

1977  
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[A. LOIZOU, J.]

MELIS  
CONSTANTINOU  
v.  
REPUBLIC  
(MINISTRY OF  
FINANCE  
AND ANOTHER)

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION  
MELIS CONSTANTINOU,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH THE  
MINISTRY OF FINANCE AND ANOTHER,

*Respondents.*

(Case No. 141/76).

*Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151 (as amended by Law 23/65)—Section 6B(1) (b) thereof restricting the importation or manufacture of “flipper” machines—Not unconstitutional as being contrary to Articles 23 and 25 of the Constitution—Said restrictions absolutely necessary in the interests, inter alia, of public morals, public order and public interest.*

*Constitutional Law—Right to property and right to practise any profession or to carry on any occupation, trade or business—Articles 23 and 25 of the Constitution—Section 6B(1) (b) of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151 (as amended by Law 23/65) not unconstitutional as being contrary to the aforesaid Articles.*

*Monopoly—Section 6B(1) (b) of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151 (as amended by Law 23/65)—Differentiations between importation of new “flipper” machines and those already possessed—Does not create a monopoly.*

The sole issue for consideration in this recourse was whether section 6B(1) (b) of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151 (as amended), which prohibits the importation or manufacture of machines commonly known as “Flippers” was unconstitutional as offending the right of ownership and the right to practise any profession or to carry on any occupation, trade or business, safeguarded by Articles 23 and 25 of the Constitution.

5 In support of the contention of unconstitutionality it was  
submitted that the definition of a gaming machine in the above  
Law was so wide and sweeping covering thereunder all kinds  
of machines, including toys, and it could not, therefore, be a  
mere restriction which the State was empowered to impose on  
the exercise of the said rights by virtue of the provisions of  
Articles 23.3 and 25.2 of the Constitution. It was further  
submitted that the above section created a monopoly for those  
people who were, at the time of its enactment, in possession  
10 of such machines and who, subject to the conditions of sub-  
section 2 thereof, may continue using them and in a sense  
without a limitation as to time, as the law permits the impor-  
tation of spare parts for the maintenance of these machines.

15 *Held*, (1) that the object of the said section, emanating from  
the provisions, *inter alia*, of sub-section 2, is to protect from  
time-wasting activities which, with the consequential gathering  
of people and associations, entail generally the development  
of bad habits, particularly among the youth; that looking at  
20 the whole of the enactment and bearing in mind that the le-  
gislation must be considered innocent till it is proved guilty  
beyond reasonable doubt, this Court has come to the conclu-  
sion that the restriction on the importation and manufacture  
of the said machines is not unconstitutional as being contrary  
to or inconsistent with Articles 23.3 and 25.2 as it can pro-  
25 perly be considered to be absolutely necessary in the interests,  
*inter alia*, of public morals and in the case of Article 25.2 of  
public order and in the public interest.

30 (2) That the argument that the different approach in re-  
spect of the importation of new machines and those already  
possessed creates a monopoly cannot succeed as offending any  
provisions of the Constitution because it merely regulated  
existing rights at the time of the enactment of the Law.

*Application dismissed.*

**Recourse.**

35 Recourse against the decision of the respondents where-  
by 11 "Pin Tables" were found to be "flipper" machines  
the importation of which is prohibited and had to be re-  
exported.

*R. Michaelides*, for the applicant.

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R. Gavrielides, Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgment was delivered by:-

A. LOIZOU, J.: The applicant imported through the Limassol Port 18 packages said to contain various goods, *inter alia*, 11 "Pin Tables". Upon information received later by the Collector of Customs, those 11 Pin Tables were found to be "flipper" machines the importation of which was prohibited under section 6(B) (1) (b) and (4) of the Betting Houses, Gaming Houses and Gambling Prevention Law, Cap. 151 as amended by Law 23/65 and sections 39(b), 188 and 191(b) of the Customs and Excise Law, 1967 (Law 82/67). As these prohibited imports escaped the attention of the Customs personnel at the time of the examination and they allowed their clearance, the Collector orally requested the applicant to return these goods to the Customs pending their re-exportation. The applicant duly complied, but protested in writing and requested their re-delivery to him to which the respondent addressed a letter drawing his attention to the relevant sections of the Law contravened and requested him to proceed with the re-exportation of the goods, otherwise they might be forfeited without prejudice to the eventual prosecution of the offences.

Section 6 B (1) provides that every person who (a) has in his control or possession any gaming machine or permits that such gaming machine be installed or used on any premises of which he has the control or possession otherwise than in accordance with the conditions referred to in sub-section (2) and (b) imports or manufactures any such machine, is guilty of an offence and liable to imprisonment not exceeding two years or fine not exceeding £200 or to both, and the Court is empowered also to order forfeiture of such machine.

It is not in dispute that the machines in question, subject matter of these proceedings, are "Flippers" that is to say, gaming machines within the definition of section 6 B (4) of the Law, as amended by Law 23/65, which provides that for the purposes of the said section gaming machine means any machine commonly known or called

5 “Flipper” which aims at offering simple pleasure to the person operating it and no monetary or other consideration and the playing of which calls for further activity on behalf of the person handling it in addition to setting it in motion and which offers sufficient possibility of exercise of skill on one’s behalf or any other machine which is declared by order of the Council of Ministers published in the official Gazette of the Republic as gaming machine for the purposes of this section and further it includes any spare part of such machine.

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It was contended on behalf of the applicant that section 6 B (1) (b) of the Law which prohibits the importation or manufacture of such machines, is unconstitutional, as offending the right of ownership and the right to practise any profession or to carry on any occupation, trade or business, safeguarded by Articles 23 and 25 of the Constitution.

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The first reason for this contention is that the definition of a gaming machine is so wide and sweeping covering thereunder all kinds of machines, including toys and, therefore, it could not be a mere restriction which the State is empowered to impose on the exercise of the aforesaid rights by virtue of the provisions of para. 3 of Article 23 and para. 2 of Article 25 of the Constitution, and at that, absolutely necessary in the case of Article 23 or necessary in the case of Article 25, in the interests, *inter alia*, of public morals.

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The second reason is that this section creates a monopoly for those people who were, at the time of its enactment, in possession of such gaming machines and who, subject to the conditions provided by sub-section (2) thereof, may continue using them and in a sense without limitation as to time, as the law permits the importation of spare parts for the maintenance of their machines.

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In my opinion, the restriction on the importation and manufacture of such machines is not unconstitutional as being contrary to or inconsistent with the said Articles as they can properly be considered to be absolutely necessary in the interests, *inter alia*, of public morals and in the case of Article 25, para. 2, of public order and in the public interest.

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The legislator, who, in view of the expressions "imposed by law" in para. 3 of Article 23 and "prescribed by law" in para. 2 of Article 25, only can decide to what extent fundamental rights and liberties safeguarded by the Constitution should be restricted or limited, intimates by what is provided in sub-section (2), para (a) of section 6 B of the Law, in particular the object of these restrictions which are clearly within the bounds permitted by the Constitution. Sub-section (2) even regulated the use of already owned appliances and subjected it to certain conditions. Under para. (a) thereof, a licence from the District Officer is a prerequisite for the installation or use of such machines in any premises and is subject to such conditions, as the District Officer might impose in the public interest, the public morals or public order. Under para. (b) of sub-section (2) the operation or handling of such a machine is prohibited to any person under 18 years of age and under para. (c) thereof, no more than two such machines may be installed or be accessible to any premises.

The object, therefore, of this legislation, as emanating from the provisions, *inter alia*, of sub-section (2) is to protect from time-wasting activities which, with the consequential gathering of people and associations, entail generally the development of bad habits, particularly among the youth.

Further, even if I were to grant that the definition of a gaming machine is as wide as claimed to be by counsel, yet, I am not concerned with that in this case, as the machines, subject matter in these proceedings are those mentioned by name therein and do not come within the wider ambit of this definition and the provisions empowering the Council of Ministers to declare any other machine as a gaming machine for the purposes of sub-section (4). Also, the argument advanced that the different approach in respect of the importation of new machines and those already possessed in the country with the regulation of their control and use, creates a monopoly, cannot, in my opinion succeed either, as offending any provisions of the Constitution. It merely regulated existing, at the time of the enactment of the law, rights.

In arriving at these conclusions I have looked at the

whole of the enactment and I have borne in mind that the legislature must be considered innocent till it is proved guilty beyond reasonable doubt.

5 For all the above reasons the present recourse fails but in the circumstances I make no order as to costs.

*Application dismissed.*  
*No order as to costs.*

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