

(1988)

1988 March 22

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

STAMATIOU AND LARTIDES LTD.,

*Applicants,*

v.

THE CYRPUS TELECOMMUNICATIONS AUTHORITY,

*Respondent.*

(Case No. 1072/85).

*Executory act—Informative act—The latter cannot be challenged by a recourse.*

*Cyprus Telecommunications Authority—Fees in respect of the provision, installation and maintenance of subscriber owned private branch exchanges (P A B X)—Whether relevant regulations ultra vires The Inland Telecommunications Service Law, Cap. 302—Question determined in the negative.*

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The facts of this case sufficiently appear in the judgment of the Court.

*Recourse dismissed.*

*No order as to costs.*

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*Cases referred to:*

*Kyriakides v. The Republic* (1982) 3 C.L.R. 611;

*Savva v. The Republic* (1986) 3 C.L.R. 1222;

*Malesis v. The Republic* (1986) 3 C.L.R. 1214.

**Recourse.**

5 Recourse against the decision of the respondent whereby certain fees were payable to the respondent in respect of the provision, installation and maintenance of subscriber owned private branch exchanges by the parties.

*Chr. Clerides*, for the applicants.

*A. Hadjioannou*, for the respondent.

*Cur. adv. vult.*

10 A. LOIZOU J. read the following judgment. By the present recourse the applicant company seeks a declaration of the Court that the decision of the respondent Authority contained in its letter of the 17th October 1985, to the effect that certain fees were payable to the respondent in respect of the provision, installation and maintenance of subscriber owned private branch exchanges (PBXS),  
15 by their parties, is null and void and of no legal effect whatsoever.

20 The applicant company supplies private branch exchanges, electronic equipment, telephones, etc. on the 26th September 1985 and 7th October 1985, "intending to market, install and maintain PABX Systems" they wrote to the respondent Authority to be informed of the "possible one time and recurrent changes payable" to it, who replied on the 17th October 1985, that the following fees were payable.

- 25 1. Equipment approval fees based on the cost of such equipment (non-recurrent), payable by the supplier.
2. Fees for the work necessitated for the approval of the installation and connection of the Authority's network, payable by the subscriber, and,
3. Annual maintenance fees, payable by the subscriber.

The applicant Company informed the respondent Authority that it was willing to pay equipment approval as well as installation and connection fees for the PABX system but declined to pay any fees for a sociate equipment, for each extension for other customers. It declined to pay annual maintenance fees in view of the fact that such would be carried out by the applicants. 5

The respondent Authority replied on the 21st December 1985, to the effect that:

"The rates quoted had been fixed by the Authority in accordance with its rules and regulations and were final. 10

The fees payable in respect of (a) associate equipment (b) extensions and (c) other connections were not the actual installation/connection fees but fees for work necessitated for the approval of their connection with the Authority's network.

The fees payable for maintenance represented the compensation for the involvement of the Authority in case of malfunctions of the subscriber's equipment." 15

The applicant as a result filed the present recourse.

Before proceedings to deal with the recourse on its merits I propose first to consider whether the sub judice letter amounts to an executory administrative decision within the ambit of Article 146 of the Constitution, a matter which can be examined by this Court ex proprio motu. 20

Relevant is, what was stated in the case of *Vassos Kyriakides v. The Republic* (1982) 3 C.L.R. 611 at 619, to the effect that: 25

"It is well settled that a letter, which is merely of an informative nature and does not contain a decision creating a new legal situation, is not of an executory nature and, therefore, it cannot be made the subject-matter of a recourse under Art. 146." 30

5      Similarly in the present instance, I consider that the letter of the respondent of the 17th October 1983, which is challenged by the present recourse does not contain an executory administrative decision but only information in reply to the applicant's letter of the 26th September 1985, requesting "a list of possible one-time and recurrent changes payable to CYTA" and is as such outside the scope of Article 146 of the Constitution. (See *Savva v. The Republic* (1986) 3 C.L.R. 1222 at p. 1228; *Malesis v. The Republic* (1986) 3 C.L.R. 1214 at p. 1219.

10      However, if it were to be found that such letter is of an executory nature, I propose to consider briefly the grounds of law put forward on behalf of the applicant company.

15      It was argued that under section 19(1) of the Inland Telecommunications Service Law, Cap. 302, the respondent Authority is not a profit making organization and therefore all changes, being fees and not taxes, must be correlated to the costs of rendering such services and that the total revenue of the Authority must be such as to cover its liabilities and provide for further development. Consequently, since all installations and connection will be carried out by the applicant company, as well as any maintenance, such fees as specified are arbitrary and unjustified and are contrary to law and any regulations supporting the imposition of such fees must be ultra vires the law.

25      It was also argued that under section 43 of Cap. 302 the respondent Authority has no power to precharge for its services especially in view of the fact that such services may never be required if no malfunctioning ever occurs.

30      I do not consider that the charges as contained in the respondent's letter of the 17th October 1985, are excessive or contrary to the Law or that the respondent Authority will be charging for something in respect of which no service will ever be offered because, even when maintenance, which is the only item to which such arguments can be related to, is carried out by the subscriber under Regulation 36(2) the Authority still has to maintain its in-

ternal installations of which the subscriber's equipment is connected and also when there is any malfunctioning of the subscriber's equipment, the Authority may inevitably be involved to ascertain the sources of such malfunctioning and whether it originates from its own end from the subscriber's equipment. Nothing in my view contained in the regulations in question is contrary to or in conflict with the provisions of the Law; they are therefore not ultra-vires the law as suggested. 5

For the reasons stated above this recourse must fail and is hereby dismissed with no orders as to costs. 10

*Recourse dismissed.  
No order as to costs.*