

1978 February 28

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LIMASSOL CHEMICAL PRODUCTS COMPANY LIMITED,
Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF COMMERCE AND INDUSTRY,
Respondent.

(Case No. 302/76).

*Administrative Law—Administrative act or decision—Executory act—
Confirmatory act—Distinction—New enquiry—What constitutes
a new enquiry—Decision refusing to reconsider previous refusal
to renew quarry licence—No new substantive facts put forward
by applicants on which a new enquiry was made—Said decision
not of an executory nature and cannot be made the subject
of a recourse under Article 146.1 of the Constitution.* 5

On July 3, 1975 the applicants applied to the Ministry of
Commerce and Industry for the renewal of their quarry licence,
issued on January 1, 1966 and which was due to expire on 10
December 31, 1975. After obtaining the views of various
Government Departments and of the Cyprus Tourism Organiza-
tion the Minister decided not to renew the licence in question.
This decision was communicated to the applicants by letter of 15
the Senior Mines Officer dated 11th August, 1976 wherein it
was stated that “the Minister of Commerce and Industry has
considered the said application, taking into consideration the
fact that the P.W.D. and the Cyprus Tourism Organization
object to the renewal of the licence and taking also into account 20
that you did not work the said licence for the last three years,
he decided that this licence should not be renewed”. Applicants
wrote a letter* in reply on the 3rd September, 1976, wherein

* See the full text of the letter at pp. 56–58 *post*.

they stated, *inter alia*, the reasons for which they did not work the licence during the last three years and asked for the re-consideration of the Minister's decision. The Minister by letter dated 24th September, 1976 informed the applicants that he could see no reason to change the previous decision. After receiving this letter applicant filed a recourse on December 7, 1976 challenging both the original decision refusing renewal of the licence and the latter decision refusing reconsideration of the previous decision.

Counsel for the respondent in his opposition raised the ground of law that the act or decision complained of was not an executive administrative act but a confirmatory one of a previous decision; this ground was, with the consent of the applicants, heard as a preliminary legal issue.

Counsel for the respondent contended that the decision not to renew the quarry licence was taken on 13.7.1976 and was communicated to applicants by letter dated 11.8.76. The decision of the Minister in answer to the new application of the applicants, dated 3.9.1976, contained in the letter of 24.9.76, is not a new decision but confirmatory of the previous one. This decision was not issued after a new enquiry as no substantive new facts were put before the Minister by the letter of applicants dated 3.9.1976.

On the other hand, counsel for the applicants contended that the allegation of the applicants in their letter of 3.9.76 that the quarries of the cement factory of Moni were also visible from the sea and were situated very near the Nicosia-Limassol road, as well as the explanation given as to why they did not carry out any operations in their quarry for the last three years, amounted to substantive new facts, which after being considered by the Minister in a new enquiry, the new decision was issued.

Held, (1) what constitutes a new enquiry depends on the facts of the particular case. In general it is considered to be a new enquiry the taking into consideration of new substantive factual elements (see the principles stated in Stassinopoulos in the Law of Administrative Disputes, 4th edition p. 176 which were followed in *Lordos Apartotels Ltd. v. The Republic* (1974) 11 J.S.C. 1087 at p. 1091). The reference in applicants' letter of 3.9.1976 to the quarries of the cement factory of Moni cannot

be considered as a substantive new fact as, in fact, the applicants were enquiring and they wanted to know whether the same measures were proposed to be taken against others and, in particular, against the Moni cement factory. Moreover, the excuse given by the applicants regarding the non-carrying of operations at their quarry during the last three years preceding the expiration of their licence, cannot, also, be considered as new substantive fact. Therefore, the decision of the respondents contained in the letter dated 24.9.1976 is not of an executory nature and cannot be made the subject of a recourse under Article 146.1 of the constitution. The recourse against the decision dated 13.7.76 is out of time as it was not filed within the 75 days time limit provided by Article 146.3 of the constitution.

Application dismissed. 15

Cases referred to:

Lordos Apartotels Ltd. v. The Republic (1974) 11 J.S.C. 1087
at p. 1091 (to be reported in (1974) 3 C.L.R.).

Recourse.

Recourse against the decision of the respondent to refuse the renewal of a quarry licence or to grant a quarry licence to applicants. 20

J. Potamitis, for the applicants.

N. Charalambous, Counsel of the Republic, for the respondent. 25

Cur. adv. vult.

MALACHTOS, J.: The applicants in this recourse were the holders of a quarry licence, class A, under No. 1186, covering a piece of land of 44 donums in extent, situated near Mari village in the District of Larnaca, for the purpose of excavating limestone. This licence was issued on 1/1/66 and expired on 31/12/75. On 3/7/75, a few months before the expiration of the said licence, the applicants applied for its renewal. The Ministry of Commerce and Industry, to which the application was addressed, asked and obtained the views on this subject of the Cyprus Tourism Organization, the District Officer of Larnaca, the Department of Housing and Town Planning and the Public Works Department. Out of these government departments the Cyprus Tourism Organization and the Public 30 35

Works Department objected to the renewal of the said licence. The Cyprus Tourism Organization objected on the ground that the physical environment of the area, which is of touristic importance will be damaged, as the area described in the licence
5 is covered with green and is visible from the Nicosia-Limassol main road and the seaside area known as the "Governor's Beach".

The Public Works Department on the other hand, expressed the view that the quarry licence should not be renewed as the
10 area concerned, besides the need for preservation of its physical environment, is so close to the new Nicosia-Limassol road so that the explosions which were bound to occur in excavating the limestone, would create a danger to the road users.

The views of these departments were transmitted by the
15 Senior Mines Officer to the Ministry of Commerce and Industry together with a covering letter dated 26/5/76, which reads as follows:

" This licence has expired on 31/12/75 and the company has applied for its renewal. The licence has been issued in
20 1966 for ten years. For better information I enclose, herewith, a copy of the licence. Several views for its renewal were asked for and I enclose the answers of the departments concerned. Out of those departments the Cyprus Tourism Organization and the Public Works Department object to
25 its further renewal. Furthermore, the company has not worked this licence for at least the last three years and we recommend that the quarry licence be cancelled for this additional reason. Please inform me of your decision so that I may inform the applicants accordingly."

30 The Minister of Commerce and Industry on 13/7/76, decided not to renew the licence in question. The decision was communicated to the applicants by letter dated 11/8/76 addressed to them by the Senior Mines Officer which reads:

35 " I refer to your letter dated 17th February, 1976 concerning the renewal of the quarry licence No. 1186 (class A) on a piece of land consisting of 44 donums near the village of Mari in the Larnaca District for the excavation of limestone and I inform you that the Minister of Commerce and Industry has considered the said application, taking

into consideration the fact that the P.W.D. and the Cyprus Tourism Organization object to the renewal of the licence and taking also into account that you did not work the said licence for the last three years, he decided that this licence should not be renewed.”

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On 3/9/76 applicants wrote the following letter to the Senior Mines Officer explaining, among other things, the reasons why they did not work their licence during the last three years prior to its expiration and asking, at the same time, for reconsideration of the Minister's decision.

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“ We have received your letter dated 11th August, 1976, by which you inform us that the Honourable Minister of Commerce and Industry, upon considering our application for renewal of our quarry licence under No. 1186 (class A), and after obtaining the views of his advisers ‘the Public Works Department and the Tourism Organization’, decided that this quarry licence should not be renewed.

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The above decision does not coincide with the repeated declarations of your Ministry in Cyprus and abroad, that the government will help to the highest degree the reinforcement and development of industry in Cyprus. Therefore, we would like to emphasize that we, the Limassol Chemical Products Co. Ltd., with the Cyprus Industrial and Mining Co. Ltd., are the only ones who in the past years expended many thousands of pounds in order to found the only factory in Cyprus for dehydration and pulverization of limestone to the thinness of 200-350 mesh with a yearly production of over 1,500 tons. We have been for years covering all the needs in limestone powder of the factories which are engaged in the manufacturing of drugs for agricultural purposes, herbicides, as well as other products which are used in agriculture and we contribute to the preservation of these products at low and stabilized prices, and so we are economising in the export of many thousands of pounds of valuable foreign exchange.

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As regards your remark that for the last three years we did not work in the said quarry, the case has as follows: Because the consumption of this industrial product does not at present exceed 400 tons a year, for this reason we

work periodically in this quarry and because of its being situated near the Turkish village of Mari, we were employing Turkish workers who were working at our factory at Mouttayaika. During the intercommunal troubles the Turkish Military commander of this village threatened our workers that if they continued to work there, he would arrest them and take them to the Turkish occupied area.

In view of this we applied to the management of the Cement Factory of Moni in order to provide us periodically with small quantities of limestone in order to cover the needs of the market. Unfortunately, our application was refused and so we applied later to the management of the Cement Factory of Vassiliko, the quarries of which are near our own. The Hellenic Mining Company promptly promised to cover on a temporary basis the needs of our factory. After the Turkish invasion and the desertion of the village of Mari by the Turks, the kind of gun powder which we used for explosions disappeared for a long time from the Cyprus market and when recently it made its appearance again, its price is so high that together with other relevant costs, obliged us to raise the prices of our products but this has not been accepted by our clients, particularly by the Central Cooperative Bank, which is our best customer.

For this reason we still continue being supplied with limestone from the nearby quarries of the Hellenic Company which; due to the mechanical means that has at its disposal the costs for excavation and loading is very low and so we preserve the price of this product in the Cyprus market, still at a low level.

As regards the views of the Director-General of the Cyprus Tourism Organization and the Public Works Department, we would like to know if the same measures were proposed to be taken against others, including the quarries of the Cement Factory of Moni, which are very near archaeological places and near the main Limassol-Nicosia road and are visible from the sea.

After the above explanations to which we have referred to, we hope that the Honourable Minister will review his

decision and will not oblige us to close our factory and deprive the market from these products and to resort to Courts in order to protect our interests and the interests of the industries which are supplied and use limestone powder of 200–350 mesh.” 5

By letter dated 24/9/76 the Director–General of the Ministry of Commerce and Industry communicated the decision of the Minister to the applicants. The said letter reads as follows:

“ I have been instructed to refer to your letter dated 3rd September, 1976, in which you enclose a copy of your letter, of even date, to the Senior Mines Officer, in relation to the refusal of the Minister of Commerce and Industry to grant to you a quarry licence class A, in an area of land near the village of Mari in the Larnaca District and for the reasons explained to you I inform you that your application has been placed once again before the Minister of Commerce and Industry, who decided that he does not see any reason to change his previous decision already communicated to you.” 10
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After receiving this letter the applicants on 7/12/76 filed the present recourse claiming:

A declaration of the Court that the decision of the respondent to refuse the renewal of the quarry licence or to grant a quarry licence to the applicants and/or not to reconsider his previous negative decision, which was communicated to the applicants by letter dated 24th September, 1976, of the Director–General of the Ministry of Commerce and Industry, for the reasons referred to in the letter of the Senior Mines Officer dated 11th August, 1976, or for any reasons, in *null* and *void* and of no effect whatsoever. 25
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: One of the grounds of law on which the opposition is based, is that the act or decision complained of is not an executory administrative act but a confirmatory one of a previous decision. This ground on the application of counsel for the respondent and with the consent of counsel for the applicants, was heard first as a preliminary legal issue. 35

Counsel for the respondent argued that the decision not to renew the quarry licence of the applicants was taken on 13/7/76

and was communicated to the applicants by letter dated 11/8/76. The decision of the Minister in answer to the new application of the applicants dated 3/9/76 contained in the letter of 24/9/76 of the Director-General of the Ministry of Commerce and
5 Industry is not a new decision but confirmatory of the previous one. This decision was not issued after a new enquiry as no substantive new facts were put before the Minister by the letter of the applicants dated 3/9/76.

10 Counsel for the applicants, on the other hand, submitted that the allegation of the applicants in their letter of 3/9/76, that the quarries of the cement factory of Moni are also visible from the sea and are situated very near the Nicosia Limassol road, as well as the explanations given as to why they did not carry
15 out any operations in their quarry in question, for the last three years prior to the expiration of their licence, amount to substantive new facts which, after being considered by the Minister in a new enquiry the new decision was issued.

Now, what constitutes a new enquiry depends on the facts of the particular case. In *Stassinopoulos on the Law of*
20 *Administrative Disputes*, 4th edition, at page 176 we read:

“ When does a new enquiry exist, is a question of fact. In general, it is considered to be a new enquiry, the taking into consideration of new substantive legal or factual elements, and the used new material is strictly considered,
25 because he who has lost the time limit for the purpose of attacking an executory act, should not be allowed to circumvent such a time limit by the creation of a new act, which has been issued formally after a new enquiry, but in substance on the basis of the same elements. So, it is not
30 considered as a new enquiry, when the case is referred afresh to a Council for examination exclusively on its legal aspect, or when referred to the Legal Council for its opinion or when another legal provision other than the one on which the original act was based is relied upon if there is
35 no reference to additional new factual elements. There is a new enquiry particularly when, before the issue of the subsequent act, an investigation takes place of newly emerged elements or although preexisting were unknown at the time which are taken into consideration in addition to
40 the others, but for the first time. Similarly, it constitutes

new enquiry the carrying out of a local inspection or the collection of additional information in the matter under consideration.”

The above principles were followed by this Court in the case of *Lordos Apartotels Ltd. v. The Republic of Cyprus through the Official Receiver and Registrar* (1974)* 11 J.S.C. 1087 at 1091*. 5

The question, therefore, that falls for consideration in the present case is whether the letter of the applicants of 3/9/76 where they applied to the Minister of Commerce and Industry to reconsider his previous decision contained new substantive facts on which a new enquiry was made and a new decision was taken by the respondent. The reference in the said letter to the quarries of the cement factory of Moni that they are situated very near the Nicosia-Limassol main road and that they are visible from the sea, cannot be considered as a substantive new fact. In fact, the applicants were enquiring and they would like to know if the same measures were proposed to be taken against others and, in particular, against the Moni Cement Factory. Neither do I consider as new substantive facts the excuse given by the applicants as to why, for the last three years preceding the expiration of their licence, they did not carry out any operations at the quarry in question. Therefore, the decision of the respondents contained in the letter of the Director-General of the Ministry of Commerce and Industry of 24/9/76 is of no executory nature, and therefore, cannot be the subject of a recourse. 10 15 20 25

Needless to say that even if we assume that this recourse is directed against the decision of the respondent dated 13/7/76 then the recourse is out of time as it was not filed within the 75 days time limit provided by Article 146.3 of the Constitution. 30

For the above reasons this recourse fails.

In the circumstances, I make no order as to costs.

Application dismissed. No order as to costs. 35

* To be reported in (1974) 3 C.L.R.