

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

ANDREAS K.
PSARAS
v.
REPUBLIC
(MINISTRY OF
COMMERCE AND
INDUSTRY) AND
ANOTHER

ANDREAS K. PSARAS,

Applicant,

and

1. THE REPUBLIC OF CYPRUS, THROUGH THE
MINISTRY OF COMMERCE AND INDUSTRY

2. THE POTATO MARKETING BOARD,

Respondents.

(Case No. 201/67).

Potato Marketing—Potato Marketing Board—Export of potatoes through, or by permission of, the Board—Arrangements made by the Board for the purpose—The Cyprus Potato Marketing Law, 1964 (Law No. 59 of 1964), sections 26, 28, 47, 48 and 49—Constitutionality of sections 47 to 49—They do not offend against Articles 23, 25 and 26 of the Constitution—Articles 23.3—Article 25.2—See, also, herebelow.

Constitutional Law—Constitutionality of laws—The Court will not interfere with the validity of an enactment unless satisfied beyond reasonable doubt that such enactment is unconstitutional—See, also, above and below.

Constitutional Law—Articles 23, 25 and 26 of the Constitution—Provisions of sections 47 to 49 of the said Law No. 59 of 1964 not contrary to Articles 23, 25 and 26—Restrictions and limitations of the right of ownership which are absolutely necessary, inter alia, for the protection of the right “of others” in the sense of paragraph 3 of Article 23—Liberty to carry on a business or profession—Safeguards—Article 25 of the Constitution—What is guarded against is direct, and not indirect, interference with the right safeguarded under Article 25—Direct interference with such right in a manner which is necessary, inter alia, in the public interest—Article 25.2—Liberty to enter into contracts—Safeguarded under Article 26—Scope and extent.

Constitutionality of laws—The Court will not interfere with the

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validity of a statute unless satisfied beyond reasonable doubt that such enactment is unconstitutional—See, also, above.

Potato Marketing Board—See above.

Profession—Liberty to carry on any profession—Safeguards—Restrictions—Article 25 of the Constitution.

Contract—Liberty to enter into contracts—Safeguards and restrictions—Article 26 of the Constitution.

Property—Deprivation of property not allowed save under the provisions of Article 23 of the Constitution—See herebelow.

Deprivation—Deprivation of property—Not allowed save under the provisions of Article 23 of the Constitution—In the present case there has been no deprivation of property—See, also, above under Potato Marketing.

Restrictions and limitations of the right of property—Article 23.3 of the Constitution—Restrictions necessary, inter alia, for the protection of the right of “others” in the sense of that paragraph—“Others” in the present case being the producers of potatoes all over Cyprus—See, also, above under Potato Marketing; Constitutional Law.

Marketing—Potato Marketing—See above.

In this recourse under Article 146 of the Constitution Applicant complains against the refusal of the Cyprus Potato Marketing Board to allow him to export to the United Kingdom his 1967-1968 winter crop of potatoes in a manner not in accordance with the arrangements made as a result of the enactment of the Cyprus Potato Marketing Law, 1964 (Law No. 59 of 1964).

The main submission of counsel for the Applicant was that sections 47, 48 and 49 of the said Law, and the consequent arrangements made by Respondent 2 (The Cyprus Potato Marketing Board), are unconstitutional as being contrary to Articles 23, 25 and 26 of the Constitution. Sections 47 to 49 are fully quoted in the Judgment, post. By section 48(2) of the Law the export of potatoes takes place through, or by permission of, the Board; and the arrangements complained of were as follows: Producers deliver their potatoes to the Board; the Board sells them to Cypriot exporters on the basis of tenders; the net pro-

ceeds of the thus disposed of potatoes are distributed among the producers. The Applicant being a producer could, also, have acted as an exporter by submitting a tender for the purpose.

Paragraphs 1, 2 and 3 of Article 23 of the Constitution provide.

1. "Every person, alone or jointly with others, has the right to acquire, own, possess, enjoy or dispose of any movable or immovable property and has the right to respect for such right.

The right of the Republic to underground water, minerals and antiquities is reserved.

2. No deprivation or restriction or limitation of any such right shall be made except as provided in this Article.

3. Restrictions or limitations which are absolutely necessary in the interest of the public safety or the public health or the public morals or the town and country planning or the development and utilization of any property to the promotion of the public benefit or for the protection of the rights of others may be imposed by law on the exercise of such right.

Just compensation shall be promptly paid for any such restrictions or limitations which materially decrease the economic value of such property. Such compensation to be determined in case of disagreement by a civil court".

Paragraphs 1 and 2 of Article 25 of the Constitution provide:

1. "Every person has the right to practise any profession or to carry on any occupation, trade or business.

2. The exercise of this right may be subject to such formalities, conditions or restrictions as are prescribed by law and relate exclusively to the qualifications usually required for the exercise of any profession or are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guarante-

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ed by this Constitution to any person or in the public interest:

Provided that no such formalities, conditions or restrictions purporting to be in the public interest shall be prescribed by a law if such formality, condition or restriction is contrary to the interests of either Community”.

Paragraph 1 of Article 26 of the Constitution provides:

1. “Every person has the right to enter freely into contract subject to such conditions, limitations or restrictions as are laid down by the general principles of the law of contract. A law shall provide for the prevention of exploitation by persons who are commanding economic power”.

In dismissing the recourse, the Court:-

Held, (1). In examining the constitutionality of sections 47, 48 and 49 of the Cyprus Potato Marketing Law, 1964 (Law No. 59 of 1964) this Court has to be guided by the well established principles that the unconstitutionality of an enactment has to be established beyond reasonable doubt, before this Court will interfere with its validity (see *The Board for Registration of Architects and Civil Engineers v. Kyriakides* (1966) 3 C.L.R. 640 at p. 654; *The Attorney-General v. Ibrahim and Others*, 1964 C.L.R. 195 at p. 233.

(2)(a) I can find nothing in sections 47 and 48 of the said Law No. 59 of 1964 which conflicts with Article 23 of the Constitution. It is true that these provisions (see those sections in the Judgment, post) do interfere with the use of property, namely crops of potatoes produced by a producer, but in doing so they only impose—in relation solely to the export trade of potatoes—restrictions and limitations which are absolutely necessary for, *inter alia*, the protection of the rights of others, in the sense of Article 23.3 of the Constitution (*supra*); the “others” being the producers of potatoes all over Cyprus. A mere glance at section 26 of the same Law which lays down the functions of the Board Respondent 2, as well as at the proposals for legislation which led to the enactment of the said

Law No. 59 of 1964 (see *Exhibit 5*), leaves no room for doubt on this point.

(b) Nor can I find, in the provisions of section 49 of the said law (quoted, in the Judgment, post), anything contrary to Article 23 of the Constitution. This section does not have at all the effect of compulsorily acquiring from any producer his crops of potatoes in a manner inconsistent with Article 23; the crop of potatoes of a producer does not become automatically by law the property of the Board (Respondent 2), but ownership thereof vests in the said Board only after the producer concerned has had his crop accepted by the Board—obviously after a voluntary offer of his—for sale or other disposal on his behalf by the Board (Respondent 2).

(3) Looking, next, at Article 25 of the Constitution (*supra*) I am not in the least satisfied that sections 47 to 49 of the said law No. 59 of 1964 offend against this Article:

(a) In the present case, the relevant legislative provisions do not interfere directly with the right, as such, of the Applicant to carry on the business of exporter; he is merely prevented from using his crops of potatoes for export purposes unless he complies with the requirements laid down as a result of such provisions (see *The District Officer Nicosia and Ioannides*, 3 R.S.C.C. 107, at p. 109; *The Police and Liveras*, 3 R.S.C.C. 65, at p. 67).

(b) But even if I were to take the view that there is, indeed, direct interference with his right to carry on his business of exporter, I would have no difficulty to find that the provisions in question interfere with such right in a manner which is necessary, *inter alia*, in the public interest, in the sense of paragraph 2 of Article 25 (*supra*) and that they are not unconstitutional.

(4) Regarding Article 26 of the Constitution (*supra*) all I need say is that on the basis of any one of the views, regarding the application of Article 26, which were expressed in *Chimonides v. Manglis*, (1967) 1 C.L.R. 125 sections 47 to 49 of the said Law No. 59 of 1964 cannot be held to be unconstitutional.

(5) What I have already said in relation to the constitutionality of sections 47 to 49 applies with equal force to the arrangements made by the Board (Respondent 2)

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in respect of the export of potatoes to the United Kingdom—in the exercise of its powers under, *inter alia*, section 28 of the said Law No. 59 of 1964.

Recourse dismissed.

Cases referred to:

The Board for Registration of Architects and Civil Engineers v. Kyriakides, (1966) 3 C.L.R. 640 at p. 654;

The Attorney-General v. Ibrahim and Others, 1964 C.L.R. 195 at p. 233;

The District Officer Nicosia and Ioannides, 3 R.S.C.C. 107, at p. 109;

The Police and Liveras, 3 R.S.C.C. 65, at p. 67;

Chimonides v. Manglis, (1967) 1 C.L.R. 125.

Recourse.

Recourse against the refusal of Respondent 2, to allow Applicant to export his 1967—1968 winter crop of potatoes to the United Kingdom in a manner not in accordance with the arrangements made as a result of the enactment of the Cyprus Potato Marketing Law, 1964 (Law 59/64).

Chr. Mitsides, for the Applicant.

K. Talarides, Senior Counsel of the Republic, for Respondent No. 1.

L. Clerides with *J. Mavronicolas*, for Respondent No. 2.

Cur. adv. vult.

The following Judgment was delivered by:-

TRIANTAFYLLIDES, J.: In this Case the Applicant complains, in effect, against the refusal of the Cyprus Potato Marketing Board, Respondent 2, to allow him to export his 1967-1968 winter crop of potatoes, to the United Kingdom, in a manner not in accordance with the arrangements made as a result of the enactment of the Cyprus Potato Marketing Law, 1964 (Law 59/64); the said Board functions under the supervision of the Minister of Commerce and Industry.

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All else which is claimed by the motion for relief in the application in this recourse cannot be treated as being relief which could be properly claimed within the ambit of the competence under Article 146; it only amounts, in my opinion, to argument in support of the claim of the Applicant for annulment of the said refusal, which constitutes an act or decision of Respondent 2.

The present dispute between the Applicant and Respondent 2 commenced as early as the 14th November, 1966, when the Applicant wrote to Respondent 2 (see *exhibit 2*), seeking permission to export directly, himself, to the United Kingdom his, at the time, crop of potatoes. Respondent 2 replied on the 17th November, 1966, in the negative (see *exhibits 3A and 3*, which are, respectively, the original and a copy of the Board's reply). By its reply the Board informed the Applicant that by virtue of section 48(2) of Law 59/64 the export of potatoes takes place through, or by permission, of the Board; that, in particular, in relation to the United Kingdom, the Board sells potatoes, on the basis of tenders, to Cypriot exporters; that, therefore, the Applicant could submit a tender for the purpose, and if he would purchase, in this way, potatoes, then the Board would allow him to pack his own potatoes as against the quantity of potatoes purchased from the Board.

It is common ground that, in relation to potato exports to, at any rate, the United Kingdom, the Board's arrangements, under Law 59/64, have been at all material times as follows:-

Producers deliver their potatoes to the Board; the Board sells them to Cypriot exporters, on the basis of tenders; and then the net proceeds of the thus disposed of potatoes are distributed among the producers.

So the Applicant, being a producer, could, also, have acted as an exporter, by means of the method suggested in the Board's above-quoted reply.

Later, the Applicant, by letter of the 16th October, 1967 (see *exhibit 1*), reverted on to the matter and he sought permission to export his 1967-1968 winter crop of potatoes without complying with the Board's arrangements for the purpose. On the 21st October, 1967, Respondent 2 wrote to the Applicant (see *exhibit 4*) informing him that there was nothing to be added to the contents of the letter of the 17th

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November, 1966 (*exhibit 3*).

This recourse was filed, as a result, on the 27th October, 1967.

The course of the proceedings in this Case has been a rather complicated one and it is necessary, in the circumstances, to put on record a short summary thereof:

On the same day when the recourse was filed the Applicant applied for a Provisional Order, to the effect, in substance, that he should be allowed, pending the proceedings, to export his potatoes directly, himself, without complying with the requirements laid down by Respondent 2. This application was dealt with on the 2nd November, 1967, and, as a result, a direction was made, by consent, for a short date of hearing of the Case; such hearing was fixed for the 24th November, 1967.

On the 24th November, 1967, the hearing had to be adjourned until the 5th December, 1967, due to the fact that counsel for the Applicant had received copies of the Oppositions of Respondents too late, and he had not been, thus, in a position to prepare himself accordingly.

On the 5th December, 1967, the hearing was concluded, but, at the end thereof, the Court directed that Respondent 2 should file and deliver to the other parties, within two weeks, copies of the terms of tenders which were mentioned in the letter of Respondent 2 dated the 17th November, 1966 (*exhibit 3*); it was, further, directed that if any party desired the hearing to be re-opened, so as to make further submissions in relation to the said terms, then an application for the purpose should be made to the Court within a week after the filing and delivery of such terms; otherwise Judgment would be deemed to have been reserved.

Copies of the terms of tenders were duly filed and delivered on the 12th December, 1967 (see *exhibit 6*); and no application for re-opening of the hearing was made by any party within a week thereafter. Then, while the Case was under consideration with a view to Judgment being delivered, counsel for the Applicant, filed and delivered to other counsel, on the 15th January, 1968, a "notice" containing written observations regarding the said terms of tenders. He was informed, by letter of the Chief Registrar, dated the 17th January, 1968, that the proper course was to apply for leave

to re-open the hearing of the Case in order to raise the points set out in his said "notice".

Counsel for the Applicant applied accordingly on the 17th February, 1968.

His application was dealt with on the 2nd March, 1968, and the Case was fixed, by consent, for further hearing on the 20th March, 1968; on that date counsel for Respondent 2 did not appear, but counsel for the Applicant and counsel for Respondent 1 addressed the Court further on the matter, and, then, Judgment was reserved.

While the Judgment was under preparation, counsel for the Applicant applied ex parte, on the 26th April, 1968, for a Provisional Order allowing him to export another potato crop of his directly and without complying with the Board's requirements. In view of the stage of the proceedings at which the Applicant took the step in question he was required to apply by summons; he did so on the 2nd May, 1968, and his application came up for hearing on the 18th May, 1968. Then, it was adjourned for mention to the 23rd May, 1968, and later to the 11th and the 13th June, 1968, in view of the possibility having arisen, through discussions among counsel, of arranging the whole Case out of Court; eventually, no such arrangement was arrived at, the application for a Provisional Order was withdrawn, and the delivery of this Judgment was fixed for today.

The main submission of counsel for the Applicant has been that sections 47 to 49 of Law 59/64, and the consequent arrangements made by Respondent 2, are unconstitutional as being contrary to Articles 23, 25 and 26 of the Constitution.

It is convenient to deal, first, with the constitutionality of the said provisions of Law 59/64; they read as follows:-

«47. Ἀπὸ τῆς ἐνάρξεως τῆς ἰσχύος τοῦ παρόντος Νόμου, ἀνεὺ τῆς ἐγγράφου ἀδείας τοῦ Συμβουλίου ἀπαγορεύεται ἡ ὑπὸ τῶν παραγωγῶν πώλησις, ἐμπορία ἢ ἄλλως πῶς διάθεσις πατατῶν, ἢ οἰουδήποτε χαρακτηρισμοῦ ἢ ποσότητος αὐτῶν, προοριζομένων δι' ἐξαγωγήν.

48.(1) Ἀπὸ τῆς ἐνάρξεως τῆς ἰσχύος τοῦ παρόντος Νόμου ἀπαγορεύεται ἡ ἐξαγωγή πατατῶν ἢ οἰουδήποτε

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χαρακτηρισμοῦ ἢ ποσότητος αὐτῶν ἐξαιρέσει -

- (α) πατατῶν ἐφ' ὧν τὸ δικαίωμα κυριότητος περι-
ῆλθε τῷ Συμβουλίῳ δυνάμει τῶν διατάξεων τοῦ
ἄρθρου 49· ἢ
- (β) πατατῶν ἢ ἐξαγωγή τῶν ὁποίων ἔτυχε τῆς πρὸς
τοῦτο δεούσης ἀδείας τοῦ Συμβουλίου.

(2) Ἀπὸ τῆς ἐνάρξεως τῆς ἰσχύος τοῦ παρόντος
Νόμου ἀπαγορεύεται ἡ ἐξαγωγή πατατῶν ἢ οἰουδήποτε
χαρακτηρισμοῦ ἢ ποσότητος αὐτῶν ὑπὸ παντὸς προσώ-
που ἐξαιρέσει

- (α) προσηκόντως διωρισμένου πράκτορος ἐνεργοῦ-
ντος διὰ λογαριασμόν τοῦ Συμβουλίου· ἢ
- (β) παντὸς ἑτέρου προσηκόντως ἐξουσιοδοτημένου
ὑπὸ τοῦ Συμβουλίου προσώπου.

49. Ἐπὶ τῷ τέλει ἐνασκήσεως τῶν δυνάμει τοῦ παρό-
ντος Νόμου ἀρμοδιοτήτων τοῦ Συμβουλίου, τὸ δικαίωμα
κυριότητος ἐπὶ πασῶν τῶν πατατῶν ἄτινας τὸ Συμβού-
λιον ἀπεδέχθη ἐξ οἰουδήποτε παραγωγῆς πρὸς πώλησιν
ἢ διάθεσιν αὐτῶν διὰ λογαριασμόν τοῦ τελευταίου,
περιέρχεται τῷ Συμβουλίῳ δυνάμει τοῦ παρόντος ἄρθρου
καὶ ἄνευ ἐτέρας μεταβιβαστικῆς πράξεως».

“47. From and after the day of the coming into
operation of this Law no producer shall, without the
written authority of the Board, sell, market or otherwise
dispose of potatoes, or any description or quantity
thereof, intended for export.

48. (1) From and after the day of the coming into
operation of this Law no potatoes, or any description or
quantity thereof, shall be exported other than —

- (a) potatoes in which the proprietary rights have
vested in the Board by virtue of the provisions of
section 49; or
- (b) potatoes the export of which has been duly au-
thorized by the Board.

(2) From and after the day of the coming into opera-
tion of this Law no person shall export any potatoes,
or any description or quantity thereof, except—

- (a) a duly appointed agent acting on behalf of the Board; or
- (b) any person duly authorized by the Board.

49. For the purposes of the exercise of the functions of the Board under this Law, the proprietary rights in all potatoes accepted by the Board from any producer for sale or other disposal on his behalf shall vest in the Board by virtue of this section and without any further act of transfer").

In examining the constitutionality of these sections this Court has to be guided by the principles expounded in the case of *The Board for Registration of Architects and Civil Engineers v. Kyriakides*, (1966) 3 C.L.R. 640. It was laid down therein (at p. 654), *inter alia*, that the unconstitutionality of an enactment has to be established beyond reasonable doubt, *before this Court will interfere with its validity* (see, also, *The Attorney-General v. Ibrahim and Others*, 1964 C.L.R. 195 at p. 233).

I can find nothing in sections 47 and 48 of Law 59/64 which conflicts with Article 23 of the Constitution. It is true that these provisions do interfere with the use of property, namely, crops of potatoes produced by a producer, but in doing so they only impose — in relation solely to the export trade of potatoes — restrictions and limitations which are absolutely necessary for, *inter alia*, the protection of the rights of others, in the sense of Article 23.3 of the Constitution; the "others" being the producers of potatoes all over Cyprus. A mere glance at section 26 of Law 59/64, which lays down the functions of Respondent 2, as well as at the proposals for legislation which have led to the enactment of Law 59/64 (see *exhibit 5*), leaves no room for doubt on this point.

Nor can I find, in the provisions of section 49 of Law 59/64, anything contrary to Article 23 of the Constitution. This section does not have at all the effect of compulsorily acquiring from any producer his crop of potatoes in a manner inconsistent with Article 23; the crop of potatoes of a producer does not become automatically, by law, the property of Respondent 2, but ownership thereof vests in Respondent 2 only after the producer concerned has had his crop accepted by Respondent 2 — obviously after a voluntary offer of his

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-- for sale or other disposal on his behalf by Respondent 2'

Looking, next, at Article 25 of the Constitution I am not in the least satisfied that sections 47 to 49 of Law 59/64 offend against this Article:

In *The District Officer Nicosia and Ioannides*, (3 R.S.C.C., 107, at p. 109) it was held that "Article 25 safeguards the right to practise any profession or to carry on any occupation, trade or business subject to such formalities, conditions or restrictions as provided for therein. What is guarded against are infringements in the exercise of this right as such; but controls in respect of objects which might be necessary for the exercise of such right are not excluded by this Article". Also, in *The Police and Liveras*, (3 R.S.C.C. 65, at p.67) it was held that Article 25 "only guards against direct, and not indirect, interference with the right safeguarded thereunder".

In the present Case, the relevant legislative provisions do not interfere directly with the right, as such, of the Applicant to carry on the business of exporter; he is merely prevented from using his crops of potatoes for export purposes unless he complies with the requirements laid down as a result of such provisions.

But even if I were to take the view that there is, indeed, direct interference with his right to carry on the business of exporter, I would have no difficulty to find that the provisions in question interfere with such right in a manner which is necessary in, *inter alia*, the public interest, in the sense of paragraph 2 of Article 25, and that they are not unconstitutional.

Regarding Article 26 of the Constitution — which was mentioned by counsel for the Applicant in a cursory way only — all I need say is that on the basis of any one of the views, regarding the application of Article 26, which were expressed in *Chimonides v. Manglis*, (1967) 1 C.L.R. 125, sections 47 to 49 of Law 59/64 cannot be held to be unconstitutional.

What I have said already in relation to the constitutionality of the said sections 47 to 49 applies with equal force to the arrangements made by Respondent 2 in respect of the export of potatoes to the United Kingdom — in the exercise of its powers under, *inter alia*, section 28 of Law 59/64 — and, therefore, I cannot hold, as at present advised, that I

have been satisfied by the Applicant, on whom the onus lay, that such arrangements, to the extent to which they are complained of by him, are unconstitutional as contravening Articles 23, 25 or 26.

This Case has been scarcely argued before me on the issue of whether or not, on this particular occasion, the refusal of Respondent 2 to allow the Applicant to export directly his own potatoes was taken in abuse or excess of powers.

It is obvious from the contents of the letter *exhibit 3* that such refusal is due to the fact that the course sought to be followed by the Applicant would be contrary to the generally applicable arrangements in relation to exports of potatoes to the United Kingdom, and as the Applicant did not attempt to show at all, in his relevant application to Respondent 2, that there existed special circumstances entitling him to different treatment, I fail to see how Respondent 2 could be said to have acted in abuse or excess of powers. It is up to the Applicant to show — if it applies again in future to Respondent 2 for any exceptional facility — that he has a case meriting, in any respect, special treatment, in a manner within the competence of Respondent 2; in the meantime I express no opinion, one way or the other, on the point.

In the circumstances, I have no difficulty in dismissing this recourse. There shall be, however, no order as to costs, in view of the fact that this is the first case of such a nature and the Applicant was entitled to bring his grievance before the Court for determination; but, as the Applicant has caused costs to be incurred by the other parties, through delay on his own part in taking proper steps for the re-opening of the proceedings in time, after *exhibit 6* was filed, I find that it is only fair to discharge the order for costs made against the Respondents on the 24th November, 1967, because of the fact that the hearing on that date had to be adjourned in view of their Oppositions having reached counsel for the Applicant belatedly.

*Application dismissed,
Order for costs as aforesaid.*

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