

1983 November 28

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEMOS FARM LTD.,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF COMMUNICATIONS AND WORKS,

Respondent.

(Case No. 71/82).

Administrative Law—Administrative acts or decisions—Executory act—Confirmatory act—Can only be made the subject of a recourse if taken after a new inquiry—Which exists when new substantive legal or factual elements are taken into consideration—No new facts submitted by applicants after the original decision of the administration—Sub judice decision a confirmatory one of the previous decision and cannot be made the subject of recourse. 5

The applicants, who were the owners of “Demos” farm and “Demos” supermarket, applied by letter dated 18th June, 1977, exhibit 2, to the Director-General of the Ministry of Communications and Works for a licence to own and install four units of radiotelephones in order to facilitate communications between their farm and their supermarket. The respondent Ministry, after obtaining the views of the Chief of Police, who objected to the granting of the licence for security reasons, turned down the application and informed applicants accordingly by letter dated 14th November, 1977. Applicants reverted to the matter by their letters dated 8th January, 1980 but his application was rejected by letter of the respondent dated 11th August 1980. On the 30th November, 1981 the applicants applied once again for a licence and were asked to furnish particulars regarding the name of the applicant, his place and date of birth, his profession and address of business, his present address, identity card number and name of father and mother. Applicants furnished 10 15 20

these particulars but again their application was rejected, by letter of the respondent dated 27th January, 1982, "for security reasons". Hence this recourse which was filed on the 10th February, 1982.

5 *On the preliminary objection of the respondent that the decision complained of was not of an executory nature but confirmed the previous decision of the respondent Ministry taken on 14.11.1977 and so it could not be made the subject of a recourse under Article 146 of the Constitution, as it was out of time:*

10 *Held, that a confirmatory act is one which repeats the contents of a previous executory act and signifies the adherence of the Administration to a course already adopted; that where the Administration confirms a previous executory act after a new inquiry, then the resulting new act or decision is itself executory too; that a new inquiry exists when new substantive legal or*
 15 *factual elements are taken into consideration; that as it appears from the documentary evidence adduced in this case, no new facts were submitted by the applicants to the respondents in addition to those that were already before them and on which*
 20 *their original decision of the 14.11.1977 was taken; and that, therefore, the subject decision is a confirmatory one of the decision of 14.11.1977 and cannot be made the subject of a recourse; accordingly the recourse should fail.*

Application dismissed.

25 *Cases referred to:*

Kelpis v. Republic (1970) 3 C.L.R. 196 at pp. 202-204;

Varnava v. Republic (1968) 3 C.L.R. 566 at p. 574;

Mylonas v. Republic (1982) 3 C.L.R. 880 at p. 887;

Lordos Apartotels Ltd. v. Republic (1974) 3 C.L.R. 471;

30 *Georghiou v. Republic (1982) 3 C.L.R. 828 at p. 835.*

Recourse.

Recourse against the refusal of the respondents to grant applicant a licence to install and/or operate a wireless telephone in their farm.

35 *Chr. Triantafyllides, for the applicants.*

A. Papasavvas, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

MALACHTOS J. read the following judgment. In this recourse the applicants seek a declaration of the Court that the decision of the respondents of the 27th January, 1982, refusing and/or rejecting their application for a licence to install and/or operate a wireless telephone in their farm is null and void and of no legal effect whatsoever. 5

The relevant facts of the case are as follows:

The applicants, who are the owners of "Demos" farm and "Demos" supermarket, applied by letter dated 18th June, 1977, exhibit 2, to the Director-General of the Ministry of Communications and Works for a licence to own and install four units of radiotelephones in order to facilitate communications between their farm and their supermarket. This letter reads as follows: 10

"We hereby apply for and would request that the issue of a licence to own and operate 4 (four) units of Radiotelephones, which we intend to install and use as follows: 15

1. One Base Station at our Farm near Politiko village.
2. One Base Station at the residence of our Managing Director Mr. Demos Galataki, Kyriakou Matsi Str. 9, Strovolos. 20
3. One Base Station at 'DEMOS' Supermarket, Strovolos Avenue 132, Strovolos.
4. One Mobile Unit on the Farm's car EH998.

The Base Station which will be installed at 'DEMOS' Supermarket will operate during normal working hours in order to communicate and control the works of our farm at Politiko. On the other hand the Base Station at our Manager's house will be used for emergency at night hours. 25 30

For your information we have, in the past, applied to CYTA for the installation of a telephone at our Farm but due to its situation, according to CYTA'S estimates it would cost us a lot of money.

We are confident that you will appreciate and understand the number of problems created with substantial 35

losses due to the lack of communication with our farm, especially in cases of emergency”.

5 This application was passed over to the Chief of Police for his views, who, in his turn, by letter dated 8th October, 1977 (exhibit 3) informed the Director-General of the Ministry of Interior that for security reasons the Police did not recommend the granting of a licence to the applicants and, furthermore, the applicants did not furnish a certificate from CYTA to verify their allegation that the installation of a tele-
10 phone at their farm near Politiko village is impossible.

As a result, the Director-General of the Ministry of Interior addressed a letter 14.10.1977 (exhibit 4) to the Director-General of the Ministry of Communications and Works, informing him that the Ministry of Interior objected to the granting of a licence
15 to the applicants for security reasons.

The respondent Ministry wrote to the applicants on the 14.11.1977 exhibit 5 which is as follows:

20 “I have been instructed to refer to your application for a licence to own and operate wireless base stations for communications between your house, your shop at Strovolos and your farm at Politiko village and to inform you that the Ministry of Communications and Works regrets because it is unable to grant the licence requested as the telephone communication between the said locations is “possible”.

25 On the 8.1.1980 Mr. Galatakis wrote the following letter to the Director-General of the respondent Ministry (exhibit 6):

30 “We refer to our previous application for the granting of a licence for the installation and operation of a wireless telephone for the requirements of our farm, and we request that you reexamine this matter of ours.

Our farm is situated at a site beyond Politiko village where there is no telephone communication.

35 Many times there is need for timely communication of the person in charge of the farm with our management for an immediate medical treatment of our animals, visit of veterinary surgeon, for despatch of medical supplies and

urgent instructions for the avoidance of various risks, death to animals etc.....”.

The matter was reconsidered and the Commander of Police wrote to the Ministry of Interior on the 10.3.1980 (exhibit 7) informing them that the Police objected to the granting of the said licence for security reasons. 5

In consequence, the Ministry of Interior by letter dated 19.3.1980 (exhibit 8) informed the respondent Ministry that they objected to the granting of a licence to own and operate units of radio telephone to the company “Demos Farm Ltd” of Strovolos, for security reasons. 10

By letter dated 11.4.1980 (exhibit 9), the respondent Ministry informed the applicant as follows:

“I am instructed to refer to your application for a licence for the installation of wireless units for the requirements of your farm and to inform you that the Ministry of Communications and Works regrets because they are unable to grant the licence requested for security reasons”. 15

By letter dated 30.11.1981 (exhibit 10), the applicants once again applied to the respondents for a licence to install and operate a wireless telephone for the requirements of their farm. This letter reads as follows: 20

“We hereby request to be granted a licence for the installation and operation of a wireless telephone for the requirements of our farm. 25

We are an agricultural and stock rearing company since 1976 and our farm at which we breed goats, sheep and cows, is beyond Politiko village.

The farm which is situated in a remote area cannot have telephone communications with us. Many times there is need for timely and immediate communication of the person in charge of the farm with the management of the company for the medical treatment of our livestock and immediate visit of the veterinary surgeon at the farm and for other urgent instructions in order to avert unpleasant consequences and danger to our animals”. 30 35

On the 10th December, 1981, the respondents addressed the following letter (exhibit 14) to Mr. Galatakis:

5 "I refer to your application dated 30.11.1981 for the issue of a licence for the installation of wireless telephone at your farm and to request you to let me have the following particulars:

- (a) full name of applicant
- (b) place and date of birth
- (c) profession and address of business
- 10 (d) present address
- (e) identity card number
- (f) name of father and mother of applicant".

On the 15.12.1981 Mr. Galatakis addressed the following letter (exhibit 15), to the respondent:

15 "In reply to your letter of the 10th December, 1981 YSE 492/59/911, we set out herein below the particulars which you have requested in relation to the issue of a licence for the installation of a wireless telephone:

- (a) Demos Galatakis
- 20 (b) Nicosia 20.12.1934
- (c) Director of the farm
- (d) Residential address: Kyriakou Matsi 9, Strovolos
- (e) Identity Card No. 129186
- (f) Damianos—Eleni Galataki".

25 On the 13.1.1982 the Chief of Police wrote to the Director-General of the Ministry of Interior (exhibit 12) "that the Police still continued to object to the granting of the licence for security reasons".

30 In view of this the Director-General of the Ministry of Interior wrote to the respondent (exhibit 13), which reads as follows:

"I have been instructed to refer to your letter File No. 492/59/94 and dated 30th December, 1981, and to inform you that this Ministry continues to object to the granting

of a licence of possession and use of wireless units to Mr. D. Galataki Director of the company Demos Farm Ltd., Strovolos, for security reasons”.

The respondent Ministry on 27.1.1982 addressed the following letter (exhibit 17) to the applicants:

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“I have instructions to refer to your application for a licence for the installation of wireless telephones at your farm and to inform you that it was not possible for your application to be approved for security reasons”.

Hence the present recourse, which was filed on the 10th of February, 1982.

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The first legal ground on which the opposition is based is that the decision complained of is not of an executory nature but confirms the previous decision of the respondent Ministry taken on 14.11.1977 and so it cannot be made the subject of a recourse under Article 146 of the Constitution, as it is out of time.

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When this recourse came on for hearing, on the application of both counsel and the approval of the Court, this ground was heard first as a preliminary legal issue.

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It was submitted by counsel for the respondent that the decision complained of was not an administrative act but confirmatory of their original decision of the 14.11.1977 and, therefore, the recourse was out of the time of seventy-five days prescribed by Article 146.3 of the Constitution.

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Counsel for applicant, on the other hand, has argued that there were three different applications which were separate and unconnected. Consequently, in their final letter (exhibit 1), the respondents reply to the last application, is a new executory act, as the decision contained therein was reached after a new inquiry. By their letter of the 10.12.1981 (exhibit 14), the respondent requested the applicants to furnish them with new information. Therefore, their final decision was not the result of a mere reexamination of the case, as it stood, but an entirely new examination on new additional facts. He has relied on *Kelpis v. The Republic* (1970) 3 C.L.R. 196 at 202-4; *Varnava v. The Republic* (1968) 3 C.L.R. 566 at 574 and *Mylonas v. The Republic* (1982) 3 C.L.R. 880 at 887.

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As it is stated in Stassinopoulos on the Law of Administrative Disputes, 4th Edition at p. 175 a confirmatory act is one which repeats the contents of a previous executory act and signifies the adherence of the Administration to a course already adopted; but where the Administration confirms a previous executory act after a new inquiry, then the resulting new act or decision is itself executory too.

As to when there is a new inquiry and, consequently, a new decision, is a question of fact. In the case of *Lordos Apartotels Ltd. v. The Republic* (1974) 3 C.L.R. 471 the following passage from Stassinopoulos (*supra*) at page 176 is cited:

“When does a new enquiry exist, is a question of fact. In general, it is considered to be a new enquiry. the taking into consideration of new substantive legal or factual elements, and the used new material is strictly considered, because he who has lost the time limit for the purpose of attacking an executory act, should not be allowed to circumvent such a time limit by the creation of a new act, which has been issued formally after a new enquiry, but in substance on the basis of the same elements. So, it is not considered as a new enquiry, when the case is referred afresh to a Council for examination exclusively on its legal aspect, or when referred to the Legal Council for its opinion or when another legal provision other than the one on which the original act was based is relied upon if there is no reference to additional new factual elements. There is a new enquiry particularly when, before the issue of the subsequent act, an investigation takes place of newly emerged elements or although preexisting were unknown at the time which are taken into consideration in addition to the others, but for the first time. Similarly, it constitutes new enquiry the carrying out of a local inspection or the collection of additional information in the matter under consideration”.

See also the case of *Georghiou v. The Republic* (1982) 3 C.L.R. 828 at p. 835.

As it appears from the documentary evidence adduced in this case, no new facts were submitted by the applicants to the

respondents in addition to those that were already before them and on which their original decision of the 14.11.1977 was taken.

Consequently, the present recourse should and it is hereby dismissed as it was filed out of time.

On the question of costs I make no order.

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*Recourse dismissed with no order
order as to costs.*