

[L. LOIZOU, J.]  
IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

ANDREAS IOANNIDES,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE PERMITS AUTHORITY AND ANOTHER,

*Respondents.*

(Case No. 167/69).

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*Administrative act or decision—Which can be made the subject of a recourse under Article 146 of the Constitution—Paragraph 1 of Article 146—Executory act—Confirmatory act—Request that original decision be reconsidered—No new material in support—And no new inquiry taking place rendering new decision executory—Reply to the said request merely confirmatory of the original decision—Consequently, it is not a decision in the sense of paragraph 1 of the Constitution and cannot be attacked by a recourse under that Article.*

*Recourse under Article 146 of the Constitution—Acts or decisions which alone can be made the subject of a recourse—Paragraph 1 of Article 146—Executory acts or decisions as distinct from acts or decisions merely confirmatory of previous ones.*

*Equality—Principle of equality of treatment—It applies only in cases of legality—Refusal by the Administration to repeat an illegal act does not amount to discrimination in the sense of Articles 6 and 28 of the Constitution.*

The facts sufficiently appear in the judgment whereby the learned Judge of the Supreme Court, dismissing this recourse against the refusal by the respondents to reconsider their original decision, held that such refusal was a decision merely confirmatory of their said previous decision, as there had been no new material and as no new inquiry did take place; a recourse, therefore, against the refusal complained of is not maintainable.

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## Recourse.

Recourse against the decision of the respondents to reject applicant's application to register four second-hand vehicles imported from the United Kingdom.

*L. Papaphilippou*, for the applicant.

*S. Georghiades*, Senior Counsel of the Republic,  
for the respondents.

*Cur. adv. vult.*

The following judgment was delivered by :-

L. LOIZOU, J. : The relief claimed by the applicant in this recourse is a declaration that the decision of the respondents to reject his application to register four second-hand vehicles imported from the United Kingdom is null and void and of no effect whatsoever.

The undisputed facts of the case are briefly as follows :

On the 12th August, 1965, the applicant bought the vehicles in question in England. They are two second-hand Leyland lorries, one second-hand A.E.C. lorry and one second-hand Dodge Trailer. The vehicles were imported in Cyprus on the 3rd April, 1967. On the 29th June, 1967, the applicant, together with another person, applied to the Minister of Communications and Works for a permit to register the said vehicles. Their application is *exhibit 2* and it contains a description of the vehicles, the time and place of their purchase, the name of the ship on which they were transported to Cyprus and the date of their importation; enclosed with the application was the relative Customs Entry Form No. 2151 (Form C. 30). In the penultimate paragraph of their application they express their regret for the delay in applying which they attribute to the fact that the decision of the Council of Ministers had not come to their knowledge earlier.

The application was referred to the licensing authority for consideration and on the 26th October, 1967, the Chairman informed the applicants by his letter *exhibit 1* that their application had been considered by the licensing authority who decided to reject it on the ground that it had been submitted after the 31st May, 1967. The reference to the 31st May, 1967, is made in view of the

proviso to regulation 12A of the regulations made under the Motor-Transport (Regulation) Law, 1964. This regulation was introduced for the first time on the 7th October, 1965, by the Amending Regulations published in Supplement No. 3 to the Gazette under Not. 626. It reads as follows :

«12.A. Ούδεμία άδεια όδικής χρήσεως διά λεωφορείον και ούδεμία άδεια δημοσίου μεταφορέως «Α» ή ιδιωτικοῦ μεταφορέως «Β» έκδίδεται έπί τῆ βάσει τών παρόντων Κανονισμών διά μηχανοκίνητον όχημα τό πρῶτον κυκλοφοροῦν έκτός εάν τοῦτο είναι νεότευκτον και άμεταχειρίστον».

(“12A. No road use licence for a bus and no licence for a public carrier ‘A’ or for a private carrier ‘B’ may be issued under these regulations in respect of a motor vehicle which is put on the road for the first time unless same is new and unused”).

By Not. No. 406 published in Supplement No. 3 to the Gazette of the 25th May, 1967, regulation 12A was amended by the addition at the end thereof of the following proviso :

«Νοεΐται ότι εις εύλόγους περιπτώσεις ή άρχή άδειών δύναται έν τῆ διακριτικῆ αυτης έξουσία, να έκδώση τοιαύτην άδειαν άφού ίκανοποιηθῆ ότι τό μηχανοκίνητον όχημα —

- (α) ήγοράσθη έκ τοῦ Βρεττανικοῦ Ύπουργείου Πολέμου πρό τῆς 7ης Όκτωβρίου, 1965, ή
- (β) ήγοράσθη ή συμφωνήθη όπως αγορασθῆ έκτός τῆς Κύπρου πρό τῆς 7ης Όκτωβρίου, 1965, ή
- (γ) εισήχθη έν Κύπρω πρό ή κατά τήν 7ην Όκτωβρίου, 1965 αλλά δέν ένεγράφη πρό ή κατά τήν ειρημένην ήμερομηνίαν, και εάν υποβληθῆ αίτησις δι' έκδοσιν τοιαύτης άδειας μέχρι τῆς 31ης Μαΐου, 1967».

(“Provided that on a reasonable occasion the licensing authority may in its discretion, issue such a licence if satisfied that the motor vehicle —

- (a) had been purchased from the British War Ministry prior to the 7th October, 1965, or

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(b) had been purchased or agreed to be purchased outside Cyprus prior to the 7th October, 1965, or

(c) had been imported to Cyprus prior to or on the 7th October, 1965, but had not been registered prior to or on the said date, and if an application for the issue of such licence is lodged by the 31st May, 1967").

As it appears from *exhibit 1* the reason why the application was refused by the licensing authority was because it had been submitted after the 31st May, 1967, in contravention of this regulation.

Almost two years later, on the 7th February, 1969, the applicant, alone this time, wrote the letter *exhibit 3* to the Chairman of the licensing authority praying that the authority's decision of the 26th October, 1967, by virtue of which the application to register the four vehicles was rejected be reconsidered. Attached to this letter were the invoice issued by the vendors of the vehicles in England and a photocopy of the Customs Entry Form No. 2151.

By his letter dated 21st March, 1969, *exhibit 4*, the Chairman of the licensing authority informed the applicant that the licensing authority had examined his application on the 15th March, 1969, and it had decided to inform him that they had nothing to add to their letter of the 26th October, 1967, (*exhibit 1*).

Thereupon the applicant filed the present recourse.

The grounds of law upon which the application is based are that the respondents acted under a misconception of the facts and/or the law and also in discrimination against the applicant. In his particulars of the grounds of law the applicant sets out the names of five persons who, in his allegation, imported vehicles and to whom the respondents issued permits; he further alleges that the decision complained of was in contravention of Articles 23 and 25 of the Constitution. But this last ground was not pursued when the application came up for hearing and in fact not one word was mentioned by learned counsel who was appearing on behalf of counsel for the applicant with regard to any violation relating to such Articles.

By their Opposition the respondents allege that the

application is out of time in that the decision challenged by the recourse *i.e.* the letter dated 21st March, 1969 (*exhibit 4*) is merely confirmatory of the earlier decision which was communicated to the applicant by the letter dated 26th October, 1967 (*exhibit 1*). They further allege that the decision to reject the application was in conformity with regulation 12A of the regulations and that the respondents had no discretion in the matter.

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Learned counsel appearing for the applicant was content to rest his case on the issue of discrimination and to argue that the application was not out of time as alleged in the Opposition.

With regard to the issue of time limit a mere comparison of *exhibits 2* and *1 i.e.* the original application by the applicant and the letter communicating to him the authority's negative decision, with *exhibits 3* and *4 i.e.* his request that the original decision refusing his application be re-examined and the authority's reply thereto, will leave no room for doubt that the decision challenged by this recourse is merely confirmatory of the original decision contained in *exhibit 1*. Nor can it be argued that there has intervened a new inquiry which has rendered the last decision executory, because it is abundantly clear that *exhibit 3* does not contain either any new material or any other material which was not before the respondents when they were taking their first decision. (See Conclusions from the Case Law of the Greek Council of State 1929 - 1959 at p. 241).

The very wording of *exhibit 4*, the subject-matter of this recourse, clearly shows that the respondents are merely signifying their adherence to their previous decision thereby and that it cannot be considered to be anything more than a mere repetition of such previous decision; and as such it is not a decision in the sense of Article 146 of the Constitution and cannot be the subject of a recourse.

But quite independently of the issue of time limit the applicant has, in my view, also failed to make out a case on the issue of discrimination. In the course of his address learned counsel for the applicant gave the names of three persons to whom, in his allegation, the respondents had issued permits to register imported second-hand vehicles

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although their applications were submitted out of time as in the case of the applicant and, therefore, in contravention of regulation 12A. This allegation was denied by counsel for the respondents who said that in all the three instances mentioned by counsel for the applicant the applications to the licensing authority were made prior to the 31st May, 1967. Learned counsel for the applicant declined a suggestion from the Court to adjourn the case and have the files containing the applications of those three persons produced and he preferred to close his case. But, even assuming that the applicant's allegation was correct and that the respondents had in fact allowed registration of the vehicles in question in contravention of the regulations, such action could not amount to discrimination against the applicant because it is now well settled that the principle of equality of treatment applies only in cases of legality and, therefore, refusal by the Administration to repeat an unlawful act does not amount to discrimination. (See Conclusions from the Case Law of the Greek Council of State 1929 - 1959 p. 182).

In the light of all the foregoing I find no merit in this recourse and it must fail. Very reluctantly I have decided to make no order as to costs.

*Recourse dismissed.*  
*No order as to costs.*