

1985 April 4

[LORIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

PHOTINI ANDREOU,

*Applicant,*

v.

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

*Respondent.*

AND AS AMENDED BY ORDER OF THIS COURT  
DATED 21.10.1982

PHOTINI ANDREOU,

*Applicant,*

v.

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

*Respondents.*

(Case No. 237/82).

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5 *Administrative Law—Administrative acts or decisions—Lawful and unlawful administrative acts—Revocation—Principles applicable—Procedure on revocation—Road use licence—Refusal to issue—Hierarchical recourse to Minister against refusal—Dismissal of recourse—Competence of Minister ceased from time he has given his decision on the hierarchical recourse—And he had no competence to revoke his said decision—Assuming that he was competent to do so he had to follow the same procedure envisaged for the*

making of the decision and to give full and special reasoning but he failed to do so—Further he had no competence to call upon the Licensing Authority to issue a licence—Only competent organ to issue or refuse the licence was the Licensing Authority—And in so doing it had to make an enquiry afresh and exercise a discretion—Licensing Authority acting under a misconception of Law by complying with the decision of the Minister and failing to carry out an inquiry. 5

Motor Transport—Road use licence—Refused by Licensing Authority—Hierarchical recourse to Minister—Dismissal of recourse—Minister had no competence, after giving his decision dismissing the recourse, to revoke his said decision—And he had no competence to call upon the Licensing Authority to grant the licence and at the same time dictate the conditions under which it will be issued—Only organ vested with competence to issue or refuse a licence was the Licensing Authority—And in so doing it had to make an inquiry afresh and exercise a discretion—Licensing Authority acting under a misconception of Law by complying with decision of the Minister and failing to carry out an inquiry—Motor Transport (Regulation) Law, 1964 (Law 16/64 as amended). 10 15 20

Practice—Recourse for annulment—Amendment—So as to include respondent 2 of whose decision applicant had no knowledge when he filed the recourse. 25

Ministers—Assumption of duties—Only after affirmation—Article 59.4 of the Constitution.

On 25.6.1981 the Licensing Authority, respondent 2, after a due inquiry turned down the application of the interested party in this case for the issue to him of a licence for the running of a rural taxi at Sykopetra village. The inquiry included representations made by the applicant who was running a rural taxi in the area. As against the above decision the interested party filed a “hierarchical recourse” to the Minister of Communications and Works, respondent 1, who after dealing with it dismissed it on the 13th January, 1982. On the 20th April, 1982 respondent 1 revoked the decision he has given in the hierarchical recourse on the ground that the said deci- 30 35 40

5 sion was based on wrong data; and he, further, called upon the Licensing Authority to issue a licence to the interested party. When applicant came to know of the above revocation he challenged it by means of this recourse which was directed against respondent 1; and when after the filing of the opposition, he came to know that the Licensing Authority, decided on the 3rd June 1982, to issue a licence to the interested party, he applied and had the original recourse amended so as to include the  
 10 Licensing Authority, respondent 2, in the present recourse. The decision of the 20th April, 1982, taken by respondent was signed by ex-Minister Mr. HjiCostas; and it was argued on behalf of the applicant that Mr. HjiCostas was not a Minister on 20.4.82 because the present Minister  
 15 was appointed on 20.4.82. The affirmation of the present Minister was made at 12 noon of 20.4.1982.

*Held*, (1) that since applicant had no notice whatsoever of the relevant decision of respondent he could apply and amend his recourse by adding respondent 2 in time.

20 (2) That in the absence of any other evidence and in view of the presumption of regularity the decision in question must be treated as the decision of the Minister of Communications and Works. The new Minister could not assume duties before giving his affirmation (Article  
 25 59.4 of the Constitution) and it is clear from the evidence that the affirmation was given at 12 noon of 20.4.1982.

(3) After stating the principles governing revocation of lawful and unlawful administrative acts and the procedure on revocation vide pp. 819-823 post.

30 That the competence of the Minister has ceased from the time he has given his decision on the hierarchical recourse on 13.1.82; that the matter was thereafter entirely outside his competence; that any person aggrieved by his decision and having a legitimate interest in the matter  
 35 could have a recourse to the Court pursuant to the provisions of Article 146 of the Constitution, within the next 75 days; and that, therefore, the Minister could have no competence ninety-seven whole days after his decision on the hierarchical recourse to revoke his aforesaid decision.

40 *Held, further* (1) that assuming that the Minister was

a competent administrative organ, he would be able to revoke the administrative decision of 13.1.82 on the ground of public interest, as matters regulating the traffic and matters incidental thereto are grounds of public interest (vide the Decision of the Plenary of the Greek Council of State No. 1355/55) subject to following the same procedure envisaged for the making of the decision of 13.1.82, as the aforesaid decision was a lawful one (see Conclusions of the Greek Council of State 1929-1959 at p. 204) and to providing in his decision of 20.4.82 "full and special reasoning" (see Decision of the Plenary of the Greek Council of State under No. 264/1955), but the Minister failed to follow the same procedure and to give full and special reasoning or even ordinary reasoning.

(2) That the Minister had no competence whatever to call upon the Licensing Authority to issue a permit and at the same time dictate the conditions under which the permit will be issued.

(3) That respondent 2, the Licensing Authority, was the only organ vested with competence to issue or refuse a licence for a rural taxi and in so doing it had to exercise its discretionary power according to the Law, and make an enquiry afresh; and that since the Licensing Authority did not carry out any enquiry it acted under a misconception of the Law, complying with the decision of the Minister, the decision of the Minister purporting to revoke his earlier decision of 13.1.1982 as well as the decision of respondent 2 dated 3.6.1982 must be annulled.

*Sub judice decision annulled.*

Cases referred to:

*A. & S. Antoniadis & Co. v. Republic* (1965) 3 C.L.R. 673 at p. 682;

*Paschali v. Republic* (1966) 3 C.L.R. 593 at p. 609;

*Decisions of the Greek Council of State* Nos: 1681/55, 1355/55, 264/55, 463/43 and 832/52.

**Recourse.**

Recourse against the decision of the respondents where-

by the interested party was given a licence to run a rural taxi at Sykopetra village.

*Chr. Pourghourides*, for the applicant.

*M. Tsiappa (Mrs.)*, for the respondent.

5 *G. Teoulides*, for the interested party.

*Cur. adv. vult*

LORIS J. read the following judgment. The applicant by means of the present recourse, as amended on the 21st October 1982, impugnes:

10 (a) The decision of the Minister of Communications and Works—respondent No. 1—dated 20.4.82, whereby the respondent had revoked his earlier decision of 13.1.82 (the decision of 13.1.82 having been given  
15 by him on a hierarchical recourse to him by the interested party in the present case).

(b) The decision of the Licensing Authority—respondent No. 2—dated 3.6.82, whereby the interested party in the present case was given a licence to run a rural taxi at Sykopetra village.

20 The facts are very briefly as follows:

Respondent No. 2 on 25.6.81, by its decision properly reached at after due inquiry, (vide blue 18 in ex. 7) turned down the application of the interested party in the present case, for the issue to him of a licence for the running of  
25 a rural taxi at Sykopetra village; it is clear from the contents of blue 18 that the enquiry of respondent No. 1 included inter alia the representations made by the applicant in the present case, who was running a rural taxi in the area, pursuant to the provisions of the relevant legislation then in force i.e. s. 9(4) of the Motor Transport (Regulation) Law, 1964 (Law No. 16/64) as amended by Law 60/75 which provided that the Licensing Authority in  
30 exercising its discretionary power of granting or refusing rural taxi licences should take into consideration inter alia “the representations which may be made by persons  
35 who are already providing in good faith transport facilities in the same or nearby area.”

The interested party in this case, feeling aggrieved against the said decision of respondent No. 2 filed a "hierarchical recourse" to the Minister of Communications and Works—respondent No. 1—as envisaged by the relevant legislation. It must be stated here by way of parenthesis that the Motor Transport (Regulation) Law, 1964—(Law No. 16/64)— as amended by Laws 78/66, 89/69, 13/70, 45/71, 33/72, 81/72, 60/73, 82/73 and 60/75 was repealed and re-enacted by Law 9/82 which was promulgated in the official Gazette on 19.3.82 and came into operation on the same day. It must be noted further that the provisions concerning the "hierarchical recourse" to the Minister, envisaged by section 6 of the original Law (vide s.3 of Law 81/72) were replaced by identical provisions in s. 4 of Law 9/82 which reads as follows:

"4. (1) Anyone dissatisfied with the decision of the Licensing Authority, issued under the provisions of the present Law, may within twenty days from the date of the communication to him of the decision, by written recourse to the Minister, in which the reasons in support thereof are set out, challenge the said decision.

(2) The Minister examines the recourse made to him without undue delay and after hearing or giving the opportunity to the applicant to support the grounds upon which the recourse is based, decides on it, and communicates forthwith his decision to the applicant:  
Provided that...

(3) The person dissatisfied with the decision of the Minister can resort to Court, but until the Minister has given his decision, in case of a recourse to him, or in case of no recourse to him, until the period envisaged by sub-section (1) for the filing of a recourse has elapsed, the decision of the Licensing Authority shall not become executory.

(4) . . . . . "

In order to avoid confusion it must be noted that Law 9/82 has also been amended by Law 84/84 and the relevant section 4 of Law 9/82 has been repealed and substituted by new sections 4 and 4A (vide s. 4 of Law 84/84)

which provide for a “hierarchical recourse” not to the Minister anymore but to a specially constituted body as envisaged in s. 4A of Law 84/84; of course Law 84/84 having been published on 16.11.84 is inapplicable in the present case.

Reverting to the facts of the case: The Minister of Communications and Works—respondent No. 1—dealt with the “hierarchical recourse” of the interested party according to Law and on 13.1.82 gave his decision (vide blue 22 in ex. 7) whereby the “hierarchical recourse” by the interested party was dismissed.

The applicant in the present case was informed of the said dismissal by a letter from the Ministry dated 23.1.82 (vide ex. 1 attached to the written address of the applicant).

On 20.4.82 the Minister—respondent No. 1—revoked the decision he has given on the hierarchical recourse on 13.1.82; the revocation in question appears in ex. 2A attached to the written address of the applicant and reads as follows:

“24/67/1994

Ο ΠΕΡΙ ΡΥΘΜΙΣΕΩΣ ΤΗΣ ΤΡΟΧΑΙΑΣ ΜΕΤΑΦΟΡΑΣ  
ΝΟΜΟΣ ΤΟΥ 1982

(“Άρθρο 4)

‘Απόφαση του ‘Υπουργού Συγκοινωνιών και Έργων στην προσφυγή του κ. ‘Ανδρέα Παπαδόπουλου από τη Συκόπετρα, έναντίον άρνητικής απόφάσεως της ‘Αρχής ‘Αδειών σ’ αίτηση του για τη χορήγηση άδειας άγροτικού ταξί για ένα καινούργιο όχημα, με έδρα τη Συκόπετρα.

.....

‘Επειδή-

(α) Στις 13 ‘Ιανουαρίου, 1982, είχα εκδόσει την απόφαση μου με άρ. 24/67/1994 με την όποία απέρριψα την αίτηση του κ. ‘Ανδρέα Παπαδόπουλου για τη χορήγηση άδειας άγροτικού ταξί για ένα καινούργιο

όχημα με έδρα τὸ χωριὸ Συκόπετρα, καὶ ἐπειδὴ

(β) ἐκδίδοντας τότε τὴν ἀπόφαση μου εἶχα θεωρήσει, στηριζόμενος σὲ ἐσφαλμένα δεδομένα, ὅτι οἱ μεταφορικές ἀνάγκες τοῦ χωριοῦ Συκόπετρα ἐξυπηρετοῦντο πλήρως ἀπὸ τὰ ἀγροτικά ταξί τῆς περιοχῆς, 5  
 ἰδιαίτερα ἀπὸ τὸ ἀγροτικό ταξί τοῦ Προφήτη Ἥλια, καὶ ἐπομένως δὲ δικαιολογοῦσαν τὴ χορήγηση ἄδειας ἀγροτικοῦ ταξί με ἔδρα τὸ χωριὸ Συκόπετρα, γεγονός πού ὑποστηρίκτηκε ἀπὸ τὴν ἐνιστάμενη κα Φωτεινὴ Ἀνδρέου, ἰδιοκτῆτρια τοῦ ἀγροτικοῦ ταξί 10  
 τοῦ Προφήτη Ἥλια με ἀρ. ἐγγραφῆς LV 151, κατὰ τὴν ἐνώπιον μου ἀκρόαση τῆς πιὸ πάνω ἱεραρχικῆς προσφυγῆς, καὶ ἐπειδὴ

(γ) τώρα ἐπανεκτιμώντας κατόπιν εἰσηγήσεως τοῦ προσφεύγοντα τὰ γεγονότα, βρίσκω ὅτι οἱ ἀνάγκες 15  
 τοῦ χωριοῦ Συκόπετρα δὲν μποροῦν νὰ ἐξυπηρετηθοῦν πλήρως ἀπὸ τὸ ἀγροτικό ταξί τοῦ Προφήτη Ἥλια, ἀφοῦ δὲν ὑπάρχει τηλεφωνικὴ σύνδεση μεταξὺ τῶν δύο χωριῶν οὔτε καὶ προγραμματίζεται 20  
 τέτοια σύνδεση στὸ σύντομο μέλλον.

2. Γιά ὅλους τοὺς πιὸ πάνω λόγους ἔχω καταλήξει στὸ συμπέρασμα ὅτι ἡ ἀπόφαση μου με ἀρ. 24/67/1994 καὶ ἡμερ. 13 Ἰανουαρίου 1982, πρέπει νὰ ἀνακληθεῖ καὶ με τὴν παροῦσα ἀπόφαση τὴν ἀνακαλῶ.

3. Γι' αὐτὸ καλεῖται ἡ Ἀρχὴ Ἀδειῶν ὅπως χορηγήσει στὸν κ. Ἀνδρέα Παπαδόπουλο ἄδεια ἀγροτικοῦ ταξί γιὰ ἓνα καινούργιο ὄχημα με ἔδρα τὸ χωριὸ Συκόπετρα, τότε μόνο ὅταν ὁ κ. Παπαδόπουλος ἀποξενωθεί καὶ μεταβιθάσει σ' ἄλλο πρόσωπο τὴν ἄδεια Μεταφορέα «Α» πού κατέχει γιὰ τὸ ὄχημα του με ἀρ. 30  
 ἐγγραφῆς JQ 733.

(ΓΕΩΡΓΙΟΣ ΧΑΤΖΗΚΩΣΤΑΣ)

ΥΠΟΥΡΓΟΣ ΣΥΓΚΟΙΝΩΝΙΩΝ ΚΑΙ ΕΡΓΩΝ

20 Ἀπριλίου, 1982.»

("24/67/1994

THE MOTOR TRANSPORT (REGULATION)  
 LAW, 1982.



## (Section 4)

5 Decision of the Minister of Communications and Works in the recourse of Andreas Papadopoulos of Sykopetra against the negative decision of the Licensing Authority to his application for the grant of a licence for a rural taxi in respect of a new vehicle, stationed at Sykopetra village.

## Whereas—

10 (a) On 13th January, 1982 I have delivered my judgment under No. 24/67/1994 whereby I dismissed the application of Andreas Papadopoulos for the grant of a licence for a rural taxi in respect of a new vehicle stationed at Sykoperta village, and whereas

15 (b) in delivering then my judgment I had considered, basing myself on wrong data, that the transport needs of Sykopetra village were fully served by the rural taxis of the area, especially by the rural taxi of Profitis Elias, and therefore did not justify the grant of a licence to a rural taxi stationed at Sykopetra village a fact which had been put forward by the person  
20 opposing the grant of a licence Mrs. Photini Andreou, owner of the rural taxi of Profitis Elias under registration No. LV 151, during the hearing before me of the hierarchical recourse and whereas

25 (c) now in reassessing the facts at the request of the applicant, I find that the needs of Sykopetra village cannot be served fully by the rural taxi of Profitis Elias, since there is no telephone connection between the two villages and that no such connection is  
30 being planned in the near future.

2. For all the above reasons I have come to the conclusion that my judgment No. 24/67/1994 dated 13th January, 1982 must be revoked and by this judgment I hereby revoke it.

35 3. Therefore the Licensing Authority is called upon to grant to Mr. Andreas Papadopoulos a licence for a rural taxi in respect of a new vehicle stationed at

Sykopetra village, only when Mr. Papadopoulos alienates and transfers to another person Carrier "A" licence which he is holding for the vehicle under registration No. JQ 733.

GEORGHIOS HJICOSTAS  
MINISTER OF COMMUNICATIONS AND WORKS.  
20th April 1982."

5

The aforesaid revocation was communicated to the applicant by letter dated 7.5.82.

The applicant addressed a letter on 13.5.82 to the Chairman of the Licensing Authority (*vide* blue 31 in ex. 7) protesting for the granting of licence" to the interested party and enquiring of the reasons of such decision.

10

Obviously having received no reply she addressed another letter to respondent No. 2 through her advocate on 29.5.82 (blues 32 and 33 in ex. 7); I shall have the opportunity of referring to the contents of this letter later on, in the present judgment.

15

Finally the applicant filed the present recourse which was originally impugning only the decision of respondent No. 1 dated 20.4.82.

20

After the filing of the opposition by respondent No. 1 it was revealed that respondent No. 2 gave also a decision on the same matter on 3.6.82. This decision of respondent No. 2 appears in blue 29 of ex. 7 and same was communicated to the interested party on 5.6.82 (blue 30 in ex. 7).

25

The applicant on being informed that there existed a decision of respondent No. 2 on the matter applied and had the original recourse amended so as to include respondent No. 2 as well in the present recourse.

30

Pausing here for a moment I must say that learned counsel appearing for both respondents conceded that the applicant was never informed about the decision of respondent No. 2 dated 3.6.82. It was the stand of respondent No. 2 that it was unnecessary in the circumstances to notify the applicant of his decision of 3.6.82.

35

I am satisfied that the applicant had no notice whatsoever of the relevant decision of respondent No. 2 and therefore he applied and amended his recourse by adding respondent No. 2 in time.

5 The applicant is relying on several grounds of Law which appear on record and I do intent repeating; before proceeding though in the examination of the merits of the case I feel it my duty to deal very briefly with one of the grounds raised and in respect of which several documents  
10 were produced and quite an argument was advanced by both sides. The ground in question is this: The decision of 20.4.82 (ex. 2A) taken by respondent 1 is signed by ex-Minister Mr. HjiCostas. It was argued on behalf of the applicant that Mr. HjiCostas was not a Minister on 20.4.82  
15 as according to ex. 3, the Official Gazette of the Republic dated 21.4.82, the present Minister was appointed on 20.4.82. Learned counsel appearing for the respondents produced exhibits 4 and 5, Press Releases of the Press and Information Office, where it is stated that the affirmation  
20 by the new Minister was made at 12 noon; she also argued that the sub judice decision was taken by the Ex-Minister before noon i.e. during the time he was still holding office.

In the absence of any other evidence and in view of  
25 the presumption of regularity I have decided to treat the decision in question as the decision of the Minister of Communication and Works. The new Minister could not assume duties before giving his affirmation (Article 59.4 of the Constitution) and it is clear from exhibits 4 and 5  
30 that the affirmation was given at 12 noon of 20.4.1982.

Before proceeding to examine the merits of the present recourse, I intend to make a brief reference to the legal aspect of "revocation" (ἀνάκλησις) by the administration of an earlier administrative act.

35 In the first place a dividing line must be drawn between a "revocation" regulated by legislation (*A. & S. Antoniadis & Co. v. The Republic* (1965) 3 C.L.R. 673 at p. 682) and a "revocation" not so regulated but simply being governed by the general principles of Administrative Law.

40 Such principles have been laid down by the case Law

of the Greek Council of State (vide Conclusions of the Greek Council of State 1929-1959 pp. 198-205) and considerable number of same has already been adopted and applied by our Supreme Court in a variety of cases.

According to such principles a distinction must be drawn between unlawful administrative acts and administrative acts validly made. 5

The revocation of an unlawful act is, generally speaking permissible.

“The revocation of an unlawful administrative act is a course lawfully open to the administration and it is based on the notion of the preservation of legality...” (*Yiangou & Another v. The Republic* (1976) 3 C.L.R. 101 at page 105). 10

To this general principle there are several exceptions to which I need not refer, as they are not required for the purposes of the present judgment: It is useful though to bear in mind that: 15

“Where the irregularity of an administrative act is due to the action of the Administration, and is not due to any fraudulent conduct of the person concerned, then such an act is irrevocable after the lapse of a reasonable period of time—what is reasonable period being determined in the light of the circumstances of each particular case.” 20 25

(*Iro Paschali v. The Republic* (1966) 3 C.L.R. 593 at p. 609).

In respect of administrative acts validly made, the position is different: although administrative acts validly made may be revoked by the administration for certain reasons “no administrative act validly made and creating rights in any person can be revoked thereafter” (*Iro Pashali v. The Republic* (1966) 3 C.L.R. 593 at p. 608). 30

Nor is it permissible for the administration to revoke a valid administrative act simply because they have subsequently “differently assessed the same facts and circumstances” (vide Σ.Ε. 211/38, 485/48, 1761/54) “or simply 35

the administration has changed its views" (vide Σ.Ε. 463/43, 832/52).

It is apparent though, from the case Law of the Greek Council of State, that public interest always affords a ground for revocation of an administrative act validly made independently of what is stated above (vide the decisions of the Greek Council of State 1929-1959 at p. 201). The leading case on this topic is case No. Σ.Ε. 1355/1955 which is a decision of the plenary of the Greek Council of State; the relevant part of the decision reads as follows:

«... Καί εἶναι μὲν ἀληθές, ὅτι αἱ αὐταὶ κυκλοφοριακαὶ συνθηκαὶ ὑπῆρχον καὶ πρὸ τῆς χορηγήσεως τῆς ἀνακληθείσης ἀδείας, οὐχ ἦττον ἢ Διοίκησις ἐκέκτητο διακριτικὴν ἐξουσίαν, ὅπως μεταγενέστερον καὶ εἰς πᾶσαν στιγμὴν, ὠθουμένη ἐκ λόγων ἐξυπηρετούντων τὸ γενικὸν καὶ δημόσιον συμφέρον, κατισχυόντων δὲ τῶν συμφερόντων τοῦ τυχόν ὠφεληθέντος ἐκ τῆς χορηγηθείσης ἀδείας ἰδιώτου, ἐκτίμησιν ἄλλως τὴν ὑφισταμένην πραγματικὴν κατάστασιν καὶ ἀναθεωρήσιν τὴν προτέραν γνώμην αὐτῆς. ἐφ' ὅσον ἐν τῇ τοιαύτῃ νέᾳ ἐκτιμήσει καὶ μεταβολῇ τῶν ἀντιλήψεων τῆς δὲν ἐνεφυλοχώρησε κακὴ χρῆσις τῆς διακριτικῆς ἐξουσίας ἢ κατάχρησις ἐξουσίας...»

("... And it is true that the same circulation conditions existed also before the granting of the revoked licence, but none the less the Administration was possessed of discretionary power, subsequently and at every moment, prompted by reasons serving the general and public interest, with the interests of the individual who might have benefited from the licence granted prevailing, estimate otherwise the existing real situation and revise its previous decision, so long as in the said new estimate and change of its views no misuse of the discretionary powers or abuse of powers has slipped in...").

In this connection Decision No. 264/1955, which is a decision of the plenary of the Greek Council of State as well, provides further that in cases of revocation of an administrative act validly made on the ground of public interest the decision must be "fully and specially reasoned"

(δέον να είναι πλήρως και ειδικώς ήτιολογημένη). It is important to note here that the reasoning of a decision revoking an earlier one on the ground of public interest must be "full and special reasoning" as contrasted with the "ordinary reasoning" required for a decision revoking an earlier decision on any other permissible ground (vide p. 205 of the Conclusions of the Greek Council of State 1929-1959).

5

Two more topics in connection with "revocation" have to be examined:

10

- A. The competence of the organ effecting the revocation of the administrative act in question.
- B. The procedure to be followed in effecting the revocation.

A. *Competence*: Every administrative act must be made by the competent administrative organ. Competent organ for effecting the revocation of an administrative act is as a rule the administrative organ which has made the act or issued the decision in question. On the other hand, in cases where the Law provides for the exercise of a hierarchial recourse against the act of an administrative authority, there is nothing to prevent the organ dealing with the hierarchical recourse to revoke the administrative act if satisfied that the act in question was unlawfully made. (Vide the Conclusion of the Greek Council of State 1929-1959 at p. 204).

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B. *Procedure on revocation*.

With reference to the procedure to be followed upon revocation, the Greek case Law distinguishes between lawful and unlawful acts. In the case of lawful acts a revocation can be effected if the same procedure which is envisaged for the making of the original decision is followed, unless a deviation from such principle is excusable by reason of the existence of a specific provision in the Law.

30

35

On the contrary, for the revocation of unlawful acts the administration is not bound to follow terms and provisions required for the issue of the original decision, unless the Law otherwise provides. (Vide the Conclusions of the

Greek Council of State 1929-1959 at pages 204-205). The decision under No. 1681/55 of the Greek Council of State (decision also of the plenary thereof) states clearly the following:

5 «Νομίμως συνεπῶς έκδοθείσης τῆς ἀποφάσεως ταύτης μετὰ τὴν κατὰ νόμον διαδικασίαν καὶ διαπίστωσιν τῶν νομίμων αὐτῆς προϋποθέσεων, ἡ προσβαλλομένη ἀνάκλησις αὐτῆς... ἔδει νὰ ἐνεργηθῆ κατὰ τὴν αὐτὴν νόμιμον διαδικασίαν, μετὰ νέαν τοὔτέστι γνωμοδότησιν τοῦ Κεντρικοῦ Συμβουλίου προστασίας ἀπολυμένων, ἀναγκαίαν πρὸς διαπίστωσιν τῆς ἐπελθούσης ταύτης μεταβολῆς ἢ τῆς ἐμφυλοχωρησάσης πλάνης».

15 (“Consequently this judgment having been issued lawfully after the procedure according to Law and ascertainment of its legal prerequisites, its attacked revocation... ought to have been effected by the same lawful procedure, namely after new advice of the Central Council for the protection of dismissed officers, necessary for ascertaining this already effected change or the slipped in error”).

20 Reverting now the the facts of this case:

As stated earlier on in the present judgment the Licensing Authority after due enquiry and after properly exercising its discretion pursuant to the provisions of s. 9(4) of Law 16/64 as amended by s.5 of Law 60/75 (applicable at the time) gave its decision on 25.6.81 thereby refusing to the interested party a licence for the running of a rural taxi at Sykopetra village.

30 The interested party attacked the said decision by means of a hierarchical recourse to the Minister envisaged by the provisions of the relevant Statute; (s.6 of Law 16/64 amended and substituted by s.3 of Law 81/72). The competence of the Minister, which was created by Statute, was confined to examining and deciding on the hierarchical recourse only; as stated earlier on in the present judgment when dealing with the legal aspect of the case, the Minister might have been vested with competence to revoke the decision of the Licensing Authority had he been satisfied that the act in question was unlawfully made.

40 But the Minister did not so find. After a proper examina-

tion of the hierachical recourse, according to Law, he was satisfied that the original decision was perfectly lawful, not vulnerable on any ground, and by his decision of 13.1.82 dismissed the hierarchical recourse thereby confirming the original decision of the Licensing Authority. I hold the view that the competence of the Minister has ceased from the time he has given his decision on the hierarchical recourse on 13.1.82. The matter was thereafter entirely outside his competence. Any person aggrieved by his decision and having a legitimate interest in the matter could have a recourse to the Court pursuant to the provisions of Article 146 of the Constitution, within the next 75 days.

Surprisingly, the Minister on 20.4.82 (Ninety-seven days after his decision on the hierarchical recourse, which was never impugned before the Court gave another decision—which is set out verbatim in this judgment—stating therein that:

(1) He revokes his decision of 13.1.82 for the reasons stated in paras. (a) (b) and (γ) of his decision (vide paragraph 2 of the decision).

(2) He “calls upon” the Licensing Authority to issue a licence to the interested party in respect of a rural taxi at Sykopetra subject to certain conditions appearing in para. 3 of the decision.

I have already held that the competence of the Minister in respect of this case had already ceased from the time he has given his decision on the hierarchical recourse on 13.1.82. Therefore he could have no competence ninety-seven whole days thereafter, to revoke his aforesaid decision.

Nevertheless assuming that he had competence, I shall proceed to examine the grounds of such revocation, the procedure followed and the reasoning of the decision of 20.4.82. In this connection the following should be observed:

(a) In spite of the fact that the Minister says in his decision of 20.4.82 that “he relied on wrong data” (έσφαλμένα



δεδομένο) in giving his decision of 13.1.82, he does not mention anywhere what these wrong data were.

5 If the insinuation is that the "wrong data" were the ignorance of the fact that "there does not exist telephone communication between the two villages" (referred to in paragraph (γ) of the decision) I am unable to accept such an implied allegation as it is clear from red 6 of ex. 6 that the Minister was well aware of "the absence of telephone communication between the two villages" prior to the 10 13.1.82 when his decision on the hierarchical recourse was given; and this fact is conceded in paragraph 4 of the 3rd page of the written address of learned counsel appearing for both respondents.

15 (b) As it is stated in the decision of 20.4.82 the Minister effected the revocation in question after a revaluation of the facts of this case "on the submission of the interested party". No indication is given as to whether such a submission was oral or written and what were the contents thereof so that one could ascertain whether new facts were 20 placed before the Minister before he gave his decision of 20.4.82.

25 (c) It was conceded by learned counsel appearing for the respondents that the decision of 20.4.82 was merely reached on a revaluation of the existing facts, i.e. the facts which existed prior to the decision of 13.1.82; "there was no change in the factual situation" she stated and submitted that nevertheless the Minister could revoke his earlier decision on a revaluation of the same facts relevant to the question whether the transport needs of Sykopetra 30 village could be adequately served.

(d) Learned counsel for the respondents conceded further in her written address, that in reaching at the decision of 20.4.82 the Minister did neither notify or hear the representations of the applicant in the present recourse.

35 The wording of the decision of respondent No. 1 dated 20.4.82 examined in the light of the written address of Counsel on his behalf, leads to the unequivocal conclusion that the Minister invokes "public interest" as a ground for the revocation of his earlier decision of 13.1.82.

Assuming always that the Minister was a competent administrative organ, he would be able to revoke the administrative decision of 13.1.82 on the ground of public interest as matters regulating the traffic and matters incidental thereto are grounds of public interest (vide the Decision of the Plenary of the Greek Council of State No. 1355/55) subject (a) to following the same procedure envisaged for the making of the decision of 13.1.82, as the aforesaid decision was a lawful one (vide Conclusions of the Greek Council of State 1929-1959 at p. 204) (b) to providing in his decision of 20.4.82 "full and special reasoning" as provided by the Decision of the Plenary of the Greek Council of State under No. 264/1955.

It is abundantly clear that in the case under consideration the Minister apart from the fact that he was an organ without competence did not follow the same procedure envisaged for the making of the original act nor did he give "full and special reasoning" required as above stated; I may even go further and say that he did not give even the ordinary reasoning required, which cannot be supplemented from the material in the administrative files before me.

Furthermore the Minister had no competence whatever to issue the decision contained in paragraph 3; the competence to issue a licence for a rural taxi is entirely within the province of the Licensing Authority which has to exercise its discretion according to the Law. To my comprehension paragraph 3 of the decision of respondent No. 1 "calls upon" the Licensing Authority to issue a permit and at the same time dictates the conditions under which such permit will be issued something impermissible for respondent No. 1 who has no such competence.

Respondent No. 2, the Licensing Authority, is the only organ vested with competence to issue or refuse a licence for a rural taxi (which is the present case) and in so doing it has to exercise its discretionary power according to the Law, which on 3.6.82 (when the sub judice decision of respondent No. 2 was given) was section 9(3) of Law 9/82 (having been published in the Official Gazette of the Republic on 19.3.82) which reads as follows:

“9(3) The Licensing Authority in the exercise of its discretionary powers should take into consideration the following:-

(a) As regards the urban taxis and rural taxis:

- 5 (i) The extent to which the needs of the relevant urban traffic area or the rural community, according to the case, are adequately served;
- (ii) The degree to which, it is probable, that the applicant will be able to render the transport  
10 services applied for;
- (iii) The extent to which the proposed road use is necessary or desirable in the public interest;
- (iv) The needs of the area as a whole in relation to the conveyance of passengers;”

15 The Licensing Authority—respondent No. 2—on 3.6.1982 was substantially examining a new application for the granting or refusing a licence to the interested party, as the Minister on 20.4.82 did not revoke the original decision of the Licensing Authority dated 25.8.81 (turning  
20 down the application of the interested party); what he has attempted to do was to revoke his own decision dated 13.1.82 given by him in connection with the hierarchical recourse to him.

25 Respondent No. 2, had therefore, as the only competent organ according to Law, to make an enquiry afresh and after exercising their discretion as envisaged by s. 9(3) of Law 9/82, give their decision on 3.6.82. In carrying out their inquiry the Licensing Authority should bear in mind  
30 inter alia (a) “the degree to which, it is probable, that the applicant will be able to render the transport services applied for” i.e. the new requisite inserted by s.9(3)(ii) of Law 9/82 (which did not exist under s.9(4) of Law 16/64 as amended by Law 60/75) (b) the objection of the applicant dated 13.5.82 (blue 31 in ex. 7), (c) the letter  
35 addressed to it on 29.5.82 (blues 32 and 33 in ex. 7) by counsel acting on behalf of the applicant, which contained inter alia information about carrier “A” under Registration No. JQ 733 i.e. the car the interested party was to

alienate before being eligible to be considered for obtaining the licence in question.

The Licensing Authority without carrying any enquiry and without exercising its discretionary powers according to Law proceeded on 3.6.82 to issue a licence for a new rural taxi to the interested party "basing themselves on the decision of the Minister" or "complying with the decision of the Minister" as it appears from the following extracts from (a) their decision which appears in blue 29 of ex. 7 and (b) their letter dated 5.6.82 addressed to the interested party (blue 30 in ex. 7) which read as follows:

(a) "The Licensing Authority based on the decision of the Minister of Communications and Works dated 20.4.82... approves the application..." (vide blue 29 in ex. 7).

(b) "The Licensing Authority... approved your application complying with the decision of Minister of Communications and works dated 20.4.82..."

But, the Licensing Authority, the only competent body to issue or refuse the relevant licence, enquires first and after exercising a discretion of its own according to Law proceeds to decide; it does not give its approval "based on the decision of the Minister" nor does it "comply with the decision of the Minister."

I am satisfied that the Licensing Authority did not examine the application of the interested party as it ought to; it did not carry out any enquiry and acted under a misconception of the Law complying with decision of the Minister. Furthermore it did not give reasons for its decision of 3.6.82.

For all the above reasons both sub judice decisions i.e. the decision of the Minister—respondent No. 1—purporting to revoke his earlier decision of 13.1.82 (given by him on the hierarchical recourse of the interested party) as well as the decision of respondent No. 2 dated 3.6.82 are hereby annulled.

Respondents to pay £20.- towards the costs of the applicant.

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*Sub judice decisions annulled. Respondents to pay £20.- costs.*