

1987 October 9

[LORIS J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

TAKIS SKAROU (NISSIS TAXI OFFICE),

Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH
THE PERMITS REVIEW AUTHORITY,

Respondent

(Case No 597/85)

Administrative Law — Discretion of administration — General guidelines, laying down of — An administrative organ cannot lay down guidelines contrary to the policy of the law

5 *Motor transport — The Motor Transport Regulation Law 9/82 — Cars hired without a driver — Permits Review Authority cannot lay down general guidelines forecasting suggestions of the Transport Department and the views of the Cyprus Tourism Organisation (Sections 5(14) and 10(2) of aforesaid law)*

10 *Reasoning of an administrative act — General policy directive — No substitute of a reasoning — Reasoning must be such as to enable judicial scrutiny of the legality of the act in question*

15 On 9 1 85 the Licensing Authority granted to the applicant two licences for cars hired without a driver (Z cars) This decision was challenged by a hierarchical recourse before the Permits Review Authority, which, after having formulated on 17 4 85 certain general guidelines for the purpose of guiding themselves for the resolution of this and other cases, annulled the aforesaid decision of the Licensing Authority, because the latter, «on the basis of the criteria laid down by the Permits Review Authority on 17 4 85», exercised its discretion wrongly

20 Hence this recourse

Held, annulling the sub judice decision (1) The Licensing Authority, which issued its decision on 9 1 85, could not have possibly had in mind criteria formulated by the respondents on 17 4 85 Moreover, certain of the said

criteria are contrary to the policy of the law. An administrative organ cannot lay down criteria, which are contrary to law.

(2) Criteria in the form of general directives cannot be issued forecasting suggestions of the Road Transport Department and views of the Cyprus Tourism Organisation, which have to be given due consideration by the Licensing Authority in exercising its discretion pursuant to s 14(1) and s 10(2) of the Law such views and suggestions depending on the facts of each particular case 5

(3) «A general policy directive is not a substitute for reasoning of a decision in the particular case» (*Kynakou v Republic* (1986) 3 C L R 1845 at 1853 adopted) The sub-judice decision fails to convey clear reasoning to the subject (the applicant in this case) and at the same time it renders impossible its judicial scrutiny 10

Sub-judice decision annulled
No order as to costs 15

Cases referred to

P E O v The Board of Cinematograph Films Censors & Another (1965) 3 C L R 27

Kynakou v Republic (1986) 3 C L R 1845

Philippou v Republic (1983) 3 C L R 1386 20

Recourse.

Recourse against the decision of the respondent annulling the decision of the Licensing Authority whereby applicant was granted a licence to own and manage two cars hired without a driver 25

S Karapatakis, for the applicant

M Tsiappa (Mrs), for the respondent

Cur adv vult

LORIS J read the following judgment The applicant impugns by means of the present recourse the decision dated 6 5 85, given by the respondent Permits Review Authority on a hierarchical recourse annulling the decision of the Licensing Authority, whereby the applicant was granted licence to own and manage two cars hired without a driver commonly known as «Z» cars, the aforesaid sub-judice decision was communicated to the applicant on 23 5 1985 30 35

The undisputed facts of this case may be summarised as follows:

On 30.9.83 the applicant in the present recourse applied to the Licensing Authority for the grant to him of a licence to own and manage eleven «Z» cars (vide Appendix 1 attached to the
5 opposition).

A report dated 29.11.83, in respect of the said application, was prepared by the Famagusta District Transport Inspector (Appendix 2).

The Licensing Authority heard the applicant on 13.3.84
10 (Appendix 3) and at its meeting of 27.12.84 decided to grant to the applicant a licence for 2 «Z» cars (Appendix 4); the decision aforesaid was communicated to the applicant on 9.1.85 (Appendix 5).

The said decision of the Licensing Authority was impugned by
15 means of hierarchical recourses filed on 28.1.85 with the Permits Review Authority by Christos Papageorghiou, Panayiota Michael, Security Travel Ltd and KEM Taxi Ltd (Appendix 6).

At the meeting of the Respondent Authority of 28.3.85, the
20 hierarchical recourses filed by Security Travel Ltd and KEM Taxi Ltd were withdrawn (Appendix 7).

In the course of the hearing of the remaining hierarchical recourse the respondent Authority laid down certain guidelines that would guide them in the resolution of this particular case and obviously of other cases to come before them in the future. These
25 guidelines appear in Appendix 8 attached to the opposition.

Relying on the guidelines aforesaid the respondent Authority reached its decision on 6.5.85 (vide Appendices 9 & 10); the said decision was communicated to the applicant on 23.5.85 (Appendix 11).

30 The sub-judice decision which is set out in Appendix 10 reads as follows:

Η Αναθεωρητική Αρχή Αδειών αφού μελέτησε όλα τα στοιχεία των σχετικών Φακέλων και όλα όσα έχουν
35 λεχθεί από τους προσφεύγοντες και το δικηγόρο του ενδιαφερομένου, αποφασίζει την αποδουχή των προσφυγών διότι η Αρχή Αδειών, με βάση τα κριτήρια που τέθηκαν στη συνεδρία της Αναθεωρητικής Αρχής Αδειών στις 17.4.1985, άσκησε λανθασμένα τη

διακριτική της εξουσία. Επρεπε να προτιμησει άλλους αιτητές οι οποίοι πληρούσαν τα πιο πάνω κριτηρια »

(And in English

«The Permits Review Authority having considered the material in the relevant files and everything that was said by the applicants and counsel for the interested party, decides to accept the recourse because the Licensing Authority exercised wrongly its discretion on the basis of the criteria laid down by the Permits Review Authority at its meeting of 17 4 1985. It should have preferred other applicants who did fulfil the above criteria »

It must be stated, with respect, that the Licensing Authority could not have had in mind, in connection with this particular case, the criteria laid down by the Permits Review Authority, for the simple reason that the Licensing Authority exercised its discretion and gave its decision on 9 1 85, whilst the criteria-guidelines in question were laid down by the Permits Review Authority on 17 4 85. What the licensing Authority had in mind - and there is nothing on record militating to the contrary - were the provisions of the relevant law applicable i.e. Law No. 9/82 as amended by Law No. 84/84

Now with regard to the criteria laid down by the Permits Review Authority on 17 4 85, as they appear in Appendix 8 attached to the opposition, I shall confine myself in saying this much. Although certain paragraphs are quite consonant with the provisions of the relevant Law (such as para (b) based obviously on the provisions of s 5(9), part of para (d) which incorporates s 5(13) of the law), there are criteria laid down, in particular in the second part of para (d), which are contradictory on the one hand with the first part of the same paragraph and in conflict on the other, with the policy of the law, and definitely an administrative organ cannot lay down criteria which are contrary to Law. And, it may be added here by way of answering argument advanced by learned counsel for the respondent, criteria in the form of general directives cannot be issued forecasting suggestions of the Road Transport Department and views of the Cyprus Tourism Organisation, which have to be given due consideration by the Licensing Authority in exercising its discretion pursuant to s 5(14) and s 10(2) of the Law, such views and suggestions depending on the facts of each particular case

Reverting now to the reasoning of the sub-judice decision:

«Administrative law requires that an administrative decision, through which there results a situation unfavourable for the subject, is to be duly reasoned.... Moreover, decisions of collective
5 organs, such as the one with which we are dealing with, are particularly required to be reasoned because of the very fact that such decisions are expected to be the result of the deliberations of the members of the said organs...» (vide *P.E.O. and the Board of Cinematograph Films Censors & Another* (1965) 3 C.L.R. 27 and
10 the authorities therein cited).

The sub-judice decision fails to convey clear reasoning for annulling the decision of the Licensing Authority; it confines itself to stating that they «decided to accept the recourse because the
15 Licensing Authority exercised wrongly its discretion on the basis of the criteria laid down by the Permits Review Authority...» It wholly fails to reason how the decision has application in the circumstances of this case. In this connection I fully indorse what was stated by Pikiş J. in *Kyriacou v. Republic* (1986) 3 C.L.R. 1845
at p. 1853 «A general policy directive is not a substitute for
20 reasoning a decision in the particular case.»

The sub judice decision fails to convey clear reasoning to the subject (the applicant in this case) and at the same time it renders impossible its judicial scrutiny; and as stated recently by the
learned President of this Court in *Philippou v. Republic* (1983) 3
25 C.L.R. 1386 at p. 1396 «An administrative act should contain all the elements which are necessary for the ascertainment of its legality in case of exercise of judicial review.»

The only course therefore which is open to this Court is to annul the sub-judice decision of the respondent Permits Review
30 Authority on the ground that it is defective because of lack of due reasoning.

Sub-judice decision is hereby annulled; let there be no order as to costs.

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Sub judice decision annulled.
No order as to costs.