

1988 July 26

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.

ETERIA PIRION APHRODITI LTD. ,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF COMMERCE & INDUSTRY,

Respondent.

(Case No.438/86).

5 *Acts or decisions in the sense of Art. 146.1 of the Constitution—
Administrative policy outside its ambit—Refusal to change existing import
controls for the protection of local industry—The Imports (Regulation)
Law, 1962 as amended by Law 7/67—Does not create an obligation on the
Minister to change existing regulations upon the motion of any party ag-
grieved by them—Minister's omission to act as aforesaid not justiciable.*

10 By means of the sub judge decision the respondent refused to accept a
request by the applicants, who are local manufacturers of safety matches, to
change government policy and impose stricter controls on imports of safety
matches from abroad. The recourse was dismissed on the ground that the
sub judge decision is not justiciable under Art. 146.1.

*Recourse dismissed.
No order as to costs.*

Cases referred to:

- 15 *Savidou v. The Republic* (1970) 3 C.L.R. 118;
Pernaros v. The Republic (1975) 3 C.L.R. 175;
C. Carayiannis v. The Republic (1980) 3 C.L.R. 39;
Tricomitis v. The Republic (1985) 3 C.L.R. 2328.

Recourse.

Recourse against the refusal of the respondent to introduce further restrictions on the importation of foreign manufactured safety matches.

Ph. Valiantis, for the applicants. 5

St. Theodolou, for the respondent.

Cur, adv. vult.

PIKIS J. read the following judgment. The applicants are the only local manufacturers of safety matches. They have been in the business since 1962. From the beginning they were given protection through import controls, tariffs and the exemption from duties of the raw material, used for the manufacture of their products; and they still continue to enjoy a degree of protection. Nevertheless they felt dissatisfied with the level of protection accorded to them and petitioned the authorities by a series of representations to impose stricter controls on the importation of foreign manufactured safety matches. They complained of a declining market and corresponding increase of the sales of their competitors. Their competitors too were aggrieved with government policy and kept complaining that the protection given to the applicants was excessive and unjustified.

The Minister of Commerce & Industry and his department studied the complaints of the applicants and inquired into the necessity, if any, of changing their policy and imposing stricter controls on the importation of foreign manufactured safety matches. In the end he decided that the introduction of further restrictions was not in the public interest. Moreover, it would have the effect of damaging the trading relations of Cyprus with European countries and create problems in the implementation of the customs agreement of Cyprus with the European Economic Community. On 8th May, 1986, The Minister informed the applicants of his unwillingness to change government policy and the reasons for it.

The Present proceedings are directed against the validity of the above decision.

5 Applicants challenge the assessment of the Minister that the economic interest of the country militated against the introduction of further restrictions in the importation of safety matches. Presently the applicants enjoy protection through; (a) Quantitative restrictions in the importation of safety matches; (b) The imposition of duties on the importation of foreign products; and (c) Exemption from the payment of import duties of the raw material used by applicants, namely, match sticks. It is the case for the applicants than not only the Minister misappreciated the needs of the Cyprus economy but was ill-motivated in refusing the application for a change of policy, acting out of a desire to favour the interests of their competitors.

15 Aside from asserting the soundness of government policy, the respondents contended that the decision is not justiciable for lack of executory character. In any event administrative policy as distinct from administrative action is not a proper subject for review by the Courts. Counsel for the applicants refuted the validity of these objections and maintained that refusal to change government policy affects their interests in a way entitling them to protect them by recourse under Art. 146. 1 of the Constitution.

25 It is settled that administrative policy cannot as such be made the subject of judicial review under Art. 146.1 of the Constitution *Savvidou v. The Republic* (1970) 3 C.L.R. 118; *Pernaros v. The Republic* (1975) 3 C.L.R. 175; *C. Carayiannis v. The Republic* (1980) 3 C.L.R. 39; *Tricomitis v. The Republic* (1985) 3 C.L.R. 2328. Only the implementation of administrative policy resulting in the issuance of an executory administrative act, founded thereon, can be made the subject of judicial action. For its policies, as distinct from its actions, the executive is only politically accountable.

30 The subject decision is nothing other than the expression of government policy to adhere to the regime of existing control of

imports in an area of great interest to the public. The inaction of the Minister and failure in particular to change existing regulation of imports is not justiciable. The law, namely, Imports Regulation (Amendment) Law 1967 (Law 7/67) does not cast an obligation on the Minister to act upon the motion of any party affected by existing regulations. What the applicants are in essence challenging is the omission of the Minister to alter existing import controls for the protection of local industry. He had no statutory obligation to act. The subject decision is nothing other than the expression of administrative policy to maintain the existing legal regime. As such it cannot be made the subject of judicial review under Art. 146. 5 10

Consequently, the recourse must be dismissed for lack of executory character of its subject matter and I so order. Let there be no order as to costs. 15

*Recourse dismissed.
No order as to costs.*