάμει του παρόντος Νό-
 10 μου εγκαθιδρυομένου Δικαστηρίου, το δε Δικαστήριον
 επιλαμβάνεται τούτων και εκδίδει τοιούτο διάταγμα ή
 απόφασιν συμφώνως προς τας διατάξεις του παρόντος
 Νόμου.

15 (2) Οιαιδήποτε εφέσεις εκκρεμούσαι κατά την ημε-
 ρομηνίαν ενάρξεως της ισχύος του παρόντος Νόμου
 θα συνεχισθούν και θα εκδικασθούν υπό του Ανωτάτου
 Δικαστηρίου λαμβανομένων υπ' όψιν των διατάξεων
 του παρόντος Νόμου».

20 (“32 (1) All pending on the coming into operation
 of this Law judicial proceedings shall be transferred
 and registered with the Registry of the Court estab-
 lished by virtue of this Law, and such Court shall
 determine such cases and shall issue an order or judg-
 ment according to the provisions of this Law.

25 (2) Any appeals pending on the coming into opera-
 tion of this Law shall be continued and determined by
 the Supreme Court, taking into consideration the pro-
 visions of this Law”).

30 The cases of the parties do not refer to disputes arising
 out of the application of “this Law” and plainly the pro-
 cedure for execution by the issue of warrant of possession
 does not fall within the ambit of s. 4(1). They were not
 pending cases on the coming into operation of the Law.
 The Supreme Court in its appellate jurisdiction in Civil
 Appeal No. 5949—*Municipality of Limassol v. Michalis*
 35 *Avraam**—in which judgment had been reserved before the
 enactment of Law No. 23/83, as in the present cases, and
 delivered on the same day—20th November, 1984—said:-

* Reported in (1985) 1 C.L.R. 518.

“We eventually reached the view that s. 32(2) of Law 23/83 cannot be interpreted so widely as to affect rights of parties in appeals in which judgment had been reserved before its enactment”.

The appeals were not even pending appeals in the sense of s. 32(2) of the new legislation. Cases completed before the enactment of Law No. 23/83 fall outside the ambit of the jurisdiction of the Rent Control Court. Cases in which the judgment or order of possession or ejection was issued before the coming into operation of Law No. 23/83 are not judicial proceedings which are pending in the sense of s. 32(1).—*Papaconstantinou v. Spartacos*, (1985) 1 C.L.R. 202). 5
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Writs of execution on judgments or orders of the Supreme Court in appeals are issued out of the Court appealed from upon the filing of an office copy of such judgment or order. The same applies where an appeal is dismissed—(0.35, rr. 22-26; see, also, 0.40, r. 5). 15

The Rent Control Court established under Law No. 23/83 is neither the Court nor the Judge referred to in 0.43A of the Civil Procedure Rules as “Judge” should be a Judge or a Court having jurisdiction or power under the Law for the time being in force—(0.1, r.2). The Court, which issued the judgments for which execution was sought, is the one set up under s.4(1) of Law No. 17/61. Section 10(2) of the Interpretation Law, which has been judicially considered in a number of cases cited in the judgment of *Spartacos* case, has no bearing in the present proceedings. 20
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No jurisdiction vests in the Rent Control Court to authorised execution of orders made by any other Court. The jurisdiction invoked by the Rent Control Court is the creature of a statute, not conferring jurisdiction in general terms, but confined to a particular defined subject-matter. The first question which a Court has to ask, when it is invited to exercise a limited statutory jurisdiction, is whether the case falls within the defined ambit of the statute; and it is his duty to decline to make an order as Judge, if and so far as the matter is outside the jurisdiction. 30
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In the present case the limits of the jurisdiction appeared on the face of the statute, and the fact of the lack of jurisdiction appears on the face of the proceedings for which the relevant prerogative order is sought by the appellants.

Prohibition is discretionary when the defect is not patent. It is well settled, however, that where the defect of jurisdiction is apparent on the face of the record, no question of any discretion arises, because the applicant is entitled, as a matter of right, to the order sought for.

In *Buggin v. Bennet*, 4 Burr. 2037, Lord Mansfield said:-

“If it appears upon the face of the proceedings that the Court below have no jurisdiction, a prohibition may be issued at any time, either before or after sentence; because all is a nullity; it is coram non iudice. But where it does not appear upon the face of the proceedings, if the defendant will lie by and suffer that Court to go on under an apparent jurisdiction, as upon a contract made at sea, it would be unreasonable that this party who, when defendant below, has thus lain by and concealed from the Court below a collateral matter, should come hither after sentence against him there and suggest that collateral matter as a cause of prohibition, and obtain a prohibition upon it after all this acquiescence in the jurisdiction of the Court below”.

In *Worthington v. Jeffries*, [1875] L.R. 10 C.P. 379, at 384, Brett, J., said:-

“If the superior Court is clear in fact and in law that the inferior Court is acting in excess of its jurisdiction, or without jurisdiction, it cannot rightly refuse to enforce public order in the administration of the law by refusing to issue a writ of prohibition”.

This was confirmed in *Ellis v. Fleming and Another*, [1876] C.P.D. 237.

In *Farquharson v. Morgan*, [1894] 1 Q.B. 442, at p. 556, Lord Halsbury said:-

“It has been long settled that, where an objection 5
to the jurisdiction of an inferior Court appears on
the face of the proceedings, it is immaterial by what
means and by whom the Court is informed of such
objection. The Court must protect the prerogative of
the Crown and the due course of the administration 10
of justice by prohibiting the inferior Court from
proceeding in matters as to which it is apparent that
it has no jurisdiction”.

Lopes, L. J., at p. 559, had this to say:-

“The result of the authorities appears to me to be 15
this: that the granting of a prohibition is not an
absolute right in every case where an inferior tri-
bunal exceeds its jurisdiction, and that, where the
absence or excess of jurisdiction is not apparent on
the face of the proceedings, it is discretionary with 20
the Court to decide whether the party applying has
not by laches or misconduct lost his right to the
writ to which, under other circumstances, he would be
entitled. The reason why, notwithstanding such acqu-
iescence, a prohibition is granted where the want of 25
jurisdiction is apparent on the face of the proceedings,
is explained by Lord Denman in *Bodenham v. Ricketts*
to be for the sake of the public, lest ‘the case might
become a precedent if allowed to stand without im-
peachment’, and, I will add for myself, because it is 30
a want of jurisdiction of which the Court is informed
by the proceedings before it, and which the Judge
should have observed, and of which he himself should
have taken notice”.

And Davey, L. J., at p. 560, said:-

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“It has always been the policy of our law as a question of public order to keep inferior Courts strictly within their proper sphere of jurisdiction”.

5 It is the duty of the Supreme Court to keep inferior
Courts within the proper sphere of their jurisdiction. This
is a matter of public order and when the defect of juris-
diction is apparent of the face of the record, the con-
duct of the parties, such as acquiescence or delay in ap-
10 plying for prohibition, the order for prohibition ought to
be treated as *ex debito justitiae*. The inferior Courts have
to be kept within their competence and jurisdiction. Judi-
cial acts performed without jurisdiction are a nullity and
should not be allowed to survive or to be enforced.—(See,
also, *In Re Birch*, 119 E.R. 617).

15 In *Jones v. Owens*, [1848] 18 L.J. Q.B. 8; 12 J.P. 747;
the Judge ordered that a warrant should issue to turn
the defendant out of possession at the expiration of 7 days.
A rule nisi for prohibition was obtained on the 5th June
but not served until the 7th and the warrant was executed
20 on the 6th June. Patteson, J., said that the County Court
acted without jurisdiction and the prohibition must go as
the rule was obtained before the warrant of possession was
actually obtained, and possession was restituted, and thus
restitution was ordered after execution where the rule had
25 been applied for before possession given. Prohibition has
been granted after judgment and execution—(*Acworth v.*
Dowsett, [1848] Cox M. & H. 118; 12 J. P. Jo. 324).

30 “An application for prohibition is never too late so
long as there is something left for which to operate upon,”
per R. S. Right in *Re London Scottish Permanent Building*
Society, [1893] 61 L.J. Q.B. 112, 113; *Estate & Trust*
Agencies, (1927) Ltd. v. Singapore Improvement Trust,
[1937] 3 All E.R. 324).

In *R. v. North, ex-parte Oakey*, [1927] 1 K.B. 491.

Scrutton, L.J., after expressly approving the dictum of Right in the aforesaid case as that of a judge who had great familiarity with the subject, remarked at p. 503:-

“When the sentence is unexecuted a statement of intention to execute it may be followed by a writ of prohibition, however long a time may have elapsed since the original sentence was pronounced.”

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Certiorari, except when applied for on behalf of the Attorney-General, is not an order of course.

In *Regina v. Justices of Surrey*, [1870] L.R. Q.B. 466, it was held that though a certiorari is not a writ of course, yet where the application is by the party grieved, it ought to be treated as *ex debito justitiae*—(See, also, *R. v. Straford*, [1940] 2 K.B. 33).

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An order of prohibition is not merely to prevent the making of an order should it arrive in time but is also to prevent the enforcement of it should it arrive after it has been made—(*R. v. St. Edmundsbury and Ipswich Diocese (Chancellor) and Another, ex-parte White and Another*, [1947] 2 All E.R. 170, at 178).

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In Cyprus the principles governing prerogative orders were adopted and applied.

Bourke, C.J., in *Lambrianides v. Michaelides*, 23 C.L.R. 49, at p. 63, said:-

“There remains the point referred to under (b) above, namely, that prohibition should not have been allowed to issue as a matter of the exercise of the discretion because of the delay in moving for the remedy. I think the answer may be given shortly. The excess of jurisdiction appears clearly upon the face of the record. Where the defect of jurisdiction

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is apparent on the face of the proceedings and the application is made by a party, the order goes as of right and is not a matter of discretion. Prohibition in such case lies at any time, even after judgment or sentence in spite of laches or acquiescence of the applicant, and can go to prohibit steps being taken in execution to enforce anything that had been done in transgression of the limits of jurisdiction".

After the establishment of the Republic and having regard to the constitutional provisions of Article 155.4, the same principles are applicable subject to the provisions of Article 146 to which reference was earlier made—(*Attorney-General of the Republic v. Christou*, 1962 C.L.R. 129; *Kyriakides v. Hilimindri*, (1963) 2 C.L.R. 171; *Ex-parte Efrossini Michaelidou*, (1969) 1 C.L.R. 118; *Vassiliou v. Police Disciplinary Committees*, (supra); *In Re Droushiotis*, (1981) 1 C.L.R. 708; *Frangos v. Medical Disciplinary Board*, (1983) 1 C.L.R. 256; *Yerolemidis v. Municipality of Nicosia*, (1985) 1 C.L.R. 104; *In Re Psaras*, (1985) 1 C.L.R. 561; *In Re Psaras*, Civil Application No. 86/85, not yet reported).*

In Re Droushiotis (supra) Triantafyllides, P., said that the Court possessed competence to grant an order prohibiting the execution of a consent judgment involved in those proceedings if such consent judgment was given without jurisdiction.

In conclusion, the order of 12.1.85 and the leave granted are a judicial act; the Rent Control Court of Limassol acted without jurisdiction; the lack of jurisdiction is apparent on the face of the proceedings; the issue of an order of prohibition to keep the Rent Control Court within the limits of its jurisdiction is a question of public order and this Court has to issue the order.

For all the aforesaid reasons these appeals succeed. Orders for certiorari and prohibition are granted.

* Reported in (1985) 1 C.L.R. 604.

In all the circumstances of the case we make no order as to costs.

Appeals allowed. Orders for certiorari and prohibition granted.

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