

1968
Nov 28

[VASSILIADES, P, TRIANTAFYLIDIS AND JOSEPHIDES, JJ]

ANDREAS
DEMETRIADES
v
THE POLICE

ANDREAS DEMETRIADES,

Appellant,

v

THE POLICE,

Respondents

(Criminal Appeal No. 3029)

Wireless Telegraphy Law Cap 307—Annual licence Fees—Differentiation introduced by regulation 5 of the Wireless Telegraphy Regulations 1955 to 1966, between the annual licence fee for the maintenance of a car radio and the annual licence fee for radios installed elsewhere—Such differentiation neither ultra vires section 6 (1) (f) of Cap 307 (supra) nor repugnant to Articles 19 and 28 of the Constitution—See, also, herebelow.

Constitutional Law—Constitutionality of regulation 5 of the Wireless Telegraphy Regulations (supra)—Article 19 of the Constitution safeguarding the enjoyment of the right to receive information and ideas—Article 28 safeguarding the principle of equality—Article 29 does not exclude reasonable differentiations or Distinctions—Such as the differentiation introduced by the aforesaid regulation 5 (supra)

Equality—Principle of equality—Article 28 of the Constitution—See above

Right to receive information or ideas—Enjoyment of such right safeguarded under Article 19 of the Constitution—See above

In this case the appellant appeals against his conviction by the District Court of Nicosia, of the offence of maintaining an apparatus for wireless telegraphy without a licence, contrary to sections 3 (1) and 11 (a) (ii) of the Wireless Telegraphy Law, Cap 307, and regulation 5 of the Wireless Telegraphy Regulations 1955 to 1966, the particulars of the offence being that on the 1st day of February, 1967, he did maintain a Becker valve apparatus for wireless telegraphy which was, in fact, a radio installed in his motor car—without a licence from the appropriate authority

This appeal is solely based on the ground that regulation 5, as re-enacted in 1966, has invalidly prescribed a higher annual licence fee, £3—, for a radio installed in a car, as compared

with the annual licence fee, £1.250 mils, for a radio maintained elsewhere. It was argued by counsel for the appellant that regulation 5 is *ultra vires* section 6 (1) (f) of Cap. 307 (*supra*) because it introduces, by way of prescribing fees, a differentiation, between car radios and other radios, which is allegedly unwarranted. It was further argued that regulation 5 results in unequal treatment contrary to Article 28 of the Constitution, regarding the enjoyment of the right safeguarded under Article 19 which includes the right to receive information and ideas.

In dismissing the appeal, the Court :

Held, per TRIANTAFYLIDIS J., (VASSILIADES P. and JOSEPHIDES J., *concurring*) :

(1) I cannot agree that the differentiation made by regulation 5 is so unreasonable, or otherwise unjustified, as to lead me to the conclusion that the relevant enabling powers have been used in a manner which is outside the ambit of their object and that, consequently, regulation 5 is *ultra vires*.

(2) The right to equality in the enjoyment of any fundamental right—such as that safeguarded under Article 19 of the Constitution—is not so absolute as to exclude reasonable differentiations or distinctions (see, *inter alia*, *Mikrommatis and the Republic* 2 R.S.C.C. 125, as well as the decision of the European Court of Human Rights in the *Belgian Linguistic Case*).

(3) (a) In the present case, regulation 5 (*supra*) does not entail an arbitrary differentiation between car radios and other radios resulting in any violation of Articles 19 and 28 of the Constitution.

(b) I take the view that the installation and use of a radio in a car is something distinguishable from and beyond the ordinary minimum daily necessity of having a radio available at one's home or at one's place of work ; it is somewhat in the nature of a luxury, by, at any rate, present standards, and it is, thus, reasonably, amenable to different treatment as regards annual licence fee.

Appeal dismissed.

Cases referred to :

Mikrommatis and the Republic, 2 R.S.C.C. 125 ;
The Decision of the European Court of Human Rights in the Belgian Linguistic Case.

1968

Nov. 28

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ANDREAS
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v.
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Appeal against conviction

Appeal against conviction by Andreas Demetriades who was convicted on the 24th August, 1968, at the District Court of Nicosia (Criminal Case No. 10388/68) on one count of the offence of maintaining an apparatus for wireless telegraphy without a licence, contrary to sections 3 (1) and 11 (a) (ii) of the Wireless Telegraphy Law, Cap. 307 and regulation 5 of the Wireless Telegraphy Regulations, 1955 to 1966 and was discharged absolutely by Mavrommatis, D.J.

A. Triantafyllides with *S. Spyridakis*, for the appellant.

K. Talarides, Senior Counsel of the Republic, for the respondents.

VASSILIADES, P.: We find it unnecessary to call on the other side. And I shall ask Mr. Justice Triantafyllides to give the first Judgment.

TRIANTAFYLLIDES, J.: In this case the appellant appeals against his conviction, on the 24th August, 1968, by the District Court of Nicosia, of the offence of maintaining an apparatus for wireless telegraphy without a licence, contrary to sections 3 (1) and 11 (a) (ii) of the Wireless Telegraphy Law, Cap. 307, and regulation 5 of the Wireless Telegraphy Regulations, 1955 to 1966; the particulars of the offence being that on the 1st day of February, 1967, he did maintain a Becker valve apparatus for wireless telegraphy—which was, in fact, a radio installed in his car—without a licence from the appropriate authority.

The conviction is not attacked on any question of fact; it is common ground that, at the material time, the appellant did maintain the said radio and that he did not have a licence for the purpose.

This appeal is based on the ground that regulation 5, as re-enacted in 1966 (see Not. 297 in the Third Supplement to the official *Gazette* of the 9th June, 1966) has invalidly prescribed a higher annual licence fee, £3, for a radio installed in a car, as compared with the annual licence fee, £1,250 mils, for a radio maintained elsewhere.

Learned counsel for the appellant has submitted, first, that regulation 5 is, in essence, *ultra vires* section 6 (1) (f) of Cap. 307, because it introduces, by way of prescribing fees, a differentiation, between car radios and other radios, which is unwarranted.

Bearing in mind the essential nature of things, as well as the purpose of the relevant enabling powers, I cannot agree that the differentiation made by regulation 5 is so unreasonable, or otherwise unjustified, as to lead me to the conclusion that the said powers have been used in a manner which is outside the ambit of their object and that, consequently, regulation 5 is *ultra vires*.

Secondly, counsel for the appellant has submitted that regulation 5 results in unequal treatment regarding the enjoyment of the right safeguarded under Article 19 of the Constitution, which includes the right to receive information and ideas. It has not been submitted that the making of provision for the payment of a fee for an annual licence to maintain a radio violates, as such, Article 19; counsel's contention is that the differentiation made between the annual licence fees for car radios and other radios entails an infringement of Article 19 when taken together with Article 28, which safeguards the right to equality and prohibits discriminatory treatment.

The right to equality in the enjoyment of any fundamental right—such as that safeguarded under Article 19—is not so absolute as to exclude reasonable differentiations or distinctions (see, inter alia, *Mikrommatis and The Republic*, 2 R.S.C.C. 125, as well as the Decision of the European Court of Human Rights in *The Belgian Linguistic Case*).

In the present case, I am not of the opinion that counsel for the applicant has managed to satisfy me (and the burden was on him) that regulation 5 entails the making of an arbitrary differentiation between car radios and other radios, with the result that Articles 19 and 28 have been violated; I take the view that the installation and use of a radio in a car is something distinguishable from and beyond the minimum ordinary daily necessity of having a radio available at one's home or at one's place of work for the purpose of keeping in touch with what is happening in his country and the world around him, and of listening to other radio broadcasts; it is somewhat in the nature of a luxury, by, at any rate, present standards, and it is, thus, reasonably amenable to different treatment as regards annual licence fee.

For the foregoing reasons, I would dismiss this appeal.

VASSILIADES, P.: I agree. I found the elaborate argument advanced on behalf of the appellant quite interesting.

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1968

Nov. 28

—
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DEMETRIADES

v.

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Vassiliades, P.

Learned counsel have, apparently, put in a lot of work into the matter and have done useful research ; but I do not find myself convinced, in the end, that their submissions can be sustained. For the reasons stated by Mr. Justice Triantafyllides, I agree that this appeal must be dismissed.

JOSEPHIDES, J.: I also agree. I am of the view that the imposition of a higher fee for the maintenance of a car radio is not *ultra vires* the law (Cap. 307). Nor am I satisfied that this differentiation is arbitrary ; consequently, I hold that the relevant regulation is not unconstitutional.

VASSILIADES, P.: In the result this appeal is dismissed.

Appeal dismissed.