IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS KASAPIS,

Applicant,

and

THE COUNCIL FOR REGISTRATION OF
ARCHITECTS AND CIVIL ENGINEERS,

Respondent

(*Cases Nos* 258/65, 101/66).

Administrative Law—Administrative decisions—Need for due reasoning of administrative decisions—Especially when taken by collective organs and being unfavourable to the citizen—Vague reasons are not substitute for specific reasons when such are called for—Therefore, an administrative decision in the absence of due reasons must be annulled—As being not only in excess and abuse of powers, but, also, contrary to law viz the relevant principle of Administrative Law requiring due reasons to be given—See, also, herebelow

Architects and Civil Engineers—The Architects and Civil Engineers Law, 1962 (*Law No* 41 *of* 1962) *as amended—Refusal of the Respondent Council to license Applicant to practise as an architect by profession under section* 9 (1) (*A*) *of the Law—"Responsible capacity" in the sense of section* 9 (1) (*A*) (*ii*) *thereof—Refusal not duly reasoned—Respondent was content to set out, only, in a negative form, the alternatives enumerated in paragraph* (*ii*) *of section* 9 (1) (*A*) supra—*Nothing more specific to the particular case has been stated—This is far from the due reasoning required by the principles of Administrative Law—See, also, hereabove under Administrative Law*

Administrative Decisions—Need for due reasoning—See above

Reasons—Due Reasoning of administrative decisions—Especially of those taken by collective organs and being unfavourable to the citizen—See above

Collective Organs—Decisions of—Need for due reasoning—See above

Abuse of powers—Abuse and excess of powers—See above under Administrative Law

Excess of powers—See above under Administrative Law

Principles of Administrative Law—Requiring due reasoning of administrative decisions—See above under Administrative Law.

"Responsible Capacity"—In the sense of paragraph (ii) of section 9 (1) *(A) of Law No* 41 *of* 1962, supra*—See, also, above under Architects and Civil Engineers*

By his recourse in the second case No 101/66 (*supra*) (the other under No. 258/65 having been abated due to disappearance of its subject matter), the Applicant complains against the refusal of the Respondent Council to license him as an "architect by profession" under Law No 41 of 1962 (as amended), *supra*, on the ground, *inter alia*, that the reasons given by the Council for such refusal are so vague as to lead to the invalidity of the decision complained of

The relevant legislative provision is section 9 (1) (A) of Law No 41 of 1962 (as amended), *supra*, which provides that a person who is a citizen of the Republic shall be entitled to be issued with a licence as a licensed "architect by profession" if he satisfies the Respondent that he is of good character and (i) that he has adequate knowledge of the work of an architect or civil engineer, (ii) that on the date of the coming into operation of the said Law he was *bona fide* engaged in the Republic as a principal in the practice of the profession of an architect or civil engineer or in a responsible capacity under a person entitled to be registered as an "architect" under the Law or in the service of the Government or other public body or authority, (iii) that he had been so engaged for at least seven years before the coming into operation of the Law No. 41 of 1962 (*supra*).

The Respondent Council refused the Applicant's application to be licensed as "architect by profession" (*supra*). The reasons given for such refusal as they have been recorded in their minutes of the 23rd March, 1966, and as they have been repeated in their letter addressed to the Applicant dated the 13th April, 1966, are merely in a negative form, the alternatives enumerated in the said paragraph (ii) (*supra*); nothing more specific to the particular case has been stated.

The Court in granting the application and annulling the *sub judice* decision of the Respondent Council:

Held, (1). The need for due reasons to be given for administrative decisions—especially when taken by collective organs and being unfavourable to a citizen—has been stressed consistently by this Court in the past (see, *inter alia, PEO and The Board of Cinematograph Films Censors and another* (1965) 3 C.L.R. 27; *Constantinides and The Republic* (reported in this Part at p. 7 *ante*)) and it is not necessary to dwell on the matter at any length once again.

(2) I am of the opinion that the reasons given by the Respondent for its *sub judice* decision are not what could be called due reasons in Administrative Law on an occasion such as the present one; they do fall short of the necessary minimum standard.

(3) In the absence of due reasons for the decidion complained of I have no alternative but to regard such decision as being, not only in excess and abuse of the powers vested in the Respondent, but also contrary to law *viz.* the relevant principle of Administrative Law requiring due reasons to be given for administrative decisions of this nature.

Decision complained of annulled.

Per curiam: It would be wrong in law to say that a person who possesses the adequate knowledge qualification under paragraph (i) of section 9 (1) (A) (*supra*) and who has held a responsible post in the office of a registered architect, entailing his involvement in *many* but not all, aspects of the work of an architect (or civil engineer) cannot be licensed as an "architect by profession"; in my opinion the notion of "responsible capacity" in paragraph (ii) of the aforesaid section 9 (1) (A) (*supra*) corresponds to the notion of "bona fides', in the same paragraph and requires real engagement in the practice of the professions of architecture or civil engineering; in the last analysis it is a matter to be resolved on the basis of the particular circumstances of each case.

Cases referred to:

The Board for Registration of Architects and Civil Engineers v. *Kyriakides* (1966) 3 C.L.R. 640;

PEO and The Board of Cinematograph Film Censors and another, (1965) 3 C.L.R. 27 *followed;*

Constantinides and The Republic (reported in this Part at p. 7 *ante*).

Recourses.

Recourses against the refusal of the Respondent to license Applicant to practise as an "architect by profession" under section 9 (1) (A) of the Architects and Civil Engineers Laws 1962–1964 (Laws 41/62 and 7/64).

A. Triantafyllides for the Applicant.

L. Demetriades for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:

TRIANTAFYLLIDES, J.: These two recourses have been heard together, as they relate to one and the same matter, and it is now proposed to give one Judgment in respect of both of them.

By the first one, Case 258/65, the Applicant challenges the validity of the refusal of the Respondent to license him to practise as an "architect by profession", under section 9 (1) (A) of the Architects and Civil Engineers Laws, 1962–1964 (Laws 41/62 and 7/64). Such refusal was communicated to the Applicant by letter dated the 19th October, 1965 (see *exhibit* 1), having been decided upon by the Respondent on the 22nd September, 1965 (see the minutes of Respondent, *exhibit* 4). The Applicant, as a result, filed a recourse, Case 258/65, on the 31st December, 1965.

In the meantime, the Applicant, by letter dated the 17th December, 1965, had sought a reconsideration of his case by the Respondent. Such reconsideration was accorded to him and on the 23rd March, 1966, the Applicant was interviewed for the purpose by the Respondent. On the same day it was decided, once again, by the Respondent to refuse to the Applicant the licence applied for (see the minutes *exhibit* 4) and the relevant decision was communicated to him by letter dated the 13th April, 1966 (see *exhibit* 2). Against this second decision Applicant filed a new recourse, Case 101/66, on the 4th May, 1966.

Inasmuch as the Respondent, on the 23rd March, 1965, has clearly reconsidered afresh the matter of the relevant application of the Applicant, and reached a new decision thereon, which was not merely confirmatory of its previous one, but the product of a new examination of the matter after the Applicant had been interviewed for the purpose, it follows that the said previous decision of the Respondent – of the 22nd September, 1965, which is the subject-matter of Case 258/65 – ceased, on the 23rd March, 1966, to exist as an effective administrative act or decision, with the result that Case 258/65 has been abated due to disappearance of its subject-matter; it is, therefore, dismissed accordingly.

What remains, only, to be determined is Case 101/66.

When such Case came up for Directions, on the 10th September, 1966, the Applicant abandoned those of the grounds of law relied upon in the Application which were already covered by the judgment in *The Board for Registration of Architects and Civil Engineers* v. *Kyriakides* (1966) 3 C.L.R. 640 and limited his case to the remaining grounds of law in the Application, particulars of which were given on the 21st September, 1966, to the following effect:

– That the Applicant ought to have been given an opportunity to be heard by the Respondent, especially when its decision entailed a material change in Applicant's position, in that his till then enjoyed professional status was to be drastically altered; and

– That the Respondent abused its powers in that, on the basis of the correct facts of the matter and a correct assessment thereof, Applicant ought to have been found to be within the ambit of section 9 (1) (A) of Law 41/62.

At the hearing counsel for the Applicant did not press the first of the above contentions. In any case, it is quite clear, from the relevant minutes of the Respondent (see *exhibit* 4), that the Applicant was interviewed by the Respondent before the *sub judice* decision was taken and, thus, an opportunity to be heard was in fact given to him.

Regarding the contention that the Respondent in refusing a licence to the Applicant has acted in abuse of powers two points have been made, at the hearing, by counsel for the Applicant: First, that the Respondent applied wrongly the relevant

legislative provision to the facts of this Case and, secondly, that the reasons given by the Respondent for such decision are so vague as to lead to the invalidity of the said decision.

The relevant legislative provision is section 9 (1) (A) of Law 41/62, which provides that a person who is a citizen of the Republic shall be entitled to be issued with a licence as a licensed "architect by profession" if he satisfies the Respondent that he is of good character and (i) that he has adequate knowledge of the work of an architect or civil engineer, (ii) that on the date of the coming into operation of Law 41/62 he was *bona fide* engaged in the Republic as a principal in the practice of the profession of an architect or civil engineer or in a responsible capacity under a person entitled to be registered as an architect or civil engineer or in the service of the Government or other public body or authortiy, (iii) that he had been so engaged for at least seven years before the coming into operation of Law 41/62.

The Applicant based his claim to be licensed as an "architect by profession" on the ground that for over ten years, from the 1st January, 1955 onwards, he was working as the person in charge of the Drawing Section in the office of Mr. P. Stavrinides, a registered architect. (See the certificate dated the 14th July, 1965, *exhibit* 3).

The reasons given by the Respondent in its minutes of the 23rd March, 1966, (see *exhibit* 4), for rejecting the application for a licence of an "architect by profession", are that the Respondent had not been convinced that the Applicant at the date of the coming into operation of the relevant Law was *bona fide* engaged, in the Republic, as a principal in the practice of the profession of an architect or civil engineer or in a responsible capacity under a person entitled to be registered as an architect or civil engineer or in the service of the Government or other public body or authority. The same reasons were repeated in the letter written to Applicant on the 13th April, 1966, informing him of the Respondent's decision (see *exhibit* 2).

Thus the Respondent, in lieu of any other reasoning for its *sub judice* decision, was content to set out, only, in a negative form, the alternatives enumerated in paragraph (ii) of section 9 (1) (A) of Law 41/62; nothing more specific to the particular case has been stated.

The need for due reasons to be given for administrative decisions – especially when taken by collective organs and being unfavourable to a citizen – has been stressed consistently by this Court in the past (see, *inter alia, PEO and The Board of Cinematograph Films Censors and another* (1965) 3 C.L.R.27; *Constantinides and The Republic*, reported in this Part at p. 7 *ante*) and it is not necessary to dwell on the matter at any length once again.

I am of the opinion that the reasons given by the Respondent for its *sub judice* decision are not what could be called due reasons in Administrative Law on an occasion such as the present one; they do fall short of the necessary minimum standard in view, *inter alia*, of the following:

The Applicant had applied to be licensed as an "architect by profession" on the ground that for the full seven years' period prescribed in paragraph (iii) of sect on 9 (1) (A) of Law 41/62 he had been engaged in the practice of the profession concerned, in a responsible capacity, under Mr. P. Stavrinides, a registered architect; it had never been his case that he had practised such profession as a principal on his own, or in the service of the Government or of any public body or authority. It appears – and this has been confirmed by counsel for Respondent – that the Applicant's application has been rejected by the Respondent because it was not convinced that Applicant's work in the service of Mr. Stavrinides amounted to a "responsible capacity" in the sense of section 9 (1) (A) (ii) of Law 41/62. Yet, *nothing* was recorded as to *why* the Respondent took such a view; instead the various alternative capacities, contained in paragraph (ii) of section 9 (1) (A), were set out, in order to state that Applicant did not satisfy any one of them; in effect, the Applicant's application was stamped "refused" without any explanation.

On an occasion such as the present one, where it might be said, *prima facie*, that the Applicant has held an important position in the service of Mr. Stavrinides – being in charge of the Drawing Section in his office – the requirement for the due reasoning of the *sub judice* decision would only have been satisfied if the Respondent had set down the specific reasons for which the particular aforesaid position of the Applicant under Mr. Stavrinides had not been found to be a "responsible capacity", in the sense of section 9 (1) (A) (ii); this was certainly not an instance on which one could say that it was

obvious, on the face of things, that the position of the Applicant under Mr. Stavrinides was not a "responsible capacity", in the sense of the relevant provision, and, thus, no specific reasons for the *sub judice* decision were called for.

In the absence of due reasons for the *sub judice* decision I have no alternative but to regard such decision as being, not only in excess and abuse of the powers of the Respondent, but also contrary to law *viz.* the relevant principle of Administrative Law requiring due reasons to be given for administrative decisions of this nature.

In view of the above conclusion it is not necessary – or proper, either, since the Respondent will be dealing with the matter afresh – to express any opinion on the substance of the matter. But it may be useful to state the following in relation to the relevant legislative provision – section 9 (1) (A) – for the guidance of the Respondent:

In the course of the hearing before me counsel for Respondent has submitted that the correct – and the Respondent's – view of the meaning of the expression "responsible capacity", in paragraph (ii) of section 9 (1) (A), is that it must be such a capacity as would enable the person concerned to acquire practical knowledge of *all* aspects of the work of an architect; it may well be that such a view has led the Respondent to refuse to the Applicant the licence he seeks; though, due to the absence of due reasoning for the *sub judice* decision, it is impossible to say how and why this view has been applied to the particular circumstances of the present Case. Be that as it may, and in order to clear up a little the legal position I would like to observe in this respect that in interpreting the meaning of the expression "responsible capacity", in paragraph (ii) of section 9 (1) (A) of Law 41/62, sight must not be lost of the fact that the provisions of the said paragraph are not the sole provisions in section 9 (1) (A) which might be held to relate to the possession of adequate knowledge of the work of an architect or civil engineer; there exists paragraph (i) of the same section which expressly renders the possession of such adequate knowledge an essential qualification, *in addition* to the qualifications laid down by paragraph (ii) – and paragraph (iii) – of the same section.

It follows that it would be wrong in law to say that a person who *possesses* the adequate knowledge qualification under paragraph (i) and who has held a responsible post in the office

of a registered architect, entailing his involvement in *many*, but not *all*, aspects of the work of an architect or civil engineer, cannot be licensed as an "architect by profession"; in my opinion the notion of "responsible capacity" in paragraph (ii) corresponds to the notion of "*bona fides*" in the same paragraph, and requires real engagement in the practice of the professions of architecture or civil engineering; in the last analysis it is a matter to be resolved on the basis of the particular circumstances of each case.

In the result, this recourse succeeds on the ground of the lack of due reasons for the *sub judice* decision and the said decision is declared to be null and void and of no effect whatsoever.

As regards costs I am of the view that the Applicant has delayed unduly to apply to the Respondent for reconsideration of its first decision against him – once he intended so to apply; as a result, he had to file recourse 258/65 before he knew of the outcome of such reconsideration – presumably as the time under Article 146.3 was running out – and, when that second decision of the Respondent was taken, he had to file a second recourse. Thus, he has, in a way, increased his own costs through no fault of the Respondent. He is awarded, therefore, only part of his costs which I assess at £8.—

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