

1988 November 19

[BOYADJIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MARCOS TSERKEZOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR,

Respondent.

(Case No. 558/86).

5 *Driving Licence—Suspension—The Motor Vehicle and Road Traffic Regulations of 1984-1986, Regs. 31(1) (a), 31 (2) (b) and 31 (3)—The Power of the Registrar to suspend a driving licence—Regulation 31 (1) (a) is limited to cases, where the holder of the licence has been convicted of a criminal offence relating to his driving or has acquired his licence by false pretexts—Effect of non compliance with the mandatory provision of Regulation 31 (2) (b) to inform the holder of the licence of his right to attack the decision by submitting a medical report.*

10 *Formalities—Non compliance with formality laid down by Law—Effect—Form prescribed by legislation—It is normally regarded as essential and only in exceptional cases may be considered as non-substantial.*

15 *Recourse for annulment—Parties—Chief of Police, acting in his capacity as Deputy Registrar of Inland Transport, informed applicant by letter, written on paper of the Ministry of Interior, that applicant's licence was suspended—The recourse was rightly directed against the Republic through the Ministry of Interior.*

Recourse for annulment—Parties—The recourse is directed against the act itself—The power of the Court to amend, if the party named as respondent is not correct.

The facts of this case may be briefly described as follows: On 6.2.86 the applicant submitted an application for a duty free car on the ground that he was suffering from partial bodily disablement. The Medical Board concluded that, due to his spondyloarthritis ankilopoiepica, the applicant was unable to drive any car. On the basis of this report the Senior Technical Superintendent of Drivers Examination Officers-required the applicant to present himself for a re-examination of his driving ability. Following such examination, the Senior Technical Superintendent, reported that the driving by the applicant of any type of Motor Vehicle constitute a danger for the public safety.

On the basis of the last report the Chief of Police suspended the driving licence of the applicant and informed the latter of his decision by letter, written on paper of the Ministry of Interior. The applicant felt aggrieved and requested reconsideration of his case, expressing his willingness to undergo a new medical examination. In answer to this letter the Chief of Police informed the applicant that his decision was based on the report of the Senior Technical Superintendent.

As a result the applicant filed the present recourse.

The Court, having dismissed the preliminary objection, that the recourse was wrongly directed against the Republic "through the Ministry of Interior", annulled the sub judge decision, on the following grounds:

(a) Regulation 31 (1) (a), which has been involved by the respondent, is not applicable, as it is limited to cases, where the holder of the licence either has been convicted of a criminal offence relating to his driving or has acquired his licence by false pretences.

(b) Regulation 31 (3) empowers the Registrar to require the holder of a driving licence to undergo a new test in respect of his ability to drive and, in the meantime, to suspend the validity of such licence. However, the licence in this case was not suspended under this regulation.

(c) Regulation 31(2) (b) empowers the Registrar to cancel or suspend the validity of a driving licence if the condition of the holder has deteriorated or if the holder of the licence suffers afresh or with bodily disabilities that may render his driving dangerous for the public safety. However, this regulation provides that the Registrar shall inform the holder of the licence of his right to attack the decision by submitting a medical report. The holder of the licence may, also, demand to be medically examined, concerning his ability to drive.

In this case the Deputy Registrar not only did not inform the applicant of his right to attack the decision, but expressly refused a medical examination.

5 (d) Non compliance with formalities laid down by law lead to annulment of the sub judice act, unless such formalities are not of an essential character. A Form prescribed by law is essential, save in exceptional cases. In this case the non - compliance of the Deputy Registrar with the mandatory provisions of Regulation 31(2) (b) should lead to annulment of the sub judice decision.

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

Cases referred to:

Christodoulou v. Republic, 1 R.S.C.C. 1;

Minister of Finance v. Public Service Commission (1968) 3 C.L.R. 691;

15 *Hadjipapasymeou v. The Republic* (1984) 3 C.L.R. 1182;

Horaitis v. Republic (1984) 3 C.L.R. 1067;

M. D. M. Estates v. Republic (1980) 3 C.L.R. 54;

Papadopoulos v. The Republic (1985) 3 C.L.R. 154;

Alvanis v. CYTA (1985) 3 C.L.R. 2695.

20 **Recourse.**

Recourse against the decision of the respondent whereby applicant's driving licence was suspended.

N. Clerides, for the applicant.

Cl. Theodoulou, Senior Counsel of the Republic, for the respondent.

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Cur. adv. vult.

BOYADJIS J. read the following judgment. By the present re-
course the applicant prays for a declaration of the Court that "the
act and/or decision of the Chief of Police which was communicat-
ed to the applicant by letter dated 14.7.1986 whereby the Chief of
Police suspended the driving licence of the applicant, is null and
void and of no effect whatsoever".

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The history of the events that led to the taking of the sub-judice
decision is briefly this: The applicant, a refugee from Asomatos
village, is a carpenter presently residing in Limassol. For the last
20 years preceding the sub-judice decision he had been the holder
of a driving licence No. 135823 which entitled him to drive motor
vehicles of categories DHJ.

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On 6/2/1986 the applicant submitted an application for the pur-
chase by him of a duty free car on the ground that he was suffer-
ing from partial bodily disablement. In the course of the examina-
tion of his aforesaid application by the Ministry of Finance, the
applicant was examined on 18 April 1986 by a medical board
consisting of three government doctors of the Nicosia General
Hospital who issued their report on the same day expressing
therein their unanimous opinion that, due to his spondyloarthritis
ankylopoietica, he presents since 1976 lack of spinal movements
from the cervical region to the sacral region of the spine. They
added that the applicant presents slight Kyphosis and the position
of the skull remains permanently on a slight flexion. The doctors
concluded by stating that the applicant's disablement is of a nature
that renders him unable to drive any kind of motor vehicle since
he is basically unable to make the movements of the cervical spine
and in particular the movements of the head to the right and to the
left which are required to be made by a driver in the course of
driving of any vehicle.

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On 13 June 1986 the Director of the Department of Customs
and Excise wrote a letter to the Senior Technical Superintendent,
Drivers Examination Office, to which he attached copy of the
aforesaid report of the medical board, asking whether the driving
licence of the applicant would be suspended or not, given the fact

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that he was not fit to drive any ordinary type of motor vehicle.

5 The relevant correspondence was transmitted to the Chief of
Police so that he may deal with the matter in his capacity of Deputy
Registrar of Inland Transport. The latter wrote a letter to the
applicant dated 19 June 1986 requiring him to present himself be-
fore the Senior Technical Superintendent, Drivers Examination
Office, for the purpose of his undergoing a re-examination of his
driving ability. In the Opposition this letter is alleged to have been
sent pursuant to Regulation 31(3) of the Motor Vehicles and Road
10 Traffic Regulations of 1984.

15 In compliance to the aforesaid letter the applicant was exami-
ned on 5 July 1986 by the Senior Technical Superintendent, Dri-
vers Examination Office, who found and reported that the driving
by the applicant of all types of motor vehicles constitutes a danger
for the public safety.

20 Acting on the last aforesaid finding of the Senior Technical Su-
perintendent, Drivers Examination Office, the Chief of Police
wrote a letter to the applicant dated 14 July 1986 informing him
that his driving licence No. 135823 is being suspended and re-
quiring him to surrender it to the police. The Chief of Police
wrote this letter in his capacity of Deputy Registrar of Inland
Transport. The full text of this letter, which constitutes the sub-
25 justice decision, is set out hereinafter.

30 In compliance to the aforementioned letter the applicant surren-
dered his driving licence on 29 July 1986. Three days later, i.e.
on 1 August 1986 the applicant wrote a letter to the Chief of Po-
lice protesting against what he described as an unorthodox man-
ner in which his driving licence was suspended and requesting a
reconsideration of his case expressing at the same time his will-
ingness to undergo a new medical examination for the purpose of
restoring the validity of his driving licence. In answer to this letter
the Chief of Police informed the applicant by letter dated 7 August
1986 that the suspension of his driving licence was not based on
any medical report; that it was based on the report of the Senior

Technical Superintendent, Drivers Examination Office; that he is unable to refer applicant's case to the medical authorities for examination; and that he was willing to make arrangements for a new driving examination of the applicant by the same officer, if the applicant so wishes. The applicant failed to respond to this offer and all communications between the parties ended there.

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Feeling aggrieved with the aforementioned decision of the respondent dated 14 July 1986, the applicant seeks to have it annulled through the present recourse filed on 3 September 1986 on the following three grounds, namely, (i) that it is contrary to the Motor Vehicle and Traffic Regulations: (ii) that the suspension of the applicant's licence was wrongly and illegally based on the report of the Senior Technical Superintendent, Drivers Examination Office, instead of upon the results of a medical examination by a proper board; and (iii) that the sub-judice decision amounts to a flagrant violation of Article 29 of the Constitution in that it is not duly reasoned.

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In answer to the above, the respondent alleges in his Opposition that the sub-judice decision was correctly and lawfully taken by the Chief of Police in his capacity of Deputy Registrar of Motor Vehicles in accordance with the Constitution and the principles of administrative law, pursuant to the Motor Vehicles and Traffic Laws and Regulations, the Land Transport (Transfer of Competence) Law, 1975, the K.Δ.Π. 166/76 and the A.Δ.Π. 1033/76, after a proper enquiry, and that it is correctly, lawfully and adequately reasoned under the circumstances and/or by reference to the contents of the relevant file.

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Before examining the aforementioned grounds upon which the Application is based, it is convenient to refer to and dispose of the preliminary objection, albeit belatedly raised for the first time in the written address of counsel for the respondent, which concerns an allegation that "the respondent has no locus standi in the recourse". Counsel for the respondent has argued in this respect that the present Application was wrongly filed against the Republic through the Minister of Interior in as much as the latter could

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not and has not taken any part in the making of the sub-judice decision and was, therefore, wrongly named as the respondent in the Application.

5 It is true that, in taking the sub-judice decision, the Chief of Police did not act in his police capacity in the strict sense. Had he done so the recourse could only be filed against the Republic through the Minister of the Interior who is the Minister responsible for the Police. He acted in his capacity of Deputy Registrar of Inland Transport* appointed by the Registrar, i.e. the Minister of
10 Communcations and Works. His aforesaid appointment was made pursuant to section 3(2) of the Land Transport (Transfer of Competence) Law 1975 (Law 27 of 1975) in respect of certain specified matters which include the cancellation, suspension e.t.c. of driving licences under Regulation 30 of the Motor Vehicles and Road Traffic Regulations 1973, now Regulation 31 of the Motor
15 Vehicles and Road Traffic Regulations of 1984. See the Official Gazette dated 23 December 1976, Supplement No. 3, Part II (A.Δ.II.1033, paragraph (a) (iii)).

20 Be that as it may, the fact remains that, looking at the letter dated 14 July 1986, containing the sub-judice decision, one can see that it is written on paper of the Ministry of Interior, Police Headquarters. It is not surprising, therefore, that the recourse was filed against the Republic through the Minister of Interior. It could, of course, be filed against the Republic through the Chief of Police
25 or through the Deputy Registrar of Inland Transport or the Deputy Registrar of Road Transport. I am of the view that there is no defect in the title of the Application. If I thought that the recourse was wrongly filed against the Republic through the Minister of Interior I would have exercised my discretion in ordering or
30 allowing the addition of a second respondent, namely, the Chief of Police. Such amendment at this stage would not prejudice either the parties concerned or the interest of justice: See *Miltiades*

* The Inland Transport Department has been re-named Road Transport Department by virtue of Law 17/86.

Christodoulou v. The Republic, through the Collector of Customs (1 R.S.C.C. 1) The defect would have been a mere formal defect. In *Minister of Finance v. Public Service Commission* (1968) 3 C.L.R. 691 it was held that in administrative law a recourse is not regarded as aimed at the organ responsible for the sub-judice decision, but it is regarded as aimed at the particular decision concerned with a view of bringing it under judicial review, and that, once the decision is before the Court, the exact title of the proceedings which is a secondary consideration, does not frustrate the process of judicial review. See also in this respect the decision in *Theophano Hadjipapasymeou v. The Republic* (1984) 3 C.L.R. 1182.

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In the light of the above, the preliminary objection raised by counsel for the respondent fails.

I shall now proceed to examine the merits of the grounds of Law set out in the Application.

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It is pertinent at this juncture to recite the words of the respondent's letter to the applicant dated 14 July 1986 which is the sub-judice decision. It reads as follows:

"Κύριο Μάρκο Τσιερκέζο,
Δημόνακτος αρ. 6,
Κάψαλος,
Λεμεσός.

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Κύριε,

Άδεια οδηγήσεως αρ. 135823

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Κατόπιν αναφοράς του Ανώτερου Τεχνικού Επιθεωρητή Εξεταστών Οδηγών που σας εξέτασε την 5.7.86 ότι το οδήγημα σας αποτελεί κίνδυνο για τη δημοσία ασφάλεια, λυπούμαι να σας πληροφορήσω ότι είμαι υποχρεωμένος, μέσα στα πλαίσια των νομικών μου εξουσιών, να αναστείλω και με την παρούσα μου επιστολή αναστέλλω την ισχύ

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της αδείας οδηγήσεώς σας υπ' αρ. 135823, την οποία οφεί-
λετε να παραδώσετε αμέσως στην Αστυνομία της περιοχής
σας.

5 2. Θα είμαι ευτυχής να επαναξετάσω την περιπτώσή
σας όταν σημειωθεί βελτίωση στην κατάσταση της υγείας
σας, πράγμα το οποίο εύχομαι.

Με τιμή,

(ΦΡ. ΓΙΑΓΚΟΥ)

10 Αρχηγός Αστυνομίας,
Αναπλ. Έφορος Χερσαίων Μεταφορών."

Translated in English the letter reads:

15 "Mr. Marcos Tserkezos,
Demonahktos No. 6
Kapsalos,
Limassol

Sir,

Driving licence No. 135823

20 Following a report by the Senior Technical Superintendent,
Drivers Examination Office, who tested your driving on
6.7.86, to the effect that same constitutes a danger for the pub-
lic safety, I regret to inform you that I am compelled, in exer-
cise of my legal powers, to suspend and through my present
25 letter I do suspend the validity of your driving licence No.
135823, which you must surrender forthwith to the police of
your area.

2. I shall be happy to reconsider your case when an im-
provement is made in the condition of your health, something

which I wish that would happen.

Respectfully,

(FR. YANGOU)

Chief of Police,

Deputy Registrar of Inland Transport" 5

The first ground of law relied upon by the applicant is that the sub-judice decision is contrary to the Motor Vehicles and Road Traffic Regulations. This is the ground upon which the applicant mainly relies and upon which his counsel laid particular emphasis in his oral arguments before me. 10

Let us first see on which Regulations the Chief of Police relies to justify his decision to suspend applicant's driving licence. In his letter dated 14 July 1986, he does not specifically refer to any particular law or regulation under which he had acted in the case of the present applicant. In para. 7 of the Opposition it is alleged that, in taking the sub-judice decision, the Chief of Police acted in his capacity of Deputy Director of Inland Transport under Regulations 31(2)(b) and 31(3) of the Motor Vehicles and Road Traffic Regulations of 1984-1986. In para. Γ(1) of the written address of counsel for the respondent it is alleged that, acting in his capacity of Deputy Registrar of Inland Transport, the Chief of Police suspended the applicant's driving licence under Regulation 31(1)(a) (b) and 31(3) of the Motor Vehicles and Road Traffic Regulations 1984-1986. However, in para. Γ(3) of the same written address counsel alleges that the Deputy Registrar acted under Regulation 31(3) which confers upon him the power to take the sub-judice decision. Finally, in her oral arguments made before me counsel for respondent submitted that the Chief of Police, in his aforesaid capacity, is empowered to take the sub-judice decision by virtue of the combined effect of Regulations 31(3), 31(2)(b) and 31(1) (a). 15 20 25 30

I must say at the outset that Regulation 31(1)(a)* has no application to the facts of the present case and cannot, therefore, be called in aid of the respondent. The power given to the Registrar under para. (1) of Regulation 31 to cancel or suspend a driving licence is expressly limited to cases where the holder of the licence either has been convicted of a criminal offence relating to his driving or has acquired his licence by false pretences. None of these pre-requisites exists in the present case.

Para. (3) of Regulation 31 reads as follows:

"31(3) Εφ' όσον ο Έφορος έχει λόγους να πιστεύει ότι ο κάτοχος αδείας οδήγησης θα έδει να υποβληθή εις νέαν εξέτασιν περί την ικανότητα αυτού εις την οδήγησιν, ούτος δύναται κατά το δοκούν να αναστείλη την ισχύν της τοιαύτης αδείας και να υποχρεώση τον κάτοχον αυτής όπως υποβληθή εις νέαν, ατελώς διεξαχθησομένην, εξέτασιν."

*31-(1) "Ο Έφορος, ενασχών διακριτικόν εξουσίαν δύναται, τηρουμένων των διατάξεων της παραγράφου (2) δι' επί τούτω αποφάσεως αυτού-

(α) να ακυρώση ή αναστείλη την ισχύν οιασδήποτε αδείας οδήγησης, αδείας μαθητευομένου ή προσωρινής τοιαύτης ή

(β)

εφ' όσον ο αιτούμενος την έκδοσιν αυτής κατεδικάσθη υπό δικαστηρίου δι' οιονδήποτε αδίκημα σχετικόν προς την οδήγησιν μηχανοκινήτου οχήματος, υπό περιστάσεις, αι οποίαι κατά την γνώμη του Εφόρου, δεικνύουν ότι ούτος είναι ακατάλληλος δι' οδήγησιν μηχανοκινήτου οχήματος, ή εφ' όσον ο Έφορος ήθελεν πεισθή ότι άδεια προηγουμένως κατεχομένη υπό του αιτητού ελήφθη διά ψευδών παραστάσεων, ή ότι η χορήγησις της τοιαύτης αδείας θα ήτο επικίνδυνος διά την δημοσίαν ασφάλειαν,

Διά τους σκοπούς της παρούσης υποπαραγράφου, ο όρος "δικαστήριον" περιλαμβάνει και στρατοδικείον ή οιαδήποτε πειθαρχικόν διαδικασίαν εφαρμοστέαν επί μελών των ενόπλων δυνάμεων ή των δυνάμεων ασφαλείας της Δημοκρατίας."

Translated in English Regulation 31(3) reads as follows:

"31(3) Once the Registrar has reasons to believe that the holder of a driving licence should undergo a new test concerning his ability to drive, he may at his discretion suspend the validity of such licence and to compel the holder thereof to submit to such test which shall be conducted free of charge." 5

This is the Regulation that empowered the Deputy Registrar to write to the applicant the letter dated 19 June 1986, requiring him to submit on a specified day to a new test regarding his driving ability, to which I made reference when summarizing the facts. The suspension of the licence, however, which followed the conducting of the new driving test, was not made under Regulation 31(3). In fact it could not have been made under this Regulation. The suspension of the driving licence envisaged by Regulation 31(3) is a conservative measure of definite interim duration and it is subject only to the existence in the mind of the Registrar of reasons causing him to believe that the holder of the licence should undergo a new driving test. The suspension expires when the driving test takes place. 10 15

In the present case where the report of the Senior Technical Superintendent, Drivers Examination Office, on the new driving test which the applicant was compelled to undergo under Regulation 31(3) and the report of the medical board, both reports being to the effect that, owing to the condition of his health, applicant's driving endangered the safety of the public, were before the Deputy Registrar, the latter had power to suspend applicant's driving licence only under sub-para. (b) of para. (2) of Regulation 31 which reads as follows: 20 25

"31(2)(β) Ανεξαρτήτως των εις την υποπαράγραφον (α) διαλαμβανομένων, ο Έφορος δύναται αμέσως να ακυρώσει ή αναστείλει την ισχύν αδειας οδήγησεως επί τω λόγω ότι επεδεινώθη η κατάσταση της υγείας του κατόχου αυτής ή επί τω ότι ούτος πάσχει εκ νέου ή εκ φυσικής αναπηρίας δυνάμενης να καταστήση την οδήγησιν αυτού επι- 30

κίνδυνον διά την δημοσίαν ασφάλειαν. Εις πάσαν τοιαύ-
 την περίπτωση ο Έφορος οφείλει όπως αμελλητί κοινο-
 ποιήσει εγγράφως την επί τούτω απόφασίν του εις τον κά-
 5 τοχον της αδείας και γνωρίση εις αυτόν ότι κέκτηται το
 δικαίωμα να προσβάλη την τοιαύτην απόφασιν διά της
 προσκομίσεως ιατρικού πιστοποιητικού εμφανίζοντος ότι
 ούτος είναι ικανός προς ασφαλή οδήγησιν· επί τούτω ο
 κάτοχος της αδείας δύναται, πλην των περιπτώσεων των
 νόσων και φυσικών αναπηριών, των καθοριζομένων εις
 10 την παράγραφον (4) του Κανονισμού 29, να απαιτήσει
 όπως υποβληθή εις ιατρικήν εξέτασιν περί την ικανότητα
 ή την καταλληλότητα αυτού εις την οδήγησιν μηχανοκινή-
 του οχήματος, εφ' όσον δε ήθελεν υποστή επιτυχώς την
 15 τοιαύτην εξέτασιν, τω αποδίδεται και η ακυρωθείσα ή
 ανασταλείσα άδεια."

Translated in English Regulation 31(2)(b) reads:

"31(2)(b) Notwithstanding what is provided in sub-para.
 (a) above, the Registrar may forthwith cancel or suspend the
 20 validity of a driving licence on the ground that the condition of
 the health of the holder thereof has deteriorated or on the
 ground that he suffers afresh or with bodily disabilities that
 may render his driving dangerous for the public safety. In eve-
 ry such case the Registrar must indispensably communicate his
 25 decision on the matter to the holder of the licence and inform
 him that he has the right to attack such decision by submitting
 a medical report certifying that he is capable to drive safely; for
 this purpose, except in the case of the diseases and disabilities
 set out in para. (4) of Regulation 29, the holder of the licence
 30 may demand to be medically examined concerning his ability
 or fitness to drive a motor vehicle, and provided he successful-
 ly undergoes such examination, the driving licence which had
 been cancelled or suspended is restored to him."

Regarding now the letter dated 14 July 1986 containing the
 sub-judice decision, recited hereinbefore, it is obvious that (i) the
 35 Deputy Registrar did not comply with the mandatory provisions

of Regulation 31(2)(b), and (ii) there was a confusion in the mind of the Deputy Registrar concerning the nature and extent of his powers under Regulation 31(2)(b), on the one hand, and his powers under Regulation 31(3) on the other hand. The latter view which I now express is based rather on a consideration of what preceded and what followed the sub-judice decision, i.e. respondent's letters dated 19 June 1986 and 7 August 1986, the latter being in answer to applicant's letter dated 1.8.86. 5

Even if I ignore for the moment the omission of the Deputy Registrar, in communicating his decision to the applicant, to inform him of his right, inter alia, to demand a medical examination, and even if I attribute such omission not to any misconception on his part of the contents and effect of Regulation 31(2)(b), but to his belief that the communication of such information to the applicant was a mere formality with which he need not comply, it is again difficult for me to understand how or why, had the Deputy Registrar applied after correct conception Regulation 31(2)(b), he turned down applicant's request to be medically re-examined for the purpose of restoration to him of his suspended licence, something which is expressly provided in Regulation 31(2)(b). I refer to the refusal to be found in the Deputy Registrar's letter to the applicant dated 7 August 1986. 10
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Be that as it may, the fact remains that the Deputy Registrar failed to communicate to the applicant together with his decision the information expressly required to be communicated by the very provision under which he is said to have acted in taking the sub-judice decision. This being so, the question that poses for determination is what is the impact of the aforesaid failure of the Deputy Registrar upon the legality of the sub-judice decision. Is the decision rendered thereby illegal and liable to be annulled or is it not? 25
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The relevant principles of administrative law applicable in the present instance are set out in a number of decisions of this Court which adopt the opinion expressed in their textbooks by several eminent Greek authors, including Kyriakopoulos on Greek Ad- 35

ministrative Law (Κυριακοπούλου, Ελληνικό Διοικητικό Δίκαιο), 4th Ed., vol. B, pp. 391-394, Manual of Administrative Law by Spiliotopoulos (Σπηλιωτοπούλου, Εγχειρίδιο Διοικητικού Δικαίου) 1977, pp. 405-406, para. 443 and also
5 the Conclusions from Case-Law of the Council of State in Greece (Πορίσματα Νομολογίας του Συμβουλίου της Επικρατείας, 1929-1959, pp. 266-267). The basic principle may be briefly stated as follows: If, in reaching the sub-judice decision, the administrative organ failed to comply with essential formalities, its
10 decision is rendered a nullity on account of such failure. If, on the other hand, the non-compliance concerns a mere as distinct from an essential formality, the act is not rendered liable to annulment. See for example *Horaitis v. Republic* (1984) 3 C.L.R. 1067 and *M.D.M. Estates v. Republic* (1980) 3 C.L.R. 54.

15 The distinction between essential formalities on the one hand and mere or non-essential formalities on the other hand is not always easy to draw: *Papadopoulos v. The Republic* (1985) 3 C.L.R. 154. As a general rule, however, the omission to comply with a prescribed form in administrative law amounts to contra-
20 vention of an essential formality resulting to the annulment of the administrative act: Law of Administrative Acts by Stasinopoulos, 1951 Edn. p. 229 adopted in *M.D.M. Estates v. Republic* (supra). In Administrative Law by PapaHadjis, 5th Edn. 1976, at pp. 476-477 it is stated that every form which is prescribed by
25 administrative legislation is considered as essential and only in exceptional cases the administrative judge may consider certain forms prescribed by legislation as non-substantive. I would finally like to refer to *Alvanis v. CYTA* (1985) 3 C.L.R. 2695, where it was reiterated that formalities prescribed by law must be
30 complied with and that, unless the formality ignored is of an inessential character, the decision is tainted with invalidity.

Applying the above principles to the circumstances of the instant case, I consider compliance with the formalities prescribed in Regulation 31(2)(b) as indispensable for the validity of the
35 sub-judice decision. I have reached this conclusion because of the very explicit and mandatory manner in which the formalities re-

ferred to are laid down in the Regulation and of the essential principle which they aim to serve. The Deputy Registrar had ignored in this case an essential formality and his decision is, therefore, liable to be annulled.

In the result, the first ground upon which the present Application is based succeeds. The sub-judice decision, being contrary to the law, has to be annulled. I need not, in the circumstances, examine the second and third grounds (supra) relied upon by applicant. I do not, however, intend to make any order as to costs, given the fact that the Chief of Police had acted throughout in good faith, his only motive being the safety of the public. It is now up to the appropriate administrative authority to take and communicate to the applicant its decision on the matter in compliance to the relevant Regulations. 5
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Sub-judice decision annulled. 15
No order as to costs.