

1986 June 18

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

DEMETRIOS DEMETRIOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF COMMERCE AND
INDUSTRY,

Respondents.

(Case No. 251/85).

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- Legitimate Interest—Acceptance of an administrative act—
Lack of acceptance a prerequisite to the justiciability of
the act under Article 146 of the Constitution—Acceptance
connotes consent freely given as a matter of choice—
Acceptance not invalidated by reason of the acceptor's
inner fear or misconception of facts relevant to acceptance
—Pressure culminating in the elimination of the freedom
of choice—Acceptance resulting therefrom is not an ac-
ceptance in the above sense.* 5
 - Constitutional Law—Constitution, Article 28—Export of goods
(animals)—Policy requiring refund to government of the
amount of subsidy paid for rearing the animals—No such
condition in respect of sales in the home market—Dis-
tinction reasonable.* 10
 - The Defence (Export of Goods) Regulations, 1956—Reg. 3(1)—
Discretion to impose terms and conditions relating to such
exports.* 15

By virtue of an export licence the applicant exported
285 “shami” goats to Saoudi Arabia, receiving approxi-
mately £78,826—a most profitable transaction, as the 20

applicant acknowledged. One of the terms of the said licence required the applicant to refund to government an amount equivalent to the cost incurred by government for the subsidization of the feeding of the animals in question.

5 After completing the export and implementing the said term, the applicant filed the present recourse, challenging the validity of the said licence and particularly its afore-
10 said term. He alleged that the apparent acceptance of the said term betrayed no real consent to the decision, as he was pressured by officials of the appropriate Authority to accept it and he was labouring under fear of losing a profitable contract.

15 The applicant submitted that the sub judge decision was taken in abuse of power. The said term was onerous and legally impermissible as the applicant was not the breeder of the animals. The decision was taken by an incompetent organ. It amounted to discriminatory treatment in breach of Article 28.1 of the Constitution.

20 The respondents denied every allegation of pressure upon the applicant and justified the sub judge decision and the imposition of the impugned term under reg. 3(1) of the Defence (Export of Goods) Regulations, 1956.

25 *Held, dismissing the recourse:* (1) Lack of acceptance of an administrative act is a prerequisite of justiciability of a cause under Article 146. Acceptance connotes consent freely given as a matter of choice of the person giving it. Acceptance ceases to be the by-product of free choice, where it is the result of pressure culminating in the elimination of the freedom necessary to make acceptance an expression of one's choice. In contradistinction acceptance freely given cannot be invalidated because of inner fears or resulting from the acceptor's misconception of the facts relevant to the acceptance. Acceptance may be inferred from conduct.

35 In this case the evidence adduced showed that the applicant accepted and fulfilled the condition and the permits in its entirety unreservedly and gladly too. It follows that

the applicant has no legitimate interest to pursue the present proceedings.

(2) The outcome of the recourse would not have been different, if the Court were to advert to the merits of the complaint, too. It is judicially settled that reg. 3(1) of the Defence Regulations continued in force after the establishment of the Republic (*Irfan v. Republic*, 3 R.S.C.C. 39 at 42). In virtue of the said regulation the respondents are the arbiters of the desirability of attaching terms and conditions to the export of goods and their content. The reasoning of the sub judge decision was explicit, whereas the inquiry made to ascertain the amount of the subsidy was wholly adequate. 5 10

The decision was in conformity with policy to make the export of animals dependent on the refund of government subsidization for rearing the same. The disposal of animals in the home market was not subject to such a condition. The distinction is reasonable. In the second case the beneficiaries are the Cyprus public, who bear the burden of the subsidy, whereas in the first case the beneficiaries are outside the country and do not contribute to the subsidy. The condition was neither unjustified nor discriminatory against applicant. 15 20

Recourse dismissed.

No order as to costs. 25

Cases referred to:

Alexandrou and Others v. The Republic (1984) 3 C.L.R. 15;

Papadopoulou and Another v. C.B.C. (1985) 3 C.L.R. 2274;

Irfan v. The Republic, 3 R.S.C.C. 39. 30

Recourse.

Recourse against the validity of an export licence issued to applicant to export 285 "Shami" goats to Saudi Arabia and particularly against the term that required the applicant to refund to Government an amount equivalent to 35

the cost incurred by Government for the subsidization of the feeding of the animals.

A. Eftychiou, for the applicant.

St. Ioannides (Mrs.), for the respondents.

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Cur. adv. vult.

PIKIS J. read the following judgment. By virtue of an export licence the applicant exported 285 "shami" goats to Saudi Arabia, receiving US \$121,378.- (One Hundred and Tewnty One Thousand, Three Hundred and Seventy
10 Eight US Dollars), the equivalent approximately of Cyprus Pounds £78,826.- (Seventy Eight Thousand, Eight Hundred and Twenty Six Cyprus Pounds)—a most profitable transaction, as the applicant acknowledged. Because of the profitability of the deal the applicant was most anxious to
15 secure the licence and make the export before 7th January, 1985, the date the letter of credit opened in his favour was due to expire. The licence given him on 17.12.84 enabled him to export the animals in time and thus complete the transaction that yielded, as we may infer, considerable
20 profit.

After completing the export in accordance with and subject to the terms of the permit, he questioned the permit by the present recourse as invalid, particularly the term that required him to refund to government, as a condition
25 for making the export, an amount equivalent to the cost incurred by government for the subsidization of the feeding of the animals. In accordance with the data of the Ministry of Agriculture the goats are fed to the extent of 70% by foreign imported barley, supplied to animal breeders at
30 considerable discount; subsidized to the extent of 65% of its value.

The decision is challenged as invalid for excess of power. The imposition of the term was legally impermissible, as alleged, because the applicant was not the breeder himself.
35 Moreover, the decision was taken by an incompetent organ, whereas the term in itself is challenged as onerous. It amounted to discriminatory treatment in breach of the

provisions of Article 28.1 of the Constitution. The apparent acceptance of the term by the applicant betrayed no real consent to the decision, as he was pressured by officials of the appropriate Authority to accept it. Being thus pressured and labouring under constant fear of losing a profitable contract, he agreed to the term and, in fact, implemented it by authorising the Bank of Cyprus to remit the amount representing the equivalent of subsidization. 5

Respondents disputed every suggestion of pressure having been exerted upon the applicant to accept or in any way misleading him about the term in question. In their contention, applicant was fully cognizant with both the policy of the Ministry in this area and, the implications of any export licence that might be secured; his only concern being to secure the licence as early as possible. Not only he accepted the permit without protest, but with gratitude too. Acceptance of the terms of the permit, as the respondents submitted, disentitled the applicant from pursuing the present recourse. Charges of excess or abuse of power in taking the decision are denied. The imposition of the impugned term in particular, was in the power of the respondents, in accordance with reg. 3(1) of the Defence (Export of Goods) Regulations 1956, conferring power on the respondents to impose such terms and conditions for the export of goods, as they may deem appropriate. Having accepted the decision the applicant does not possess, in their contention, the necessary interest, postulated by Article 146.2 of the Constitution, to pursue the proceeding, while the decision itself is supported as a legitimate exercise of the power of the respondents. 10
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Legitimacy of the interest of the applicant to raise and pursue the proceedings:

In this, as in other fields of the law, acceptance connotes consent freely given as a matter of choice of the person giving it¹. Acceptance ceases to be the by-product of free choice, where it is the result of pressure culminating in the 35

¹ Alexandrou and Others v Republic (1984) 3 C.L.R. 15,
Papadopoulos and Another v CBC (1985) 3 C.L.R. 2274

elimination of the freedom necessary to make acceptance on expression of one's own choice. In contra-distinction, acceptance freely given cannot be invalidated because of inner fears not engendered by an outsider or resulting from the acceptor's misconception of the facts relevant to acceptance. Acceptance may be inferred from one's explicit actions or indirectly as a necessary inference from his conduct. As explained by *Professor Dagtoglou*¹, not only acceptance saps the legitimacy of the interest of a party to seek the review of administrative action, but non-acceptance is a prerequisite for the legitimacy of the interest of a party to propound the cause. In other words, lack of acceptance is a prerequisite of justiciability of a cause raised under Article 146.

Because of allegations or insinuations adumbrated in the recourse and, more specifically made in the addresses that the Authorities exerted pressure upon the applicant to accept unreservedly the relevant term, evidence was received from the applicant and Mr. Yiannakis Loucaides, the officer who handled the application for an export licence, and Mr. Loucas Charalambous, the Director of the Grain Commission, who assumed ultimate responsibility for the determination of the amount of the subsidy to be refunded. Far from supporting the above allegations the evidence of the applicant tends to establish that no pressure was exerted upon him to accept the relevant condition, saying characteristically at some stage of his evidence that no one compelled him to accept. "I judged it was in my interest to do so." Elsewhere in his testimony he was vague and to a degree uncertain whether, as suggested to him by counsel for the respondents, Mr. Loucaides informed him from the very beginning, when he made inquiries, that any export licence that might be given, would be accompanied by a condition for the refund of an amount equivalent to the subsidization of the feed of the goats. He acknowledged, however, that Mr. Loucaides helped him a lot with his inquiries and the issue of the licence that enabled him to carry through a successful commercial transaction.

Mr. Loucaides stated in his evidence that he told appli-

¹ General Administrative Law, pp. 231, 232.

cant from the very beginning that refund of the subsidy would be a condition precedent to any export licence that might be granted and that applicant was all along not only willing but anxious to secure a licence subject to the impugned condition. I wholly accept the testimony of Mr. Loucaides as accurately reflecting the facts preceding and accompanying the issue of the licence, as well as the testimony of Mr. Charalambous. It emerges from the testimony of the latter that not only applicant was aware of the intention of the respondents to incorporate the relevant condition, but both he and the purchaser were anxious that the amount would be quantified the soonest, so that he could comply with the condition and have the way paved for the export of the goats. For that reason, instructions were given to the Bank of Cyprus to pay, on his behalf, a sum equivalent to a pre-estimate of the amount of subsidization, part of which was refunded when the final estimate came to less than the pre-estimate.

In my judgment, not only the applicant accepted and fulfilled the condition and the permit in its entirety unreservedly, but gladly too. It very much seems to me that after concluding the successful export and realising the anticipated profit, he raised the present proceedings in order to enhance his profit further. I, therefore, find applicant has no legitimate interest to pursue the present proceedings that must, on that account, be dismissed. *The outcome of the recourse would be no different if we were to advert to the merits of the complaint, too.* In the contention of applicant the decision was invalid because it was taken in excess of power or in abuse of it, that is, the condition was imposed for reasons unconnected with the power vested in the respondents. Also, discretion to impose such power is questioned by reference to the law pursuant to the provisions on which it was imposed, namely, regulation 3(1) of the Defence (Export of Goods) Regulations 1956. That the regulation continued in force after the establishment of the Republic, is judicially settled—see, *Hussein Irfan v. Republic*¹.

Regulation 3(1) confers discretion on the respondents to

¹ 3, R S C C 39, 42

impose such terms and conditions for the export of goods as they may deem appropriate. So, they are the arbiters of the desirability of attaching terms and conditions to the export of goods and their content. The necessity for controlling the export of goods cannot be doubted. It is an aspect of the overall responsibility of the State for the financial and economic affairs of the country.

The decision in the particular case was in conformity with the policy of the respondents to make the export of goods dependent on the refund of government subsidization for rearing the animals. The disposal of the animals in the home market was not subject to a similar condition or constraint. Was the distinction reasonable? The answer is definitely in the affirmative. In the latter case the eventual beneficiaries of the subsidy are the Cyprus public at large who eventually bear the burden of the subsidy through one form of taxation or another; whereas in the case of export the beneficiaries, the purchasers and the consumers are outside the country and, in no way, contribute to the subsidy for the feeding of the animals. The condition was in no sense unjustified nor discriminatory against the applicant. Moreover, the decision was not defective, as alleged, for lack of due reasoning. The reasoning of the decision was explicit, whereas the inquiry made to ascertain the precise sum of the subsidy was wholly adequate.

In the result the recourse is dismissed. As the outcome of the decision was, because of the unqualified acceptance of the administrative act, a foregone conclusion and not the result of the inquiry made into the merits of the decision, I shall adjudge the applicant to pay costs, if costs are claimed by the respondents.

Mrs. Ioannides: We claim no costs.

COURT: Let there be no order as to costs.

Recourse dismissed.

No order as to costs.

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