

1981 August 10

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHARALAMBOS MARKITSIS,

*Applicant,*

v.

THE ATTORNEY-GENERAL OF THE  
REPUBLIC,

*Respondent.*

(Case No. 116/80).

*Administrative Law—Administrative decision—Misconception of—  
By means of the letter purporting to convey its contents which  
were different than contents of the letter—Therefore recourse  
directed against the decision, as embodied in the letter, success-  
ful.*

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This recourse was directed against a decision of the District  
Committee of Paphos for the Management of requisitioned  
Turkish Cypriot Properties taken at a meeting held on March  
10, 1980, which was contained in a letter of the District Officer  
Paphos dated March 17, 1980. The said letter purported to  
convey to applicant a decision of the above Committee revok-  
ing its earlier decision whereby certain vineyards, being requi-  
sitioned Turkish Cypriot properties, were ceded to him.

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It was contended by Counsel for the applicant and conceded  
by counsel for the respondent that the said letter was wrongly  
written to the applicant because the decision which it  
purported to convey was never taken by the appropriate organ.

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*Held*, that the decision of the Committee of the 10th March,  
1980, neither revoked nor did it in any way affect applicant's  
rights to the properties for the period they were ceded to him  
as it clearly related to the next cultivating period and not to

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the period covered by the first decision ; that, therefore, it is clear that the contents of the letter of the 17th March, 1980, which gave rise to the present proceedings, is due to a misconception of the decision of the meeting of the 10th March, 1980 ;  
5 accordingly this recourse must succeed.

*Sub judice decision annulled.*

### Recourse.

Recourse against the decision of the District Committee for the Management of Turkish Cypriot properties revoking an  
10 earlier decision of the said Committee whereby certain vineyards, being requisitioned Turkish Cypriot properties, were ceded to to him.

*A. Ladas*, for the applicant.

*R. Gavrielides*, Senior Counsel of the Republic, for the  
15 respondent.

*Cur. adv. vult.*

*L. LOIZOU, J.* gave the following judgment. By this recourse the applicant seeks a declaration that the administrative act and/or decision contained in a letter dated 17th March, 1980,  
20 addressed by the District Officer of Paphos to him purporting to convey a decision of the District Committee for the Management of Turkish Cypriot properties revoking an earlier decision of the said Committee whereby certain vineyards, being requisitioned Turkish Cypriot properties, were ceded  
25 to him, is null and void ab initio and of no legal effect.

The facts of the case in so far as they are relevant for the purposes of these proceedings are briefly these:

At one of the meetings held by the District Committee of Paphos for the Management of requisitioned Turkish Cypriot  
30 properties held between the 14th January and the 7th February, 1980 it was decided to cede to the applicant certain vineyards for him to cultivate and enjoy. The minutes of the meetings in question are *exhibit 4* before this Court and the relevant part reads as follows:

35 "2. Στόν Χαράλαμπο Μαρκίτση παραχωροῦνται τὰ τεμάχια 609/1 τοῦ 35/34 καὶ 134/1 τοῦ 35/26 ἐκτάσεως 15-0-0 ἀμπέλια ἀπὸ αὐτὰ πού ἀφαιρέθηκαν ἀπὸ τὴν Θόλεια Προβατᾶ καθὼς καὶ τὸ τεμάχιο 429 τοῦ 35/49 ἐκτάσεως 3-1-0 ἀμπέλια.

Ἐπίσης στὸν Χαρ. Μαρκίτση ἐνεκρίθη ἡ ἐνοικίαση ἀμπελιῶν ἐκτάσεως 22-0-0 σκαλῶν, γιὰ ἓνα χρόνο μὲ ἀνανέωση, ἀπὸ αὐτὰ πού διαχειρίζεται ἡ Διοίκηση ἀντὶ τοῦ ποσοῦ τῶν £10.- σὰν ἐνοίκιο”.

(“ 2. To Charalambos Markitis there are ceded plots 609/I of 35/34 and 134/I of 35/26 of an extent of 15.0.0 vineyards (out of those that were taken away from Thalia Provata) and plot 429 of 35/49 of an extent 3-1-0 vineyards. There was also approved the lease of vineyards of an extent of 22-0-0 to Char. Markitsis out of those that are being managed by the District Administration for the sum of £10 as rent”).

On the strength of this decision on the 13th February, 1980, an agreement in the form of a licence (*exhibit 6*) was entered into between the Central Committee for the Management of Turkish Cypriot properties for and on behalf of the Republic of Cyprus and the applicant. The term of the licence, as stated therein, was to expire on the 31st October, 1980, but would, in any case, automatically expire upon the termination of the requisition order relating to the properties in question; it was further provided that it could be terminated at any time by the licensor and that the licensee would not in such a case be entitled to any damages.

On the 7th March, 1980, the District Officer of Paphos in his capacity as Chairman of the District Committee for the Management of Turkish Cypriot properties at Paphos addressed a letter to the applicant in the following terms:

“Κύριε,

Ἐπιθυμῶ ν’ ἀναφερθῶ στὸ θέμα τῶν Τ/Κ ἀμπελιῶν πού κατεῖχε ἡ ἐκτοπισμένη Θάλεια Προβατᾶ στὸ χωριὸ Τέρρα καὶ τὰ ὁποῖα ἡ Ὑπεπιτροπὴ Ἀναθεωρήσεως καὶ Ἀναδιανομῆς τῶν κλήρων παραχώρησε σὲ σᾶς κατὰ τὴν νέα καλλιεργητική περίοδο 79/80 καὶ νὰ σᾶς πληροφορήσω ὅτι τὸ θέμα τῆς πιὸ πάνω παραχώρησης βρίσκεται ὑπὸ ἐπανεξέταση.

Ὡς ἐκ τούτου καλεῖσθε ὅπως μὴ προβεῖτε στὴν καλλιέργεια ἢ τὴν ἀξιοποίηση τῶν πιὸ πάνω ἀμπελιῶν μὲ ὅποιοδήποτε τρόπο μέχρι νεωτέρας εἰδοποιήσεως”.

(“ Sir

I wish to refer to the question of the Turkish Cypriot vine-

yards that were in the possession of the displaced Thalia Provata at Terra village and which were ceded to you by the sub-Committee for re-consideration and re-division of the lots during the new cultivation period 79/80 and to inform you  
 5 that the question of the above cession is under re-consideration.

In view of the above you are requested not to cultivate or develop in any way the above vineyards until further notice").

10 In fact at a meeting of the District Committee held on the 10th March, 1980, the minutes of which are *exhibit 5* the following decision was taken in relation to the subject properties:

"I. Ἀρόδες

α) Ἀναθέωρησε προηγούμενη ἀπόφαση τῆς γιὰ ἀφαίρεση τοῦ κλήρου τῆς Θάλειας Προβατᾶ στὶς Ἀρόδες ποὺ μετοίκησε  
 15 σὲ ἄλλη Ἐπαρχία καὶ ἀπεφάσισε ὅπως κατὰ τὴν νέα καλλιεργητικὴ περίοδο ὁ πρὸ πᾶνω κλῆρος τῆς παραχωρηθεῖ ἐκ νέου ἀφοῦ προηγουμένως ἐγκατασταθεῖ μόνιμα στὸ χωριό".

("I. Arodes

(a) It revoked its previous decision for taking away the lot of  
 20 Thalia Provata at Arodes who settled in another district and decided that during the re-w cultivation period the above lot be ceded to her afresh after she previously settles permanently at the village").

In consequence of this decision the District Officer on the  
 25 17th March, 1980, wrote another letter to the applicant purporting to convey the decision of the Committee to the effect that the original decision ceding to him the vineyards in question was no longer valid and informed him that he had no right to keep, cultivate or enjoy the said properties and adding that  
 30 any expenses already incurred by him in-relation to the said properties would be assessed by appropriate officers of the District Administration and would be refunded to him. There followed some telegrams of protest on behalf of the applicant and some other correspondence which are not, in my view,  
 35 necessary for the determination of the case as the crux of the matter is the true meaning and effect of the decision of the Committee taken on the 10th March, 1980, which is set out hereinabove.

The gist of the argument of learned counsel for the applicant in support of this case was that the letter *exhibit 1* was written under a misapprehension in that it did not in fact convey the decision of the appropriate organ i.e. the Committee, which did not relate to the cultivating period 1979/80 i.e. the period that the subject properties were ceded to the applicant, but to the period following that i.e. the cultivating period 1980/81. Learned counsel for the respondent felt constrained to concede that the letter *exhibit 1* was wrongly written to the applicant and that the decision which it purported to convey was never taken by the appropriate organ; and for this reason he did not consider it necessary to file any Opposition to the recourse.

I have considered this case in the light of the argument advanced and the documents which are before the Court and I am satisfied that the decision of the District Committee of Paphos for the Management of Turkish Cypriot Properties of the 10th March, 1981, neither revoked nor did it in any way affect applicant's rights to the properties for the period they were ceded to him as it clearly related to the next cultivating period and not to the period covered by the first decision and by the licence. If any confirmation of the intention of the District Committee of Paphos was required such confirmation has been provided by the District Officer himself who, in his capacity as Chairman of the Committee, demanded payment from the applicant of the sum specified by way of rent when the original decision ceding to him the properties in question was taken and duly collected same from him and this after the expiration of the cultivating period 1979/80.

For all the above reasons it is clear that the contents of the letter of the 17th March, 1980, which gave rise to the present proceedings, is due to a misconception of the decision of the meeting of the 10th March, 1980, and that, therefore, this recourse must succeed.

In the result there will be a declaration in the terms of the prayer in the application. With regard to costs I think that, in all the circumstances, it is fair that the respondents should pay the sum of £35 against applicant's costs.

*Sub judice decision annulled.  
Order for costs as above.*