IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS PERNAROS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH

1. THE COUNCIL OF MINISTERS,
2. THE MINISTER OF COMMERCE AND INDUSTRY,
3. THE CYPRUS TOURISM ORGANIZATION,

Respondents.

(*Case No.* 260/71).

Administrative Law—Administrative decision—Due reasoning.

Administrative Law—Discretionary powers—Policy view—Taken in the exercise of statutory discretionary powers—Section 16 *of the Hotels and Tourists Accommodation Law,* 1969 (*Law* 40 *of* 1969)—*Once the respondents acted within their statutory discretion and not in abuse or in excess of their power, the Court cannot entertain the question as to whether or not the "policy view" is a proper one.*

Discretionary powers—Policy view.

This recourse is directed against the refusal of the respondents to grant a loan to the applicant in the sum of £300,000 for the erection of a hotel. The *sub judice* refusal is embodied in a letter dated April 15, 1971 addressed to applicant by the General Manager of the Cyprus Tourism Organization which stated that the organization could not suggest to the lending agency of the Government the granting of the said loan because the proposed hotel did not fulfil the terms and pre-requisites included in the planning of the Government policy for the lending of money to the hotel industry, from the point of view of proportion of beds to side area.

The decision to refuse applicant's application was taken on the lines of a policy view which had been taken earlier and by virtue of which there was introduced a new policy for the granting

of loans to the hotel industry (The said policy view is quoted at pp. 180–181 of the judgment *post*). Counsel for the applicant contended:

(a) That the decision of the respondent was not duly reasoned.

(b) That the government policy adopted by the respondent was contrary to section 16 of the Hotels and Tourists Accommodation Law, 1969 (Law 40 of 1969) and the Regulations made thereunder.

(c) That the *sub judice* decision was taken in abuse or in excess of the discretionary power of the respondents.

Held (I) with regard to contention (a) above after stating the law relating to due reasoning (vide pp. 182–183 *of the judgment post)*:

In the light of the authorities and having considered carefully the contentions of both counsel I have reached the conclusion that in view of the material before me, I have no doubt that the decision of the respondents is duly reasoned and I am confident that the applicant knew, after reading such material, the reasons why the administration turned down his application for granting him a loan. I therefore dismiss this contention of counsel because I would reiterate that even if there was no sufficient reasoning, that reasoning can be supplemented from the material in the file and the facts before me.

Held, (II) with regard to contentions (b) and (c) above:

Once it is accepted that the respondents were given the power to grant loans, in excercising their discretion, certainly they were entitled to apply a certain policy; and, in my view, they had to consider seriously before making up their mind to grant such loans, whether it was within the general economic framework of helping more profitably the hotels industry. Once the respondents acted within their statutory discretion and not in abuse or in excess of their power, this Court cannot entertain the question as to whether or not the "policy view" is a proper one. (See *Savvidou* v. *The Republic* (1970) 3 C.L.R. 118, at pp. 121–122).

Application dismissed.

Cases referred to:

Zavros v. *The Council for Registration of Architects and Civil Engineers* (1969) 3 C.L.R. 310;

Korai and Another v. *C.B.C.* (1973) 3 C.L.R. 546, at pp. 555–556;

Rallis and The Greek Communal Chamber, 5 R.S.C.C. 11 at p. 18;

Metalock (Near East) Ltd. v. *The Republic* (1969) 3 C.L.R. 351 at p. 359;

HadjiSavva v. *The Republic* (1972) 3 C.L.R. 174, at p. 205;

Sofocleous v. *The Republic* (1972) 3 C.L.R. 56, at pp. 60–61;

Myrtiotis v. *Republic,* (reported in this Part at p. 58, *ante*);

Savvidou v. *The Republic* (1970) 3 C.L.R. 118, at pp. 121–122.;

Decisions of the Greek Council of State: Nos. 948/37 and 1535/50.

Recourse.

Recourse against the decision of the respondents whereby applicants' request for the grant of a loan in the sum of £300,000.– for the erection of a hotel on the beach of Famagusta was turned down.

J. Kaniklides, for the applicant.

L. Loucaides, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

The facts sufficiently appear in the judgment which was delivered by:

HADJIANASTASSIOU, J.: In these proceedings under Article 146 of the Constitution, the applicant, Andreas Pernaros of Famagusta, seeks the following relief:–

"A declaration of the Court that the refusal of the respondents or either of them (and/or decision) embodied in a letter dated the 15th April, 1971, addressed to the applicant, and in another letter dated the 10th June, 1971, addressed to applicant's counsel whereby the application of the applicant dated the 7th April, 1970, for the grant

of a loan in the sum of £300,000.- for the erection of a hotel on the beach of Famagusta was turned down and/or whereby respondents failed to recommend to the loan trustees or commissioners the granting of the said loan, is in excess or abuse of powers, unconstitutional and/or against the provisions of the Hotels and Tourists Accommodation Law, (Law 40/69), and Cyprus Tourism Organization Law (Law 54/69) and/or *ultra vires* of the Hotels and Tourists Accommodation Regulations of 1970, and illegal".

The facts so far as relevant are these:-

On July 16, 1969, the applicant who is the registered owner of a piece of land situated at Famagusta and abutting on the beach, Plot No. 267, sheet/plan XXX 111/29.3.IV, plot E, at the locality of Ayios Memnon of an extent of 28,256 sq. ft. submitted an application to the Hotels Committee, established under the provisions of section 6 of the Hotels and Tourists Accommodation Law, 1969 (No. 40/69) for the erection of a hotel on the said land. He also attached to his application the required plans and invited the said Committee to approve them. (See the covering letter marked 'A'). It appears that the said plans which were submitted on July 16, 1969, were altered by the applicant's architect substantially with a view to satisfying all the requirements of the said Committee which comes under the Ministry of Commerce and Industry.

On January 10, 1970, the plans were finally approved by the said Committee, and in their final form, the plans provided for the erection of 112 rooms (a four star hotel) in addition to all other amenities. (See letter of approval marked 'B'). In view of the said approval, the applicant on April 7, 1970, in accordance with the provisions of section 16 of Law 40/69, applied to the Ministry of Commerce and Industry for the grant to him of a loan of £300,000.- because the estimated amount for building the said hotel was £430,140.- (See the application marked *exhibit* 4, and estimated costs marked C.2).

I think I should have added that the making of loans takes place always with the prior approval of the Board of Directors because under section 16 "the making of loans by the State or by such agencies under its control for the erection of new hotels or for the extension and improvement of the existing ones shall take place always with the prior approval of the Board

of Directors. Such approval shall be granted on the written application of the interested parsons and shall relate to the usefulness of granting the loan".

On June 6, 1970, the applicant feeling uneasy because there was no reply to his letter, wrote once again to the Ministry in question reminding them; and on November 2, 1970, he gave further details of the scheduled time-table of the construction of his hotel.

On April 15, 1971, the General Manager of the Cyprus Tourism Organization, established under Law 59/69, addressed a letter to the applicant informing him that the Organization regretfully could not suggest to the lending agency of the Government the granting of the said loan because the proposed hotel does not fulfil the terms and pre-requisites which are included in the planning of the Government policy for the lending of money to the hotel industry, from the point of view of proportion of beds to side area. (See letter *exhibit* 1).

I am sure that the applicant must have felt very unhappy about the whole situation particularly in view of the fact that his plans had been approved, and consequently he must have thought that would have opened the door for obtaining the loan required for the erection of his hotel. In the light of his uneasiness, counsel on his behalf addressed a new letter to the Organization (K.O.T.) dated May 1, 1971, (*exhibit* 3), and as there was no reply, his counsel sent a new letter dated June 4, 1971, complaining that until that time he did not receive a reply to his previous letter (see letter marked G. 2).

On June 10, 1971, the General Manager of the Organization in reply to the applicant expressed his sorrow for the long delay in taking a definite decision adding that the taking of a decision was overdue regarding all new applications; and that was due to the fact that the Government had to take a definite stand on the matter. The General Manager went on to state that it was not possible to satisfy all the applicants, and that the Organization could not ignore the said regulating decision of the Government with regard to the highest number of beds per donum and according to the class of the hotel.

There is no doubt that there has been a long delay indeed for the purpose of making up their minds and the applicant feeling aggrieved because of the said refusal, filed the present

recourse, and the application was based on these grounds of law:-

" (a) The decision complained of is in excess or in abuse of the respondents or either of them.

(b) The decision complained of is discriminatory, unconstitutional, *null* and *void* and illegal.

(c) The decision complained of is against the provisions of the Hotels and Tourists Accommodation Law (Law 40/69), and the Cyprus Tourism Organization Law (Law 54/69), and/or *ultra vires* of the Hotels and Tourists Accommodation Regulations of 1970".

Counsel on behalf of the respondents filed the opposition, which was based on two grounds of law "(a) that the said decision was taken lawfully in accordance with the provisions of section 16 of Law 40/69 and in accordance with the substantial facts of the case; and (b) that the decision attacked refers to the expediency for the grant of the loan to the applicant, a matter which is outside the control of the Supreme Court in its Revisional Jurisdiction in accordance with Article 146 of the Constitution". In support of the opposition counsel relied on two decisions of the Greek Council of State Nos. 733/33 and 11/35.

The facts in support of the opposition are (paragraph 4) that the Council of Ministers by its decision No. 9424 dated February 12, 1970, introduced a new policy for the granting of loans to the hotel industry and I propose quoting an extract from the minutes of that meeting:

* " Τὸ Συμβούλιον ἀπεφάσισεν ὅπως ἐγκρίνῃ τὴν ἀκόλουθον πολιτικὴν παραχωρήσεως δανείων πρὸς τὴν Ξενοδοχειακὴν Βιομηχανίαν:-

(α) ὅπως δι' ἀνέγερσιν νέων ξενοδοχείων χορηγῶνται δάνεια μέχρι ποσοστοῦ 70% ἐπὶ τοῦ συνολικοῦ ὕψους τῆς ξενοδοχειακῆς ἐπενδύσεως ὡς τοιαύτης θεωρουμένης τῆς δαπάνης διὰ κτίρια, ἐγκαταστάσεις, ἐπίπλωσιν, καὶ ἐξοπλισμόν. Ἐντὸς τοῦ περιθωρίου τούτου δι' ἀποφάσεων κατὰ καιροὺς ἐκδιδομένων ὑπὸ τοῦ Ὑπουργοῦ Οἰκονομικῶν καὶ τοῦ

* An English translation of this text appears at p. 186 *post*.

'Υπουργείου 'Εμπορίου καὶ Βιομηχανίας θὰ ρυθμίζωνται τὰ ποσοστὰ δανειοδοτήσεως κατὰ προτεραιότητα περιοχῶν καὶ τάξεων καὶ ἐπὶ τῇ βάσει προγραμματικοῦ διαγράμματος ἀναπροσαρμοζομένου ἀναλόγως τῶν κρατουσῶν ἐν τῇ τουριστικῇ βιομηχανίᾳ τῆς Νήσου συνθηκῶν. Τὸ 'Υπουργεῖον 'Εμπορίου καὶ Βιομηχανίας δέον ὅπως ὑποβάλῃ πρὸς τὸ 'Υπουργεῖον Οἰκονομικῶν, πρὸς ἐξέτασιν, περιοχὰς προτεραιοτήτων καθὼς καὶ τάξεις ξενοδοχείων ὡς πρὸς τὰς ὁποίας θὰ ἰσχύουν ἀντίστοιχα ποσοστὰ δανειοδοτήσεως ἐντὸς τοῦ ἀνωτάτου ὁρίου τοῦ 70%.

(β) διάρκεια δανείου καὶ ἐπιτοκίου ὡς μέχρι τοῦδε προβλέπεται, ἤτοι:–

διὰ περίοδον	μέχρι	5	ἐτῶν	ἐπιτόκιον	5%
"	"	ἀπὸ 5–12	ἐτῶν	"	$5^1/_2$%
"	"	" 12–15	ἐτῶν	"	$5\frac{3}{4}$%
"	"	" 15–20	ἐτῶν	"	6%

(γ) ἔναρξις καταβολῆς τοκοχρεωλυτικῶν δόσεων μετὰ τὴν συμπλήρωσιν διετίας ἀπὸ τῆς ὁλοκληρώσεως τῆς καταβολῆς τοῦ δανείου".

In the light of this policy view, on April 2, 1971, an extract of the minutes of the Cyprus Tourism Organization shows under the heading " Loans for Hotels", the following:–

" The President announced that the subject matter was discussed with the Minister of Finance and the Minister of Commerce and Industry. The Minister of Finance will consider ways of finding the necessary sum within the next years and he requested a list of the applications which are pending.

The Council after examining all the applications for the erection of new hotels, decided to reject some of them, and regarding the rest fulfilling the pre-requisites for the granting of the loan from every aspect. to arrange a list and submit it to the Minister of Commerce and Industry and to the Minister of Finance.

1. The following applications are considered as rejected:–

(a) St. Barbara Tourist Development Co. Ltd. in the area 'Kyma' in Limassol, because of the small area of the site.

(b) Andrea Pernarou, for the erection of a 4 star hotel, 224 beds in the area of 'Golden Beach' in Famagusta upon a site of an area of about 2 acres, because it does not fulfil the conditions regarding the proportion of beds to the site area".

In paragraph 10 it is alleged that the application of the applicant has been examined by the Organization and it was refused for the reasons given in the letter of April 15, 1971.

I should have added that counsel on behalf of the applicant in accordance with Rule 10 (2) of the Supreme Constitutional Court Rules applied to the Court for further directions, that the Municipality of Famagusta was the proper authority to issue to the applicant a building permit for the erection of the hotel in question, but because the other side during the hearing of this case conceded this point I need not deal any further with it.

Counsel on behalf of the applicant contended that the decision of the respondents was not duly reasoned in accordance with the provisions of administrative law. With regard to the principle of due reasoning it has been said time after time in a number of cases before the Supreme Court that the object of the rule requiring reasons to be given for administrative decisions is to enable the person concerned as well as the Court on a review to ascertain in each case whether the decision is well founded in fact and in law. The reasons therefore must be stated clearly and unambiguously; must be expressed in the sense in which reasonable persons affected thereby would understand them; and must be stated in terms fulfilling the object of the rule. The mere fact therefore that some doubt that is not merely fanciful exists as to the meaning of the reason behind an administrative decision, is sufficient to vitiate such decision. (*Zavros* v. *The Council for the Registration of Architects and Civil Engineers* (1969) 3 C.L.R. p. 310; *Korai and Another* v. *The C.B.C.* (1973) 3 C.L.R. 546, at pp. 555–556). (Also see Conclusions from the Jurisprudence of the Greek Council of State 1929–59 at p. 183).

Although in Greece the need for due reasoning is necessitated by the principles of legality of administrative acts (Stassinopoulos on the Law of Administrative Acts 1951 at p. 337) it appears that such reasoning is required in order to make possible the ascertainment of the proper application of the law and to

enable the carrying out of judicial control. (Kyriacopoulos on the Greek Administrative Law, 4th ed., vol. 2, at p. 386).

According to Professor Forsthoff, the giving of reasons must, as a rule, be deemed to be required by the law today. This is a consequence of the guarantee of access to administrative Courts as provided by law. Usually and certainly in the case of decisions made in the exercise of discretion, the person concerned is only able to pursue his rights if he knows the reasons for an administrative act. (The Administrative Act 1963 at p. 38).

Reverting now to our own case law it appears that the first case that laid down the requirement of due reasoning is that of *Rallis* and *The Greek Communal Chamber*, 5 R.S.C.C. 11 at p. 18. According to the principle laid down in this case, absence of due reasoning is not necessarily in itself a ground of invalidity, but in later Cyprus decisions the view has prevailed, that absence of due reasoning is by itself a ground of invalidating the particular decision. (*Metalock (Near East) Ltd.* v. *The Republic* (1969) 3 C.L.R. 351 at p. 359, and *HadjiSavva* v. *The Republic* (1972) 3 C.L.R. 174, at p. 205).

There is no doubt that as in the case of insufficient reasoning, vague reasoning tantamounts to absence of reasoning and renders the *sub judice* act or omission *null* and *void*. (Decisions of the Greek Council of State Nos. 948/37 and 1535/50). A vague reasoning, judicial review of which is impossible, or does not state the facts on which the administrative determination is based, or is so vague and general as not to admit on its supplementation from other material in the relevant files, will not be considered as due reasoning. (See Conclusions from the Jurisprudence of the Greek Council of State 1929–1959 at pp. 186–7; and *Sofocleous* v. *The Republic* (1972) 3 C.L.R. 56, at pp. 60–61; and a recent authority of this Court in *Panayiotis Ioannou Myrtiotis* v. *The Republic of Cyprus through the Educational Service Commission* (reported in this Part at p. 58, *ante*).

In the light of the authorities and having considered carefully the contentions of both counsel I have reached the conclusion that in view of the material before me, I have no doubt that the decision of the respondents is duly reasoned and I am confident that the applicant knew, after reading such material, the reasons why the administration turned down his application for granting him a loan. I therefore dismiss this contention of counsel

because I would reiterate that even if there was no sufficient reasoning, that reasoning can be supplemented from the material in the file and the facts before me.

The next contention of counsel was (a) that the Government policy adopted by the respondent was contrary to s. 16 of Law 40/69, and the Regulations made thereunder; and their decision to turn down the application for a loan was taken in abuse and in excess of their discretionary power; and (b) that because before adopting such a policy oral promises were given to both the architect who prepared the necessary plans and to the applicant himself by the officials.

I am afraid that although an allegation of promises was put forward, unfortunately no evidence was adduced before me in order to substantiate such ground of complaint. It may perhaps be true that during this long delay one could not exclude the possibility that one or more officials encouraged the applicant or his architect to believe that a loan would be finally granted to him, but, as I said earlier, nothing concrete was placed before me to warrant the inference that such binding promises were actually given by responsible officials, and that such promises could in any way bind either the Ministry of Commerce and Industry or the Board of Directors or, indeed, any other responsible agency. In any event, irrespective of whether or not the applicant was left with that impression, it appears that there were too many applicants running after loans, but, regretfully, there were very few funds, and it was impossible to satisfy them at that time.

Turning now to the first leg of the contention, I think that once it is accepted that the respondents were given the power to grant loans, in exercising their discretion, certainly they were entitled to apply a certain policy; and in my view, they had to consider seriously before making up their mind to grant such loans, whether it was within the general economic framework of helping more profitably the hotels industry. Once, therefore, the respondents acted within their statutory discretion and not in abuse or in excess of their power, this Court cannot entertain the question as to whether or not the "policy view" is a proper one.

In *Savvidou* v. *The Republic* (1970) 3 C.L.R. 118, the Court, dealing with the policy view taken by the Council of Ministers, said at pp. 121–122.

" What the Council of Ministers did, in effect, was to deal with the said request on the basis of a policy regarding the exercise of its powers under section 58; and I cannot accept the view that the Council of Ministers disregarded the merits of the case; it had before it all relevant material; apparently, it did not find such merits in the case in question as would justify a course contrary to that adopted by it, which was quite reasonably open to it.

Once I am satisfied that the Council of Ministers acted in this matter within the limits of its statutory discretion and not in abuse or excess of powers I cannot enter into the question as to whether or not the policy view taken by the Council of Ministers was a proper one; to do this would be beyond the limits of a jurisdiction such as the one under Article 146 of the Constitution (see Kyriacopoullos on Greek Administrative Law, 4th ed., vol. I p. 209 and the decisions of the Greek Council of State in Cases 733/33 and 11/35)".

In the light of the Greek and Cyprus authorities, and having regard to the circumstances of this case, I am confident that the respondents exercised their discretionary power properly and have not acted in abuse or in excess of power. Therefore, I think that I cannot really touch the question as to whether or not the "policy view" taken by the respondents was the proper one; particularly so, because by doing so I would have gone beyond the limits of the jurisdiction provided by Article 146 of the Constitution.

For the reasons I have endeavoured to explain, I would dismiss the recourse, but having regard to the long delay, and in view of the various adjournments, I propose making an order for costs of the amount of £30 in favour of the applicant.

Application, therefore, dismissed with £30 towards the costs of the applicant.

Application dismissed. Order for costs as above.

This is an English translation of the Greek text appearing at pp. 180–181 *ante*.

" The Council decided to approve the following policy for the grant of loans to the Hotel Industry:–

(a) That for the erection of new hotels there should be granted loans up to 70% of the total amount of the hotel investment and as such is considered the cost of buildings, installations, furniture and equipment. Within this margin by decisions issued from time to time by the Minister of Finance and the Minister of Commerce and Industry the percentages of loans to be granted will be regulated in order of priority of areas and classes and on the basis of a programmed diagram re-adapted according to the conditions prevailing in the tourist industry of the Island. The Ministry of Commerce and Industry should submit to the Ministry of Finance, for examination, priority areas as well as hotel classes in respect of which there would operate respective percentages of loans to be granted within the highest limit of 70%.

(b) The duration of the loan and rate of interest will be as at present provided, that is:

For a period up to 5 years at the rate of 5%
For a period from 5–12 years at the rate of 5½%
For a period from 12–15 years at the rate of 5¾%
For a period from 15–20 years at the rate of 6%.

(c) The instalments of capital and interest will commence being paid after the lapse of two years from the completion of the grant of the loan".