

1988 May 31

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOS ERACLEOUS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE DIRECTOR OF THE DEPT. OF CUSTOMS,

Respondent,

(Case No. 559/87).

Executory act—Duty free importation of cars for invalid persons—Opinion obtained before importation—It is not justiciable under Art. 146.1 of the Constitution.

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

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*Recourse dismissed.
No order as to costs.*

Cases referred to:

Yiangou v. The Republic (1987) 3 C.L.R. 27;

Symeou v. The Republic (1987) 3 C.L.R. 332.

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Recourse.

Recourse against the decision of the respondents, whereby it was decided that the applicant did not qualify as a disabled person for the importation of a duty free car.

N. Papaefstathiou, for the applicant.

D. Papadopoulou (Mrs.), for the respondent.

Cur. adv. vult.

PIKIS J. read the following judgment. Guided by the decision of the Full Bench in *Yiangou v. The Republic* (1987) 3 C.L.R. 27 I invited argument on the justiciability of the recourse with particular reference to the character of the decision and amenity to review it. In *Yiangou* it was decided that an executory decision to exempt or withhold exemption from the payment of import duty upon the repatriation of a Cypriot can only arise upon the importation of the car. In the Judgment of the Court this was inevitable in view of the provisions of the order itself dealing with the importation of a car, by repatriated Cypriots, and the legal framework in which executory decisions may be taken by the Director of Customs. It was pointed out that the order (meaning the order made under section 11(2) of the Customs and Excise Duties Law) cannot but be read and interpreted subject to the definition of the word 'import' to be found in section 2 of the law confined to the bringing of goods into the Republic by sea or air.

The decision in *Yiangou* was followed in *Symeou v. The Republic* (1987) 3 C.L.R. 332 where it was observed "Under the relevant provisions of the Customs and Excise Duties Law, an executory decision with regard to the payment of import duty, can only come into being on the importation of the goods".

In this case an opinion of the authorities was sought whether applicant qualified as a disabled person and the right if any accruing thereupon to import a car free of duty. Under the provisions of the relevant order, made under section 11 sub-section 2 of the Customs Legislation, a disabled person duly certified to be incapacitated by a medical board is entitled to import free of duty a car subject to a means test applied by the Minister of Finance. Counsel for the Republic submitted that the present case for purposes of justiciability is indistinguishable from that of *Yiangou* in that in

both cases the emergence of an executory decision of the Director of Customs is dependent upon the importation of the goods. Counsel for the applicant submitted that the present case is distinguishable from the decision in *Yiangou* mostly on account of the wording of the two Orders and in particular the specific reference made in the order for the importation of cars by repatriated Cypriots to the time interval within which the goods must be imported, within a reasonable time after their arrival in Cyprus.

Both orders specifically refer to the importation of vehicles and must likewise be interpreted subject to and in accordance with the notion of importation elicited in section 2 of the Customs and Excise Duties Law. Not only section 2 of Law 82/67 as subsequently amended makes the exercise of the power of the Director of Customs dependent on the physical importation of the goods but the whole framework of the exercise of his powers is tied to that reality.

The order here under consideration vests power in the Director to grant relief from the payment of duty upon "the importation" of a car. The Greek word used is "εισαγόμενα" which translated in English means "imported". As a matter of law the elicitation of the eligibility of the importer to a duty free car must be ascertained at the date of importation.

The opinion of the Government Medical Board is no doubt an act preparatory to the exercise of the powers of the Director. However, if this opinion is extricated from the actual importation of a car it can at the highest be of an advisory or informatory character. An executory decision of the Director can only arise upon the importation of a car. Perhaps the Law ought to have been different and a person claiming the benefits of disability under the provisions of the relevant order should have an executory decision in his hands before importing a car adapted to his needs. And the authorities should, I believe, give consideration to this possibility. Be that as it may as the Law presently stands I am constrained, for the reasons earlier indicated, to rule that the decision is non justiciable. That being the case it is I believe inadvis-

ble to express an opinion on the merits of the case for the eligibility of the applicant under the order here reviewed must be determined at the date of the importation of the car. One's disability may worsen or for that matter improve with the passage of time. I consider it inopportune to express a concluded opinion on the merits of the case. 5

The recourse is, therefore, dismissed for lack of justiciability.

Recourse dismissed.