

1981 June 24

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

METAPHORIKI ETERIA "AYIOS ANTONIOS"
SPILIA-COURDALI LTD.,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF COMMUNICATIONS AND WORKS,
2. THE LICENSING AUTHORITY,

Respondents.

(Case No. 294/78).

5 *Legitimate interest—Article 146.2 of the Constitution—Unreserved
acceptance of administrative act or decision—Deprives acceptor
of legitimate interest to make a recourse—Issue of road service
licence to applicants subject to certain restrictions—Acceptance
of restrictions by applicants and no steps taken by them for their
cancellation—Subsequent refusal to issue road service licence
without the said restrictions—Said earlier acceptance deprives
applicant of the right to contest the refusal by means of a recourse
because any legitimate interest which might have existed has
10 been lost by such acceptance.*

15 *Administrative Law—Administrative acts or decisions—Reasoning—
Due reasoning—Need for—Reasoning may be ascertained and
supplemented from the material in the file—Sub judge decision
was, in the light of its contents as appearing from the administrative
records, reasoned to a sufficient extent as to render same duly
reasoned.*

*Administrative Law—Discretionary powers—Judicial control—Prin-
ciples applicable.*

20 *Motor Transport—Road service licence—Issued subject to restrictions
—No steps taken for their cancellation—Applicants having no
legitimate interest to attack validity of subsequent decision refusing*

to issue licence without said restrictions—Discretion of respondents in taking sub judice decision properly and reasonably exercised in the circumstances of this case—Sections 8(2) and (6) of the Motor Transport (Regulation) Laws 1964 to 1975.

The applicant company has since its incorporation in 1968 been licensed by respondent 2 to operate its three buses along the route from Spilia and Kourdali to Nicosia and back subject to certain conditions one of which was as follows:

“It is prohibited for the bus on its way to Nicosia and back to its destination to take up or set down any passengers from any in-between villages, along such route, which are being served by the buses of their respective villages, before 8 a.m.”.

Prior to the establishment of the applicant company similar licences with the same conditions had been issued to the individual shareholders of the applicant company who were the owners of the old buses which were transferred to the applicant and which had been operated for their own account prior to and since 1964 when the Motor Transport (Regulation) Law, 1964 (Law 16/64) came into operation and till the incorporation of the applicant company. But neither such persons in their individual capacity nor the applicant company after its incorporation took any proceedings against the refusal of the Licensing Authority to remove the restrictions, either by appeal to the Minister or recourse to the Court. And this notwithstanding the fact that on several occasions they were prosecuted and fined for contravening such conditions by taking passengers from intermediate villages.

On April 12, 1977 the applicant Company applied* to respondent 2 Authority for the granting of a road service licence for all its buses in order to be able to take up and set down at any time passengers from intermediate villages on the new Nicosia-Troodos road, on the basis of the rights which it had prior to the establishment of the Licensing Authority as well as prior to the functioning of the new Nicosia-Troodos road. The respondent Authority dismissed the application and the applicant company appealed to the Minister of Communications and

* The application appears at p. 228 *post*.

Works by way of a hierarchical recourse under section 6(1) of Law 16/64. The Minister dismissed* the appeal after hearing argument on behalf of the applicant Company, the representatives of the Government Departments concerned and the interested parties who were operating buses from the intermediate villages in question. Hence this recourse.

Counsel for the applicant Company mainly contended:

- (a) That the applicant had a vested right safeguarded under section 17** of Law 16/64, which was acquired through its shareholders who were the previous owners of the transport licences and which could not be interfered with and that the fact of the existence of such right was not taken into consideration when the respondents were considering the application and as a result the *sub judice* decision was taken under misconception of facts.
- (b) That the *sub judice* decision was not duly and adequately reasoned.
- (c) That the respondents did not exercise their discretion properly and in accordance with the provisions of section 8(2) (b)(c)(d) and 8(6) of Laws 16/64 to 60/75.

Held, (1) that if a person accepts an administrative act or decision unreservedly, he no longer possesses a legitimate interest entitling him to make a recourse against it in the sense of Article 146.2 of the Constitution; that the whole demeanour of the applicant company as well as its shareholders prior to the formation of the company and after the enactment of Law 16/64 shows clearly an acceptance, without reservation, of the restrictions imposed by the Licensing Authority; that if the applicant company had any vested rights as alleged, it should, at least from the time of its establishment, if not its shareholders much earlier, after the enactment of Law 16/64, take steps for the cancellation of the condition restricting them to carry any passengers from intermediate villages; that the acceptance of the said restriction by the applicant has deprived it from the right to contest, at this late stage, the *sub judice* decision, as any legitimate interest which might have existed has been lost

* The *sub judice* decision appears at pp. 229–30 *post*.

** Section 17 is quoted at p. 233 *post*.

by such acceptance and/or acquiescence of the restrictive conditions imposed by the Licensing Authority; accordingly contention (a) must fail.

(2) That the administration must give proper reasons for its decision to enable the Court to ascertain whether the decision 5
complained of is well founded; that the reasoning may also be ascertained and supplemented from the material in the files of the administration; that the *sub judice* decision was taken after the Minister had taken “into consideration all the facts before him, the representations of the interested parties and 10
the allegations of the applicants that they have a right to take up or set down passengers from the intermediate villages”; that such decision was, in the light of its contents and as it appears from the contents of the administrative records reasoned to a reasonably sufficient extent as to render same duly reasoned; 15
accordingly contention (b) must fail.

(3) That this Court is not entitled to substitute its own discretion for that of the appropriate organ but can only examine as to whether such discretion was properly and reasonably exercised in the circumstances of each case (see, *inter alia*, 20
Christou v. Republic (1977) 3 C.L.R. 11); that this Court is satisfied from all the material before it, including the notes of the hearing before the Minister and the contents of his decision, that the Minister in reaching his decision did not act improperly or in contravention of the provisions of either section 8(2) or 25
section 8(6) of the Motor Transport (Regulation) Laws 16/64 to 60/75, and there is no justification for any interference with the said decision; accordingly contention (c) must, also, fail.

Application dismissed.

Cases referred to: 30

- Neocleous and Others v. Republic* (1980) 3 C.L.R. 497;
Piperis v. Republic (1967) 3 C.L.R. 295;
Ioannou and Others v. Republic (1968) 3 C.L.R. 612;
Markou v. Republic (1968) 3 C.L.R. 267;
Myriantthis v. Republic (1977) 3 C.L.R. 165; 35
Eleftheriou and Others v. Central Bank (1980) 3 C.L.R. 85 at
p. 98;
Zafirides v. Republic (1980) 3 C.L.R. 140;

- Vassiliades and Others v. Municipality of Larnaca* (1980) 3 C.L.R. 486;
- Savva v. Republic* (1980) 3 C.L.R. 675;
- Bagdades v. Central Bank of Cyprus* (1973) 3 C.L.R. 417;
- 5 *Papazachariou v. Republic* (1972) 3 C.L.R. 486;
- Hadjisavva v. Republic* (1972) 3 C.L.R. 174;
- Mavrommatis v. Republic* (1977) 3 C.L.R. 380;
- Ploussiou v. Central Bank* (1978) 3 C.L.R. 18;
- Christodoulou and Another v. CYTA* (1978) 3 C.L.R. 61;
- 10 *Dekathlon Shipping v. Republic* (1980) 3 C.L.R. 630;
- Christou v. Republic* (1977) 3 C.L.R. 11;
- Christodoulou and Another v. CYTA* (1978) 3 C.L.R. 61;
- Tsangaris v. Republic* (1975) 3 C.L.R. 518;
- Georghakis v. Republic* (1977) 3 C.L.R. 1;
- 15 *Evgeniou v. Republic* (1979) 3 C.L.R. 239.

Recourse.

- Recourse against the decision of the respondents whereby applicants application for the granting of a licence to their buses so as to take up and set down passengers from the touristic
- 20 Troodos-Nicosia road was dismissed.

P. Solomonides, for the applicants.

Cl. Antoniadès, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

- 25 SAVVIDES J. read the following judgment. The applicant is a transport company of limited liability incorporated in 1968 having its place of business at Spilia village. It is a licensed carrier of passengers under the provisions of section 17 of the Motor Transport (Regulation) Laws 16/64 to 60/75) in respect
- 30 of its three buses under Registration Nos. TDT 314, TFB 656 and THM 534.

- The licences issued by the Licensing Authority established under the provisions of Law 16/64 are annual licences defining the route on which each bus is to operate and embodying certain
- 35 conditions subject to which such licences are issued.

In the present case the buses of the applicant company were

licensed to operate along the route from Spilia and Kourdali to Nicosia and back, subject to certain conditions one of which was as follows:

“It is prohibited for the bus on its way to Nicosia and back to its destination to take up or set down any passengers from any in-between villages, along such route, which are being served by the buses of their respective villages, before 8 a.m.”. 5

Such licences were issued to the applicant in substitution of previous licences for old buses operated by the applicant since its incorporation which have been replaced by the present buses. Such licences have always been in the same terms and subject to the same conditions. Prior to the establishment of the applicant company similar licences with the same conditions were issued to the individual shareholders of the applicant company who were the owners of the old buses which were transferred to the applicant and which were operated for their own account prior to and since 1964 when Law 16/64 came into operation and till the incorporation of the applicant company. But neither such persons in their individual capacity nor the applicant company after its incorporation took any proceedings against the refusal of the Licensing Authority to remove the restrictions, either by appeal to the Minister or recourse to the Court. And this notwithstanding the fact that on several occasions they were prosecuted and fined for contravening such conditions by taking passengers from intermediate villages, as it appears from the contents of the various files which were put before me as *exhibits* in the case. Furthermore, in addition to the criminal proceedings the Licensing Authority after complaints made by the common enterprise of bus-owners of Kakopetria that the buses of the applicant were taking up and setting down passengers at Kakopetria, one of the intermediate villages on the licensed route of the applicant company, in contravention of the conditions subject to which such licences were issued, summoned the applicant to appear before the Licensing Authority, to show cause why steps should not be taken against the applicant for the suspension of the licences for the operation of its buses as public utility buses for the carriage of passengers. 10
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At the hearing of such complaint which took place on 27.8.76 the shareholders of the applicant company appeared and were 40

also represented by advocate who on their behalf admitted the contraventions and addressed the Committee in mitigation concluding that his clients realised that under the Law it was prohibited for them to take any passengers contrary to the provisions of their licences and prayed that no further steps be taken against them and that they would apply to the Authority for a licence allowing them to take passengers from intermediate villages in the light of new facts which arose as a result of the construction of the new Nicosia-Troodos road. The Committee having taken into consideration the mitigating factors put forward by counsel for applicant decided as follows: "For the time being the Licensing Authority considers it sufficient to caution severely the accused and to point out to them that any similar contravention in future will be treated very severely".

The minutes of such hearing appear in the file *exhibit* 1(b) (blues 60-63). Such decision was also communicated to the applicant company by letter dated the 9th September, 1976 (vide *exhibit* 1(b) blue 64) signed by the chairman of the respondent Authority the material part of which reads as follows:

"*Complaint of the joint enterprise of Kakopetria buses (SAM) that your buses under Nos. 314, HM 534 and 656 take up and set down passengers before 8 a.m. from Kakopetria village.*

I wish to refer to the above subject and to inform you that the Licensing Authority at its meeting of the 27th August, 1976, examined what was said by your advocate and decided with great reluctance not to suspend the road use licences of your said buses for the reasons as also stated by your advocate that you were in doubt as to whether you have a right to take up or set down passengers on the tourist highway of Troodos-Nicosia.

The Licensing Authority considers it sufficient for the time being to warn you severely and to make it clear to you that any similar contravention in future will be faced very severely".

On 17.3.1977 the applicant submitted a new application for a licence for motor buses Nos. DT 314, FB 656 and HM 534 to take up passengers from the touristic main Nicosia Troodos

road. The respondent Authority met on the 2nd April, 1977 and dismissed such application for the reasons stated in respondent's letter dated 3.5.1977 copy of which is attached to the present recourse and which reads as follows:

"I wish to refer to your application dated the 17th March, 1977, by which you apply for the granting of a licence for your buses Nos. DT 314, FB 656 and HM 534 to take up and set down passengers from the touristic Nicosia-Troodos road, and to inform you that the Licensing Authority at its meeting dated the 2nd April, 1977 has examined your application and dismissed it because the route is sufficiently served by the licensed buses of the area".

On 12.4.1977 applicants' advocate addressed a letter (*exhibit 3*) to the Chairman of the Licensing Authority the material part of which reads as follows:

"We, 'Ayios Antonios' Transport Company, hereby apply on the basis of the rights which we had prior to the establishment of the Licensing Authority, as well as prior to the functioning of the new Nicosia-Troodos road for the granting of a road service licence for all of our buses, in order to be able from so on, as we did before, to take up and set down at any time, passengers from the villages in respect of which we had the relevant licence as is shown in your registers.

For this purpose, and in confirmation of our allegations regarding the rights for which we apply, we attach certified statements of all the Mukhtars, as well as the Secretary of the Co-operative Society of the villages through which, or partly through which we used to pass and take up and set down passengers on payment....."

The certificates of the mukhtars attached to the said application (10 in number) are similar in text and they read as follows:

"I, the undersigned chairman of the village commission of.....do hereby declare to the best of my knowledge that the buses of Spilia village used to pass through our village before the establishment of the Licensing Authority where they used to take up and set down passengers".

The respondent Authority replied to the above application

by letter dated the 14th May, 1977 which is attached to the recourse as document 1 and which reads as follows:

5 "I wish to refer to your application dated the 12th April, 1977, by which you apply for the granting of a licence so that your buses may take up and set down passengers from the villages in-between their route towards Nicosia and to inform you that the Licensing Authority at its meeting dated 26th April, 1977 has examined your applica-
10 tion and decided to insist on its previous decision of 2.4.1977 because the transport needs of the villages of the area are adequately served by the existing licensed buses".

On 31.5.1977 the applicants appealed to the Minister of Communications and Works against this decision of the respondent Authority by way of hierarchical recourse under section
15 6(1) of Law 16/64 as amended by section 3 of Law 81/72.

At a hearing before the Minister which took place on 21.11.77 and at which besides the representatives of the Government Departments concerned, the applicants, as well as the other interested parties who were operating buses from such inter-
20 mediate villages to Nicosia, attended and both applicants and the other interested parties, who were opposing the application, through their advocates argued their case. (The record of such proceedings appears at Reds 17-24 of the file *exhibit 1(f)*). The Minister having heard what was said by counsel on both
25 sides decided to dismiss the appeal of the applicant. The reasons for such dismissal appear in his letter dated 4th May, 1978 (copy of which appears on page 2 of document No. 2 attached to the application) which reads as follows:

30 "Having considered all the material before me, the representations of the persons interested and the allegations of the applicants that they have rights to take up and set down passengers from the villages in-between the route Spilia-Nicosia because before the application of the Motor Transport (Regulation) Law, 1964, they were taking up
35 and setting down passengers from those villages, I arrived at the following conclusions:

- (a) The applicants applied in 1965, after the application of the Motor Transport (Regulation) Law, 1964, for a road service licence on the route Spilia-Nicosia

with a right to take up and set down passengers from the villages in-between.

- (b) The Licensing Authority having exercised its discretionary power, has granted a road service licence for a rural bus as from 16.9.1965 on the route Spilia-Nicosia attaching on the licence granted the condition that 'the taking up and setting down of passengers from in-between villages is prohibited'. 5
- (c) The circulation on the touristic Troodos-Nicosia road may be adequately served by the existing licensed buses. 10

2. For these reasons the said recourse is dismissed".

As a result the applicant filed the present recourse, by which it prays for a declaration of the Court that the act and/or decision of the Minister of Communication and Works and/or the Licensing Authority, which was communicated to the applicants through the Ministry of Communications and Works by letter dated the 4th May, 1978 whereby their application for the granting of a licence to their buses Nos. DT 314, FB 656 and HM 534 so as to take up and set down passengers from the touristic Troodos-Nicosia road was dismissed, is null and void and of no legal effect whatsoever. 15 20

The application is based on the following grounds of Law:

- "1. The decision of the Respondents was based on a misconception of facts and/or on a misconceived basis. 25
2. The decision of the Respondents was taken in abuse and/or in excess of powers.
3. The decision of the Respondents is contrary to Law 16/64 and its amending laws and Regulations.
4. The reasoning of the decision was not made in accordance with the Law and/or the decision is unduly reasoned. 30
5. The decision of the Respondents infringes vested rights and/or interests of the applicants which are protected by the Law, the Constitution and the Legal Principles.

6. Generally, the decision of the Respondents is unjust and/or illegal and/or unjustified”.

5 The respondents by their opposition to the present application allege that the *sub judice* act and/or decision was correctly taken in accordance with the provisions of the Transport (Regulations) Laws 1964 to 1975 and in particular under the provisions of section 6 as amended by Law 81/72, in the proper exercise by the respondents of their discretionary powers and after all material facts and circumstances of the case had been taken
10 into consideration.

15 In his written address counsel for applicant submitted that the shareholders of the applicant Company as bus owners used to operate their buses since 1950 prior to the enactment of the Motor Transport (Regulation) Law of 1964 through the intermediate villages taking passengers from such villages without any restrictions and in consequence under the provisions of section 17 of Law 16/64 they were entitled to be issued with a licence allowing them to do so. The applicant company
20 is also entitled to such licence as a successor of the rights of the individual shareholders. Therefore, the refusal of the respondents to grant such licence was the result of misconception of facts and wrong interpretation of the law. He further contended that the respondents in reaching their decision did not take
25 into consideration the provisions of section 8 and in particular of paragraphs (b)(c)(d) of such section which deals with matters which had to be taken into consideration by the Licensing Authority when dealing with the present case.

30 In expounding the grounds of law set out in the recourse he submitted in respect of ground 1 that the misconception of facts and law consisted in that the respondents—contrary to the provisions of section 17 of Law 16/64 did not take into consideration the fact that prior to the enactment of Law 16/64
35 as well as after such date the shareholders of the company were operating regular routes through such villages. In respect to grounds (2) and (3) he argued that the *sub judice* decision was taken arbitrarily and in abuse of powers because the respondents failed to take into consideration the provisions of section 17 of Law 16/64 and that such provision was clear and safeguarded
40 the rights of the applicant as existing prior to the enactment of the law. In so far as ground (4) is concerned the *sub judice*

decision was not properly reasoned but was very vague. In support of ground 5 his argument was based on the fact that the *sub judice* decision is interfering with vested rights of the applicant protected by the law, the Constitution and the principles of justice. In so far as ground (6) is concerned that the decision of the respondents is unjust, illegal and unjustified, he argued that the respondents failed to take into consideration the restrictions imposed on the discretionary powers of the Licensing Authority under section 8(6) of Law 16/64 which provides that the provisions of section 8 will be applied in such a way as to give equal chances to all parties concerned to make profit. Also that the respondents failed to take into consideration the needs of the inhabitants of the said villages and the written requests of the Chairmen of the village Commissions of the said villages on this matter.

Counsel for respondents repelled the arguments of counsel for applicant and contended that the *sub judice* decision was properly taken by the respondents with all material facts before them as well as the respective provisions of the law and that they exercised their discretion properly and lawfully. Furthermore, even if the allegation of the applicant that there was a vested right in the shareholders who were the previous holders of the licences prior to 1964 when Law 16/64 was enacted was correct, they never took any steps for the recognition of such right notwithstanding the fact that the restrictions were imposed on the licences issued to them since the establishment of the Licensing Authority in 1964 nor did they attack such decision by hierarchical appeal or recourse to this Court then or in any subsequent year for which the licence was renewed till 1977.

From what may be gathered from the arguments of counsel for applicant, as appearing in his written address, the grounds of law on which he based his case may be summarised into three. The first one is that the applicant had a vested right safeguarded under section 17 of Law 16/64, which was acquired through its shareholders who were the previous owners of the transport licences and which could not be interfered with and that the fact of the existence of such right was not taken into consideration when the respondents were considering the application and as a result the *sub judice* decision was taken under

misconception of facts. This is the substance of grounds 1, 2, 3 and 5 set out in the recourse.

5 The second legal ground is that the *sub judice* decision was not duly and adequately reasoned (ground 4 of the recourse) and the third one, that in case there was no recognition of the
10 vested rights of the applicant under section 17 of Law 16/64 the respondents failed to exercise their discretionary powers under section 8(2) and 8(6) of Law 16/64 properly, in that they failed to take into consideration the restrictions imposed on
15 the discretionary powers of the Licensing Authority under the said sections, and, furthermore, that they failed to take into consideration the needs of the inhabitants of the various intermediate villages and the written requests of the Chairmen of the Village Commissions of the said villages on this matter, and the possibility of giving equal chances to all interested parties to make profit (this is ground 6 of the recourse).

I shall deal with the said legal grounds in the above order and I come to the first one.

Section 17 of Law 16/64, reads as follows:

20 “Notwithstanding anything contained in this Law a public service vehicle licensed as such on the date of the coming into operation of this Law shall be licensed under the provisions of this Law if it is so constructed or adapted for use as to comply with the relevant provisions of this
25 Law”.

30 Law 16/64 was enacted for the purpose of regulating and controlling the transportation of goods and passengers as it appears from the provisions contained in the said Law in that respect and the penal sanctions in case of contravention of the provisions of the law. The shareholders of the applicant company who were owners of vehicles for the transportation of passengers prior to 1964, after the enactment of Law 16/64, applied to the Licensing Authority for such a licence on the
35 route from Spilia and Kourdali to Nicosia and back in accordance with the provisions of Law 16/64. Such a licence was issued to them subject to the express restriction already referred to in this judgment that they were not allowed to take up or set down any passengers from the intermediate villages on such route.

The said owners did not take any steps for the removal of such restriction and the licence continued to be so renewed embodying the same restriction till 1968 when the applicant company was formed and to which the rights under the licences were transferred. Ever since the incorporation of the applicant company, the applicant continued to apply annually for the renewal of such licences which renewal was granted subject to the same restriction as before. On several occasions the shareholders of the applicant company were prosecuted for contravening the conditions of such licence by taking passengers from intermediate villages and they pleaded guilty to the charges. Also, as I have already mentioned in 1976 the applicant company was summoned to appear before the Licensing Authority to show cause why its licences for the operation of its buses were not to be cancelled after a complaint had been made against the applicant by the owners of the buses operating from the intermediate villages that the applicant was interfering with their passengers. The applicant appeared at such hearing, admitted the contravention and prayed for leniency.

The applicant company notwithstanding such proceedings never took any steps to contest the validity of such proceedings on the ground of alleged vested rights. That the applicant was well aware of the extent and effect of the restrictions is also evidenced by the fact, as it appears from the contents of the files before me, that on 7.11.1975 it applied to the respondent Authority for a licence to take up and set down garden-workers only at Astromeritis village, one of the intermediate villages on its route.

The whole demeanour of the applicant company as well as its shareholders prior to the formation of the company and after the enactment of Law 16/64 shows clearly an acceptance, without reservation of the restrictions imposed by the Licensing Authority. If the applicant company had any vested rights as alleged, it should, at least from the time of its establishment, if not its shareholders much earlier, after the enactment of Law 16/64, take steps for the cancellation of the condition restricting them to carry any passengers from intermediate villages. The acceptance of the said restriction by the applicant has deprived it from the right to contest, at this late stage, the *sub judice* decision, as any legitimate interest which might have existed has been lost by such acceptance and/or acquiescence of the

restrictive conditions imposed by the Licensing Authority. As stated in Stasinopoulos's Law of Administrative Disputes, 4th Edition, p. 205:

5 "The jurisprudence accepts that one cannot claim the revocation of an illegal administrative act if he has accepted it, that is, if he has consented freely to its contents and its performance".

10 (" 'Η άποδοχή τής πράξεως.—'Η νομολογία δέχεται ότι δέν δύναται νά προσβάλη τις δι' αίτήσεως άκυρώσεως μίαν παράνομον διοικητικήν πράξιν, εάν έχη ήδη άποδεχθί αύτήν, εάν δηλαδή έχη συναιρέσει έλευθέρως εις τό περιεχόμενον αύτής και εις τήν έκτέλεσιν αύτής").

Also, in the Decisions of the Greek Council of State (1929–1959) at pp. 260–261, the following is stated:

15 "α' Συναινέσεις και άποδοχή.

"Δέν ύφίσταται έννομον συμφέρον πρός προσβολήν διοικητικής πράξεως, έκδοθείσης τή αίτήσει, ή τή προκλήσει ή τή συναινέσει τοῦ αίτουñτος. Γενικώς δέ δέν δημιουργείται έννομον συμφέρον, όσάκις διαπιστουñται ότι ό αίτῶν συνήνεσεν 20 καθ' οίονδηποτε τρόπον εις τήν έκδοσιν τής πράξεως.

Εξ άλλου, ή γενομένη τυχόν άποδοχή τής προσβαλλομένης πράξεως ύπό τοῦ αίτουñτος καθιστᾶ άπαράδεκτον τήν κατ' αύτής στρεφομένην αίτησιν άκυρώσεως, έλλείψει συμφέροντος. 'Η άποδοχή έπέρχεται οῦ μόνον ρητῶς, διά σχετικής δηλώσεως 25 τοῦ αίτουñτος, αλλά και σιωπηρῶς, δυναμένη δηλονότι νά συναχθῆ και εκ διαφόρων ενεργειῶν του, ως ή άναγνώρισις εκ μέρους τοῦ αίτουñτος νομικής τινος καταστάσεως, έφ' όσον αύτη δέν άντίκειται εις τό δημόσιον συμφέρον, ή ή άνευ έπιφυλάξεως είσπραξις χρηματικού έντάλματος, έκδοθέντος 30 εις έκτέλεσιν τής προσβαλλομένης πράξεως. Πάντως ή άποδοχή δέον νά εΐναι άνεπιφύλακτος και έλευθέρα και ούχι νά έλαβε χώραν ύπό τήν πίεσιν τής έπελεύσεως έπιβλαβῶν συνεπειῶν διά τόν αίτουñτα".

("(a) Consent and acceptance.

35 There is no legitimate interest for attacking an administrative act, issued on the application or at the request or the

consent of the applicant. Generally no legitimate interest is acquired when it is verified that the applicant has consented in any way to the issue of the act.

On the other hand, acceptance of the attacked act by the applicant renders unacceptable the recourse for annulment which is directed against it for lack of legitimate interest. The acceptance does not come only expressly, by a relevant declaration of the applicant but tacitly also which can be inferred from various acts of his, such as the recognition on the part of the applicant of some legal situation, so long as same is not contrary to the public interest, or the receipt of a monetary warrant without reservation, issued in execution of the attacked act. In any event the acceptance must be unreserved and free and must not have taken place under the pressure of forthcoming injurious consequences for the applicants.”). 5 10 15

It has been repeatedly pronounced in a number of decisions of this Court that if a person accepts an administrative act or decision unreservedly, he no longer possesses a legitimate interest entitling him to make a recourse against it, in the sense of Article 146.2 of the Constitution (vide, in this respect, *Neocleous and others v. The Republic* (1980) 3 C.L.R. 497, in which reference is made to the following decisions of this Court: *Piperis v. The Republic* (1967) 3 C.L.R. 295, *Ioannou and others v. The Republic* (1968) 3 C.L.R. 612, *Markou v. The Republic* (1968) 3 C.L.R. 267 and *Myriantthis v. The Republic* (1977) 3 C.L.R. 165). 20 25

I wish to adopt for the purposes of this recourse, what was said by Triantafyllides, P. in *Myriantthis* (*supra*) at p. 168:

“It is well established, by now, in the administrative law of Cyprus, on the basis of relevant principles which have been expounded in Greece in relation to a legislative provision there (section 48 of Law 3713/1928) which corresponds to our Article 146.2 above, that a person, who, expressly or impliedly, accepts an act or decision of the administration, is deprived, because of such acceptance, of a legitimate interest entitling him to make an administrative recourse for the annulment of such act or decision”. 30 35

For the reasons I have endeavoured to explain, I find that the recourse so far as this legal ground is concerned, fails.

I come now to the second ground of law, that the decision is not properly reasoned.

5 It is one of the fundamental principles of administrative law that administrative decisions should be duly reasoned (vide Tsatsos "Recourse for Annulment" 3rd Ed. pp. 233, 234).

10 It has been judicially pronounced, time and again, in a number of cases of this Court that the administration must give proper reasons for its decision to enable the Court to ascertain whether the decision complained of is well founded. In *Eleftheriou and others v. Central Bank* (1980) 3 C.L.R. p. 85 Hadjiana-stassiou, J. had this to say at p. 98:

15 "It is said and rightly so, with respect, that it is one of the concepts of administrative law that decisions must be duly reasoned, and which in effect means, that clear and adequate reasons must be given, especially in cases of decisions taken by collective organs. Indeed, this is essential when a decision is unfavourable to the subject,
20 and because in the absence of such reasons, the Court is unable to ascertain whether the decision complained of is well-founded in fact and in accordance with the law".

(Vide, also, *inter alia*: *Zafirides v. Republic* (1980) 3 C.L.R. 140, *Vassiliades and others v. Municipality of Larnaca* (1980)
25 3 C.L.R. 492, *Savva v. Republic* (1980) 3 C.L.R. 675, *Bagdades v. The Central Bank of Cyprus* (1973) 3 C.L.R. 417, *Papazachariou v. The Republic* (1972) 3 C.L.R. 486).

30 It is also well settled that the reasoning may also be ascertained and supplemented from the material in the files of the Administration (vide *Hadjisavva v. The Republic* (1972) 3 C.L.R. 174, *Mavrommatis v. The Republic* (1977) 3 C.L.R. 380, *Ploussiou v. Central Bank* (1978) 3 C.L.R. 18, *Christodoulou and another v. CYTA* (1978) 3 C.L.R. 61 (in which reference is made to a number of decisions of this Court on this point). Also, *Dekathlon Shipping v. The Republic* (1980) 3 C.L.R. 630).
35

Reverting to the *sub judice* decision the contents of which appear in page 2 of document No. 2 attached to the present recourse, such decision was taken after the Minister had taken

“into consideration all the facts before him, the representations of the interested parties and the allegations of the applicants that they have a right to take up or set down passengers from the intermediate villages”.

I do find that such decision was, in the light of its contents and as it appears from the contents of the administrative records reasoned to a reasonably sufficient extent as to render same duly reasoned. 5

I come now to the last legal ground argued by the applicant by which the *sub judice* decision is challenged on the ground that the respondents did not exercise their discretion properly and in accordance with the provisions of section 8(2)(b)(c)(d) and section 8(6) of Laws 16/64 to 60/75. 10

Section 8(2) reads as follows:

“In exercising such discretion the licensing authority shall have regard to the following matters:- 15

- (a) the suitability of the route on which a service may be provided under the licence;
- (b) the extent, if any, to which the needs of the proposed routes or any of them are adequately served; 20
- (c) the extent to which the proposed service is necessary or desirable in the public interest;
- (d) the needs of the area as a whole in relation to traffic (including the provision of adequate, suitable and efficient services, the elimination of unnecessary services) and the provision of unremunerative services and the co-ordination of all forms of passenger transport, 25

and shall take into consideration any representations which may be made by persons who, on the date of the coming into operation of this Part of this Law, were already providing in good faith and for a reasonably long time transport facilities along or near to the route in question or any part thereof”. 30

And section 8(6) reads as follows:

“The provisions of this section shall be so applied as to give all concerned equal opportunity of gain as far as possible”.

- 5 The Minister dealt with the recourse of the applicants before him after a hearing at which all interested parties were present. The arguments of counsel for the applicants and those of counsel for the interested parties appear in the file produced before me as *exhibit 1(f)* (Red J. 17-24).
- 10 Also, the Minister had before him all material facts recorded in the files as well as the allegation of the applicant about a vested right which had been exercised freely and without any interruption. Obviously, the reason that at such hearing the owners of buses licensed to operate from the intermediate
- 15 villages to Nicosia were summoned to attend, was to give them a chance to express their views and substantiate their objection and to ascertain whether the inhabitants of the intermediate villages were adequately served by the existing licensed buses. It was the duty of the Minister to consider the representations
- 20 of all interested parties in reaching a conclusion to enable him consider any conflicting interests and reach a proper decision under the law.

The Minister after dealing with applicant's appeal exercised his discretion by dismissing same.

- 25 It has been stated time and again that this Court is not entitled to substitute its own discretion for that of the appropriate organ but can only examine as to whether such discretion was properly and reasonably exercised in the circumstances of each case (vide *Christou v. The Republic* (1977) 3 C.L.R. 11, *Christodoulou and another v. CYTA* (1978) 3 C.L.R. 61, *Tsangaris v. Republic* (1975) 3 C.L.R. 518, *Georghakis v. Republic* (1977) 3 C.L.R. 1, *Evgeniou v. Republic* (1979) 3 C.L.R. 239, etc.).
- 30

- I am satisfied from all the material before me, including the notes of the hearing before the Minister and the contents
- 35 of his decision, that the Minister in reaching his decision did not act improperly or in contravention of the provisions of

either section 8(2) or section 8(6) of the Motor Transport (Regulation) Laws 16/64 to 60/75, and I really see no justification for any interference with the said decision.

In the result, this recourse is dismissed with no order for costs.

*Application dismissed. No order 5
as to costs.*