

1988 February 2

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEMETRIS FACONTIS,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF COMMUNICATIONS AND WORKS,

Respondent.

(Case No. 534/83).

Reasoning of an administrative act—Action on the part of applicant, relied upon as a reason for the sub judice decision, capable of more than one interpretation—In the circumstances the sub judice act is not adequately reasoned.

5 *Reasoning of an administrative act—The need to refer to the rule applicable.*

The Licensing Authority granted to the applicant, who, at the time, was the owner of two licences for cars hired without a driver, eight licences for such cars.

10 Following the said decision, the applicant agreed to sell the one of the said licensed vehicles and consented to the transfer of the other.

Upon a hierarchical recourse to the respondent Minister by the interested parties, against the said decision of the Licensing Authority, the respondent Minister reached the sub judice decision, the relevant part of which reads as follows:

15 "Having in mind the legislation in force and all the facts placed before me and in particular the fact that after the grant to him by the Licensing Authority of the challenged eight licences he transferred two licences to other persons, I allow this recourse."

20 It must be noted that from the reports of a District Transport Inspector and of the District Office of the Department of Inland Transport it transpires

that the applicant, who was residing at Yeroskipou, had, as his business, the purchase and sale of cars and was an agent for the sale of Peugeot-make cars. He was also the agent of Subaru-make cars and has an office at Yeroskipou and a show-room at Kato-Paphos.

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Held, annulling the sub judice decision: (1) Sections 10(1) and (2) of Law 9/82 govern the grant of licences for the hire of vehicles without a driver and section 5(9) prohibits the grant of a road use licence in relation to any vehicle, unless the owner thereof persuades the Licensing Authority that he is carrying out the said business of transportation as his main profession.

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(2) The act of transfer of the two vehicles does not unequivocally show its legal significance. Indeed, it may have been relied upon as an act prohibited by law or as an act showing that applicant did not intend to carry on the business as his main profession. If the Court assumes the second alternative (the first is contrary to law), it would be tantamount to supplementing the reasoning of the sub judice decision. There should have been a clear finding that the applicant did not carry or intend to carry as his main business the hire of cars without a driver.

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Though the transfer of the two vehicles was linked with questions about the business activities of the applicant but as the act of transfer by itself is capable of more than one interpretation, the judicial control of it is not possible and therefore the sub judice decision suffers from lack of adequate reasoning, there being no reference to the exact rule applicable nor has it been subject to the exact provision of the law applicable as it ought to have been done.

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

Recourse.

Recourse against the decision of the respondent allowing the hierarchical recourse of the interested parties against the decision of the Licensing Authority to grant applicant licences for eight vehicles for hire without a driver.

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Chr. Clerides, for the applicant.

M. Tsiappa (Mrs), for the respondent.

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A. Panayiotou, for the interested parties.

Cur. adv. vult.

5 A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the decision of the respondent Minister by which he allowed the hierarchical recourse of KEM Taxi Ltd., A. Petsas and Sons Ltd., F. Varianou and Co. Ltd., and ASTRA self-drive cars Ltd., against the decision of the Licensing Authority of the 30th September, 1982, to grant to the applicant licences in relation to eight vehicles for hire without a driver commonly known as "Z" licences is null and void and of no effect whatsoever.

10 The relevant facts are briefly these. On the 20th May, 1982, the applicant who was already the owner of two licences for vehicles for hire without a driver applied to the Licensing Authority for the grant of such licences for another twenty vehicles of Peugeot-make. In his said application the applicant
15 described his business to have been an agent for the sale of Peugeot-make cars and also to have an office for the hire of vehicles without a driver which apparently was related to his therein stated ownership of two such licensed vehicles under registration No. Z JR832 and ZKB187 (see Exhibit "C" page 1).
20 From the report of a District Transport Inspector dated the 3rd June, 1982 and of the District Office of the Department of Inland Transport dated the 7th September 1982, it transpires that the applicant who was residing at Yeroskipou and was the owner of two licensed vehicles had as his business the purchase and sale of
25 cars and was an agent for the sale of Peugeot-make cars. He was also the agent of Subaru-make cars and has an office at Yeroskipou and a show-room at Kato-Paphos. The rental business was intended to be carried out at Kato-Paphos (see Exhibit "C" pages 2 and 3).

30 By letter dated the 6th October 1982, (Exhibit "C" page 6), the Licensing Authority communicated to the applicant their decision taken at their meeting of the 30th September 1982, by which they

granted to the applicant eight licences for hire of vehicles without a driver and vehicles to be stationed at Kato Paphos.

Following the grant of the above mentioned eight licences, the applicant on the 15th October 1982, entered into a written agreement with one Polydoros Eleftheriou for the sale of one of the two licensed vehicles (vehicle JR832) owned by him at the time of the decision of the Licensing Authority (See Exhibit "B" page 25.) Also on the 25th November 1982, the applicant also consented to the transfer of the other licensed vehicle (vehicle KB187) to KYPREXXO Motor Agency (see Exhibit "D" pages 15 and 16).

The Licensing Authority approved the transfer of the said vehicles at its meeting of the 15th March, 1983, but it decided to bring the matter to the attention of the respondent Minister, before whom the hierarchical recourse against the Licensing Authority's decision to grant the eight licences was pending (see Exhibit "D" p. 27).

Before proceeding any further it is useful to set out herein the sub judice decision issued by the respondent Minister in pursuance of the hierarchical recourse of the interested parties made under the Motor Transport Regulation Law 1982 (Law No.9 of 1982) which reads as follows:

"Decision of the Minister of Communications and Works in the recourse of Messrs. Kern Taxi Ltd., A. Petsa and Sons Ltd., Ph. Varianou and Co., Ltd., and Astra, self-drive cars Ltd., against the decision of the Licensing Authority by which eight 'Z' licences were granted to Demetris Faonti.

Having in mind the legislation in force and all the facts placed before me and in particular the fact that after the grant to him by the Licensing Authority of the challenged eight licences he transferred two licences to other persons, I allow this recourse."

5 It is the case for the applicant that in accordance with the provisions of Section 6(1) of the Motor Transport Regulation Law 1982 (Law No. 9 of 1982) "Z" licences, as other licences for road use relate to the vehicle in respect of which they are granted and can be transferred with it by its owner. Furthermore, although the right to acquire and dispose of property is safeguarded by Article 23(1) of the Constitution, the respondent Minister by his sub judice decision penalized, it was argued, the applicant for having exercised such statutory and constitutional right by considering fatal the sale of the "Z" licences. It was 10 moreover argued that although in the sub judice decision reference is made "to all the facts of the case", no particulars are given and consequently to that extent that part of the decision cannot be considered as duly reasoned.

15 It was further contended that the sale of such "Z" licences is a neutral factor and what had to be determined was whether such sale contravened any of the relevant criteria laid down on the 28th September 1982, namely "to make viable small business andto enable persons engaged in connected fields and who have 20 the means to obtain such licences."

25 Sections 5(3) and 5(6) (d) give the Licensing Authority discretionary powers to grant road use licences for the hire of vehicles without a driver. Section 10(1) and (2) govern the grant of licences for the hire of vehicles without a driver, and section 5 (9) prohibits the grant of a road use licence in relation to any vehicle unless the owner thereof persuades the Licensing Authority that he is carrying out the business of transportation or proposes to carry out the said business as his main profession.

30 It was submitted on behalf of the respondent Minister that the sub judice decision was reasonably open to him in view of the facts of the case and in particular the fact of transfer by the applicant of two licensed vehicles after the grant to him of eight additional licences and that he remained unconvinced that the applicant proposed to carry out as his main profession the 35 business of hiring vehicles without a driver. It was urged that

having remained so unconvinced the respondent Minister had a statutory obligation under section 5(9) of the Law to refuse the grant of licences to the applicant.

In support of the aforesaid proposition and in addition to the facts of the case outlined hereinabove my attention was drawn to the hearing of the hierarchical recourse on the 29th May, 1983, where it was put forward on behalf of the interested parties that the applicant neither carried out nor proposed to carry out as his main profession the business of hiring vehicles without a driver his aim being the purchase and sale of licensed vehicles. Moreover although the applicant denied the said allegation and claimed that as a matter of fact he had not sold to Polydoros Eleftheriou his licensed vehicle under Reg. No. JR832, this allegation, however, conflicted with the statements of the said Polydoros Eleftheriou who alleged that he had purchased from the applicant the licensed vehicle and it also conflicted with the contents of the written agreement entered into between the applicant and the said purchaser. Furthermore the applicant had failed to give any details or documentation in support of his allegation of the existence of a partnership agreement between himself and the said Polydoros Eleftheriou.

The present case can, in my view, be determined on the issue whether the sub judice decision is duly reasoned or not. It has been said time and again that the reasoning of an administrative decision may be supplemented from the material in the file, if there is no adequate reasoning in the body of the decision. In the sub judice decision apart from the generalities which can be applied to every case, namely the reference to the law in force and not to any particular section or sections thereof and to the facts placed before the respondent Minister, the only element mentioned is the fact that after the grant to the applicant by the Licensing Authority of the challenged eight licences he transferred two vehicles to other persons. This concrete action on the part of the applicant cannot by itself be a reason for the cancellation of the eight licences granted to him, as it does not unequivocally show the legal significance of it. As such it may have been relied upon as an act prohibited by Law hence the result arrived at by

the respondent Minister, or as showing that the applicant was not carrying or did not intend to carry as his main profession the business of hiring vehicles.

5 If I were therefore to assume that the reference to this element shows that the respondent Minister had not been convinced by the applicant that he was carrying out or intended to carry out the business of hiring vehicles without a driver as his main profession, I would have been myself drawing inferences from the evidence adduced and supplementing the reasoning of the sub
10 justice decision. There was needed in the sub justice decision the conclusion that the act of the transfer of the two vehicles amounted to what learned counsel for the respondent Minister claims to have established. There should have been a clear finding that the respondent Minister had not been convinced that the applicant carried or intended to carry as his main business the hire
15 of cars without a driver. It is true that at the hearing of the hierarchical recourse before the respondent Minister which resulted in the sub justice decision, the transfer of the two vehicles was linked with questions about the business activities of the applicant, but as the act of transfer by itself is capable of more than one interpretation, the judicial control of it is not possible and therefore the sub justice decision suffers from lack of
20 adequate reasoning. There being no reference to the exact rule applicable nor has it been subject to the exact provision of the law applicable as it ought to have been done (See Tsatsos "Recourse of Annulment", third edition paragraph 112 page 239).

30 For all the above reasons the sub justice decision is annulled and the matter will have to be re-examined by the respondent Minister.

In the circumstances, however, there will be no order as to costs.

35 *Sub justice decision annulled.*
No order as to costs.