

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. CYPRUS TRANSPORT CO. LTD.,
2. EFSTATHIOS KYRIACOU AND SONS LTD.,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PERMITS AUTHORITY,

Respondent.

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CYPRUS
TRANSPORT
CO. LTD.
& ANOTHER
v.
REPUBLIC
(PERMITS
AUTHORITY)

(Case No. 320/69).

*Recourse for annulment under Article 146 of the Constitution—
Recourse against refusal to grant road service licences—Motor
Transport (Regulation) Law, 1964 (Law No. 16 of 1964)—
Whether Applicants entitled to rely on their (alternative) legal
contention that the licences in question were not required under
the said Law, once they had applied for such licences—The answer
is yes—In a recourse for annulment what really is in issue is
not the merit or demerit of the conduct of the parties—But the
validity of the sub judice decision—And in proceedings of this
nature there are certain issues, including matters such as questions
of competence and legality, which the Court has to examine
even ex officio—In the present case the Applicants having been
refused the licences for which they had applied, still have the
necessary legitimate interest to argue that the Respondent had
no competence to refuse them such licences because they were
not in law necessary—The case would have been different, had
the Applicants been granted the licences in question—In which
case they would have had no legitimate interest to say that such
licences were not required by law.*

*Legitimate interest—Existing legitimate interest etc. within Article
146.2 of the Constitution—See supra.*

By this recourse the Applicants seek to challenge the validity of the Respondent's refusal to grant them certain road service licences in relation to the performance of a road transport contract entered into between the Applicant on the one part and the British Ministry of Defence on the other.

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At this stage of the proceedings the issue to be decided by the Court is whether or not the Applicants are entitled to rely on ground of law 2 in their Application to the effect that the aforesaid road service licences for which they had applied and which they had been refused, were not, in fact and in the circumstances of the present case, required to be possessed by the Applicants under the relevant legislation viz. the Motor Transport (Regulation) Law, 1964 (Law No. 16 of 1964). What in effect the Applicants were saying by this alternative ground of law was this: You, the Respondent, have no competence to grant to us, in the circumstances of this case, the licences for which we have applied; therefore, you have no competence to refuse them, with the result that the *sub judice* refusal is *null* and *void*.

In granting leave to the Applicants to proceed with the aforesaid argument, the Court:—

Held, (1) (a). It has been objected that once the Applicants did apply to the Respondent, in the appropriate manner, for the said road service licences, and did not, at any stage during the examination of the matter by the Respondent, state anything regarding the non-requirement of such licences, they cannot be heard now to submit that, after all, these licences were not, in law, necessary.

(b) In deciding on the validity of this objection I have borne in mind that what we are examining in these proceedings are not the merits or demerits of the conduct of the parties but the validity of the *sub judice* decision of the Respondent (see *inter alia*, *Lambrou and The Republic* (reported in this Part at p. 74 *ante*).

(2) That is why in proceedings of this nature there are certain issues which the Court has to examine *ex officio*, including matters such as questions of competence and of legality (see Stasinopoulos on the Law of Administrative Disputes, 1964 p. 251; Conclusions from the Jurisprudence of the (Greek) Council of State 1929–1959 p. 226; the decisions of the Greek Council of State in Cases Nos. 512/30, 1752/54, 1287/58, 2634/64, 2821/64; and Zacharopoulos Digest etc. etc. 1953–1960 Vol. I, 1st part, p. 105, para. 34).

(3) Thus, if a matter, which the Court is bound to examine, has, also, been raised by one of the parties, it cannot be said

that such should not be allowed to rely on, and argue, it, even though the past conduct of such party had led to the impression that such matter was not being raised.

(4) Had the Applicants secured the road licences applied for by them, surely, they could not have made a recourse in the matter, because they would not have possessed the legitimate existing interest entitling them to do so. But the position, now is obviously quite different; and the aforesaid issue (*supra*) has to be dealt with first at the resumption of the hearing of the case. And if the Applicants are wholly successful regarding such issue, they may win the point but lose their case. But I leave the point for the time being open.

Order accordingly.

Cases referred to:

Lambrou and The Republic (reported in this Part at p. 74 ante);
The Decisions of the Greek Council of State in cases Nos.:
512/30, 170/31, 370/35, 483/35, 2036/50, 1752/54, 1829/56,
1287/58, 2634/64, 2821/64, 600/65.

Decision.

Decision on legal issues arising in a recourse against the validity of the refusal of the Respondent to grant to Applicants road service licences in relation to the performance of a road transport contract between the Applicants and the British Ministry of Defence.

A. Triantafyllides and *M. Christophides*, for the Applicants.

Chr. Demetriades and *A. Neocleous*, for the Respondent.

L. Clerides and *P. Laoutas*, for the Interested Party
(Lefkaritis Bros).

Sir *P. Cacoyiannis* watching the proceedings on behalf
of the British Ministry of Defence.

Cur. adv. vult.

The following decision was delivered by:

TRIANTAFYLLIDES, J.: At this stage of these proceedings (in which the Applicants challenge the validity of the refusal of the Respondent to grant them certain road service licences in relation to the performance of a road transport contract

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between the Applicants and the British Ministry of Defence) I have to decide whether or not the Applicants are entitled to rely on ground of Law 2 in their Application. By means of such ground it is, in effect, contended—in the alternative—that the said road service licences were not, in fact, in the circumstances of the present case required to be possessed by the Applicants, under the relevant legislation, which is the Motor Transport (Regulation) Law, 1964 (Law 16/64).

It has been objected by learned counsel for the Respondent and for the Interested Party that once the Applicants did apply to the Respondent, in the appropriate manner, for the said road service licences, and did not, at any stage during the examination of the matter by the Respondent, state anything regarding the non-requirement of such licences, they are not entitled now to submit that, after all, these licences were, in law, not necessary.

In deciding on the validity of this objection I have borne in mind that what we are examining in these proceedings are not the merits or demerits of the conduct of the parties but the validity of the *sub judice* decision of the Respondent (see, *inter alia* *Lambrou* and *The Republic* reported in this Part at p. 74 *ante*).

That it why in proceedings of this nature there are certain issues which the Court has to examine *ex officio*, including matters such as questions of competence and of legality (see Stasinopoulos on the Law of Administrative Disputes (1964) p. 251; Conclusions from the Jurisprudence of the Greek Council of State, 1929–1959, p. 226; the decisions of the said Council in Cases 512/30, 1752/54, 1287/58, 2634/64, 2821/64; and Zacharopoulos Digest 1953–1960, Vol. 1, 1st part, p. 105, para. 34).

Thus, if a matter, which the Court is bound to examine, has, also, been raised by one of the parties before it, it cannot be that such party should not be allowed to rely on, and argue, it, even if the past conduct of such party has led to the impression that such matter was not being raised.

In the present instance there arises, in view of the material before me, the issue as to whether or not, in the particular circumstances of this case, there are required—and I leave this issue open at this stage—road service licences for the road transport operations of the Applicants in relation to the

performance of the whole, or any part, of their obligations under their aforementioned contract with the British Ministry of Defence; in other words, whether, in law, such licences were at all necessary, in view of the provisions of section 7(2)(c) of Law 16/64; and the answer to this involves obviously the legality of the *sub judice* refusal of the licences by the Respondent, as well as the competence of the Respondent to decide if it was going to grant the licences in question. This is, indeed, a case in which the issue of competence and the issue of legality seem to be interwoven to a considerable extent (as in the situation described by Tsatsos in the Recourse for Annulment, 2nd ed., p. 206).

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In my view there arises, therefore, an issue which, due to its nature, would have to be examined by me *ex officio*, even if it was not raised by any of the parties; and, once, it has been raised, as an alternative one, by the Applicants, it would, indeed, lead to an absurdity if I were to decide on this issue without allowing those who have raised it to be heard in relation thereto; the ground for refusing to hear them being that they applied to the Respondent for the licences concerned.

I have, therefore, decided to allow the Applicants to rely on, and argue, ground of law 2 in the Application; and, of course, I shall hear, too, counsel for the other parties.

In addition to the reasons which I have already given for my decision, I would add that it is not exactly correct to say that, all along, the Applicants behaved as if for the performance of the contract in question there were required road service licences; they have put in issue the matter of the need for such licences in an earlier recourse, related to the same contract (see their Opposition in Case 254/69, *exhibit 2*); and one could fairly say that all the subsequent steps taken by the Applicants in relation to securing road service licences, in respect of that contract, were taken subject to their having all along questioned the necessity for them, and that they have acted as they did, in applying for the licences, by way of taking a cautious course.

I quite agree with the proposition that a person who has accepted an administrative act or decision, or the situation created thereby, and has acted accordingly, or who has applied for and secured an act or decision in accordance with his application, cannot be allowed later to challenge its validity,

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by way of a recourse for its annulment, because such person does not possess, in the circumstances, a legitimate interest entitling him to make the recourse at all.

It is quite clear in administrative law that this is so (see Kyriacopoulos on Greek Administrative Law, 4th ed., Vol. 3, p. 124; also the decisions of the Greek Council of State in Cases 170/31, 370/35, 483/35, 2036/50, 1829/56 and 600/65.

Thus, if the Applicants had secured the road services licences applied for by them they could not have made a recourse in the matter, because they would not have possessed a legitimate interest entitling them so to do; and, then, no opportunity, or need, could have arisen for this Court to proceed to examine *ex officio* any other issue related to the validity of the decision to grant the licences to the Applicants.

Once, however, the Respondent decided to refuse the licences applied for by the Applicants, the Applicants are not prevented from proceeding by recourse against the relevant decision of the Respondent; and, as indicated, I must allow them to be heard regarding the issue involved in ground of law 2 of their Application.

Such issue has, naturally, to be dealt with first, at the resumption of the hearing of this case.

If the Applicants are wholly right regarding such issue—and I express no opinion either way—they may be found, possibly, not to possess a legitimate interest in the matter, in the sense that they cannot complain that they were refused licences to which they are not entitled (as not being required under Law 16/64). So, they may win their argument but lose their case; I, should not, however, pronounce on this aspect before the issue involved in ground of law 2 in the Application is resolved.

Order accordingly.