

1988 December 3

[HADJITSANGARIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

A - Z TRAVEL LTD.,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE PERMITS REVIEW AUTHORITY,

*Respondent.*

*(Case No. 533/85).*

*Motor Transport—The Motor Transport Regulation Law, 1982 (Law 9/82), section 5(9)—Cars hired without a driver—Applying policy criteria\* which do not appear anywhere in section 5(9)—Ground for annulment of the refusal to grant the licence applied for —Kyriacou v. The Republic (1986) 3 C.L.R. 1845 adopted.*

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The facts of this case sufficiently appear in the Judgment of the Court.

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

*Cases referred to:*

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*Kyriacou v. Republic (1986) 3 C.L.R. 1845.*

**Recourse.**

Recourse against the decision of the respondents to annul the decision of the Licensing Authority whereby licences for cars for

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\* *(The criteria taken into consideration appear at p. 2390 post):*

hire without a driver were granted to applicants in relation to four vehicles.

A. Panayiotou, for the applicants.

M. Cleridou - Tsiappa (Mrs.), for the respondents.

*Cur. adv. vult.*

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HADJITSANGARIS J. read the following judgment. By the present recourse the applicants seek a declaration of the Court that the decision of the respondent authority dated 17.4.84 and communicated to them by a letter dated 2.5.85 by which the respondents annulled the Licensing Authority's decision dated 27.12.84 to grant to the applicants licences for cars for hire without a driver in relation to 4 vehicles is null and void and of no effect whatsoever.

15 The facts of this case are briefly as follows: The applicants by applications to the Licensing Authority dated 28.9.82 sought the grant of licences for cars for hire without a driver in relation to 30 vehicles. The Licensing Authority heard the applicants at its meeting of the 17.4.1984 and at its meeting of the 27.12.84 it decided to grant to the applicants licences for cars for hire without a driver in relation to 4 vehicles. On 22.1.1985, 23.1.1985 and 28.1.1985 hierarchical recourses were filed to the Permits Review Authority by Panayides Travel Agency Ltd., Thames Rent Cars Ltd., Christos Papageorghiou and G. Drakos respectively against the said decision of the Licensing Authority. At its meeting of the 16.3.1985 the Permits Review Authority heard the Applicants and all the above persons on the hierarchical recourses filed against the above Licensing Authority's decision of the grant licences to the applicants and on hierarchical recourses filed by the same persons against the decision of the Licensing Authority to refuse to grant to them of licences for the hire of vehicles without a driver. At its meeting of the 17.4.1985 the Permits Review Authority, decided to accept the hierarchical recourses filed against the Licensing Authority's decision to grant to the appli-

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cants licences for cars for hire without a driver in relation to the 4 vehicles. The above decision of the Permits Review Authority dated 17.4.85 was communicated to the applicants and all concerned by a letter dated 2.5.85. Against this decision the applicants have filed the present recourse. The main grounds put forward by the applicants for the annulment of the above decision are as follows:

- (a) That the decision of the Licensing Authority to grant to the applicants 4 licences for cars for hire without a driver in relation to 4 vehicles did not constitute discrimination against the interested parties. 5
- (b) That the Respondent Authority acted wrongly and against the provisions of the law in considering that the applicant company is related with the company Holiday Tours Ltd. to which licences for other cars for hire without a driver were granted. 10 15
- (c) The criteria on which the sub-judice decision was based were relied upon by the respondents in excess or abuse of power. 15

The last ground forward for the annulment of the decision has been dealt with in a series of decisions the Supreme Court to the effect that decisions of the Permits Authority based on such criteria constituted grounds for Annulment. In *Vassos Kyriakou v. Republic* (1986) 3 C.L.R. 1845 Pikis J. had this to say at pp. 1850, 1851, 1852: 20 25

"In evolving their policy decision they derived authority as may be presumed from the content of the directive from the provisions of sub-section (9) of s. 5 of the law - Law 9/82 (amended by Law 84/84). Now s.5(9) does not in terms confer power on the respondents to improvise criteria other than those laid down in the law in the exercise of their duties. What it provides is that no one should be licensed to carry on a Z-car hire business unless he exercises or intends to carry on the 30

business and his main occupation. It is a matter of fact whether this factual requirement is satisfied in anyone case. Certainly the aforementioned provision of the law does not empower the respondents to lay down general criteria for the resolution of individual applications.

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An Administrative authority cannot in the exercise of its administrative powers override the law by the evolution of criteria other than those laid down in the relevant statute. The one thing they cannot do is to neutralise their discretion to respond to the merits of the individual case.

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The sweeping nature of the directives laid down in this case are designed to introduce a body of rules outside the context of the law and in some areas in opposition to it. They are not confined to laying down the procedural means of eliciting the factual background to the application particularly the genuineness of the intention of the pursuer to start a Z-car business as his main occupation. Rules (c) and (d) in particular seem to lay down criteria unknown to the law and establish principles that may lead the Administration to decide without reference to the individual merits of the case. In particular the assertion that the objects of the law would not be served by granting licences to a large number of persons because there are objecting difficulties in the establishment of small viable businesses does not reflect in any way the policy of the law. Furthermore the law does not in any way suggest that a balance should be struck between big and smaller Z-car businesses.

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In essence the policy directive purported to limit as well as streamline the exercise of the discretion of the respondents in a manner unwarranted by the law, introducing criteria unknown to the law in the exercise of their discretionary powers».

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The same principles which were laid down by the above judgment are applicable in the present case. The Permits Review Authority exercised its discretionary power based on criteria which do not derive from the law, which are unknown to the law and which are in consequence arbitrary. The above criteria which the respondents laid down in (γ) and (δ) of this decision are as follows:

- “(γ) για να μπορούν να προσφερθούν κατά τρόπο ικανοποιητικό οι υπηρεσίες που εξυπακούονται από την εκμίσθωση οχημάτων άνευ οδηγού είναι απαραίτητο όπως οι υπηρεσίες αυτές προσφέρονται από γραφεία που είναι καλά οργανωμένα και διαθέτουν ένα ικανοποιητικό αριθμό οχημάτων. Όμως δεν πρέπει να χορηγείται στα γραφεία αυτά μεγάλος αριθμός αδειών, πέραν των αναγκών τους, ώστε οι άδειες να καταστούν αντικείμενα εμπορίας.
- (δ) παράλληλα, ένας ικανοποιητικός αριθμός αδειών θα πρέπει να χορηγείται και σε μικρές επιχειρήσεις οι οποίες ασκούν αποδεδειγμένα ή προτίθενται να ασκήσουν το επάγγελμα του εκμισθωτή οχημάτων άνευ οδηγού ως κύριο τους επάγγελμα ώστε αφ' ενός μεν να λειτουργούν ως βιώσιμες επιχειρήσεις αφ' ετέρου δε να παρέχεται σ' αυτές ίση ευκαιρία κτήσεως κέρδους. Όμως θα πρέπει εδώ να τονιστεί ότι δεν εξυπηρετείται ο σκοπός του νόμου με τη διασπορά των αδειών, δηλαδή με την χορήγηση μικρού αριθμού αδειών σε πολλά άτομα τα οποία εξ αντικειμένου δεν θα μπορούν να διεξάγουν κατά τρόπο βιώσιμο την επιχείρηση αυτή με αναγκαία συνέπεια είτε να χρησιμοποιήσουν τις άδειες ως μέσο επενδύσεως διά της υποεκμισθώσεως των οχημάτων τους είτε να τις εμπορευθούν”.

The above criteria do not appear anywhere in the provisions of sub-section 9 of section 5 of Law 9/82.

5 Basing themselves on the above "criteria" the respondents reached the conclusion that there was discrimination against the interested parties. The decision of the respondents in the present case is in my opinion wrong in law. Their discretionary power was not exercised in accordance with the provisions of the law but against such provisions, and by the introduction of "criteria" which were not provided by the legislator they misconceived the facts of the case and the proper enforcement of the law.

10 In the result pursuant to the provisions of Article 146(4) (b) of the Constitution the sub-judice decision is declared null and void. Let there be no order as to costs.

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