

1966  
June 22,  
Oct. 31

[VASSILIADES, AG. P., TRIANTAFYLLOIDES AND JOSEPHIDES, JJ.]

—  
NICOS  
KYRIAKOU  
MILIOTIS  
v.  
THE POLICE

NICOS KYRIAKOU MILIOTIS,

*Appellant,*

v.

THE POLICE,

*Respondents.*

(Criminal Appeal No. 2819)

*Road Traffic—Motor vehicle—Driving a motor vehicle without a licence in respect thereof being in force, contrary to Regulation 18 of the Motor Vehicles Regulations, 1959—Refusal of the Registrar of Motor Vehicles to issue such licence is a matter outside the competence of the courts exercising criminal or civil jurisdiction (other than the jurisdiction in respect of the recourse under Article 146 of the Constitution)—Therefore, such refusal being an administrative decision, act or omission, the proper remedy lies in a recourse to the competent court under Article 146 of the Constitution—Provision in paragraph (6) of section 2 of the Motor Vehicles and Road Traffic (Amendment) Law, 1965 (Law No. 3 of 1965), requiring the owner of a motor vehicle to give advance notice of non-use of his vehicle to the Registrar, not repugnant to the provisions of Article 8 of the Constitution.*

*Constitutional Law—Article 8 of the Constitution—Constitutionality of legislation—Paragraph (6) of section 2 of Law No. 3 of 1965 (supra)—Provisions thereof neither inhuman nor degrading treatment—Therefore they are not repugnant to the provisions of Article 8 of the Constitution—See, also, under Road Traffic above and under Constitutional Law, Human Rights, below.*

*Constitutional Law—Constitutionality of legislative provisions—Judicial control of such constitutionality—Principles applicable—One of them is that the Courts are concerned only with the constitutionality of legislation and not with its motives, policy, wisdom, appropriateness or the necessity of its existence.*

*Administrative Law—Constitutional Law—Article 146 of the Constitution—The refusal of the Registrar of Motor Vehicles to issue a licence to the appellant in respect of his motor vehicle, being an administrative decision, act or omission, the proper remedy is a recourse under Article 146 of the Constitution before the competent court—Such refusal is outside the competence*

of a criminal court and of the Supreme Court on appeal from a decision of a court exercising criminal jurisdiction—See, also, under Road Traffic above.

*Human Rights—Inhuman or degrading punishment or treatment—Article 8 of the Constitution—Article 3 of the European Convention of Human Rights—Article 5 of the Universal Declaration of Human Rights.*

*European Convention of Human Rights—Article 3—See above.*

*Universal Declaration of Human Rights—Article 5—See above.*

The appellant was convicted by the District Court of Famagusta of driving a motor-van for which a motor vehicle licence was not in force, contrary to the provisions of Regulation 18 of the Motor Vehicles Regulations, 1959, and he was sentenced to pay a fine of £1.500 mils. He appeals against his conviction and sentence on two grounds. He admitted driving the van without a licence being in force but—

(a) he complained against the decision of the Registrar of Motor Vehicles refusing to issue to him a licence for his van and he alleged that this refusal was contrary to the provisions of the Constitution ; and

(b) he submitted that paragraph (6) of section 2 of the Motor Vehicles and Road Traffic (Amendment) Law, 1965 (Law No. 3 of 1965), requiring the owner of a motor vehicle to give advance notice of non-use of his vehicle, (the relevant part of the said paragraph (6) of section 2 is set out in the judgment, *post*), is unconstitutional being repugnant to the provisions of Article 8 of the Constitution.

Article 8 of the Constitution reads as follows :

“ No person shall be subjected to torture or to inhuman or degrading punishment or treatment.”

This article reproduces the provisions of Article 3 of the European Convention of Human Rights, and of Article 5 of the Universal Declaration of Human Rights.

On the other hand Article 146, paragraph 1, of the Constitution provides :

“ 1. The Supreme Constitutional Court (*now the Supreme Court* under the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law No. 33 of 1964) ) shall have exclusive jurisdiction to adjudicate finally on a recourse made

1966  
June 22,  
Oct. 31

—  
NICOS  
KYRIAKOU  
MILIOTIS  
v.  
THE POLICE.

1966  
June 22,  
Oct. 31  
--  
NICOS  
KYRIAKOU  
MILLOTIS  
v.  
THE POLICE

to it on a complaint that a decision, an act or omission of any organ, authority or person exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person ”.

The Supreme Court in dismissing the appeal against conviction, but allowing the appeal against sentence :—

*Held*, (1) We find ourselves in agreement with the ruling of the learned trial Judge, to the effect that the refusal of the Registrar of Motor Vehicles to issue to the appellant the licence for his motor-van, being an administrative decision, act or omission, the proper remedy for the appellant lay in a recourse to the competent court under the provisions of Article 146 of the Constitution. The appellant failed to follow the proper procedure and this Court, sitting on appeal from the decision of a Judge exercising criminal jurisdiction, has no competence to deal with the point raised by him.

(2) (a) The provisions of the aforesaid paragraph (6) of section 2 of Law No. 3 of 1965 (*note* : the material part of that paragraph is set out in the judgment, *post*), requiring the owner of a motor vehicle to give advance notice of non-use of his vehicle to the Registrar, may cause some inconvenience and, in few cases, hardship.

(b) But one of the principles governing the exercise of judicial control of legislative enactments is that the Courts are concerned only with the constitutionality of legislation and not with its motives, policy, wisdom, appropriateness or the necessity for its existence : see *The Board for Registration of Architects and Civil Engineers v. Kyriakides* (1966) 6 J.S.C. 880 at p. 886 and *Runyowa v. Reginam* [1966] 1 All E.R. 633, at p. 643 (Privy Council).

(c) Having given the matter our best consideration we have no hesitation in holding that paragraph (6) of section 2 of the Motor Vehicles and Road Traffic (Amendment) Law, 1965 (Law No. 3 of 1965) (*v. post*) is neither repugnant to, nor inconsistent with, the provisions of Article 8 of the Constitution (*supra*).

*Appeal against conviction dismissed. Appeal against sentence allowed conditionally. Sentence of £1.500 mls fine set aside.*

Cases referred to :

*The Board for Registration of Architects and Civil Engineers v. Kyriakides* (1966) 6 J.S.C. 880, at p. 886, *followed* ;

*Runyowa v. Reginam* [1966] 1 All E.R. 633, at p. 643 (Privy Council), *followed*.

1966  
June 22,  
Oct. '31  
—  
NICOS  
KYRIAKOU  
MILIOTIS  
v  
THE POLICE

**Appeal against conviction and sentence.**

Appeal against conviction and the sentence imposed on the appellant who was convicted on the 18th May, 1966, at the District Court of Famagusta (Criminal Case No. 263/66) on one count of the offence of driving a motor-van the licence of which was not in force contrary to regulation 18 of the Motor Vehicles Regulations 1959 and was sentenced by Kourris, D.J., to pay a fine of £1,500 mils.

Appellant, in person.

*L. Loucaides*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

VASSILIADES, AG. P.: The judgment of the Court will be delivered by Mr. Justice Josephides.

JOSEPHIDES, J.: The appellant was convicted by the District Court of Famagusta of driving a motor-van for which a motor vehicle licence was not in force, contrary to the provisions of Regulation 18 of the Motor Vehicles Regulations 1959, and he was sentenced to pay a fine of £1,500 mils. He now appeals against his conviction and sentence.

He admitted driving the van without a licence being in force but—

- (a) he complained against the decision of the Registrar of Motor Vehicles refusing to issue to him a licence for his van and he alleged that this decision was contrary to the provisions of the Constitution ; and
- (b) he submitted that paragraph (6) of section 2 of the Motor Vehicles and Road Traffic (Amendment) Law, 1965 (Law 3 of 1965) is unconstitutional being repugnant to the provisions of Article 8 of the Constitution.

1966  
June 22,  
Oct. 31

—  
NICOS  
KYRIAKOU  
MILIOTIS  
v.  
THE POLICE

The appellant in admitting that he was driving an unlicensed van but forward the following version which was not substantially challenged by the prosecution.

The aforesaid motor van (K. 245) is registered in his wife's name but he is the sole driver and he is responsible for the issuing of the road fund licence in respect of it. On the 21st December, 1964, he took the van to the garage for repairs when the mechanic informed him that it would be ready by the middle of January, 1965. As the mechanic had not finished with the van by the middle of February, 1965, the appellant addressed a letter dated the 17th February, 1965, to the Deputy Registrar of Motor Vehicles informing him that he was not using the van and that he would issue a road fund licence when the repairs had been completed. Characteristically the appellant in his letter stated: "Although we agreed with him (the mechanic) that the whole work would be completed in two or three weeks at the latest, nevertheless on the present indications it would appear that the repairs will finish at the same time as the Cyprus problem, if not later, because two of the mechanic's assistants have been called up to join the Army. In January I informed personally some of the traffic police officers so that they may be aware of the situation". However, on the same day (17.2.1965) he filled in an official printed form addressed to the Deputy Registrar of Motor Vehicles informing him that he was not going to make use of the van for the period 1.1.1965 to 31.3.1965 because "it is now found immobilised in the blacksmith's shop of Michalaki G. Milioti since 21.12.1964 for repairs". To this he received no reply from the competent authority.

Eventually, the van was repaired and delivered to the appellant on the 6th September, 1965, when he filled in an official form of application for the issue of a licence of a motor vehicle (Form F. 38). Although he submitted this application on the 6th September, 1965, he, nevertheless, offered to pay for a licence beginning more than two months earlier, that is to say from the 1st July, 1965 to the 31st December, 1965, a period of six months. The officer in charge of licensing in Nicosia informed him that he would have to pay for a licence from the 1st April, 1965 and not as from the 1st July, 1965, and this is shown on the application form of the appellant, which was amended in red ink, presumably by the responsible officer. The appellant did not agree to this course and on his return to Famagusta he addressed on the following day, the 7th

September, 1965, a letter to the Registrar of Motor Vehicles requesting that a licence be issued to him as from the 1st July, 1965 and not as from the 1st April, 1965. In that letter the appellant gave full particulars of his case as stated earlier in this judgment. The Registrar replied on the 21st September, 1965, insisting that the appellant should pay licence fees as from the 1st April, 1965, because the latter had failed to notify the Registrar of Motor Vehicles in writing prior to the 1st April, 1965, that he would be immobilising his vehicle, pursuant to the provisions of paragraph (6) (b), section 2 of Law 3 of 1965.

The appellant not being satisfied with this reply, wrote another letter to the Registrar (received on the 25th September, 1965) reiterating his allegations that he had notified the Registrar since the middle of February, 1965, that the repairs to his van would take the same time to finish as the solution to the Cyprus problem. The Registrar replied by his letter dated 28th September, 1965, admitting that he had received the appellant's notice of immobilisation of the vehicle for the period 1st January to 31st March, but adding that the appellant's reference to his previous letter, stating that the repairs to the van by the mechanic "would take ages to finish, was altogether irrelevant". It would appear that the difference between them was over a fee of £1.900 mils.

The net result was that the appellant refused to take out a licence and pay fees as from the 1st April, 1965, and he decided to make a test case out of this by driving the motor-van without a licence. When he was eventually caught by the police constable on the 20th December, 1965, driving his van without a licence, he told the police constable who stopped him, that he had differences with the office of the Registrar of Motor Vehicles. When the police constable cautioned him and informed him that he was going to report him, the appellant replied « ἴντα ἐνὸς πωλῶ νομικὰ μέσ' τὸν δρόμον; » ("what do you think am I going to sell legal advice in the street?").

Pausing there, we think it should be stated that the appellant, who conducted his case in person both before the trial Judge and this Court on appeal, did not have the benefit of legal advice on the matter and we must say that for a layman his performance was a good one. But it is unfortunate that he did not consider it necessary to seek legal advice or be legally represented before the Court, because it is rather difficult for a layman to appreciate the legal niceties which may arise in this kind of case.

1966  
June 22,  
Oct. 31  
—  
NICOS  
KYRIAKOU  
MILIOITIS  
v.  
THE POLICE

1966  
June 22,  
Oct. 31  
—  
NICOS  
KYRIAKOU  
MILIOTIS  
v.  
THE POLICE

As stated earlier in this judgment, the appellant's first ground of appeal was that he had a complaint against the Registrar of Motor Vehicles for refusing to issue to him a licence as from the 1st July, 1965, and he invited the Court to adjudicate upon his difference with the Registrar of Motor Vehicles. In considering this submission the trial Judge said :

“ I have considered the submission of the accused very carefully but I have come to the conclusion that these are not the proper proceedings to deal with the complaint of the accused against the decision of the Registrar of Motor cars. In my opinion, if the *accused* was aggrieved by the *decision of the Registrar*, he should take the proper steps before the appropriate Court for the examination of the merits of his complaint about an administrative decision, as the decision of the Registrar of Motor cars not to issue a licence to the accused is.”

We find ourselves in agreement with the ruling of the learned trial Judge, to the effect that the refusal of the Registrar of Motor Vehicles, being an administrative decision, act or omission, the proper remedy for the appellant lay in recourse to the competent court under the provisions of Article 146 of the Constitution. The appellant failed to follow the proper procedure and this Court, sitting on appeal from the decision of a judge exercising criminal jurisdiction, has no competence to deal with the point raised by him.

The appellant's second and last ground of appeal was that paragraph (6) of section 2 of Law 3 of 1965 is unconstitutional as it is “ degrading treatment ” for a person to be compelled to send a notice to the Registrar of Motor Vehicles informing him of the immobilisation of his vehicle. The relevant part of the aforesaid paragraph (6) of section 2 reads as follows :—

“(6) The first proviso to paragraph 2.B (as set out in section 2 (c) of Law No. 4 of 1964) shall be repealed and the following proviso shall be substituted therefor :

Provided that no licence shall be issued in respect of a yearly or nine-monthly or six-monthly or three-monthly period, as the case may be, unless a licence was already issued in respect of the same motor vehicle for the immediately preceding yearly

or nine-monthly or six-monthly or three-monthly period, as the case may be, or unless---

- (a) written notice had been given by the registered owner of the motor vehicle to the Registrar, before any period in respect of which no application for the issue of a licence has been made, to the effect that the vehicle aforesaid shall not circulate or be used during such period ; and
- (b) the Registrar has certified that the steps indicated for the immobilization or the sealing of the vehicle have been taken by him or that he has been satisfied that the vehicle aforesaid has not circulated or been used during such period :”

Article 8 of the Constitution reads as follows :

“ No person shall be subjected to torture or to inhuman or degrading ‘ punishment or treatment ’.”

This Article reproduces the provisions of Article 3 of the European Convention of Human Rights, and of Article 5 of the Universal Declaration of Human Rights.

It is sufficient to read the provisions of the aforesaid paragraph (6) of Section 2 of our Law to see at once that the provisions of that paragraph are neither inhuman nor degrading treatment. The provision requiring the owner of a motor vehicle to give advance notice of non-use of his vehicle to the Registrar may cause some inconvenience and, in a few cases, hardship, but the reasons for which such a provision was enacted during the abnormal conditions prevailing in Cyprus at the time are understandable. It may well be that with the return to normality the House of Representatives may consider repealing this provision or making it more flexible for the Registrar to waive such a requirement in cases of a *bona fide* omission to notify him in time.

To conclude, the short point which we had to determine was whether the provisions of paragraph (6) of section 2 of Law 3 of 1965 were repugnant to, or inconsistent with, the provisions of Article 8 of our Constitution. One of the principles governing the exercise of judicial control of legislative enactments is that the Courts are concerned only with the constitutionality of legislation and not with its motives, policy, wisdom, appropriateness or the necessity for its existence : see *The Board for Registration of Architects etc. v. Kyriakides* (1966) 6 J.S.C. p. 880, at page 886 ; and

1966  
June 22,  
Oct. 31  
—  
NICOS  
KYRIAKOU  
MILIOTIS  
v.  
THE POLICE



1966  
June 22,  
Oct. 31

—  
NICOS  
KYRIAKOU  
MILIOTIS  
v.  
THE POLICE

*Runyowa v. Reginam* (1966) 1 All E.R. 633, at page 643 (Privy Council). Having given the matter our best consideration, we have no hesitation in holding that paragraph (6) of section 2 of the aforesaid Law is neither repugnant to, nor inconsistent with, the provisions of Article 8 of our Constitution. In the result the appeal against conviction is dismissed.

With regard to sentence, although the penalty of £1.500 mils imposed on the appellant would not, in normal circumstances, be considered to be excessive, nevertheless, we have been impressed with the good faith and genuine belief of the appellant that he was justified in refusing to pay licence fees prior to the 1st July, 1965. Although he was ill-advised and failed to seek legal advice as to the proper course to follow to vindicate any rights he thought he had in the circumstances, we do not think that he had any intention of defrauding the Revenue or dodging payment of the licence fees.

Having regard to the circumstances of the case we are of the view that it would be inexpedient to inflict punishment on the appellant and we accordingly allow the appeal against sentence and set aside the sentence of £1.500 mils fine, but we order that the appellant be discharged subject to the condition that he commits no offence during a period of six months from today.

*Appeal against conviction dismissed. Appeal against sentence allowed conditionally. Sentence of £1.500 mils set aside.*