

1985 June 5

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

CHARALAMBOS LOIZOU,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF FINANCE,

*Respondent.*

*(Case No. 401/79).*

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*Administrative Law—Administrative acts or decision—Legality—Governed by the legislation in force at the time they are made—But pre-existing legislation applicable when there has been an omission on the part of the administration to perform within a reasonable time what it was duty bound to do before the change of the Law—And an applicant cannot be punished for a delay that was not due to his fault but the administration was to blame.*

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On the 1st August, 1978, the applicant, a disabled person, applied to the respondent for a licence to import a duty free vehicle, by virtue of the provisions of sub-heading 09 of item 01 of the 4th Schedule to the Customs and Excise Duties Law, 1978 (Law 18/78); and in reply the respondents asked him to produce a certificate of the Medical Board for which he had to apply in order to secure it. Though he duly applied for a medical certificate he could not secure it because the Medical Board had been dissolved.

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By letter dated the 13th August, 1979, the respondent Ministry informed the applicant that his application for a duty free vehicle "for invalids of 3000 cc horse power" would not be approved under the existing legislation.

Between the submission of the application on the 1st August, 1978 and the above letter of the 13th August, 1979, the relevant legislation was amended so as to cover motor vehicles of horse power not exceeding 2000 cc. whereas applicant had applied for a 3000 cc. vehicle. 5

*Upon a recourse by the applicant:*

*Held*, that it is basic principle of administrative Law that the legality of administrative acts is governed by the legislation in force at the time when they are made; that this principle applies also in the instance where the legislation in force has changed between the application and the date of the decision was taken, but is however subject to the exception that the pre-existing legislation is applicable when there has been an omission on the part of the administration to perform within a reasonable time what it was duty bound to do before the change of the Law; that it is clearly settled that an applicant cannot be punished for a delay that was not due to his fault but the administration was to blame; that from the facts which are undisputed, it transpires that the respondents imposed on the applicant a condition for granting him the import licence with which condition, however, it was impossible to comply due to the fault of the Administration itself., i.e. he was unable to obtain a medical certificate from the Medical Board, as required, since the Board was not in existence at that time; that the fact that the car had arrived after the change of legislation is immaterial as this does not absolve the respondents from their liability for their delay in dealing with the matter; and that, therefore, the refusal of the respondents to issue the applicant with a licence to import a duty free vehicle for invalids, has to be annulled and is, hereby, declared null and void. 10  
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*Sub judice decision annulled.*

Cases referred to:

*Loiziana Hotels Ltd. v. Municipality of Famagusta* (1971) 35  
3 C.L.R. 466 at p. 472;

*Lordou v. Republic* (1968) 3 C.L.R. 427 at p. 433;

*Philippou v. Municipal Corporation of Nicosia* (1972) 3  
C.L.R. 50 at p. 54;

*Decisions of the Greek Council of State* Nos: 1477/56 and 40  
1235/56.

**Recourse.**

Recourse against the refusal of the respondent to grant applicant an import licence for a motor vehicle for invalids, free of import duty.

5 Applicant appeared in person.

*G. Erotoklitou (Mrs.)*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

10 MALACHTOS J. read the following judgment. The applicant in this recourse claims, as stated therein,

(a) a declaration of the Court that the decision of the respondent of the 13th August, 1979, is contrary to the provisions of the Constitution and the Laws of the Republic and was taken in abuse of power, and

15 (b) a declaration of the Court that the omission of the respondent to grant to the applicant an import licence for a motor vehicle for invalids, free of import duty, is null and void and whatever has been omitted ought to have been performed.

20 The applicant is a disabled person, his right hand being deformed since birth, it is thinner and shorter than the left hand and without a proper palm. On the 1st August, 1978, he applied by letter, exhibit 1, to the Customs and Excise Department to be granted a licence to replace his  
25 old car Reg. No. EY 465, a Vauxhall 200, with another new one, type Mercedes 300 D.

On the 7th August, 1978, he communicated by telephone with the Director of Customs and Excise who informed him that -

30 (a) he could import any type of vehicle free of import duty, but,

(b) he should first obtain a certificate in respect of his invalidity from the Medical Board.

35 The applicant confirmed this conversation by his letter to the Customs and Excise Department, dated 9th August, 1978.

On the same day, the applicant applied by letter, exhibit 2, to the Medical Board for examination. He subsequently received a copy of a letter dated 4th September, 1978, exhibit 3, by the Ministry of Health addressed to Dr. Pelides, Chairman of the Medical Board, requesting the medical examination of the applicant.

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By letter dated 28th September, 1978, exhibit 4, the Customs Department replied to the application of the applicant of the 1st August, 1978, confirming their telephone conversation which reads as follows:

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“I refer to your letter of the 1st August, 1978, by which you apply for the importation of a vehicle duty free according to subheading 09 of item 01 of the 4th Schedule to the Customs and Excise Duties Law (18/78), and to inform you that you may import a new vehicle specially converted without payment of the duty, provided that the appropriate duty on the vehicle already in your possession, imported duty free, under Reg. No. EY 465, is paid before the importation of the new vehicle, and that you should produce a certificate of the Medical Board for which you must apply in order to secure it.”

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In the meantime, on the 9th August, 1978, the applicant placed an order with the Cyprus Import Corporation Ltd., the importers of Mercedes cars, for the car in question. Copy of the order was produced as exhibit 5.

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On the 23rd January, 1979, the applicant wrote to the Customs Department, exhibit 6, complaining that he had been informed by the Director of Medical Services and the Chairman of the Medical Board that the Medical Board had been dissolved and that they did not know when a new Board would be appointed.

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The Customs Department wrote to the applicant in reply, on the 13th February, 1979, exhibit 7, as follows:

“I refer to your letter dated 23rd January, 1979, in connection with the duty free importation of a vehicle specially converted for your disability and I inform you that the said vehicle may be imported duty free by virtue of subheading 09 of item 01 of

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the Fourth Schedule of Law 18 of 1978, (section 11), and in accordance with the above terms and conditions prescribed in the said sub heading, a photo-copy of which is enclosed.

5       Hence the said vehicle may be imported free of duty, provided that and as long as the aforesaid terms and conditions are fulfilled by you before the clearance of the vehicle...".

10       On the 6th March, 1979, the applicant wrote once again to the Minister of Health complaining about the delay of his examination by the Medical Board, (exhibit 8). The Ministry of Health replied by their letter of the 12th March, 1979, exhibit 9, informing him that the  
15       reason his case had not been examined by the Medical Board was that the Board had been dissolved and that it had also been decided that all such applications were to be handled solely by the Ministry of Finance. In view of this they suggested he should apply afresh.

20       On the 21st March, 1979, the applicant wrote to the Minister of Finance, exhibit 10, explaining the position and requesting that his application be expedited, as the vehicle he had ordered arrived in Cyprus. After a telephone communication with a Mr. Tryfonides, an official of the Ministry, he wrote on the 29th March, 1979, exhibit 11, to  
25       the Minister of Finance quoting the full particulars of the new car. According to the applicant, the said official accepted his suggestion that they ought to accept the previous medical certificates certifying that the right hand of the applicant is deformed by birth, which certificates were  
30       used in the past for the importation of two cars duty free by the applicant.

35       On the 15th May, 1979, the applicant wrote to the respondent Ministry of Finance, exhibit 12, complaining that even though they had agreed to use the previous medical certificates, nonetheless he had received no reply from them.

40       On the 14th June, 1979, the applicant wrote to the Department of Customs, exhibit 13, explaining that since his disability was by birth and of a permanent nature, there was no possibility of it changing or improving and,

therefore, there was no need to have this certified by the Medical Board, before which he had not as yet been invited for examination. Also, on the 14th June, 1979, the respondents wrote to the applicant in reply to his letter, exhibit 12, informing him that the medical certificate is a necessary prerequisite and that without this, they would be unable to grant him the licence. They further stated that they were not responsible for any delay in the matter but another Government Department was to blame. 5

In the meantime, the Cyprus Import Corporation Ltd. wrote to the applicant on the 15th June, 1979, exhibit 15A, informing him that they were unable to keep the car for him any longer and unless he obtained all the necessary documents and certificates within ten days, they would be obliged to sell the car to another customer. The applicant, as a result and in reply to the letter of the 14th June, 1979, exhibit 14, once again wrote to the Customs Department on the 21st June, 1979, exhibit 15, enclosing a copy of exhibit 15A. 10 15

On the 8th August, 1979, the applicant after having been examined by the new Medical Board, wrote to the Minister of Finance, exhibit 16, complaining about the situation and about the delay in the issuing of the medical certificate in question. He also informed the respondents that the importers of the car had notified him that they would keep for him the car, which had by then arrived, until the 9th August, 1979. 20 25

On the 13th August, 1979, the respondent Ministry addressed to the applicant the following letter, exhibit 17:

"I have been instructed to refer to your letter of the 21st March by which you apply for a duty free vehicle for invalids of 3000 cc horse power and I regret to inform you that according to the existing legislation, your application cannot receive a favourable reply". 30 35

Hence, the present recourse, which, as stated therein, is based on the following two grounds of Law, namely:

1. The sub judice decision is contrary to Law 18/78,

section 11, Fourth Schedule, sub heading 09, item 01, as in force on 1st August, 1978, and

2. The sub judice decision is contrary to Article 29 of the Constitution as it is not duly reasoned.

5 The applicant has argued that the respondents were guilty of unreasonable delay and that they wrongly considered his case under the Law as it stood on the date of the taking of the sub judice decision. He contended that the Law applicable was that which was in force on the date of his application, i.e. the 1st August, 1978. He has further argued that, as it is evident from exhibit 17, the sub judice decision, the respondents wrongly considered his letter of 10 the 21st March, 1979, exhibit 10, to the Minister of Health as being his application, whereas his actual application was that of the 1st August, 1978, exhibit 1. 15

In support of his argument the applicant referred to the case of *Loiziana Hotels Ltd. v. Municipality of Famagusta* (1971) 3 C.L.R. 466 at 472; and also to the Decision 1235/56 of the Greek Council of State.

20 Counsel for the respondents contended that the Law applicable should be that in force at the "relevant time" which, in the present case, is the time of the clearance of the vehicle because that is the time when the Department of Customs decides what duty is payable, if any. He further submitted that in the present case the relevant Law 25 is Law 18/78, Fourth Schedule, sub heading 09, item 01, as amended on the 8th December, 1978, by Not. 272/78 published in the Official Gazette No. 1487, Part III(1) p. 839, and by Not. 284/78 published in the Official Gazette No. 1489, Part III(1) p. 871 on 22nd December, 30 1978. Consequently, since the car of the applicant arrived on the 18th December, 1978, i.e. ten days after the last amendment of sub heading 09 of item 01 of the Fourth Schedule of Law 18/78, on the 8th December, 1978, 35 the Law applicable would be as amended by No. 272/78; therefore, any delay on the part of the Administration to issue the medical certificate, would, in the circumstances, be immaterial.

Law 18/78 provides in the Fourth Schedule, in sub

heading 09 of Item 0i (p. 822) for the Duty free importation of:

“Motor vehicles for use by persons suffering from a physical disability, imported by disabled persons the disability of whom is duly certified by a Government Medical Board set up for this purpose. 5

Provided that....”

By Not. 272/78 the aforesaid sub heading 09 was amended to provide as follows:

“Motor vehicles of horse power *not exceeding 2000 cc* for use by....” 10  
and as regards the extent of the exception-

“Absolutely or partially as the Minister of Finance may decide.”

By Not. 284/78, sub heading 09 was replaced to provide 15  
as regards the extent of the exception:

“As the Minister of Finance may decide in accordance with the financial position of the applicant.”

It is a basic principle of Administrative Law and as stated in *Andreani Lordou v. The Republic* (1968) 3 C.L.R. 427 20  
at 433, followed by the case of *Loiziana Hotels Ltd. v. Municipality of Famagusta* (1971) 3 C.L.R. 466, “that the legality of administrative acts is governed by the legislation in force at the time when they are made (see Conclusions from the Jurisprudence of the Greek Council of State 25  
1929-1959 p. 160; see, also, inter alia, Decision 1477/56 of the Greek Council of State).”

— This principle applies also in the instance where the legislation in force has changed between the application and the date of the decision was taken, but is however 30  
“subject to the exception that the pre-existing legislation is applicable when there has been an omission on the part of the administration to perform within a reasonable time what it was duty bound to do before the change of the Law.” 35

In *Loiziana* case, supra. it is clearly settled that an applicant cannot be punished for a delay that was not due



to his fault but the Administration, was to blame. In Decision 1477/56 of the Greek Council of State considering Decision 1235/56, the Law is laid down as follows:

5 "In accordance with established principles of administrative Law the validity of an administrative act is determined on the basis of the legal status existing at the time of its issue unless same is issued so that the administration may conform with an omission to  
10 act which had already occurred prior to the alteration of the legal status or unless the Law otherwise expressly provides."

See also *Antonakis I. Philippou v. Municipal Corporation of Nicosia* (1972) 3 C.L.R. 50 at p. 54.

15 In the present case, from the facts which are undisputed, it transpires that the respondents imposed on the applicant a condition for granting him the import licence with which condition, however, it was impossible to comply due to the fault of the Administration itself, i.e. he was unable to  
20 obtain a medical certificate from the Medical Board, as required, since the Board was not in existence at that time. Moreover, even though he was willing and able to supply the respondents with a medical certificate, which had been issued previously in respect of his permanent  
25 disability, the respondents would not accept this but wanted a new one to be issued.

The fact that the car had arrived after the change of legislation is immaterial as this does not absolve the respondents from their liability for their delay in dealing with the matter.

30 For these reasons, the refusal of the respondents to issue the applicant with a licence to import a duty free vehicle for invalids, has to be annulled and is, hereby, declared null and void.

There will be no order as to costs.

35 *Sub judice decision annulled.*  
*No order as to costs.*