

1986 January 31

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

CO-OPERATIVE SOCIETY OF ALONA.

Applicants,

v.

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

Respondents.

(Case No. 358/84).

The Road Transport Regulation Law 9/82 s. 4 (before its repeal by s. 4 of Law 84/84)—Hierarchical recourse to the Minister of Communications and Works—Nature of—It is neither of a judicial nor a quasi judicial nature—Minister acts in an administrative capacity.

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Administrative Law—Reasoning of an administrative act—It may be supplemented from the material in the file—Brevity of decision not indicative of reasoning or no reasoning—It is the contents and context thereof that must be considered—What constitutes due reasoning is a question of degree dependent upon the nature of the particular decision in question.

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The applicant, the first and the second interested party are the owners of rural buses Reg. Nos. MZ 685, ET 281 and EQ 912 respectively. The three buses were conveying villagers from Alona to Nicosia and pupils of secondary education from Alona to Agros village.

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Sometime in 1983 the Cyprus Professional Motorists Confederation applied to the Licensing Authority to fix time schedules and rotation for the running of the said buses. As a result the Licensing Authority fixed a time

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schedule for the circulation of the said three buses which was different for each bus every three weeks and thus every three weeks that time schedule would apply to each of the buses in rotation.

5 The applicants challenged the said decision by means of a hierarchical recourse to the respondent Minister, as provided by s. 4* of Law 9/82. The grounds in support of the recourse were in short that the decision was contrary to the spirit and letter of the Law, that it violates Article 10 25 of the Constitution, that the Licensing Authority acted in excess or abuse of power, that the decision was not reasoned and that it was issued for a non-existent, groundless, vague and not proved request.

15 On 27.4.84 the decision of the Minister was issued. It reads: "Having taken into consideration all the material placed before me, I reached the conclusion that the decision of the Licensing Authority is correct and, therefore, I dismiss the recourse".

20 Hence the present recourse. In support of his contention that the decision of the Minister is not duly reasoned counsel for the applicant submitted that a decision in a hierarchical recourse should be duly reasoned as a judgment of a Court.

25 *Held.* annulling the sub judice decision (1) A hierarchical recourse is not a judicial proceeding in any sense. It is not intended to review the correctness of the subordinate organ's decision by reference to the soundness of its reasoning, but to establish a second tier in the decision taking process, designed to eliminate mistakes as well as abuse of authority by subordinates. It is at least as 30 feasible for the superior in hierarchy to take any decision that the subordinate body could reasonably take. In exercising his powers in a hierarchical recourse under s. 4 of Law 9/82 the Minister acts in an administrative capacity and not in a quasi-judicial one.

35 (2) An administrative decision must be duly reasoned. Its reasoning may be supplemented from the material in the

* Repealed by s 4 of Law 84/84.

relevant file. What is "due reasoning" is a question of degree dependent upon the nature of the decision concerned. The brevity of a decision is not indicative of reasoning or no reasoning. It is the contents and context thereof that must be considered in the circumstances of each case. 5

(3) Most points raised by the applicants in the hierarchical recourse are not part of the sub judice decision. The Minister gave no reasons why he arrived at the conclusion he reached and no reason whatsoever for his decision is found in the records related thereto. The decision lacks due or any reasoning. 10

Sub judice decision annulled
No order as to costs

cases referred to: 15

Hambou and Others v. Michael and Another (1981) 1 C.L.R. 618;

Petrides v. The Republic (1983) 3 C.L.R. 216;

Tsouloftas v. The Republic (1983) 3 C.L.R. 426;

Georghiades v. The Republic (1967) 3 C.L.R. 653. 20

HjiSavva v. The Republic (1972) 3 C.L.R. 174;

Mavrommatis v. The Republic (1977) 3 C.L.R. 380;

Ploussiou v. The Central Bank (1978) 3 C.L.R. 18;

Marangos v. The Republic (1983) 3 C.L.R. 682.

Recourse. 25

Recourse against the dismissal by the respondent of applicants' hierarchical recourse against the decision of the Licensing Authority whereby a time schedule for the circulation of the rural buses of Alona was fixed.

L. Clerides with M. Iacovou, for the applicants. 30

G. Erotokritou (Mrs.), Senior Counsel of the Republic,
for the respondent.

S. Mamantopoulos, for the interested party.

Cur. adv. vult.

5 STYLIANIDES J. read the following judgment. By this
recourse the applicants challenge the validity of the decision
of the Minister in a hierarchical recourse against a decision
of the Licensing Authority.

10 The sub judice decision is challenged on the following
grounds:-

- (a) It is contrary to the Road Transport Regulation
Law, 1982 (Law No. 9 of 1982);
- (b) It violates the fundamental right of the applicants
15 to exercise a profession as enshrined in Article 25
of the Constitution;
- (c) It violates the principle of equality safeguarded by
Article 28 of the Constitution and.
- (d) It is faulty as it lacks due or any reasoning at all.

20 The applicant is the Co-operative Credit Society of Alo-
na, the members of which are most of the inhabitants of
the village. It owns rural bus Reg. No. MZ 685. The inter-
ested parties—Stylianos Christodoulides & Co. and Poly-
carpos Aloneftis, of Alona, drivers by occupation—are the
owners of rural buses Reg. Nos. ET 281 and EQ 912.
25 respectively. The three buses were conveying villagers from
Alona to Nicosia and pupils of secondary education to
Agros village.

30 In the past the three bus owners were keeping an arrange-
ment made among themselves for the better service to the
passengers and the benefit of the bus owners themselves.
Sometime in the middle of 1983 this arrangement was dis-
turbed and the Cyprus Professional Motorists Confederation
applied to the Licensing Authority to exercise its power
under ss. 5(13) and 8(3)(d) of the Motor Transport Regu-

lation Law, 1982 (Law No. 9 of 1982) and fix time schedules and rotation for the running of the buses so as to afford equal opportunity of employment and benefit to all three aforesaid rural buses.

The Licensing Authority took up the matter and after giving the opportunity to all interested parties to be heard, including the two confederations of motorists—S.E.A.K. and P.E.E.A.—on 30.8.83 decided for the better service of the village to fix time schedule for the circulation of the rural buses of Alona which was different for each bus every three weeks and thus every three weeks that time table would apply to each of the buses in rotation. 5
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The applicants being aggrieved by the decision of the Licensing Authority, filed a hierarchical recourse to the Minister, as provided by s.4 of Law No. 9/82. This took place before the repeal of this section by s. 4 of Law No. 84/84 whereby a new Revisional Licensing Authority was established to deal with hierarchical recourses arising from the application of this Law. 15

The grounds of the hierarchical recourse are set out in para 2 of exhibit No. 2. They included that the challenged decision of the Licensing Authority was contrary to the spirit and the letter of the Law; that the challenged decision violated Article 25 of the Constitution; that the Licensing Authority acted in excess and/or abuse of power; that it was issued for a non-existent, groundless, vague and not proved request and that it was not reasoned. The recourse was heard; the hearing was concluded on 12.11.83. On 27.4.84 the decision of the Minister was issued. It reads:- 20
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«Αφού έλαβα υπόψη όλα τα στοιχεία που τέθηκαν ενώπιον μου κατέληξα στο συμπέρασμα ότι η απόφαση της Αρχής Αδειών είναι σωστή και γι' αυτό απορρίπτω την προσφυγή». 30

(Having taken into consideration all the material placed before me, I reached the conclusion that the decision of the Licensing Authority is correct and, therefore, I dismiss the recourse"). 35

This decision was communicated to the applicants and the interested parties by letter dated 11th May, 1984. Hence this recourse under Article 146 of the Constitution.

5 The file of the proceedings before the Licensing Authority and the file of the hierarchical recourse were produced as exhibits No. 1 and 2, respectively.

10 Counsel for the applicants submitted that the decision in a hierarchical recourse should be reasoned as a judgment of the Court and referred to the case of *Androulla Georgiou Hambou and Others v. Maria Charalambous Michael and Another*, (1981) 1 C.L.R. 618, in which the Court of Appeal set aside the judgment of a President of the District Court on the ground that his decision amounted only to a verdict regarding the outcome of the appeals against
15 the decision of the Nicosia District Lands Office, without any reasoning at all having been given in support of such verdict.

A hierarchical recourse is not a judicial proceeding in any sense. It is not intended to review the correctness of the
20 hierarchically subordinate organ's decision by reference to the soundness of the reasoning propounded in support thereof but, to establish a second tier in the decision—taking process, designed to eliminate mistakes as well as abuse of authority by subordinates. Hence it is at least as
25 feasible for the superior in hierarchy to take any decision that the subordinate body could reasonably take in the first instance. Both organs in the hierarchy are charged with the same duty—to promote the objects of the law by the application of its provision in particular cases. Generally,
30 it is competent for the body exercising powers in a hierarchical recourse, to review the legality of the decision taken in the first instance, as well as the manner in which they exercised their discretionary powers by reference to the facts of the case—(*Tsoutsos-Administration and the Law*.
35 (1979), p. 63; *Stassinopoulos—Law of Administrative Acts*. (1951) Reg. 177; *Spiliotopoulos—Manual of Administrative Law*, (1977) Vol. 1, pp. 221 - 222).

The Minister of Communications and Works in exercising the powers vested in him by s. 4 of Law No. 9/82

acts in an administrative capacity and not in a quasi-judicial one.

It is well settled that administrative decisions should be adequately reasoned and that the lack of due reasoning renders them contrary to Law and as taken in excess or abuse of power. 5

The reasoning of an administrative decision may be supplemented by the material in the file of the case.

In *Petros Petrides v. The Republic*, (1983) 3 C.L.R. 216, at p. 220, it was said:- 10

“Finally it was argued that the decision was not duly reasoned. It is a fact that it is a rather laconic decision but it does, in my view, clearly convey the reason why the recourse was allowed, i.e. the better service of the inhabitants of the area concerned; and bearing in mind that the reasoning behind the decision may legitimately be supplemented from the material contained in the files which in fact, as stated earlier on, do contain all the reasons for such decision this ground also fails”. 15 20

The decision of the Minister in *Petrides* case (supra) was as follows:-

«Αφού έλαβα υπόψη όλα τα στοιχεία που τέθηκαν μπροστά μου, κατέληξα στο συμπέρασμα πως για την καλύτερη εξυπηρέτηση του χωριού Φλάσου, δικαιολογείται η χορήγηση της αιτουμένης άδειας. 25

2. „Γιό τον πάνω λόγo η προσφυγή αυτή επιτρέπεται».

“Having taken into consideration all the material placed before me, I reached the conclusion that for the better service of the village of Flasou the grant of the permit applied for is justified. 30

2. For the reason aforesaid this recourse is allowed.”)

In *Tsouloftas v. Republic*, (1983) 3 C.L.R. 426, it was said:- 35

“So long as the decision conveys on examination of its contents and the background thereto the reasons why a given decision is taken, it cannot be faulted for lack of due reasoning”.

5 What is “due reasoning” is a question of degree dependent upon the nature of the decision concerned—(*Athos Georghiades v. Republic*, (1967) 3 C.L.R. 653, 666).

10 In the present case the sub judge decision is a very short, three-line document. The brevity of the decision is not indicative of reasoning or no reasoning. It is the contents and context thereof that must be considered in the circumstances of each particular case.

15 Most of the points raised in the appeal in the hierarchical recourse are not part of the decision under review by the Minister. The Minister simply said that the decision of the Licensing Authority was correct and he reached such conclusion on the material before him. He gives no reason whatsoever why he arrived at such a conclusion and no reason whatsoever for such decision is found in the records
20 related thereto.

The reasoning may be ascertained and supplemented from the material in the file of the Administration—(*Hii-Savva v. Republic*, (1972) 3 C.L.R. 174; *Mavrommatis v. The Republic*, (1977) 3 C.L.R. 380; *Ploussion v. Central Bank*, (1978) 3 C.L.R. 18; *Marangos v. The Republic*, (1983) 3 C.L.R. 682).

30 In the present case no reasoning can be ascertained from the file, and the material to which reference is made in the sub judge decision does not satisfy the requirement for reasoning of an administrative decision.

The sub judge decision lacks due or any reasoning and, therefore, it would be annulled.

In view of the aforesaid I need not embark on the other grounds on which this recourse is based.

35 Section 4 of Law No. 9/82, whereby a hierarchical recourse was made and in virtue of its provisions the power

for review was vested in the Minister, was repealed and substituted by ss. 4 and 4A of the Motor Transport Regulation (Amendment) Law, 1984 (Law No. 84 of 1984). Relevant for this case is also s. 6 of this Law.

In the result the sub judice decision is declared null and void and of no effect whatsoever. Let there be no order as to costs. 5

*Sub judice decision annulled.
No order as to costs.*