

1980 December 3

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEKATHLON SHIPPING CO. LTD.,

*Applicants,*

v.

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

*Respondent.*

(Case No. 227/80).

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*Administrative Law—Discretionary powers—Defective exercise of—  
Misconception of the situation—Refusal to register a ship—  
Respondent failing to examine possibility of allowing registration  
and imposing conditions, as previously announced, and thus choo- 5  
sing less onerous course for the applicants—In proceeding on  
the basis of an absolute prohibition respondent laboured under  
a misconception of the situation and exercised his discretion  
in a defective manner—Sub judice decision annulled.*

*Administrative Law—Administrative decisions—Reasoning—Vague and  
uncertain reasoning—Decision refusing registration of ship— 10  
Under powers given by section 14(A) of the Merchant Shipping  
(Registration of Ships, Sales and Mortgages) Law, 1963 (Law  
45/63 as amended), which provides for such refusal on either  
of two grounds—Sub judice decision not specifying under which  
of these two grounds it was taken—Reasoning therefor vague 15  
and uncertain and leads to its annulment.*

*Ship—Registration—Section 14(A) of the Merchant Shipping (Regi-  
stration of Ships, Sales and Mortgages) Law, 1963 (Law 45/63  
as amended)—Refusal to register ship—Annulled due to uncertain- 20  
ty and vagueness of the reasoning therefor and due to defective  
exercise of the discretionary powers vested in the respondent.*

This was a recourse against the decision of the respondent whereby he refused to approve the registration under Cyprus

flag of a ship purchased by the applicant company. No written communication of the *sub judice* decision was given to the applicants because they were informed over the telephone about it; but in the relevant file it was stated that “the Minister of Communications and Works exercising the powers vested in him under section 14(A)\* of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law No. 45 of 1963 as amended by Law No. 82 of 1968) decided not to approve the registration in the Cyprus Register of the said Ship as same was less than 500 tons and older than 10 years”.

In November, 1978, the Director-General of the Ministry of Communications and Works stated at a press conference that in the case of ships which are below 500 tons, for which “the International Convention for the Safety of Life at Sea of 1960, does not apply in its entirety there will be put certain special conditions.....”.

*Held*, (1) that when considering the application of the applicants the respondent failed to examine the possibility of imposing any conditions as it had been announced by the Director-General in the press conference, that it would be done in such cases and proceeded, as it appears from the contents of the subject decision, on the basis that it decided upon an absolute prohibition with regard to this particular class of ships which was clearly not the case; that the respondent laboured obviously under a misconception of the situation and so exercised his discretion in a defective manner as had he considered the possibility of imposing and in fact by imposing, if he so decided, conditions he could have chosen the less onerous course for the applicants (see *Vassos Eliades Ltd., v. The Republic* (1979) 3 C.L.R. p. 259).

(2) That the power of the Minister under the said section 14(A), to give directions to the Registrar not to effect the registration of a particular ship, or of a particular class of ships consists of two legs, namely where the registration of such ship or ships

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\* Section 14(A) reads as follows:

“14(A). Notwithstanding the provisions of this Law, the Minister shall have power, where the registration of a particular ship or of a particular class of ships in the Cyprus Register would be contrary to the general policy followed by the Government of the Republic or to the public interest in general, to give directions to the Registrar not to effect the registration of such ship or ships”.

would be contrary to (a) the general policy followed by the Government of the Republic, or (b) to the public interest in general; that the material in the file of the administration from which the reasoning of the *sub judice* decision has to be ascertained does not specify under which of the two legs the Minister acted in deciding not to approve the registration of the ships of the applicants; that the situation is suggestive of a lack of due inquiry, and the fact that there is no suggestion in the material in the decision as to which of the alternatives was pursued, renders the reasoning of the subject decision vague and uncertain and all these constitute grounds for annulling the *sub judice* decision; and that, accordingly, the *sub judice* decision must be annulled and the matter be referred for re-examination by the respondent.

*Sub judice decision annulled.* 15

Cases referred to:

*Vassos Eliades Ltd., v. The Republic* (1979) 3 C.L.R. 259.

#### Recourse.

Recourse against the refusal of the respondent to approve the registration under Cyprus flag of the ship "Avon" under the name "My Destiny". 20

*L. Papaphilippou with E. Vralimi (Mrs.)*, for the applicant.

*Cl. Antoniadès*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. By the present recourse the applicants who are a private Company of limited liability and registered as such on the 12th February, 1980, under the provisions of the Companies Laws, Cap. 113, claim: 25

A declaration of the Court that the act and/or decision of the respondent by which on or about the 8th July, 1980, he refused to approve the registration under Cyprus flag of the ship "AVON" under the name "MY DESTINY" is null and void and of no effect whatsoever and that what was omitted ought to be done. 30

The facts of the case are not in dispute. 35

The shareholders and directors of the applicant Company are Cypriots residing in Cyprus and its main object is to acquire,

own and exploit ships. The applicants negotiated the purchase of a ship called "AVON" which at that time was flying the flag of Panama. Before concluding the purchase of the said vessel, they obtained an Exchange Control Permission from the Central Bank of Cyprus for the transaction and payment of the sum of US \$ 103,000.- The purchase was duly concluded and the Bill of Sale duly signed, was executed. The ship as described in the Bill of Sale (*exhibit 'B'*), was built in Holland in December, 1960. She is shown to be on the Bill of Sale 539.23 gross tonnage.

The vessel was brought to Cyprus and after certain repairs were effected on her by the applicant Company, its gross tonnage was reduced to 497.54 tons.

On the 5th June, 1980, the applicants through their counsel submitted an application to the respondent for her registration under the Cyprus flag in their name (*exhibit 'C'*) and on the 19th June, 1980, applied to the Registrar of Ships that same be surveyed by one of the surveyors of the Republic and carry out the measurements in order to ascertain her gross and net tonnage. This was done and she was found to have the tonnage hereinabove given. On the 8th July, 1980, the applicants through their advocates were informed over the phone that their application for the registration of the said ship was rejected and upon that they sent a telex (*exhibit 'E'*) which reads as follows:

"THE MINISTRY OF COMMUNICATIONS AND WORKS ATTENTION: THE DIRECTOR-GENERAL RE: M/V 'AVON' TBR 'MY DESTINY' ON ENQUIRY OVER THE PHONE WITH THE MINISTRY WE HAVE BEEN INFORMED THAT OUR APPLICATION FOR REGISTRATION OF ABV VSSL DATED 5TH JUNE 1980 HAS BEEN REJECTED. NO REASONS HAVE BEEN GIVEN. WE HAVE BEEN TRYING TO GET IN TOUCH WITH YOU SO AS TO ARRANGE A MEETING BUT REGRETTABLY WE HAVE BEEN IGNORED. APPARENTLY THE SERIOUSNESS OF THE MATTER IS DISREGARDED. AS WE ARE INSTRUCTED TO FILE A RECOURSE AGAINST THE REFUSAL OF THE REGISTRATION AND THE SO CALLED 'REGULATION'

RESTRICTING THE REGISTRABLE AGE, WE  
REQUEST A WRITTEN DECISION AND REASONS  
BEFORE THE 11TH OF JULY”.

As rightly pointed out by counsel for the respondent, it was not possible in the normal course of things to give a written reply on such a serious matter within the two-day time limit given by counsel for the applicants in his telex and as this recourse was filed on the 15th July, no written communication of the *sub judice* decision was given to the applicants, though the applicants were duly informed over the telephone about it, hence the expeditious filing of the recourse.

The reasoning of the *sub judice* decision has then to be ascertained from the material in the file of the Administration (*exhibit 2*). In reds 3 and 4 therein, it is stated that the Minister of Communications & Works exercising the powers vested in him under section 14A of The Merchant Shipping (Registration of Ships, Sales and Mortgages) Law 1963 (Law No. 45 of 1963 as amended by Law No. 82 of 1968) decided not to approve the registration in the Cyprus Register of the said ship as same was less than 500 tons and older than 10 years.

Connected with the question of reasoning are the contents of a statement made on the 25th November, 1978, at a Press Conference by the Director-General of the Ministry of Communications and Works, copy of which has been produced as *exhibit 3*. Counsel for the respondent has invited me to find that its contents supplement or explain the grounds and reasons for the *sub judice* decision. In so far as relevant it reads as follows:-

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2. The purpose of this meeting is to announce certain decisions which the Ministry of Communications and Works took with regard to the Cyprus Merchant Shipping and then to request you to tell us what you have done for the adoption and implementation by the ship owners that you represent of the Cyprus collective agreement which we brought to your consideration some months ago.

3. It is known to all of you that the Cyprus flag was at times the subject of many criticisms and adverse comments from international sailors and stevedores trade unions

and from a section of the international press. I shall mention some of the criticisms and the adverse comments that I have in mind:—

- 5 (a) The Cyprus flag is a flag of convenience and the shelter of very old ships and of ships of low safety level.
- (b) There is no real link between the Cyprus ship and the Cyprus flag.
- 10 (c) Many Cyprus ships sail over the oceans with incomplete crews or without certificates of competence of members of their crews or without up to date safety certificates.
- (d) The Government of Cyprus does not exercise the control which must be exercised over Cyprus ships.
- 15 (e) In many Cyprus ships the conditions of life and the terms of employment are not considered satisfactory and the Cyprus Government does not take the necessary measures for their improvement.
- (f) In the majority of cases the crews of Cyprus ships consist of foreigners who do not have any protection from the Cyprus Government.
- 20 (g) Cyprus ships engage in illegal activities.

Probably many of the aforesaid criticisms and comments are baseless and may be malicious. The Ministry of Communications and Works on many occasions tried to answer many of the accusations that appeared in the international press against the Cyprus flag. In meetings with representatives of the two known international trade unions of seamen with communications through the press and the television in international forums and in contacts with various persons, efforts were made to persuade international public opinion that the Cyprus flag is not as they wished to present it as certain sailor's trade unions and or persons wished to present it.

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35 4. In spite of this, unfortunately the criticisms and the adverse comments continue and I am sorry to say that from elements and reports that we have it appears that the state of certain Cyprus ships and the conditions prevail-

ling on them and the actions of certain ship-owners and/or masters not only do not contribute to the termination of criticisms and adverse comments against the Cyprus flag but give reasons for their continuation. It appears from statistics that we have really many Cyprus ships which are very old and that another number of cargo Cyprus ships is below 500 tons and very old. As in the case of ships which are below 500 tons The International Convention for the Safety of Life at Sea of 1960, which has been ratified by Cyprus, does not apply in its entirety and the control of their condition is not easy.

5. Bearing in mind the aforesaid and after considerable thought and study we have invited an expert to advise us how to modernize the legislation on the Cyprus Merchant Shipping and how to face other connected subjects and concurrently we have decided that as from the 1st December 1978, it is in the public interest not to register in the Cyprus Register ships which are more than 17 years old and also not to register in the Cyprus Register cargo boats and fishing shps which are below 500 tons and whose age is over five years. In the case of these ships which are below 500 tons, for which as I said the international Convention for the Safety of Life at Sea of 1960, does not apply in its entirety there will be put certain special conditions

6. The aforesaid measures have been taken within the framework of the wider efforts which the Ministry of Communications and Works makes for the preservation and the further improvement of the prestige of the Cyprus flag.

From what was said in paragraph 5 regarding the class of ships that had a tonnage of less than 500 tons and were over five years of age, attention has to be drawn to the statement contained in paragraph 5 hereinabove set out that in respect of them "there will be put certain special conditions" and because the Convention For The Safety Of Life At Sea of 1960 does not apply in its entirety. Nothing appeared in the relevant file of the administration, *exhibit 2*, which contains the *sub judice* decision with regard to any special conditions that were considered when examining this application in particular, nor there has been any suggestion on the part of the respondents that any conditions of general application were thought of

and brought into existence since the statement contained in *exhibit 3* was made. On the contrary when the application to the respondents for the registration of the ship in question was made, what were examined were that the proposed name  
5 "DESTINY" was free, that the fees of ten pounds were collected and then there followed a record that "the registration of the ship is not recommended since she is below 500 tons and more than fifteen years' old. It should be noted that under German flag as "ATAIR" its tonnage was 539. I suggest that it should  
10 be surveyed in accordance with the Cyprus Regulations before the application is considered for registration under Cyprus flag." A survey and measurements were carried out by Mr. Karydjis whose findings were that she was 498 gross tons. It was then that the Minister approved of the subject decision (red  
15 3 in *exhibit 2*) which has been referred to earlier in this judgment.

Section 14(A) of the Law which was inserted by section 2 of Law 82 of 1968 reads as follows:

20 "14 (A). Notwithstanding the provisions of this Law, the Minister shall have power, where the registration of a particular ship or of a particular class of ships in the Cyprus Register would be contrary to the general policy followed by the Government of the Republic or to the public interest in general, to give directions to the Registrar not to effect the registration of such ship or ships."

25 The power of the Minister to give directions to the Registrar not to effect the registration of a particular ship, or of a particular class of ships consists of two legs, namely where the registration of such ship or ships would be contrary to (a) the general policy followed by the Government of the Republic, or (b)  
30 to the public interest in general.

The material in the file of the administration from which the reasoning of the subjudice decision has to be ascertained does not specify under which of the two legs the Minister acted in deciding not to approve the registration of the ships of the  
35 applicants.

Counsel, however, appearing for the respondent, has asked the Court to consider that the contents of *exhibit 3*, in so far as relevant to the tonnage and age of the ship in question and its registration, constitutes part of the reasoning of the subject



decision and that the refusal to register was done in the public interest in general because the ship in question fell within the class of ships of a tonnage less than 500 and over five years of age. The leg referring to the general policy followed by the Government of the Republic on the question of registration of ships was not invoked but this differentiation does not appear from the material in the file. 5

In any event there did not appear to have been at that time, that is the 8th July 1980, any general direction of general policy given by the Council of Ministers under Article 54, paragraph (A) of the Constitution in the exercise of its executive power, which includes such power. 10

After the hearing of the case was concluded, counsel for the applicants brought to my attention decision number 19.357 of the Council of Ministers taken on the 24th July 1980, (*exhibit "X"*), as affecting the outcome of the proceedings and asked that the hearing be reopened, as he was not aware of this decision beforehand. At the reopening of the case counsel for the respondent produced also the Submission which the Ministry of Communications and Works made to the Council of Ministers on the basis of which this decision was taken. The decision reads as follows: 15 20

*"Cyprus Merchant Shipping.*

10. The Council studied the aforesaid subject and decided that the criteria of the age of ships with regard to their tonnage as well as the remaining conditions for the registration of ships in the Cyprus Register, mentioned in paragraphs 14.2 and 15 of the submission be adopted as government policy." 25

A perusal of the submission of the paragraphs mentioned as well as paragraph 14.1 shows that the registration of ships, like the subject ~~one~~, could, under this decision, be effected on certain conditions. This decision of course could not apply to the present case as it does not give the legal position that existed at the time the subject decision was taken. The submission, however, was dated 14th July, 1980, that is, at a time very proximate to the taking of the subject decision. I cannot but assume that when the Director General was making the statement contained in *exhibit 3*, and was saying that there will 30 35

be placed certain special conditions with regard to the registration of ships in the class in which the subject ship falls, was indicating that the prohibition of their registration was not intended to be absolute.

5 This being so it leads me to the conclusion that when considering the application of the applicants the respondent failed to examine the possibility of imposing any conditions as it had been announced that it would be done in such cases and proceeded, as it appears from the contents of the subject decision,  
10 on the basis that it decided upon an absolute prohibition with regard to this particular class of ships which was clearly not the case. The respondent laboured obviously under a misconception of the situation and so exercised his discretion in a defective manner as had he considered the possibility of imposing  
15 and in fact by imposing, if he so decided, conditions he could have chosen the less onerous course for the applicants. This latter stand brings the case within the principles enunciated by the Full Bench of this Court in the case of *Vassos Eliades Ltd., v. The Republic* (1979) 3 C.L.R. p. 259.

20 Furthermore this situation is suggestive of a lack of due inquiry, and the fact that there is no suggestion in the material in the decision as to which of the alternatives was pursued, the reasoning of the subject decision is vague and uncertain and all these constitute grounds for annulling the subject decision  
25 and the matter should go back for re-examination by the respondent.

I cannot, however, fail to observe that a new situation has come into existence since the adoption by the Council of Ministers of decision Number 19.357 of the 24th July 1980 which  
30 permits the registration of such ships subject to certain conditions which are set out therein and which may be imposed in permitting their registration.

For all the above reasons the recourse succeeds, the subject decision is annulled but in the circumstances I make no order  
35 as to costs.

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