

(1988)

1988 June 28

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNIS ANASTASSIOU,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF FINANCE,

*Respondent.*

*(Case No. 583/87).*

*Customs and Excise Duties—Duty free importation of cars for invalid persons—Whether administration entitled to take into consideration a report by the Senior Technical Examiner—Question determined in the affirmative—Indeed, there is no objection to the administration on its own free will to submit its discretion to forms or limitations (not provided for by the law), as a choice of means to form an opinion.*

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

*Recourse dismissed.  
No order as to costs.*

*Cases referred to:*

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

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

*Kalli v. The Republic* (1984) 3 C.L.R. 443;

*Florides v. The Republic* (1987) 3 C.L.R. 1770;

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

### Recourse.

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

A. *Scordis*, for the applicant.

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

*Cur. adv. vult.*

10 A. LOIZOU P. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the decision of the respondent by which his application for the importation of a duty free car for disabled persons was rejected is null and void and of no legal effect whatsoever.

15 The applicant applied originally on the 3rd December 1984, but that application was refused on the 17th May, 1985. That decision was the subject of Recourse No. 624/85 by which the said act was annulled on the ground that it had been taken by an organ having no competence in the matter.

20 The application of the applicant made under the provisions of Class 01.09 of the Fourth Schedule of the Customs Duties and Excise Laws 1978 - 1979, was accompanied by a certificate of Dr. Tourvas, Orthopaedic Surgeon, at Paphos Hospital. Accord-  
25 ing to it the applicant had been under his care for the last three years due to progressive deterioration of his arthritis in both shoulder joints; that he had been operated in August 1982, and the right shoulder joint was replaced with an artificial one, and that the condition of the left shoulder joint was rapidly deteriorating and it was advisable, according to this doctor to have the joint

of the left shoulder replaced. The report concludes as follows:

"Mr. Anastasi has severe disability of both upper limbs and is unable to do any manual work. Driving car with manual gearbox and without power steering is difficult, dangerous and detrimental to the stability of the artificial joint of his shoulder." 5

The applicant was then examined by a Medical Board consisting of Dr. Savvides, a Senior Specialist Orthopaedic Surgeon, Dr. Papanastassiou, Senior Specialist Surgeon and Dr. P. Eliades, Principal Medical Officer Nicosia. Their report dated the 27th January 1987, is appended to the Opposition. After referring to the medical history of the applicant which is along the same lines as that of his doctor in Paphos, it concludes by saying that the movement of his right shoulder is restricted to 25% of the normal and considerably painful. That the movement of the left shoulder is restricted to 25% of the normal and considerably, painful so the patient has great difficulty with the usual movements, as for example, when pressing himself. During the last seven months he started complaining for pains and numbness in the left lower limb. His strength in both upper limbs is reduced by 20% there is grip but reduced. Both lower limbs are normal. 10 15 20

The applicant was then referred to Mr. Eracleous, a Senior Technical Examiner in the office of Transport Branch of Examiners for Drivers. His report dated the 22nd May, 1987, addressed to the Director of Customs was that on the basis of the report of the Medical Board, dated the 27th March, 1987, he examined the applicant and ascertained that his physical condition permits him to drive a vehicle without any restriction. 25

On the basis of this material the respondents informed the applicant that after a competent examination it had been ascertained that his physical condition did not justify the use of a specially constructed vehicle, suitable for invalid persons and therefore his application could not be met. 30

5 It is the case for the applicant that in accordance with the medical opinion by driving a motor - car with manual gear - box and without power - steering causes difficulties to the applicant is dangerous and affects the stability of the artificial joint on his right shoulder. It was argued that in reaching the sub judge decision the respondents, contrary to the statutory provisions contained in Class 01.09 took into consideration the opinion and or relied on the opinion of an organ having no competence in the matter in reaching it namely that of the Senior Technical Examiner. Learned counsel relied for that proposition to the cases of *Stylianou Miltiadous v. The Republic* (1983) 3 C.L.R. 590; *Costas Papakyriakou Markides v. The Republic* (1985) 3 C.L.R. 1393; and *Kallis Kalli v. The Republic* (1984) 3 C.L.R. 443.

10 I had the occasion to deal with this issue in the case of *Andreas Florides v. The Republic*, (1987) 3 C.L.R. 1770, in which I extensively dealt with all aspects of the case. I abide by that decision as I have not been persuaded that I should depart from it. Suffice it to quote here the relevant passage from the case of *Markides v. The Republic* (1985) 3 C.L.R. 1393, where at p. 1399 I had this to say:

20 "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 administrative on its own free will to subject its administrative 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 arbitrariness 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.

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35 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 extent 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 need to meet same (see *Miltiadou* case (1983) 3 C.L.R. 590). 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."

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The aforesaid approach was also adopted by Savvides, J. , in the case of *Tooulis v. The Republic* (1985) 3 C.L.R. 2478.

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For all the above reasons the recourse is dismissed but in the circumstances there will be no order as to costs.

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