

1985 November 22

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ELIAS KYRIACOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF FINANCE,

Respondents.

(Case No. 414/85).

The Customs and Excise Duties Laws 1978-1981—Ss. 2(2) and 11—The Order of the Council of Ministers made under s. 11(2) published on 13.9.79 under Not. 221/79—Import duty—Refusal to exempt applicant from payment of duty in respect of a vehicle for incapacitated persons—The organ vested with competence to decide such a matter is the Director of the Department of Customs—Therefore, sub judice decision taken in excess of power—In any event respondents not entitled to take into consideration a report by the Senior Technical Inspector of Examiners of Drivers as the law intends the certification of the incapacity of applicant to be made by the Medical Board and no one else—Therefore, sub judice decision vitiated by a misconception of Law and of Fact.

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Administrative Law—Misconception of Fact and of Law. 15

On 21.2.85 the applicant applied for exemption from payment of import duty for a car suitable for incapacitated persons under paragraph 01-09 of the Fourth Schedule of the Customs and Excise Duties Laws, 1978-1981. He was

referred to a Medical Board which eventually made its report to the Director-General of the Ministry of Finance. He was also referred to the Senior Technical Inspector of Examiners of Drivers, who came to the conclusion that the applicant is in a position to drive a vehicle without special adaptation. A socio-economic report on the family and financial condition of the applicant was received from the State Welfare Services.

Relying on the report by the Senior Technical Examiners the Director-General of the Ministry of Finance turned down the applicant's said application. As a result the present recourse was filed.

The applicant did not raise the issue of competence of the Director-General of the Ministry of Finance. The issue was brought to the attention of the Court by the address of counsel for the respondents.

Held, annulling the sub judice decision:

(1) An administrative act or decision taken by an organ not having competence is a decision arrived at in excess of power and is of no effect whatsoever. The matter may be examined by the Court ex proprio motu.

(2) The applicant's application for exemption was based on s. 11 of the Customs and Excise Duties Laws 1978-1991 and the Order of the Council of Ministers made under s. 11(2) and published in the Official Gazette of 14.9.79 under Notification 221/79.

Having regard to the provisions of s. 11(1), where reference is made to the "Director" and paragraph (b) of the said Order of the Council of Ministers, there can be no doubt that the organ vested with competence in the matter in hand is the "Director". In accordance with s. 2(2) of the said laws and s. 2(1) of the Customs and Excise Duties Laws 1967-1977 "Director" means the

Director of the Department of Customs. It follows that the sub judice decision is the product of excess of power.

(3) The law intends the certification of the incapacity of the applicant to be made by a Government Medical Board established for the purpose and by no one else. The certificate of the Board is not an advisory act but an intermediate one. Therefore, by relying on the report of the Senior Technical Inspector of Examiners of Drivers the Director-General of the Ministry of Finance took into consideration matters which he should not and thus acted on a misconception of law and of fact. This is a further ground for annulling the sub judice decision.

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

Cases referred to:

Mehmed Ali Rouhi v. The Republic, 2 R.S.C.C. 84;

Georghiades v. The Republic, (1966) 3 C.L.R. 252;

HjiStefanou v. The Republic, (1966) 3 C.L.R. 289;

Evlogimenos v. The Republic, (1973) 3 C.L.R. 184;

Ioannou v. The Republic, (1985) 3 C.L.R. 31.

Recourse.

Recourse against the refusal of the respondents to exempt applicant from the payment of import duty for a car suitable for incapacitated persons.

P. Demetriou, for the applicant.

S. *Georghiades*, Senior Counsel of the Republic,
for the respondents.

Cur. adv. vult.

5 STYLIANIDES J. read the following judgment. The applicant, a refugee from Famagusta, now residing at Ypsonas village in the Limassol District, was seriously injured in 1974 during the Turkish invasion. He received medical treatment in Cyprus and Germany but he was left with serious incapacity of the right upper limb.

10 On 21.2.85 he applied for exemption from payment of import duty for a car suitable for incapacitated persons under paragraph 01-09 of the Fourth Schedule of the Customs & Excise Duties Laws, 1978-1971. He was referred to a Government Medical Board which, after examination,
15 reported to the Director-General of the Ministry of Finance (Appendix 2 to the opposition).

Thereafter the applicant was referred to the Senior Technical Inspector of Examiners of Drivers who was furnished with a copy of the report of the Medical Board. The latter,
20 having examined the applicant, came to the conclusion that he is in a position to drive a vehicle without any special adaptation.

A socio-economic report on the family and financial condition of the applicant was received from the State Welfare
25 Services.

The Director-General of the Ministry of Finance, relying on the first two aforesaid reports, rejected the application of the applicant and communicated his such decision on 24.1.85 (Appendix 5).

30 By this recourse the validity of this decision is challenged on the ground that the Minister of Finance and/or the Director-General of the Ministry, acting in contravention

of the Law, took into consideration and acted on the report of the Senior Technical Inspector of Examiners of Drivers and not only on the report of the Medical Board that has the duty to certify and verify the incapacity of the applicant.

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The question of competence of the Director-General of the Ministry of Finance has not been raised by the applicant as a ground of invalidity of the sub judice decision. It was rightly brought to the attention of the Court by the address of counsel for the respondents.

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An administrative act or decision taken by an organ not having competence is a decision arrived at in excess of power and is of no effect whatsoever—(*Mehmet Ali Rouhi v. The Republic*, 2 R.S.C.C. 84, 88).

An administrative Court is entitled to examine *ex proprio motu* the competence of the particular organ, the decision of which is being challenged before it—(*Stassinopoulos on the Law of Administrative Disputes*, (1964), p. 251; *Cleanthis Georghiades v. The Republic*, (1966) 3 C.L.R. 252, 276; *Yiangos Hji Stephanou v. The Republic*, (1966) 3 C.L.R. 289; *Evipides Evlogimenos v. The Republic*, (1973) 3 C.L.R. 184).

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The relevant legislative provision on which applicant's application for exemption was based, is s. 11 of the Customs & Excise Duties Laws, 1978-1981, and the Order of the Council of Ministers made under s. 11(2), published in the Official Gazette No. 1553 of 14.9.1979 under Notification No. 221/79.

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Section 11, before the repeal and substitution by s. 2 of Law 50/85 of subsection (2) thereof, reads as follows:-

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-11.- (1) Ανεξαρτήτως οιασδήποτε νομοθετικής διατάξεως δυνάμει της οποίας είναι δυνατή η ατελής εισαγωγή ειδικώς καθοριζομένων εμπορευμάτων προς χρήση αυτών υπό ωρισμένων προνομιούχων προσω-

5 πων, οργανισμών, αρχών και οργανώσεων, και υπ' ους
όρους ο Διευθυντής ήθελεν επιβάλει προς διασφάλισι-
των δημοσίων προσόδων, εμπορεύματα του εν τῷ Τε-
τάρτῳ Πίνακι καθοριζομένου είδους απαλλάττονται,
10 υπό τας εν τῷ ειρημένῳ Πίνακι οριζομένας περιστά-
σεις και όρους εκτός εάν άλλως προνοήται εν τῇ τε-
τάρτῃ στήλῃ του ιδίου Πίνακος, του εισαγωγικού δα-
σμού ή φόρου καταναλώσεως όστις άλλως θα επεβάλ-
λετο δυνάμει του παρόντος Νόμου, νοουμένου ότι η
15 αίτησις απαλλαγῆς υποβάλλεται υπό ή δια τον εισαγω-
γέα πριν ή τα εμπορεύματα απομακρυνθῶσι του τελω-
νειακού ελέγχου, εκτός ως άλλως ρητῶς προνοείται
εν τῷ παρόντι Νόμῳ.

15 (2) Δια Διατάγματος αυτού δημοσιευθησομένου εν
τη επισήμῳ εφημερίδι της Δημοκρατίας, το Υπουργικόν
Συμβούλιον δύναται να προσθέτη, διαγράφη, μεταβάλ-
λη ή άλλως τροποποιή τας κλάσεις ή οιασδήποτε τού-
των ως αύται εκτίθενται εν τῷ Τετάρτῳ Πίνακι».

20 (“(1) Notwithstanding any other legislative provi-
sion permitting the duty free importation of specified
goods for the use by certain privileged persons, orga-
nizations, authorities and associations, and subject to
any terms which the Director may impose for safe-
25 guarding public revenue, goods of the kind specified
in the Fourth Schedule are exempted under the condi-
tions and circumstances set out therein from the payment
of customs or excise duty which otherwise would have
been imposed under this law, provided that the applica-
30 tion for exemption is submitted by or for the importer
before the clearance of the goods, except as otherwise
provided by this law.

35 (2) The Council of Ministers may by Order published
in the Official Gazette add, delete, alter or otherwise
amend the classes or any of them as the same are
set out in the Fourth Schedule”.

The relevant part of the Fourth Schedule, as substituted by the aforesaid Order of the Council of Ministers, reads:-

Εδάφιοι	Περιγραφή Απαλλαγής	Έκταση Απαλλαγής	
09	Βενζινοκίνητα και πετρελαιοκίνητα οχήματα, ιπποδυνάμειως μη υπερβαινούσης τα 2000 κυβ. εκατοστά και 2300 κυβ. εκατοστά, αντιστοίχως, κατάλληλα προς χρήση υπό προσώπων πασχόντων εκ σωματικής αναπηρίας εισαγόμενα υπό αναπήρων προσώπων των οποίων η αναπηρία πιστοποιείται δεόντως υπό επί τούτω συγκροτούμενου Κυβερνητικού Ιατρικού Συμβουλίου:	Ως ήθελεν αποφασίσει ο Υπουργός Οικονομικών βάσει της οικονομικής καταστάσεως του αιτητού.	5
	Νοείται ότι η απαλλαγή αυτή δεν τυγχάνει εφαρμογής επί αναπήρων προσώπων άτινα:		10
	(α) Είναι ιδιοκτήται ή κάτοχοι ετέρου ούτως ατελώς εισαχθέντος οχήματος		15
	ή		
	(β) δεν κέκτηνται άδειαν οδηγού, νοουμένου ότι οσάκις ανάπηροι κέκτηνται άδειαν μαθητευόμενου οδηγού ο Διευθυντής δύναται να παραχωρήση απαλλαγήν υπό τον όρον ότι θα εξασφαλισθή άδεια οδηγού εντός ενός έτους από του τελωνισμού του οχήματος ή εντός τοιαύτης ετέρας περιόδου ως ούτος ήθελε κρίνει εύλογον.		20
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(*Description of Exemption*)

5 Petrol and diesel motor vehicles of a horse power not exceeding 2000 c.c. and 2300 c.c. respectively suitable for use by persons suffering from body disablement imported by disabled persons whose disablement is duly certified by a Government Medical Board constituted for the purpose:

 Provided that this exemption is not applicable to disabled persons who:

- 10 (a) Are the owners or possessors of another thus duty free imported vehicle;
- (b) are not the holders of a driving licence, provided that when disabled persons are the holders of a learner's driving licence the Director may grant
- 15 such exemption on the condition that a driving licence will be obtained within one year from payment of customs duty for the vehicle or within such other period which he might consider reasonable.

20 *Extent of Exemption*—As the Minister of Finance may decide on the basis of the financial condition of the applicant”).

25 The legislator by Section 11 of the Customs & Excise Duties Laws, 1978-1981, exempted from payment of import and excise duty the goods specified in the Fourth Schedule under the conditions and circumstances set out therein, provided that the application for exemption is submitted before clearance from customs. The Council of Ministers is empowered by Subsection (2) of this Section to make

30 any alterations, deletions or amendments of the classes or any of them set out in the Fourth Schedule by order to be published in the Official Gazette of the Republic, and after the amendment by Law 50/85 such order has to be approved by the House of Representatives.

35 Having regard to the provisions of s. 11(1), where reference is made to “the Director” and paragraph (b) of the Order of the Council of Ministers, no doubt is left that the organ vested with competence to examine and

accept or reject the claim of the applicant is the Director. "Director" means the Director of the Department of Customs—(See s. 2(2) of the Customs & Excise Duties Laws, 1978-1981, and s. 2(1) of the Customs & Excise Laws, 1967-1977). Neither the Minister of Finance nor the Director-General of the said Ministry had any competence to determine the application of the applicant. Only when the application of the applicant is accepted by the Director, the Minister of Finance is empowered to decide the extent of the relief on the basis of the financial condition of the applicant. As the Minister of Finance and the Director-General lacked competence, the sub judice decision is the product of excess of power and is of no legal effect whatsoever.

There is another matter which has to be given due consideration. The law intends the certification of the incapacity of the applicant to be made by a Government Medical Board established for the purpose and by no one else. The issue of this certificate is not simply an advisory act but an independent intermediate act—(*Ioannou v. The Republic*, (1985) 3 C.L.R. 31).

In the present case, as in arriving at the sub judice decision the Director-General relied on the report of the Senior Technical Inspector of Examiners of Drivers, he took into consideration matters which he should not and thus acted on a misconception of law and fact. This is a further ground for annulling the sub judice decision.

The decision complained of is hereby declared null and void. Let there be no order as to costs.

Sub judice decision annulled. 30
No order as to costs.