1988 March 31

[STYLIANIDES, J.]

ETERIA FEDERATED AGENCIES LTD.,

Applicants,

v.

THE MUNICIPAL COMMITTEE OF LIMASSOL,

Respondents.

(Case No. 193/86).

Executory act—Confirmatory act—The required elements for the classification of an act as confirmatory.

Time within which to file a recourse—Written request submitted to the administration under Art 29 of the Constitution for reconsideration of a decision—It neither interrupts nor suspends the period of time.

Doctrine of judicial precedent—Decision by slim majority of the Full Bench of the Supreme Court—Binding on a member of the Court exercising original jurisdiction.

General principles of administrative law—The presumption that a decision of the administration is reached after a correct ascertainment of the relevant facts—Burden of rebutting it—How rebutted.

Reasoning of an administrative act—The required degree—Principles applicable—Determination of fees by Municipality for a professional licence—It is not expected that the Municipality would give very detailed reasoning.

The applicants applied to the Municipal Committee of Limassol for a professional licence. By letter dated 21.10.85 the respondents informed the applicants that the fees payable for the licence would be £600. By letter dated 11.11.85 the applicants filed an objection. By letter dated 10.1.86 the respondents informed the applicants that their request for reduction of the fees was unjustified. Hence this recourse, which was filed on 21.3.86.

Held, *dismissing the recourse*:

(1) The decision communicated by the letter of 10.1.86 was confirmatory of the earlier decision, communicated by the letter of 21.10.85.

For an act to be confirmatory the following elements are required: -

(a) Identity of the issuing authority.

(b) Identity of the person or persons to whom it relates.

(c) Identity of the procedure.

(d) Identity of the reasoning; and

(e) Identity of the order.

As there was no new inquiry in respect of new facts, the only executory decision in this case is that communicated by the letter of 21.10.85.

(2) The question whether a written request under Art. 29 of the Constitution addressed to an administrative organ for reconsideration of its decision suspends or interrupts the running of the 75 days (Art. 146.3 of the Constitution) has been determined in the negative by a majority decision of the Full Bench of this Court in *Larkos v. The Republic*, (1987) 3 C.L.R. 2189.

In accordance with the doctrine of precedent this Court is bound by the said decision.

(3) This recourse fails, also on the substance. The applicants failed to discharge the burden cast on them. They failed to show that the sub judice decision is tainted by any misconception of fact or any failure to carry out due inquiry.

As regards the issue of reasoning, what is due reasoning is a question of degree, depending upon the nature of the decision concerned. A decision even laconic may convey the reason why it was taken. What is due reasoning depends on the particular circumstances of each case. Having regard to the nature of the sub judice decision it is not expected from the Municipal Corporations to give very detailed reasoning for the determination of the fees payable for professional licence.

Recourse dismissed with costs.

Cases referred to:

Kolokassides v. The Republic (1965) 3 C.L.R. 542;

Varnava v. The Republic (1968) 3 C.L.R. 566;

Kyprianides v. The Republic (1982) 3 C.L.R. 611;

Spyrou v. The Republic (1983) 3 C.L.R. 354;

Goulielmos v. The Republic (1983) 3 C.L.R. 883;

Evangelou v. Electricity Authority of Cyprus (1979) 3 C.L.R. 159;

Larkos v. The Republic (1987) 3 C.L.R. 2189;

Republic v. Demetriades (1977) 3 C.L.R. 213;

Republic v. Ekkeshis (1975) 3 C.L.R. 548;

Skaros v. The Republic (1986) 3 C.L.R. 2109;

Pissas v. The Republic (1974) 3 C.L.R. 476;

L. and G. Iacovides Enterprises Ltd. v. The Republic (1986) 3 C.L.R. 2101.

Recourse.

Recourse against the decision of the respondents to impose on applicant the sum of £600.- as professional tax for the year 1985.

A. Drakos, for the applicants.

Y. Potamitis, for the respondents.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicants by this recourse seek the annulment of the decision of the respondents, whereby it was determined that the fee of £600.- be paid by the applicants for licence to carry their business within the municipal limits of Limassol for the year 1985.

The applicants are a registered company which carries travel, tourist and insurance agency business at Nicosia and Limassol. Their head office is at Nicosia.

On 28.1.1985 the applicants, in pursuance of the provisions of section 157 of the Municipal Corporatiosn Law, Cap. 240, applied to the Municipal Committee of Limassol for a professional licence for the year 1985 - (Exhibit 1).

The respondents by letter dated 21.10.85 - Exhibit 2 - informed the applicants that the fee for professional licence for 1985, payable by them, was determined at £600. - and requested payment thereof.

On 11.11.85 the applicants objected in writing to this amount alleging that it was excessive. The reply to this objection is contained in letter - Exhibit 5 - dated 10.1.86, whereby the applicants were informed that their request for reduction of the professional tax imposed for 1985 was unjustified, according to a decision taken by the respondents at their last meeting.

Hence this recourse, which was filed on 21.3.1986.

The respondents in the opposition raised two preliminary objections: -

(a) That the recourse is out of time; and

(b) That the letter of 10.1.86 contains confirmatory act and no more.

It is well settled that a confirmatory act lacks executory nature

and, therefore, it cannot be made the subject-matter of a recourse under Article 146 of the Constitution. A confirmatory act or decision is an act or decision of the administration which repeats the contents of a previous executory act and signifies the adherence of the administration to a course already adopted; it is not in itself executory because it does not itself determine the legal position of an individual case, and this is the reason it cannot be the subject of a recourse.

An act which contains a confirmation of an earlier one, may, however, be executory and, therefore, subject to a recourse for annulment, if it has been made after a new inquiry into the matter - (*Kolokassides v. The Republic* (1965) 3 C.L.R., 542; *Varnava v. The Republic* (1968) 3 C.L.R. 566; *Kyprianides v. The Republic* (1982) 3 C.L.R. 611 and *Spyrou v. The Republic* (1983) 3 C.L.R. 354).

As to when a new inquiry exists I repeat what I have said in *Spyrou v. Republic* (supra) at pp. 358 to 359: -

"When does a new inquiry exist is a question of fact. In general, it is considered to be a new enquiry, the taking into consideration of new substantive legal or factual elements, and the used new material is strictly considered, because he who has lost the time limit for the purpose of attacking an executory act, should not be allowed to circumvent such a time limit by the creation of a new act, which has been issued formally after a new inquiry, but in substance on the basis of the same elements. There is a new inquiry particularly when, before the issue of the subsequent act, an investigation takes place of newly emerged elements or, altough preexisting, were unknown at the time and are taken into consideration in addition to others for the first time. Similarly, it constitutes new inquiry the carrying out of a local inspection or the collection of additional information in the matter under consideration."

For an act to be confirmatory the following elements are required: -

(a) Identity of the issuing authority.

(b) Identity of the person or persons to whom it relates.

(c) Identity of the procedure.

(d) Identity of the reasoning; and

(e) Identity of the order.

(See Tsatsos - Application for Annulment, 3rd edition, pp. 132-133; *Kyprianides v. Republic* (supra); and *Goulielmos v. Republic* (1983) 3 C.L.R. 883, at pp. 894-896)

In the present case the letter - objection of the applicants - of 11.11.85 does not state any new facts. It simply repeats part of the contents of their application of 28.1.85.

The administration by their letter of 10.1.86 did not accede to the request of the applicants to reduce the fees determined by them and payable by the applicants, and they reiterated their previous decision. The decision contained in Exhibit 5 is no more than a confirmatory act. The only executory decision is the one contained in the letter of the 21st October, 1985.

The law in operation until 18.10.85 was the Municipal Corporations Law, Cap. 240, as amended by Laws 64/64 - 62/84.

As from 18.10.85 the new Municipal Corporatiosn Law, 1985 (Law No. 111/85) came into force. It is a comprehensive legislation, which repealed all previous laws.

In section 157(1)(a) of the old law provision is made for any person aggrieved to appeal to the Commissioner of the district within 21 days from the date of the notification to him of the determination of the fee payable. This was a hierarchical recourse.

The new law does not contain such a provision and, therefore,

any person aggrieved may apply to this Court under Article 146 as provided therein.

Paragraph 3 of Article 146 of the Constitution provides that a recourse shall be made within 75 days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse. This, according to our jurisprudence is a provision of public policy and, therefore, mandatory. This period is shorter than any period provided in the limitation laws for actions before the civil Courts. The objective is to have speedy determination of the legality of the acts of the administration, for the better interests of the citizen, of the administration and of the people at large, so as not to leave in abeyance the challenge of the legality of the administrative decision.

The request of the applicants of 11.11.85 is not a hierarchical recourse, but a petition to the competent administrative authority to review its earlier decision more favourably to the applicants.

It is well settled that when a law provides for a hierarchical recourse, or review by a reviewing authority and an applicant exercises his right in that respect, the administrative process is considered as continued till a decision is taken by the hierarchical and superior organ, or by a reviewing authority and the 75 days period prescribed in paragraph (3) of Article 146 of the Constitution is computed as from this latter day.

The question that poses is what is the effect on the period of 75 days for filing a recourse, if a citizen does not make at once a recourse against this decision, but seeks from the competent administrative authority, which has reached it, a reconsideration of the matter by a written request.

The right to address and submit written request to the competent public authorities is safeguarded by Article 29 of the Constitution which reads: -

"1. Every person has the right individually or jointly with others to address written requests or complaints to any competent public authority and to have them attended to and decided expeditiously; an immediate notice of any such decision taken duly reasoned shall be given to the person making the request or complaint and in any event within a period not exceeding thirty days.

2. Where any interested person is aggrieved by any such decision or where no such decision is notified to such person within the period specified in paragraph 1 of this Article, such person may have recourse to a competent court in the matter of such request or complaint."

In numerous decisions this Court has said, from the early dates of the introduction in this country of the administrative jurisiction by Article 146 of the Constitution, that Article 146 should be interpreted and applied in accordance with the interpretation of analogous provisions by administrative tribunals in a number of European countries, such as France, Greece and Italy. In all these countries a petition for redress, analogous to the petition safeguarded in Article 29 of the Constitution, affects the date of the computation of the period within which a recourse may be made. In Greece, France and Italy the time within which a recourse may be made against the decision complained of, ceases to run when a written request to the competent public authority is made, provided the application for reconsideration is made before the expiry of the period within which a recourse may be made against the decision concerned; and the time within which a recourse can be made commences to run afresh either as from the date a reply is received or as from the expiry of the time within which a reply ought to have been given, in case no such reply is actually given - (see Stassinopoulos on the Law of the Administrative Disputes (1964), pp. 208-209; *Dendia Administrative Law, Volume C.*, pp. 293-294; *Kyriakopoulos Greek Administrative Law, Volume C.*, pp. 116 and 132 and *Tsatsos Application for Annulment, 3rd Edition*, pp. 90-96).

Triantafyllides, P., in *Evangelou v. The Electricity Authority* (1979) 3 C.L.R., 159, adopted and applied the aforesaid principle.

The Full Bench of this Court in Revisional Jurisdiction Appeal No. 365, not yet reported, by a slim majority (three to two), decided that a written petition under Article 29 does neither suspend, nor interrupt the running of the time for filing a recourse.

His Honour Judge Loris and myself in *Larkos v. The Republic* (1987) 3 C.L.R. 2189 adopted the view of Professor Tsatsos, that a written petition for review to the competent authority only suspends the period of 75 days for 30 days - the period provided in Article 29 of the Constitution for replying to an applicant - or for shorter period, if the reply is actually given earlier. Failure to take into consideration the 30 days period would in effect make the right to address the authorities nugatory, or would discourage the citizen to exercise his right under the Constitution. The exercise of the right to address the authorities is conducive to good administration and at the same time it relieves the Court from the influx of recourses.

According to the doctrine of judicial precedent, as enunciated in *The Republic (Minister of Finance and Another) v. Demetrios Demetriades* (1977) 3 C.L.R. 213, the majority decision in *Larkos* case, is binding on me. Therefore, the period of 75 days is computed from the date that the letter of 21.10.85 came to the knowledge of the applicants. The recourse was filed on 21.3.1986; therefore, it is clearly out of time and cannot be entertained by this Court.

This recourse fails, also, on the substance. The grounds advanced for the annulment of the sub judice decision are that the respondents failed to exercise properly their discretionary power by not carrying out due inquiry, resulting in material misconception as to the facts; and that it lacks due reasoning.

An administrative decision by presumption is reached after a

correct ascertainment of the relevant facts. This presumption is rebuttable. The burden of establishing that an administrative decision was reached on the basis of misconception about a material fact rests on the person challenging the validity of such decision on this ground. This burden is discharged, even if the applicant raises a doubt in the mind of the Court in this respect. A probability that a misconception has led to the taking of the decision complained of is sufficient to vitiate an administrative act - (*Republic v. Ekkeshis* (1975) 3 C.L.R. 548; *Skaros v. The Republic* (1986) 3 C.L.R., 2109, at p. 2115).

Having regard to the material placed before me, the applicants failed to discharge the burden cast on them. They failed to show that the sub judice decision is tainted by any misconception of fact or any failure to carry out due inquiry.

The respondents in arriving at the sub judice decision had before them not only the facts set out in the application of the applicants of 28.1.85, but other material such as the size and extent of the business of the applicants in Limassol.

What is due reasoning is a question of degree, depending upon the nature of the decision concerned. A decision even laconic may convey the reason why it was taken. What is due reasoning depends on the particular circumstances of each case - *Pissas v. Republic* (1974) 3 C.L.R., 476; *Skaros* case (supra) and *L. & G. Iacovides Enterprises Ltd. v. The Republic* (1986) 3 C.L.R., 2101, at p. 2106).

Having regard to the nature of the sub judice decision it is not expected from the Municipal Corporations to give very detailed reasoning for the determination of the fees payable for professional licence.

No comparison can be made between the fee imposed on the applicants in 1983 (£250.-) and 1985 (£600.-), as the maximum amount in 1983 provided by law (see Law No. 42/82) was £500.-, which was increased in 1984 by Law No. 62/84 to

£1,000.-. Law No. 111/85 left it at £1,000.-.

For all the afore reasons this recourse fails and is dismissed with costs.

Recourse dismissed with costs.