

1982 June 19

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CYPRUS CEMENT COMPANY LIMITED,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF COMMERCE AND INDUSTRY,

Respondent.

(Case No. 443/78).

- 5 *Supplies and Services (Transitional Powers) (Cyprus) Order, 1946—
Defence Regulation 61 in the first Schedule thereto, which con-
tinued in force by virtue of section 6 of the Supplies and Services
(Transitional Powers) (Continuation) Law, Cap. 175A—And
the Defence (Exportation of Goods) Regulations, 1956—Were
validly in force in 1978 and they could be applied—Cap. 175A
and the 1956 Regulations not repealed by implication due to
the enactment of the Supplies and Services (Regulation and
Control) Law, 1962 (Law 32/62).*
- 10 *Statutes—Repeal by implication—Principles applicable—Repeal
by implication not to be favoured by the Courts—Supplies and
Services (Regulation and Control) Law, 1962 (Law 32/62) has
not repealed by implication either the Supplies and Services
(Transitional Powers) (Continuation) Law, Cap. 175A or the
15 Defence (Exportation of Goods) Regulations, 1956.*
- 20 *Supplies and Services (Transitional Powers) (Cyprus) Order, 1946—
“Competent Authority” under Defence Regulation 3—Designation
of Minister of Commerce and Industry as Competent Authority—
It extends to his successor in office in the light of Defence Re-
gulation 3(2) and in the absence or express provision to the con-
trary.*

The applicants in this recourse challenged the validity of an Or-
der which was published on 4th November 1978 by virtue of which

there were fixed maximum retail prices for portland cement per metric ton. This Order is the Supplies and Services (Prices, Control, and Regulation of Sale of Goods) (Amendment No.34) Order, 1978, and it came into operation on 6th November 1978. It was made under Defence Regulation 61 in the First Schedule to the Supplies and Services (Transitional Powers) (Cyprus) Order, 1946 (see No. 64, Supplement No. 3, to the Official Gazette of 23rd February 1946) and the said Defence Regulation was continued in force by virtue of section 6 of the Supplies and Services (Transitional Powers) (Continuation) Law, Cap. 175A. The applicants complained also, against the decision contained in a letter of the respondent Minister dated 7th November 1978, and further relevant correspondence, by means of which, first, the total quantity of cement to be sold by the applicants and another cement manufacturer in the Cyprus market and the percentages on the basis of which such quantity would be shared between them, were laid down, and secondly, the respondent refused to grant, except on certain conditions, export licences in respect of cement produced by the applicants. The Minister appears to have acted under the Defence (Exportation of Goods) Regulations, 1956.

On the questions:

- (a) Whether on the material date Defence Regulation 61 and the Defence (Exportation of Goods) Regulations, 1956 were in force;
- (b) Whether the Defence (Exportation of Goods) Regulations, 1956 and Cap. 175A were repealed by implication due to the enactment of the Supplies and Services (Regulation and Control) Law, 1962 (Law 32/62);
- (c) Whether the Minister of Commerce and Industry who has issued the aforementioned Order, and has, also, taken the complained of administrative action as from the 7th November 1978 onwards, was duly appointed by the Council of Ministers as the "Competent Authority" under Defence Regulation 3 of the Supplies and Service (Transitional Powers) (Cyprus) Order, 1946.

Regarding (c) above on 18.2.1974 there was appointed under regulation 3 as the "Competent Authority" "the Minister of Commerce and Industry Mr. Michael G. Colocassides"; it has been submitted that inasmuch as Mr. Michael Colocassides was ap-

pointed personally, when he was Minister of Commerce and Industry, as the Competent Authority under the aforesaid regulation 3 and as he ceased to be the Minister of Commerce and Industry prior to the date when the aforesaid Order 219/78 was issued, and before the aforementioned administrative action was taken as from 7th November 1978 onwards, his successor in the office of Minister of Commerce and Industry was not duly appointed as the Competent Authority.

Held, (1) that Defence Regulation 61 and the Defence (Exportation of Goods) Regulations, 1956 were in force and they could be applied.

(2) That one provision repeals another by implication if, but only if, it is so inconsistent with or repugnant to that other that the two are incapable of standing together; that if it is reasonably possible so to construe the provisions as to give effect to both, that must be done; that in the light of this principle Law 32/62 has not repealed by implication either Cap.175A or the Defence Regulations involved in the present proceedings, especially when one bears in mind that, repeal by implication is not to be favoured by the Courts.

(3) That the designation as the Competent Authority of Mr. Michael G. Colocassides, who was at the time Minister of Commerce and Industry, must, in the light of Defence Regulation 3(2)*, and in the absence of express provision to the contrary, be deemed to extend to the Minister of Commerce and Industry who was performing the duties of Minister of Commerce and Industry at the time when the sub judice Order was issued and the sub judice administrative action was taken and such Minister was at that time the Competent Authority for the purposes of Defence Regulation 3(1).

Order accordingly.

Cases referred to:

Infan v. Republic, 2 R.S.C.C. 39 at p. 42;

Philippou Demetriou & Sons Ltd. v. The Republic (1968) 3 C.L.R. 444 at p. 448;

* Regulation 3(2) is quoted at p. 717 post.

Lanitis Bros Co. Ltd. v. Ioannides (1979) 1 C.L.R. 815 at p. 821;

Hinis v. The Police (1963) 1 C.L.R. 14 at pp. 25, 26;

Petrides v. The Republic, 1964 C.L.R. 413 at p. 425;

Vassiliko Cement Works Ltd. v. Violaris (1975) 1 C.L.R. 256, 265.

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Interim decision.

Preliminary legal issues raised by applicants in respect of the validity of the Defence (Exportation of Goods) Regulations, 1956 in a recourse against the decision of the respondent whereby maximum retail prices were fixed for portland cement per metric ton. 10

G. Cacoyiannis, for the applicants.

Cl. Antoniadis, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult. 15

TRIANTAFYLLIDES P. read the following interim judgment. The applicants challenge, in effect, the validity of an Order which was published on 4th November 1978 (see No. 219, Third Supplement, Part I, to the Official Gazette).

The said Order is the Supplies and Services (Prices, Control and Regulation of Sale of Goods) (Amendment No. 34) Order, 1978, and it came into operation on 6th November 1978. 20

This Order was made under Defence Regulation 61 in the First Schedule to the Supplies and Services (Transitional Powers) (Cyprus) Order, 1946 (see No. 64, Supplement No. 3, to the Official Gazette of 23rd February 1946) and the said Defence Regulation was continued in force by virtue of section 6 of the Supplies and Services (Transitional Powers) (Continuation) Law, Cap. 175A. 25

By virtue of the aforesaid Order 219/78 there were fixed maximum retail prices for portland cement per metric ton. 30

The applicants are cement manufacturers and traders in cement, including portland cement.

Prior to the aforementioned Order 219/78 the respondent Minister had made another Order, again under Defence 35

Regulation 61, by virtue of which cement was declared to be a controlled commodity. This Order is the Supplies and Services (Prices, Control and Regulation of Sale of Goods) (Amendment No. 23) Order, 1977 (see No. 160, Third Supplement, Part I, to the the Official Gazette of 15th July 1977).

The applicants complain, also, against the decision contained in a letter of the respondent Minister dated 7th November 1978, and further relevant correspondence, by means of which, first, the total quantity of cement to be sold by the applicants and another cement manufacturer in the Cyprus market and the percentages on the basis of which such quantity would be shared between them, were laid down, and, secondly, the respondent refused to grant, except on certain conditions, export licences in respect of cement produced by the applicants.

The respondent Minister appears to have acted in this respect under the Defence (Exportation of Goods) Regulations, 1956 (see No. 378, Supplement No. 3, to the Official Gazette of 10th May 1956); and the said Regulations were continued in force, too, by virtue of section 6 of Cap. 175A.

On 30th April 1982 counsel for the respondent informed this Court that it had been agreed between counsel for the parties that, in the first instance, judgment should be delivered in this case on legal issues which are not connected with disputed facts; and I am, consequently, delivering now this interim judgment.

The main issue with which I have had to deal with, first, is whether on the material date Defence Regulation 61 and the Defence (Exportation of Goods) Regulations, 1956 (378/56) were in force.

In *Irfan v. The Republic*, 3 R.S.C.C. 39, it was held that the Defence (Importation of Goods) Regulations, 1956 (No. 377, Supplement No. 3 to the Official Gazette of 10th May, 1956)—which are legislation of the same nature as Defence Regulation 61 and Defence Regulations 378/56, above—were in force and they could be applied; and the following is a relevant extract from the judgment in the said case (at p. 42):

“(b) The Respondent in this Case based its action on the Defence (Importation of Goods) Regulations, 1956.

Such Regulations were continued in force by virtue of section 6 of the Supplies and Services (Transitional Powers) (Continuation) Law, CAP. 175A. In view of this, these Regulations come within the ambit of 'law' as defined in paragraph 5 of Article 188 and have continued in force under the said Article. 5

In the opinion of the Court the Regulations in question are not unconstitutional in so far as they enable the appropriate authorities to impose restrictions on imports which are necessary in the public interest in the sense of paragraph 2 of Article 25. 10

It is to be observed that in deciding what is 'necessary', in the sense of paragraph 2 of Article 25, regard must be had to the circumstances prevailing at the relevant time.

In the opinion of the Court, having regard to the impact on the economy of the country through the change of sovereignty and the creation of the Republic, it cannot be said that such powers to restrict and regulate imports as those given under the Regulations in question were not necessary in the public interest in the sense of paragraph 2 of Article 25, at the time of the coming into operation of the Constitution and at the relevant time, i.e. February 1961. 15 20

The period of time during which such Regulations would continue to be considered as 'necessary', in the above sense, is a question of fact which does not call for a decision in this Case". 25

It has been submitted that, even if the *Irfan* case, supra, which was decided on 3rd February 1962, quite soon after the establishment of the Republic of Cyprus, could be said to have been correctly decided, it was not possible to hold that Defence Regulations such as those involved in the present case were still in force in 1978, when the events giving rise to the present recourse occurred, that is eighteen years after the establishment of the Republic. 30 35

In my opinion even if such argument could have been found to be valid in normal times, it cannot be accepted as being correct in the present instance, because from 1963 onwards

there commenced, due to intercommunal conflict, an abnormal situation in Cyprus which was continuing in 1978, and which had been immensely aggravated by the Turkish military invasion of Cyprus in 1974. Thus, there was created, and there has
5 been continuing, an emergency situation eminently requiring reliance on emergency legislation such as the Defence Regulations in question.

As far as I could find out, on at least two occasions, after the *Irfan* case, supra, this Court treated Defence Regulations
10 as being still applicable in Cyprus (see *Philippos Demetriou & Sons Ltd. v. The Republic*, (1968) 3 C.L.R. 444, 448, and *Lanitis Bros. Co. Ltd. v. Ioannides*, (1979) 1 C.L.R. 815, 821).

The Defence Regulations involved in the present case, as well as CAP. 175A, were not expressly repealed when on 17th
15 May 1962 the Supplies and Services (Regulation and Control) Law, 1962 (Law 32/62) was enacted and which, to a certain extent, makes similar, though not identical, provisions as the Defence Regulations in question.

It has to be examined, next, whether the said Defence Regula-
20 tions and Cap. 175A were repealed by implication due to the enactment of Law 32/62.

The relevant principle of law is stated as follows in Halsbury's *Laws of England*, 3rd ed., vol. 36, p. 466, para 709: "The rule is, therefore, that one provision repeals another by implication
25 if, but only if, it is so inconsistent with or repugnant to that other, that the two are incapable of standing together. If it is reasonably possible so to construe the provisions as to give effect to both, that must be done" (and see, also, in this respect, Cross on *Statutory Interpretation*, (1976), p. 3, Odgers on *Construction of Deeds and Statutes*, 5th ed., p. 361, Maxwell on
30 *Interpretation of Statutes*, 12th ed., pp. 191, 193, and Craies on *Statute Law*, 7th ed., p. 366).

The same principle has been followed by our Supreme Court in cases such as *Hinis v. The Police*, (1963) 1 C.L.R. 14, 25,
35 26, *Petrides v. The Republic*, 1964 C.L.R. 413, 425, and *Vassiliko Cement Works Ltd. v. Violaris*, (1975) 1 C.L.R. 256, 265).

In the light of the aforementioned principle I do not feel satisfied that Law 32/62 has repealed by implication either Cap.

175A or the Defence Regulations involved in the present proceedings, especially when one bears in mind that, as it is to be derived from the textbooks referred to above, repeal by implication is not to be favoured by the Courts.

It is noteworthy that on 28th June 1962 there was enacted the Regulation of Imports Law, 1962 (Law 49/62) and that, there were thereby repealed, inter alia, the Defence (Importation of Goods) Regulations, 1956 (377/56), which were involved in the *Irfan* case, supra; thus, such Regulations appear to have been regarded as being applicable and in force in the Republic of Cyprus until their repeal by Law 49/62; and the same must have been the view of the Legislature about other Defence Regulations which were not repealed expressly by Laws 32/62 and 49/62.

If the Legislature intended by means of Law 32/62 to repeal either Cap. 175A or any Defence Regulations this could have been stated expressly, as it was done by Law 49/62 which repealed expressly the aforesaid Defence (Importation of Goods) Regulations, 1956 (377/56).

Another issue of law with which I will deal in this judgment is the submission that the Minister of Commerce and Industry who has issued the aforementioned Order 219/78, and has, also, taken the complained of administrative action as from the 7th November 1978 onwards, was not duly appointed by the Council of Ministers as the "Competent Authority" under Defence Regulation 3 of the Supplies and Services (Transitional Powers) (Cyprus) Order, 1946 (No. 64, Supplement No. 3, to the Official Gazette of 23rd February 1946).

It is common ground that on 18th February 1974 (see No. 51, in Third Supplement, Part I, to the Official Gazette) there was appointed under regulation 3, above, as the "Competent Authority" for all purposes of the Defence Regulations, and, in particular, for the purposes of regulations 61 and 61A, "The Minister of Commerce and Industry, Mr. Michael G. Colocassides" ("τὸν Ὑπουργὸν Ἐμπορίου καὶ Βιομηχανίας, κ. Μιχαήλ Γ. Κολοκασίδη").

It has been submitted that inasmuch as Mr. Michael Colocassides was appointed personally, when he was Minister of Commerce and Industry, as the Competent Authority under

the aforesaid regulation 3 and as he ceased to be the Minister of Commerce and Industry prior to the date when the aforesaid Order 219/78 was issued, and before the aforementioned administrative action was taken as from 7th November 1978 onwards, his successor in the office of Minister of Commerce and Industry was not duly appointed as the Competent Authority.

Defence regulation 3, as modified under Article 188 of the Constitution, reads as follows:

10 “3.-(1) The Competent Authority shall be the person appointed by the Council of Ministers in writing for the purposes of all or any of the regulations in which such expression occurs, and any person so appointed is in these regulations referred to as the Competent Authority.

15 (2) Where the holder of a designated office has been appointed to be the Competent Authority, then, unless express provision is made to the contrary, the appointment shall be deemed to extend to the person for the time being performing the duties of the office designated”.

20 In my opinion the designation as the Competent Authority of Mr. Michael G. Colocassides, who was at that time Minister of Commerce and Industry, must, in light of Defence Regulation 3(2), and in the absence of express provision to the contrary, be deemed to extend to the Minister of Commerce and Industry who was performing the duties of Minister of Commerce and Industry at the time when the sub judice Order was issued and the sub judice administrative action was taken and such Minister was in my view, at that time the Competent Authority for the purposes of Defence Regulation 3(1).

30 The remaining issues as to whether Articles 23, 25, 26 and 28 of the Constitution, which have been relied on by the applicants, are applicable to a situation such as the one in the present case and as to whether, if such Articles are applicable, the rights safeguarded thereby could be validly restricted, are inseparably connected with the facts of this case, many of which are disputed, and, therefore, such issues cannot be decided on now, but later together with the merits of this case.

Counsel should consider the position in the light of the interim judgment I have just given today and then this case will come up before me for further directions.

Order accordingly.