[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DINOS KONTOS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE PERMITS AUTHORITY (LICENSING AUTHORITY),

Respondent.

(*Case No.* 480/71).

Motor Transport—Licensing Authority—Taxi—Parking station—Permit to use the airport Nicosia as a parking station—Permit refused—Refusal annulled on the ground of misconception of fact and/or faulty evaluation of the material facts—Licensing authority acting under a misconception of fact by disregarding, or failing to give proper weight to, the letter of the Manager of the airport, fully supported by a letter of the Ministry of Communications and Works, clearly stating that the needs of the airport were not served properly by the existing licensed taxis etc.–Sub judice *decision (refusal) has, therefore, to be annulled as taken in abuse and excess of powers—Cf. The Motor Transport (Regulation) Law,* 1964 (*Law* 16/1964), *sections* 4 *and* 9—*And Regulation* 13 (h) *of the Motor Transport Regulations,* 1968.

Abuse and excess of powers—Discretionary powers vested in the administration—Defective exercise of—Due to misconception of fact (or law), or faulty evaluation of material facts—Court left in doubt as to the correctness of the findings of fact—Sufficient reason for annulling the relevant decision as taken in abuse and excess of powers—Presumption of correctness of such findings of fact made by the administration—Such presumption may be weakened or reversed—See further supra; *cf. also immediately herebelow.*

Misconception of fact—Decision taken under misconception—Must be annulled—That is so even if the Court entertains doubt as to the correctness of the findings of fact made by the administration—Abuse and excess of powers—See further supra.

Findings of fact made by the administration—Presumption of correctness—Rebuttal—Doubt sufficient—See supra.

Discretionary powers—Abuse and excess of—Misconception of fact (or law)—Faulty evaluation of material factors—See supra.

Constitutional Law—Right to exercise a profession or to carry on any trade or business or occupation—Article 25 *of the Constitution—Such right is not absolute—It is subject to formalities, conditions or restrictions—Article* 25.2 *of the Constitution—In the instant case there has been no contravention of such right—The* sub judice *decision whereby the respondent Licensing Authority refused to grant to applicant a permit for using the airport as a parking station for his taxis—Does not contravene Article* 25 *of the Constitution—See further* supra.

Constitutional Law—Principle of equality safeguarded under Article 28 *of the Constitution—Article* 28 *safeguards only against arbitrary differentiations—But it does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things—Principles laid down in this respect in great number of cases—Followed and applied—The* sub judice *decision does not offend against the said principle of equal treatment.*

Profession, trade or business—Right to practise any profession or to carry on any business, trade or occupation—Article 25 *of the Constitution—Scope and extent—Conditions, formalities and restrictions—Article* 25.2*—See* supra.

Equality—Principle of—Article 28 *of the Constitution—Meaning and effect—See* supra.

Motor Transport—Taxi—Parking station—Law 16/1964 (supra)*—Licensing Authority has power to grant permits for the parking of taxis at two or more places within the same urban traffic area—Section* 9 (4) *of the said Law and regulation* 13 (*h*) *of the Motor Transport Regulations* 1968*—See* supra *under Motor Transport.*

By this recourse the applicant seeks the annulment of the decision of the respondent Licensing Authority, set up under the Motor Transport (Regulation) Law, 1964 (Law 16/1964), whereby the said Authority, in the exercise of its discretionary powers under that Law, refused to grant to him a permit for the parking of a number of his taxis at the Nicosia airport.

The learned Judge annulled the aforesaid refusal on the sole ground that very probably it was reached under a misconception

of fact and/or as a result of a faulty evaluation of material facts as they appear on record, in that the respondent Authority appears to have disregarded, or failed to attach the proper weight to, the letter of the Manager of the airport (fully supported by the letter of the Ministry of Communications and Works of April 29, 1971), stating clearly that the needs of the airport were not properly served by the existing licensed taxis.

It would seem of interest to note that counsel for the applicant raised unsuccessfully a number of other points, two of which such points were aimed at the constitutionality of the refusal complained of in this case. It was said in this respect that the *sub judice* refusal offends:

(1) Against the right of the subject to carry on any business, profession or occupation, safeguarded under Article 25 of the Constitution;

(2) against the principle of equal treatment safeguarded under Article 28 of the Constitution, regard being had to the fact that similar permits (as the one refused) had already been given to a number of other taxi owners.

The learned Judge held that there has been no constitutional impropriety in this case, but, as it has been already pointed out (*supra*), he annulled the *sub judice* decision (refusal), solely on the ground that it was taken in abuse or excess of powers, in that on the material before him he was left in doubt as to the correctness of the findings of fact made by the administration, or as to whether there has been a proper evaluation of the material facts.

Article 25, paragraphs 1 and 2, of the Constitution, reads as follows:

" 1. Every person has the right to practise any profession or to carry on any occupation, trade or business.

2. The exercise of this right may be subject to such formalities, conditions or restrictions as are prescribed by law and relate exclusively to the qualifications usually required for the exercise of any profession or are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person or in the public interest:

Provided that no such formalities, conditions or restrictions purporting to be in the public interest shall be prescribed by a law if such formality, condition or restriction is contrary to the interests of either Community".

Article 28, paragraph 1, of the Constitution reads as follows:

"1. All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby".

Held, I: As regards the issue whether there has been in this case a misconception of fact or a defective evaluation of material facts:

(1) (A) The trend of authorities as to findings of fact made by the administration is that there is a presumption in favour of the correctness of such findings:

(B) This presumption, however, is weakened once the litigant succeeds in rendering possible the existence of a misconception of fact on the part of the administration, that is to say by *creating doubts in the* mind of the Judge about the correctness of the findings of fact by the administration (see *Pierides* v. *The Republic* (1969) 3 C.L.R. 274, at p. 290, where the Court followed and adopted a passage from the textbook of Stasinopoulos, the Law of Administrative Acts, 1951, at p. 305).

(C) There is no doubt that acts or decisions done or taken on a misconception of law or fact may be treated as instances of abuse and excess of powers (see *Andreas Tryfon* v. *The Republic* (1968) 3 C.L.R. 28, at p. 42; *Pierides* case *ubi supra*).

(D) The above principles apply also to the cases where there has been an insufficient or defective evaluation of material facts (cf. *Republic* v. *Georghiades* (1972) 3 C.L.R. 594, at p. 646; *Papazachariou* v. *The Republic* (1972) 3 C.L.R. 486, at p. 504).

(2) In the light of the authorities and all the material before me including the letters of the Ministry of Communications and Works dated April 29, 1971, and the report of the Manager of the airport (*supra*), as well as the increase of air traffic, I am of the opinion that the applicant succeeded in *rendering possible* the existence of a misconception of fact, and/or indeed that there was no proper evaluation of all the facts on the part of the administration; and because I *have doubts* in my mind I am

not prepared to follow the presumption in favour of the correctness of the findings of fact made by the administration.

(3) Consequently, the *sub judice* refusal has to be annulled as being in excess or abuse of powers.

Held, II: As to the submission that the sub judice *refusal constitutes an interference with the constitutional right of the applicant to carry on his trade or profession safeguarded under Article* 25.1 *of the Constitution.*

(1) The applicant still has the right to practise his profession or trade of hiring licensed taxis within the urban area (including the airport); he is only prevented from using the airport as a parking station. It is clear, therefore, that there is no direct interference with his profession since he the applicant is free to take passengers to and from the airport.

(2) But even if one would have taken the view that it might have been so, then again I have no hesitation in reaching the same view *i.e.* that the *sub judice* refusal is not unconstitutional, because it was taken in the public interest in accordance with the provisions of Article 25.2 of the Constitution; as it has been said judicially Article 25 safeguards the right to carry on any trade or occupation or to practise any profession subject to such formalities, conditions or restrictions as provided therein. (See *District Officer Nicosia* and *Georghios Ioannides*, 3 R.S.C.C. 107, at p. 109; cf. *Nicosia Police* and *Constantinou*, 2 R.S.C.C. 123, at p. 124; *Police* and *Liveras*, 3 R.S.C.C. 65, at p. 68).

Held, III: As regards the point whether the sub judice *decision offends against the principle of equality safeguarded under Article* 28 *of the Constitution:*

(1) What has happened in this case is that the respondent Licensing Authority, in exercising its discretionary powers under the law, after considering the merits of the applicant's application for a permit, came to the conclusion that the public was served well by the holders of the taxi licences having the right to use the airport as a parking station, and refused to allow to the applicant a permit for his taxis to use the airport as an additional parking station.

In my view, therefore, the said decision does not contravene the principle of equality, once the differentiation was not arbitrary.

(2) And as it was laid down in *Mikrommatis* and *The Republic*, 2 R.S.C.C. 125, at p. 131 "equal before the law (and the administration) in paragraph 1 of Article 28 of the Constitution does not convey the notion of exact arithmetical equality, but it safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things". This principle has been adopted and followed in a number of cases (see: *Panayides* v. *The Republic* (1965) 3 C.L.R. 107; *Louca* v. *The Republic* (1965) 3 C.L.R. 383; *Impalex Agencies Ltd.* v. *The Republic* (1970) 3 C.L.R. 361, at p. 374; *The Republic* v. *Arakian and Others* (1972) 3 C.L.R. 294; *Proios* v. *The Republic* (1972) 3 C.L.R. 698, at pp. 712–713). Thus, it appears that the word "equality" in this context means "that among equals the law shall be equal and should be equally administered, that like should be treated alike" (see Jennings, Law and Constitution (1952) at p. 59).

(3) In my opinion the onus remains on the applicant to show that in this case the decision of the licensing authority was not based upon any reasonable basis; and that in not granting more licences it was guided by arbitrary criteria (Cf. *Levy* v. *Louisiana*, 391 U.S. 68; 20 L. Ed 2d 436, at p. 439 per Justice Douglas).

Sub judice decision annulled;
no order as to costs.

Cases referred to:

Peristeronopigi Transport Co. Ltd. v. *Toumazou* (1970) 1 C.L.R. 196, at p. 204;

District Officer Nicosia and *Georghios Ioannides*, 3 R.S.C.C. 107, at p. 109;

Police and *Georghios Liveras*, 3 R.S.C.C. 65, at p. 68;

Nicosia Police and *Christos Constantinou*, 2 R.S.C.C. 123, at p. 124;

Mikrommatis and *The Republic*, 2 R.S.C.C. 125, at p. 131;

Panayides v. *The Republic* (1965) 3 C.L.R. 107;

Louca v. *The Republic* (1965) 3 C.L.R. 383;

Impalex Agencies Ltd. v. *The Republic* (1970) 3 C.L.R. 361, at p. 374;

The Republic v. *Arakian and Others* (1972) 3 C.L.R. 294;

Proios and Another v. *The Republic* (1972) 3 C.L.R. 698, at pp. 712-713;

Levy v. *Louisiana,* 392 U.S. 68; 20 L. Ed. 2d 436, at p. 439 per Justice Douglas;

Pierides v. *The Republic* (1969) 3 C.L.R. 274, at p. 290;

Tryfon v. *The Republic* (1968) 3 C.L.R. 28, at p. 42;

Republic v. *Georghiades* (1972) 3 C.L.R. 594, at p. 646;

Papazachariou v. *The Republic* (1972) 3 C.L.R. 486, at p. 504.

Recourse.

Recourse against the decision of the respondent refusing to grant applicant a permit for the standing and/or parking of his taxis at Nicosia airport.

K. Michaelides, for the applicant.

V. Aristodemou, Counsel of the Republic, for the respondent.

A. Panayiotou, for interested parties 1 and 2.

Cur. adv. vult.

The following judgment was delivered by:-

HADJIANASTASSIOU, J.: On April 30, 1964 the Motor Transport (Regulation) Law, 1964 (Law No. 16/64) was enacted by the House of Representatives, in order to make further provision for the regulation of motor transport. For the purpose of this law the area of the Republic was divided into three traffic areas, that is to say,

(a) Urban traffic areas, which shall be the area within a radius of seven miles from the District Office in each town;

(b) Trans-urban traffic areas, which shall be a route running through more than one traffic areas and connecting two or more towns; and

(c) Rural traffic areas, which shall be such area within a district as the Council of Ministers may by Order, to be published in the official Gazette of the Republic, determine. (Section 5 (i)).

Under section 4 of the law a licensing authority was created " which shall have the power and be charged with the duty of issuing licences under this law and shall exercise such other powers and perform such other duties as are conferred or imposed on it by or in pursuance of this law"; and under sub-section 2 " the licensing authority shall consist of three members appointed by the Council of Ministers, to hold office for such period as the Council of Ministers may determine. Two of the members of the licensing authority shall be public officers and the third one, who shall not be a public officer, shall be designated by the Council of Ministers as the Chairman of the licensing authority".

Under section 9 (1) of the law regarding the licensing of taxis, " no such taxi shall be used or caused or permitted to be used within an urban traffic area, save under a licence..... granted by the licensing authority". Furthermore, under sub-section 3 " the licensing authority may at its discretion grant or refuse a taxi licence and in the exercise of its discretion it shall have regard to the following matters:-

(a) The extent to which the needs of the urban area concerned are adequately served;

(b) the extent to which the proposed service is necessary or desirable in the public interest; and

(c) the needs of the area as a whole in relation to traffic, and shall take into consideration any representations which may be made by persons who, on the date of the coming into operation of this part of this law, were already providing in good faith and for a reasonably long time, transport facilities along or near to the area in question or any part thereof".

On January 21, 1971, the applicant in this case, who is carrying out the business of hiring cars to various people, applied to the licensing authority to grant him a permit for the parking of his taxis Nos. TDT 760, TEY 627, TEK 46, TEZ 247 and TDA 87, at Nicosia airport, which is considered as coming within the urban traffic areas. Unfortunately, after repeated

reminders nothing was done, and the applicant was requested by the licensing authority to submit a new application. He presented a new application on May 3, 1971, and on September 10 of the same year, the licensing authority refused to grant him such a permit and their decision was communicated to him in October 1971.

The applicant, feeling aggrieved because of the refusal of the licensing authority, filed the present recourse, claiming a declaration that the said decision of the respondent refusing to grant him a permit " for the standing and/or parking of his taxis at Nicosia airport, is *null* and *void* and of no effect whatsoever".

The application is based on the following grounds of law:-

1. Respondent's decision complained of is unconstitutional as being contrary to, or inconsistent with, Article 25 of the Constitution.

2. Respondent's decision is further unconstitutional as being contrary to, or inconsistent with, Articles 6 and 28 of the Constitution.

3. The said decision is contrary to the provisions of section 9 of Law 16/64 because it restricts or prohibits the use of a licensed taxi within an urban traffic area, particularly at Nicosia International Airport.

4. The respondent is not empowered to fix parking spaces or places where vehicles and especially taxis can stand when not actually in motion; and that the only authority which is empowered to do so and fix the numbers and types of vehicles which shall be permitted to stand at such places, and regulate any matter in connection therewith, is the Improvement Board of Yerolakkos, under the provisions of section 25 of the Villages (Administration & Improvement) Law, Cap. 243.

5. Neither Law 16/64 nor the Regulations made thereunder empower the respondent to grant permits for the standing of a taxi at two or more places within one and the same urban traffic area; and furthermore, the standing of properly licensed taxis at the airport should be free; and in paragraph 6 respondent's decision complained of was made in excess or abuse of its powers and is based on a misconception of facts.

I would add that under Regulation 13 (g) of the Road Transport Regulations, (1964) published in the official Gazette No. 368 dated 19th November, 1964, supplement 3 P.I. 505, a taxi driver has to park only at the approved parking place which is shown on the prescribed licence within the urban traffic area.

Reverting now to the facts of the case, as shortly as possible, they are these:-

The applicant is the owner of 150 'Z' cars and 9 taxis, properly licensed, to be used within the Nicosia urban traffic areas; his offices are at 52, Regaena Street and he has also an office within the Cyprus Hilton Hotel. He also serves the needs of the UNFICYP personnel by supplying them with cars for a number of years, apparently under a contract.

It appears that when the new airport was put into operation in 1968, the licensing authority, no doubt having in mind the provisions of section 9 of the said law, granted permits to 35 persons to use the airport as a parking station for their taxis. The applicant is complaining that these persons do not serve properly the needs of the traffic movement at the airport. Furthermore, the applicant complained that although the taxis of those persons were given a taxi licence and had their parking station within the urban area of Nicosia, they were also allowed to have another parking station at the airport.

There is no doubt that the licensing authority, in considering the application of the applicant, along with the applications from other persons to use the airport as a parking station, sought the views of the manager of the airport regarding the question of whether or not there was need for more taxis, in order to serve the needs of the airport properly. On May 12, 1971, the licensing authority had before it a letter from the manager of the airport, stating clearly that the present needs of the airport were not served properly by the existing licensed taxis, because (a) air traffic had been increased considerably since April 1, 1971, that is to say from the beginning of the summer flights, and (b) because some of those licensed taxis did not always remain at the airport; and in paragraph 3 of his letter he suggested that the number of taxis using the airport as a parking station should be increased to 40, and also that the licensed taxi drivers should be obliged to park continuously at the said airport in order to serve properly the needs of the coming and going passengers. (See the said letter, *exhibit* 11).

On September 4, 1971, when the licensing authority met in order to decide the fate of the applications, had before it not only the views of the manager of the airport, but also a report by their administrative officer, who, in effect, was supporting the views of the manager of the airport, and it is clear that in his view also the existing taxis were not sufficient for the needs of the traffic at the airport and, in fact, they had been complaining that in many cases their superintendents were obliged themselves to call taxis from Nicosia in order to serve the needs of the passengers of the airport. Furthermore, the licensing authority had before it a letter dated April 29, 1971, addressed to the officer of Road Motor Transport Board, complaining that the licensed taxis having a parking station at the airport are not there to serve the public when there are no flights. In the light of those reports, the licensing authority decided to call before them, on the 8th of the same month, all the persons who were licensed to use the airport as a parking station, as well as all the applicants who made applications for new licenses, including the applicant in this case, who appeared before them together with his counsel, Mr. Michaelides, who presented the views of his client. The meeting was presided over by Mr. D. Rigas, the Chairman of the authority and present also was Mr. A. Alexandrou, representing the Road Motor Transport Board, established under section 3 of Law 16/64.

On September 10, 1971, the licensing authority considered all the material before them, as well as the views of all interested parties, and came to the conclusion, after weighing the facts and circumstances before them, that the licensed taxis which had a parking station at the airport were sufficiently serving the needs of the public at present, and it dismissed all the applications before them. The minutes of the meeting further show that the licensing authority admitted that in a few circumstances the airport was not served properly in the past; the reason being because of certain irregular flights (anomalous ptisis ton aeroplanon), and in order to express its protest, decided to despatch a letter to all licensed persons, reminding them that they were bound to park a sufficient number of taxis at the airport during the whole of the 24 hour service, in order to serve sufficiently the needs of the public and avoid complaints. As I said earlier, the decision of the licensing authority was communicated to the applicant on September 30 and received by him in October, 1971.

I think that, before dealing with the contentions of counsel, I ought to state that although the object of the statute in question (Law 16/64), was to regulate motor transport (a long felt need indeed) for the benefit of the public in general, nevertheless, in order to achieve his purpose, the legislator created a class of persons, the licensees, under the statute, whom he subjected to certain conditions and limitations in the exercise of their trade, as against certain privileges and benefits conferred by, or resulting from, their licence. These persons have a special interest in the proper application of the statute; and for any damage suffered from the violation of its provisions by a wrong-doer, a person belonging to the class of licensees is entitled to sue the wrong-doer, for such damage, independently of any penalties enforceable at the instance of the public authority concerned. (*Peristeronopighi Transport Co. Ltd.* v. *Toumazou* (1970) 1 C.L.R. 196, per Vassiliades, P. at page 204).

With this principle in mind, I propose dealing with the first question of unconstitutionality regarding the decision of the respondent. Counsel is now complaining that the decision of the respondent to turn down the application to allow him to use the airport as a parking station is contrary to Article 25 of the Constitution, because it restricts the free exercise of the lawful business of the applicant—being a licensed taxi owner—and that such restriction or limitation is not covered by paragraph 2 of the said Article.

There is no doubt that the Constitution of the Republic of Cyprus, like many post-war Constitutions, could not ignore the social rights of man arising out of his multifarious and especially economic relations in a modern society, and by a series of Articles it guarantees to the individual certain social and economic rights, which are to be exercised within the framework of public interest and common good. Thus, though the private initiative and free economy are declared and adhered to, nevertheless, the private enterprise is checked by state intervention when public interest and benefit so require. This was one of the purposes of Law 16/64 for the state interfering to regulate the traffic in the public interest, as I said earlier in this judgment. Now it has been said judicially that " Article 25 safeguards the right to practise any profession or to carry out any occupation, trade or business subject to such formalities, conditions, or restrictions as provided for therein. What is guarded against are infringements in the exercise of this right as such; but con-

trols in respect of objects which might be necessary for the exercise of such right are not excluded by this Article". (*District Officer, Nicosia* and *Georghios Ioannides*, 3 R.S.C.C. 107 at page 109).

In *Police* and *Georghios D. Liveras*, 3 R.S.C.C. 65, the Court dealing with the question of whether the decision prohibiting the parking of all vehicles in the streets within the area of Nicosia municipality had this to say, at page 68, " Regarding the constitutionality of the prohibition of 'standing' of all vehicles, under the said decision, the Court is of the opinion that such prohibition is unconstitutional in so far as it amounts to a prohibition of the 'standing' of vehicles for such time as may be reasonably required for taking or alighting passengers (whether paying or non-paying) because this would not be warranted by either paragraph 3 of Article 23", (with which we are not concerned in this case) " or paragraph 2 of Article 25. In all other respects the said prohibition of 'standing' is not unconstitutional for the same reasons for which paragraph 1 (a) of the said bye-law (3) is not unconstitutional, especially as provision is also made in such decision for the loading or unloading of goods during certain periods of time". Furthermore, the Court in that case reiterated once again that Article 25 guarded only against direct interference with the right safeguarded thereunder and had no relevancy to the interest of the owners of premises or of the traders which though affected by the application of the said bye-law to any street, were not directly interfered with.

Thus it appears from the trend of the authorities that the exercise of such right cannot be absolute and that the state has power to regulate it for the protection of others, or the community at large.

In the present case the applicant is not attacking any of the provisions of Law 16/64, but as I said earlier, he is only attacking the decision of the licensing authority. There is no doubt that an administrative act or decision is amenable to redress under Article 146.1 of the Constitution and it can be challenged on the grounds of excess or abuse of powers and of contravention of the provisions of the Constitution or of any law. In the light of the authorities, and having given the matter some consideration, I have reached the view that the decision of the said authority to refuse to grant to the applicant a permit to use the airport as a parking station, is not a direct interference

with the right of the applicant to practise his profession, or to carry on any occupation, under Article 25. The applicant, no doubt, as it has been conceded by counsel for the applicant, he still has a right to practise the profession or trade of hiring licensed taxis within the urban area, and he is only prevented from having a right to use the airdrome as a parking station. I think I need not stress the fact that the licensed taxis of the applicant are not prevented from taking passengers to the airdrome, or even taking passengers back within the same urban area. It is clear in my view, that there is no direct interference, but even if one would have taken the view that it might have been so, then again I have no hesitation in reaching the same view that this decision is not unconstitutional—not being contrary to paragraph 2 of the said Article—because it was taken in the public interest and after the said authority had considered the needs of the traffic of the airport. Cf. *Nicosia Police* and *Christos Constantinou*, 2 R.S.C.C. 123 at page 124. For these reasons and in the light of the authorities I have quoted earlier, this submission of counsel fails.

The second complaint of counsel arising out of ground 2 of the points of law, is that the said decision contravenes the principle of equal treatment and that his client suffered discriminatory treatment, contrary to Articles 6 and 28 of our Constitution, because those other licensees were given a right, within the urban area, to have in their taxi licence a second parking station at the airdrome. Counsel further complained that the decision of the respondent created a number of persons which he called a 'privileged number', who would continue holding exclusively the permits to have a parking station, both within the same urban area and the airdrome. I think the question of the principle of equality and when it is contravened has been said clearly in a number of authorities, starting with *Mikrommatis* and *The Republic*, 2 R.S.C.C. 125, where it was stated at page 131, that, " equal before the law in paragraph 1 of Article 28 does not convey the notion of exact arithmetical equality, but it safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things". This principle has been adopted and followed in a number of cases: *Panayides* v. *The Republic* (1965) 3 C.L.R. 107; *Louca* v. *The Republic*, reported in the same volume at page 383; *Impalex Agencies Ltd.* v. *The Republic* (1970) 3 C.L.R. 361 at page 374; *Republic* (*Ministry of Finance*) v. *Nishian Arakian and Others* (1972) 3

C.L.R. 294 and *Proios and Another* v. *Republic (Minister of Finance)* (1972) 3 C.L.R. 698, at pp. 712–713. Thus, it appears in the epigrammatic expression of Jennings (Law and Constitution) (1952) at page 59, equality means " that among many equals the law shall be equal and should be equally administered, that like should be treated alike". With this principle in mind, as I have already said, in dealing with the facts of the case, what has happened is that the licensing authority, in exercising their discretionary powers under the law, after considering the merits of the application of the applicant, came to the conclusion that the public was served well by the holders of the taxi licences having the right to use the airport as a parking station, and refused to allow to the applicant a permit for his taxis to use the airport as an additional parking station.

In my view, therefore, the said decision does not contravene the principle of equality, once the differentiation was not arbitrary and it was justified in the circumstances of this case, because the number of licences already granted to those persons who were found to be serving the area before the passing of the law, was considered as sufficiently serving the needs of the area of the airport. I would also repeat that once the purpose of classification was necessary in the public interest having reasonable basis, it does not offend against the principle of equality merely because it is not made with mathematical nicety or because it results in some inequality. In my opinion, the onus remains on the applicant to show that in this case the decision of the licensing authority was not based upon any reasonable basis and that in not granting more licences it was arbitrary. See also *Levy* v. *Louisiana*, 391 U.S. 68; 20 L. Ed. 2d 436 per Justice Douglas at p. 439.

Counsel has further contended, regarding point 5, that the decision of the licensing authority was taken contrary to the said law and the regulations made thereunder, in deciding to grant permits for the standing and/or parking of taxis at two or more places within the same urban traffic area. Having considered carefully the contentions of both counsel, I have reached the view that the decision of the said licensing authority was taken under the provisions of the aforesaid law and the regulations made thereunder. In my view, it is clear that the said licensing authority is given power to grant permits for the standing of a taxi at two or more places within the same urban traffic area, and I am not prepared to subscribe to the view of

counsel for the applicant. It is clear that the licensing authority, in using its discretionary powers, has a right under section 9 (4) of the law to impose on the holder of a taxi licence certain conditions as the licensing authority may deem fit to impose, and under Regulation 13 (h) a taxi driver is to park only at the approved place of parking which appears on the licence itself. I will go further and state that even if there was some doubt as to the right given to the licensing authority to fix parking stations in the licence to more than one place, the Council of Ministers, removed those doubts in 1968. Exercising its power under s. 15 of Law 16/64 it made new regulations, and in accordance with paragraph 3 which is to be found in Supplement No. 3 of the official Gazette of the Republic under Not. 820 at page 887. It reads:–

> " In paragraph (h) of Regulation 13 (h) the following reservation is added. 'It is to be understood that the Licensing Authority has power, and always had power, if the circumstances of a certain case justify it, to include on the relevant licences more than one parking station' ".

Thus it seems to me that the point is made very clear and that the licensing authority had always that power to fix parking stations to more than one place in a licence, and therefore, this contention of counsel also fails.

I am now turning to point 6: It was forcibly argued by counsel for the applicant that the decision complained of was made in excess or in abuse of powers of the licensing authority, because (a) it was based on a misconception of the real facts when considering the application of the applicant; and (b) it failed to consider the complaints and the reports that the airport is not served properly because the existing taxis are not sufficient in number to provide a regular service.

Now, I have examined very carefully the argument of both counsel and I think that the trend of authorities regarding the presumption as to findings of fact is that there is a presumption in favour of the correctness of the findings of fact by the administration. This presumption is weakened, however, once the litigant succeeds in rendering possible the existence of a misconception of fact on the part of the administration, that is to say, by creating doubts in the mind of the Judge about the correctness of the findings of fact by the administration.

" In such cases, the Judge, finding himself in doubt, is not inclined to follow the aforesaid presumption, but he resorts to one of the two courses; that is, he either (a) directs production of evidence, or (b) he annuls the act so that the administration may ascertain the actual circumstances in a way not leaving doubts".

(*Nicos Pierides* v. *The Republic* (1969) 3 C.L.R. 274, at p. 290, where the Court adopted and followed a passage from the well-known textbook of Stasinopoulos on the Law of Administrative Acts, 1951 ed. at p. 305).

There is no doubt, as it has been said in a number of cases, that administrative acts or decisions done or taken on a misconception of law or fact may be treated as instances of excess or abuse of power. (*Andreas Tryfon* v. *The Republic* (1968) 3 C.L.R. 28, at p. 42). It is to be added, however, that without necessarily such a finding of excess or abuse of power, an administrative act or decision may be annulled if it has been done or taken as a result of a material misconception of fact. (*Pierides* v. *The Republic*, (*supra*)). I think I should have added also that apart from the presumption as to findings of fact in favour of the correctness of such findings by the administration, it is clearly open to the authority in question to evaluate properly all the facts before it and reach its decision. That this proposition is a correct one, it finds support from the decision in *Republic* v. *Georghiades* (1972) 3 C.L.R. 594, where it is said at p. 646:-

" There is no doubt, therefore, that our Supreme Court, in exercising its competence under Article 146 of the Constitution, has to examine whether a certain administrative act can be annulled as contravening the provisions of the law. The mistaken valuation of the real facts and the mistaken subjection or non-subjection of those facts to the said legal provisions, constitutes contravention of the law for the purposes of Article 146. See the well-known textbook of Tsatsos, 3rd ed., on ' Application for Annulment before the Council of State', at p. 31 et seq. See also Waline Droit Administratif, at p. 438 et seq.

In case 368 of 1937, the Greek Council of State, dealing with the question of misconception of the real facts, took the view that misconception of the facts by the administration is an indirect contravention of the law, and provides

a reason for the annulment of such decision of the administration".

(See also *Papazachariou* v. *The Republic* (1972) 3 C.L.R. 486, at p. 504).

In the light of the authorities and all the material before me, including the letters of the Ministry of Communications and Works dated April 29, 1971, and the report of the Manager of the airport, as well as the increase of air traffic referred to earlier in this judgment, I am of the opinion that the applicant has succeeded in rendering possible the existence of a misconception of fact, and/or indeed that there was no proper evaluation of all the facts on the part of the administration; and because I have doubts in my mind I am not inclined to follow the presumption in favour of the correctness of the findings of fact. I have, therefore, decided instead of directing production of oral evidence, to annul the *sub judice* decision of the authority in question so that the administration may ascertain all the actual circumstances in a way not leaving doubts that the needs of the airport are served properly during all times and seasons by a sufficient number of taxis licensed in accordance with the provisions of the law.

Finally, in view of the result I have reached, and particularly because the applicant has applied to the Licensing Authority to grant him a taxi licence to use as an additional parking station the airport, I do not think that I need decide today the point in paragraph 4 of the grounds of law, whether the only authority which is empowered to fix parking spaces or places for taxis is the Improvement Board of Yerolakkos.

For the reasons I have endeavoured to explain, I declare that the decision of the respondent is contrary to the law and is made in excess or in abuse of powers vested in such authority. Regarding the question of costs, I have decided not to make an order for costs in the circumstances of this case.

Order accordingly.

Sub judice decision annulled;
no order as to costs.