1988 July 27

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.

KAZAN CARTON INDUSTRY LIMITED,

*Applicants,*

v.

THE CYPRUS PORTS AUTHORITY,

*Respondents.*

*(Case No.531/87).*

*Administrative practice—If it rests on an erroneous view of the law, it can and, indeed, it should be revised.*

*Revocation of administrative act—The power to revoke, even an illegal act, is not absolute—The kind of reasoning required—To what matters the Administration must specifically address itself—Significance of a long standing administrative practice.*

The applicants are importers of units of paper rolls. The respondents changed their practice to treat paper big rolls on the same footing as paper rolls in separate units (Class 3(1) (i)) and began to claim charges under Class 3(1) (xi) of the Cyprus Ports Authority (Charged Payable) Regulations, 1976. At the same time, the respondents decided, and this is the second act challenged by this recourse, to levy additional charges in respect of goods imported by the applicants earlier during 1987.

Held:

(1) The existence of an administrative practice, inconsonant with the law, raises no obstacles to its revision. Like every practice founded on an erroneous view of the law, it can, indeed it should, be changed to conform to its provisions. The respodents are in a unique position to comprehend the realities of importations. The Regulations make the levying of charges dependent, inter alia, on the form in which goods are imported. That being the

case the first sub judice act was reasonably open to the respondents.

(2) The second sub judice act constitutes a revocation of previous acts. The power to revoke is not absolute even in the case of illegal administrative action. A revocatory act upsets rights regarded as settled. The Administration must duly reason its decision. It must address itself to the reasons warranting the revocation, its effect on the rights of those affected.

In this case the second sub judice act is not duly reasoned. Indeed, there is no reference to the effluxion of time between the revocatory decision and those decisions that it recalled, its effect on the rights of the applicants and more significantly the implications of the retroactive revision of a practice of long standing.

*Recourse dismissed as far as the first sub judice act is concerned. Second sub judice act anulled.*
*No order as to costs.*

*Cases referred to:*

*Ayios Andronikos Co. v. The Republic* (1984) 3 C.L.R. 1176;

*Moschovakis and Another v. C.B.C.* (1988) 3 C.L.R. 750.

## Recourse.

Recourse against the decision of the respodents to classify the charges payable for the importation of units of paper rolls under class 3(1) (xi) of the Cyprus Ports Authority (Charges Payable) Regulations, 1976 and that the same should apply to importations made during the first four months of 1987.

*P. Mouaimis*, for the applicants.

*N. Papaefstathiou*, for the respodents.

*Cur. adv. vult.*

PIKIS J. read the following judgment. The applicants, importers of paper rolls, challenge two acts of the respodents embodied

in the same decision, affecting the charges payable for the importation of units of paper rolls. The goods were imported in rolls in containers wherein they were stored.

In the decision of the Ports Authority the products should be classified for purposes of charges (Cyprus Ports Authority (Charges Payable ) Regulations 1976) under class 3(1) (xi) applicable to the importation of products not separately identifiable. And the same should apply to importations of paper rolls made by the applicants during the first four months of 1987. Accordingly, they levied additional charges to those paid by the applicants for their importations earlier in the year. This is the second act of the respodents questioned in these proceedings amounting, in the submission of counsel for the respodents, to a revocatory decision of earlier administrative acts founded on a misconception of the law, or its misapplication.

The applicants dispute the correctness of the two decisions on a variety of grounds:

Respecting the first decision it was argued that it is arbitrary, unreasoned, resting on an erroneus interpretation and application of the relevant provisions of the Regulations. It is their case that the importation of paper in big rolls had no effect on their classification for purposes of charges; the products retained their basic character, that is, paper rolls in seperate units and, as such, ought to have been classified under class 3(1) (i). The understanding of the respondents of the effect of the relevant Regulations, particularly the implications of importing goods in big units, constituted a departure from previous practice, a fact cited as an additional reason for the annulment of the act for reasons of bad faith. The respondents acknowledged the existence of a contrary practice; but felt free to depart from it for the reason that it was founded on a misconception of the law resulting in the erroneous classification of paper rolls imported in big units. The bundling of the goods in big rolls changed their character for purposes of charges, a view consistent, according to respondents, with international practice in the application of similar provisions affecting

port charges.

The existence of an administrative practice, inconsonant with the law, raises no obstacles to its revision. Like every practice founded on an erroneous view of the law, it can, indeed it should, be changed to conform to its provisions. The following passage from the judgment of Triantafyllides, P. , as he then was, in *Ayios Andronikos Co. v. Republic,* (1984) 3 C.L.R. 1176, 1181 is an accurate reflection of the relevant principle of administrative law:

> "In any event, however, as the administrative practice was not consonant with the proper application of s.18(1) (c) of Law 9/85, it cannot be treated as creating a legal situation enabling the applicants to succeed in their present recourse (see, inter alia, *P. M. Tseriotis Ltd. v. Republic* (1970) 3 C.L.R. 135, 143; and *Makrides v. The Republic* (1979) 3 C.L.R. 584, 601. See, also, *Stassinopoulos - Law of Administrative Acts,* 1951 ed. , p. 19; *Kyriacopoulos - Greek Administrative Law,* Tome A, 4th ed. , pp. 78 & 79)."

The respondents are the Authority entrusted by law to appreciate the implications of the importation of goods in different forms and then apply the Regulations according to the spirit and letter of their enactment. They are, in may respects, in a unique position to comprehend the realities of importations. There can be no doubt that the products of the applicants were imported in big units transported in containers. It appears to me that the Regulations make the levying of charges dependent, inter alia, on the form in which goods are imported. That being the case it was reasonably open to the respondents to treat the products of the applicants as liable to charges under class 3(1) (xi). Consequently, the first leg of the recourse must be dismissed.

Determination of the second aspect of the recourse necessitates examination of the nature of the decision to revise duties imposed in the past, the amenity to recall such completed administrative action and, lastly the reasoning and justification for the decision itself.

It is acknowledged that the Administration has power to revoke earlier administrative action. It is a power primarily intended to enable the Administration to rectify illegal action and remedy errors occuring in the course of the administrative process; an essential power for the sustenance of legality and the efficacy of the administrative process. But the power to revoke is not absolute even in the case of illegal administrative action. The caselaw on the subject and the principles relevant to the revocatory powers of the Administration,were reviewed in the recent decision of *Aristos Moscovakis and Another v. C.B.C.* (1988) 3 C.L.R. 750. Moreover, the Administration need not specifically label its action as revocatory if an intention to recall earlier action can be implied with certainty. (See, *Conclusions from Greek Caselaw 1929-59*, p. 199).

The decision here under consideration was clearly intended to revoke a series of earlier ones resting on a misapplication of the law. We are, therefore, confronted with a revocatory decision. A revocatory decision must, like every other executory decision, be reasoned. It can be argued that the reasoning of a revocatory decision must be as explicit as it could be. For by a process of a revocatory decision the rights of those affected regarded as settled are, in essence, upset. The Administration must address itself specifically to the reasons warranting revocation of an earlier decision, the justification for the measure and the effect on the rights of those affected. The need for such reasoning is all the more necessary in a case like the present where the decisions sought to be revoked were based on a practice of the Administration of long standing; a practice no doubt upon which citizens planned their action.

In this case there is nothing by way of reasoning explaining the necessity for the measure or its justification. There is no reference to the effluxion of time between the revocatory decision and those decisions that it recalled, its effect on the rights of the applicants and more significantly the implications of the retroactive revision of a practice of long standing.

For the above reasons, I feel dutybound to annul the revocatory decision in question, and I so order, pursuant to the provisions of para. 4(b) of article 146 of the Constitution.

The first part of the recourse is dismissed, and the relevant decision affirmed, pursuant to the provisions of para.4 (a) of article 146 of the Constitution.

There shall be no order as to costs.

*Sub judice decision partly annulled.*
*No order as to costs.*