

1988 March 4

[LORIS J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS CONSTANTINOU,

*Applicant,*

v.

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

*Respondents.*

*(Case No. 657/86).*

5 *Customs and Excise Duties—Duty free importation of a motor car for incapacitated persons—Refusal based on report of Senior Technical Inspector of Examiners of Drivers—The report should not have been taken into consideration—Thus, the discretion was exercised under a misconception of law and fact.*

The facts of this case sufficiently appear in the judgment of the Court.

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

*Cases referred to:*

10 *Kyriacou v. The Republic (1985) 3 C.L.R. 2414;*

*Kallis v. The Republic* (1984) 3 C.L.R. 443;

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

## Recourse.

Recourse against the refusal of the respondent Director of Customs to allow applicant to import a duty free vehicle for invalid persons . 5

*E. Efstathiou*, for the applicant.

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

*Cur. adv. vult.* 10

LORIS J. read the following judgment. The applicant in the present case challenges the refusal of the respondent Director of Customs to allow him to import a duty free vehicle for invalid persons.

The invalidity of the applicant was the result of injuries sustained by him, in August 1985, in a road traffic accident 15

After the submission of his application, on 27 February 1986, for exemption from the payment of import duty, the applicant was referred for examination by a Medical Board set up for the purpose and composed by a Senior Specialist Orthopaedic Surgeon, 20 a Senior Specialist Surgeon and a First Medical Officer. The Medical Board forwarded its report to the Director of the Department of Customs on 25 April 1986. Such report, at its material part, reads as follows:

"Τα κατάγματα έχουν επουλωθεί σε ικανοποιητικό 25 \*  
 άξονα όμως το δεξιό γόνατο έχει χάσει σχεδόν πλήρως την

κίνητικότητα του η δε κάμψη της κατά γόνυ αρθρώσεως έχει σχεδόν εξαλειφθεί πλήρως.

Ωσαύτως το δεξιό σκέλος παρουσιάζει σχετική αδυναμία."

- 5 ("The fractures have healed in a satisfactory axis, but the right knee has lost almost fully its moving ability and the bending of the knee arthrosis has almost disappeared fully.

Also the right leg shows some weakness").

- 10 The said medical report was forwarded by the Department of Customs to the Senior Technical Inspector in the Office of Examiners of Drivers for his opinion, who, after examining the applicant in the light of such report, ascertained that the applicant was in a position to possess a driving licence and that his bodily condition permits him to drive a vehicle without any restriction.

- 15 The sub-judice decision was communicated to the applicant by letter dated 25 August 1986, by means of which he was informed that in accordance with the report of the Medical Board his bodily condition does not require the use of a vehicle specially adapted for invalid persons.

- 20 The only complaint put forward by counsel for the applicant in his written address, is that the Director of the Department of Customs, in arriving at the sub-judice decision, relied on the report of the Senior Technical Inspector in the Office of Examiners of Drivers as well, an organ which was incompetent to participate in  
25 the whole administrative process and thus acted under a misconception of law and fact.

He referred, in this respect, to the case of *Kyriacou v. The Republic* (1985) 3 C.L.R. 2414, where, on a similar question raised, it was held that the only competent organ to certify the in-

capacity of the applica.. was the Medical Board and that the Director of Customs, by relying on the report of the Senior Technical Inspector in the Office of Examiners of Drivers, had acted under a misconception of law and fact.

The same approach was, also, adopted in the cases of *Kallis v. The Republic*, (1984) 3 C.L.R. 443 and *Ioannou v. The Republic* (1985) 3 C.L.R. 31. 5

I fully endorse the statement of my brother Judge Stylianides in the case of *Kyriacou v. The Republic* (supra) at p. 2422: "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..." 10

In the instant case, although the applicant was referred to a Government Medical Board, the report of which appears in the file, he was referred thereafter to the Senior Technical Inspector of Examiners of Drivers ' who examined the applicant himself and ascertained" that the applicant was in a position to drive an ordinary vehicle (vide Report dated 16th June 1986 attached to the opposition as Appendix 4). 15

It is abundantly clear from the opposition and Appendix 4 attached thereto that the respondent Director of Customs took into consideration the report of the Senior Technical Inspector of Examiners of Drivers, i.e. material which ought not have been taken into consideration and thus acted under a misconception of law and fact exercising his discretion wrongly. 20 25

In the circumstances the sub-judice decision is hereby declared null and devoid of any legal effect.

Let there be no order as to costs.

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

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