

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COMMERCIAL COMPANY " ARKOZY",

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTRY OF FINANCE,

*Respondent.*

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COMMERCIAL  
COMPANY  
"ARKOZY"  
v.  
REPUBLIC  
(MINISTRY OF  
FINANCE)

(Case No. 383/74).

5 *Equality—Principle of equality—Equal protection of the law—Article 28.1 of the Constitution—Payment of different customs duties on goods imported during two distinct periods—Section 2 of the Customs Duties and Excise Duties (Amendment) Law, 1974 (Law 36 of 1974)—A subjection to equal laws applying to all in the same circumstances—Principle of equality not violated.*

10 *Constitutional Law—Constitutionality of legislation—Principles applicable—Section 2 of the Customs Duties and Excise Duties (Amendment) Law, 1974 (Law 36 of 1974) not unconstitutional as being contrary to Article 28.1 of the Constitution.*

*Customs Duties and Excise Duties (Amendment) Law, 1974 (Law 36 of 1974)—Not unconstitutional as being contrary to Article 28.1 of the Constitution.*

15 *Equality—Taxation Laws—No exception to the principle of equal protection—Freedom of legislature in classification.*

*Taxation Laws—They are no exception to the principle of equal protection—See, also, under "Equality".*

20 The Customs Duties and Excise Duties (Amendment) Law, 1974 (Law No. 36/74) was introduced to the House of Representatives on the 3rd May, 1974. As finally enacted, it made provision for different customs duties payable on goods imported during two distinct periods. The first period (section 2 (a)) covered those cleared from customs between the 3rd May and the 11th July, 1974, at the same rates of duties to be found in  
25 the Bill, as introduced to the House of Representatives, and the

second period (section 2 (b)) covered those cleared from customs as from the 12th July, 1974 onwards, at rates of duties which were lower than those in the Bill but in any event higher than those provided in the basic Law (No. 57 of 1973).

Applicant cleared from customs goods during the first period; and when his request for refund of the additional duty was turned down he filed the present recourse whereby he contended:

- (a) That Law No. 36 of 1974 and in particular section 2 thereof, is unconstitutional as offending Article 28.1 of the Constitution which safeguards the principle of equality.
- (b) The differentiation between merchants who cleared from customs goods during the first and second periods, irrespectiv: of when the goods arrived in Cyprus, and the imposition of higher duties on the first period and less on the second period, constitutes a legislation which unreasonably discriminates and does not serve justice or public interest or a special expediency and it obviously exceeds the extreme permitted limits acceptable by the public feeling.
- (c) At the enactment of Law 36/74, the number of traders who cleared from customs goods between 3.5.1974–11.7.1974 was known and limited and it was unjustly intended by the said law to retain fully the duties paid by these traders.

*Held*, (1) A law is presumed to be constitutional until proved otherwise beyond reasonable doubt. The burden lies upon him who attacks a statute to show that there has been a clear transgression of the constitutional principles (see, *inter alia*, *Board for Registration of Architects and Civil Engineers v. Kyriakides* (1966) 3 C.L.R. 640).

(2) The principle of equality, a constitutional principle, safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things; it is violated if a distinction has no objective and reasonable justification (see *Mikrommatis* and *The Republic*, 2 R.S.C.C. 125).

(3) Taxation laws are no exception to the principle of equal protection and a taxation law will be declared unconstitutional

as violating Article 28.1 of the Constitution, if the classification made by it is not a reasonable one or if the same class or property similarly situated is the subject of unequal taxation. (See, also, Basu's Comentary on the Constitution of India, 5th Ed. Vol. 4 p. 240).

(4) In taxation, even more than any other field, legislatures possess the greatest freedom in classification. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it (*Madden v. Kentucky* (1940) 309 U.S. 83).

(5) In our case, there is equal treatment in respect of all, in the same circumstances—persons and goods for the same period. Difference in the customs duties imposed in respect of different periods, does not amount to discrimination, nor is the legal position changed merely because those affected by the duties imposed on goods cleared during the first period, was a limited or an ascertainable number at the time of the enactment.

(6) There was nothing personal in the character of the legislation. There was only classification according to difference in time which was reasonable under the particular set of circumstances as founded on clear differentials having a rational relation to the objects sought to be achieved by the law in question. (See *Basu's (supra)* vol. 1, p. 456). It was subjection to equal laws applying to all in the same circumstances, and this is what is meant by equal protection of the law. Therefore, the said section 2 of Law 36 of 1974, is not unconstitutional as offending Article 28.1 of the Constitution.

*Application dismissed.*

Cases referred to:

*Board for Registration of Architects and Civil Engineers v. Kyriakides* (1966) 3 C.L.R. 640, at p. 644;

*Meletiou and Another v. District Labour Officer, Nicosia* (1975) 2 C.L.R. 21;

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

*Republic v. Arakian and Others* (1972) 3 C.L.R. 294, at pp. 298–299;

*Madden v. Kentucky* (1940) 309 U.S. 83.

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**Recourse.**

Recourse against the refusal of the respondent to refund to applicants the additional duty which was paid on their goods cleared from Customs between 3rd May and 11th July, 1974 in accordance with the Customs Duties and Excise Duties Law, 1973 as amended by Law 36/74. 5

*M. Christofides*, for the applicant.

*C. Kypridemos*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.* 10

The facts sufficiently appear in the judgment of the Court delivered by:—

A. LOIZOU, J.: The applicant, a trading firm, cleared from customs goods, between the 3rd May and the 7th June, 1974 and paid customs duty thereon, in accordance with the Customs Duties and Excise Duties Law, 1973, (Law No. 57/73), as amended by the Customs Duties and Excise Duties (Amendment) Law, 1974, (Law No. 36/74). This amending Law with which we are primarily concerned in this case, was introduced to the House of Representatives on the 3rd May and published as a Bill in the official Gazette of the Republic, on the 10th May, 1974. It was intended thereby to amend the duties payable on certain goods which were included in the Third Schedule to the principal Law and the new rates appear in the First Schedule to the Law which came into force retrospectively, in accordance with section 4 thereof, as from the 3rd May, 1974. As finally enacted, it made provision for different customs duties payable on goods imported during two distinct periods. The first period (section 2 (a)) covered those cleared from customs between the 3rd May and the 11th July, 1974 at the rates appearing in the First Schedule, Part I which are the same rates of duties to be found in the Bill, as introduced to the House of Representatives, and the second period (section 2 (b)), the rates payable as from the 12th July, 1974 onwards, to be found in the First Schedule, Part II thereof and which were lower than those in the Bill, but in any event higher than those provided in the basic Law. The amount involved is in the region of £2,400, but it has been agreed between counsel that the exact figures may be ascertained, if necessary, from the official books and the list attached to this Application. 15  
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By Article 24.3 of the Constitution, "no tax, duty or rate of any kind whatsoever, shall be imposed with retrospective effect: Provided that any import duty may be imposed as from the date of the introduction of the relevant Bill". Statutory expression of this provision is to be found in section 7 of Law 57/73. By it, customs duties are collected at the rate provided in a Bill as from its introduction to the House of Representatives, and in case there is a difference in the rates as finally enacted in the Law, such difference has to be refunded to the importer.

10 Law 36/74 a posteriori, approved the customs duties collected at the rates provided in the Bill between the date of its introduction to the House, up to the 11th July, 1974, the date of its enactment into law, which came into operation on its publication in the official Gazette of the Republic of the 26th August,  
15 1974, but with retrospective effect as already indicated.

On the 14th August, 1974 the applicant Company requested by letter (*exhibit 2*), the Controller of Customs and Excise to refund the additional duty which was paid on their goods cleared from customs during the first period. The refusal to  
20 that request is to be found in *exhibit 1*, the letter of the Controller of the 31st August, 1974, hence the present recourse, by which it is claimed that Law 36/74 and in particular section 2 thereof is unconstitutional, as offending the principle of equality guaranteed by Article 28 of the Constitution.

25 The applicant Company in support of the application relies on the following grounds of Law:—

- (a) That Law 36/74 and in particular section 2 thereof, is unconstitutional as offending Article 28.1 of the Constitution which safeguards the principle of equality.
- 30 (b) The differentiation between merchants who cleared from customs goods between the 3rd May, 1974 and the 11th July, 1974 and those who cleared from customs goods after the 12th July, 1974, irrespective of when the goods arrived in Cyprus, and the imposition of  
35 higher duties on the first and less on the others, constitutes a legislation which unreasonably discriminates and does not serve justice or public interest or a special expediency and it obviously exceeds the extreme permitted limits acceptable by the public feeling.

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(c) At the enactment of Law 36/74, a number of traders who cleared from customs goods between 3.5.1974 – 11.7.1974 was known and limited and it was unjustly intended by the said law to retain fully the duties paid by these traders.

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Counsel for the applicant Company has conceded that there was equality of treatment in respect of all importers and all goods cleared from customs during the first period, as well as similar treatment in respect of importers and goods during the second period. What is complained of, is that not all the importers of the Island but a limited number thereof that was known or could be ascertained by reasonable inquiry, cleared goods from customs during the first period, and they were discriminated upon vis-a-vis those that cleared from customs goods after the 12th July who were treated more beneficially and the differentiation made by the law was unreasonable and it exceeded the permitted limits.

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A law, is presumed to be constitutional until proved otherwise beyond reasonable doubt. The burden lies upon him who attacks a statute to show that there has been a clear transgression of the constitutional principles. (See *Board for Registration of Architects and Civil Engineers v. Christodoulos Kyriakides* (1966) 3 C.L.R., p. 640 at p. 644 and *Meletiou and Another v. District Labour Officer Nicosia* (1975) 2 C.L.R. 21).

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The principle of equality, a constitutional principle, safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things; it is violated if a distinction has no objective and reasonable justification. (*Mikrommatis and The Republic* 2 R.S.C.C., 125 and *Republic v. Arakian and Others* (1972) 3 C.L.R. 294, at pp. 298–299).

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Taxation laws are no exception to the principle of equal protection and a taxation will be declared unconstitutional as violating Article 28.1 of the Constitution, if the classification made by it is not a reasonable one or if the same class or property similarly situated is the subject of unequal taxation. As pointed out in Basu's Commentary on the Constitution of India, 5th ed. vol. 4, p. 240, "if the taxation generally speaking imposes a similar burden on every one with reference to that particular kind and extent of property on the same basis of taxation, the law shall not be open to attack on the ground

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that the result of the taxation is to impose unequal burdens on different persons”.

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5 Furthermore, in taxation, even more than any other fields, legislatures possess the greatest freedom in classification. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it. (*Madden v. Kentucky* (1940) 309 U.S. 83).

10 In our case, there is equal treatment in respect of all, in the same circumstances—persons and goods for the same period. Difference in the customs duties imposed in respect of different periods, does not amount to discrimination, nor is the legal position changed merely because those affected by the duties imposed on goods cleared during the first period, was a limited or an ascertainable number at the time of the enactment. There was nothing personal in the character of the legislation. There was only a classification according to difference in time which was reasonable under the particular set of circumstances as founded on clear differentials having a rational relation to the objects sought to be achieved by the law in question. (See Basu’s (*supra*) vol. 1, p. 456). It was subjection to equal laws applying to all in the same circumstances, and this is what is meant by equal protection of the law.

For all the above reasons, the present recourse fails and is hereby dismissed, with no order as to costs.

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