

1987 November 28

(A LOIZOU J)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS FLORIDES,

*Applicant,*

v

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF FINANCE,

*Respondent*

*(Case No 769/86)*

*Customs and Excise Duties — Motor vehicles, duty free importation of by incapacitated persons — Whether respondent entitled to obtain the views of the Senior Technical Examiner of the Office of Examiners for Drivers — Question answered in the affirmative — Markides v The Republic (1985) 3 C L R 1393 and Tooulis v The Republic (1985) 3 C L R 2478 cited with approval* 5

*Customs and Excise Duties — Motor vehicles, duty free importation of by incapacitated persons — The relief is not granted in respect of the importation of any car, but only in respect of the importation of cars specially adapted for the needs of incapacitated persons — Miltiadous v The Republic (1983) 3 C L R 590 approved* 10

The facts of this case sufficiently appear from the judgment of the Court

*Recourse dismissed*

*No order as to costs*

*Cases referred to* 15

*Kalli v Republic (1984) 3 C L R 443,*

*Ioannou v The Republic (1985) 3 C L R 31,*

*Markides v The Republic (1985) 3 C L R 1393*

*Tooulis v The Republic (1985) 3 C L R 2478,*

*Miltiadous v The Republic (1983) 3 C L R 590*

**Recourse.** 20

Recourse against the decision of the respondent to reject applicant's application for the duty free importation of a car for disabled persons.

L. Clerides, for the applicant.

S. Georghiadēs, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

5 A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the decision of the respondent to reject his application for the duty free importation of a car for disabled persons is null and void and of no legal effect whatsoever.

10 The applicant on the 25th March, 1985, applied for an exemption from the payment of import duty in relation to a motor-car for disabled persons under the provisions of class 01/09 of the Fourth Schedule to the Customs Duties and Excise Laws 1978-1979. His case was accordingly referred to the Medical Board on the 7th April 1986, which examined the applicant and submitted  
15 its relevant report to the respondent on the 13th June 1986.

The views of the Senior Technical Examiner of the Office of Examiners for Drivers were also obtained to the effect that from his examination of the applicant on the 13th June 1986, he concluded that the applicant was able to drive an ordinary vehicle  
20 without any special adaptation.

The respondent informed the applicant on the 2nd October 1986, that in the light of the report of the Medical Board his physical condition did not justify the use of a specially converted car for invalids and his application was therefore rejected. As a  
25 result the applicant filed the present recourse.

The main argument on his behalf is that the matter was wrongly and contrary to law referred to the Senior Technical Examiner as the only competent organ to decide on the matter was the Medical Board. Moreover, it was submitted, the respondent acted under a  
30 misconception of fact in that the report of the Medical Board was not properly evaluated and/or taken into account, as therein the physical condition of the applicant was described as such that would justify the use by him of the kind of vehicle in question.

The question of legality of seeking the opinion of the Senior  
35 Technical Examiner has been considered by the Court on several occasions in the past and the general conclusion is that the Medical Board is the only competent Authority to decide on a person's disability and its extent and that it would be wrong to rely on the

opinion of another body. (See: *Kalli v. Republic* (1984) 3 C.L.R. 443; *Ioannou v. Republic* (1985) 3 C.L.R. 31.)

This Court had the opportunity to consider the matter in the case of *Markides v. The Republic* (1985) 3 C.L.R. 1393, where it was stated at page 1393:

«Whatever the legal position is where there is no interference with the exercise of administrative discretion by a person or organ having no competence in the matter under the relevant legislation, there is, under the General Principles of Administrative Law, no objection to the administration on its own free will to subject its administrative discretion to forms and limitations, not imposed and not provided for by the Law, as a choice of means to form an opinion. In such a case what it cannot do thereafter is to ignore arbitrarily such opinions as same would constitute proof of inconsistent and arbitrary and therefore wrong exercise of discretionary power. The competent administrative organ may, however, do so by giving reasons for that.

Though it may be said that in the present case there was nothing to suggest clearly that the respondent Minister was binding himself to accept the opinion of the Senior Technical Examiner etc., yet it was in the form of further opinion and as part of the wider inquiry carried out by him in the matter. It is obvious that the ascertainment of the extend of invalidity of a person is not enough. It has to be correlated to the interference with safe driving and the requirement of any adaptation that a vehicle may need to meet same (see *Miltiadou* case (supra)). † Such self-binding of the administration, is not contrary to the General Principles of Administrative Law. (See Stassinopoulos, the Law of Administrative Acts, 1951 p. 333, Conclusions from the Case law of the Greek Council of State, 1929-1959, p. 193 and Decisions of the Greek Council of State 738/1933, 934/1933, 1062/1951.)

The same approach was also adopted in the case of *Tooulis v. The Republic* (1985) 3 C.L.R. 2478, where it was stated at p. 2490:

«I fully endorse what was said by A. Loizou, J. in *Markides case* (supra) that under the general principles of Administrative Law, there is no objection to the administration, on its own free will, to subject its

administrative discretion to forms and limitations, not imposed but prohibited by law as a choice of means to form an opinion. (Useful reference may be made in this respect to Stassinopoulos Law of Administrative Acts 1951 at p. 333.

5 See, also, *Efstathios Kyriacou & Sons Ltd. and others v. The Republic* (1970) 3 C.L.R. 106.)»

On the facts, however, it was found therein at p. 2491 that «... the Minister of Finance in reaching his decision has given undue weight to the opinion of the Senior Technical Examiner as against  
10 that of the Medical Board, which materially affected his decision and that he wrongly construed the contents of the report of the Medical Board as suggesting that the applicant did not require a car for invalid person.»

In the present case, on the facts, I cannot reach a conclusion, as  
15 suggested by applicant, that the respondent was unduly influenced in reaching his decision by the report of the Senior Technical Examiner. since it is clear from the respondent's letter to the applicant that the sub judice decision was reached solely «on the basis of the report of the appropriate Medical Board». Such a  
20 decision was therefore properly reached and in accordance with the law.

Before concluding I wish to point out that the applicant applied for the exemption from import duty in respect of, as he specified in his application, of an automatic car with hydraulic steering,  
25 which has not been established to be a specially converted car for use by an invalid person.

As stated in *Miltiadous v. The Republic* (1983) 3 C.L.R. 590, at p. 592, it was not the intention of the law to afford relief from import duty to disabled persons for the importation of any car but  
30 only to those who import vehicles specially adapted to the needs of incapacitated persons.

For the reasons stated above this recourse fails and is hereby dismissed with no order as to costs.

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*Recourse dismissed.  
No order as to costs.*