1984 June 13

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS IACOVOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF FINANCE,

Respondent.

(*Case No.* 211/83).

Time within which to file a recourse—Article 146.3 *of the Constitution —Time begins to run from communication of relevant act— In order to set time running communication must be complete that is both in respect of the operative part of the decision as well as of the reasons that led to it—Courses open to an applicant when the act is not reasoned.*

On the 11th August, 1982 the applicant applied to the respondent for relief from the import duty with regard to a vehicle for disabled persons. The respondent turned down his application by means of a letter dated the 4th February, 1983* in which it was stated that the "Minister of Finance having considered the reports of the appropriate Services of the state decided" that applicant's claim cannot be given a favourable reply.

On the 25th April, 1983 applicant addressed a letter to the respondent requesting to be furnished with the reasons that led to the above negative reply. In his reply, dated the 4th May, 1983 the respondent informed the applicant that on the basis of the reports of the appropriate Services of the State, it was found that his degree of disablement did not justify the use of a disabled person's vehicle. Hence this recourse which was filed on the 24th May, 1983.

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* The letter is quoted at pp. 1510–1511 post.

On the preliminary objection raised in the opposition that the recourse was out of time because the letter of 4.5.1983 *did not amount to a new decision but was confirmation of the original decision:*

Held, that individual administrative acts should be communicated to the person concerned and time begins to run from such communication; that communication, however, in order to set the time running must be complete, that is both in respect of the operative part of the decision as well as of the reasons that led to it, and in this respect, time begins to run only when the person concerned has complete knowledge of the act or decision concerned; that applicant was informed and knew as early as 4.3.1983 of the operative part of the sub judice decision as well as a general reference to the reasons which led to it since reference was made in the same letter to the reports of the appropriate services of the State; and that these were enough to set the time running; accordingly the recourse is out of time and should be dismissed.

Held, further, that even if it were to be accepted that the letter of 4.2.1983 did not contain any reasoning at all, then again two courses were open to the applicant. .The first one was to file a recourse against such decision seeking its annulment on the ground of lack of due reasoning or to apply as soon as possible and *without any delay* to the respondent for any clarification which would enable him to pursue his claim more easily. A delay of about 80 days in seeking such information is unjustified in the circumstances of the present case and could not affect the running of time against the applicant.

Application dismissed.

Cases referred to:

Moran v. *Republic*, 1 R.S.C.C. 10;

Marcoullides v. *Greek Communal Chamber*, 4 R.S.C.C. 7;

Cariolou v. *Municipality of Kyrenia* (1971) 3 C.L.R. 455;

Zivlas v. *Municipality of Paphos* (1975) 3 C.L.R. 349;

Aspri v. *Republic* (1979) 3 C.L.R. 490 at pp. 497, 498;

Irrigation Division "Katzilos" v. *Republic* (1983) 3 C.L.R. 1068;

Decision of the Greek Council of State No.: 482/57.

Recourse.

Recourse against the decision of the respondent whereby applicant's application for the grant of a vehicle to be used by him as a disabled person free of import duty was dismissed.

A. Panayiotou, for the applicant.

S. Georghiades, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant applies for a declaration of the Court that the act and/or decision of the Minister of Finance, communicated to the applicant by letter dated 4.5.1983, by which his application for the grant of a vehicle to be used by him as a disabled person free of import duty was dismissed, is null and void and of no legal effect.

The applicant is a displaced person from Ayios Ermolaos and resides at Peristerona. He works with a goldsmith in Nicosia as a travelling sales man, having to drive, for this purpose, his own car. Suffering from an atrophy and partial paralysis of his left arm he applied, on the 11th August, 1982, to the Ministry of Finance for relief from the import duty with regard to a vehicle for disabled persons. The Ministry of Finance sought the views of the Medical Board, which examined the applicant and submitted its report on 26.11.1982, with the finding that applicant was suffering from an obstetrical paralysis of his upper left arm with a fall (complete bending) of his lower left hand.

Applicant was then referred to a driving examiner who tested him and found that he was able to drive a vehicle without any special adaption. His report was submitted on 22.1.1983.

The Minister then decided, on the basis of the above report, not to grant the applicant's application, who was informed of the decision of the Minister by letter dated 4.2.1983, which reads as follows:

> "I have been instructed to refer to your application dated the 11th August, 1982 for the release from the payable import duties of a vehicle for disabled persons and regret to inform you that the Minister of Finance having con-

sidered the reports of the appropriate Services of the State decided that your claim cannot be given a favourable reply".

Applicant then remained silent till the 25th April, 1983, when he addressed a letter through his counsel, to the Ministry of Finance, which reads as follows:

"We wish to refer to your letter No. Y.O. 602/70/493 dated 4.2.1983 to our client Andreas Iacovou, of Peristerona -Morphou, with regard to his application for a disabled person's vehicle and request to be furnished with the reasons that led to your negative reply to the claim of our client.

The furnishing of the reasons is indispensable for the existence of a specific administrative act so that our client would know whether he will challenge it before the Supreme Court".

The Ministry of Finance replied to the above letter on the 4th May 1983, as follows:

"I have instructions to refer to your letter dated the 25th April, 1983 with reference to an application of our client Andreas Iacovou, for the grant of a car for disabled persons free of import duty and to inform you that on the basis of the reports of the appropriate Services of the State, it was found that the degree of disablement of your client does not justify the use of a disabled person's vehicle".

The applicant then filed on 24.5.1983, the present recourse, based on the following grounds of law:

(a) The act and/or decision of the respondent was taken in excess of power and/or through a defective exercise of discretion on the basis of the facts and circumstances of the case.

(b) The act and/or decision was reached under a misconception of facts regarding the disablement of the applicant and/or his need for use of a disabled person's vehicle.

(c) The act and/or decision lacks lawful reasoning and/or is based on a misconceived reasoning.

Counsel for the respondent based his opposition on two grounds:

1. That the recourse is out of time because the letter of 4.5.1983 does not amount to a new decision but is a confirmation of the original decision.

2. Without prejudice to the above ground, the sub judice decision was taken lawfully in the light of all relevant material.

I consider that the first point raised in the opposition, being a preliminary objection, should be considered first.

In this respect counsel for applicant has argued that the time should start running from the 4th May, 1983, the date of the last letter, when the applicant was informed of the reasons for the refusal of his application and the communication of the decision to him was then complete, and further that the letter of 4.2.1983, purporting to communicate the decision of the Minister did not contain the necessary elements of the communication of a decision and thus could not set the time running.

Counsel for the respondent conceded to the principle that time begins to run from the date when the applicant acquires knowledge not only of the operative part of the decision but also of the reasons that led to it. He maintained, however, that the letter of 4.2.1983, contained the reasoning required to set the time running since it referred to the reports of the appropriate organs on the basis of which the sub judice decision was reached and, furthermore, bearing in mind the accepted principle of administrative law and practice that reasoning of a decision may be supplemented from the material in the relevant file of the administration, as in the present case, the communication of the decision as effected on 4.2.1983 is enough to set the time running.

It is a well settled principle of administrative law that individual administrative acts should be communicated to the person concerned and time begins to run from such communication. Communication, however, in order to set the time running must be complete, that is both in respect of the operative part of the decision, as well as of the reasons that led to it, and in this respect, time begins to run only when the person concerned

has complete knowledge of the act or decision concerned. (see, in this respect, Conclusions from the Case Law of the Greek Council of State (1929–1959), pp. 252, 253; Dendhias on Administrative Law, Vol. C 1965, pp. 290, 291; Recourse for Annulment by Tsatsos 1971, pp. 74, 75; Spiliotopoulos —Textbook on Administrative Law, 1977, p. 367; Decision No. 482/57 of the Greek Council of State).

This principle has been accepted and applied by our Courts in a number of cases (see *Moran* v. *Republic*, 1 R.S.C.C. 10; *Marcoullides* v. *The Greek Communcal Chamber*, 4 R.S.C.C. 7; *Cariolou* v. *Municipality of Kyrenia* (1971) 3 C.L.R. 455; *Zivlas* v. *Municipality of Paphos* (1975) 3 C.L.R. 349; *Aspri* v. *Republic* (1979) 3 C.L.R. 490 and *Irrigation Division "Katzilos"* v. *Republic* (1983) 3 C.L.R. 1068 at pp. 1075–1077 where reference is made to the position in Greece and Cyprus.

Thus, in the case of *Aspri* v. *Republic* (supra) at pp. 497, 498 it was said by Malachtos, J. that—

> "It is well settled and accepted as a general principle that individual administrative acts should be communicated to the interested persons, even in cases where the communication is not imposed by law, since as from this communication starts the time limit of the recourse for annulment. It is not required for the communication to be effected in a sensational form but in a simple administrative notice properly proved. This may be given either to the applicant or to his duly authorised advocate. (See Conclusions from Case Law of the Greek Council of State 1929 to 1959 page 252).
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> Knowledge from the publication or communication starts the time limit if and only for that part that it is complete. Complete is the knowledge that allows the interested person to find out for sure and with precision the financial or moral damage which he suffers by the publication or communication of the act. In order that the knowledge should be complete it is not required–unless the law otherwise provides—the publication or communication of all the elements which result to the keeping of the prescribed forms and of all the elements, which the administration took into account in order to justify its deci-

sion. It suffices only the mention of the keeping of the forms and a summary of the reasoning to be diligently drafted and since one suffers damage should proceed in time in order to obtain knowledge of the above elements (see Recourse for Annulment by Tsatsos, 3rd edition, page 74 paragraph 30).

In the light of the above principles and taking into consideration the sequence of events in the present case and in particular the fact that the new medical certificate of 24.1.1978 was supplied to the District Officer of Larnaca by the father of the applicant himself, leaves no room for doubt that the decision of the respondent Minister contained in the letter of 25.4.1978, was a new decision based on new enquiry as a result of the new medical certificate. If any clarification was required the applicant should apply for that without delay to the respondent authority and in any case he had to file his recourse within the time limit of 75 days as provided by Article 146.3 of the Constitution. From the time the letter of 25.4.1978 was received by his advocate the time limit within which the applicant should file his recourse started to run as it supplied to him full knowledge of the consequences of the decision of the respondent Minister".

Reverting back to the facts of the present case, applicant was informed and knew as early as 4.2.1983 of the operative part of the sub judice decision as well as a general reference to the reasons which led to it since reference was made in the same letter to "the reports of the appropriate services of the State". In my view, there is no room for doubt about the operative part of the decision. As to the reasoning, applicant knew that the decision was based on the reports of the appropriate departments. And that was enough, in my view, to set the time running. But even if I were to accept that the letter of 4.2.1983 did not contain any reasoning at all, then again two courses were open to the applicant. The first one was to file a recourse against such decision seeking its annulment on the ground of lack of due reasoning or to apply as soon as possible and *without any delay* to the respondent for any clarification which would enable him to pursue his claim more easily. A delay of about 80 days in seeking such information is unjustified, in the circum-

stances of the present case and could not affect the running of time against the applicant. The letter of the 4th May, 1983, does not embody a new decision but it is merely explanatory of the previous decision communicated to the applicant on the 4th February, 1983, and as such cannot be treated as enabling the applicant to file a recourse against a decision in respect of which the time had expired.

In consequence, I find that the above recourse is out of time and should, therefore, be dismissed.

In view of the above finding I consider it unnecessary to deal with the other grounds raised by the applicant in this recourse.

In the result, this recourse fails and is, therefore, dismissed, but in the circumstances of the case I make no order for costs.

Recourse dismissed.
No order as to costs.