1985 December 19

[A. Loizou, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

H. & D. HEALTH AND DIET
FOOD CENTRE LTD.,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE AND OTHERS,

Respondents.

(Case No. 644/85).

Administrative act—Executory—Act of execution—Act preparatory in nature—Importation of goods—The decision that such goods are pharmaceutical preparations is an executory act—But the decision that followed to seize the goods in question is an act of execution and also an act preparatory to the eventual forfeiture of the goods.

Administrative act—Reasoning of—The fact that respondents justified the sub judice seizure by referring to the wrong section of the Law (s. 39 (c) of 82/67) does not invalidate the decision as ample support for it can be found in s. 39 (b) of the same law.

Administrative Law—Experts—Conclusions of—Subject to certain exceptions the principle is that such conclusions are not reviewable by this Court.

The Customs and Excise Duty Law 82/67 ss. 24, 39 (b), 39 (c) and para. 3 of the 2nd Schedule thereto.

The Drugs (Control of Quality, Supply and Prices) Law, 1967 —S.4—Competency of the Drugs Council.

On the 3rd and 5th July 1985 the applicant company

delivered to the Customs Authority entry forms for the importation of goods described as "Athletic Health Foods" and "Vitaminized Food Preparations". The entries were accepted and the appropriate duties, fees and charges were paid. The goods were examined by the appropriate officers who verified that being food supplements were correctly classified under tarrif 21.07.99.

Subsequently, the Health Authorities were called by the Customs Authorities to inspect the said goods and did so on the 5th and 6th July, 1985 (Appendices 1 and 7 to the opposition) and decided that only the goods named *Carottes 150 cc and Lecithine 350 mg. were to be given* to the applicants, the rest of the goods being considered as pharmaceuticals. Despite this, the Limassol Customs Authorities wrongly delivered all the goods to the applicants. When, however, this matter came to the knowledge of the Director of Customs, instructions were given for the seizure of the goods under Law 82 of 1967 and the goods were accordingly seized on the 9th July, 1985 and the appropriate notice of seizure was given to the applicant by letter dated 10th July 1985, that the goods were seized under section 39 (c) of the said Law.

As a result applicants filed the present recourse. Respondents raised a preliminary objection that the sub judice decision which is the notice of seizure is not an administrative act capable of being challenged under Article 146 of the Constitution, but is merely a preparatory act to the actual seizure.

Held, dismissing the recourse:

(1) Here there are in effect two separate acts or decisions. The first is the decision that the goods in question are pharmaceutical preparations. This is an executory administrative act producing legal results. The second is the decision to seize the goods which as such is an act of execution and also a preparatory act to the eventual forfeiture of the goods.

(2) The Drugs Council set up by the Drugs (Control of Quality, Supply and Prices) Law, 1967 is by virtue of s.4 of the said law the appropriate organ to decide if a

specified substance is a pharmaceutical preparation or not.

(3) This Court cannot interfere with the expert opinion of the Drugs Council as the non-reviewability, subject to certain exceptions, of the conclusions of experts is a well established principle. The contrary opinion of foreign experts cannot lead to the conclusion that the expert opinion before the Court is wrong because it is not before the Court on what this opinion to the contrary was based nor what were the relevant provisions of their law.

(4) The sub judice seizure was justified under s. 39 (c) of the Customs and Excise Law 1967. The provisions of the said section are irrelevant to the present case, but this fact is immaterial as the matter can be remedied by reference to the correct section of the law, i.e. s.39(b).

Recourse dismissed.
No order as to costs.

Cases referred to:

Ioannou v. *The Republic* (1982) 3 C.L.R. 380;

Akinita Anthoupolis Ltd. and Another v. *The Republic* (1980) 3 C.L.R. 296;

Spyrou and Others (No. 1) v. *The Republic* (1973) 3 C.L.R. 478;

Paraskevopoulou v. *The Republic* (1980) 3 C.L.R. 647.

Recourse.

Recourse against the decision of the respondents whereby goods imported by applicants and cleared from customs were seized and/or confiscated by the Health Authorities under section 39 (c) Law No. 82/67.

L. Clerides with *N. Panayiotou*, for the applicants.

N. Charalambous, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

A. Loizou J. read the following judgment. The applicant company by the present recourse seeks the following reliefs:-

(1) Declaration of the Court that the decision of the respondents by virtue of which they proceeded to seize and/or confiscate the goods of the applicants is null and void and of no legal effect whatsoever.

(2) Declaration that the act and/or decision of the respondents by which they revoked the administrative act for the clearance of the goods is null and void and of no legal effect whatsoever.

(3) Declaration that the act and/or decision of not allowing the clearance of the goods is null and void and of no legal effect whatsoever.

(4) Declaration that the act and/or decision that the goods concerned are goods of which the importation is forbidden or is subject to restrictions by virtue of section 39 of Law 82 of 1967 (as amended) is null and void.

(5) Declaration that the act and/or decision of the Director of Customs as referred to in his written instructions to the respondents is null and void.

(6) Declaration that the act and/or decision of the respondents by which the goods concerned were considered as pharmaceutical preparations in order that their seizure might be decided and/or ordered, is null and void and of no legal effect whatsoever.

(7) Declaration that the decision of the respondents that the circular dated 1st July, 1985, (by which the goods in question were considered as pharmaceutical preparations), is null and void and of no legal effect whatsoever.

On the 3rd and 5th July 1985, the applicant company, who are agents of what are described as food supplements (dietic preparations), delivered to the Customs Authority in Limassol, in accordance with section 24 of the Customs and Excise Law, 1967, (Law No. 82 of 1967), entry forms for the importation of goods described as "Athletic Health

Foods" and "Vitaminized Food Preparations". The documents were checked and in accordance with the standing practice the entries in question were accepted and the appropriate duties, fees and charges, were paid on the 3rd and 6th July, 1985. The goods were examined by the appropriate officers who verified that being food supplements they were correctly classified under tarrif No. 21.07.99.

Subsequently, the Health Authorities were called by the Customs Authorities to inspect the said goods who did so on the 5th and 6th July, 1985 (Appendices 1 and 7 to the opposition) and decided that only the goods named Carottes 150 cc and Lecithine 350 mg. were to be given to the applicants, the rest of the goods being considered as pharmaceuticals. Despite this, the Limassol Customs Authorities wrongly delivered all the goods to the applicants. When, however, this matter came to the knowledge of the Director of Customs, instructions were given for the seizure of the goods under Law 82 of 1967 and the goods were accordingly seized on the 9th July, 1985 and the appropriate notice of seizure was given to the applicant by letter dated 10th July 1985, that the goods were seized under section 39 (c) of the said Law.

As a result of the seizure of the goods as above, the applicants filed the present recourse on the 12th July 1985, the grounds of law upon which it is based can be summarized as follows:

(a) It was taken by an incompetent organ and/or by usurpation of power.

(b) It was taken contrary to the Constitution and in particular to Articles 28 and 129 and/or The Drugs (Control of Quantity, Supply and Prices) Law 1967, (Law No. 6 of 1967) and/or Law No. 82 of 1967 as amended.

(c) It was based on illegal circulars and/or written orders and/or were taken in breach of the general principles of Administrative Law and/or of proper administration and/or on the basis of defective reasoning and/or wrong exercise of discretion and/or abuse of power.

Before going into the arguments advanced on behalf of the applicant company, I shall deal first with the preliminary objection put forward by counsel for the respondents to the effect that the sub judice decision which is the notice of seizure issued in accordance with the Second Schedule to the Customs and Excise Law, 1967, is not an administrative decision capable of being challenged under Article 146, but is merely a preparatory act to the actual seizure because as a result of such act no legal results are produced, such being produced in the present case, only after proceedings for condemnation before the Civil Courts are taken.

I do not entirely agree with this contention. It is a correct statement of the Law but only as regards the decision of the respondents leading to the revocation of the clearance of the goods and to their seizure. It is not entirely correct because here there are in effect two separate acts or decisions of the respondents; the first is the decision of the respondents that the goods in question are pharmaceutical preparations and not food supplements. This is an executory administrative decision producing legal results and consequently capable of being challenged by this recourse. The second act or decision which is a separate one and unconnected with the first is the decision to seize the goods which as such is an act of execution. This, as correctly stated by counsel for the respondents cannot be challenged by the present recourse as it is also a preparatory act to the eventual forfeiture of the goods which are so forfeited either on the expiration of the period prescribed by paragraph 3 to the 2nd Schedule to the Law No. 82 of 1967, if no objection to the seizure is served on the Director of Customs and Excise, or if such notice of objection is given, upon a finding by the District Court as a result of proceedings for condemnation.

Having disposed of this matter, I shall now deal with the arguments of the applicants.

It is pertinent to deal first with the argument of the applicants that the Drugs Council was not the appropriate organ to decide on the matter because the goods being

food supplements do not come under the competence of the Council.

The Drugs Council which was set up by virtue of the Drugs (Control of Quality, Supply and Prices) Law, 1967 is in accordance with section 4 of the Law, the appropriate organ to prepare "a list of the substances which are to be treated as controlled pharmaceutical preparations" for the purposes of the Law; it is thus the appropriate organ to decide if a specified substance is a pharmaceutical preparation or not, as it has done in the present case. Consequently this ground must fail.

The next argument of the applicants is that the goods in question are not pharmaceutical preparations as alleged by the respondents but are food supplements; thus they were wrongly seized and their importation was wrongly prohibited.

It should be stated at this stage that as regards this argument, six out of the twelve goods were returned to the applicants on the 2nd August 1985, as a result of a decision of the Drugs Council communicated by letters of 27th July, 1985 and 2nd August 1985, of the Registrar of the Drugs Council to the Director of Customs to the effect that six out of the twelve goods which had been seized were not considered as controlled under Law No. 6 of 1967. Therefore this argument and the recourse are without substance as regards the returned goods and only relevant as regards the goods which have not been returned.

As already stated above the appropriate organ to decide as to the nature of the goods is the Drugs Council and this Court cannot interfere with such expert opinion, as the non-reviewability, subject to certain exceptions to which I shall be referring shortly, of the conclusions of experts, is a well established principle. In this respect reference may be made to *Theodossis Ioannou* v. *Republic* (1982) 3 C.L.R. 380, where Stylianides, J., had this to say at pp. 384 - 385:-

> "With the advancement of science the ordinary and general knowledge of a person are not sufficient to deal with matters which are considered technical or

specialized. Special knowledge or capacities acquired by scientific study, training and experience are required for the facing, examination and determination of such matters. The value of specialized knowledge is uncontestable, being the product, as it is, of intensive study, research and experience beyond the range of the ordinary man. In general, neither the administrative organ nor this Court can pass a judgment on the opinions of a body of experts. It is only when there is a misconception of fact by the taking into consideration of non-existing facts or by the failure to take into consideration existing ones that the Court can exercise judicial control over decisions based on such opinions.

The non-reviewable, subject to what was stated above, of the conclusions of the experts and particularly of medical experts, is well settled. (D. P. Economou—Judicial Control of Administrative Power, 1966, p. 253). It is normally beyond the competence of this Court in a case of this nature to examine the correctness from a scientific aspect of the report of the Medical Board. (See Decision No. 2051/70 of the Greek Council of State: *Pitsillides* v. *Republic*, (1978) 3 C.L.R. 99; *Kyriacos Diosmis* v. *Republic*, (1975) 3 C.L.R. 461, 465). It is within the exclusive competence of the administrative organ to decide on the disability of a person (ικανότης ή ανικανότης) and its decision is not reviewable unless there is a reviewable defect. (Case No. 828/49 of the Greek Council of State)."

In any event such expert opinion was also taken in accordance with Notification No. 274 of 1970, published in Supplement III to the Official Gazette, that certain pharmaceuticals which are considered as controlled drugs can only be imported under licence; and in this instance the applicants had no such licence.

Such expert opinion is also valid even if there may be existing opinion of other experts to the contrary. Such contrary opinion cannot lead to a conclusion that the expert opinion before the Court is wrong because in the present

case, it is not before the Court on what this opinion of foreign experts to the contrary was based, nor what were the relevant provisions of their law. Therefore this ground must also fail.

The final argument of the applicants is that the sub judice decision is devoid of reasoning and/or that the reasoning given was defective in that it was stated that the sub judice seizure of the goods was effected under section 39 (c) of the Customs and Excise Law 1967, which is irrelevant and inapplicable in the circumstances of the case.

It is true that section 39(c) is irrelevant but as counsel for the respondents stated it is immaterial that the wrong section was quoted by mistake, since the matter can be remedied by reference to the correct section of the Law, that is section 39 (b). In support of this argument the following was stated by me in the case of *Akinita Anthoupolis Ltd. and Another* v. *Republic* (1980) 3 C.L.R. 296 at 302 - 303:-

> "His reference, however, to the repatriation of the purchase money, which I take it to be his understanding of the philosophy of the Exchange Control Law, does not affect the validity and legality of the sub judice decision which can be upheld on the basis of other lawful reasoning, namely, the mere non-existence of the prescribed by the Exchange Control Law permit and there is ample authority and administrative decisions, valid in Law, for some other reasoning than the one given by their author could be judicially upheld on the basis of other lawful reasoning."

Also in the case of *Spyrou and Others (No. 1)* v. *The Republic* (1973) 3 C.L.R. 478, Triantafyllides, P., at p. 484 said the following:-

> "It is, however, open to an administrative Judge—and I am dealing with these cases in such a capacity—to uphold the validity of an administrative decision on the basis of a lawful reasoning therefor even though such reasoning is different from the reasoning given by the administration for reaching such decision and

even if the reasoning given by the administration is legally defective (see, inter alia, the decisions of the Greek Council of State in Cases 48/1968, 132/1969, 2134/1969 and 2238/1970)".

One may refer also the case of *Paraskevopoulou* v. *Republic* (1980) 3 C.L.R. 647, where both above passages were cited with approval.

Consequently the fact that the respondents wrongly referred to the wrong section of the Law does not invalidate their decision since ample support can be found for this in section 39 (b) instead. The sub judice decision is thus duly reasoned.

For all the above reasons I find that the sub judice decision was duly taken in accordance with the Law and regulations, the recourse must therefore fail and is hereby dismissed with no order as to costs.

Recourse dismissed.
No order as to costs.