

1982 May 29

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MOUSTAKAS SHIPPING AGENCIES LTD.,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE COUNCIL OF MINISTERS AND OTHERS,

*Respondents.*

(Case No. 171/80).

*Administrative Law—Administrative acts or decisions—Reasoning—  
Licence to operate V.H.F. radio-telephones—Refused for secu-  
rity reasons—Letters to Chief of Police by officer in charge  
Central Information Service alleging, inter alia, that Managing  
5 Director of applicants has been a member of EOKA B, and a  
supporter of the Coup of July 15, 1974—These allegations not  
communicated to him and not put forward to him in cross-exa-  
mination so that he would be given the opportunity to admit or  
deny them—No explanation by respondents how the radio-tele-  
10 phones in question could be used in an illegal way—Allegations  
in the said letters not substantiated or supported by the evidence  
and they were uncertain and vague—Sub judice refusal annulled.*

On November 6, 1979, the applicants a limited company  
15 carrying on the business of shipping agents, applied to the  
Ministry of Communications and Works for the issue to them  
of a licence to operate V.H.F. radio-telephones for the purpose  
of enabling them to communicate with vessels lying within the  
port area of Limassol. On March 22, 1980, the Ministry  
informed the applicants that their application could not be  
20 approved for security reasons. Hence this recourse.

The objection to grant to the applicants the licence applied  
for was raised by the Ministry of Interior; and though the  
Ministry of Communications and Works would have no objection

to grant the licence applied for, as it was the invariable practice of the Ministry not to go behind the decision of the Ministry of Interior in matters of this nature and as the Ministry of Interior had objected on security reasons, they had turned down the application. In the Police file relating to this case there were two letters addressed to the Chief of Police by the Officer in Charge of the Central Information Service, to the effect, inter alia, that the Managing Director of the applicant Company was against the government, that he was arrested by the Police a few days before the Coup and that on the 16th and 17th July, 1974, he was seen carrying arms. The allegations contained in the two letters were never communicated to the applicants nor were they put forward to the Managing Director when he was being cross-examined so that he would be given the opportunity to admit or deny them. The Managing Director in his evidence emphatically stated that he was never convicted by any Court of Law for any kind of offence and that all his co-directors were very respectable people.

*Held*, that as the respondents did not explain how the radio-telephones required by the applicants can be used in an illegal way and the allegations contained in the two letters as regards the character of the Managing Director are not substantiated or supported by the evidence, and they are uncertain and vague the decision of the Ministry of Communications and Works to refuse the application of the applicants must be annulled.

*Sub judice decision annulled.*

### Recourse.

Recourse against the refusal of the respondents to grant applicants a licence to operate V.H.F. radio telephones for the purpose of enabling them to communicate with vessels lying within the port area of Limassol.

*P. Soteriou*, for the applicants.

*A. Vladimirov*, for the respondent.

*Cur. adv. vult.*

DEMETRIADES J. read the following judgment. The applicants, who are a limited company registered in Cyprus in accordance with the relevant Laws and who carry on the business of shipping agents, by their present recourse pray for a declaration that the act and/or the decision of the respondents, which was communicated to them on or about the 29th March, 1980,

is null and void, illegal, unconstitutional and of no legal effect. They further pray for a declaration that they are entitled to a licence to possess V.H.F. radio telephones.

5 The facts of the case are: On the 6th November, 1979, the applicants applied to the Ministry of Communications and Works for the issue to them of a licence to operate V.H.F. radio telephones for the purpose of enabling them to communicate with vessels lying within the port area of Limassol. On  
10 the 22nd March, 1980, the General Director of the Ministry replied to the applicants' application and informed them that they were unable to approve it for security reasons.

The objection to grant to the applicants the licence applied for was raised by the Ministry of Interior. The applicants called  
15 three witnesses in support of their application. They are, Mr. Rogiros Michaelides, the Head of the Telecommunications Section of the Ministry of Communications and Works, the Assistant Chief of Police, Mr. Phanis Demetriou, who is in charge of the Operational Part of the Cyprus Police Force, and their Managing Director, Mr. Michalakis Moustakas.  
20 Mr. Michaelides told the Court that the Ministry would have no objection to grant the licence applied for, but as it was the invariable practice of the Ministry not to go behind the decision of the Ministry of Interior in matters of this nature and as the Ministry of Interior had objected on security reasons, they  
25 had turned down the application. He further said that though licences of this nature had on several occasions been refused either for security reasons, or because the nature of the party's application was not such as to justify the issue of such licence, the Ministry of Communications and Works would grant the  
30 licence, because the applicants fulfilled all the conditions and requirements in view of the nature of their business, i.e. shipping agents. Mr. Michaelides produced a list of twelve shipping agents of Limassol to whom licence to operate wireless tele-  
35 phones was granted. Mr. Phanis Demetriou was called in order to produce the Police file relating to the present case. Though counsel for the respondents objected to the production of this file on the ground that it contains strictly confidential documents concerning the person of the Managing Director of the applicants, it was made available to the Court for inspection.  
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I have had the opportunity to go through this file and I can trace no other information or documents except two letters addressed to the Chief of Police by the officer in charge of the Central Information Service, to the effect that Mr. Michalakis Moustakas, the Managing Director of the applicant Company, is "Εθνικόφρονας, αντίκυβερνητικός, διετέλεσε μέλος τῆς ΕΟΚΑ Β, καὶ παρέμεινε ἀμετανόητος", as well as that he was against the government, that he was arrested by the Police a few days before the coup and that on the 16th and 17th July, 1974, he was seen carrying arms, that he appeared to be a person of authority and that he took part in interrogating policemen and law-abiding citizens who had been arrested and kept at the Limassol Police Station. It is further stated in these letters that Mr. Moustakas, after the restoration of the constitutional order in Cyprus continued to have the same ideas and to support the coup.

Mr. Moustakas, who gave evidence, said that the Board of Directors of the applicant Company consists of himself, his wife, Mr. P. Soteriou, the counsel appearing to-day for the applicants, and Mr. Fronis Saveriades, an advocate of Limassol. He said that he has been in the shipping business for approximately 27 years and that until he formed his own company he was employed by Messrs S. Ch. Ieropoulos Co Ltd as their Manager. The witness said that in order to operate their business the applicants must possess and use the equipment applied for, because without it they cannot do their work properly, which becomes problematic, that they cannot compete with other shipping companies, because the cost of loading and unloading cargo that is entrusted to them becomes prohibitive. Further, by not communicating by means of radio-telephone with the Master and the crew of ships on which they either load or unload cargo they have to use a motor-launch which is very costly and it takes considerable time.

The allegations contained in the two letters that I have earlier mentioned, were never communicated to the applicants nor were they put forward to Mr Moustakas when he was being cross-examined so that he would be given the opportunity to admit or deny them. Mr. Moustakas in his evidence emphatically stated that he was never convicted by any Court of Law

for any kind of offence and that all his co-directors are very respectable people.

5 As the respondents did not explain how the radio-téléphones required by the applicants can be used in an illegal way and the allegations contained in the two letters as regards the character of Mr. Moustakas are not substantiated or supported by the evidence, and they are uncertain and vague, I find that the decision of the Ministry of Communications and Works to refuse the application of the applicants must be annulled.

10 In the circumstances of the case there will be no order as to costs.

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