IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SAVVAS CHR. SPYROU AND OTHERS (No. 2),

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH THE LICENSING AUTHORITY,

Respondents.

(Cases Nos. 80/71, 96/71, 100/71, 145/71 - 147/71, 164/71, 166/71, 195/71, 196/71, 203/71 - 205/71).

Motor Transport—Motor Transport (Regulation) Law, 1964 (Law 16/1964)—Motor Transport (Regulation) Regulations, 1964 (as amended)—Regulation 12A—Construction and validity of said Regulation 12A—Carrier's licence thereunder—Prohibition to issue such licences for motor vehicles put into circulation for the first time in Cyprus, unless vehicle is newly built and unused—Such prohibition under said Regulation 12A repugnant to Article 23.3 of the Constitution—In that it amounts to a severe restriction or limitation of the right of property of the owners of the motor vehicles concerned—And, therefore, it ought to have been imposed by statute i.e. *by a Law of the House of Representatives—And not through subsidiary legislation such as regulations—Consequently Regulation 12A not validly enacted as being unconstitutional as aforesaid—It follows that the* sub judice *decisions whereby the respondent Licensing Authority refused to the applicants carriers' licences have to be annulled—Moreover said Regulation 12A is* ultra vires *the parent enactment (see immediately herebelow).*

Regulation 12A of the Motor Transport (Regulation) Regulations, 1964—Regulation 12A is ultra vires *the enabling enactment Law 16/1964* (supra)*—It certainly could not be lawfully made under section 15(1) or section 15(2)(b) of the said Law 16/1964* (supra)*—It is moreover inconsistent with sections 8 and 10 of the said same Law*

—As well as with the definition of "goods vehicle" under section 2(1) of the same Law 16/1964.

Right of property—Restrictions or limitations thereon—Article 23.3 of the Constitution—Restrictions or limitations on the right to property have to be imposed only by a Law of the House of Representatives—And not by subsidiary (delegated) legislation such as regulations—Hondrou's case, followed (infra)*—Cases where resort to subsidiary legislation regarding restrictions on the right of property is permissible.*

Subsidiary legislation—Question of whether or not subsidiary legislation is ultra vires *the parent enactment—Correct approach in considering the matter—See further* supra.

Constitutional Law—Right of property—Restrictions or limitations—How to be imposed—Article 23.3 of the Constitution—See supra.

Delegated legislation—Subsidiary legislation etc.—See supra.

Words and Phrases—"Imposed by law" in Article 23.3 of the Constitution—Cf. "Prescribed by law" in Article 25.2 of the Constitution—"Goods vehicle" in section 2(1) of the Motor Transport (Regulation) Law, 1964 (Law 16/1964)—"Adapted for use" in the said same section —«Φορτηγὸν αὐτοκίνητον ὄχημα» in the said same section—«Διασκευασμένον ὥστε νὰ χρησιμοποιῆται» ibid.

By these recourses under Article 146 of the Constitution, the applicants seek to challenge the decisions of the respondent Licensing Authority, whereby the said Authority, purporting to act in accordance with Regulation 12A of the Motor Transport (Regulation) Regulations, 1964 (as amended), refused to issue to them carriers' licences for their motor vehicles involved in these proceedings. It is to be noted that the learned President of this Court by an interim decision, delivered on September 8, 1973, held that the reasoning for the aforesaid refusals was erroneous for the reasons explained therein (*see* this interim decision, reported in this Part, at p. 478 *ante;* cf. also *post* in the judgment). Be that as it may, the learned President reached now the conclusion that Regulation 12A (*supra*) was not validly enacted and, therefore, the *sub judice* decisions (refusals) complained of have to be annulled as having been based on an invalid

enactment; and the reasons for saying that the aforesaid Regulation 12A was not validly enacted are, broadly speaking, the following two :

(1) Regulation 12A as framed is repugnant to, and inconsistent with, Article 23.3 of the Constitution (*infra*), in that the restriction sought to be imposed by such regulation on the right of property of the owners of motor vehicles ought to have been imposed, in view of the said Article 23.3, by statute *i.e.* by a law of the House of Representatives, and not merely through delegated legislation such as the aforesaid Regulations.

(2) In any event, the said same Regulation 12A is *ultra vires* the parent statutory (legislative) enactment *viz.* the Motor Transport (Regulation) Law, 1964 (Law 16/1964). The material part of Regulation 12A (the full text thereof is set out *post* in the Judgment) provides :-

> "No road service licence for a bus and no public carrier's licence 'A' or private carrier's licence 'B' is issued under these Regulations for any motor vehicle which is put into circulation for the first time unless it is newly built and unused."
>
> "*Provided that* "

Correctly construed Regulation 12A means, *inter alia,* that, with the exception of newly built and unused vehicles, no carrier's licence can be issued in respect of a motor vehicle which is being *put into circulation in Cyprus, for the first time, as a bus or as a goods vehicle,* irrespective of any previous circulation in Cyprus of such vehicle as a vehicle of *any other* nature or of the previous circulation *abroad* of such vehicle as a vehicle of *any nature* (including that of a bus or a goods vehicle).

It is common ground that the vehicles involved in these recourses were all being put into circulation for the first time in Cyprus as goods vehicles and that they were not "unused".

Regulation 12A was made under section 15 of the Motor Transport (Regulation) Law, 1964 (Law 16/1964), the material parts of which read :

> "Section 15(1) The Council of Ministers may make Regulations to be published in the Official Gazette of

the Republic, for the better carrying out of the provisions of this Law into effect.

(2) In particular, and without prejudice to the generality of sub-section (1), any such regulation may provide for any or all of the following matters :-

(a)

(b) regulating the licensing under this Law, the procedure to be followed therefor, the classes of the various licences and the terms and conditions to be inserted in a licence under this Law;

(c)

On the other hand, paragraphs 1 and 3 of Article 23 of the Constitution read as follows :-

"1. Every person, alone or jointly with others, has the right to acquire, own, possess, enjoy or dispose of any movable or immovable property and has the right to respect for such right.

The right of the Republic to underground water, minerals and antiquities is reserved.

3. Restrictions or limitations which are absolutely necessary in the interest of the public safety or the public health or the public morals or the town and country planning or the development and utilization of any property to the promotion of the public benefit or for the protection of the rights of others may be imposed by *law* on the exercise of such right.

Just compensation shall be promptly paid for any such restrictions or limitations which materially decrease the economic value of such property; such compensation to be determined in case of disagreement by a civil court."

Following his aforesaid interim decision (*supra*), the learned President proceeded to annul the refusals complained of on the two broad grounds referred to above, and :-

Held, I : *Regarding the unconstitutionality of Regulation 12A* (supra) :

(1) The correct interpretation of Regulation 12A is that it contains a prohibition against the issuing

of a carrier's licence in respect of a motor vehicle which is being put into circulation in Cyprus for the first time, as a bus or as a goods vehicle, irrespective of any previous circulation in Cyprus of such vehicle as a vehicle of any other nature or of the previous circulation *abroad* of such vehicle as a vehicle of any nature (including that of a bus or a goods vehicle).

(2) I am of the opinion that this interpretation of Regulation 12A is the one most consistent with its object and that it ought not to be rejected by me because the regulation could have been drafted, in this respect, in more clear terms. (Cf. *Cramas Properties Ltd.* v. *Connaught Fur Trimmings Ltd.*, [1965] 1 W.L.R. 892, at p. 898, per Lord Reid).

(3) On the basis of the aforesaid interpretation of Regulation 12A I would have had found no difficulty in upholding as valid the *sub judice* refusals (because the vehicles involved in these proceedings were all being put into circulation for the first time in Cyprus as goods vehicles and they were, at any rate, definitely not "unused") had I not reached the conclusion that the said decisions (refusals) have to be annulled as having been based on an invalid enactment (*i.e.* Regulation 12A). See *Christodoulou* and *The Republic*, 1 R.S.C.C. 1.

(4) My reasons for reaching the above conclusion are the following:

(A) The effect of Regulation 12A, as construed in this Judgment, is that it is impossible to license a bus or a goods vehicle which is put into circulation in Cyprus for the first time *as such*, unless it is a vehicle which is newly built and unused.

(B) This is a very severe restriction on the right of property of the owners of buses or goods vehicles which do not meet the requirements referred to above; and even if such restriction could be brought under the head of 'public

safety' in paragraph 3 of Article 23 of the Constitution (*supra*), as suggested by counsel for the respondent, it should have to be imposed by statute *viz.* by a Law of the House of Representatives, and not merely by a subsidiary legislation such as a regulation (*The Police* and *Hondrou*, 3 R.S.C.C. 82, at p. 85, *applied*).

(C) In this respect I adopt the principles laid down in the *Hondrou's* case (*ubi supra*), namely, that "the expression 'imposed by law' in paragraph 3 of Article 23, of the Constitution, the expression 'prescribed by law' in paragraph 2 of Article 25 of the Constitution and the like expressions in other Articles of Part II of the Constitution, mean in so far as laying down and defining the extent and framework of the particular restriction or limitation is concerned, a law of the House of Representatives. This does not however prevent the House of Representatives from delegating its power to legislate in respect of prescribing the form and manner of, and the making of other detailed provisions for the carrying into effect and applying the particular restriction or limitation within the framework as laid down by such law, e.g. the addition of further items or instances falling within the restriction or limitation in question. Such course is presumed to be included in the will of the people as expressed through the particular law of its elected representatives."

(D) In relation to the above view it is to be observed that in the Motor Transport (Regulation) Law, 1964 (Law 16/1964) under which Regulation 12A was enacted, there exists no provision laying down and defining the extent or framework of the particular restriction or limitation which was imposed by means of Regulation 12A and, therefore, such Regulation cannot be regarded as a regulation made only for the purpose "of

prescribing the form and manner of, and the making of other detailed provisions for, the carrying into effect and applying the particular restriction or limitation within the framework" as laid down by such law. (Cf. *Chester* v. *Bateson* [1920] 1 K.B. 829, at p. 833).

Held, II : *Regarding the conclusion that said Regulation 12A is* ultra vires *the parent enactment* i.e. *the Motor Transport (Regulation) Law, 1964 (Law 16/1964)* :-

(1) (A) The answer to the question whether a piece of subsidiary legislation is *ultra vires* the parent enactment depends, in every case, on the true construction of the relevent enabling enactment (*see* Halsbury's Laws of England, 3rd ed. Vol. 36, p. 491, para. 743).

(B) And as it was laid down in *Marangos'* case (*infra*) "if there is involved interference with a fundamental right, such as the right to property, any doubt about the extent and effect of the relevant enactment has to be resolved in favour of the liberties of the citizen (see *Fina (Cyprus) Ltd.* and *The Republic,* 4 R.S.C.C. 26, at p. 33; *Chester* v. *Bateson* [1920] 1 K.B. 829, at p. 838; *Newcastle Breweries Ltd* v. *The King* [1920] 1 K.B. 854).

Also, in examining whether or not subsidiary legislation is *ultra vires* its parent enactment, it has to be borne, particularly, in mind the state of the law at the time when such enactment was passed and the changes which it was passed to effect, as well as the structure of such enactment as a whole (see *Attorney-General* v. *Brown* [1920] 1 K.B. 773, at p. 791)." See *Marangos and Others* v. *The Municipal Committee of Famagusta* (1970) 3 C.L.R. 7, at p. 13. Cf. *Utah Construction and Engineering Property Ltd. and Another* v. *Pataky* [1965] 3 All E.R. 650.

(C) The above principles indicate, in my view, what seems to be the correct approach in examining whether or not a regulation is *intra vires* or *ultra vires* its parent enactment.

(2) It has been argued by counsel for the respondent that it was legally possible to make Regulation 12A (*supra*) under paragraph (b) of sub-section (2) of section 15 of the enabling law 16/1964 (*supra*), which paragraph enables the Council of Ministers to *regulate* "the licensing under this Law, the procedure to be followed therefor, the classes of the various licences and the terms and conditions to be inserted in a licence under this Law".

But the words "regulate", "regulating" are not apt in themselves to include a power to prohibit; and there is not evident reason why the draftsman should not have added the words "or prohibiting" after the word "Regulating" in the said paragraph (b) of sub-section (2) of section 15, if he meant to include a power to prohibit the issue of licences. (See *Tarr* v. *Tarr* [1972] 2 All E.R. 295, at p. 302, per Lord Pearson, H.L., *applied*. But *Slattery* v. *Naylor* [1888] 13 A.C. 446, *distinguished*).

(3) (A) I am also unable to accept the argument advanced by counsel for the respondent to the effect that it was legally possible to make Regulation 12A under the general provision of sub-section (1) of section 15 of the parent enactment (Law 16/1964, *supra*), enabling the Council of Ministers to "make Regulations to be published in the Official Gazette of the Republic, *for the better* carrying out of the provisions of this Law into effect".

Note : After laying stress on the close relationship between the aforesaid Law 16/1964 and the Motor Vehicles and Road Traffic Law, Cap. 332 and stating that these two Laws, when

read together, appear to form a legislative complex in the same way as a legislative complex was constituted in England by the Road Traffic Act, 1930 and the Road Traffic and Rail Traffic Act, 1933 the learned President went on :

(B) It seems to me that it could hardly have ever been intended to enable the making under sub-section (1) of section 15 of the aforesaid Law 16/1964 (*supra*) of a regulation of such a sweeping and prohibitive nature, as Regulation 12A, in order to introduce entirely novel requirements in relation to the types of vehicles affected thereby. Such object could have been lawfully achieved by amending Law 16/1964 (*supra*), or that part of the Motor Vehicles Regulations, 1959, which refers to the safety of vehicles.

(4) In any case, Regulation 12A seems to me to be inconsistent with sections 8 and 10 of the parent enactment (Law 16/1964, *infra*). Indeed it introduces a new draconian test in relation to the licensing of both buses and goods vehicles, which is nowhere stated, expressly or impliedly, in the said Law 16/1964, and which is inconsistent with the whole tenor of such Law. In this respect, one must not loose sight of the fact that by the aforesaid sections 8 and 10 of Law 16/1964 provision is made for the granting of "road service licence" and "carrier's licence", respectively, but there is nothing therein indicating or enabling the making of any distinction between used or unused vehicles as provided by Regulation 12A.

(4bis) (A) Without resorting to an exhaustive examination of the provisions of Law 16/1964 (*supra*) in order to demonstrate the incompatibility of Regulation 12A with a lot of them, I might refer, by way of example, to the definition of "goods vehicle" in section 2(1) of the said Law; it reads as follows :

" 'Goods vehicle' means a motor vehicle constructed or *adapted* for use for the carriage or haulage of goods or burden of any description and includes a trailer drawn thereby".

Now, the term "adapted" has been interpreted to mean not merely a vehicle which is suitable for use as a goods vehicle, but, also, one altered so as to make the vehicle apt (see *French* v. *Champkin* [1920] 1 K.B. 76).

(B) It follows from the above that it is inevitably necessary to hold that Regulation 12A amounts to an invalid way of amending, by subsidiary (or delegated) legislation, a definition in a Law, namely that of "goods vehicle" in section 2(1) of Law 16/1964 (*supra*), which statutory definition envisages a "goods vehicle" being, *inter alia*, a vehicle *'adapted'* for the purpose of becoming such a vehicle but does not introduce any requirement that such vehicle should be newly built or unused.

Held, III: For all the foregoing reasons I find that Regulation 12A is invalid and, therefore, the *sub judice* decisions (refusals) challenged by the present recourses have to be annulled.

Note: In view of Article 146.4 of the Constitution the outcome of these recourses is only the annulment of the aforesaid refusals of the respondent Licensing Authority, and not the annulment of Regulation 12A notwithstanding that it has been found to be invalid.

Sub judice decisions (refusals) annulled. No order as to costs.

Cases referred to:

Christodoulou and *The Republic*, 1 R.S.C.C. 1;

Police and *Hondrou*, 3 R.S.C.C. 82, at p. 85;

Marangos and Others v. *The Municipal Committee of Famagusta* (1970) 3 C.L.R. 7, at p. 13;

Fina (Cyprus) Ltd. and *The Republic*, 4 R.S.C.C. 26, at p. 33;

Ross-Clunis v. *Papadopoulos and Others*, 23 C.L.R. 71, at p. 90, P.C.;

Cramas Properties Ltd. v. *Connaught Fur Trimmings Ltd.* [1965] 1 W.L.R. 892, at p. 898, per Lord Reid, H.L.;

Chester v. *Bateson* [1920] 1 K.B. 829, at pp. 833, 838;

Newcastle Breweries Ltd. v. *The King* [1920] 1 K.B. 854;

Attorney-General v. *Brown* [1920] 1 K.B. 773, at p. 791;

Utah Construction and Engineering Property Ltd. and Another v. *Pataky* [1965] 3 All E.R. 650, at p. 653, P.C.;

Ward v. *Folkestone Wateworks Co.* [1890] 24 Q.B. 334, at p. 338;

Municipal Corporation of the City of Toronto v. *Virgo* [1896] A.C. 88, at pp. 93, 94;

Attorney-General for Ontario v. *Attorney-General for the Dominion, and the Distillers and Brewers' Association of Ontario* [1896] A.C. 348, at p. 363;

Birmingham and Midland Motor Omnibus Co. Ltd. v. *Worcestershire County Council* [1967] 1 All E.R. 544, at p. 549;

Tarr v. *Tarr* [1972] 2 All E.R. 295, at p. 302, per Lord Pearson, H.L.;

Slattery v. *Naylor* [1888] 13 A.C. 446, at pp. 450, 451;

French v. *Champkin* [1920] 1 K.B. 76.

Recourses.

Recourses against the validity of decisions of the respondent Licensing Authority refusing applicants carriers' licence in respect of vehicles of theirs which were imported into Cyprus, as used vehicles, after 1965.

L. Clerides, for the applicant in Case No. 80/71.

E. Efstathiou with *A. Panayiotou*,
for all other applicants.

V. Aristodemou, Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgment was delivered by :-

TRIANTAFYLLIDES, P. : On the 11th September, 1973, by an interim decision *—(which should be treated as incorporated in this judgment)—I found that the reasoning for the administrative decisions challenged by the applicants was erroneous, because, though the prohibition contained in regulation 12A of the Motor Transport (Regulation) Regulations, 1964—(as amended by the Motor Transport (Regulation) (Amending) Regulations, 1965, and by the Motor Transport (Regulation) (Amending) Regulations, 1967)—is applicable only to vehicles which are being put into circulation for the first time, the respondent Licensing Authority refused to the applicants carriers' licences on the ground that the motor vehicles concerned of the applicants were *not* being put into circulation for the first time.

Regulation 12A reads as follows :-

«12Α. Οὐδεμία ἄδεια ὁδικῆς χρήσεως διὰ λεωφορεῖον καὶ οὐδεμία ἄδεια δημοσίου μεταφορέως 'Α' ἢ ἰδιωτικοῦ μεταφορέως 'Β' ἐκδίδεται ἐπὶ τῇ βάσει τῶν παρόντων Κανονισμῶν διὰ μηχανοκίνητον ὄχημα τὸ πρῶτον κυκλοφοροῦν ἐκτὸς ἐὰν τοῦτο εἶναι νεότευκτον καὶ ἀμεταχείριστον.

Νοεῖται ὅτι εἰς εὐλόγους περιπτώσεις ἡ ἀρχὴ ἀδειῶν δύναται ἐν τῇ διακριτικῇ αὐτῆς ἐξουσίᾳ νὰ ἐκδώσῃ τοιαύτην ἄδειαν ἀφοῦ ἱκανοποιηθῇ ὅτι τὸ μηχανοκίνητον ὄχημα —

(α) ἠγοράσθη ἐκ τοῦ Βρεττανικοῦ Ὑπουργείου Πολέμου πρὸ τῆς 7ης Ὀκτωβρίου 1965, ἢ

(β) ἠγοράσθη ἢ συνεφωνήθη ὅπως ἀγορασθῇ ἐκτὸς τῆς Κύπρου πρὸ τῆς 7ης Ὀκτωβρίου 1965, ἢ

* Reported in this Part at p. 478 *ante*.

(γ) εισήχθη εν Κύπρῳ πρὸ ἡ κατὰ τὴν 7ην Ὀκτωβρίου 1965 ἀλλὰ δὲν ἐνεγράφη πρὸ ἡ κατὰ τὴν εἰρημένην ἡμερομηνίαν.

καὶ ἐὰν ὑποβληθῇ αἴτησις δι' ἔκδοσιν τοιαύτης ἀδείας μέχρι τῆς 31ης Μαΐου 1967».

("No road service licence for a bus and no public carrier's licence 'A' or private carrier's licence 'B' is issued under these Regulations for any motor vehicle which is put into circulation for the first time unless it is newly built and unused.

Provided that in proper cases the Licensing Authority may in its disrcetion issue such a licence when satisfied that the motor vehicle —

(a) was bought from the British Ministry of War before the 7th October, 1965, or

(b) was bought or it was agreed that it would be bought outside Cyprus before the 7th October, 1965, or

(c) was imported into Cyprus before or on the 7th October, 1965, but it was not registered before or on the aforesaid date,

and if an application for the issue of such a licence is submitted by the 31st May, 1967").

Having given the above interim decision I had to examine, next, whether the *sub judice* administrative decisions could, nevertheless, be upheld on some other legal basis.

In the light of further arguments advanced by counsel for the parties I am confirmed in my view (which I indicated, subject to further argument, in my interim decision) that the correct interpretation of Regulation 12A is that it contains a prohibition against the issuing of a carrier's licence in respect of a motor vehicle which is being *put into circulation in Cyprus, for the first time, as a bus or as a goods vehicle,* irrespective of any previous circulation in Cyprus of such vehicle as a vehicle of *any other* nature or of the previous circulation *abroad* of such vehicle as a vehicle of *any* nature (including that of a bus or a goods vehicle).

I am of the opinion that this interpretation of regulation 12A is the one most consistent with its object and that it ought not to be rejected by me merely because the regulation could have been drafted, in this respect, in more clear terms. In *Cramas Properties Ltd.* v. *Connaught Fur Trimmings Ltd.* [1965] 1 W.L.R. 892, Lord Reid stated (at p. 898) the following in respect of a difficulty which had arisen in relation to the construction of a provision in the Landlord and Tenant Act, 1954 :-

> "
>
> one must always remember that the object in construing any statutory provision is to discover the intention of Parliament and that there is an even stronger presumption that Parliament does not intend an unreasonable or irrational result. Of course we must go by the words of the Act and if they are only capable of one meaning then we must take that meaning however irrational the result. But if they are capable of two meanings, one of which leads to a reasonable result while the other does not, there must in my opinion be very strong reasons to drive us to accept the latter meaning."

On the basis of the aforesaid interpretation of regulation 12A I would have had found no difficulty in upholding as valid in law the *sub judice* administrative decisions (because the vehicles involved in these recourses were all being put into circulation for the first time in Cyprus as goods vehicles and they were, at any rate, definitely not "unused") had I not reached the conclusion that regulation 12A was not validly enacted and, therefore, the said decisions have to be annulled and to be declared to be null and void and of no effect whatsoever, as having been based on an invalid enactment (see *Christodoulou* and *The Republic*, 1 R.S.C.C. 1).

My reasons for reaching the above conclusion are, mainly, the following :-

The effect of regulation 12A, as construed in this judgment, is that it is impossible to license a bus or a goods vehicle which is put into circulation in Cyprus for the first time *as such*, unless it is a vehicle which is newly built and unused. This is a very severe restriction on the right of property of the owners of buses or goods

vehicles which do not meet the above requirements and, even if it could be brought under the head of public safety in paragraph 3 of Article 23 of the Constitution, as suggested by learned counsel for the respondent, it would have to be imposed by a Law of the House of Representatives, and not merely by a regulation, which was not even placed before the House of Representatives so as to afford it a chance to decide whether or not it should become operative. In *The Police* and *Hondrou*, 3 R.S.C.C. 82, it was stated in the judgment of the then Supreme Constitutional Court (at p. 85) that :-

> "The Court in this Casc has had to consider whether, and if so to what extent, the House of Representatives is entitled to delegate its power of legislation in relation to the imposition of restrictions or limitations on the fundamental rights and liberties guaranteed by Part II of the Constitution in view of the special nature of the provisions of such Part.
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> It is only the people of a country themselves, through their elected legislators, who can decide to what extent its fundamental rights and liberties, as safeguarded by the Constitution, should be restricted or limited and this principle is inherently contained in all constitutions, such as ours, which expressly safeguard the fundamental rights and liberties and adopt the doctrine of the separation of powers.
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> In the opinion of the Court, therefore, the expression 'imposed by law' in paragraph 3 of Article 23, the expression 'prescribed by law' in paragraph 2 of Article 25 and like expressions in other Articles of Part II of the Constitution, mean, in so far as laying down and defining the extent and framework of the particular restriction or limitation is concerned, a law of the House of Representatives. This does not however, prevent the House of Representatives from delegating its power to legislate in respect of prescribing the form and manner of, and the making of other detailed provisions for, the carrying into effect and applying the particular restriction or limitation within the framework as laid down by such law, e.g. the addition of further items or

instances falling within the restriction or limitation in question. Such a course is presumed to be included in the will of the people as expressed through the particular law of its elected representatives."

In relation to the above view it is to be observed that in the Motor Transport (Regulation) Law, 1964 (Law 16/64), under which regulation 12A was enacted, there exists no provision laying down and defining the extent and framework of the particular restriction or limitation which was imposed by means of regulation 12A and, therefore, such regulation cannot be regarded as a regulation made only for the purpose of "prescribing the form and manner of, and the making of other detailed provisions for, the carrying into effect and applying the particular restriction or limitation within the framework as laid down by such law".

It is useful, in this respect, to refer, also, to *Chester* v. *Bateson* [1920] 1 K.B. 829, where it was held that a regulation forming part of the Defence of the Realm Regulations, which prevented any person from taking, without the consent of the Minister of Munitions, any proceedings for the purpose of obtaining an order or decree for the recovery of possession of, or for the ejectment of a tenant of, any dwelling-house in which a munition worker was living, if such house was situated in an area declared by an order of the Minister of Munitions to be a special area, was not authorized by the provisions of the Defence of the Realm Consolidation Act, 1914, and was, therefore, invalid. Darling J stated the following (at p. 833):-

> "But the regulation as framed forbids the owner of the property access to all legal tribunals in regard to this matter. This might, of course, legally be done by Act of Parliament; but I think this extreme disability can be inflicted only by direct enactment of the Legislature itself, and that so grave an invasion of the rights of all subjects was not intended by the Legislature to be accomplished by a departmental order such as this one of the Minister of Munitions."

I have examined, also, whether or not regulation 12A is *intra vires* or *ultra vires* the Law 16/64:

In relation to this matter the following was stated in *Marangos and Others* v. *The Municipal Committee of Famagusta* (1970) 3 C.L.R. 7, at p. 13 :-

> "When subsidiary legislation—such as the said Regulations—is examined with a view to deciding on a contention that it is *ultra vires*, the answer to this question depends, in every case, on the true construction of the relevant enabling enactment (see Halsbury's Laws of England, 3rd ed., vol. 36, p. 491, para. 743).
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> If there is involved interference with a fundamental right, such as the right to property, any doubt about the extent and effect of the relevant enactment has to be resolved in favour of the liberties of the citizen (see *Fina (Cyprus) Ltd.* and *The Republic*, 4 R.S.C.C. 26, at p. 33; *Chester* v. *Bateson* [1920] 1 K.B. 829, at p. 838; *Newcastle Breweries, Ltd.* v. *The King* [1920] 1 K.B. 854).
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> Also, in examining whether or not subsidiary legislation is *ultra vires* its parent enactment, it has to be borne, particularly, in mind the state of the law at the time when such enactment was passed and the changes which it was passed to effect, as well as the structure of such enactment as a whole (see *Attorney-General* v. *Brown* [1920] 1 K.B. 773, at p. 791)".

In the judgment in the *Marangos* case, *supra*, reference was made also, to *Utah Construction and Engineering Property, Ltd. and Another* v. *Pataky* [1965] 3 All E.R. 650. In that case the Privy Council was dealing with the issue of *ultra vires* in relation to paragraph 2 of regulation 98, which was made under the Scaffolding and Lifts Act, 1912 - 1960, in New South Wales, in Australia; the said paragraph provided that "every drive and tunnel shall be securely protected and made safe for persons employed therein". Lord Guest stated the following (at p. 653) :-

> "The only section of the Act relied on by the respondent and the Full Court in considering the validity of para. 2 of reg. 98 was s. 22. No other provision of the Act gives any power to make re-

gulations and no section of the Act by itself imposes any duty to carry out the provisions of the regulations. So far as is material this section is as follows:

'22(1). The Governor may make regulations not inconsistent with this Act prescribing all matters which are required or authorised to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2). Without limiting the generality of the powers conferred by sub-s. (1) of this section, the Governor may make regulations...

(g) relating to...

(iv) the manner of carrying out building work, excavation work or compressed air work;

(v) safeguards any measures to be taken for securing the safety and health of persons engaged in building work, excavation work or compressed air work, or at or in connexion with conveyors, cranes, hoists, lifts, plant, scaffolding or gear;...

(4) A regulation may impose a penalty not exceeding one hundred pounds for any breach thereof.'

Before the Full Court s. 22(1) of the Scaffolding and Lifts Act, 1912 - 1960, was rejected as affording validity for reg. 98. In their lordships' view the Full Court were right in so doing. It was contended that reg. 98 could be justified as being within the power to make regulations under s. 22(1) for prescribing all matters which are necessary or convenient to be prescribed for carrying out or giving effect to the Act. The only section which, it was argued, it was necessary to give effect to by reg. 98 was s. 15. Their lordships have no hesitation in rejecting this contention. Section 15 *inter alia* gives power to an inspector where it appears to him that the manner of carrying out any excavation work would be dangerous or that regulations in regard to excavation work are not being complied with to give such directions to the contractor as he thinks necessary to prevent accidents or to en-

sure compliance with the regulation. The person directed must carry out the direction under pain of a penalty for non-compliance. The person directed is given a right of appeal to the Minister. By no possible stretch of imagination could reg. 98 be justified by s. 22(1) read in conjunction with s. 15. Their lordships adopt with approval the statement in the judgment of the High Court of Australia in *Shanahan* v. *Scott* (1957) 96 C.L.R. 245 at p. 250, relating to the construction of a provision similar to s. 22(1) of the Scaffolding and Lifts Act, 1912—1960, to the following effect.

'The result is to show that such a power does not enable the authority by regulations to extend the scope or general operation of the enactment but is strictly ancillary. It will authorise the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provisions. But such a power will not support attempts to widen the purposes of the Act, to add new and different means of carrying them out or to depart from or vary its ends.'

Their lordships now pass to s. 22(2)(g)(iv) and (v). Sub-paragraph (iv) empowers the Governor to make regulations 'relating to the manner of carrying out .... excavation work'. The relevant portion of reg. 98 provides 'Every drive and tunnel shall be securely protected and made safe for persons employed therein'. The expression 'manner of carrying out' the work plainly envisages a system of working, and does not in their lordships' view justify a regulation imposing an absolute duty of protecting the drive and tunnel or an absolute duty of ensuring the safety of persons employed in the drive or tunnel. The relevant portion of reg. 98 does not prescribe the manner of doing the work. Sub-paragraph (iv) therefore cannot in their lordships' opinion empower the making of the relevant portion of reg. 98.

A more difficult question is whether the relevant portion of reg. 98 is authorised by s. 22(2)(g)(v)

which empowers the Governor to make regulations 'relating to the safeguards and measures to be taken for securing the safety and health of persons engaged in ..... excavation work'. The appellants argued that the power conferred by this paragraph related only to the means for achieving an end and not to the creation of the end itself. In other words that the sub-paragraph did not authorise a regulation prescribing that a tunnel must be safe, but authorised only regulations stating specific means which persons bound by the regulations were required to adopt. Their lordships are of opinion that these arguments are sound.

The relevant portion of reg. 98 does not in their lordships' view fall within the powers conferred by s. 22(2)(g)(v). It is in their lordships' view *ultra vires* and therefore invalid."

I have quoted the above passage in order to indicate what seems to be the correct approach in examining whether or not a regulation is *intra vires* or *ultra vires* its parent enactment.

Regulation 12A was made under section 15 of Law 16/64 which read as follows at the material time :-

«15.(1) Τὸ Ὑπουργικὸν Συμβούλιον δύναται νὰ ἐκδίδῃ Κανονισμοὺς δημοσιευομένους ἐν τῇ ἐπισήμῳ ἐφημερίδι τῆς Δημοκρατίας διὰ τὴν καλλιτέραν ἐφαρμογὴν τῶν διατάξεων τοῦ παρόντος Νόμου.

(2) Εἰδικώτερον, καὶ ἄνευ ἐπηρεασμοῦ τῆς γενικότητος τοῦ ἐδαφίου (1), οἱ Κανονισμοὶ οὗτοι δύνανται νὰ προνοῶσι περὶ ἁπάντων, ἢ περὶ τινων τῶν ἀκολούθων ζητημάτων :

(α) περὶ τοῦ καθορισμοῦ παντὸς ζητήματος ἢ τέλους, ὅπερ δυνάμει τοῦ παρόντος Νόμου χρήζει ἢ εἶναι δεκτικὸν καθορισμοῦ·

(β) περὶ τῆς ρυθμίσεως τῆς παροχῆς ἀδειῶν δυνάμει τοῦ παρόντος Νόμου, τῆς ἀκολουθητέας διαδικασίας, τῶν κατηγοριῶν τῶν διαφόρων ἀδειῶν, καὶ τῶν ὅρων οἵτινες δυνατὸν νὰ ἐντεθῶσιν ἔν τινι ἀδείᾳ δυνάμει τοῦ παρόντος Νόμου·

(γ) περὶ τῆς ρυθμίσεως τῆς συμπεριφορᾶς τῶν ὁδηγῶν καὶ ἐπιβατῶν παντος οχήματος εις ο παρεσχέθη αδεια δυνάμει τοῦ παρόντος Νομου

(δ) περὶ τῆς μεταφορᾶς ἐπιβατῶν, τῶν ἀποσκευῶν καὶ ἀγαθῶν αὐτῶν, ἐπι παντος οχηματος εις ὃ παρεσχέθη ἄδεια δυναμει τοῦ παροντος Νομου

(ε) περὶ τῆς ρυθμισεως τῶν ενώπιον τοῦ Υπουργοῦ ἀσκουμένων ἐφέσεων δυνάμει τοῦ παρόντος Νόμου

(στ) περὶ τοῦ καθορισμοῦ κυρωσεων δια την παράβασιν παντὸς τοιούτου Κανονισμοῦ, αἵτινες ὅμως ἐν πάση περιπτώσει δεν δύνανται νὰ εἶναι ἀνώτεραι τῆς φυλακισεως διὰ διάστημα μὴ ὑπερβαῖνον τοὺς ἐξ μῆνας, ἢ τῆς χρηματικῆς ποινῆς μὴ ὑπερβαινούσης τας εκατον λιρας, ἢ ἀμφοτέρων τῶν ποινῶν τῆς φυλακισεως καὶ τῆς χρηματικῆς τοιαύτης»

("15.—(1) The Council of Ministers may make Regulations to be published in the official Gazette of the Republic, for the better carrying out of the provisions of this Law into effect

(2) In particular, and without prejudice to the generality of sub-section (1), any such regulations may provide, for any or all of the following matters

(a) prescribing any matter or fee which under the provisions of this Law is required or may be prescribed;

(b) regulating the licensing under this Law, the procedure to be followed therefor, the classes of the various licences and the terms and conditions to be inserted in a licence under this Law,

(c) regulating the conduct of drivers of, and passengers on, any vehicle licensed under this Law;

(d) the carriage of passengers, their luggage and goods on any of the vehicles licensed under this Law;

(e) regulating any appeals under this Law to the Minister;

(f) prescribing penalties, not exceeding six months' imprisonment or one hundred pounds fine or both such imprisonment and fine, for the breach of any such Regulations").

It has been argued by counsel for the respondent that it was legally possible to make regulation 12A under paragraph (b) of sub-section (2) of section 15, as a provision regulating the licensing of the vehicles in question :

In *Ward* v. *Folkestone Waterworks Co.* [1890] 24 Q.B. 334, the following was stated by Cave J (at p. 338) :-

> "In this case the waterworks company claim the right to compel the consumer of water to put down a screw-down valve in the street in the pipe which connects his premises with the company's main, and it lies upon them to shew by very clear and unmistakeable language that they have that right.
>
> Sect. 14 is more to the point, for it does give the company power to compel the consumer to adopt certain precautions to prevent waste. It says, 'All persons supplied with water by the company shall provide proper ball or stop-cocks'. We all know what a ball or stop-cock is,—it is an apparatus used in a cistern for the purpose of admitting water into the cistern when it is not full, and excluding the water when it is full. Then the section goes on, 'or other necessary apparatus of approved construction for regulating such supply..... so that the water may be properly drawn off and effectually prevented from running to waste'. The apparatus there spoken of must be something akin to a ball-cock, something, that is to say, which will prevent the water from running to waste consistently with its admission into the cistern as occasion may require. But the object of the screw-down valve which it is sought here to compel the consumer to put down is not

to regulate the supply in the same manner in which the ball-cock regulates it, but to shut it off altogether. It seems to me, therefore, clear that the company had not under that section either the right which they seek to establish."

In *Municipal Corporation of the City of Toronto* v. *Virgo* [1896] A.C. 88, it was held that a statutory power conferred upon a municipal council to make bye-laws for regulating and governing a trade does not, in the absence of an express power of prohibition, authorize the making it unlawful to carry on a lawful trade in a lawful manner. Lord Davey stated (at pp. 93, 94) :-

"It appears to their Lordships that the real question is whether under a power to pass by-laws 'for regulating and governing' hawkers, & c., the council may prohibit hawkers from plying their trade at all in a substantial and important portion of the city no question of any apprehended nuisance being raised. It was contended that the bye-law was *ultra vires*, and also in restraint of trade and unreasonable. The two questions run very much into each other, and in the view which their Lordships take it is not necessary to consider the second question separately.

No doubt the regulation and governance of a trade may involve the imposition of restrictions on its exercise both as to time and to a certain extent as to place where such restrictions are in the opinion of the public authority necessary to prevent a nuisance or for the maintenance of order. But their Lordships think there is marked distinction to be drawn between the prohibition or prevention of a trade and the regulation or governance of it, and indeed a power to regulate and govern seems to imply the continued existence of that which is to be regulated or governed. An examination of other sections of the Act confirms their Lordships' view, for it shews that when the Legislature intended to give power to prevent or prohibit it did so by express words.

But through all these cases the general principle may be traced, that a municipal power of regulation or of making by-laws for good government, without express words of prohibition, does not authorize the making it unlawful to carry on a lawful trade in a lawful manner."

The above view was confirmed in *Attorney-General for Ontario* v. *Attorney-General for the Dominion, and the Distillers and Brewers' Association of Ontario* [1896] A.C. 348; Lord Watson stated (at p. 363) :-

"In that view, their Lordships are unable to regard the prohibitive enactments of the Canadian statute of 1886 as regulations of trade and commerce. They see no reason to modify the opinion which was recently expressed on their behalf by Lord Davey in *Municipal Corporation of the City of Toronto* v. *Virgo,* in these terms : 'Their Lordships think there is marked distinction to be drawn between the prohibition or prevention of a trade and the regulation or governance of it, and indeed a power to regulate and govern seems to imply the continued existence of that which is to be regulated or governed'."

In *Birmingham and Midland Motor Omnibus Co. Ltd.* v. *Worcestershire County Council* [1967] 1 All E.R. 544, 549, the issue was whether the provisions of section 65(1) of the Highways Act, 1959, to the effect that —

" 'A highways authority may, in relation to a highway maintainable at the public expense by them, being a highway which consists of or comprises a made-up carriageway, construct and maintain works in that carriageway :- (a) along any length of the highway, for separating a part in the carriageway which is to be used by traffic moving in one direction from a part of the carriageway which is to be used (whether at all times or at particular times only) by traffic moving in the other direction; (b) at cross roads or other junctions, for regulating the movement of traffic'."

enabled the county council concerned to block up intersections with blocks of wood. Lord Denning MR stated (at p. 550) :-

"Counsel for the county council relies in the first place on para. (a). He says that, by putting in the blocks of wood, the county council have separated the traffic in one direction from the traffic in the other direction. That is true. But at the same time the council have done much more. They have actually prevented traffic crossing by means of the intersecting portions of the highway. That is not permissible. It is one thing to separate lines of traffic. It is another thing to prevent it moving in its desired direction at all. The cross-traffic here does desire to use the intersecting portion of the highway. The county council have no right under para. (a) to block up those portions. Counsel for the county council next relies on para. (b). He says that these works were for 'regulating the movement of traffic'. This paragraph would justify works which send traffic round a round-about, or sending traffic up, say, one hundred yards in one direction and back one hundred yards in another. But does it extend to works which send the traffic seven-eighths of a mile up in one direction and seven-eights of a mile down in another? Thus making it go an extra distance of some 1¾ miles. Does that come within the words 'regulating the movement of traffic'? I think not. In *City of Toronto Municipal Corpn.* v. *Virgo* [1896] A.C. 88 at p. 93, Lord Davey said that a power to 'regulate' and 'govern' seems to imply the continued existence of that which is to be 'regulated' or 'governed'. So, here, when a highway authority simply sends the traffic round a round-about or a short diversion, they can fairly be said to be 'regulating the movement of traffic'; but if it forces the traffic to go 1¾ miles out of its way, it ceases to be 'regulating' the traffic. It is equivalent to prohibiting it."

The above dicta of Lord Davey, Lord Watson, Cave J and Lord Denning were adopted with approval in *Tarr* v. *Tarr* [1972] 2 All E.R. 295, by the House of

Lords; and in that case Lord Pearson added the following (at p. 302) :-

> "In the Oxford English Dictionary under the word 'regulate' there is not given any meaning which could possibly include prohibition. Thus, the word 'regulating' in itself is not apt to include a power to prohibit. There is not evident reason why the draftsman should not have added the words 'or prohibiting' if he meant to include a power to prohibit. If a temporary prohibition were required, the duration could have been limited under s. 1(4). Alternatively the words 'or suspending' might have been added."

A case pointing in the opposite direction is *Slattery* v. *Naylor* [1888] 13 A.C. 446, where it was decided by the House of Lords that a bye-law made in pursuance of section 153 of the Municipalities Act, 1867, empowering municipal councils to make bye-laws for regulating the interment of the dead was not *ultra vires*, by reason of its prohibiting interment altogether in a particular cemetery and thereby destroying the private property of the owners of burial places therein. Lord Hobhouse stated the following (at pp. 450, 451) :-

> "It is true that, in regulating the interment of the dead, the bye-law makes the cemetery useless for its former purpose. This, it is argued, is not regulation but prohibition, and it is pointed out that, with regard to several objects of the bye-laws, prevention and suppression are expressly allowed by the Act, whereas in the case of interment only regulation is allowed. One illustration of regulation proper, as distinct from prohibition, was found in another bye-law laying down rules as to the number of corpses in a grave and their depth below the surface. Now if, at the passing of the bye-law, a grave was already so full that it could not, consistently with the bye-law, receive another corpse, the bye-law would amount to a complete prohibition of burial, although the owner of the grave may have contemplated that in death he should be laid by those whom he loved best in life.

To regulate the place of burial is certainly one of the most important points in regulating burials for the health of a community, perhaps the most important of all. It is indeed a serious thing to prevent people from indulging their affections in a matter which they justly consider so sacred as the disposal of their dead. Such prohibitions should be well considered before they are passed. But they are undoubtedly necessary in large and growing communities. And their Lordships cannot hold that a bye-law is *ultra vires* because, in laying down a general regulation for the borough of Petersham, it has the effect of closing a particular cemetery."

In my opinion, however, the present case (where regulation 12A has introduced a sweeping and total prohibition of the licensing of all buses or goods vehicles which circulate as such in Cyprus for the first time and which are not newly built and unused) is governed by the other relevant case-law, cited earlier on, and is distinguishable from the *Slattery* case, where the exercise of the power of "regulating" resulted in closing a particular cemetery only, due to its special location.

In my opinion, therefore, regulation 12A could not be lawfully made under section 15(2)(b).

It has been further argued by counsel for the respondent that it was permissible to make regulation 12A under sub-section (1) of section 15. For the reasons set out hereinafter I cannot accept this proposition as being well-founded :

It is, indeed, correct that section 15 is, in this respect, different from section 19(1) of Cap. 96, in relation to which the *Marangos* case, *supra,* was decided, because the said section does not contain anything similar to subsection (1) of section 15.

As stated in Basu's Commentary on the Constitution of India, 5th ed., vol. 1 (at p. 279) :-

"In most modern statutes, the practice is to confer rule-making power by one general provision empowering the rule-making authority to make rules 'for carrying out the purposes of the Act', followed by the enumeration of certain particular matters

regarding which rules may be made 'without prejudice to the generality of the foregoing power'. In such a case, it has been held that the specific enumeration does not circumscribe the general power conferred to make any rules provided they are required for carrying out the purposes of the Act and they are consistent with the provisions of the act."

Also, in *Ross-Clunis* v. *Papadopoulos and Others*, 23 C.L.R. 71, which was decided by the Privy Council on appeal from Cyprus, it was stated (at p. 90) :-

> "Counsel's argument, already mentioned, based on section 6(2)(g) was briefly and conclusively answered by Zekia, J., as follows :- 'There is nothing to warrant the reading of section 6(2)(g) as a restrictive proviso to section 6(1). On the contrary the words 'without prejudice to the generality of the powers conferred by the preceding sub-section' in section 6(2) lead us to a contrary view. The language of the relevant section is clear and unambiguous'."

But in examining the possibility of validly enacting regulation 12A under sub-section (1) of section 15 one should bear in mind the whole Law 16/64, and, particularly, the object of such statute. In this respect it may be noted that in *Attorney-General* v. *Brown* [1920] 1 K.B. 773, it was stated (at p. 791) by Sankey, J that —

> "... in construing an Act of Parliament it is, in my view, legitimate to consider (1.) the state of the law at the time the Act of Parliament was passed, and the changes it was passed to effect; (2.) the sections and structure of the Act of Parliament as a whole :"

Law 16/64 is described, by its long title, as «Νόμος διαλαμβάνων περαιτέρω προνοίας περί της ρυθμίσεως της τροχαίας μεταφοράς» ("A Law to make further provision for the regulation of motor transport"); and I lay stress on the word "further" in such title. It may be derived, too, from section 2(2) of Law 16/64 that it is an enactment closely related to, and intended to supplement in a certain way, the Motor Vehicles and Road Traffic Law, Cap. 332 (as in force at the material time).

Cap. 332 and Law 16/64, when read together, appear to form a legislative complex in the same way as a legislative complex was constituted by the Road Traffic Act, 1930, and the Road and Rail Traffic Act, 1933, in England; actually, Part IV of the Road Traffic Act, 1930, corresponds to Law 16/64, whereas Parts I and II of such Act correspond to Cap. 332.

The close relationship between Law 16/64 and Cap. 332 is, also, to be derived from provisions in the Motor Transport (Regulation) Regulations, 1964, of which eventually regulation 12A became a part; regulation 10 of the said Regulations regulates the issuing of road service licences in respect of buses, by making various provisions regarding their suitability. irrespective of whether they are used or unused, but provided, always, that each vehicle concerned fulfils the requirements of the Motor Vehicles Regulations, 1959, which were made under Cap. 332; also, regulation 11 of the said Regulations of 1964 provides that no public carrier's "A" licence can be issued unless the vehicle in question complies with the requirements of the aforesaid Regulations of 1959.

It is not in dispute that the vehicles involved in the present cases were, when first imported, licensed as motor vehicles of "any other type", under regulation 19(7)(xi) of the Regulations of 1959, and then, when they were converted (on the strength of a relevant permit for the purpose—see, for example, *exhibit* 1) they were licensed as motor lorries under regulation 18(7)(iii) of the same Regulations.

Regulation 18, above, is to be found in Part III of the relevant Regulations, which deals with the licensing of motor vehicles; the registration of motor vehicles is covered by Part II of the same Regulations, in a manner obviously intended to make provision about the safety of the vehicles; and there is nothing to be found therein which introduces any distinction between used and unused vehicles of any kind.

It seems to me that it could hardly have ever been intended to enable the making, under sub-section (1) of section 15 of Law 16/64, of a regulation of such a sweeping and prohibitive nature, as regulation 12A, in order to introduce entirely novel requirements in relation

to the types of vehicles affected thereby. Such an object could have been lawfully achieved by amending Law 16/64 or Cap. 332, or that part of the 1959 Regulations which refers to the safety of vehicles.

Moreover, regulation 12A is inconsistent with certain provisions of Law 16/64, such as sections 8 and 10 thereof :-

Section 8 provides about the granting of road service licences and nothing is to be found in the criteria laid down therein which can be related to the notion that the vehicles to be licensed must be newly built and unused; and though no part of a Law can be amended by subsidiary legislation, such as Regulations made under that Law, regulation 12A in effect attempts to amend, by restricting by necessary implication the ambit of its application, the proviso to sub-section (1) of section 8, which lays down that when a vehicle in respect of which there has been issued a road service licence is taken out of circulation its owner may, subject to the provisions of Law 16/64 or of any other relevant law, be granted a road service licence in respect of "any" («πᾶν») vehicle by which the one taken out of circulation is to be replaced, without there being found therein anything to the effect that the new vehicle should be unused.

Also, in section 10 of Law 16/64, whereby provision is made about carriers' licences, there is nothing indicating or enabling the making of any distinction between used or unused vehicles.

Indeed, regulation 12A introduces a new draconian test in relation to the licensing of both buses and goods vehicles, which is nowhere stated, expressly or impliedly, in Law 16/64, and which is inconsistent with the whole tenor of such Law.

Without resorting to an exhaustive examination of all the provisions of Law 16/64 in order to demonstrate the incompatibility of regulation 12A with a lot of them, I might refer, by way of example, to the definition of "goods vehicle" in section 2(1) of the Law; it reads as follows :-

«'φορτηγὸν αὐτοκίνητον ὄχημα' (goods vehicle) σημαίνει μηχανοκίνητον ὄχημα κατεσκευασμένον ἢ διε-

σκευασμένον ὥστε νὰ χρησιμοποιῆται διὰ τὴν μεταφορὰν ἀγαθῶν ἢ πάσης φύσεως φορτίου, περιλαμβάνει δὲ πᾶν ρυμουλκούμενον ὄχημα».

("'goods vehicle' means a motor vehicle constructed or adapted for use for the carriage or haulage of goods or burden of any description and includes a trailer drawn thereby").

This definition appears to be modelled on section 1(2) of the Road and Rail Traffic Act, 1933, in England, which reads, in its relevant part, as follows:-

"(2) In this Part of this Act the expression 'goods vehicle' means a motor vehicle constructed or adapted for use for the carriage of goods, or a trailer so constructed or adapted."

The term "adapted", which is to be found, also, in our definition of a "goods vehicle", has been interpreted to mean not merely a vehicle which is suitable for use as a goods vehicle, but, also, one altered so as to make the vehicle apt (see, in this respect, *French* v. *Champkin* [1920] 1 K.B 76).

It follows from the above that it is inevitably necessary to hold that regulation 12A amounts to an invalid way of amending, by subsidiary legislation, a definition in a Law, namely that of "goods vehicle" in section 2(1) of 16/64, which envisages a goods vehicle being, *inter alia*, a vehicle *adapted* for the purpose of becoming such a vehicle and does not introduce any requirement that such vehicle should be newly built and unused.

For all the foregoing reasons I find, as already indicated, that regulation 12A is invalid and, therefore, the *sub judice* decisions, challenged by the present recourses, have to be annulled.

Before concluding I must point out that in view of the provisions of Article 146.4 the outcome of these recourses is only the annulment of the decisions challenged thereby, and not directly, also, the annulment of the said regulation 12A, even though it was found to be invalid,

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by this judgment, in the course of determining these recourses.

Bearing in mind the nature of the issues raised in these proceedings I have decided not to make any order as to costs.

Sub judice decisions annulled.
No order as to costs.