

1982 July 27

[A. LOIZOU, SAVVIDES AND STYLIANIDES, JJ.]

MICHALIS PALALAS,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 4297).

Legitimate interest—Acceptance of administrative act—Deprives acceptor of a legitimate interest entitling him to make an administrative recourse for its annulment—Definition of appellant's cabaret as a "Tourist Centre" under section 2(d) of the Tourist Places of Entertainment Law, 1979 (Law 91/1979 as amended)— 5
Whether appellant, having accepted the administrative act, can in a criminal prosecution for contravention of the above Law complain against the validity of the act.

Tourist Places of Entertainment Law, 1979 (Law 91/1979 as amended) 10
—Definition of appellant's cabaret as a "Tourist Centre", under section 2(d) of the Law, subject to his complying with certain conditions—Whether in proceedings for contravention of sections 2, 11(5) and 16(4) of the Law fact that he has not complied with said conditions a defence.

Tourist Places of Entertainment Law, 1979 (Law 91/1979 as amended) 15
—Definition of premises as Tourist Centre by Cyprus Tourism Organization with approval of the Minister of Commerce and Industry—Section 2(d) of the Law—Relevant decision need not be published in the Official Gazette because no such publication is required by Law—And approval of the Minister need not be 20
communicated to owner of premises because decision as a whole was communicated to him.

Administrative Act—Illegality of—Whether a defence in the ordinary Courts and in particular in Criminal Courts.

The appellant has been the owner of the cabaret "New Miami" for sixteen years. Following the enactment of the Tourist Places of Entertainment Law, 1979 (Law 91/1979) ("the Law") the Cyprus Tourism Organization ("the Organization") defined by name the said cabaret as a Tourist Centre under section 2(d)* of the Law. The cabaret in question was so defined with the approval of the Minister of Commerce and Industry and the relevant decision was communicated to the appellant by letter** dated 7th February, 1981. In this letter it was, inter alia, stated that the classification was subject to the term that within six months the appellant will proceed to the following:

- (a) Creation of one at least W.C. and one shower for the performing personnel;
- (b) Improvement and widening of the staircase leading to the dressing-rooms of the artists".

Under section 10(1) of the Law, a person not satisfied from any decision of the Organization, issued under the provisions of the said Law, could within 20 days, from communication to him of such decision make a hierarchical recourse in writing to the Minister; and under section 10(3) a person not satisfied with the decision of the Minister, could file a recourse to the Court. Neither a hierarchical recourse to the Minister nor a recourse to the Supreme Court was filed since the communication of the decision in question to the appellant on the 7th February, 1981; but the appellant paid the sum of £10.- for the issue to him of an operation licence, as required by paragraph 3 of the above letter, and same was issued to him.

The appellant was prosecuted and convicted of failing to exhibit a copy of his pricelist on the external entrance of his tourist centre, to wit the cabaret "New Miami", for the in-

* Section 2(d) provides as follows:

"Tourist Centre means a shop which the Organization will, with the approval of the Minister, define by name due to the nature of the services which are rendered or due, to its location, the gathering or movement of customers, travellers, tourists, or holiday makers".

** The letter is quoted at pp. 205-206 post.

formation of customers contrary to sections 2, 11(5) and 16(4) of the Law (as amended by Laws 50/1980 and 7/1981) and hence this appeal.

Counsel for the appellant mainly contended:

- (a) That since the decision defining the cabaret as a Tourist Centre, as appearing in the letter of 7.2.1981 was subject to two conditions which were never complied with by the appellant, the prerequisites for such definition did not exist. 5
- (b) That as the appellant has violated numerous provisions of the Law the business in question could not have been found to be a Tourist Centre. 10
- (c) That the subject decision ought to have been published in the official Gazette of the Republic and also that the relevant approval of the Minister of Commerce and Industry ought to have been communicated to the appellant. 15

Held, that by paying the sum of £10 for the issue of an operation licence to him the appellant had thereby expressly accepted the act and/or decision of the administration and deprived himself by such acceptance of a legitimate interest entitling him to make an administrative recourse for the annulment of such act or decision; that, therefore, the several questions, for determination in this appeal regarding the legal validity of the administrative act in question are thereby given a complete answer. 20 25

Held, further, on the above contentions of Counsel, by assuming only and without entering into an examination of the controversial question, as no argument has been advanced on this point by either side, whether the illegality of an administrative act as a defence in the ordinary Courts and in particular in Criminal Courts (the exception d'illegalite of the French Law which poses a jurisdictional dilemma) is available in Cyprus as an exception to the general principle which requires the illegality of administrative acts to be determined by the administrative Courts, in 30 35

our case the Supreme Court in its revisional jurisdiction given exclusively to it under Article 146 of the Constitution:

5 (1) That the two conditions imposed on the appellant would, obviously, entitle the Organization to take the necessary steps under the Law, whatever those steps may be, after the expiration of the six months time limit set for their compliance by the appellant; but even if this Court were to accept the contention of counsel as to the effect of these conditions, which it does not, such eventuality could not arise with regard to these proceedings, 10 as the offence was committed on the 2nd July, 1981, whereas the time limit of six months for compliance with them was to expire four days later, namely, the 6th of that month (see also, sections 2(d), 4, 5(1) and (2) of the Law); accordingly contention (a) should fail.

15 (2) That as the appellant could have been prosecuted for each and every one of the violations, as after his business was defined as a Tourist Centre thereunder and of course he could be prosecuted for non obtaining the operation licence once his business premises were so defined and classified by the Organi- 20 zation his argument that he had violated numerous provisions of the Law and so his business could not have been found to be a tourist centre, cannot stand; accordingly contention (b) should fail.

25 (3) That there is no provision in the Law requiring publication of the subject decision and, therefore, there does not arise at all a question of its validity because of its non-publication; that as the decision as a whole was communicated to the appellant his argument that the approval of the Minister ought to have been communicated to him cannot stand; that, 30 therefore, the premises of the appellant were properly defined as a Tourist Centre under section 2(d) of the Law; accordingly contention (c) should, also, fail.

Appeal dismissed.

Appeal against conviction.

35 Appeal against conviction by Michalis Palalas who was convicted on the 30th January, 1982 at the District Court of

Nicosia (Criminal Case No. 14665/81) on one count of the offence of failing to exhibit a copy of a pricelist on the external entry of his tourist centre contrary to sections 2, 11(5) and 16(4) of the Tourist Places of Entertainment Law, 1979 (Law No. 91 of 1979) (as amended by laws 50/80 and 7/81) and was sentenced by A. Ioannides, D.J. to pay £5.- fine and £20.- towards costs. 5

E. Karaviotis with A. Entafianos, for the appellant.

M. Eliades with D. Papadopoullou (Mrs.) and A. Paschalides, for the respondents. 10

Cur. adv. vult.

A. LOIZOU J. read the following judgment of the Court. The appellant was found guilty of the offence of failing to exhibit a copy of his pricelist on the external entrance of his tourist centre, to wit, the cabaret "NEW MIAMI" for the information of customers, contrary to sections 2, 11(5) and 16(4) of The Tourist Places of Entertainment Law, 1979 (Law No. 91 of 1979, as amended by Laws, No. 50 of 1980, and No. 7 of 1981), hereinafter to be referred to as the law. 15

He appeals against his conviction on the ground that same is wrong in law inasmuch as the cabaret in question had not been properly and in accordance with the law defined as a tourist centre. The facts of the case which are not in dispute are these:- 20

The appellant is the owner of the aforesaid cabare for sixteen years. After the law came into force on the 1st November, 1980 (see Notification No. 316 published in Supplement No. III (1) of the official Gazette No. 1641 dated 31.10.1980), the Cyprus Tourism Organization (K.O.T.) defined by name the said cabaret as a Tourist Centre, under section 2 (d) of the law which provides that a "Tourist Centre means a shop which the Organization will, with the approval of the Minister, define by name due to the nature of the services which are rendered or due, to its location, the gathering or movement of customers, travellers, tourists, or holiday makers". The cabaret in question was so defined with the approval of the Mi- 25
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nister of Commerce & Industry, and this decision was communicated to the appellant by letter dated the 7th February, 1981 (exh. 2), which was served personally on the appellant and which reads as follows:-

5 "Honourable Sir,

Subject: *Definition and issue of permit
of Tourist Centre.*

I wish to inform you that the Board of Directors of KOT decided in accordance with the provisions of the Tourist
10 Places of Entertainment Laws and with the concurring opinion of the Committee of Tourist Centres, to classify your centre by the name 'New Miami' as and under the management of Mr. Michalakis Palala in the category 'Night Club - Cabaret'.

15 2. This classification is subject to the term that within six months you will proceed to the following:

- (a) Creation of one at least W.C. and one shower for the performing personnel;
- (b) Improvement and widening of the staircase leading
20 to dressing-rooms of the artists.

3. You are requested that in accordance with regulation 4 of the Tourist Places of Entertainment Regulations, forward to the Organization, not later than the 15th March, 1981, the sum of C£10.- for the issue, under the Law in
25 force, of an operation permit of your Tourist Centre, which will be valid until the 31st December, 1981.

4. The aforesaid permit to be issued does not relieve you of the obligation to secure a building permit and a certificate of approval of your premises in accordance
30 with the provisions of the Streets and Buildings Regulation Law, Cap. 96, and to comply with any other provisions of the same Law or any other Law or Regulations.

5. With regard to the obligations vis-a-vis the Law of

Business Managers of Tourist Centres you are requested to consult the enclosed information leaflet (Appendix 'A')".

In accordance with the provisions of s.2(d) of the Law, prior to its definition as a Tourist Centre the Organization sought the approval of the Minister, that is, the Minister of Commerce & Industry, which was duly given and communicated to the Organization by letter dated the 21st January, 1981 (exhibit 1) on which it was appended the list whereby the said business place of the appellant was defined as a Tourist Centre by name and classified in the category of night-clubs-cabarets.

Under section 10(1) of the Law, a person not satisfied from any decision of the Organization, issued under the provisions of the said Law, can within 20 days from communication to him of such decision make a hierarchical recourse in writing to the Minister setting out the grounds in support thereof with which he challenges such a decision. Subsection (3) of the said section provides that a person not satisfied from the decision of the Minister, may file a recourse to the Court but until the issue of the decision of the Minister in case of recourse to him or in case of no such recourse to him until the lapse of the time specified in subsection 1, for the filing of a recourse, the decision of the Board of Directors or the Committee does not become executory. The Committee in question is the Committee of Tourist Centres established under section 9 of the Law for the purpose of examination and approval of the studies and plans of the Organization referred to in section 3 of the Law.

Under section 11 of the Law, the prices of the services rendered by Tourist Centres are fixed by the proprietor after taking into consideration any price control provisions in force at the time and are recorded on a special pricelist which is submitted to the Board of Directors of the Organization for approval. When so approved, they become valid for a year commencing the 1st March of such year. Under subsection (5) thereof a copy of such pricelist must be exhibited on the external entrance of the Tourist Centre for the information of the customers.

It may conveniently be mentioned here that neither an hierarchical recourse to the Minister nor a recourse to the Supreme

Court was filed since the communication of the decision in question to the appellant on the 7th February, 1981.

On the 2nd July, 1981, George Pericleous, Inspector of the Cyprus Tourism Organization, accompanied by P.C. Serghides, visited the said night-club of the appellant and found that there was no pricelist approved by the Organization exhibited on the external entrance of the cabaret in question. The appellant was not at the time in the cabaret, but the person in charge thereof was informed about this omission by a written notice given to him at the time.

Moreover the appellant paid the sum of C£10.—for the issue of an operation licence as a tourist centre as required of him by para. 3 of the letter of the 7th February, 1981, (exhibit 2), and same was issued to him. He had thereby expressly accepted the act and/or decision of the administration and deprived himself by such acceptance of a legitimate interest entitling him to make an administrative recourse for the annulment of such act or decision. The several questions, therefore, for determination in this appeal regarding the legal validity of the administrative act in question are thereby given a complete answer and the matter could have rested there.

But we intend to examine them out of respect to counsel who have argued them at the trial and in this Court on appeal and of course to the learned trial Judge himself who determined them. And this, by assuming only and without entering into an examination of the controversial question, as no argument has been advanced on this point by either side, whether the illegality of an administrative act as a defence in the ordinary Courts and in particular in Criminal Courts (the exception d'illgalite of the French Law which poses a jurisdictional dilemma) is available in Cyprus as an exception to the general principle which requires the illegality of administrative acts to be determined by the administrative Courts, in our case the Supreme Court in its revisional jurisdiction given exclusively to it under Article 146 of the Constitution.

The first point argued on behalf of the appellant was that the decision defining his cabaret as a Tourist Centre, as appearing in the letter of the 7th February, 1981 (exhibit 1), was subject

to two conditions, namely, (a) the creation of at least one W.C. and one shower for the performing personnel and (b) the improvement and widening of the staircase leading to the dressing rooms of the artists, which conditions were never complied with by the appellant and, consequently, the prerequisites for such definition did not exist. We do not subscribe to this view. 5

This communication to him of the subject decision has to be viewed as a whole and it is apparent that the Board of the Cyprus Tourism Organization had reached such decision, as stated therein, in accordance with the provisions of the Tourist Places of Entertainment Law. That that was so, it is borne out from the contents of exhibit 2, to the effect that the business in question was so defined—the approval of the Minister of Commerce & Industry having been duly secured for the purpose—and in view of the nature of the services it renders, it was classified as a Night Club and Cabaret with the concurring opinion of the Committee of Tourist Centres. Moreover, the appellant, as already stated, paid the relevant fee and had the prescribed licence to operate as a Tourist Centre issued to him. 10 15 20

The aforesaid conditions imposed on the appellant would, obviously, entitle the Organization to take the necessary steps under the Law, whatever those steps may be, after the expiration of the six months time limit set for their compliance by the appellant. But even if we were to accept the contention of counsel as to the effect of these conditions, which we do not, such eventuality could not arise with regard to these proceedings, as the offence was committed on the 2nd July, 1981, whereas the time limit of six months for compliance with them was to expire four days later, namely, the 6th of that month. 25 30

The situation, however, becomes more clear if one looks at the Law, especially the definition of a Tourist Centre to be found in section 2 and in particular paragraph (d) thereof, earlier referred to in this judgment, which is the one applicable in the present case, in conjunction with section 4 which provides that in respect of every Tourist Centre, obviously first defined under section 2(d) as such, there will be carried out by the Board of Management, in the prescribed manner and procedure, a 35

classification of such Centre, according to the nature of the services rendered by it and there follow the categories under which such a Centre will be classified, "Night Club and Cabaret" being one of them. Once a business establishment is so defined, section 5 of the Law becomes applicable. Sub-section (1) thereof provides that no person will operate a Tourist Centre without an operation licence issued in accordance with the provisions of the Law and the Regulations made thereunder, and under sub-section (2) an operation licence is issued by the Board of Management on the specified form and on the payment of the prescribed fee and so long as the prescribed terms and prerequisites provided by the Law and the Regulations are satisfied. In accordance with these statutory provisions it would have been an offence for the appellant to operate his said Tourist Centre without a licence and, further, without complying with the terms and prerequisites imposed on a licensee by virtue of the provisions of the Law and the Regulations.

This brings us to the next argument advanced on behalf of the appellant, namely, that as he had violated numerous provisions of the Law indicated by counsel in the course of his argument, to which we need not refer in detail, the business in question could not have been found to be a Tourist Centre. This is an argument which cannot stand, because the appellant in such a case could have been prosecuted for each and every one of them as being in violation of the Law, after his business was defined as a Tourist Centre thereunder and of course he could be prosecuted for non obtaining the operation licence once his business premises were so defined and classified by the Organization.

The next argument advanced on behalf of the appellant was that the subject decision ought to have been published in the official Gazette of the Republic and also that the approval of the Minister of Commerce & Industry contained in exhibit 2 ought to have been communicated to him. In the Law itself there is no provision requiring publication of such a decision and therefore there does not arise at all a question of its validity because of its non publication. It is only when publication is imposed by Law that the issue has to be considered whether

such publication is a constituent element for the validity of an administrative decision.

The second part of this argument should also fail as the decision as a whole was communicated to the appellant.

Once, however, this individual administrative act came to his knowledge as a whole, it produced its legal effects. We have not known of any legal principle whereby the legality and validity of an administrative act is affected because not each constituent element of it was not separately brought to the knowledge of the person concerned. But independently, however, of this the existence of the approval of the Minister was impliedly communicated to the appellant by the statement contained in exhibit 2 to the effect that such decision was reached in accordance with the Law. 5 10

Therefore, having come to the conclusion that the premises of the appellant were properly defined as a Tourist Centre under section 2(d) of the Law, the appeal should fail and is hereby dismissed, as the remaining elements of the offence for which the appellant was found guilty and against which conviction he has appealed, were duly proved and in fact never disputed by him. 15 20

Appeal dismissed.