

1986 November 8

[Pikis, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

OLVIA TRAVEL LIMITED,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PERMITS REVIEW AUTHORITY,

Respondents.

(Case No. 625/85).

Motor Transport—The Motor Transport Regulation Laws 9/82 and 84/84—Appeal from a decision of the Permits Authority to the Permits Review Authority—Right of—Section 4A (1)—Everyone having a “legal interest”—“Legal interest” connotes legitimate interest in the sense accepted in administrative law—Right of appeal not dependent on communication of decision of Permits Authority to person having such an interest—Powers of Permits Review Authority acting on appeal. 5

Motor Transport—The Motor Transport Regulation Law 9/82—Section 5(9)—Cars hired without a driver (“Z” cars)—Applicant should have or make it in the future the hire of “Z” cars as his main business or occupation. 10

The decision of the Permits Authority, whereby permits were granted to the applicants for “Z” hired cars, was reversed on appeal by the two interested parties on the ground that the applicants did not satisfy the requirements of section 5(9) of Law 9/82. Hence the present recourse. 15

The applicants admitted that their main business was tourism and that they wanted to secure the permits, in order to facilitate their main business. 20

One of the points raised by counsel for the applicants was that the two interested parties, namely a company in the "Z" car business and another company interested in securing "Z" licences, had no right to appeal to the respondents, because the decision appealed from had not been communicated to them. In fact the decision had been communicated to ПАКРО, the professional association of "Z" car hirers.

Held, dismissing the recourse: (1) The Permits Review Authority, acting on appeal and despite the label of appeal, is not confined to review the validity of the decision appealed from, but it is charged to decide, like its subordinates, the Permits Authority, whether an application is well founded in law.

(2) The decision of the Permits Authority affected directly the legitimate interest of the interested parties. Their interest did not stem indirectly through an injury caused to ПАКРО, but directly because of prejudice suffered or likely to be occasioned to their own interests. Section 4A(1) of Law 84/84 confers a right to appeal from a decision of the Permits Authority upon everyone having a "legal interest". This expression connotes a legitimate interest in the accepted sense of the expression in administrative law. The submission that the right to appeal depends also on communication of the relevant decision to such a person is not warranted by the law. Carried to its logical conclusion the argument entails defeat of a right given by law by failure or omission of the deciding body to communicate its decision.

(3) Section 5(9) of Law 9/82 requires that the applicant for "Z" cars licences should have the hire of "Z" cars as his main business or occupation or make it in future his main business or occupation. In the light of the factual reality in this case, the sub judice decision was unavoidable.

*Recourse dismissed.
No order as to costs.*

Cases referred to:

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

Pitsillos v. C.B.C (1982) 3 C.L.R. 208.

Recourse.

Recourse against the decision of the respondents to reverse, on a hierarchical appeal by the interested parties, the decision of the Permits Authority to issue to the applicants permits for "Z" hire cars. 5

A. *Skordis*, for the applicants.

G. *Erotokritou (Mrs.)*, Senior Counsel of the Republic, for the respondents. 10

M. *Tsangarides* for E. Efstathiou, for interested party Security Travel Ltd.

A. *Panayiotou*, for interested party A. Petsas & Sons Ltd. 15

Cur. adv. vult.

PIKIS J. read the following judgment. The Permits Review Authority reversed on a hierarchical appeal the decision of the Permits Authority and refused applicants' application for permits for "Z" hire cars. The appeal had been taken by the two interested parties, namely A. Petsas & Sons Limited, a company in the "Z" hire business and, Security Travel Limited, themselves interested in obtaining "Z" licences. The application was dismissed on the ground that applicants did not fulfil the requirements of subsection 9 of section 5 of the law (Law 9/82), namely that the hire of "Z" cars was not the main business or occupation of the applicants nor was it contemplated that it would become. 20 25

Notwithstanding the acknowledgement by the applicants that the interested parties had a legitimate interest to pursue an appeal before the respondents, they doubted the propriety of their action on account of the fact that the decision was not appealable at their instance for lack of direct communication of it to them by the respondents. The decision was communicated to ΠΑΚΡΟ, the pro- 30 35

fessional association of "Z" car hirers, seemingly in the interest of convenience, leaving to ΠΑΚΡΟ circulation of the decision among its members. That the interested parties took an appeal before the respondents within 20
5 days of becoming aware of the decision is not disputed. In the contention of the applicants the only way for the interested parties to protect their interests was by filing a recourse within 75 days from the day they gained knowledge of the decision, something they failed to do. In
10 consequence, the recourse is out of time.

The only other question to be answered if it is found that the recourse was raised in time, is the validity of the decision, particularly the application of the relevant provisions of subsection 9 of section 5 of the law to the facts
15 of the case. It is the case for the applicants that respondents misconstrued the law and misapplied it to the facts of this case.

It might be worth reminding before examining the above questions that (a) despite the label of appeal attached to the proceedings, the Permits Review Authority is not confined to the review of the validity of the decision appealed from. They act like the Permits Authority in an administrative capacity charged to decide, as their subordinates, whether the application for a permit is well
20 founded in law¹; and (b) that the decision of the Permits Authority affected the interests of the interested parties directly and for that reason the legitimacy of their interest to seek its review before the respondents could not be validly questioned. Their interest did not stem in-
25 directly through injury being caused to ΠΑΚΡΟ but directly because of prejudice suffered or likely to be occasioned to their interests².
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Section 4A (1) of the law (Law 84/84) confers a right upon everyone having a "legal interest" in a decision of
35 the Permits Authority to appeal before the Permits Review Authority. The expression "legal interest" connotes a legitimate interest in the accepted sense of the expression

¹ See, *Tsouloftas v. Republic* (1983) 3 C.L.R. 426.

² See, *inter alia*, *Pitsillos v. C.B.C.* (1982) 3 C.L.R. 208.

in administrative law. That the interested parties did have a legitimate interest to seek the review of the decision of the Permits Authority is beyond doubt; nor were arguments raised to the contrary. Nonetheless, applicants contended that no right ever vested in the interested parties to appeal before the respondents for such right was not solely dependent on the existence of a legitimate interest but on direct communication of the decision to them by the respondents as well. Carried to its logical conclusion the argument entails subordination of an acknowledged right to appeal to a procedural requirement dependent solely on an administrative decision respecting the persons or bodies to whom the decision should be communicated. In other words, the right given by law was apt to be defeated by a failure or omission to communicate the decision by the deciding body. It would be difficult to attribute such intention to the legislature nor is such construction warranted by the wording of s. 4A(1) of the law. The right to take an appeal is safeguarded to everyone with a legitimate interest in the matter, provided it is exercised within 20 days from communication to him of the decision. The law does not lay down that such communication should emanate from the Permits Authority, although in this case communication to a representative association for convenience sake could be regarded as communication to the interested parties, counting timewise from the day that the parties gained knowledge of the decision. The next step is to address the merits of the decision.

The law specifically confines the right to "Z" car licences to persons carrying on or intending to make transport business their main occupation. Subsection 9 of section 5 encompasses every species of application for a transport permit. In so far as an application for a "Z" car permit is concerned, it requires that the applicant should have the hire of "Z" cars as his main business or occupation, or make it in future his main business or occupation. On their own admission applicants had tourism as their main business and had no intention or plans, then and now, to change the nature of their business. In fact, they want to secure "Z" car licences in order to facilitate their main

business. The hire of "Z" cars will be incidental and subordinate to their main occupation.

5 In light of the factual reality, the decision of the respondents was not only reasonably open to them but unavoidable. The recourse is dismissed. The decision of the respondents is confirmed under Article 146.4 (a) of the Constitution. Let there be no order as to costs.

Recourse dismissed.

No order as to costs.