

1988 March 23

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GRINA DEVELOPMENT CO. LIMITED,

v.

Applicants,

THE REPUBLIC OF CYPRUS, THROUGH
THE DISTRICT OFFICER, LARNACA,

Respondent.

(Case No. 1065/85).

5 *Streets and Buildings—Division of land into building sites—Land outside the area of the water supply of Pyrga—The Water (Domestic Purposes) Village Supplies Law, Cap. 349, sections 4(1) and (3) and The Water (Domestic Purposes) Villages Supplies (Pyrga) Regulations, 1973, as amended, regs. 4(1)(2)(3) and 5 A(4)(1)—District Officer rejecting application for division on ground that the land in question is outside the area of the village of Pyrga water supply, without first referring the matter to the Water Commission—Such conduct transgresses aforesaid provision.*

10 *Streets and Buildings—Division of land into building sites—The Streets and Buildings Regulation Law, Cap. 96, as amended by section 2 of Law 80/82, section 9(4).*

Reasoning of an administrative act—Defective reasoning—Does not lead to annulment, if the decision can be upheld on the basis of a lawful reasoning therefor.

15 The applicants' application for division of their land at Pyrga village into 40 building sites was rejected by the respondent on the following grounds, namely,

(a) The property of your clients is situated outside the fixed boundaries of the water supply of the village.

(b) The provisions of Law 80/82 are not satisfied for the following reasons: -

(i) It is a scattered type of development which cannot be considered as a uniform development and

(ii) It does not contribute in the unification or improvement of existing housing settlements and does not amount to a proper tourist or other uniform development.

Hence this recourse. It must be noted that the District Officer did not refer the matter to the Village Water Commission, whilst, acting in accordance with Law 80/82 referred the matter to the Director of the Town and Planning Department, in accordance with whose advice he acted in adopting reasoning (b) hereinbefore referred to.

Held, dismissing the recourse: (1) In the light of the provisions of section 4(1) and (3) of the Water (Domestic Purposes) Village Supplies Law, (Cap. 349) and of Regulations 4(1) (2) and (3) and 5A (4) (1) of the Water (Domestic Purposes) Village Supplies (Pyrga) Regulations, 1973 the competent authority for granting a permit for the supply of drinking water is the Water Commission of the Village, notwithstanding the fact that the consent of the District Officer is necessary before the permit is issued.

In this case the respondent did not refer the matter to the Commission, but acted on his own. Moreover, he failed to give due weight to the opinion of the Director of the Water Development Department.

(2) Section 2 of Law 80/82 amended section 9 of Cap. 96, by adding a new sub - section as sub - section 4*. The Regulations thereunder were published on 1.7.83. Acting in accordance with these provisions the respondent referred the matter to the Director of the Town and Planning Department. He then acted in accordance with the latter's advice.

In the light of the material placed before the Court reason (b) of the sub judge decision could be reasonably adopted by the respondent .

(3) It is open to an administrative Court to uphold the validity of an administrative decision on the basis of a lawful reasoning therefor even though such reasoning is different from the reasoning given by the administration for reaching such decision and even if the reasoning given by the administration is legally defective.

* Quoted at pp. 620-621 post.

(4) In this case the sub judice decision can be supported by reason (b) hereinbefore referred to.

Recourse dismissed.

No order as to costs

5 *Cases referred to:*

Papadopoulos v. The Republic (1968) 3 C.L.R. 660;

Anthoupolis Ltd. v. The Republic (1980) 3 C.L.R. 296;

Constantinou v. The Republic (1985) 3 C.L.R. 1142;

Spyrou v. The Republic (1978) 3 C.L.R. 478;

10 *Decisions of the Greek Council of State* Nos. 666/1936, 1606/1950, and 1850/1950.

Recourse.

Recourse against the refusal of the respondent to issue to applicants a division permit of their property into building sites.

15 *A. Hadjioannou with St. Nathanael*, for the applicants.

Cl. Theodoulou (Mrs.), Senior Counsel of the Republic, for the respondent . . .

Cur. adv. vult.

20 SAVVIDES J. read the following judgment. The applicants by the present recourse seek a declaration that the decision of the respondent District Officer of Larnaca communicated to them by letter dated 17th October, 1985 by which their application for the division of their property (Plot 105/2 Sheet/Plan XL/49 at Pyrga village) into building sites was dismissed, is null and void as it
25 of power and/or misconception of fact.

The applicants are a registered company dealing, amongst others, with land development. They are the owners of land under plot 105/2 Sheet Plan XL/49 at the village of Pyrga which is outside the water supply area of Pyrga village.

On 30.6.1982 applicants submitted an application for the division of their aforesaid property into 64 building sites. On 21.12.1982 they informed the respondent that they were prepared to grant their borehole which existed on the said plot, to the Village Water Commission of Pyrga, provided that the latter would supply them with water for their intended building sites. On 10.2.1983 the District Officer of Larnaca informed them that he was unable to proceed any further with the examination of their application on the ground of lack of sufficient and suitable water supply. He further informed them that their offer for the grant of their borehole to the Village Commission in exchange of supply of water was not accepted. On 3.3.1983 the applicants requested the approval of their application for division of their property on the basis that there was sufficient water supply from their borehole for the needs of the proposed building sites. On 27.8.1983, the respondent replied that irrespective of the contents of their letter of 3.3.1983, the application of applicants for division of their land into building sites could not be considered, as the intended building sites were outside the water supply area of the village of Pyrga.

The applicants reverted again on the matter by letter dated 13th October, 1983, persisting on their contention that there was sufficient water supply by means of their borehole and requesting a final reply. The respondent by letter dated 31st October, 1983, rejected, their application for division of their land into building sites for the following reasons:

(a) The property was outside any defined water supply area.

(b) The proposed development was not related with any other development on the area, or with any community. In fact, it amounted to a kind of scattered development with the object of

profit which could not be considered as a uniform development.

(c) Such development could not benefit the adjoining village of Pyrga because it did not amount to a natural expansion of the village and its situation was such that it could not organically, become
5 part of the village, even within the next few years.

(d) Approval of such a development would, in any event, create a bad precedent of which other applicants, in similar cases, would try to get advantage, a fact which would contribute to the creation of scattered developments in various parts of the island.

10 As a result the applicants on 13.1.1984 filed Recourse No. 20/84, challenging the above decision, which was withdrawn on 26.6.84 after the respondent undertook to re-examine a new application by the applicants which would raise new facts for consideration.

15 On 8.3.1985, the applicants submitted a new application for the division of their property into 40 building sites instead of 64. Attached to the said application there was a study of the applicants' architect, as to the division of the land into 40 building
20 sites in which the opinion was expressed that there was suitable and sufficient water supply for the needs of the proposed building sites from the borehole of the applicants. The District Officer of Larnaca by letter dated 17th October, 1985 communicated to the applicants concerned his decision rejecting their application, for the following reasons (as stated therein):

25 "(a) The property of your clients is situated outside the fixed boundaries of the water supply of the village.

(b) The provisions of Law 80/82 are not satisfied for the following reasons:-

30 (i) It is a scattered type of development which cannot be considered as a uniform development and

(ii) It does not contribute in the unification or improvement of existing housing settlements and does not amount to a proper tourist or other uniform development."

The applicants, feeling aggrieved by the refusal to grant to them the division permit sought, filed the present recourse challenging such decision.

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The grounds of law on which the recourse is based are that the sub judice decision is contrary to the provisions of the Streets and Buildings (Regulation) Law, Cap. 96; that the respondent failed to carry out a due or any inquiry; the sub judice decision lacks due reasoning; it was based on a misconception of fact; that the respondents relied on the provisions of Law 80/82, whereas the original application of the applicants was submitted before the enactment of such law.

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In expounding on his grounds of law, counsel for the applicants submitted that there was no problem with the water supply of the building sites in question and that the respondent in refusing the application exercised his discretion in a wrong manner. According to the contents of the relevant files, counsel added, there was no objection on the part of the Water Development Department for the supply of water to the intended building sites from the water supply of Pyrga village.

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Furthermore, the respondent failed to carry out an inquiry whether the water of the borehole of the applicants was fit, as alleged by them, for the water supply of the said building sites. In dealing with the other reasons given by the respondent for refusing the application, counsel argued that this is a repetition of the same reasons given in the original refusal of the application.

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Furthermore, counsel argued, the respondent failed to consider and give due weight to the plans submitted by the applicants and the written opinion expressed by their architect and town planner and relied on the opinion of the Town Planning Department which did not carry out a proper inquiry before expressing such

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opinion. The suggested development, counsel submitted, is not contrary to the provisions of Law 80/82, and had the respondent considered the proposals submitted by the applicants, he would have reached a different decision. It was further suggested by
5 counsel for applicants that the refusal was instigated by irrelevant motives such as the expenditure which the Village Authorities would have incurred in asphaltting the road leading from the village to the said building sites disregarding altogether the benefit which have accrued to the village by such development.

10 As mentioned earlier, several reasons were given by the respondent for refusing the applicants' application. I shall deal first with the reason that the property of the applicants is situated outside the fixed boundaries of the Water Supply of the village.

15 Under section 4(1) of the Water (Domestic Purposes) Village Supplies Law, Cap. 349, it is provided that -

"In every village to which this Law is made to apply the Village Commission, with the mukhtar thereof as chairman, shall be constituted as a Village Water Commission for the purposes of this Law;

20 and under sub-section (3) of section 4, it is further provided that -

"The mukhtar as chairman shall duly carry out the decisions of the Village Water Commission."

25 The Water Commission of Pyrga village, exercising their powers under the Law issued Bye-Laws, modelled on the lines of the Water (Domestic Purposes) Village Supplies (Elea) Bye-Laws, 1950, which were adopted with certain changes as part of the bye-laws concerning the water supply of Pyrga. These are cited as the Water (Domestic Purposes) Village Supplies (Pyrga) Regulations, 1973 published in Supplement No. III of the official Gazette of 1973 at p. 409, under Notification 109/73. These Regulations were amended by Notification Nos 233/77, 124/84 and 11/
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85 published in Supplement No. III of the official Gazette of the respective years.

Regulation 4(1) provides as follows:-

"No water from the water supply shall be installed in any dwelling house or premises in the village without the written permission of the Water Commission first obtained." 5

Under sub-paragraph (2) it is provided as follows:-

"Such permission shall be subject to such terms and conditions as the Water Commission may think fit to impose."

Under sub-paragraph (3) it is further provided that 10

"No permission shall be granted by the Water Commission under this bye-law without the consent of the District Officer."

Reg. 5A (4) (1) which was introduced by Not 11/85 provides as follows:

"5A (4) (1) Αν οι ανάγκες του χωριού σε πόσιμο νερό το επιτρέπουν, η Επιτροπή Υδατοπρομήθειας μπορεί κατά την κρίση της και έπειτα από την έγκριση του Επάρχου να παραχωρεί το δικαίωμα προμήθειας πόσιμου νερού από την υδατοπρομήθεια του Χωριού για να χρησιμοποιηθεί έξω από την περιοχή Υδατοπρομήθειας ως πηγή Υδατοπρομήθειας για σκοπούς αξιοποίησης γης ή διαχωρισμού γης σε οικόπεδα ή για να μεταφερθεί σε ανεγειρόμενη οικοδομή". 15 20

And the English translation:-

("5A(4) (1) If the needs of the village in drinking water permit it, the Water Commission may at its discretion and after the approval of the District Officer grant the right of supply of drinking water from the Water supply of the village for use 25

outside the water supply area as a source of water supply for the purpose of development of land or division of land into building sites or to be conveyed to a building under construction").

5 It is clear from the above Regulation that the competent authority in granting a permit is the Water Commission of the Village, notwithstanding the fact that the consent of the District Officer is necessary before the permit is issued. In the present case though
10 the District Officer in considering applicants' application for the division of their land asked for the opinion of the Director of the Water Development Department on the matter, he never placed the application of the applicants before the appropriate authority which was the Water Commission of Pyrga village and he dealt with the matter in his personal capacity. I therefore find that the
15 District Officer in refusing applicants application on this ground has failed to act in accordance with the provisions of Regulation 5. Furthermore, as it appears from the relevant file which is before me the District Officer failed to give due weight to the opinion expressed by the Director of the Water Development Department which appears under Note 43 dated 12th September, 1985 in
20 Exhibit 1, and failed to submit such opinion to the Water Commission of Pyrga. It reads as follows:

25 " Σημείωμα (42) πιο πάνω. Η νέα αίτηση αφορά τον διαχωρισμό 40 οικοπέδων εκτός της ζώνης υδρεύσεως Πυργών.

30 Η κοινότητα Πυργών υδροδοτείται σήμερα ικανοποιητικά από τον Αγωγό Λευκωσίας και υπάρχει σχέδιο έτοιμο που να προβλέπεται να υλοποιηθή μέσα στο 1986 για ενίσχυση της υδατοπρομήθειας του Χωριού με πολύ δυναμική γεώτρηση στην περιοχή του Χωριού.

Εφ' όσον υπάρχουν περιθώρια για υδροδότηση των προτεινομένων οικοπέδων από την κοινοτική υδατοπρομήθεια εισηγούμαι όπως εφαρμοσθεί ο νέος περί Υδατοπρομήθειας Χωριών (Δι' Οικιακούς σκοπούς) Νόμος Κεφ.

349. Κανονισμοί δυνάμει του άρθρου 30(1). Άν ήθελε προωθηθεί η αίτηση να μου σταλεί ο φάκελλος μετά την έγκριση του τελικού διαχωρισμού για υποδείξεις των διασωληνώσεων."

In the light of the above note it appears that the inquiry carried out by the District Officer was not the proper one in the circumstances of the case. 5

Having dealt with the above, I shall next proceed to consider the other reasons given by the respondent for refusing applicants' application. Such reasons are based on the provisions of the Streets and Buildings Regulation (Amendment) Law, 1982 (Law 80/82) and in particular section 2 whereby section 9 of the Streets and Buildings Regulation Law, Cap. 96 was amended by the addition of a new sub-section as sub-section (4). Sub-section (4) (a) provides that no permit shall be granted for the layout or division of land into separate sites which is outside a water supply area unless: - 10 15

" ... η αρμοδία αρχή, αφού λάβη την συμβουλήν του Διευθυντού του Τμήματος Πολεοδομίας και Οικήσεως (εν τοις εφεξής εν τω παρόντι εδαφίω καλουμένου 'ρηθεις Διευθυντής'), ικανοποιήται πλήρως ότι τούτο θα συμβάλη εις την ενοποίησην ή την βελτίωσιν υφισταμένων οικισμών ή την συμπλήρωσιν του οδικού δικτύου εντός των υπό ανάπτυξιν περιοχών ή εις ενδεδειγμένην τουριστικήν ή άλλην ενιαίαν ανάπτυξιν. 20 25

Διά του σκοπούς εκπληρώσεως της ως προείρηται προϋποθέσεως το Υπουργικόν Συμβούλιον διά διατάγματος αυτού, δημοσιευομένου εις την επίσημον Εφημερίδα της Δημοκρατίας, θα εκδίδη τας αναγκαίας ή επιθυμητάς οδηγίας και θα αναθεωρή ταύτας οσάκις αι περιστάσεις μεταβάλλωνται: 30

Νοείται ότι η αρμοδία αρχή, μετά σύμφωνον γνώμην του ρηθέντος Διευθυντού, δύναται εάν ούτω επιβάλλη το

δημόσιον συμφέρον, τη εγκρίσει του Υπουργικού Συμβουλίου, να μην απαιτή εφαρμογήν της ανωτέρω προϋποθέσεως, ως ήθελε κρίνει σκόπιμον, λογιζομένων των ειδικών περιστάσεων εκάστης περιπτώσεως."

5 And the English translation:

10 (".... the appropriate authority after receiving the advice of the Director of the Department of Town Planning and Housing (hereinafter in this sub-section referred to as 'the said Director'), is completely satisfied that this will contribute to the unification or the improvement of existing housing settlements or the completion of the road network within the areas under development or to an approved tourist or other uniform development.

15 For the purposes of fulfilling the aforesaid prerequisite the Council of Ministers by order published in the official Gazette of the Republic, shall issue the necessary or desirable directions and shall revise same whenever the circumstances change:

20 Provided that the appropriate authority, on the concurrent opinion of the said Director, may not, if this is necessary in the public interest, with the consent of the Council of Ministers, demand the fulfilment of the above prerequisite, as it may consider expedient, having regard to the special circumstances of each case.")

25 The Council of Ministers in the exercise of the powers vested in it by sub-section 4 issued an order dated 1st July, 1983 published in Supplement No. III Part I of the official Gazette of the Republic, dated the 8th July, 1983, embodying directions necessary for the fulfilment of the prerequisites of sub-section (4).
30 Such directions were as follows: -

(1)

(2) Ειδικά προκειμένου για ενιαία ανάπτυξη, επιπρόσθετα από τις πιο πάνω γενικές οδηγίες θα ισχύουν και οι ακόλουθες -

(α) ως ενιαία ανάπτυξη θεωρείται η οικιστική ενιαία ανάπτυξη, η τουριστική ενιαία ανάπτυξη και η ανάπτυξη 5
πολλαπλών ψυχαγωγικών διευκολύνσεων, εφόσο είναι υψηλής τεχνικής και αισθητικής στάθμης και δημιουργείται στην κατάλληλη τοποθεσία.

(β) η ενιαία ανάπτυξη θα πρέπει να συνοδεύεται από 10
σχέδιο γενικής διατάξεως, από αρχιτεκτονικά σχέδια και οτιδήποτε άλλο αναγκαίο για να αποδειχτεί η πρόθεση των αιτητών για εκτέλεση του έργου στο σύνολό του.

(γ) Ειδικότερα η ενιαία οικιστική ανάπτυξη θα πρέπει να συμβάλλει στην ενοποίηση και βελτίωση των υφιστάμενων οικιστικών είτε να δημιουργεί ανεξάρτητους και αυτοτελείς οικισμούς που να περιλαμβάνουν, εκτός από οικιστικές μονάδες, και άλλες κοινωφελείς χρήσεις, ανάλογα με την περίπτωση, όπως χώρους πρασίνου, γήπεδα αθλοπαιδιών και άλλες αθλητικές διευκολύνσεις, εκπαιδευτικά ιδρύματα, και να εξυπηρετεί κοινωφελή ή άλλο μη κερδοσκοπικό σκοπό". 15
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And the English translation: -

("(1)

(2) Especially, in the case of a uniform development, in addition to the above general directions the following will apply: 25

(a) As a uniform development is considered to be the housing uniform development, the tourist uniform development and the development of multi entertainment facilities, provided they are of a high technical and aesthetic level and is created in the suitable locality; 30

(b) the uniform development should be accompanied by a plan of general arrangement, by architectural plans and anything else required to prove the intention of the applicants to execute the work in its totality;

5 (c) more specifically the uniform housing development should either contribute to the unification and improvement of the existing housing settlements or create independent and self-contained settlements which will comprise, besides housing units, other
10 uses for the public interest, according to the case, such as spaces of green, athletic grounds and other athletic facilities, educational institutions, and serve the public or any other non profit making purpose.")

The District Officer in the present case acting in compliance with the provisions of sub-section (4), paragraph (a), submitted
15 applicants' application to the Director of the Town Planning and Housing Department for his observations. The Director, having considered the application, came to the conclusion that the application should not be granted for the reasons, inter alia, that the provisions of Law 80/82 were not complied with, in that (i) the
20 development was a scattered one and could not be considered as a uniform development and (ii) could not contribute to the unification or improvement of existing housing settlements nor did it amount to a proper tourist or other uniform development.

In the light of the material before me, as explained above, I
25 find that in the circumstances of the case it was reasonably open to the District Officer to reject applicants' application for these reasons.

The question, however, which remains to be considered is
30 whether once one of the reasons given by the respondent for refusing the application and in particular the first reason was found to be wrong, the decision can be upheld on the basis of other lawful reasoning.

According to Kyriacopoulos on Greek Administrative Law

vol. B at p. 337 wrong reasoning of a decision does not lead to its annulment if the decision can have other legal support. To the same effect are also the Decisions of the Greek Council of State 666/1936, 1606/1950 and 1850/1950. This principle has also been adopted in a number of cases of our Supreme Court. Useful reference may be made to: *Papadopoulos v. The Republic* (1968) 3 C.L.R. 660, 674; *Anthoupolis Ltd. v. The Republic* (1980) 3 C.L.R. 296, 302 - 303; *Constantinou v. The Republic* (1985) 3 C.L.R. 1142, 1148; *Spyrou v. The Republic* (1973) 3 C.L.R. 478 where it was held (at p. 484) that: -

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"It is, however, open to an administrative judge - and I am dealing with these cases in such a capacity - to uphold the validity of an administrative decision on the basis of a lawful reasoning therefor even though such reasoning is different from the reasoning given by the administration for reaching such decision and even if the reasoning given by the administration is legally defective (see, inter alia, the decisions of the Greek Council of State in Cases 48/1968, 132/1969, 2134/1969 and 2238/1970)".

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In the circumstances of the present case I have come to the conclusion that the decision of the respondent can have legal support as explained above and it can be upheld on the basis of lawful reasoning notwithstanding the fact that one of the reasons given was wrong.

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The recourse therefore fails and is hereby dismissed but in the circumstances I make no order for costs.

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*Recourse dismissed.
No order as to costs.*