1983 September 24

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.

ANDREAS MICHAEL TSIAOU AS TREASURER OF THE COMMITTEE OF THE IRRIGATION DIVISION "KATZILOS", OF PERISTERONA,

Applicant.

v.

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

Respondent.

(*Case No.* 449/80).

Time within which to file a recourse—Article 146.3 *of the Constitution —Sub judice decision not published—Time computed as from the date it came to the knowledge of applicant—"Knowledge" —When is knowledge complete—Article* 146.3 *should be restrictively interpreted and in case of doubt should be applied in favour of, and not against a citizen.*

Constitutional Law—Access to Courts—Article 30.1 *of the Constitution—Provisions of section* 29 *of the Irrigation Divisions (Villages) Law, Cap.* 342 *(as amended by section* 10 *of Law* 130/1968)— *Providing that legal proceedings by Irrigation Divisions may not be brought without the written consent of the District Officer —They do not amount to a denial of access to the Court—Not contrary to the above Article.*

Irrigation Divisions (Villages) Law, Cap. 342—*Section* 29 *(as amended by section* 10 *of Law* 130/68)—*Providing that legal proceedings by Irrigation Divisions may not be brought without the written consent of the District Officer—Not contrary to Article* 30.1 *of the Constitution.*

Administrative Law—Recourse for annulment—Abatement—When subject-matter of a recourse ceases to exist the recourse is abated —But if applicant suffers a detriment whilst the sub judice act was

still operative, and before it ceased to exist, the recourse is not abated—Because a person is only entitled to seek compensation, under Article 146.6 *of the Constitution, only after he obtains judgment in annulment proceedings before the Administrative Court—Article* 146.4 *of the Constitution.*

The applicant was the Treasurer of the Irrigation Division "Katzilos", of Peristerona which was formed by the proprietors under the Irrigation Divisions (Villages) Law, Cap. 342. Irrigation Division "Katzilos No. 2", Peristerona-Katokopia ("Interested Party") was formed by the proprietors of other lands.

The applicant Division drilled a well wherefrom water was taken for the irrigation of the lands of the proprietors. After representations by the interested party to the Minister of Agriculture, the Department of Geological Survey carried out a survey of the area and indicated in the riverbed a point where the drilling of a well would be successful. Without any permit the interested party proceeded to the sinking of a well at a distance of 790 ft. from the well of the applicants.

On 5.6.1980 the interested party applied to the District Officer for a temporary permit for the use of the water of the well which they had unlawfully already sunk in the riverbed, pending a decision by the appropriate authority on their application for the grant or lease to them of part of the Government land for the purpose of building thereon a small room and installing a water-pump. The District Officer by his letter dated 17.6.1980 granted to the interested party temporary permit for the use of this well exclusively for irrigation of plantations and cultivations in plots coming under irrigation division "Katzilos 2".

On 2.12.1980 the applicant filed this recourse whereby he sought "a declaration of the Court that the act and/or decision of the respondent dated 17.6.1980, which came to the knowledge of the applicant on or about 27.11.1980, whereby the respondent granted temporary approval of use of the unlawfully sunk drilling in the riverbed of Peristerona village near Plot 248, Sheet/Plan XX/52, Peristerona, is void and of no effect".

The respondent objected that the recourse cannot proceed as:

(a) It was out of time;

(b) It was filed without the consent of the District Officer, as envisaged by section 29* of the Irrigation Divisions (Villages) Law, Cap. 342, as amended by Law Nc. 130 of 1968; and

(c) That in the meantime the act sought to be annulled ceased to be an executory one and, therefore, there was no triable issue.

Regarding objection No. 3 counsel for the respondent argued that the subject-matter of this recourse ceased to exist by the later act of the grant to the interested party of the permit under the Water Supply (Special Measures) Law, 1964 (Law No. 32 of 1964) and consequently the act challenged lost its executory nature.

Regarding objection No. 1 counsel for the applicant submitted that as the prescribed decision was taken by the members of the Committee, the lack of the written consent of the District Officer is not an impediment, as the part of the proviso providing for the written consent of the District Officer is unconstitutional, being repugnant to Art. 30.1* of the Constitution.

Held, (1) that since the sub judice decision was not published therefore the time has to be computed as from the date that it came to the knowledge of the applicant; that it is complete knowledge which is required to set in motion the running of the time; that "complete" is the knowledge that allows the person interested to ascertain with certainty and precision the material and moral damage that he suffers from the published or communicated act; that Article 146.3 of the Constitution which limits the right of access to the Court, should be restrictively interpreted and applied and, in case of doubt, should be

* Section 29 as amended by section 10 of Law 130/1968 reads as follows:

"All actions or other legal proceedings brought by or against an irrigation division shall be brought by or against the treasurer of the Commtttee of such division as representing the proprietors thereof:

Provided that no action or other legal proceedings may be brought by an irrigation division without the prior decision of the Committee taken by absolute majority of its members and the written consent of the District Officer".

* Article 30.1 of the Constitution provides as follows:

"No person shall be denied access to the Court assigned to him by or under this Constitution. The establishment of judicial committees or exceptional Courts under any name whatsoever is prohibited".

applied in favour of, and not against a citizen; that in the present case, having regard to all the material placed before the Court, there is doubt whether the applicant obtained knowledge of the sub judice decision prior to 27.11.1980 and, therefore, the time of 75 days should be reckoned as from that day; accordingly the recourse was filed within the prescribed time.

(2) That the judicial review is restricted only to whether section 29 is repugnant to the right of access to the Court; that the District Officer cannot reasonably withhold his written consent. He has a discretion which has to be exercised consonant to the principles of administrative law. If he unreasonably withholds his consent, the majority of the members of the Committee may challenge his such decision before the appropriate Court; that the prerequisites provided in s. 29 are regulatory; that the prerequisite of the consent of the District Officer does not amount to a denial of access to the Court. A Division is not prevented from vindicating the rights of the proprietors in Court if it reaches the door of the Court in the prescribed way; that this Court is not satisfied beyond reasonable doubt that the inclusion of the consent of the District Officer renders the proviso to s. 29 unconstitutional; accordingly the applicant is not properly before the Court.

(3) When the subject-matter of a recourse ceases to exist and the continuation of a recourse serves no purpose, the recourse is abated; that the aim of a recourse is the annulment of an administrative act and the erasing of all its consequences, or the legal results that it produced; that, therefore, if the applicant did suffer a detriment whilst the administrative act was still operative, and before it ceased to exist, the recourse is not abated; that under Article 146.6 of the Constitution a person is only entitled to seek compensation after he obtains a judgment in annulment proceedings before the administrative Court; that, therefore, if he suffered any damages from the sub judice administrative act, though it ceased to exist after the filing of the recourse, he is entitled to have the recourse determined as a judgment of this Court under paragraph (4) of Art. 146 is a sine qua non to a claim for damages before a Civil Court, under Art. 146.6 before the appropriate Court; that in the present case the sub judice decision ceased to exist and the legal position is governed by the act of 17th September,

1982—the issue of the permit under the Water Supply (Special Measurers) Law of 1964; that no damage or detriment was caused by the act challenged before it ceased to be operative; and that accordingly the recourse is hereby struck out.

Recourse struck out.

Cases referred to:

Moran v. *Republic*, 1 R.S.C.C. 10 at p. 13;

Decisions of the Greek Council of State in cases: 330/30, 525/30, 540/30 and 1160/58;

Neophytou v. *Republic*, 1964 C.L.R. 280;

Barbier v. *Connolly*, 113 U.S. 28;

Durgashankar v. *Raghurag* (1965) 1 S.C.R. 267;

Malliotis and Others v. *The Municipality of Nicosia* (1965) 3 C.L.R. 75;

Chrysostomides v. *The Greek Communal Chamber*, 1964 C.L.R. 397 at p. 403;

Kyriakides v. *Republic*, 1 R.S.C.C. 66 at p. 74.

Recourse.

Recourse against the decision of the respondent whereby temporary approval of use of the unlawfully sunk drilling in the river bed of Peristerona village was granted to the applicant.

Ph. Valiantis, for *L. Papaphilippou*, for the applicant.

A. Vassiliades, for the respondent.

A. Haviaras, for the interested party.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicant is the Treasurer of the Irrigation Division "Katzilos", of Peristerona. This Division was formed by the proprietors under the Irrigation Divisions (Villages) Law, Cap. 342. Irrigation Division "Katzilos No. 2", Peristerona-Katokopia (hereinafter referred to as "the interested party") was formed by the proprietors of other lands.

The applicant Division drilled a well wherefrom water is taken for the irrigation of the lands of the proprietors. Two sinking permits were granted to the interested party, the one dated 9.8.1971. Pursuant to this permit a successful well was drilled but the Turkish invasion and occupation of Katokopia

village made the use of the water of the said well impossible. After representations by the interested party to the Minister of Agriculture, the Department of Geological Survey carried out a survey of the area and indicated in the riverbed a point where the drilling of a well would be successful. Without any permit they proceeded to the sinking of a well at a distance of 790 ft. from the well of the applicant.

The applicant by letter dated 11.4.1980—received by the District Officer on 15.5.1980—reported to the District Officer, who, under the Wells Law, Cap. 351, is the appropriate authority for the issue of sinking permits, that unknown persons were drilling on khali land and they protested, if a permit had been issued, as the amount of water of their well would be diminised.

On 5.6.1980 the interested party applied to the District Officer for a temporary permit for the use of the water of the well which they had unlawfully already sunk in the river-bed, pending a decision by the appropriate authority on their application for the grant or lease to them of part of the Government land for the purpose of building thereon a small room and installing a water-pump.

On 17.6.1980 the District Officer sent to the interested party a letter containing his decision that this recourse impeaches. It is considered pertinent to set it out seriatim:-

" 'Επιτροπείαν
'Αρδευτικοῦ Τμήματος "Κάτζιηλος 2"
Περιστερώνα.

Κύριοι,

'Επιθυμῶ νὰ ἀναφερθῶ στὴν ἐπιστολή σας ἡμερ. 5.6.1980 διὰ τῆς ὁποίας ζητεῖται ἄδεια χρήσεως τῆς διατρήσεως ποὺ ἀνορύχθηκε παράνομα ἐντὸς τῆς κοίτης τοῦ ποταμοῦ Περιστερώνας πλησίον τοῦ τεμαχίου 248, Φ/Σχ. XX/52 Περιστερώνα καὶ νὰ σᾶς πληροφορήσω ὅτι σᾶς παραχωρεῖται προσωρινὴ ἔγκριση γιὰ χρήση τῆς διατρήσεως αὐτῆς ἀποκλειστικὰ γιὰ ἄρδευση τῶν φυτειῶν καὶ καλλιεργειῶν τεμαχίων ποὺ ὑπάγονται εἰς τὸ 'Αρδευτικὸ Τμῆμα "Κάτζιηλος 2".

2. Καθίσταται σαφὲς ὅτι ἡ παροῦσα ἄδεια εἶναι ἐντελῶς

προσωρινὴ καὶ δύναται νὰ ἀκυρωθῆ ἐὰν θεωρηθεῖ ἀναγκαῖον ἄνευ οἱασδήποτε προειδοποιήσεως.

Μετὰ τιμῆς,
('Υπ.) Α.Ξ. Οἰκονομίδης,
διὰ Ἔπαρχον.

Κ/σις:- Διευθ. Τμ. 'Αν. 'Υδάτων".

("Committee
Irrigation Division 'Katzilos 2'
Peristerona.

Sirs,

I wish to refer to your letter dated 5.6.1980 by which you request a permit to use the bore-hole which was drilled unlawfully in the river bed of Peristerona near plot 248, Sh/Plan XX/52 Peristerona and to inform you that a temporary approval for the use of this bore-hole only for the purpose of irrigating the plantations and cultivations which belong to the Irrigation Division 'Katzilos 2' is granted to you.

2. It is made clear that the present permit is entirely temporary and may be cancelled if it is considered necessary without any warning.

Yours truly,
(Sgd.) A.X. Economides
for District Officer.

Copy to: Dir. Dep. of Water Development").

The applicant instituted in the District Court of Nicosia Action No. 4852/80 to vindicate its civil rights.

The only Law that confers a right upon owners of wells prejudicially affected from the sinking of a borehole or a well is Cap. 351 and particularly sections 7 and 8 thereof. The remedy is provided only for persons beneficially interested in any chain or system of wells or in any spring or source of water within a distance of 600 ft. from a well sunk or constructed and to persons beneficially interested in any other well within 80 ft. of any other well from which water is raised to the surface by any means whatsoever if by the sinking or construction of any such well the amount of water in any such chain or system of wells or spring or sourch or other well is or is likely to be substantially diminished. Therefore, no actionable right vested

in the applicant as the unlawfully sunk well was at a distance of 790 ft.

On 27.11.1980 the interested party filed a notice of opposition and his opposition was partly based on the temporary permit contained in the letter of the District Officer dated 17.6.1980 hereinabove.

On 2.12.1980 this recourse was filed whereby the applicant seeks "a declaration of the Court that the act and/or decision of the respondent dated 17.6.1980, which came to the knowledge of the applicant on or about 27.11.1980, whereby the respondent granted temporary approval of use of the unlawfully sunk drilling in the riverbed of Peristerona village near Plot 248, Sheet/Plan XX/52, Peristerona, is void and of no effect".

The respondent objected that this recourse cannot proceed as:-

(a) It is out of time;

(b) It was filed without the consent of the District Officer, as envisaged by section 29 of the Irrigation Divisions (Villages) Law, Cap. 342, as amended by Law No. 130 of 1968; and

(c) That in the meantime the act sought to be annulled ceased to be an executory one and, therefore, there is no triable issue.

Point No. 1—*Is the recourse out of time*?

Article 146.3 reads:-

> "Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse".

It is well settled that the 75 days' period provided by Article 146.3 of the Constitution, within which a recourse may be filed, is a peremptory one and public policy compels the Court not to entertain any recourse filed after the expiration of such period.

The sub judice decision was not published and, therefore, the time has to be computed as from the date that it came to the knowledge of the applicant.

It was contended by the applicant that he acquired knowledge of the sub judice decision from the notice of opposition to the interim order filed with the District Court on 27.11.1980 and not earlier. The respondent, on the other hand, submitted that, having regard to the contents of the letter of the applicant dated 11.4.1980 addressed to the District Officer, in which they disclosed knowledge of the drilling, and the subsequent events, the applicant came to know of the sub judice decision on or about 17.6.1980.

"Knowledge" in the context of Art. 146 of the Constitution means knowledge of the decision, act or omission giving rise to the right of recourse and not knowledge of evidential matters necessary to substantiate before this Court an allegation of unconstitutionality, illegality or excess or abuse of power. (*John Moran and The Republic*, 1 R.S.C.C. 10, 13).

In *Kyriacopoulos—Greek Administrative Law*, 4th edition, volume 3, p. 131, we read:-

> "γ. Ἀπό τῆς γνώσεως τῆς πράξεως παρὰ τοῦ προσφεύγοντος ἄρχεται ἡ προθεσμία προκειμένου περὶ πράξεων, δι' ας δὲν ἐπιβάλλεται δημοσίευσις ἢ κοινοποίησις. Ἡ γνῶσις τῆς πράξεως δέον νὰ εἶναι πλήρης καὶ νὰ προκύπτη κυρίως ἐκ τῶν ἐν τῷ φακέλλω τῆς ὑποθέσεως στοιχείων ἀρκεῖ ὅμως νὰ συνάγηται ἀσφαλῶς ἐκ τῆς φύσεως καὶ τῶν συντρεχουσῶν ἐν τῇ συγκεκριμένῃ περιπτώσει συνθηκῶν".
>
> ("c. From the knowledge of the act by the applicant starts running the time limit in case of an act for which no publication or notice is necessary. The knowledge of the act must be complete and must appear mainly from the material in the file of the case, provided that it can be inferred safely by the nature and circumstances in the particular case").

In *Conclusions of the Case Law of the Greek Council of State*, 1929–1959, p. 253, it is stated that it is the complete knowledge which is required to set in motion the running of the time and it is safely inferred from the material in the file or the nature and circumstances of each case. (*Greek Council of State* 330, 525, 540(30), 1160(58)).

"Complete" is the knowledge that allows the person interested to ascertain with certainty and precision the material and moral

damage that he suffers from the published or communicated act. The communication must be full, complete, because if the interested person does not become aware of the whole of the contents of the act, he cannot judge and decide about the exercice or not of the recourse. Communication, therefore, of only the operative part without the reasoning for the act is not complete and, therefore, the time does not run. (*Kyriacopoulos—Administrative Law*, 3rd edition, volume 3, p. 121).

Complete knowledge may be inferred from a statement or action of the interested person, especially from the submission of an application for remedy, containing the defects of the impeached act or omission. The onus of proof that an applicant came to the knowledge of the act or omission impeached rests on the party who alleges that the recourse is out of time.

Paragraph 3 of Art. 146, which limits the right of access to the Court, should be restrictively interpreted and applied and, in case of doubt, should be applied in favour of, and not against a citizen. (*Neophytou* v. *The Republic, through the Public Service Commission*, 1964 C.L.R. 280).

In the present case, having regard to the letter of 11.4.1980 of the applicant and all the material placed before the Court, I am in doubt whether the applicant obtained knowledge of the sub judice decision prior to 27.11.1980 and, therefore, the time of 75 days should be reckoned as from that day. The recourse was filed within the prescribed time.

Point No. 2—Consent of the District Officer and right of access to the Court.

Section 29 of the Irrigation Divisions (Villages) Law, Cap. 342, until the enactment of Law No. 130 of 1968 read:-

> "All actions or other legal proceedings brought by or against an irrigation division shall be brought by or against the treasurer of the Committee of such division as representing the proprietors thereof".

This statutory provision was amended by section 10 of Law 130 of 1968 by the addition of the following proviso:-

> "Νοεῖται ὅτι οὐδεμία ἀγωγὴ δύναται νὰ καταχωρηθῇ καὶ οὐδὲν ἄλλον ἔνδικον μέσον δύναται νὰ ληφθῇ ὑπὸ ἀρδευτικοῦ

τμήματος ἄνευ προηγουμένης ἀποφάσεως τῆς ἐπιτροπείας λαμβανομένης κατ' ἀπόλυτον πλειοψηφίαν τῶν μελῶν αὐτῆς καὶ τῆς πρὸς τοῦτο γραπτῆς συγκαταθέσεως τοῦ 'Επάρχου".

("Provided that no action or other legal proceedings may be brought by an irrigation division without the prior decision of the Committee taken by absolute majority of its members and the written consent of the District Officer").

In the present case the applicant did neither obtain nor apply for the written consent of the District Officer for filing this recourse. The respondent contends that as there was no compliance with this proviso, this recourse cannot proceed. The applicant submitted that as the prescribed decision was taken by the members of the Committee, the lack of the written consent of the District Officer is not an impediment, as the part of the proviso providing for the written consent of the District Officer is unconstitutional, being repugnant to Art. 30.1 of the Constitution.

Article 30.1 of the Constitution reads:-

"No person shall be denied access to the Court assigned to him by or under this Constitution. The establishment of judicial committees or exceptional Courts under any name whatsoever is prohibited".

Article 6.1 of the *European Convention on Human Rights*, which has superior force to other domestic legislation, except the Constitution, having been ratified in virtue of Art. 169 by Law No. 39 of 1962, reads:-

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

Article 30 safeguards the right of access to a Court of law; such right coincides, in this connection, with the right of equality. As stated in *Barbier* v. *Connolly*, 113 U.S. 28 Law. Ed. 923, by Mr. Justice Field: "The Fourteenth Amendment of the U.S. Constitution by providing about due process of law and equal protection of the Laws 'undoubtedly intended that all persons should have like access to the Courts

of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts' ".

The duty of the Court is to apply the law; it is no less its duty to enforce the Constitution which is the superior and paramount law, and if there is a conflict between the fundamental law and the ordinary law, the Court would be bound to thrash aside the law laid down by the legislature in order to give effect to the paramount law. The presumption of constitutionality of laws is well entrenched. It is well settled that all reasonable doubt of a statute's validity must be resolved in favour of a statute and it should not be pronounced to be unconstitutional unless it is clearly proved to be so.

In *Durgashankar* v. *Raghurag*, (1955) 1 S.C.R. 267, an Indian case, it was held that the Court should construe the statutory provision, if possible, as will not affect the constitutional jurisdiction of the Court and where no such construction is possible, the Court is bound to strike down the offensive provision as void.

In the right of access to the Court there are two elements involved: The first is that it should be respected by the law in such a way that no one is excluded from the Courts. The second is that where there are any necessary limitations imposed by law on the Court's jurisdiction, it is the Courts themselves who should decide in the event of dispute. (*Jacobs—European Convention on Human Rights*, (1975) p. 93).

The guarantee of the right of access to the Courts does not debar the legislature from providing for some sort of regulation of this right provided that the regulatory provision is not arbitrary or unreasonable and does not labour as an infringement of the right of access to a Court.

Irrigation divisions are bodies formed under the relevant Law either at the instance of the District Officer or on the application in writing of not less than 10 proprietors. The District Officer is by law the Chairman of the Committee with a right to vote on all questions and in case of equality he has a casting vote in addition to his own vote. He has the right to dismiss members of the Committee for grave breach of duty

or non-performance of duties. In substance and effect this Law is administered by the District Officer. The provision for the consent of the District Officer for the institution of an action or other legal proceedings is reasonably required according to the wisdom of the legislature.

The judicial review is restricted only to whether this provision is repugnant to the right of access to the Court. The District Officer cannot reasonably withhold his written consent. He has a discretion which has to be exercised consonant to the principles of administrative law. If he unreasonably withholds his consent, the majority of the members of the Committee may challenge his such decision before the appropriate Court.

The prerequisites provided in s. 29: Legal proceedings taken by or against the Treasurer, decision of the absolute majority of the members of the Committee and the consent of the District Officer, are regulatory. The prerequisite of the consent of the District Officer does not amount to a denial of access to the Court. A Division is not prevented from vindicating the rights of the proprietors in Court if it reaches the door of the Court in the prescribed way. I am not satisfied beyond reasonable doubt that the inclusion of the consent of the District Officer renders the proviso to s. 29 unconstitutional. The applicant is not properly before the Court.

Point No. 3—Was the recourse abated?

Counsel for the respondent argued that the subject matter of this recourse ceased to exist by the later act of the grant to the interested party of the permit under the Water Supply (Special Measures) Law of 1964 (Law No. 32 of 1964) and consequently the act challenged lost its executory nature.

A recourse may be abated as a result of events which take place subsequent to the filing and before the conclusion of the hearing of such recourse. In general a recourse cannot continue when its subject-matter has ceased to exist. (*Christos Malliotis and Others* v. *The Municipality of Nicosia*, (1965) 3 C.L.R. 75).

Article 146, paragraph 2, of the Constitution provides that a recourse may be made by a person whose any existing legitimate interest is adversely and directly affected. Existence of interest of an applicant is a condition precedent

of the annulment jurisdiction of an administrative Court. A recourse for annulment is not an actio popularis; it requires in respect of the applicant a legitimatio causum. The required interest of the applicant must subsist on the date of the hearing of the recourse as well. (*Kyriacos Chrysostomides* v. *The Greek Communal Chamber*, 1964 C.L.R. 397, 402).

When the subject-matter of a recourse ceases to exist and the continuation of a recourse serves no purpose, the recourse is abated. It is abated when the sub judice act is revoked expressly or by implication. (*Jurisprudence of the Council of State in Greece*, 1929–1959, p. 275). The aim of a recourse is the annulment of an administrative act and the erasing of all its consequences, or the legal results that it produced. Therefore, if the applicant did suffer a detriment whilst the administrative act was still operative, and before it ceased to exist, the recourse is not abated.

Under Article 146.6 of the Constitution a person is only entitled to seek compensation after he obtains a judgment in annulment proceedings before the administrative Court. Therefore, if he suffered any damages from the sub judice administrative act, though it ceased to exist after the filing of the recourse, he is entitled to have the recourse determined as a judgment of this Court under paragraph (4) of Art. 146 is a sine qua non to a claim for damages before a Civil Court, under Art. 146.6 before the appropriate Court. (*Kyriakides* v. *The Republic*, 1 R.S.C.C. 66, 74).

In Greece the position is lucidly stated in *Tsatsos—Application for Annulment*, 3rd edition, p. 372, as follows:-

" 'Εὰν ἡ ζημιογόνος πρᾶξις τῆς διοικήσεως δὲν ἀνακληθῇ, ἀλλὰ καταργηθῇ, ἢ ἀνακληθῇ, ἀλλ' οὐχὶ πλήρως, δηλαδὴ ἐξ ὑπαρχῆς, ἀλλ' ἀπὸ τινος χρονικοῦ σημείου μεταγενεστέρου τῆς ἐκδόσεως τῆς προσβαλλομένης πράξεως, ἐξεταστέον ἀποβαίνει, ἐὰν ἐκ τῆς ἰσχύος αὐτῆς ἀπὸ τοῦ χρόνου τῆς ἐκδόσεως μέχρι τῆς τοιαύτης ἀνακλήσεως παρήχθησαν ἀποτελέσματα ζημιοῦντα τὸν προσφυγόντα καὶ δεκτικὰ πλέον ἀνατροπῆς μόνον δι' ἀκυρώσεως. Εἰς ἣν περίπτωσιν παρήχθησαν τοιαῦτα ἐκ τῆς προσβαλλομένης πράξεως ἀποτελέσματα, ἡ αἴτησις ἀκυρώσεως, παρὰ τὴν ἀπὸ χρονικοῦ σημείου ἐφ' ἑξῆς μόνον ἐπενεργοῦσαν ἀνακλητικὴν

πρᾶξιν, δὲν ἀποστερεῖται τοῦ ἀντικειμένου της. Εἰς ἣν περίπτωσιν ὅμως δὲν παρήχθησαν τοιαῦτα ἐκ τῆς προσβαλλεμένης πράξεως ἀποτελέσματα, τοὐλάχιστον ὡς πρός τὸν αἰτοῦντα ἢ παρήχθησαν ὡς πρὸς αὐτὸν ἀλλὰ μετὰ τὸ χρονικὸν σημεῖον, ἀφ' οὗ ἡ ἀνάκλησις ἐνεργεῖ, ἡ περὶ ἀκυρώσεως αἴτησις ἀποβαίνει ἄνευ ἀντικειμένου".

("If the injurious act of the administration is not revoked, but is cancelled, or revoked, but not completely, that is from the beginning, but from a certain period of time subsequent to the issue of the attacked act, it should be examined, if from its validity from the time of its issue until such revocation were produced results injurious to the applicant and amenable only to annulment. In the case where such results have been produced by the attacked act, the application for annulment, inspite of the from a certain time limit and thereafter influencing revocative act, it is not deprived of its object. But in the case where no such results have been produced by the attacked act, at least in respect of applicant or have been produced in respect of someone else but after the time limit, when the revocation operates, the application for annulment becomes without object").

Spiliotopoulos in the Manual of Administrative Law, 2nd edition, p. 454, states:-

"505. Ἡ δίκη καταργεῖται (ΝΔ 170/1973 ἄρθρον 32), πλὴν τῆς περιπτώσεως ἐλλείψεως ὑποκειμένου καὶ λόγω ἐλλείψεως ἀντικειμένου εἰς τὰς ἀκολούθους περιπτώσεις: (i)....., (ii)....., (iii) ἀνακλήσεως τῆς διοικητικῆς πράξεως ἐν τῷ συνόλῳ τῆς μετὰ τὴν κατάθεσιν τῆς αἰτήσεως ἀκυρώσεως ἢ τῆς προσφυγῆς, ρητῆς (ΣΕ 3201/1978) ἢ σιωπηρᾶς, προκυπτούσης ἐκ πράξεως τοῦ αὐτοῦ ὀργάνου ρυθμιζούσης τὸ αὐτὸ θέμα (ΣΕ 3570/1978), (iv)....., (v) ἀντικαταστάσεως ἢ τροποποιήσεως τῆς προσβληθείσης διοικητικῆς πράξεως μετὰ τὴν κατάθεσιν τῆς αἰτήσεως ἀκυρώσεως (ΣΕ 2349/1978), (vi) λήξεως τῆς ἰσχύος τῆς διοικητικῆς πράξεως χωρὶς νὰ παραμένουν διοικητικῆς φύσεως συνέπειαι (ΣΕ 3958/1978)....".

("505. The trial is dismissed (Law 170/1973 section 32), except in the case of lack of subject and due to lack of object in the following circumstances: (i).....,

(ii)....., (iii)..... revocation of the administrative act in whole after the filing of the application for annulment or the recourse, express (C.S. 3201/1978) or implied, resulting from an act of the same organ and regulating the same matter (C.S. 3570/1978), (iv)....., (v) replacement or amendment of the attacked administrative act after the filing of the application for annulment (C.S. 2349/1978), (vi) expiry of the validity of the administrative act without there remaining results of an administrative nature").

In the present case the sub judice decision ceased to exist and the legal position is governed by the act of 17th September, 1982—the issue of the permit under the Water Supply (Special Measures) Law of 1964, as aforesaid. No damage or detriment was caused by the act challenged before it ceased to be operative.

In view of the aforesaid the recourse is abated.

As this recourse will be struck out, no useful purpose would be served by adverting to the grounds on which the annulment of the sub judice decision was sought.

In the result this recourse is struck out but in the circumstances of the case I make no order as to costs.

Recourse struck out with no order as to costs.