

1988 March 4

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS DAMIANOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE,

Respondent.

(Case No. 742/86).

5 *Customs and Excise Duties—Duty free importation of cars by invalid persons—Order 221/79 of the Council of Ministers—Relief granted in respect of vehicle "suitable for use by persons suffering from bodily disablement"—The phrase clearly conveys the meaning of driving by the invalid himself—Proviso (b) to the said Order—Not contrary to Art. 28 of the Constitution.*

Constitutional Law—Equality—Constitution, Art. 28—Safeguards against arbitrary differentiations, and not against reasonable distinctions.

10 *Constitutional Law—Equality—Constitution, Art. 28—Customs and Excise duties—Duty free importation of motor car by invalid person—Order 221/79 of the Council of Ministers—Proviso (b) thereof—Not contrary to Art. 28.*

By means of the recourse the applicant impugns the decision, whereby his application for a duty free importation of a motor car for invalid per-

sons was refused on the ground that the applicant was not the holder of a driving licence (See Proviso (b) of Order 221/79 of the Council of Ministers).

In fact, the disability invoked by the applicant (99% of eye-sight reduced) was the reason why the licence of the applicant had been revoked. 5

The applicant submitted that the said proviso is contrary to Art. 28 of the Constitution, in that

(a) It divides disabled persons into two categories, those who have or can obtain a driving licence, notwithstanding their disability and those who, by reason of their disability, cannot obtain a licence, and 10

(b) It should be sufficient, if a duty free car is used for the needs of the invalid. It is not necessary that it should be driven by the invalid himself.

Held, *dismissing the recourse*:

(1) "Equal before the Law" in paragraph 1 of Article 28 does not convey the notion of exact arithmetical equality, but it safeguards only against arbitrary differentiations and does not exclude reasonable distinctions, which have to be made in view of the intrinsic nature of things. 15

(2) The differentiation between the aforesaid two classes of invalids is reasonable.

(3) It is difficult to see how argument (b) is connected with Art. 28. In any event the short answer is that Order 221/79 grants relief in respect of "vehicle suitable for use by persons suffering from bodily disablement". These words clearly convey the meaning that the vehicle will be used by the invalid himself. 20

Recourse dismissed. 25
No order as to costs.

Cases referred to:

Christodoulou v. The Republic, 1 R.S.C.C. 1;

Yiannaki v. The Republic (1965) 3 C.L.R. 561;

Kailas v. The Republic (1988) 3 C.L.R. 274;

Mikrommatis v. The Republic, 2 R.S.C.C. 125;

The Republic v. Arakian and Others (1972) 3 C.L.R. 294.

Recourse.

- 5 Recourse against the refusal of the respondent to exempt applicant from import duty in respect of the importation of a motor car for invalid persons.

M. Papamichael, for the applicant.

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

Cur. adv. vult.

LORIS J. read the following order and judgment. The present recourse was filed against "The Republic, through the Minister of Finance" apparently because the sub-judice decision was communicated to the applicant by means of a letter dated 22.10.86 (vide
15 Ex. 1 attached to the recourse) bearing on top the words "Department of Customs-Ministry of Finance". As however, the competence concerned, under s. 11(1) of the Customs & Excise Duties Laws 1978 - 1981 and para (b) of the Order of the Council of
20 Ministers of 14.9.79 under Not. 221/79 (vide also s. 2(2) of the Customs & Excise Duties Law 1978 - 1981 and s. 2(1) of the Customs & Excise Laws 1967 - 1977) is vested directly to the Director of the Department of Customs, which is not referred to at all in the title of the present recourse, I consider it more proper
25 that the description of the Respondent should read: "The Republic through the Director of the Department of Customs", and acting ex proprio motu, I do hereby order that the title of the proceedings be treated as having been amended accordingly. I have taken this course in the light of the decision in *Christodoulou and the*
30 *Republic*, 1 R.S.C.C. 1 (followed in *Paraskevi Yiannaki v. The*

Republic (1965) 3 C.L.R. 561 at p. 564 and *Georghios Kailas v. The Republic* (1989) 3 C.L.R. 274 as I am of the opinion that the amendment at this stage does not prejudice either of the parties in these proceedings, or the interests of justice, in any way.

JUDGMENT

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The applicant by means of the present recourse impugns the decision of the respondent Director of the Department of Customs set out in a letter dated 22nd October 1986, addressed to the applicant (vide Exh. 1 attached to the recourse), whereby applicant's application for exemption from import duty in respect of the importation of a motor car for invalid persons, was refused. 10

The relevant legislative provisions on which applicant's application for exemption was based is s. 11 of the Customs & Excise Duties Laws, 1978 - 81, and the Order of the Council of Ministers made under s. 11(2), published in the Official Gazette No. 1553 of 14.9.79 under No. 221/79. 15

The relevant part of the Fourth Schedule to the Law (Class 01.09) as substituted by Order No. 221/79 reads as follows:

("Description of Exemption

Petrol and diesel motor vehicles of a horse power not exceeding 2000 c.c. and 2300 c.c. respectively suitable for use by persons suffering from body disablement imported by disabled persons whose disablement is duly certified by a Government Medical Board constituted for the purpose: 20

Provided that this exemption is not applicable to disabled persons who: 25

(a) Are the owners or possessors of another thus duty free imported vehicle;

5 (b) are not the holders of a driving licence, provided that when disabled persons are the holders of a learner's driving licence the Director may grant such exemption on the condition that a driving licence will be obtained within one year from payment of customs duty for the vehicle or within such other period which he might consider reasonable.

Extent of Exemption - As the Minister of Finance may decide on the basis of the financial condition of the applicant").

10 The applicant, an accountant, born on 27.7.37 applied on 22.10.1984, for exemption from import duty for the importation of a motor-car suitable for use by persons suffering from bodily disablement, alleging disability due to reduced eye-sight.

15 He was referred to a Government Medical Board constituted for the purpose; according to the report of the aforesaid Board dated 8.2.1985 (vide Appendix 1 attached to the opposition) the applicant was suffering from "Retinitis" and his eye-sight was reduced to 1% of the normal.

20 This meant according to the report dated 5.4.85 (vide Appendix 2 attached to the opposition) that the applicant could hardly read, using spectacles, a traffic sign post from a distance of one yard.

25 The Director-General of the Ministry of Finance, by letter dated 23.4.85 informed the applicant that his application was refused.

30 The applicant challenged the aforesaid refusal by means of recourse No. 577/85 which was eventually withdrawn after it was revealed that the said decision was not taken by the appropriate organ i.e. the Director of the Department of Customs, but by an organ lacking competence in the matter.

In the meantime, on 25th April 1985, the appropriate Authority acting under the relevant legislation forfeited the driving licence of the applicant.

On 22.9.86 the applicant submitted a fresh application addressed this time, to the Director of the Department of Customs applying for exemption from import duty for the importation of a motor-car suitable for invalid persons, alleging disability due to reduced eye-sight. In this application (vide Appendix 3 attached to the opposition) the applicant states clearly that he has no driving licence as same has been forfeited.

The respondent Director of the Department of Customs after examining the application of the applicant dated 22.9.86, having taken into consideration that the applicant is not the holder of any driving licence and also that applicant's driving licence was forfeited as a result of the diminution of his eye sight to 1% of the normal, according to the aforesaid report of the Government Medical Board, applying the provisions of para. (b) of the Proviso of the Order No. 221/79, set out above, turned down the latter application of the applicant; the respondent-Director of Customs addressed to the applicant a letter dated 22.10.86, which is exh. 1 attached to the recourse, communicating thereby his said decision and stating therein the reasons for his aforesaid refusal.

The applicant as a result filed the present recourse praying (1) for the annulment of the aforesaid decision, (2) for a Declaration to the effect that Proviso (b) of Order No. 221/79, (set out above), is unconstitutional.

All the facts set out above are uncontested. The gist of the present recourse is the alleged unconstitutionality of the Proviso in para. (b) of the Order under No. 221/79.

The aforesaid paragraph is being impugned as contravening Articles 9, 23, 25 and 28 of our Constitution. At least that is what is stated in the recourse under the heading: "The present applica-

tion is based on the following legal points".

The matter is not carried any further in respect of Article 9,23 and 25 of the Constitution in the written address of the applicant, where as I was able to comprehend it, the issue of alleged unconstititutionality is substantially confined to Article 28 of the Constitution only.

The argument of counsel set out in the written address for the applicant in connection with Article 28 of the Constitution has 2 legs:

10 (A) In the first place it complains that para (b) of the Order substantially divides disabled persons into 2 categories: (i) Those who can drive and have or can obtain a valid driving licence; and (ii) those who cannot drive owing to their disability and as a consequence thereof they do not possess a driving licence or they are
15 unable to obtain one.

It is the allegation of learned counsel for the applicant that there is discrimination against class (ii) of disabled persons whose condition is allegedly worse and they need more than those in class (i) the assistance and the benefits envisaged by the relevant Law.

20 (B) The 2nd leg of the argument advanced in this connection (Although I must say I was unable to understand its alleged connection with Article 28 of the Constitution) is to the effect that the duty free car would have been employed for the needs of an invalid person and need not be driven by the invalid person himself.
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I intend to consider the submissions advanced one by one, but before indulging into the sad task of dividing disabled persons into classes, I feel duty bound to repeat what was originally stated in *Mikrommatis and The Republic*, 2 R.S.C.C. 125 at p. 131 and
30 reiterated thereafter in a number of cases including the case of *The Republic v. Arakian & Others* (1972) 3 C.L.R. 294 at pp. 298-299:

" 'Equal before the Law', in paragraph 1 of Article 28 does not convey the notion of exact arithmetical equality but it safeguards only against arbitrary differentiations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things."

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Further reference also should be made to the cases cited at pp. 299, 330 and 301 in the Arakian case (supra) by the learned President of this Court in delivering the judgment of the Full Bench in the aforesaid case.

Reverting now to the case under consideration:

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Supposing that I accept the argument of counsel for applicants that para. (b) of the proviso to the Order, divides disabled persons into two categories, notably those who can drive and have a driving licence and those who cannot drive and therefore cannot have or obtain a driving licence (which is the case of the applicant).

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Is that an arbitrary differentiation or a reasonable distinction which has to be made in view of the intrinsic nature of things.

I hold the view that it is definitely, a reasonable distinction which has to be made in view of the intrinsic nature of things. Applicant's disability in respect of his eyesight has been extended to 99%; in other words he is almost blind and cannot therefore drive any sort of motor-vehicle. This is admitted by the applicant himself; the following is an extract from the submission of learned counsel for applicant appearing at page 4 of his written address, and it is immaterial whether the said submission was made in order to support the second leg of his argument:

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"Είναι περαιτέρω αυτονόητον, ότι είναι αδύνατον να να οδηγούνται αυτοκίνητα υπό τυφλών, τετραπληγικών και άλλων τάξεων αναπήρων, των οποίων η αναπηρία δεν επιτρέπει όχι μόνον την απόκτησιν αδειας οδηγού, αλλά και τούτο είναι πρακτικώς αδύνατον λόγω ακριβώς της

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αναπηρίας των."

Coming now to leg (B) of the submission:

Order No. 221/79 regulates the exemption from duty of motor vehicles: (1) suitable for use by persons suffering from bodily
5 disablement.

(2) imported by disabled persons

(3) persons whose disablement is duly certified Provided that this exemption shall not apply to persons who:

(a)

10 (b) are not the holders of a driving licence; ...

A careful reading of the order clearly shows that what is exempted from duty is a motor vehicle "suitable for use by persons suffering from bodily disablement". The words of the Order are clear and unequivocal and in my view they require no interpretation. In fact they cannot convey any other meaning except that the
15 vehicles in question will be used by the invalids themselves; and definitely when so used the owner thereof has to comply with the relevant Law by holding the necessary driving licence as envisaged by para (b) of the Order. The submission of learned counsel
20 for the applicant that it is immaterial by whom the car would have been driven, is untenable; if the disabled person were to employ another driver for his conveyance, why should that driver employ a motor vehicle suitable for invalid persons and not an ordinary motor vehicle? I
25 repeat: What is exempted from duty for the purposes of Order No. 221/79 is a motor vehicle "suitable for use" by persons suffering from bodily disablement; and this fact provides the answer to the further argument of learned counsel of the applicant with reference to Law No. 64/67, and in particular to section 15 thereof,
30 of, which provides for the training and the social re-adjustment of invalids and has nothing to do with the regulation of the exemp-

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tion from duty, of motor vehicles suitable for use by disabled persons.

In the result present recourse fails and is accordingly dismissed; let there be no order as to costs.

Recourse dismissed. 5
No order as to costs.