IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SUNSHORE ESTATES LTD.,

Applicant,

and

THE MUNICIPAL CORPORATION OF FAMAGUSTA,

Respondents.

(*Case No.* 153/70).

Administrative decisions—Reasoning of—Must be complete viz. *it must state or indicate their legal basis—Annulment of the sub judice decision as it neither states or indicates its legal basis and the gap is not supplied by the official records produced before the Court—Nor is there a suggestion that it can be supplied by other official records.*

Reasoning of administrative decisions—Need for due reasoning.

The facts of this case sufficiently appear in the judgment of the Court annulling the *sub judice* decision on the ground of defective reasoning.

Cases referred to :

Papadopoulos v. *The Republic* (1968) 3 C.L.R. 662 at pp. 669 and 670-671 ;

Hjilouca v. *The Republic* (1969) 3 C.L.R. 570, at p. 574;

Decision of the Greek Council of State in case No. 502/1935, *in the Decisions of the Greek Council of State, Vol. for the year* 1935, *p.* 380.

Recourse.

Recourse against the refusal of respondents to issue to applicant a building permit for the erection, in Famagusta, of a block of flats.

G. Economou, for the applicant.

M. Papas, for the respondents.

Cur. adv. vult.

The following judgment was delivered by :—

STAVRINIDES, J. : This is an application for annulment of a decision of the Municipal Corporation of Famagusta conveyed by a letter dated April 10, 1970 (*exhibit* 5), refusing, in effect, an application for a building permit for the erection of a block of flats. So far as material, the letter reads :

> " In reply I wish to inform you that the municipal council will be pleased to grant you the required permit, as soon as you have rectified your plans so that the parking space left in your property suffices for the parking of 42 vehicles."

In the course of the hearing I raised a question as to whether " the subject decision was reasoned " ; and by consent the hearing was adjourned to enable counsel for the respondents to prepare himself to argue it. At the resumed hearing the question was argued on both sides, and with the consent of both counsel the proceedings were adjourned pending delivery of the judgment thereon.

Counsel for the respondents cited a passage from Loizou, J's, judgment in *Papadopoulos* v. *Republic* (1968) 3 C.L.R. 662, at pp. 670–671, last and first paragraphs respectively ; one from the judgment of Triantafyllides, J., an he then was, in *Hjilouca* v. *Republic* (1969) 3 C.L.R. 570, at p. 574 ; and a passage from Kyriacopoulos's Administrative Law, vol. 2, p. 387.

The passage from *Papadopoulos's* case reads :

> " With regard to the first ground of law upon which the applicant bases his application, *i.e.* that the decision of the respondent is not duly reasoned I may say at once that I find no merit in such ground, firstly, because the reasons are to be found in the relevant official records, which are *exhibits* in this case and, secondly, because the reason for such refusal should have been quite apparent to the applicant from the letter dated 26th April, 1966, ... , whereby he was informed of the decision that patients with heart trouble who required a valve replacement operation would not be sponsored abroad for such treatment."

From p. 669 of the report, first paragraph, it appears that by the letter referred to in the passage quoted the applicant had been informed that " the Board which examines the

patients for treatment abroad cannot deviate from the decision taken at the meeting of the 28th March, at which it was decided that patients who are in need of special operation of the valves will not be sent abroad by the Government". Here it has not been suggested that there is anything either in the subject decision itself or in the respondents' records, as distinct from correspondence prior to *exhibit* 5, showing any legal reason for the subject decision. Such correspondence, consisting of four letters, was produced before me (*exhibits* 1–4). Two of the letters are from the respondents' side. By the earlier one (*exhibit* 1) the addressees were told that " in order to make the examination of their application possible they must produce their certificates of registration relating to the properties " and that " the parking space must become sufficient as regards the number of vehicles and their unimpeded entry, parking and exit ". By the later letter (*exhibit* 3) the addressees were told that the municipal council had decided to grant the required permit as soon as they (the addressees) " submitted new plans for the parking space within their property showing that that space properly arranged sufficed for the allocation of 41 stands for as many vehicles " and adding that " the plans previously submitted provided for the allocation of forty stands of which six could not be used with the required convenience ". In neither of those letters is any legal reason for the parking space requirement it poses given or even indirectly indicated. (Incidentally, it will be noted that no number of stands is given in *exhibit* 1, that **41** stands are required by *exhibit* 3 and **42** by *exhibit* 5). In *exhibit* 2, a letter addressed to the municipal engineer, there is a reference to " an internal regulation of the Municipality of Famagusta to the effect that we have to allocate one parking space per flat " ; and in *exhibit* 4, a letter addresed to the mayor of Famagusta, it is stated that " by a reply of the municipal engineer on February 13, 1970, we were notified that, due to internal regulations of the municipality, the parking space was insufficient and we were compelled to submit plans reducing the flats to forty and increasing the number of parking spaces to 41 ". As there is nothing in either *exhibit* 1 or *exhibit* 3 about any " internal regulation " of the corporation, the suggestion in *exhibits* 2 and 4 must be that a statement about the existence of " internal regulations " of the corporation had been made by the municipal engineer orally. But counsel for the respondents said in argument that the subject decision was based on reg. 60 (2) of the Streets and Buildings Regulations as amended in 1955, or, alternatively, on s. 8 (*a*) and (*c*) of the Streets and Buildings Regulation Law, Cap. 96. Thus if any statement

about "internal regulations" of the corporation had in fact been made by the municipal engineer it was, no doubt unwittingly, misleading. Be that as it may, *Papadopoulos's* case is clearly distinguishable from this, and I can derive no assistance from it.

Hjilouca's case was one in which the applicant was seeking to annul a decision of the council set up under the Dismissed Public Officers Reinstatement Law, 1961, refusing an application by him thereunder. The passage from that judgment that counsel for the respondents cited deals, not with any question relating to the reasoning of an administrative decision, but with a question raised as to the validity of such a decision taken by a collective organ in a case where minutes had not been kept. There is a statement in it that "the *sub judice* decision is duly reasoned", but that was not because any question as to reasoning had been raised in the case, but as part of the proposition that the omission in that case did not affect the validity of the decision. As Triantafyllides, J., as he then was, said earlier, at p. 573, para. 2, the decision there challenged "was reasoned at great length". Thus that case also is of no assistance here.

I now come to the passage from Kyriacopoulos. It reads :

> "But the non-mention of the rule applicable, which, nevertheless, the authority correctly interprets, and to which it rightly refers the particular fact, does not constitute an omission of a substantial procedural requirement."

It cites a Greek Council of State decision, 502/35. In that case an Athens University student was applying to annul an order of the Disciplinary Council of the university whereby he had been suspended on the ground that "he had conducted himself in a manner offending against the dignity of the university and inconsistent with the dignity of the student", when the document by which he had been summoned to appear before the council had charged him with "resisting police authority, in consequence of which he was sentenced by the Court of Misdemeanours to imprisonment for 2½ months". From the report of the case in the Decisions of the Greek Council of State, 1935, p. 380, it appears that the suspension order was in fact reasoned, for the report says at p. 381 :

> "Whereas the applicant was punished on the reasoned ground (epi ti etiologia) that he attempted

to compel the Police Authority to abstain from an act relating to the service , namely that he conducted himself in a manner offending against the dignity of the university and unbecoming the dignity of a student."

It is true that the next paragraph states :

"..... nor, finally, was it necessary to state specifically why resistance to the authority constituted an undignified conduct since undignified conduct lies in the act itself,"

which, read by itself, might be taken as referring to the contents of the order. But from the next paragraph, which expressly refers to the contents of the summons and deals with their sufficiency, it appears that the reference in the last-quoted passage was to the contents of the summons ; and this is confirmed by the headnote, which, so far as relevant, reads :

"So long as the summons contains the facts constituting the disciplinary offence it is complete, their subsumption under the provisions of the Law being a matter for the disciplinary council trying the case."

Thus the decision in question does not bear out Kyriacopoulos's statement on which counsel for the applicant relied. Now that statement is preceded by the proposition that

"the reasoning of the administrative act , as also that of a judicial decision, must be complete, *viz.* contain : (1) The legal basis, *i.e.* mention the rule of law applicable in the particular case" ;

which, being in accordance with the clear object of the rule requiring the reasoning of administrative decisions, I accept as correct.

As the subject decision neither states nor indicates its legal basis and the gap is not supplied by the letters *exhibits* 1 and 3, nor is there a suggestion that it can be supplied by other official records, I hold that this application must succeed.

Subject decision annulled with £20 costs against the respondents.

Sub judice decision annulled. Order for costs as aforesaid.