

1988 February 3

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANAYIOTA ARISTOTELOUS,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTRY OF FINANCE AND/OR THE CUSTOMS  
AUTHORITIES AND/OR THE DIRECTOR OF CUSTOMS,

*Respondents.*  
(Case No. 4/86).

*Customs and Excise Duties—Confiscation of goods for breach of condition in a licence to import a motor vehicle duty free under sub-heading 19 of item 01 of the Fourth Schedule of the Customs and Excise Duties Law, 1978—Herodotou v. Republic (1987) 3 C.L.R. 874 adopted.*

*Executory act—An act expressing the "will" as opposed to the "intention" of the administration—An act expressing the "intention" of the administration is not executory.*

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On May 23rd 1983, applicant was upon her repatriation granted a permit to import a car free of import duty in virtue of the provisions of Sub-Heading 19 of item 01 of the Fourth Schedule to the Customs and Excise Duties Law, 1978.

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One of the conditions in the permit reads as follows: "The vehicle shall only be used by you and your dependents and shall not be lent, hired, exchanged, given away or otherwise disposed of in the Republic without the prior written authority of the Director of Customs, upon your application".

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Some time after its importation the respondent discovered that the car was possessed and systematically used by the 47 year old elderly son of the applicant namely Kyriakos; upon this the respondent initiated an investigation, and, finally, when such investigation was completed confiscated the car.

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Applicant objected against the confiscation. By letter dated 16.11.85 the respondent turned down the objection and went on to state that he was

prepared to compound the offences committed and return the car in question to the applicant if she (or they) pay the import duty fraudulently avoided, amounting to £14,567.10 plus a compounding amounting to £3,200.

Hence this recourse.

5 Held, dismissing the recourse: (1) In the light of *Herodotou v. Republic* (1987) 3 C.L.R. 874 where the law relating to confiscation was extensively stated by A. Loizou, J., this Court reached the conclusion that the decision to confiscate the car in question was reasonably open to the respondent.

10 (2) A mere expression of the intention ("πρόθεσις") of the administration-as contradistinguished from an expression of its will ("βούλησις")- does not amount to an executory act.

In this case, the letter of 16.11.85 did not contain, as far as the questions of import duty and of compounding are concerned, the will, but the mere intention of the administration.

15 *Recourse dismissed.*  
*No order as to costs.*

*Cases referred to:*

*Herodotou v. Republic* (1987) 3 C.L.R. 874;

20 *Republic v. Demetriou and others* (1972) 3 C.L.R. 219.

**Recourse.**

25 Recourse against the decision of the respondent to confiscate applicant's motor car which had been imported by her free of import duty upon her repatriation due to the breach of a provision of the import permit.

*E. Efstathiou*, for the applicant.

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

*Cur. adv. vult.*

LORIS J. read the following judgment. On May 23rd 1983, applicant was upon her repatriation granted a permit to import a car free of import duty in virtue of the provisions of Sub-Heading 19 of item O1 of the Fourth Schedule to the Customs and Excise Duties Law, 1978. 5

The permit aforesaid was granted under certain conditions (vide clause 14 dated 23.5.83 in the administrative file) one of them notably "d" reading as follows:

"(d) The vehicle shall only be used by you and your dependents and shall not be lent, hired, exchanged, given away or otherwise disposed of in the Republic without the prior written authority of the Director of Customs, upon your application." 10

Some time after the importation and the registration of the car under Regn No. PP 897, the respondent discovered that same was possessed and systematically used by the 47 year old elderly son of the applicant namely Kyriacos; upon this the respondent initiated an investigation. 15

In pursuance of the investigation in question Customs Officials visited the applicant and obtained a statement from her on 11.10.1985 (vide Appendix 2 attached to the opposition). 20

In the aforesaid statement the applicant stated inter alia the following:

(a) Following her repatriation she was admitted as a nun at Ayios Minas Monastery in November 1983. 25

(b) Her elder son Kyriacos had been repatriated a few years before her; after her repatriation applicant promised to her said son that had she remained a nun she would leave the car to him.

(c) Ever since she took delivery of the said car in June 1983, same is being possessed and driven by her son Kyriacos; 30

applicant stays at the Monastery but when she visits on occasions her son at Larnaca with the Abbess of the Monastery her said son drives them around the town for Monastery business.

5 (d) Applicant admitted also that she herself drove the said car throughout the said period (June 1983-11.10.85) on two or three occasions and even then, only in the vicinity of the house of her said son but never within the town.

10 On 13.10.85 Customs Officials visited on the instructions of the Respondent the house of applicant's said son Kyriacos and in the presence of the applicant, her son Kyriacos and the Abbess of Ayios Minas Monastery confiscated the aforesaid car, a 'Mercedes 300' Diesel under Registration No. PP 897 issuing to the applicant the relevant receipt of confiscation C. 71A under No. 27255.

15 Applicant's counsel addressed to the respondent a letter dated 5.11.85 (vide Exh. "B" attached to the recourse), whereby applicant submitted her objection for the confiscation in question to the respondent. It may as well be stated here that in the letter  
20 aforesaid several allegations were made on behalf of the applicant in connection with the factual aspect of this case; these allegations as far as material facts are concerned are in direct contradiction with the facts stated by the applicant herself and included in her statement to the Customs Officials on 11.10.1985.

25 In reply to the letter of 5.11.85 the respondent by his letter dated 16.11.85 (vide Exhibit "A", attached to the recourse) informed applicant's counsel that the said car was being confiscated as conditions imposed by the respondent, upon the Registration in the name of the applicant of the said car duty-free, and accepted by the applicant, were being violated in defiance of  
30 Section 158 of the Customs and Excise Law 1967, and further that the said car was possessed unlawfully and the applicant thus fraudulently avoided to pay import duty under s. 191 of the Customs and Excise Law. In paragraph two of his aforesaid letter dated 16.11.85 the respondent further informed applicant's

counsel that he (the Respondent) was intending to institute criminal proceedings against the applicant and her son namely Kyriacos Aristotelous but that he was prepared to compound the offences in question and return the car in question to the applicant if she (or they) pay the import duty fraudulently avoided, amounting to £14,567.10 plus a compounding amounting to £3,200. 5

The applicant did not reply to the aforesaid letter of the respondent but instead filed the present recourse praying for:

(A) A Declaratory judgment to the effect that the confiscation in question was null and devoid of any legal effect. 10

(B) A Declaration to the effect that the decision of the respondent set out in his letter of 16.11.85 to impose import duty of £14,567.10 is null and devoid of any legal effect.

(C) A declaration to the effect that the decision of the respondent set out in his letter of 16.11.85, to impose on the applicant a compounding of £3,200 is null and devoid of any legal effect. 15

The issue of "confiscation" was recently decided in the case of *Eleni Herodotou of Engomi v. The Republic* (1987) 3 C.L.R. 874. The facts in that case are substantially identical with the facts of the present case and the Law applicable has been so extensively and lucidly stated by my brother Judge A. Loizou that it would be futile for me to attempt repeating his elaborate judgment. I shall therefore confine myself in saying that I fully adopt the legal aspect on confiscation expounded therein for the purposes of the present judgment. And having in mind the factual aspect of this case and in particular that part of the statement to the Customs Officials by the applicant on 11.10.85 (as reproduced in the present judgment) I hold the view that in the circumstances the respondent was fully entitled in law to proceed with the confiscation as he did; and his decision on confiscation was reasonably open to him on the basis of the material before him. 20  
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The decision on confiscation is duly reasoned and the material

in the administrative file coupled with relevant extracts of same attached to the recourse and the opposition, fully support the sub-judice decision on the issue of confiscation.

5 Prayers under (B) and (C) of the recourse are attacking the alleged "decisions" of the respondent (set out in his letter of 16.11.85 addressed to counsel for applicant) to impose on the applicant import duty of £14,567.10 and compounding consisting of £3,200.-respectively.

10 I have carefully gone through the said letter of the Respondent, which was written in answer to objections submitted by counsel for applicant and I hold the view that apart from confiscation, it does not contain an executory decision of the respondent in respect of the import duty and the compounding mentioned  
15 therein; in this connection it simply states the intention of the administration supplying at the same time information as to what amounts he would be claiming if the course adopted by him is accepted by the applicant; this is clearly indicated by its wording.

20 Delivering the judgment of the Full Bench in the case of the *Republic v. Demetriou & Others* (1972) 3 C.L.R. 219 the learned President of this Court stated the following on this matter (at pp. 223 - 224).

25 "As stated in the conclusions from the case-Law of the Council of State in Greece (" Πορίσματα Νομολογίας του Συμβουλίου της Επικρατείας ") 1929-1959, at p.237, executory administrative acts are acts by means of which there is expressed the will of the administration in order to produce legal consequences regarding those governed, and which entail immediate administrative enforcement; the main element of the  
30 notion of an administrative act is the production of a legal result through the creation, modification or termination of a legal situation"

(".....αι εκτελεσταί πράξεις, τουτέστιν εκείναι δι ων δηλούνται βούλησις διοικητικού οργάνου, αποσκοπούσα εις

την παραγωγή εννόμου αποτελέσματος έναντι των διοικουμένων και συνεπαγομένη την άμεσον εκτέλεσιν αυτής δια της διοικητικής οδού. Το κύριον στοιχείον της εννοίας της εκτελεστής πράξεως είναι η άμεσος παραγωγή εννόμου αποτελέσματος, συνισταμένου εις την δημιουργίαν, τροποποίησιν ή κατάλυσιν νομικής καταστάσεως .....").  
See, also, in this respect, the decisions of the Council of State in Greece in cases 487/36, 950/54 and 1866/67.

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A mere expression of the intention ("πρόθεσις") of the administration-as contradistinguished from an expression of its will ("βούλησις") - does not amount to an executory act (see the Conclusions from the Case-Law of the Council of State in Greece, 1929 - 1959, at p. 239, as well as the decision of such Council in case 296/32; also, there are not executory those acts of the administration which are only of an informative nature (see the Conclusions, supra, at p. 238, as well as the decisions of the Council of State in Greece in cases 1713/68 and 2446/68)."

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As already stated I hold the view that the aforesaid letter of the respondent dated 16.11.85 was merely a statement of intention and of an informative character as far as the Import Duty and the Compounding is concerned; it does not express the will of the administration. In this connection it does not convey an executory decision and cannot therefore be the subject-matter of a recourse under Article 146 of the Constitution.

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For this reason prayers (B) and (C) of the recourse cannot proceed. Having already held that the executory decision impugned under para.(A) of the motion for relief, was reasonably open to the Respondent the present recourse fails in its entirety. And it is accordingly dismissed.

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Let there be no order as to costs.

*Recourse dismissed.*

*No order as to costs.*