

1984 December 21

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS PAPAGEORGHIOU,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE CENSORSHIP COMMITTEE FOR
CINEMATOGRAPHICAL FILMS,

Respondents.

(Case No. 133/84).

*Administrative Law—Administrative acts or decisions—Reasoning
—Requirement for due reasoning—Decisions of collective organs
—Particularly required to be reasoned—Mere citation of the law
not sufficient—Rejection of film by Board of film censors—Rea- 5
sons given by the Board too vague, general and insufficient to
explain why the film was rejected as a whole—Sub judice rejection
annulled for lack of due reasoning.*

*Administrative Law—Discretionary powers—Defective exercise—
Board of Film Censors—Refusing their approval for the exhibition 10
of a film as a whole—Their discretion exercised in a defective
manner that is contrary to law and tantamount to abuse of
powers—Sub judice refusal annulled.*

The applicant applied to the Censorship Committee for a
permit, under the Cinematograph Films (Censorship) Regu- 15
lations, 1953–1978 to exhibit a film, a Greek comedy. The
Censorship Committee refused the application and the grounds
of refusal, were: “Refused on the basis of Regulations 6A,
paragraphs (a)(g) and (h)”. The applicant appealed to the
Board of Censors under regulation 11 of the above Regulations, 20
which by a majority of 5 to 4 dismissed the appeal. The decision
of the Board read as follows: “Dismissed. We confirm the
decision of the Committee of First Instance”.

*Upon a recourse by the applicant against the decision of the
Board of Censors:*

5 *Held*, that administrative law requires, that an administrative decision, through which there results a situation unfavourable for the subject, must be reasoned; that, moreover, decisions of collective organs, such as the one with which we are dealing, are particularly required to be reasoned because of the very fact that such decisions are expected to be the result of the deliberations of the members of the said organs; that mere citation of the law is not sufficient or any reasoning at all; that the reasons given by the Board were too vague, general and insufficient to explain why the film was rejected as a whole; 10 that in a case where four out of the nine members voted for the exhibition of the film as a whole, the majority of five should have given due reasoning of the facts; accordingly the sub judice decision must be annulled for lack of due reasoning.

15 *Held*, further, that the way that they refused their approval for the exhibition of the whole film in question and upheld the decision of the Censorship Committee indicates that they dealt with the appeal in a defective exercise of their discretion that is contrary to law and tantamount to abuse of powers; and that, 20 therefore, the sub judice decision will be for this ground, also, annulled.

Sub judice decision annulled.

Cases referred to:

- 25 *Pancyprian Federation of Labour (P.E.O.) v. Board of Cinematograph Film Censors and Another* (1965) 3 C.L.R. 27 at p. 39;
- Impalex Agencies Ltd. v. Republic* (1970) 3 C.L.R. 261 at p. 375;
- 30 *Decisions of the Greek Council of State Nos. : 166/29 and 107/36;*
- Korai and Another v. C.B.C.* (1973) 3 C.L.R. 546 at pp. 564-565.

Recourse.

- 35 Recourse against the decision of the respondents whereby applicant was prohibited from exhibiting the film "Παπαδίστικη Κομπανία".

D. Ioannides, for the applicant.

- 40 *A. Vassiliades*, for the respondent.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicant seeks the annulment of the decision of the Board of Censors appointed and acting under the Cinematograph Films Law, 1953-78, dated 20th January, 1984, whereby he was prohibited from exhibiting the film "Παπαδίστικη Κομπανία".

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The applicant applied for a permit under the Cinematograph Films (Censorship) Regulations, 1953-1978, to exhibit the aforesaid film. The Censorship Committee refused his said application on 18th January, 1984, and the said decision was communicated to the applicant in a form in English, not one of the official languages of the Republic; such form, it appears, that it had been printed on the coming into operation of the Cinematograph Films (Censorship) Regulations, 1953, during the Colonial Regime. The grounds for refusal, as recorded at the back thereof, are: "Refused on the basis of Regulations 6A, paragraphs (a), (g) and (h)".

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The applicant on 20th January, 1984, appealed to the Board of Censors under regulation 11 against the refusal of the Censorship Committee to approve the said film. On the same day the Board of Censors by a very slim majority of 5 to 4 issued the sub judice decision. It is written at the back of the form of the appeal of the applicant and reads as follows: "Απορρίπτεται. Επικυρούμεν την απόφασιν της πρωτοβάθμιας Επιτροπής". Thereunder follow the signatures of five of the members of the Board of Censors, namely, Kypros Chryssanthis, C. Cleanthous, C. Lafazanis, Niki Aristidou and A. Kramvias. Under the aforesaid five signatures it is recorded: "Διαφωνούμε με την ως άνω απόφαση", and there follow the signatures of Antis Ioannides, Erini Samuel, Popi Stavrinou and Nelli Stylianaki.

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This film is a Greek comedy. According to the documentary evidence adduced, permission was given in Greece for its exhibition to persons of over 13 years of age.

Counsel for the applicant in his written address submitted that though the respondent Board is a collective organ, a decision was taken by 5 votes to 4, without any reasoning and no record was kept of what transpired at the deliberations, if deliberations took place; that the decision is not duly reasoned or reasoned at all as the reasoning is general, vague and the

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decision adopts the general citation by the Censorship Committee of regulation 6A(a), (g), (h) of the Regulations; No facts are set out to found or to make clear the reasoning, if any; They failed to carry out a due inquiry; they exercised their discretion in a defective manner, contrary to Law; their said decision is the product of abuse of power; that the sub judge decision infringes the principle of equality as the same body granted permission for the exhibition of the films "Ayios Prevezis" and "Papasouzas", similar in contents to the film "Papadistiki Compania"; And lastly, the Regulations on which the decision is purported to have been based are contrary to the Constitution, the Law and the principles of administrative Law.

Counsel for the respondents argued that the Board of Censors has a very wide discretion and it is the sole arbiter of the exercise of its discretionary power; this Court, exercising a revisional jurisdiction and not an appellate one, cannot substitute its own discretion in the place of the discretion of the respondents; that lack and/or defective reasoning cannot lead to the annulment of the sub judge decision as the respondents are vested very wide, free discretion, and the Law and regulation 6A do not demand special and concrete reasoning; the Law and the Regulations made thereunder are not contrary to the Constitution in view of the specific provision of Article 19.5 which empowers the issue of licence for cinema enterprises.

Article 146 of the Constitution introduced in this country the administrative Law as known in a number of continental countries, such as Greece and France. An administrative Court cannot substitute its own discretion in the place of the discretion of the proper organ. Nor can the administrative Court act as an Appeal Court in the matter of the exercise of such discretion on the merits of the subject under examination. The Court can only exercise control over such discretion in order to ensure that it has been exercised within the proper limits laid down by Law—(*Stassinopoulos on the Law of Administrative Acts*, (1951), at p. 325; *Pancyprian Federation of Labour (PEO) v. (1) Board of Cinematograph Films Censors, (2) Minister of Interior of the Republic of Cyprus*, (1965) 3 C.L.R. 27).

It has been judicially accepted in many countries including Cyprus and by authors on administrative law that the absence of

due reasoning is a ground by itself for invalidating a particular decision taken by an organ or authority. Due reasoning is required in order to make possible the ascertainment of the proper application of the law and to enable a guarantee of judicial control—(*Kyriacopoulos—Greek Administrative Law*, 4th edition, volume 2, page 386). 5

An organ or authority vested with discretionary power has to exercise it reasonably. Failure by an authority to comply with this obligation renders its acts unlawful or *ultra vires*. Economou in his well known textbook “Ο Δικαστικός Έλεγχος της Διακριτικής Εξουσίας—Judicial Control of Discretionary Power)—under the heading “Τα άκρα όρια ορθότητας ενεργείας” said on p. 181:- 10

“ Ο δικαστικός έλεγχος τής διακριτικής εξουσίας έχει νομολογιακώς επεκταθῆ ἐπὶ πλείστων ὄσων περιπτώσεων καθ’ ὅς ἡ Διοίκησις ἐνεργεῖ κατὰ τρόπον ὅστις ἀντιβαίνει εἰς τὸ περὶ Δικαίου συναίσθημα γενικῶς καὶ τὰς ἀρχὰς τὰς συγκεκριμέναις πλέον, ἀγαθῆς ἢ χρηστῆς ἢ καλῆς ἢ εὐρύθμου Διοικήσεως εἰδικώτερον, κατὰ τὴν ὡσαύτως ποικίλλουσαν ὀρολογίαὶν τῆς Νομολογίας. Εἰς τὰς περιπτώσεις αὐτὰς ὁ Διοικητικὸς δικαστὴς ἐλέγχει τὴν ὀρθότητα τῆς μεθόδου διοικητικῆς δράσεως, ὡς χαρακτηριστικῶς συμβαίνει εἰς τὰς ἀκολουθούσας ομάδας διοικητικῶν πράξεων:..... (ἦτοι). 15 20

3. Ἐπὶ διοικητικῶν πράξεων ἐπιλογῆς πλείονων ἐξ ἴσου νομίμων λύσεων ἐκρίθη ὅτι συντρέχει ὑπέρβασις τῶν ἄκρων ὀρίων τῆς διακριτικῆς εξουσίας, ὡσάκις ἡ Διοίκησις προέκρινε τὴν ἐπαχθεστέραν λύσιν ἀντὶ τῆς ἐπιεικεστέρας. Ἐν προκειμένῳ ἡ ἐπιεικεία, ὑπὸ τὴν ἔννοιαν τῆς φιλαγάθου ἐπιμετρήσεως τῶν ἀντιτιθεμένων συμφερόντων ἐπὶ τῷ σκοπῷ ὅπως ἡ διοικητικὴ πράξις παράσχη τὴν μεγίστην δυνατὴν προστασίαν εἰς τὸν βαρύτερον ὑπὸ τοῦ Νόμου πληττόμενον ἀποτελεῖ ἔννοιαν στενωτέραν τῆς ὀρθῆς χρήσεως τῆς διακριτικῆς εὐχερίας, διὰ τοῦτο δὲ καὶ ὑπακτέαν, ὡς εἶδος εἰς γένος, ἐν τῇ κατηγορίᾳ τῶν ἄκρων ὀρίων..... 25 30

Εἰς ἀπάσας τὰς ἀνωτέρω περιπτώσεις ἡ ἐλεγχόμενη ὀρθότης κρίσεως τῶν διοικητικῶν ὀργάνων ἀναφέρεται εἰς τὸν δικαιότερον ἢ ἐπιεικέστερον τρόπον καθ’ ὃν ἔδει νὰ ἐνεργήσῃ ἡ Διοίκησις, κατὰ τὰς ἐχούσας ἰσχὺν νόμου ἀρχὰς τῆς καλῆς Διοικήσεως καὶ δὴ τὰς τοιαύτας τῶν ἄκρων ὀρίων”. 35

And in English it reads:—

5 “The judicial control of the administrative decision has been by case-law extended to most cases where the administration acts in a way contrary to the sense of justice generally and in particular the by now settled principles of good or honest or proper or regular administration according to varying terminology of the case-law. In these cases the administrative Judge checks the correctness of the method of the administrative action as characteristically happens in the following groups of administrative acts:—————(viz.).

15 3. In the case of administrative acts when there is a choice between equal lawful solutions, it was decided that there is excess of the outer limits of the discretionary power whenever the administration had chosen the more onerous solution instead of the more equitable one. In this case equity in the sense of the benevolent assessment of the conflicting interest aiming at the granting of the greater possible protection to him who is most adversely affected by the Law, constitutes a concept narrower than that of the proper use of the administrative discretion and for this reason falls as a class within the genus, in the category of the outer limits—————

25 In all the aforementioned cases the control of the correctness of the administrative organs refers to the more just and equitable way which the administration ought to have acted, according to the principles of good administration which have the force of law and particularly those relating to the outer limits”.

30 A defective exercise of a discretion may amount to excess or abuse of power—(*Impalex Agency Ltd. v. The Republic (The Minister of Commerce and Industry)*, (1970) 3 C.L.R. 361, 375).

35 The refusal of permission to exhibit by the Censorship Committee was based on regulation 6A (a), (g), (h) that reads as follows:—

“6A. Το Συμβούλιον ή οιαδήποτε των Έπιτροπών Λογοκρισίας θα αποκόπητη ή απορρίπητη έκάστην ύποβαλλομένην

πρὸς ἔγκρισιν ταινίαν ἢ τοιχοκόλλησιν (ἀφίσα) ἐὰν ἢ τοιαύτη ταινία ἢ τοιχοκόλλησις (ἀφίσα)—

(α) ἐμπεριέχη ὕλικὸν δυνάμενον νὰ προσβάλη τὰ θρησκευτικὰ ἢ ἔθνικὰ συναισθήματα οἰωνοδήποτε τῶν κοινοτήτων,

(ζ) ὑποσκάπτῃ τὴν προσήλωσιν εἰς τὰς ἔθνικὰς, θρησκευτικὰς, ἠθικὰς ἢ κοινωνικὰς ἀξίας τοῦ τόπου καὶ ἐνθαρρύνῃ ἀπομίμησιν ἀνεπιθυμητῶν προτύπων, 5

(η) χαρακτηρίζεται ὑπὸ τῆς ἀνηθικότητος τοῦ ὅλου θέματος ἢ τῆς αἰσχρότητος μέρους αὐτῆς ἢ τῆς αἰσχρότητος τοῦ διαλόγου”. 10

And in English it reads:—

“6A. The Board or any Censorship Committee shall cut or reject each film or poster which has been submitted for approval in such film or poster—

(a) contains material likely to offend the religious and national feelings of any of the communities; 15

(g) undermines the devotion to the national, religious, moral or social values of the country and encourages the imitation of undesirable standards;

(h) it has in its character immorality of the whole subject or obscenity or part of it or obscenity of the conversation”. 20

The Board and the Censorship Committee under it are collective organs. They have to keep records of the deliberations before reaching their decision. With regard to the non-keeping of minutes, it suffices to say that in the absence of any legislative provision regulating the matter, the non-keeping of minutes by a collective organ does not always (a question to be decided on the merits of each case) vitiate a particular administrative decision, except if the absence of such minutes or clarity in the minutes tends to deprive the decision of due reasoning. The requirement of keeping written records is primarily for purposes of good administration—(Kyriacopoulos on Greek Administrative Law, 4th ed., volume 2, p. 26; Stassinopoulos on the Law of Administrative Acts, (1951) p. 223; Decisions of the Greek Council 25 30

of State in Cases 166/29 and 107/36; *Korai and Another v. The Cyprus Broadcasting Corporation*, (1973) 3 C.L.R. 546, at pp. 564-565).

5 Administrative law requires, further, that an administrative decision, through which there results a situation unfavourable for the subject, is to be duly reasoned. This principle has been adopted by our Court in numerous decisions. Moreover, decisions of collective organs, such as the one with which we are dealing, are particularly required to be reasoned because
10 of the very fact that such decisions are expected to be the result of the deliberations of the members of the said organs—(*Tsatsos on the Recourse for Annulment before the Council of State*, 3rd edition, p. 244).

15 Regulations 8 and 13 of the Cinematograph Films (Censorship) Regulations, 1953-78 and the prescribed form point clearly that the legislator required this collective organs to give reasons for their decision. This statutory requirement is additional to the need of due reasoning by the general principles of administrative law.

20 Mere citation of the law is not sufficient or any reasoning at all—(*Conclusions of the Greek Council of State*, 1929-1959 p. 186).

25 No reasons were given by the Board. By the sub judice decision they dismissed the appeal and upheld the decision of the Committee. It may be assumed that they adopted “the reasoning” of the Committee.

30 The reasons given are too vague, general and insufficient to explain why this film was rejected as a whole. Triantafyllides, J. as he then was, in *P.E.O. v. Board of Cinematograph Films Censors etc.* (supra), said at p. 39:—

35 “Moreover, the absence of proper reasoning, explaining why the film concerned had to be rejected as a whole, leads, in the circumstances of this Case, to the conclusion, at least prima facie, that the Censorship Committee have failed to exercise properly their discretionary powers, in rejecting the whole film without exhausting the alternative of cutting certain scenes of it only; as nothing has materialized leading to the opposite conclusion, I am of

the opinion that the decision of the Committee has to be annulled on 'this ground too'.

The above passage fully applies in this case. In a case where four out of the nine members voted for the exhibition of the film as a whole, the majority of five should have given due reasoning on the facts. The film itself, which was exhibited in Court, is not sufficient to justify by itself the reasons why it was rejected as a whole. 5

The Regulations on which they relied are wide, extensive and alternative. Regulation 6A (a) refers to religious or national feelings of any of the communities. Was it rejected because it was likely to offend the religious or the national feelings of the Greek community? As I have said earlier, permission was given in Greece where by the Constitution there is a recognised church, the Greek Orthodox Church, and the national feelings in the Greek State, to my mind, are not different from the national feelings of the Greeks of this State. This may be irrelevant. It is not clear whether the film was rejected because it undermines the national or the religious values of the country and at the same time encourages the imitation of undesirable standards as the word "and" is used to connect and it cannot be read as "or" in this case. 10 15 20

The decision has to be annulled for lack of due reasoning. The way that they refused their approval for the exhibition of the whole film in question and upheld the decision of the Censorship Committee indicates that they dealt with the appeal in a defective exercise of their discretion that is contrary to law and tantamount to abuse of power. The sub judice decision will be for this ground also annulled. 25

In view of the annulment of the decision on the aforesaid grounds, I need not deal with the other grounds canvassed by the applicant. 30

After the decision of the Court the respondents have to reconsider the case of the applicant. I trust that they will do so free from prejudice, with open mind, carry out a due inquiry and give grounds for any decision they may reach, if they decide not to allow the exhibition of the whole film. They are not fettered at all by their previous decision. 35

In the result the sub judge decision is declared null and void and of no effect.

In all the circumstances of this case the respondents to pay £30.- towards applicant's costs.

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*Sub judge decision annulled.
Respondents to pay £30.-
costs.*