

1986 September 19

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

VASSOS KYRIACOU,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PERMITS REVIEW AUTHORITY.

Respondent.

(Case No. 651/85).

5 *Motor transport—The Motor Transport Regulation Law 9/82
as amended by Law 84/84—Permits Review Authority—
Its task extends to every aspect of the application as if
the matter was raised before it afresh—Z-cars—Section
5(9)—The law does not import any specific economic
policy with regard to the exercise of its powers—Nor does
it suggest that a balance should be struck between big
and smaller Z-car businesses—The assertion that the
10 object of the law would not be served by granting li-
cences to a large number of persons because of objective
difficulties in establishing small viable businesses does
not reflect policy of the law.*

15 *Administrative Law—Discretionary powers—Whether the ad-
ministrative authority has power to adopt a policy deci-
sion affecting the exercise of such powers—An admini-
strative authority cannot neutralize its discretion to re-
spond to the merits of the individual case—And cannot
override the law by the evolution of criteria unknown
to it.*

20 *Reasoning of an administrative act—Absence of, cannot be
filled by reference to a policy directive—Administration*

should reason why the provisions of such directive apply in the particular case.

Applicant, a resident of the U.K., applied to the Permits Authority for the grant to him of 25 Z-cars licences in order to start a car hire business in Cyprus. The Permits Authority approved the application in part licensing the applicant to acquire 7 Z-cars, provided that he would secure appropriate business premises for the management of the business.

The interested parties felt aggrieved by the said decision and filed a hierarchical recourse before the Permit Review Authority, which held a fresh inquiry into the matter. Respondents adjourned after completing their factual inquiry. At their resumed session they did not concern themselves with the details of the case, but addressed themselves to the evolution of guidelines that would guide them in the resolution of the case in hand and other cases that would come before them in the future. In effect their guidelines amounted to policy directives. As may be presumed in evolving their said policy decision they derived authority from s. 5(9) of Law 9/82 as amended by Law 84/84.

At their next meeting held on 20.4.85 the respondents refused the application, allowing the hierarchical appeal for two reasons: (1) Failure of the applicant to satisfy them that he intended to make the hire of Z-cars his main occupation and (b) the better claims of other applicants who should have been preferred in accordance with the said policy decision. Why they should have been preferred is not spelled out.

As a result the applicant filed the present recourse.

Held, annulling the sub judice decision: (1) Section 5(9) of the said law does not empower the respondents to lay down general criteria for the resolution of individual applications. The amenity of administrative authorities to adopt a policy decision affecting the exercise of their discretionary powers was debated in *Vassiliou v. The Republic* (1982) 3. C.L.R. 220. An administrative authority cannot in the exercise of its powers override

the law by the evolution of criteria other than those laid down in the relevant statute. It cannot neutralize its discretion to respond to the merits of the individual case.

5 (2) The sweeping nature of the directives laid down in this case are designed to introduce a body of rules outside the context of the law and in some areas in opposition to it. In particular the assertion that the objects of the law would not be served by granting licences to a large number of persons because there are objective difficulties in the establishment of small viable businesses does not reflect the policy of the law. Furthermore the law does not suggest that a balance should be struck between small and big Z-car businesses. More important still the law does not import any specific economic policy with regard to the exercise of the powers of the respondents. The relevant to the above matters guidelines laid down by the respondents are apt to deprive them of the necessary freedom to determine applications according to the facts of individual cases.

20 (3) The conclusion that applicant was not minded to carry on Z-car business as his main occupation is not borne out by the material before the respondents. Their conclusion is contradicted by the material in the file. It follows that the respondents could not invoke the provisions of s. 5(9) of the said law as justification of the sub judge decision.

30 (4) The second ground on which the application was refused is defective because it rests on a policy decision evolved in excess of power. Moreover, it does not spell out why the other applications should have been preferred. The absence of reasoning cannot be filled by reference to a policy directive. The administration should reason why and in what way the provisions of such directive apply to the particular case.

35 *Sub judge decision annulled.*
No order as to costs.

Cases referred to:

Tsouloftas v. The Republic (1983) 3 C.L.R. 426;

Vassiliou v. The Republic (1982) 3 C.L.R. 220;

Korakides v. Vine Products (1985) 3 C.L.R. 2690.

Recourse.

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Recourse against the decision of the respondents allowing the appeal of the interested parties against the decision of the Permits Authority granting applicant a licence to acquire seven Z-cars and refusing applicant's application for the grant to him of 25 Z-car licences.

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G. Yiangou with *Chr. Hadjiyangou*, for the applicant.

G. Erotokritou (Mrs.), Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

PIKIS J. read the following judgment. Applicant, a resident of the U.K. applied to the Permits Authority for the grant to him of 25 Z-car licences in order to start a car hire business in Cyprus. The application was made, as he informed the authorities, in furtherance of his plans to settle with his family in Cyprus, his native land. He emigrated to the U.K. some 22 years ago managing over the years to establish a successful business, trading in new and second-hand cars; also he ran a garage. He planned to resettle with his wife and two children in Cyprus. Approval of the application would facilitate his plans as it would give him a chance to organize a business in Cyprus.

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The Permits Authority held an inquiry into his application in the context of which the views of competing applicants for Z-car licences were heard. There was, as may be gathered from the material before the Court, fierce opposition to his application coming from persons who had a foothold in the business of hire of Z-cars. Eventually the application was approved in part, licensing the applicant to acquire seven Z-cars. The permit was conditional making its activation dependent on the applicant

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securing appropriate business premises for the management of the business. As well as imposing the above condition the Permits Authority informed the applicant the licences were not transferable as plainly laid down in the law.

- 5 The competitors of the applicant felt aggrieved by the decision and took the matter further raising an appeal before the Permits Review Authority by way of hierarchical appeal against the decision of the Permits Authority. A hierarchical appeal is by way of rehearing, the respondents
10 being free to hold an inquiry into the application anew and take any decision that might be taken by the Permits Authority. Their task is not confined to examination of the soundness of the decision of the hierarchically subordinate body but extends to every aspect of the application as if
15 the matter had been raised before them afresh. As much was clarified in the case of *Tsouloftas v. The Republic*(1). The respondents held, as may be gathered from the procedure before them, a fresh inquiry into the propriety of the application including the grounds upon
20 which the interested parties rested their objections and the views of the applicant voiced through his counsel in support of his application, in particular the justification of the decision of the Permits Authority. In the course of this inquiry the Chairman of the respondents queried the viability of a Z-car business in view of the smallness of the
25 number of the cars that would be available for hire. The Chairman appears to have overlooked that the applicant planned a much larger business and that limitation of the licences to only seven cars was the decision of the hierarchically subordinate body. As counsel for the applicant informed the Chairman and his fellow members applicant had large sums of money available to fund a much bigger
30 business. Disclosure of details of his assets in Cyprus, a house in Nicosia, flats at Paphos and deposits in a foreign account lent support to his professed intention that it was
35 in his contemplation to be repatriated.

Respondents adjourned after completing their factual inquiry. At their resumed session they did not concern themselves with the details of the case but addressed them-

(1) (1983) 3 C.L.R. 426, 431.

selves to the evolution of guidelines that would guide them in the resolution of the particular case and other cases that would come up before them in the future. In effect their guidelines amounted to policy directives reflecting the respondents' appreciation of the needs of the trade and the principles that should govern the exercise of their discretionary powers. Apparently they felt pretty certain about the validity of their factual assumptions as to proclaim their policy decision as founded on generally acknowledged reality (γενικές διοριστώσεις).

In evolving their policy decision they derived authority as may be presumed from the content of the directive from the provisions of sub-section (9) of s. 5 of the law—Law 9/82(1). Now s. 5(9) does not in terms confer power on the respondents to improvise criteria other than those laid down in the law in the exercise of their duties. What it provides is that no one should be licensed to carry on a Z-car hire business unless he exercises or intends to carry on the business as his main occupation. It is a matter of fact whether this factual requirement is satisfied in anyone case. Certainly the aforementioned provision of the law does not empower the respondents to lay down general criteria for the resolution of individual applications.

Counsel for the respondents supported the validity of the policy decision of the respondents contending they had power in administrative law to evolve relevant criteria for the exercise of their discretion. In support of this proposition she cited a passage from Wade on Administrative Law(2) suggesting that it is open to administrative bodies to establish general limitative criteria for the exercise of their discretion in the interest of consistency provided relevant to the exercise of their discretion and further provided they do not neutralize their amenity to do as justice and reason require in individual cases. The passage is founded on acknowledgment of amenity to justices of the peace to adopt certain general criteria limiting their discretion in the exercise of their licensing powers.

(1) Amended by Law 84/84.

(2) 4th ed., p. 318.

The amenity of administrative authorities to adopt a policy decision affecting the exercise of their discretionary powers was debated in *Vassiliou v. The Republic* (1982) 3 C.L.R. 220, 227, 228. The passage that follows below is pertinent to the problem and sums up, I believe, the law on the subject.

“If public interest warrants formulation of settled factors to guide the administration in its task, it is permissible for the administration to evolve a general policy, provided the discretion of the organ vested with power under the law is not neutralized to the extent of depriving it of discretion to have regard to the merits of the individual case...”

An administrative authority cannot in the exercise of its administrative powers override the law by the evolution of criteria other than those laid down in the relevant statute. The one thing they cannot do is to neutralize their discretion to respond to the merits of the individual case.

The sweeping nature of the directives laid down in this case are designed to introduce a body of rules outside the context of the law and in some areas in opposition to it. They are not confined to laying down the procedural means of eliciting the factual background to the application particularly the genuineness of the intention of the pursuer to start a Z-car business as his main occupation. Rules (c) and (d) in particular seem to lay down criteria unknown to the law and establish principles that may lead the Administration to decide without reference to the individual merits of the case. In particular the assertion that the objects of the law would not be served by granting licences to a large number of persons because there are objective difficulties in the establishment of small viable businesses does not reflect in any way the policy of the law. Furthermore the law does not in any way suggest that a balance should be struck between big and smaller Z-car businesses. More important still the law does not import any specific economic policy with regard to the exercise of the powers of the respondents. The law puts in their discretion the application of the law. They may certainly take stock of the number of Z-cars available in the market and the extent

to which such numbers satisfy existing demand. Consequently the first factual statement made in these directives that there was need for very many more Z-cars to satisfy demand was relevant and permissible. Equally relevant was paragraph (b) reminding the respondents of the provisions of s. 5(9) of the law. The rules evolved by paras. (c) and (d) on the other hand were not warranted by the law and as earlier explained they were in conflict with its provisions. They are apt to deprive the respondents of the necessary freedom to determine applications according to the facts of individual cases. The efficiency of a business does not solely depend on its size. It depends just as much on the proficiency of the businessman involved. In essence the policy directive purported to limit as well as streamline the exercise of the discretion of the respondents in a manner unwarranted by the law, introducing criteria unknown to the law in the exercise of their discretionary powers.

At their next meeting held on 20th April, 1985, the respondents refused the application, allowing the appeal before them, for two reasons: (a) Failure of the applicant to satisfy them that he intended to make the hire of Z-cars his main occupation and (b) the better claims of other applicants for Z-car licences who should have been preferred in accordance with the policy decision of 17th April, 1985. Why they should have been preferred is not spelled out. As explained in *Korakides v Vine Products*(¹) the gap of absence of reasoning cannot be filled by general reference to a policy directive, a circular in that case. The administration must reason why and in what way its provisions apply in the particular case.

The conclusion of the respondents that applicant was not truly minded to carry on Z-car business as his main occupation is not borne out by the material before the respondents. On the contrary such information as there was on the subject tended to support the opposite view. If the respondents wanted to query the professed intentions of the applicant on the subject they should have inquired further into the matter. As it is their conclusions are con-

(1) (1985) 3 CLR 2690

tradicted by the material in the file. Consequently they could not properly invoke the provisions of s. 5(9) of the law as proper justification for refusing the application. The second ground on which the decision was refused is equally
5 vulnerable to be set aside as defective because it rests on a policy decision evolved in excess of the powers of the respondents; moreover it wholly fails to reason how the decision has application in the circumstances of this case. From the material before the respondents they could properly
10 conclude that applicant had a keen business sense and, therefore the prospects of organizing a successful business were not bleak. The availability of the necessary funds of financing the business was one other consideration that foreshadowed the establishment of a successful
15 business. For these reasons the decision cannot but be set aside.

Attention should be drawn before concluding to the undesirability of evolving policy directives in the context of particular cases. Such directives must be evolved from
20 a broader perspective in order to guide the administration impersonally in the exercise of its functions. A general policy directive is not a substitute for reasoning a decision in the particular case.

In the result pursuant to the provisions of Article 146.4
25 (b) the sub judice decision is in whole declared null and void. Let there be no order as to costs.

*Sub judice decision annulled.
No order as to costs.*