

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LAVAR SHIPPING COMPANY LTD.,

*Applicants,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH

(a) THE MINISTER OF COMMUNICATIONS AND WORKS,

(b) HARBOUR MASTER OF LIMASSOL PORT,

*Respondents,*

LAVAR  
SHIPPING  
COMPANY LTD.  
v.  
REPUBLIC  
(MINISTER OF  
COMMUNICATIONS  
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(Case No. 9/69).

*Ports—Port Regulation Law, Cap. 294 (as amended by Law 28/1961)—Superintendent of Ports—Powers—Exercise of his powers under section 15 (a) of the Law (as enacted by Law 28/1961)—He need not give written directions of general application—The Superintendent, therefore, did not contravene said paragraph (a) by refusing, in the absence of such directions of general application, to allow applicant's vessel to berth in the lighter basin of Limassol port (Note: Text of said paragraph (a) set out infra)—Cf. section 15, (a) to (e), and section 16 of Cap. 294 (supra).*

*Harbours—Harbour Master—Port Superintendent—Powers—Section 15 (a) of the Ports Regulation Law, Cap. 294 (as amended)—See supra.*

*Constitutional Law—Equal treatment—Principle of equality safeguarded under Article 28.1 of the Constitution—Scope, meaning and effect—Principle of equality entails similar treatment to all who are in the same or similar situations or circumstances—And it safeguards against arbitrary and unreasonable differentiations—But it does not exclude reasonable distinctions—Refusal to allow applicant's vessel "Curium" to berth in the lighter basin of Limassol port—And permission to another vessel (the "Venus") so to berth—In view of the difference in the structure of the two vessels and the consequent difference in their respective manoeuvrability, it cannot be said that the two vessels in question were on the same footing—Or that the distinction made was in any way arbitrary or unreasonable (Mikrommatis and The Re-*

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public 2 *R.S.C.C.* 125; *The Republic v. Arakian and Others* (1972) 3 *C.L.R.* 294, *C.A.*, followed)—*Cf. supra.*

*Equal treatment—Equality—Principle of—Scope and extent—See supra under Constitutional Law.*

By this recourse under Article 146 of the Constitution, the applicant company seeks the annulment of the decision of the Harbour Master of Limassol not to allow the entry or berthing within the lighter basin of the Limassol port of their vessel “Curium”. It was contended by the applicants that the aforesaid decision contravenes the provisions of section 15 (a) of the Port Regulation Law, Cap. 294 (as said paragraph was enacted by section 2 of Law 28/1961). The text of the said paragraph (a) is set out hereinbelow. In the alternative, it was argued on behalf of the applicant that the aforesaid refusal is repugnant to the principle of equality entrenched by Article 28 of the Constitution in that the Harbour Master allowed on several occasions the entry and berthing in the said lighter basin of another similar vessel the “Venus”.

The learned Judge of the Supreme Court did not agree with the points raised by the applicants and held that (1) The refusal complained of does not contravene section 15 (a) properly construed; (2) moreover, that in the circumstances of this case there has been no arbitrary differentiation between the aforementioned two vessels viz. “Curium” and “Venus” and that, consequently, there has been no infringement of Article 28 of the Constitution.

Section 15 (a) of the Ports Regulation Law, Cap. 294 (as set out in section 2 of Law 28/1961) provides:

“ 15. The Superintendent of any port in Cyprus may give directions for all or any of the following purposes—(a) for regulating the turn, the time and the manner in which any vessel shall enter into, go out of, or lie in or at the harbour or pier, and its position ..... etc”.

*Note:* The full text of section 15 (a) (b) (c) (d) and (e) is set out *post* in the judgment.

Article 28.1 of the Constitution reads as follows:

“ 28.1. All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby”.

Dismissing the recourse, -the learned Judge:-

*Held*, (1) It seems to me to be quite apparent from the nature of the powers vested in the Superintendent of Ports by the said paragraph (a) of section 15 of the Ports Regulation Law, Cap. 294 (as amended), that such directions have to be issued with regard to each vessel and that it is impossible to fix such matters as the position of any particular vessel in the harbour by written directions of general application, especially in view of the fact that in deciding upon such matters regard must be had to the number and the position of other vessels in the harbour at the particular time.

(2) (*Regarding the allegation of unequal treatment contrary to Article 28.1 of the Constitution, supra*):

(A) It is well settled that the principle of equality entails similar treatment to all who are in the same or similar situations or circumstances. In other words it safeguards against arbitrary and unjustifiable differentiations and does not exclude reasonable distinctions (see *Mikrommatis* and *The Republic*, 2 R.S.C.C. 125; *The Republic v. Arakian and Others* (1972) 3 C.L.R. 294).

(B) Now, in the light of the different structure of the two vessels (*viz.* "Curium" and "Venus", *supra*) and the consequent difference in so far as their manoeuvrability is concerned, which was all important for the operation in question, it cannot, in my view, be said that the two cases were on the same footing or that the distinction made was in any way arbitrary or unreasonable.

*Recourse dismissed. No order as to costs.*

Cases referred to:

*Mikrommatis* and *The Republic*, 2 R.S.C.C. 125;

*The Republic v. Arakian and Others* (1972) 3 C.L.R. 294, C.A.

### Recourse.

Recourse against the decision of the Harbour Master of Limassol not to allow the entry or berthing within the lighter basin of the Limassol port of a vessel belonging to the applicants.

*Chr. Demetriades*, for the applicants.

*A. Frangos*, Senior Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

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The following judgment\* was delivered by:—

L. LOIZOU, J.: The applicants, a company limited by shares, registered in Cyprus, are the owners of the vessel “Curium” registered under the Cyprus flag and by this recourse seek a declaration that the decision of the Harbour Master of Limassol not to allow the entry or berthing within the lighter basin of the Limassol port of their above-mentioned vessel is *null* and *void* and of no effect as being contrary to the Constitution and/or the law and/or as having been taken in excess or in abuse of powers.

The relevant facts as I find them are as follows:

On the 25th October, 1968, applicants’ vessel arrived in Limassol harbour with a view to loading a quantity of carobs. On the previous day *i.e.* on the 24th October a formal application was made to the Harbour Master to allow the ship to berth *i.e.* to go alongside the quay of the lighter basin. The Harbour Master refused to allow the ship to enter the lighter basin which meant that she had to stay at anchor in the Limassol harbour outside the lighter basin and load there. But four or five days before the formal application was made one of the Directors of the applicant company visited the Harbour Master, informed him that the vessel would be arriving and asked him to allow her to berth alongside the quay. He was informed by the Harbour Master that he was not prepared to allow the vessel to berth in the lighter basin. The reason he gave this Director was that the length of the vessel was over 265 feet. In fact the length of the “Curium” is 273 feet, it is a single screw vessel and at the time it was in ballast with three quarters of the blade of its screw above water. The length of the quay of the lighter basin is about 540 feet but the dredged part of it is between 150 and 200 feet alongside the quay and at the relevant time there was a small vessel berthed in the basin, the “Kapta Mathios”.

The points of law upon which the Application is based, as set out therein, are the following:

“(a) There is no legal provision or authority empowering respondents or either of them from deciding and/or acting as above.

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\* An appeal has been lodged against this judgment. The appeal has been heard and judgment thereon has been reserved.

- (b) S. 15 of Port Regulation Law, Cap. 294, on the basis of which respondents or either of them purportedly acted is inapplicable and/or was wrongly interpreted and/or resorted to.
- (c) Irrespective of the above, the above decision and/or act was taken and/or made without relevant factors being taken into consideration and/or on a misconception of facts and/or law and/or was, in any case, wrongly taken.
- (d) Irrespective of the above, the above decision and/or act was taken and/or made in violation of Article 28 of the Constitution”.

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With regard to points (a) and (b) it was contended on the part of the applicants that respondent 2 did not act in compliance with the provisions of section 15 (a) of the Port Regulation Law, Cap. 294, because the said section pre-supposes the existence of written directions of general application in addition to any special directions relating to any particular case and that such general directions must lay down criteria and principles so that the shipowners may be aware whether their vessels are eligible to enter the basin or not so as to estimate what they should charge by way of freight. It was further argued that the wording of section 15 (a) aims at regulating the entry and berthing of ships in order, mainly, to prevent congestion in the harbour and that the entry of a vessel into a particular part of the harbour in which such vessel could safely enter cannot be prevented altogether.

Paragraph (a) of section 15 of the Port Regulation Law (as set out in section 2 of Law 28/61) reads as follows:

“ 15. The Superintendent of any port in Cyprus may give directions for all or any of the following purposes –

\* (α) Πρὸς ρύθμισιν τῆς σειρᾶς καὶ τοῦ χρόνου καὶ τρόπου καθ’ ὃν οἰονδήποτε πλοῖον θὰ εἰσέρχεται εἰς τὸν λιμένα καὶ θὰ ἐξέρχεται τοῦ λιμένος ἢ θὰ παραμένῃ ἐντὸς τοῦ λιμένος ἢ εἰς τὸν λιμένα ἢ τὴν ἀποβάθραν ὡς καὶ τὴν θέσιν αὐτοῦ, τὴν ὄρμισιν καὶ ἄρσιν αὐτοῦ ὡς καὶ τὴν τοποθεσίαν καὶ μετακίνησίν του κατὰ τὴν ἐκεῖ παραμονὴν του”.

\* An English translation of this text appears at p. 56, *post*.

Paragraphs (b) to (e) of the same section read as follows:

- “(b) For regulating the position in which any vessel shall take in or discharge its cargo or any part thereof, or shall take in or land its passengers, or shall take in or deliver ballast within or on the harbour, dock or pier;
- (c) for regulating the manner in which any vessel entering the harbour or coming to the pier shall be dismantled, as well for the safety of the vessel or for preventing injury to other vessels and to the harbour or pier and the moorings thereof;
- (d) for removing unserviceable vessels and other obstructions from the harbour or pier and keeping the same clear;
- (e) for regulating the quantity of ballast or dead weight in the hold which each vessel in or at the harbour or pier shall have during the delivery of her cargo or after having discharged it:

Provided that nothing in this Law shall authorize the Superintendent of the port to do or cause to be done any act in any way repugnant to or inconsistent with any Law relating to the customs or any regulations of the Comptroller”.

It is pertinent to bear in mind that the limits of the Limassol harbour are those set out in the Order made under section 11 of the Customs and Excise Duty Law, 1967, and published in Supplement 3 to the Gazette of 1968 under Notification No. 100 and that it comprises an area much wider than the lighter basin which is only a small part of the harbour.

Reading section 15 as a whole and particularly paragraph (a) thereof I find myself unable to agree with the contention of learned counsel for the applicants that in the exercise of his powers under paragraph (a) of section 15 respondent 2 had to issue written directions of general application. It seems to me to be quite apparent from the nature of the powers vested in him by the said paragraph “for regulating the turn, the time and the manner in which any vessel shall enter into, go out of, or lie in or at the harbour or pier, and its position ..... etc.” that such directions had to be issued with regard to each vessel

and that it is impossible to fix such matters as the position of any particular vessel in the harbour by written directions of general application especially in view of the fact that in deciding such matters regard must be had to the number and the position of other vessels in the harbour at the particular time. Learned counsel based his contention mainly on the wording of the section following, section 16, which makes provision for the imposition of penalties on masters who do not comply with the directions of the Superintendent of ports and expressly provides that every master of a vessel who, after notice of any such direction by the Superintendent served upon him shall not forthwith regulate the vessel according to such directions shall be liable to a fine. This, in my view, does not imply that any directions have to be in writing but merely that before a master becomes liable to pay a fine such directions must be put in writing and served upon him, presumably to ensure that he receives due notice. In this particular case the decision complained of was taken and communicated to the applicants long before the vessel arrived at the Limassol harbour.

As to point (c) learned counsel explained in the course of his address that in reaching his decision respondent 2 failed to take into consideration all the factors which he ought to have taken *i.e.* the advice of the Ministry, the fact that on three previous occasions the vessel entered the basin safely, the entry into the basin of another vessel, the "Venus", and the expense and inconvenience resulting to the applicants as a result of his refusal.

With regard to the reference to the advice of the Ministry it transpired from the proceedings that after the respondent 2 refused to allow the vessel to berth in the lighter basin the Chairman of the Board of Directors of the applicant company visited the Director-General of the Ministry of Communications and Works and complained to him; and according to the evidence of the Managing Director after the Director-General communicated by telephone with the Director of the Department of Ports he was informed by an official in the Ministry that it had been decided to allow the vessel to berth in the lighter basin; but in spite of this the respondent 2 refused again to allow the vessel to berth in the lighter basin.

With regard to this incident, however, learned counsel for the applicants made a statement before the conclusion of the hearing to the effect that it was not part of his case that there

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were any orders from the Ministry to respondent 2 to allow the entry of the vessel in the lighter basin nor that even if there were such orders the respondent 2 was bound to obey them and he withdrew everything relating to the intervention of respondent 1 in this matter.

Now with regard to the other matters which it is alleged the respondent 2 failed to take into consideration, it is quite apparent from his evidence that he was aware both that the “Curium” was on some occasions allowed to enter the basin before he took up duties as Harbour Master—the last time in fact was in August, 1966, almost two years previously and the then Harbour Master who allowed her in had served as master of this vessel when he was training for his Captain’s certificate—and also that another vessel the “Venus” had been allowed in on several occasions. There is nothing to show and I find it impossible to imagine that he did not have those factors in mind when *taking the decision complained of or that the fact that the vessel was not berthed but remained at anchor would involve more costs and inconvenience to the applicants.*

I now come to the applicants’ last point *i.e.* that the refusal to allow the “Curium” to berth amounted to unequal treatment contrary to Article 28.1 of the Constitution.

This point is based on the fact that another vessel, the “Venus”, with a length of 330 feet was allowed into the basin on several occasions even after respondent 2 took up duties as Harbour Master in Limassol, the last time being the 4th September, 1968.

Respondent 2 took up duties as Harbour Master in Limassol on the 11th July, 1968 and between then and the 4th September he allowed the “Venus” to berth alongside the quay in the lighter basin seven times out of the twenty six times that she called at Limassol harbour. After the 4th December he refused to allow her to berth. He explained in the course of his evidence that although he did not go into any details when he informed the applicants of his decision not to allow the “Curium” to berth and merely told him that he would not allow vessels whose length was over 265 feet to berth he did in fact take several other factors into consideration such as the manoeuvrability of the vessel, whether it was loaded or in ballast, whether the vessel had one or two screws and also the weather conditions.



A vessel with two screws, he explained, is more easily manoeuvrable than one with one screw and so also is a vessel which is loaded and its propellers are under water. The vessel "Venus" is a passenger ferry boat with very powerful engines and two screws all the time under water but in spite of this it was very reluctantly that he allowed her to berth and after a lot of pressure and this, he said, is shown from the fact that she was allowed to berth only seven times out of the twenty six. But even when he did allow her to berth he was always afraid that an accident might have occurred.

Regarding the "Curium", respondent 2 said, it has only one screw and as it was in ballast at the time the blade was three quarters above water which meant that the propeller when put in motion would churn the water without getting the power to turn the ship; in antithesis a vessel with two propellers under water, he explained, has a better pull and it can turn at the port by working one propeller ahead and the other astern. He had prior experience with the "Curium" because when he was acting as a Pilot at Famagusta, where the harbour is much bigger, he berthed her once with a little wind blowing and he found the operation very difficult.

On the question of the length of the vessels that could safely be allowed to enter the basin it is in evidence that as early as the 17th July, 1968, the Director of the Department of Ports in consultation with respondent 2, informed the Amathus Navigation Company by the letter *exhibit 4*, apparently in answer to a query from them, that no vessel with a length of over 265 feet and with a draught more than 4.6 m (15 feet) would be allowed into the basin. In the same letter mention is made of the vessel "Venus" and it is stated that her case was a special one because, *inter alia*, the vessel has twin screws and its draught is 3.60 m (12 feet). And on the 24th October, 1968 respondent 2 informed the agents of the s/s Catanian which was due at Limassol on the 31st October, 1968, that he would not allow entry of that vessel into the basin because its length was 269'11" (*exhibits 3A and 3B*).

It has not been suggested that the respondent 2 acted in bad faith in any way but, on the contrary, it was conceded that he took the decision complained of in good faith.

The question that falls for consideration, in so far as this issue is concerned, is whether the refusal to allow the vessel

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“Curium” to berth in the lighter basin is contrary to or inconsistent with Article 28 of the Constitution in view of the treatment afforded to the vessel “Venus”.

It is well settled that the principle of equality entails similar treatment to all who are in the same or similar situations or circumstances. In other words it safeguards against arbitrary and unjustifiable differentiation but does not exclude reasonable distinction (*Mikrommatis* and *The Republic*, 2 R.S.C.C. p. 125 and *The Republic v. Nishian Arakian and Others* (1972) 3 C.L.R. 294).

In the light of the different structure of the two vessels, as explained earlier on, and the consequent difference in so far as their manoeuvrability is concerned, which was all important for the operation in question, it cannot, in my view, be said that the two cases were on the same footing; or that the distinction made was in any way arbitrary or unreasonable.

It is in my judgment quite clear from the material on record that respondent 2 exercised his discretion correctly and properly in deciding to refuse entry of applicants’ vessel in the lighter basin and even if we assume that his earlier decision to allow the “Venus” in was wrong this cannot in any way alter the position.

In the light of all the above this recourse cannot succeed.

In the result it is hereby dismissed but in all the circumstances I will make no order as to costs.

*Application dismissed. No order as to costs.*

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This is an English translation of the Greek text appearing at p. 51, *ante*.

“(a) for regulating the order and the time at which and the manner in which any vessel shall enter into, go out of, or lie in or at the harbour or pier, and its position, mooring or unmooring, placing and removing whilst therein;”.