

1986 March 8

[KOURRIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

CHARALAMBOS KYPREOPOULOS,

*Applicant.*

v.

THE LICENSING AUTHORITY,

*Respondent.*

(Case No. 768/85).

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*Administrative Act—Executory—Annulment by a decision of this Court of a decision of the Minister of Communications and Works whereby the Licensing Authority was directed to issue to the applicant a road service licence*  
5 *—Following the said annulment, the Licensing Authority cancelled the said licence—The said decision of the Licensing Authority is not an executory act, because the Authority could not cancel the licence, which had already been cancelled by the Court.*

10 Following the decision of this Court in Recourse 252/78\* whereby the decision of the Minister of Communications and Works directing the Licensing Authority to issue a road service licence to the applicant in respect  
15 of bus DS 408 for the route Amathus Area—Municipal Market of Limassol, was annulled, the Licensing Authority decided to cancel the applicant's said road licence.

As a result the applicant filed the present recourse. Counsel for the respondent admitted that the respondent Authority did not carry out an inquiry before issuing  
20 the sub judice decision, but he submitted that they did not have a duty to do so as by the sub judice decision

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\* The judgment was delivered on 14.6.1985 See Efstathios Kyriacou & Sons Ltd and Another v The Republic (1985) 3 C.L.R. 979.

they intended to revoke applicant's licence in compliance with the annulling judgment of the Court

*Held*, dismissing the recourse (1) The respondent authority spoke of cancelling not revoking the applicant's road service licence. It follows that the submission of counsel for the respondent is untenable 5

(2) The sub judice decision is not justiciable under Article 146 of the Constitution because it lacks executory character. Indeed the respondent could not cancel a licence which had already been cancelled by the Court 10

(3) If the sub judice decision were an executory act it would have been annulled by reason of lack of due enquiry and due reasoning

*Recourse dismissed*  
*No Order as to costs.* 15

Cases referred to

*Vorkas and Others v The Republic* (1984) 3 C.L.R. 757.

Recourse

Recourse against the decision of the respondent whereby the road service licence in respect of applicant's bus under registration No DS 408 was cancelled 20

*L. Clerides*, for the applicant.

*R. Gavrielides*, Senior Counsel of the Republic, for the respondent.

*Cur adv vult.* 25

KOURRIS J read the following judgment. By this recourse the applicant seeks a declaration that the decision of the Licensing Authority dated 20th August, 1985, and communicated to the applicant by a letter dated 31st August, 1985, by which they cancelled the road service licence in respect of his bus DS 408, is null and void and of no effect whatsoever 30

The applicant is the owner of motor-bus No. DS 408

and was doing the route Amathus—Limassol since 1957. As a result of the enactment of Motor Transport (Regulation) Law, 1964, Law No. 16/64, a road service licence was issued for the said bus for the route Ayios Tychon  
5 to Limassol. On 10th August, 1977, the applicant applied to the Licensing Authority for a licence for the route from Amathus to Limassol Municipal Market and vice versa in respect of his bus No. DS 408. The Licensing  
10 Authority dismissed the application of the applicant on the ground that the route is sufficiently served, whereupon on the 2nd October, 1977, the applicant filed a hierarchical recourse to the Minister of Communications and Works against the decision of the Licensing Authority.

The recourse of the applicant to the Minister was heard  
15 on the 30th January, 1978, and the Minister issued his decision on the 6th March, 1978, allowing the recourse of the applicant and directing the Licensing Authority to issue a licence to him, in respect of bus No. DS 408, for the route Amathus area—Municipal Market of Limas-  
20 sol on the ground that the needs of the area would be better served.

Following the issue of the road service licence to the applicant, Efstathios Kyriacou & Sons Ltd. and Takis Michael filed a recourse in the Supreme Court against  
25 the decision of the Minister of the 6th March, 1978 (Recourse No. 252/78), seeking the annulment of the road service licence given to the applicant, who became an interested party. After reviewing the decision the Court ordered its annulment by a judgment delivered on  
30 the 14th June, 1985. (See *Efstathios Kyriacou & Sons Ltd. and Another v. The Republic of Cyprus* (1985) 3 C.L.R. 979).

As a result of the said judgment the Licensing Authority addressed a letter to the applicant dated 31st August,  
35 1985 (Appendix B). In view of the contents of this letter the applicant filed the present recourse. It should be noted that he also appealed against the judgment of the Court in the recourse No. 252/78 which is Revisional Appeal No. 509.

It should be mentioned, also, that on the 21st March, 1985, the Licensing Authority decided to readjust the hours of running of the buses in the area of Limassol town and for this purpose they readjusted the hours of running of the bus of the applicant and they communicated their decision to him by letter dated 21st May, 1985 (see Appendix A). 5

The grounds on which the applicant is seeking relief are the following:

- (a) The decision was not reasoned, 10
- (b) There was lack of due inquiry.
- (c) Abuse of authority, and
- (d) The decision of the respondent is contrary to the basic provisions of Law No. 9/82 and 84/84 and consequently is flagrantly illegal. 15

During the hearing applicant abandoned ground (d).

Before dealing with the case any further I propose to set out the contents of the said letter, which are indeed very confusing, so far as material for the purposes of this recourse: 20

«Αναφέρομαι στην απόφαση του Ανωτάτου Δικαστηρίου πάνω στην πιο πάνω προσφυγή και σας πληροφορώ πως η Αρχή Αδειών στη συνεδρία της με ημερομηνία 20.8.85 αποφάσισε να ακυρώσει την άδεια οδικής χρήσης λεωφορείου σας με αρ. εγγραφής DS 408». 25

Translated reads as follows:

"I refer to the judgment of the Supreme Court in the said recourse and I inform you that the Licensing Authority at its meeting of 20/8/1985 decided to cancel the road service licence of your bus under registration No. DS 408". 30

This letter was addressed to the applicant after the members of the Licensing Authority convened on 20th

August, 1985 (Exhibit A) and the relevant record reads as follows:

5 «Η Αρχή Αδειών, αφού έλαβε υπόψη τα στοιχεία του φακέλλου, ακυρώνει την άδεια οδικής χρήσεως του αστικού λεωφορείου με αρ. DS 408 το οποίο θα παραμείνει δημοσίας χρήσεως».

Translated reads as follows:

10 "The Licensing Authority, having taken into consideration the contents of the file, cancels the road service licence of the urban bus under registration No. DS 408 which will continue to be a public service vehicle."

15 The main complaint of the applicant is that the Licensing Authority on the 21st August, 1985, convened and took a decision in the light of the judgment of the Court in Case No. 252/78 which was delivered seven years after its filing. Counsel for the applicant said that in doing so the respondent Authority did not take into consideration the passengers' traffic and the needs for bus services in the area  
20 at the time inasmuch as from 21st March, 1985, the respondent Authority readjusted the hours of running of the buses in the area of Limassol town including the hours of running of the bus of the applicant. Counsel submitted that in view of these circumstances the decision of the respondent suffers  
25 from lack of due reasoning and lack of inquiry and, therefore, it cannot stand.

Counsel for the respondents admitted that the respondent Authority did not carry out an inquiry but he alleged that  
30 they had no duty to do so because the decision taken was in order to comply with the judgment of the Court and in doing so it was not necessary for them to make a fresh inquiry into the circumstances pertaining at the material time; and indeed they did not re-examine the case. He contended that by the said letter they intended to revoke  
35 (ἀνακαλέσουν) the road service licence in compliance with the annulling judgment of the Court as it was their duty to do so.

I do not agree with counsel for the respondent Autho-

rity that the contents of the letter conveyed to the applicant their intention to revoke (ἀνακαλέσουν) the road service licence of his bus. There is no ambiguity in the words used; and they speak of cancelling the road use licence of the bus after examination of the relevant file. 5

Again it cannot be said, as alleged, by the applicant that the respondent Authority had taken a decision which is justiciable. An administrative decision gives rise to a recourse if the position of a person is adversely affected. This is so if the act or decision complained of is executory. 10  
In the case of *Vorkas and Others v. The Republic* (1984) 3 C.L.R. 757 at p. 763 the Court said:

“Only administrative acts of an executory character are justiciable under Article 146.1 of the Constitution. 15

As often repeated, executory acts are those that are in themselves productive of legal consequences.”

In the present case the respondent Authority could not cancel a licence which already has been cancelled by the Court: for all intents and purposes it was a dead licence; and the letter says that having examined the file they 20  
decided to cancel the licence. One cannot attribute a different meaning to the word “cancel.” The decision and the contents of the letter have no bearing on the rights of the applicant under the law. By their decision they purported to cancel the road service licence and this is an 25  
abortive and non-sensical decision and it is not an executory one and as such it is not amenable to judicial review under Article 146.1 of the Constitution and for this reason the recourse is dismissed.

If it were to be held that the said decision is executory 30  
then it cannot stand because it lacks due inquiry and due reasoning. Furthermore by purporting to cancel the road service licence of the applicant the Licensing Authority acted in abuse and/or excess of their powers and again their decision would not stand. 35

For all the above reasons the recourse is dismissed but with no order for costs.

*Recourse dismissed.  
No order as to costs.*