

1984 April 13

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANAYIOTIS ODYSSEOS,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTRY OF COMMUNICATIONS AND WORKS,
2. THE PERMITS AUTHORITY,

Respondent

(Case No. 340/81)

Administrative Law—Administrative acts or decisions—Executory act—Confirmatory act—Is not executory unless new facts were put forward by the applicant into which a new inquiry was made—Legal arguments or submissions in the absence of new facts do not amount to a new inquiry—Refusal to grant road service licence in respect of applicant's cars—Similar applications in respect of same cars dealt with and refused in the past and refusals not challenged by a recourse within the time prescribed by Article 146.3 of the Constitution—New refusal does not contain any new decision either executory or non executory but purports to be of an informative nature—It is merely of a confirmatory or informative character and cannot be made the subject of a recourse.

The applicant in this recourse challenged the validity of the decision of the respondents, which was communicated to him by letter dated 15th July, 1981 whereby his application for the grant to him of a road service licence in respect of a number of cars of his hired without a driver ("Z" cars) was refused. Similar applications in respect of the same cars had been dealt with and refused by the respondents on various dates prior to the above date and no recourse was filed within the prescribed time of 7 days challenging the validity of these refusals.

Held, that an administrative act confirming a previous decision of the same organ to the same effect is not an executory one

unless new facts were put forward by the applicant into which a new inquiry was made; that new legal arguments or submissions in the absence of new facts do not amount to a new inquiry resulting in a fresh executory act or decision, that no new facts are set forward by the applicant in his application necessitating a new inquiry and a new decision because it only raised legal arguments as to vested rights, that, furthermore, the letter of 15 7 81 does not contain any new decision, either executory or non executory, but purports to be of an informative nature, informing applicant about the situation concerning each one of his cars separately, including those for which licences had already been granted, that, therefore, this recourse is groundless as the alleged act and/or decision challenged by this recourse which is contained in the letter of the 15 7.81 is not an executory act or decision as the contents of such letter are merely of a confirmatory or informative character, the executory acts and/or decisions having taken place outside the prescribed time limit for filing a recourse, each one of which had been previously communicated to the applicant who failed to challenge them in time, accordingly the recourse must fail

Application dismissed

Cases referred to

Lordos Appartotels Ltd. v Republic (1974) 3 C.L.R. 471,
Liassidou v. Municipality of Famagusta (1972) 3 C.L.R. 278,
Ioannides v Republic (1973) 3 C.L.R. 117,
Limassol Chemical Products Co Ltd v Republic (1978) 3 C.L.R. 52,
Markou v Republic (1968) 3 C.L.R. 267 at pp. 276-277,
Kelpis v Republic (1970) 3 C.L.R. 196 at p. 203,
Christophides v. Republic (1971) 3 C.L.R. 302 at p. 307.

Recourse.

Recourse against the refusal of the respondents to re-issue or grant a road service licence to applicant's "self drive cars" or "Z" cars.

Chr Kitromilides, for the applicant.

E. Papadopoulou (Mrs.), for the respondents.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant in this case prays for a declaration of the Court that the decision

and/or the refusal of the Licensing Authority to re-issue or grant a road service licence for cars hired without a driver ("Z" cars) to applicant's cars under Registration Nos AL 290, AS 763, BR 527, CH 300, AD 288, AF 123, BL 563, AT 141, 5 CG 876, GG921, BW 163, HM 136, GP 264, CT 858 and DY 661 and/or to the cars which replaced certain of the above-mentioned cars, that is car AG 904, which replaced car CH 300, car GP 264 which replaced car BR 527, car GP 179 which replaced car DY 661, car HM 136 which replaced car BW 10 163, car GG 921 which replaced car CG 876. is void, unjustified and of no legal effect whatsoever.

The facts of the case are briefly as follows:

The applicant is the owner of cars hired without a driver commonly known as "self-drive cars" or "Z" cars. On 26.10. 15 1978 he applied to the Licensing Authority (hereinafter to be referred to as the Authority) for the replacement of 14 of his cars, that is, cars Nos BM 601, AT 179, AU 123, AV 687, BT 363, AL 290, AS 763, AT 141, BR 527, CH 300, AD 288, AF 123, BL 563 and BH 404, with new cars, and the issue of road 20 service licences to them as "self-drive cars" or "Z" cars.

It is an accepted fact that all 14 cars which had previously been registered as "Z" cars had been deleted from the register of "Z" cars on various dates between 31.12.1969—31.12.1972. In view of such deletion and the fact that at the material time 25 the said cars were registered as private ordinary cars, his applications for the issue of licences to the said cars as "Z" cars were treated as applications for new licences and were rejected by the Authority at its meeting of 6.2.1979, for the reason that the needs of Nicosia were fully served by the existing "Z" cars.

30 The above decision of the Authority was communicated to the applicant by letter dated 20.2.1979, who then appealed on 27.2.1979, to the Minister of Communications and Works (hereinafter to be referred to as the Minister), by way of hierarchical recourse.

35 The Minister decided to allow the appeal partly and grant the issue of road service licences as "Z" cars to 6 of the afore-said cars of the applicant. His decision was communicated to the applicant by letter dated 27.8.1979 (blues 10, 11 of file BM 601).

Pursuant to such decision the Authority issued licences to 6 of applicant's cars, that is, cars Nos BM 601, AT 179, AU 123, AV 687, BT 363 and BH 404, as cars hired without a driver "Z" cars) subject to the right to replace such cars with new ones, on condition that after their replacement by others the licences of the former would be cancelled and their use would be restricted as private cars (see blue 12 in the same file). 5

On 20.11.1979, the applicant wrote a letter (blue 9 in the file No. AL 290), by which he was requesting the issue of licences for cars hired without a driver for 12 new cars in the place of 12 of his old cars which had been struck out of the register of "7" cars and their licences cancelled. Such cars were the cars under Registration Nos AL 290, AS 763, AT 141, BR 527, CH 300, AD 288, AF 123, BL 563 (in respect of which applications had previously been made and were dismissed both by the Authority and the Minister on appeal), DY 661, CT 858, BW 163 and CG 876. Applicant was asked to fill in the prescribed application forms for such purpose. 10 15

Applicant then submitted on 12.12.1979 16 applications for licences, for an equal number of cars for hire without a driver in the place of old cars, 12 of which were the cars mentioned in his letter of 20.11.1979, one was car BM 601 for which a licence had already been granted with a right to replace it with a new one (as mentioned above) and the rest were cars under registration Nos HM 136 (which had replaced car BW 163), IP 264 (alleged as having replaced car BR 527 in respect of which the application was dismissed both by the Authority and on appeal by the Minister) and JH 749 (which is not one of the cars for which this recourse was filed and in consequence irrelevant to the present case but in any event does not belong to the applicant, but to Phevos Cars and Boats Ltd. 20 25 30

The applications of the applicant came up before the Authority for consideration at its meeting of the 6th May, 1980 and the following are recorded in the minutes of such meeting:

"Item 17. Applications by Panayiotis Odysseos of Nicosia dated 12.12.1979 for licence of car hired without a driver for 16 new cars in replacement of CT 858, BW 163, CG 876, AF 123, CH 300, AT 141, DY 661, BR 527, HM 35

136, JH 749, BL 563, AD 288, AL 290, AS 763, BM 60
and GP 264.

Present.

Mr. Panayiotis Odysseos.

5 The Chairman of the Licensing Authority points out to
Mr. Odysseos that he has applied before for those car
and the Licensing Authority has dismissed them, that he
has appealed to the Minister and the Minister has granted him
licences for 6 of them.

10 Mr. Odysseos stated that he seeks "Z" licences for the
rest of his cars. These cars, as he has stated, had been
ruined and he, in fact, seeks new "Z" licences.

 Mr. Odysseos also states that he registered cars KW
346, KW 347, and KW 348 in replacement of cars BM 601
15 AT 179 and AU 123.

 The Licensing Authority having examined the files on
all the cars, found that all cars are deleted and dismissed
the applications except for cars Nos BM 601, AT 179
AU 123, AV 687, BT 363 and BH 404 for which the Minister
20 granted a licence and in respect of which the applicant is
entitled to have new cars registered".

 On 24.10.1980, the applicant addressed another letter to the
Authority (blue 17 in the File AL 290) by which, after making
reference to the decision of the Minister, he asks once more
25 for the issue of licences to the remaining cars of his, adding
that he considers it to be a vested right of his and requesting
a reasoned decision within one month, in accordance with the
provisions of the Constitution.

 At its meeting of 30.12.1980, the Authority again dismissed
30 applicant's applications and authorised its Chairman to reply
to him accordingly in respect of each one of the cars mentioned
in the application.

 On 15.7.1981 the Chairman of the Authority wrote a letter
to the applicant (blue 16 in file AL 290) in connection with the
35 subject of the licences of his cars, the contents of which were

 "With reference to the above matter which the Licensing

Authority considered at its meetings which took place on 6.2.1979, 4.9.1979, 6.5.1980, 30.12.1980 and 30.6.1981 and after a scrutinized and detailed inquiry which took place the following were found:

.....”
 And then the letter goes on to explain the position of each car, making reference to them in groups and giving details in respect of each car which may be summarised as follows:

1. BM 601, AT 179, AU 123, AV 687, BT 363 and BH 404. These are the cars for which licences were granted by the Minister on 22.8.1979 and were replaced by new cars, 4 of which were subsequently sold to another company. 10
2. AL 290, AS 763, BR 527, CH 300, AD 288, AF 123, BL 563 and AT 141. These 8 cars were the remaining cars in respect of which the applications had been dismissed both by the Authority and the Minister. New applications for these cars were again dismissed for the following reasons: 15
 - (a) AL 290, AS 763, AT 141 and BL 563 were deleted from the register since 31.12.1970 and the applications were therefore treated as applications for new licences which could not be granted for the reason that the needs for “Z” cars in Cyprus were completely met by the existing licensed “Z” cars. 20
 - (b) AF 123 was deleted from the register on 31.12.1969, AD 288 before 1969, CH 300 was replaced by AG 904 and deleted on 31.12.1971, and BR 527 was replaced by car GP 264 which was subsequently sold to PapaMichael Spare Parts Ltd. 25
3. CG 876, GG 921, BW 163, HM 136, BR 527, GP 264, CT 858 and DY 661. 30
 - (a) CT 858 was deleted on 31.12.1972.
 - (b) DY 661 was replaced by GP 179.
 - (c) BW 163 was replaced by HM 136 for which a licence was issued in applicant's name.
 - (d) BR 527 was replaced by GP 264 which was subsequently sold to PapaMichael Spare Parts Ltd., 35

- (e) CG 876 was replaced by GG 921 and sold to Phevos Cars and Boats Ltd., who replaced it with JH 749 for which a licence was issued in their name.

The applicant then filed the present recourse which is based on the following grounds of law:-

1. The respondents acted unlawfully and/or arbitrarily fully ignoring the well understood interest of service to tourists.
2. The respondents fully ignored the fact that all the said cars were licensed as "Z" and their licences were not transferred to other cars notwithstanding the fact that they were deleted.
3. The respondents acted under misconception of facts in that they did not take into account and/or duly considered the stated intention of the applicant to substitute all the above cars with new ones.
4. The respondents failed to consider and/or did not duly take into consideration the fact that the applicant has always been an agent and one of the bigger owners of "Z" cars, especially at times during which nobody was interested in such an enterprise.
5. The sub judice decision is not reasoned and/or duly reasoned and/or the reasoning given is unfounded in the light of the present circumstances and, having regard to the real facts, without a legal foundation."

The application was opposed and counsel for the respondents raised in her opposition a preliminary objection that the sub judice act is not an executory administrative act. She further advanced the following grounds of law in support of her opposition:

- (a) That the applicant has no legitimate interest under Article 146 of the Constitution and,
- (b) that the sub judice decision was lawful and duly taken in accordance with the law and in the proper exercise of the discretionary powers of the respondents after they had taken into consideration all the relevant facts and circumstances of the case.

Counsel for the applicant contented that the applications were wrongly treated as ones for new licences. That there is no provision in the Law or the Regulations that when a car is deleted from the register its licence is lost. Such licence may be transferred to another car and that was exactly the intention of the applicant, to transfer the licences from the deleted cars to new ones. Counsel submitted that the Authority was acting under a misconception of fact in considering the applications as being for new licences and that they should have been considered as applications for the renewal or re-issue of the old licences which were never lost.

Counsel for the respondents submitted that the sub judice decision is not executory but a confirmatory or informatory one, of a previous administrative decision which has not been challenged by a recourse. Without prejudice to the above preliminary objection, counsel argued that the applications were correctly treated as being for new licences since the cars for which the licences were sought had been deleted from the register about 10 years ago. Lastly she argued that the respondent carried out a due inquiry and exercised its discretionary powers properly.

I propose to deal first with the preliminary objection raised by counsel for the respondents. It is a well established principle of administrative law that an administrative act confirming a previous decision of the same organ to the same effect is not an executory one, unless new facts were put forward by the applicant into which a new inquiry was made (see, in this respect, the cases of *Lordos Apartotels Ltd. v. The Republic* (1974) 3 C.L.R. 471; *Liasidou v. Municipality of Famagusta* (1972) 3 C.L.R. 278; *Ioannides v. Republic* (1973) 3 C.L.R. 117; *Limassol Chemical Products Co. Ltd. v. Republic* (1978) 3 C.L.R. 52). And in this respect new legal arguments or submissions in the absence of new facts do not amount to a new inquiry resulting in a fresh executory act or decision (*Markou v. Republic* (1968) 3 C.L.R. 267, 276-277, *Kelpis v. Republic* (1970) 3 C.L.R. 196, 203; *Christophides v. Republic* (1971) 3 C.L.R. 302, 307).

For the purpose of determining the preliminary objection, I find it necessary to mention once again in a nutshell the fate of the previous applications concerning the cars referred to in this recourse.

(1) Cars under Registrations Nos AL 290, AS 763, BR 527, CH 300, AD 288, AF 123, BL 563, and AT 141.

5 The applications for the grant of a licence as "Z" cars for these cars were dismissed by the Authority on 6.2.79 and by the Minister on appeal on 22.8.79. New applications made after the decision of the Minister were again dismissed on 6.5.80 and the reasons are stated in the minutes of the Authority reference to which has already been made.

10 (2) Cars under Registration Nos DY 661 replaced by GP 179, CT 858, BW 163 replaced by HM 136, CG 876 replaced by GG 921, HM 136 which replaced car No. BW 163, GP 264 which replaced BR 527 which was one of the cars referred to above for which the application had already been dismissed by the Authority and the Minister.

15 Applications for the grant of licences to such cars had been dealt with and dismissed by the Authority on 6.5.80, together with the application for another car, No. JH 749, not mentioned in the recourse and which, as mentioned in the letter sent to the applicant by the Authority, dated 15.7.81, replaced car No.
20 GG 921, which had been sold to another company, and a licence was issued in the name of that company.

I have considered carefully the arguments of both counsel as well as the facts in the files, produced as exhibits before me. It transpires from all the material before me that applicant had
25 previously applied for licences for his cars mentioned in the recourse. It is in fact conceded so by counsel for applicant in his written address. I find it unnecessary to deal with each car separately and set out in more detail the history of each car. As already mentioned, several applications had been made in the
30 past concerning most of applicant's cars. Regarding cars Nos AL 290, AS 763, BR 527, CH 300, AD 288, AF 123, BL 563 and AT 141, such applications were dismissed by the Authority on several occasions and once by the Minister and the time of 75 days for filing a recourse against such decisions expired a long
35 time ago. The applications for the remaining cars mentioned in this recourse and/or for cars with which certain of those cars were replaced were dismissed by the Licensing Authority on 6.5.80. No recourse was filed, within the prescribed time, challenging the validity of such decision.

40 The fact that applications on the same matter had been dealt

ith and refused long time before the filing of the recourse and
 a time which is outside the prescribed time limits for filing the
 resent recourse appears also in the letter of the applicant dated
 4.10.80 (blue 17 in File AL 290) which in this respect reads as
 follows:

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“I refer to the above decision of the Minister of Communi-
 cations and Works on my recourse relating to the grant of
 licences for the cars mentioned therein.

I turn back to the same subject and apply for the grant of
 licences for the remaining cars.

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I respectfully submit that the matter concerns vested and
 settled rights which continue to exist and by which you are
 bound.

.....”.

No new facts are set forward by the applicant in his letter ne-
 cessitating a new inquiry and a new decision. He only raised
 legal arguments as to vested rights. Furthermore, having peru-
 red the letter of 15.7.81, addressed to the applicant by the Chair-
 an of the Authority and the minutes of the meeting of the
 uthority dated 30.12.80, I am satisfied that such letter does not
 contain any new decision, either executory or non executory,
 it purports to be of an informatory nature, informing applicant
 about the situation concerning each one of his cars separately,
 cluding those for which licences had already been granted.

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In the result, I have come to the conclusion that this recourse
 is groundless as the alleged act and/or decision challenged by
 this recourse which is contained in the letter of the Chairman of
 the Authority dated 15.7.81 is not an executory act or decision
 . the contents of such letter are merely of a confirmatory or
 formatory character, the executory acts and/or decisions having
 taken place outside the prescribed time limit for filing a recourse,
 each one of which had been previously communicated to the
 applicant who failed to challenge them in time.

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Having so found, I consider it unnecessary to deal with any
 other legal issue raised by this recourse.

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

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Recourse dismissed. No order as to costs.