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PANCYPRIAN FEDERATION OF LABOUR (PEO),
Applicant

and

1. BOARD OF CINEMATOGRAPH FILMS CENSORS,
2. MINISTER OF INTERIOR OF THE REPUBLIC OF CYPRUS,

Respondents.

(Case No. 317/62).

Administrative Law—Cinematograph Films Law, Cap. 43—*Decision prohibiting the exhibition of a film—Appeal to the Board of Censors under section* 9 *no longer of a conclusive or final nature in view of Article* 146 *of the Constitution—Also not an essential prerequisite to recourse though premature resort to Court may entail a penalizing order for costs.*

Cinematograph Films (Censorship) Regulations 1953-62—*Regulation* 6*A, sub-paras. (β) (ε) (στ) and (η) thereof—Discretion granted thereby to be exercised within proper limits as set by principles of administrative Law, the Constitution and terms of the provisions themselves—Film not to be rejected as a whole if only some scenes thereof only are objectionable.*

Constitution of Cyprus—Reasoned decisions—Article 146 *contains implied directive to all authorities in the Republic to reason duly their decisions, failing which the effective and convincing support of their validity before the Court may be gravely handicapped.*

Administrative Law—Administrative decisions resulting in an unfavourable situation for the subject to be duly reasoned—Decisions of collective organs are particularly required to be reasoned—Reasoning required to make possible the ascertainment of the proper application of Law and the carrying out of judicial control.

On the 29th June, 1962, the Applicant, a trade union organization, applied to Respondent No. 1 for approval, under the relevant Law and Regulations, to exhibit a copy of the film entitled both "The 5th World Trade Union Con-

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gress" and "The Voice of the Five Continents".

On the 15th September, 1962, three members of the Repondent Board, forming a Cencorship Committee under section 4 of the Cinematograph Films Law, Cap. 43 and Law 27/62, refused to approve the exhibition of the film. The decision was notified to Applicant by means of a notice dated the 18th September, 1962, in which it is stated that the film was rejected because it represented, contained or portrayed subjects which, in the opinion of the Censorship Committee, it was fit to reject or otherwise disapprove.

On the 22nd September, 1962, Applicant lodged an appeal, under section 9 of Cap. 43, to the Respondent Board against the said decision.

The Respondent Board, on the 4th October, 1962, decided to uphold the decision of the Censorship Committee. Notice of such decision was given to Applicant on the same day.

As is the established procedure, in applying Cap. 43, each copy of a film has to obtain, separately, approval for exhibition. So, before even the decision of the Censorship Committee on the first copy, on the 13th September, 1962, a second copy of the film in question, together with a copy of a film entitled "When Morning Dawns", were submitted by Applicant for approval; the copy of the other film was mistakenly described, in the relevant application, as "The 5th World Trade Union Congress" (i.e. by one of the two titles of the second copy of the first film) and this apparently led, on the 5th October, 1962, the same Censorship Committee, which had rejected the first copy of the first film, to refuse approval to the copy of the other film "When Morning Dawns".

The same Censorship Committee, on the same day, refused also to approve for exhibition the second copy of the first film which is the subject-matter of this recourse; such refusal was communicated to the Applicant by a notice dated the 8th October, 1962.

Against such refusal this recourse was filed.

Held, I. The decision of the 5th October, 1962, communicated on the 8th October, 1962, in respect of the second copy of the film in question can be challenged on

its own by way of recourse.

II. The appeal under section 9 of Cap. 43—which no longer can be deemed of a conclusive or final nature, in view of Article 146—is provided for by way of administrative review and not by way of confirmation and, therefore, it is not an essential prerequisite to proceedings before this Court. In a proper case, not lodging an appeal under section 9 and resorting to this Court directly, might, however, entail an order for costs penalizing an applicant for not exhausting first the remedy available to him under the appropriate legislation.

Pelides and The Republic etc. (3 R.S.C.C. p. 10) and *Rallis and The Greek Communal Chamber* (5 R.S.C.C. p. 11), followed.

III. An administrative court cannot substitute its own discretion in the place of the discretion of the proper organ. Nor can the administrative court act as an appeal court in the matter of the exercise of such discretion on the merits of the subject under examination. The Court can only exercise control over such discretion in order to ensure that it has been exercised within the proper limits laid down by law.

IV. A Censorship Committee when exercising its powers under the relevant legislation has to consider always first whether it is possible to approve the exhibition of a film subject to certain scenes thereof being cut and should never reject a film as a whole unless it has fully exhausted this possibility.

V. There has not been due compliance with the relevant Regulations, because what has been stated does not amount to the properly sufficient reasoning that was required in the circumstances and, especially, in view of the nature of the film.

VI. The decision concerned lacks the reasoning which was required by its very nature, irrespective of any legislative requirement.

VII. The absence of the proper reasoning that is required, either by legislative provision or by general principles of administrative law, renders the administrative action concerned defective and, therefore, subject to

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annulment. Such defect exists in the present Case in relation to the sub judice decision of the Censorship Committee and in the circumstances of this Case it is a material defect which is sufficient to cause the annulment of such decision.

VIII. Moreover, the absence of proper reasoning, explaining why the film concerned had to be rejected as a whole, leads, in the circumstances of this Case, to the conclusion, at least prima facie, that the Censorship Committee have failed to exercise properly their discretionary powers, in rejecting the whole film without exhausting the alternative of cutting certain scenes of it only; as nothing has materialized leading to the opposite conclusion, the decision of the Committee has to be annulled on this gound too.

IX. This recourse succeeds only against Respondent No. 1, as part of which the Censorship Committee has acted. It fails as against Respondent No. 2, as nothing was shown which lays any blame on such Respondent.

X. As regards costs, it is proper to allow only part of the costs of Applicant, against Respondent No. 1—payable of course out of appropriate public funds—which I assess at £15.

Decision complained of declared null and void.

Cases referred to:

Pelides and the Republic etc. (3 R.S.C.C. p. 10);

Rallis and the Greek Communal Chamber (5 R.S.C.C. p.11).

Recourse.

Recourse against the decision of the Board of Cinematograph Films Censors prohibiting the exhibition of two films.

A.N. Lemis for the applicant.

K.C. Talarides, Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgment was delivered by:

TRIANTAFYLLIDES, J.: In this Case the Applicant applies,

in effect, for a declaration that the decision of Respondent No. 1 prohibiting the exhibition of a film entitled both "The 5th World Trade Union Congress" and "The Voice of the Five Continents" is null and void.

Actually, the pleadings, as filed and framed initially, appear to treat the said film as being two separate films, due to a mistake arising out of its two titles. In reality, however, there are involved two copies of one and the same film which has two titles, as above, and the relevant proceedings are to be treated as amended accordingly.

On the 29th of June, 1962, the Applicant, a trade union organization, applied to Respondent No. 1 for approval, under the relevant Law and Regulations, to exhibit a copy of the film in question.

On the 15th September, 1962, three members of the Respondent Board, forming what is described as a Censorship Committee under section 4 of the Cinematograph Films Law, Cap. 43 and Law 27/62, refused to approve the exhibition of the film. The decision was notified to Applicant by means of a notice dated the 18th September, 1962, in which it is stated that the film was rejected because it represented, contained or portrayed subjects which, in the opinion of the Censorship Committee, it was fit to reject or otherwise disapprove.

It appears, from the above reasons, that the Censorship Committee acted under the Cinematograph Films (Censorship) Regulations 1953-1962 and, particularly, regulation (A) (η) thereof.

On the 22nd September, 1962, Applicant lodged an appeal, under section 9 of Cap. 43, against the said decision.

The Respondent Board, on the 4th October, 1962, decided to uphold the decision of the Censorship Committee. Notice of such decision was given to Applicant on the same day. The reasons for such decision, are stated to be as follows: "Appeal dismissed on political grounds because of certain scenes and utterances which tend to give the impression to the ordinary citizen of the Republic that an atmosphere of oppression exists in certain Countries towards the working class and it further creates a feeling of hatred in the minds of the people against the Governing Authorities of such Countries".

As the Applicant came to know of the above decision of the Board on the 4th October, 1962,—a thing which is not disputed—and it filed this recourse on the 22nd December, 1962, there can be no doubt that, in so far as are concerned the aforesaid decisions of either the Censorship Committee and of the Respondent Board, on appeal, the recourse would be out of time, in view of Article 146(3) of the Constitution.

The matter does not, however, end here.

As is the established procedure, in applying Cap. 43, each copy of a film has to obtain, separately, approval for exhibition. So, before even the decision of the Censorship Committee on the first copy, on the 13th September, 1962, a second copy of the film in question, together with a copy of a film entitled "When Morning Dawns", were submitted by Applicant for approval.

At this juncture an unfortunate mistake occurred. The copy of the other film was mistakenly described, in the relevant application, as "The 5th World Trade Union Congress" (i.e. by one of the two titles of the second copy of the first film) and this apparently led, on the 5th October, 1962, the same Censorship Committee, which had rejected the first copy of the first film, to refuse approval to the copy of the other film "When Morning Dawns".

The same Censorship Committee, on the same day, refused also to approve for exhibition the second copy of the first film which is the subject-matter of this recourse; such refusal was communicated to the Applicant by a notice dated the 8th October, 1962.

Against such refusal this recourse was filed.

On the 27th March, 1963, I, with the other members of the Supreme Constitutional Court, before which this recourse was pending, viewed the film, the subject-matter of these proceedings, and it was on that occasion that the mistake in relation to the other film was discovered; as a result such film was eventually approved for exhibition and we are not concerned with it, as such, in these proceedings.

Viewing the film in question, as above, has assisted me in appreciating the exact nature thereof. Apart from this, however, I have not deemed it proper or necessary to reach any conclusion of my own concerning the merits of the said

film, on the basis of knowledge acquired through viewing the said film on the 27th March, 1963.

Also, the administrative action relating to the first copy of the film, and particularly the decision of the Respondent Board on appeal on the 4th October, 1962, though not being involved in this recourse, is of considerable relevancy as constituting evidence of the nature of the film; as it has not been alleged by either side that there exists any difference between the first and second copies of the film one is entitled to reasonably assume that what has been stated in respect of the first copy would apply equally well to the second copy too.

It has been argued by counsel for Respondent that this recourse could not be filed against the decision of the Censorship Committee not to approve the second copy of the film, because the said decision is merely a confirmation of the earlier decision in respect of the first copy, which was also confirmed on appeal.

This argument would have held good had the position been that all subsequent copies of a film are approved or disapproved on the basis of a decision taken in relation to the first copy of such film. But, as already stated, each copy of a film has to be approved separately and, thus, to each copy there refers a separate individual executory administrative act. For this reason, I am of the opinion that the decision of the 5th October, 1962, communicated on the 8th October, 1962, in respect of the second copy of the film in question, can be challenged on its own by way of recourse. It must not be lost sight of, in this connection, that the second copy of the film had already been submitted since the 13th September, 1962, before the decision on the first copy had been taken on the 15th September, 1962, and yet it was dealt with separately and the decision taken on the 15th September, 1962, was not made applicable, at the time, to this second copy as well.

It has also been argued by counsel for Respondent that the decision on the second copy cannot be challenged by recourse because no appeal was been lodged against it under section 9 of Cap. 43. In the light of the judgments in *Pelides and the Republic etc.* (3 R.S.C.C. p. 10) and *Rallis and the Greek Communal Chamber* (5 R.S.C.C. p. 11), I am of the opinion that the appeal under the said section 9—which no

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longer can be deemed of a conclusive or final nature, in view of Article 146—is provided for by way of administrative review and not by way of confirmation and, therefore, it is not an essential prerequisite to proceedings before this Court. In a proper case, not lodging an appeal under section 9 and resorting to this Court directly, might, however, entail an order for costs penalizing an applicant for not exhausting first the remedy available to him under the appropriate legislation.

Coming now to the substance of this Case, the problem appears to be one of judicial control over the relevant discretion of the Censorship Committee An administrative court cannot substitute its own discretion in the place of the discretion of the proper organ. Nor can the administrative court act as an appeal court in the matter of the exercise of such discretion on the merits of the subject under examination. The Court can only exercise control over such discretion in order to ensure that it has been exercised within the proper limits laid down by law. (See Stasinopoulos on the Law of Administrative Acts, (1951) p 325).

From the notice to Applicant, dated the 8th October, 1962, in relation to the rejection of the second copy of the film in question, it appears that permission to exhibit was refused because the film was "rejected in accordance with regulation 6A(β) and (η)" of the relevant Regulations

The said provisions read as follows -

> 6A The Board or any Censorship Committee shall cut reject or otherwise disapprove each film or poster, which has been submitted for approval, if such film or poster
>
> '(β) contains scenes which are considered undesirable in the Republic from a political or social point of view
>
> '(η) presents, contains or portrays subjects which in the opinion of the Board or the Censorship Committee it is proper to cut, reject or otherwise disapprove"

It is thus, to be seen that under the above provisions, on which the decision of the Censorship Committee was based, a very wide discretion is granted It is not, however, an

absolute discretion. It has to be exercised within proper limits, as such limits are set by, *inter alia*, general principles of administrative law, the Constitution and the terms of the relevant provisions themselves.

In the present Case, as explained in what follows, I have reached the conclusion that the said limits have not been duly observed in the manner in which the film in question was dealt with.

It is not in dispute that this is not a feature film, but a documentary; its subject is the 5th World Trade Union Congress and it contains flash-backs to the struggles of working class movements. To reject such film either because of its general subject or because of the political affiliations of such Congress would be definitely unconstitutional as being in direct and flagrant contravention of constitutional provisions relating to fundamental rights and freedoms, such as Article 21 and 28. But there is nothing to show that the Censorship Committee was motivated by such considerations and, therefore, I have to assume that approval for the exhibition of the film was refused because of its actual contents.

As already mentioned the Censorship Committee has stated that they rejected the film on the basis of regulation 6(A) (β) and (η) of the Cinematograph Film (Censorship) Regulations. Counsel for Respondent has submitted at the hearing that the action of the Committee could also have been justified under sub-paragraphs (ε) and (στ) of regulation 6(A) which read as follows:-

. . . . . .

"(ε) portrays realistic scenes of tortures of exceptional cruelty or terror;

. . . . . .

(στ) portrays scenes from revolutions or massacres which are unacceptable from a moral or political aspect";

. . . . . .

Regulation 6(A) and in particular its sub-paragraphs concerned, (β) (ε) (στ) and (η), should be applied, like all similar legislative provisions involving the exercise of a discretion, subject to the general principle of administrative law that the administrative organ concerned has, in the

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exercise of such discretion, to adopt the course which achieves the purpose of the administration in the least burdensome for the citizen manner.

The above principle has been adopted also by the Council of State in Greece as laying down a limit to the exercise of administrative discretion (see Conclusions from the Jurisprudence of the Council of State 1929-1959 pp. 181-2).

This principle has all the more importance when applied to cases where a discretion is being exercised in a manner lawfully limiting the enjoyment of fundamental freedoms, such as in the present Case. The limitation of such freedoms must always be made to the minimum extent which is compatible with the needs of proper government.

I am, thus, of the opinion that a Censorship Committee when exercising its powers under the relevant legislation has to consider always first whether it is possible to approve the exhibition of a film subject to certain scenes thereof being cut and should never reject a film as a whole unless it has fully exhausted this possibility.

In the present Case it appeared to be common ground that it is certain scenes in the film in question which led to its being rejected. This is, also, amply borne out both by the reasons given by the Respondent Board in dismissing the appeal against the rejection of the first copy of the film and by the line followed by Respondent at the hearing, at which counsel for Respondent had stated that what was objectionable was the manner in which the film pieced together various incidents; moreover, the particular sub-paragraphs of regulation 6(A) which have been relied upon expressly by the Censorship Committee or have been referred to, in support of the decision to reject the film, by counsel for Respondent, rather tend to support the same view. Actually, it would be difficult to visualize the situation being otherwise in relation to a documentary film concerning a trade union congress.

It would have, thus, to be examined whether the Censorship Committee has, indeed, decided to reject the whole film having first satisfied itself that it was not sufficient to cut only certain scenes out of it; but this brings the Court to dealing, first, with the question whether the reasons given for the relevant decision of the Committee are properly sufficient.

The matter was touched upon in *Rallis and the Greek*

Communal Chamber (5 R.S.C.C. p. 11 at p. 18) where it was stated:- "The existence of a jurisdiction such as the one under Article 146 contains an implied directive to the authorities, which are subject to such jurisdiction, to endeavour to reason duly their relevant decisions. The absence of such reasoning, though not always necessarily, in itself, a ground for invalidating the particular decision, may prove to be a grave handicap towards effectively and convincingly supporting its validity in proceedings before this Court".

The need for due reasoning of administrative acts is created by the principle of legality of administrative acts (see Stasinopoulos on the Law of Administrative Acts (1951) p. 337). Due reasoning is, thus, required in order to make possible the ascertainment of the proper application of the law and to enable the carrying out of judicial control (see Kyriakopoulos on Greek Administrative Law, 4th edition, volume II p. 386).

In the present instance, in particular, the need to give reasons is expressly envisaged by regulation 8 and the 1st Schedule (form B) of the relevant Regulations.

Administrative law requires, further, that an administrative decision, through which there results a situation unfavourable for the subject, is to be duly reasoned. This principle has been adopted also in Greece. (See Conclusions from the Jurisprudence of the Council of State 1929-1959 p. 184; Stasinopoulos on the Law of Administrative Acts (1951) p. 340; Kyriakopoulos on Greek Administrative Law 4th edition, volume II p. 386). Moreover, decisions of collective 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 (see Tsatsos on the Recourse for Annulment before the Council of State, 2nd edition, p. 151).

The reasons, therefore, for the exercise of the discretion of the Censorship Committee were in this Case required to be given both by the relevant legislation and by the nature of the act itself.

In the notice given to Applicant, dated the 8th October, 1962, it is simply stated that the film in question was "Rejected in accordance with regulation 6(A) (β) and (η). As

it appears from the actual decision signed by all three members of the Censorship Committee, and dated 5th October, 1962, the aforesaid naked sentence is also the only "reasons" given in such decision for the rejection of the whole film in question. This is too vague, general and insufficient to explain why this documentary film, of which only certain scenes were really being objected to, was rejected as *a whole* and why it was not sufficient for certain scenes thereof to be excluded. Apart from the fact that it is common ground that it was only certain scenes of this film that were objected to, under Regulation 6(A), it also appears *prima facie* unreasonable that there could have been any objection, on any legitimate ground, to such parts of the film as actually portray the proceedings of the 5th World Trade Union Congress. So, more specific reasons had to be given by the Committee for its particular course of action.

And this was a Case whether a discretionary power was to be exercised in a manner involving the choice of alternative courses of action, the giving of reasons in that respect was essentially necessary. As stated by Stasinopoulos in the Law of Administrative Acts (1951) p. 339, an administrative act, done in the ambit of a discretionary power, needs, particularly, to be duly reasoned for the purpose of justifying the choice, from among alternative solutions in a matter, of the course followed.

In the light of what was stated by the Censorship Committee, as being the reasons for its decision, I have reached the conclusion that there has not been due compliance with the relevant Regulations, because what has been stated does not amount to the properly sufficient reasoning that was required in the circumstances and, especially, in view of the nature of the film.

Also, I am of the opinion that the decision concerned lacks the reasoning which was required by its very nature, irrespective of any legislative requirement.

The absence of the proper reasoning that is required, either by legislative provision or by general principles of administrative law, renders the administrative action concerned defective and, therefore, subject to annulment (see Conclusions from the Jurisprudence of the Council of State in Greece 1929-1959 p. 267). Such defect exists in the present Case in relation to the sub judice decision of the Censorship

Committee and I have reached the view that in the circumstances of this Case it is a material defect which is sufficient to cause the annulment of such decision.

Moreover, the absence of proper reasoning, explaining why the film concerned had to be rejected as a whole, leads, in the circumstances of this Case, to the conclusion, at least *prima facie*, that the Censorship Committee have failed to exercise properly their discretionary powers, in rejecting the whole film without exhausting the alternative of cutting certain scenes of it only; as nothing has materialized leading to the opposite conclusion, I am of the opinion that the decision of the Committee has to be annulled on this ground too.

That they acted on the particular day in a rather summary manner and without due regard for relevant detail is borne out to a considerable extent by the fate of the film "When Morning Dawns" which, as stated earlier, was mistakenly described, by the same Applicant, by means of one of the two alternative titles of the film, which is the subject-matter of this recourse. Such other film was also rejected on that same day by the same Censorship Committee and the only reason given for such course was:- "Rejected in accordance with regulation 6A(η)". It is reasonably certain that they did not view this other film on that day, because had they done so they would have found out the mistake caused by its wrong title and they would have allowed it, as it was done later on the 4th April, 1963, after the mistake was discovered. One is driven, therefore, to the conclusion that the Censorship Committee treated the other film as yet another copy of the first film, because they were misled into thinking that this was so by its wrong title. But then one wonders why both films were not, in the circumstances, rejected for the same reasons. The film, which is the subject-matter of these proceedings, was rejected under regulation 6(A) (β) and (η) and the other film, which must have been mistaken as another copy of the same film, was rejected under regulation 6(A) (η) only. This indicates a rather summary manner of approach which is scarcely compatible with what had to be an exhaustingly restrained exercise of the relevant discretion, as already explained earlier in the Judgment.

In all the circumstances of this Case and for the above reasons I feel that the proper course is to annul the decision

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of the Censorship Committee, by which approval for the exhibition of the whole film in question was refused, so as to enable a Censorship Committee of the Respondent Board to approach afresh the whole matter. In doing so they shall be free to reject the whole film again, provided that proper reasons are given for deciding to do so, or to cut certain scenes only, again on proper grounds, or to allow the exhibition of the whole film. The already annulled previous decision shall have no binding effect whatsoever; on the other hand, nothing in this Judgment should be construed as laying down in any way that the whole of the said film is to be approved or rejected, or that any scenes of that film are to be cut under regulation 6(A), because on the merits of the matter I am expressing no opinion whatsoever; it is a matter for the appropriate organ once again.

This recourse succeeds only against Respondent No.1, as part of which the Censorship Committee has acted. It fails as against Respondent No. 2, as nothing was shown which lays any blame on such Respondent.

As regards costs, I am of the opinion, that in the light of all relevant circumstances it is proper to allow only part of the costs of Applicant, against Respondent No. 1—payable of course out of appropriate public funds—which I assess at £15.

Decision complained of declared null and void. Order for costs as aforesaid.