

1987 January 20

(A LOIZOU, MALACHTOS, SAWIDES, PIKIS, KOURRIS, JJ)

ANNA YIANGOU,

*Appellant-Applicant,*

v

THE REPUBLIC OF CYPRUS, THROUGH  
THE DIRECTOR OF THE DEPARTMENT OF  
CUSTOMS AND EXCISE,

*Respondents*

*(Revisional Jurisdiction  
Appeal No 617)*

*Executory act—Informatory or advisory act—Application that applicant be informed whether she is entitled under Order 188/82 made under section 11(2) of the Customs and Excise Duties Law, 18/78, as amended, to import on a future date a motor car duty free—Reply in the negative—Such reply not an executory, but an informatory or advisory act*

*Words and Phrases «The importation takes place » in Order 188/82 of the Council of Ministers made under s 11(2) of the Customs and Excise Duties Law 18/78, as amended and the word «import» in section 2 of the said law*

10 On the 29.6 82 the appellant, who had returned to Cyprus in April 1981, applied to the respondent to inform her whether in case she did import on a future date a motor car, she would qualify from exemption from import duty under the said order 188/82

15 As the answer was in the negative the appellant filed a recourse under Art 146 of the Constitution. The recourse was dismissed by the President of this Court and, as a result, the present appeal was filed. The Court raised ex proprio motu the issue whether the sub-judice decision is of an executory nature. Both counsel agreed that it is not an executory act.

20 Held, dismissing the appeal (1) Agreements of counsel as to the legal state of affairs are not binding on this Court in the exercise of its revisional jurisdiction.

25 (2) The crucial words in Order 188/82 being «the importation takes place within a reasonable time from their arrival», that is the actual importation, the sub-judice act was in the nature of an informatory or advisory act. Order 188/82 should be interpreted subject to the definition of the word «import» in section 2 of the Law.

*Appeal dismissed  
No order as to costs*

**Appeal.**

Appeal against the judgment of the President of the Supreme Court of Cyprus (Triantafyllides, P.) given on the 30th July, 1986 (Revisional Jurisdiction Case No. 272/84)\* whereby appellant's recourse against the refusal of the respondents to allow her to import a motor vehicle free of import duty was dismissed.

*C. Loizou with G. Yiangou, for the appellant.*

*A. Evangelou, Senior Counsel of the Republic, for the respondent.*

*Cur. adv. vult.* 10

A. LOIZOU J. read the following judgment of the Court. This is an appeal from the judgment of the learned President of this Court by which he dismissed the recourse of the applicant—present appellant—, who had challenged the decision of the respondent Director of the Department of Customs refusing her the free of customs duty importation of a motor-vehicle as a Cypriot who had returned from abroad to settle in Cyprus. She had based her application on the provisions for conditional reliefs of goods of the Order published in the official Gazette of the Republic, Supplement No. III (I) of the 11th June, 1982, under Notification No. 188 made under Section 11(2) of the Customs and Excise Duties Law 1978, Law No. 18/78 as amended. 15 20

In the course of this appeal the question arose whether the challenged sub judice decision was an executory one amenable to the jurisdiction of this Court under Article 146 of the Constitution. This point was not argued before the learned President, but this Court in the exercise of its powers and bearing in mind the fact that this matter touches a question of jurisdiction raised same *ex proprio motu*. 25

The circumstances of the case upon which this issue arose appear in the judgment of the learned President and are not in dispute. The appellant returned to Cyprus with her husband and daughter in April 1981. Their household and personal effects were cleared from Customs by her husband who declared in the relevant customs' form, dated 13th June, 1981, that he intended to stay in Cyprus permanently. Neither of them imported at the time 30 35

\*Reported in (1987) 3 C.L.R. 18.

any motor-vehicle. Subsequently and indeed after the publication on the 11th June 1982, of the aforementioned Order, the appellant on the 29th June, 1982, applied to the respondent Director of the Department of Customs to inform her whether in case she did  
5 import a motor-car on a future date, in fact unspecified at that, she would qualify from exemption from import duty on the basis of the facts alleged in her application.

The respondent Director replied in the negative on the ground that she did not satisfy the requirement appearing in the afore-  
10 mentioned Order of her having imported the said vehicle «within a reasonable time from the date of her arrival», that date being according to the Director the 27th April 1981.

Invited by the Court to comment on the nature of the sub judice decision in particular whether it was an executory one, both  
15 counsel agreed after reflection and on the basis of the relevant provisions of the Law viewed in the light of our Case Law on the matter, that it was not an executory administrative act in the sense of Article 146 of the Constitution.

In the Revisional Jurisdiction of this Court when examining the  
20 legality of administrative acts, agreements by counsel as to the legal state of affairs and consensus of opinion among them are not binding on this Court. Nevertheless we are in agreement with the consensus expressed inasmuch as what the appellant was by her application seeking was the opinion of the respondent Director as  
25 to how he would decide in case she did import a motor-vehicle in the future and claimed relief under the said Order.

In our judgment the sub judice decision was in the nature of an  
informatory or advisory act, as under the said Order read in the light of other provisions of the Customs Legislation was not an  
30 executory administrative act, the crucial words in the said Order being «the importation takes place within a reasonable time from their arrival». That is the actual importation of the motor-vehicle in question and not the intended future importation of same. The Order cannot but be read and interpreted subject to the definition  
35 of the word «import» to be found in Section 2 of the Law, meaning the bringing of goods into the Republic from abroad by sea or air.

Before concluding we wish to express our appreciation to counsel on both sides at their readiness to view the matter in its

correct perspective, the appeal is therefore dismissed on this ground and we consider it unnecessary to pronounce on any of the other grounds raised in this appeal.

In the circumstances, however, there will be no order as to costs.

*Appeal dismissed  
with no order as to costs.*

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