[MALACHTOS, J.]

1973
June 30
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MARABOU FLOATING RESTAURANT LTD.
v.
REPUBLIC (COUNCIL OF MINISTERS)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MARABOU FLOATING RESTAURANT LTD.,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS,

*Respondents.*

(Case No. 393/72).

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*Statutes—Construction—Principles applicable—The 'golden rule', the 'literal rule'—Objects and reasons for introducing a Bill for enactment into Law—Not admissible to explain the meaning of the Law—Word "or" in section 25(1) of the Port Regulation Law, Cap. 294 (as amended)—Should be read disjunctively—Interpretation Law, Cap. 1, section 2, at p. 8.*

*Port Regulation Law, Cap. 294 (as amended)—Construction of section 25(1)—Respondent Council of Ministers empowered thereunder to declare Kyrenia Harbour in the public interest closed for vessels used,* inter alia, *as restaurants—Nothing unconstitutional in such order.*

*Administrative acts or decisions—Regulatory act* (κανονιστική πρᾶξις) *such as the one under consideration—Whether it requires due reasoning.*

*Regulatory act* (κανονιστική πρᾶξις)*—Whether or not regulatory acts must be duly reasoned.*

*Administrative acts or decisions—Due reasoning required—Reasoning for the issue of an administrative act need not be contained in the act itself—It suffices if it can be extracted, as in the instant case, from the file of the case and the administrative action as a whole.*

*Reasoning—Due reasoning etc.—See* supra, passim.

*Retrospectivity—Rules—Legislature is free to give to the legal rule retrospective effect, save in cases where such*

*retrospectivity is expressly excluded by special provisions in the Constitution.*

*Constitutional Law—Articles 23.1 and 25.1 of the Constitution—Right to enjoy property—Article 23.1—Right to practise any profession or to carry on any business, occupation or trade—Subject to restrictions and limitations deemed necessary in the public interest—Therefore, such right is not absolute—Order made by the Council of Ministers under section 25(1) of Cap. 294 (as amended),* supra, *declaring Kyrenia Harbour closed for certain vessels used as restaurants etc.—Not contrary to the said Articles.*

*Right to enjoy property—Article 23.1—Restrictions—See* supra.

*Right to practise any profession or to carry on any business or trade—Restrictions and limitations—Article 25.1 of the Constitution—See* supra.

The applicant is the owner of the "Marabou Bird" restaurant situated in the area of the Kyrenia Harbour. In April, 1972, he brought into the said harbour a vessel (caique) which was anchored next to the mole and opposite his said restaurant. This vessel as from May, 1972, has been converted and used as an annexe to the said restaurant by the name of "Marabou" floating restaurant.

By this recourse made under Article 146 of the Constitution the applicant challenges the validity of the decision of the respondent Council of Ministers published in the form of an order in Supplement No. 3 of the Official Gazette No. 964 dated 29th September, 1972, under Notification 685, by virtue of which the Kyrenia Harbour is declared "closed" for vessels used as meeting places, recreation centres, clubs, restaurants or for the like or similar purposes. The *sub judice* order was made under section 25 of the Port Regulation Law, Cap. 294, as amended by Laws 28/61 and 25/66. So far as material it reads as follows:

> "25(1) The Council of Ministers shall have power where the interest of the Republic so requires or it becomes necessary so to do for the fulfilment of international obligations, by order published in the Official Gazette of the Republic, to declare all ports in the Republic or a particular port specified in the order

to be closed to such vessels as are laid down in the order, and upon the publication of the order no such vessel shall enter into or go out of any such port."

The preamble of the *sub judice* Order of September 29, 1972, provides :

"Whereas the Council of Ministers has been satisfied that the interest of the Republic requires that the Kyrenia Harbour be declared as closed to certain categories of vessels :....."

It is obvious, therefore, that the Order in question is based on the first limb of the enabling clause in section 25(1) of the statute (*supra*) : "..... where *the interest of the Republic so requires or* it becomes necessary so to do for the fulfilment of international obligations....."

Counsel for the applicant submitted that the word "or" in between the said two limbs (*supra*) is not disjunctive but it should be taken to imply similarities. So, counsel went on, the words in the said section "where the interest of the Republic so requires" and the words "....it becomes necessary so to do for the fulfilment of international obligations" (*supra*), should be taken to mean one and the same thing; it follows that the *sub judice* order, which has nothing to do with fulfilment of any international obligations, must be held to be *ultra vires* the statute. In support of this proposition counsel invoked the objects and reasons of the Bill introducing the said amending Law 25/66 (*supra*). It was further argued by counsel for the applicant, *inter alia,* that the order in question was not duly reasoned; that it restricts the right of the applicant to possess and enjoy his vessel in question *i.e.* his said floating restaurant "Marabou" (*supra*) and so offends Article 23.1 of the Constitution; and that it contravenes Article 25.1 of the Constitution as the applicant is not allowed to carry on freely his said business or trade.

The learned Judge of the Supreme Court rejected all the points raised by counsel for the applicant and dismissing the recourse :-

Held, I : (1) There can be no doubt that the objects and reasons for introducing a Bill for enactment into law by the House of Representatives, are not admissible to explain its meaning. (See

Maxwell on Interpretation of Statutes, 11th edn. at p. 26).

(2)(a) The fundamental principle in the construction of statutes is that the words must be given their literal meaning. If language is clear and explicit the Court must give effect to it. (See *In Re A Debtor* [1948] 2 All E.R. 523, at p. 536 per Lord Greene M.R.).

(b) On the other hand in our Interpretation Law, Cap. 1, section 2, at page 8, we read: "Where the words 'or' 'other' and 'otherwise' are used, they shall be construed disjunctively and not as implying similarity, unless the word 'similar' or some other word of like meaning is added."

(c) It is, therefore, clear from the above that the word 'or' in the said section 25(1) of the Law (*supra*), should be used disjunctively and, consequently, the Council of Ministers have power under that section to close any port to any vessel in the interest of the Republic and issue the order complained of in this case.

Held, II: *As to the point raised by counsel for applicant that the decision complained of is not duly reasoned:*

(1) It is not in dispute that the decision (or order) in question is a regulatory administrative act (Kanonistiki praxis); and such, it was argued by counsel for the respondent, need not be reasoned at all (*see Decisions of the Greek Council of State Nos.* 1326/1947 and 6/1952). This proposition, however, is not quite correct (*see* Tsatsos Application for Annulment before the Council of State 3rd edn. at p. 235, and the Decision of the Council of State No. 1149/1956).

(2) In the present case, however, it is not necessary to decide the issue whether the decision complained of necessitated due reasoning or not, because even if we proceed on the assumption that it did, such due reasoning appears clearly from

the file of the case (*see Exhibits* 2 and 3); and it is a well settled principle that the reasoning behind an administrative act or decision need not be contained in the act itself but it suffices if it can be extracted from the file of the case and the administrative action as a whole (*see* Kyriakopoullos, Greek Administrative Law, 4th edn. Vol. 2, page 386).

Held, III: *As to the points raised by counsel for the applicant to the effect that the* sub judice *decision contravenes Articles 23.1 and 25.1 of the Constitution.* (supra):

(1) The order (decision) complained of does not impose restrictions as alleged in the sense of either Article 23.1 or 25.1 of the Constitution.

(2) But even if we assume that it does impose such restrictions, then again it does not offend the aforementioned two Articles as the right to enjoy property and the right to practise any profession or occupation or to carry on any business or trade is not absolute but it is subject to such restrictions or limitations which are considered necessary as provided in those Articles 23.1 and 25.1.

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

Cases referred to:

*In Re A Debtor* [1948] 2 All E.R. 533, at p. 536, per Lord Greene, M.R.;

*Becke* v. *Smith* [1836] 2 M. and W. 191, at p. 195;

*Decisions of the Greek Council of State Nos.* 1326/1947, 1426/1947, 6/1952 and 1149/1956.

**Recourse.**

Recourse against the decision of the respondents by virtue of which the Kyrenia Harbour was declared closed for vessels used as meeting places, recreation centres, clubs, restaurants or for the like or similar purposes.

*L. Papaphilippou*, for the applicant.

*L. Loucaides*, Senior Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

The following judgment was delivered by :-

MALACHTOS, J. : The applicant in this recourse, which is made under Article 146 of the Constitution, seeks a declaration of the Court that the decision and/or act of the respondents, which was published in Supplement No. 3 to the Cyprus Gazette No. 964 dated 29th September, 1972, under Not. 685, by which the Kyrenia Harbour is declared closed for vessels used as meeting places, recreation centres, clubs, restaurants or for the like or similar purposes, is null and void and of no legal effect whatsoever.

The salient facts of this recourse are as follows :-

The applicant is the owner of the "Marabou Bird" restaurant situated in the area of Kyrenia Harbour. In April, 1972, the applicant brought into the said Harbour a vessel (caique) which was anchored next to the mole and opposite the "Marabou Bird" restaurant. This vessel as from May 1972 has been converted and used as an annexe to the said restaurant by the name of "Marabou" floating restaurant.

By virtue of section 25 of the Port Regulation Law, Cap. 294, as amended by Laws 28/61 and 25/66, the Council of Ministers issued on 21st September, 1972, an order which was published in Supplement No. 3 to the Cyprus Gazette of the 29th September, 1972, under Not. 685. This Order is as follows :

> "Whereas the Council of Ministers has been satisfied that the interest of the Republic requires that the Kyrenia Harbour be declared as closed to certain categories of vessels :
>
> In exercising the powers conferred upon it by virtue of subsection 1 of section 25 of the Port Regulation Law, hereby declares the Kyrenia Harbour as closed to the vessels described in the Schedule.

SCHEDULE

(a) Passenger or cargo ships of the length of more than 25 metres.

(b) Passenger boats, yachts and ferry-boats, of transport capacity of more than 12 passengers executing regular routes.

(c) Vessels used as meeting places, recreation centres, clubs, restaurants or for the like or similar purposes."

Soon after the publication of the above order the applicant was notified by the Harbour Master of Kyrenia to remove the said vessel as it was affected by paragraph (c) thereof. As a result the applicant filed the present recourse.

The eleven points of law on which the application is based, may be summarised as follows :

1. The respondents acted in excess and/or abuse of powers in view of the fact that section 25 of the Port Regulation Law, Cap. 294, does not empower them to issue the Order and/or Decision in question.

2. The Decision of the respondents was not duly reasoned.

3. The respondents at the time of taking their Decision were under a misconception of fact as the vessel in question was already used as a restaurant and so the vested rights of the applicant were not taken into account.

4. The decision of the respondents restricts the right of the applicant to possess and enjoy the vessel in question and so offends Article 23.1 of the Constitution.

5. The decision of the respondents contravenes Article 25.1 of the Constitution as the applicant is not allowed to practise his profession or carry on his occupation, trade or business freely.

The respondents, on the other hand, in their opposition, allege that the decision complained of was lawfully taken in the interest of the Republic by virtue of section 25 of the Port Regulation Law, Cap. 294, and on the basis of all the relevant considerations of the case and

that it does not offend Articles 23 and 25 of the Constitution.

Able and extensive arguments were advanced by counsel of both sides in support of their respective case.

The main question that falls for consideration in this recourse is whether the respondents were empowered by section 25 of the Port Regulation Law, Cap. 294, to issue the Order of the 21st September, 1972. The Port Regulation Law, Cap. 294, was up to 1966 consisting of 24 sections. In 1966 this Law was amended by Law 25/66 by the addition thereto after section 24 thereof of the following new section :

> "25.-(1) The Council of Ministers shall have power, where the interest of the Republic so requires or it becomes necessary so to do for the fulfilment of international obligations, by order published in the official Gazette of the Republic, to declare all ports in the Republic or a particular port specified in the order to be closed to such vessels as are laid down in the order, and upon the publication of the order no such vessel shall enter into or go out of any such port.
>
> (2) The master and the owner of any vessel which, in contravention of a prohibition ordered under sub-section (1), enters into or goes out of a port which is closed to such vessel shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding ten thousand pounds or to both such imprisonment and fine."

It has been argued by counsel for applicant that this section by virtue of which the Order complained of was made, does not empower the respondents to make such an Order. This, he submitted, is clear from the objects and reasons of the Bill introducing this Law into the House of Representatives for enactment, which Bill was published in Supplement No. 6 to the Cyprus Gazette under Not. 500 of the 9th June, 1966, and which reads as follows :

> "The free navigation composes a principle of the legislation in force, and in peace time the closing

of harbours as a rule does not take place. Nevertheless, in exceptional cases whenever international commitments (as the Decisions of the United Nations) impose it, or the interest of the Republic renders it necessary, it is indispensable that the Council of Ministers is possessed with such authority. This is the object of the present Bill."

It is clear, he submitted, from the whole spirit of the Bill and its objects and reasons, that the amendment concerns international commitments and obligations of the Republic. So, the words "whenever international commitments impose it" and the words "when the interest of the Republic renders it necessary" should be taken to mean one and the same thing and so the word "or" in between them should be taken to imply similarities. Therefore, the word "or" appearing in between the words "when the interest of the Republic so requires" and the words "It becomes necessary so to do for the fulfilment of international obligations" appearing in section 25(1) of the Law, should also be taken as implying similarities.

There can be no doubt that the objects and reasons for introducing a Bill for enactment into law by the *House of Representatives, are not admissible to explain* its meaning. In Maxwell on Interpretation of Statutes, 11th edition, at page 26 it is stated "But it is unquestionably a rule of what may be called the parliamentary history of an enactment is not admissible to explain its meaning. Its language can be regarded only as the language of the three Estates of the realm, and the meaning attached to it by its framers or by individual *members of one of these Estates cannot control the con*struction of it. Indeed, the inference to be drawn from comparing the language of the Act with the declared intention of its framers would be that the difference between the two was not accidental but intentional. Accordingly, the Dower Act 1833 (c. 105), was construed to apply to gavelkind lands, although this was avowedly contrary to the intention of the real property *commissioners who prepared the Act; for they stated* in their report that it was their intention that it should not extend to lands of that tenure."

The fundamental principle in the construction of a statute is that the words must be given their literal

meaning. If language is clear and explicit the Court must give effect to it for in that case the words of a statute speak the intention of the Legislature. In *Re A Debtor* [1948] 2 All E.R. 533 at page 536 Lord Greene, M.R., said that "If there is one rule of construction for statutes and other documents, it is that you must not imply anything in them which is inconsistent with the words expressly used." The so called "Golden rule" is really a modification of the literal rule. It was stated in this way by Parke, B., in *Becke* v. *Smith* [1836] 2 M. & W. 191 at page 195 : "It is a very useful rule in the construction of a statute, to adhere to the ordinary meaning of the words used, and to the grammatical construction unless that is at variance with the intention of the Legislature, to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified, so as to avoid such inconvenience but no further."

In the Interpretation Law, Cap. 1, section 2, at page 8, we read, "Where the words 'or' 'other' and 'otherwise' are used, they shall be construed disjunctively and not as implying similarity, unless the word 'similar' or some other word of like meaning is added."

It is clear from the above that the word "or" in section 25(1) of the Law, should be used disjunctively and, consequently, the Council of Ministers, under the said section, has power to close any port in the Republic to any vessel where it becomes necessary so to do for the fulfilment of international obligations irrespective of whether the interest of the Republic so requires or *vice versa*.

It follows that in the present case the Council of Ministers were entitled under the aforementioned section of the Law to issue the Order complained of.

I now pass to the next point raised by counsel for applicant *i.e.* that the decision complained of is not duly reasoned.

It is not in dispute that the said act or decision is a regulatory administrative act (kanonistiki praxis).

Counsel for respondents argued that since the act or decision complained of is a regulatory one there is no

need to be reasoned. In support of this proposition he referred to two decisions of the Greek Council of State Nos. 1326/47 and 6/52. He further argued that irrespective of his above proposition, in the present case it appears from the file that the decision of the respondents was duly reasoned, the main reason being the pollution of the waters of the harbour.

The aforementioned decisions, to which counsel for respondents referred to, appear in paragraph 470 of the Supplement of Case Law of the Greek Council of State 1935 to 1952 and reads as follows: "A regulatory act does not necessitate any reasoning. 1426/47 6/52". The full report of these two cases is not available as the decisions of the Greek Council of State for the years 1947 and 1952 were never published. The above proposition, however, is not quite correct. In Tsatsos Application for Annulment before the Greek Council of State, 3rd edition, at page 235, it is stated that "from the point of view of reasoning distinction of the regulatory acts, which, so to speak, as distinguished from the individual acts, do not necessitate reasoning according to the Case Law of our Council of State, are unjustifiable (see Decision No. 1149/56). The same reasons by which the reasoning of individual acts is imposed co-exist in cases of regulatory acts."

In the present case, however, it is not necessary to decide the issue whether the act or decision complained of necessitated due reasoning or not, because even if we proceed on the assumption that it did, such reasoning appears clearly from the file of the case, *exhibits* 2 and 3.

In red 8 of *exhibit* 3, the opinion of the Ministry of Communications and Works is that the use of the vessel in question as a restaurant in the Kyrenia harbour is undesirable as inevitably will cause pollution of its waters. This view resulted in the relative proposal by the Minister of Communications and Works under No. 676/72, red 6, of *exhibit* 2, to the Council of Ministers as a result of which the decision complained of was issued.

It is clear from the authorities that the reasoning for the issue of an administrative act or decision need not be contained in the administrative act itself but it suffices if it can be extracted from the file of the case and

the administrative action as a whole (see Kyriakopoullos Greek Administrative Law, 4th edition, part 2, page 386). So, this ground of the recourse also fails.

As to the argument that the respondents at the time of taking their decision were under a misconception of fact since the vessel in question was already used as a restaurant and so the vested rights of the applicants were not taken into account, I find no merit.

The respondents in taking their decision not only were not acting under a misconception of fact but, on the contrary, their said decision, which clearly from its wording has retrospective effect, was intended to cover cases like the case of the applicant. No doubt legislative authority has full power to regulate certain relations as it thinks more profitable notwithstanding that vested rights are affected without being subjected for that to the control of the Courts, unless such action is contrary to the Constitution. The legislature is free to give to the legal rule retrospective effect, in the absence of a general prohibition being provided by the Constitution for a certain occasion. (See Kyriakopoullos Greek Administrative Law, 4th edition, part 1, page 91 under the heading of "Retrospective power of rules").

Regarding the argument that the decision of the respondents offends Article 23.1 of the Constitution, *i.e.* the right to acquire, own, possess, enjoy or dispose of any movable or immovable property, and the right to respect for such a right or that such decision of the respondents contravenes Article 25.1 of the Constitution, which gives the right to every person to practise any profession or to carry on any occupation, trade or business, cannot, in my view, stand as the decision complained of does not impose restrictions in the sense of either Article 23.1 or 25.1 of the Constitution. But even if we assume that it does impose such restrictions, then again it does not offend the aforementioned two Articles as the right to enjoy property and the right to practise any profession or occupation is not absolute but is subject to such restrictions or limitations which are considered necessary as provided in Articles 23.3 and 25.2 of the Constitution.

In the present case it is clear that the restrictions imposed were considered necessary for the protection of public interest and health.

For all the above reasons this recourse fails.

In the circumstances I make no order as to costs.

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