

1975 April 25

[TRIANTAFYLIDIS, P., STAVRINIDES, L. LOIZOU  
HADJIANASTASSIOU AND MALACHTOS, JJ.]

VASSOS ELIADES, LTD.,

*Appellant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTRY OF COMMERCE AND INDUSTRY,

*Respondent.*

(*Revisional Jurisdiction Appeal No. 182.*)

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5 *Administrative Law—Discretionary powers—Judicial control—Discretionary powers have to be exercised properly and not in a defective manner—When there is a choice between more than one, but equally lawful, solutions, the administration has to choose the more equitable one instead of the more onerous one—Refusal of*  
10 *licence to import rubber gloves—Sections 3(1) and 4(1) of the Imports (Regulation) Law, 1962 (Law 49/62)—Once the respondent could, under the Law, grant the licence and impose conditions, in choosing the more onerous solution he has acted in excess of the limits of his discretionary powers—And his decision was made in a defective manner, was contrary to law and in abuse of powers—Annulled.*

15 *Imports (Regulation) Law, 1962 (Law 49/62)—Import licence—Refusal of—Sections 3(1) and 4(1) of the Law—Once, under the Law, the respondent could grant the licence and impose conditions, in choosing the more onerous solution to refuse the licence he has acted in excess of the limits of his discretionary powers—Sub judice refusal made in a defective manner, contrary to law and in abuse of powers—Annulled.*

By means of an order, made under section 3(1)\* of the Imports (Regulation) Law, 1962 (Law 49 of 1962 as amended by Law 7 of 1967) the Minister of Commerce and Industry restricted and regulated the importation of rubber gloves by adding same, together with other commodities, to the list contained on the basic Orders of 1968-1974. The publication of this Order in the Official Gazette was preceded by an official communiqué which stated that "this measure was considered necessary for the protection of the local production and industries and falls within the announced wider policy of the Government for reactivation of local industries "

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On August 9, 1975 the appellant company applied for a licence for the importation of 6,000 dozen rubber gloves of the value of £12,000 which was turned down by the respondent Ministry on the ground that "the importation of rubber gloves is subject to restriction and regulation for the purpose of protecting the local industry for the manufacture of such gloves and that at present no licences for the importation of such goods are granted".

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The trial Judge dismissed the appellant's recourse against the above refusal of the respondent Ministry having held that the discretion under section 4 of Law 49/62 was correctly exercised and the respondent exercised his powers within the proper limits.

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Upon appeal the sole issue for consideration was whether the absolute prohibition for importing gloves in Cyprus was beyond the outer limits of the discretionary powers of the administration.

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*Held*, allowing the appeal, that although the Minister has a discretion to grant or not to grant an import licence, neverthe-

\* Sections 3(1) and 4(1) of the Law read as follows

"S. 3(1). Whenever it becomes necessary in the public interest, to restrict and regulate the importation of goods for the encouragement of local production and manufacture, the improvement of the balance of trade, compliance with international obligations or the development of the economy of the Republic, the Minister may, by Order published in the Official Gazette of the Republic, restrict and regulate the importation of the goods specified in the Order."

"S. 4(1). When under the provisions of any Order a licence is required, the licence shall be in the prescribed form

(2) The Minister may, in his discretion

(a) grant or refuse such licence,

(b) make such licence subject to such conditions as he may deem fit.

(c) .....

less, such a discretion has to be exercised properly and not in a defective manner; that once the Minister under the Law and in accordance with the principles of administrative law had a choice between more than one, but equally lawful, solutions, in choosing the more onerous solution, instead of the more equitable one, has acted, in excess of the limits of his discretionary powers because he could have chosen the less onerous one, viz., to grant the permit and impose conditions, that is to say, by restricting and regulating the quantity of the imported rubber gloves or granting a licence but subject to conditions as he may deem fit, or indeed resort to the imposition of import duty on rubber gloves, as has been suggested by the appellant company in this case; that the decision of the Minister was made in a defective manner and was contrary to the law and in abuse of power; and that, accordingly, the *sub judice* decision must be annulled and the appeal be allowed (see Economou "Judicial Control of Discretionary Powers" p. 181).

*Appeal allowed.*

Cases referred to:

- 20 *Jacovides v. Republic* (1966) 3 C.L.R. 212 at pp. 219-220;  
*Impalex Agencies Ltd. v. Republic* (1970) 3 C.L.R. 361 at pp. 375, 376;  
*Constantinou v. Republic* (1966) 3 C.L.R. 793;  
*Zittis v. Republic* (1973) 3 C.L.R. 37.

25 **Appeal.**

Appeal from the judgment of a Judge of the Supreme Court (A. Loizou, J.) given on the 27th September, 1976, (Revisional Jurisdiction Case No. 155/75) whereby appellant's recourse against the refusal of the respondent to grant them a permit for the importation of gloves into the Republic was dismissed.

*K. Chrysostomides*, for the appellant.

*N. Charalambous*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

35 TRIANTAFYLLOIDES P.: The judgment of the Court will be delivered by Mr. Justice Hadjianastassiou.

HADJIANASTASSIOU J.: This is an appeal under section 11(2) of the Administration of Justice (Miscellaneous Provisions)

Law 1964, (Law No. 33/64), against the judgment\* of a Judge of this Court, who dismissed the recourse of the appellant company by which the company was seeking a declaration that the Minister of Commerce and Industry in refusing the application for a permit for the importation of rubber gloves into the Republic had acted in excess and/or abuse of his powers. 5

The facts are these: The appellants are a firm of importers who had commercial relations with a firm called "London Rubber" and have imported during the years 1972, 1973, 1974 rubber gloves to the value of £17,000.—. On August 9, 1975, they applied for a licence for the importation of 6,000 dozen rubber gloves of the value of £12,000.—, but the letter was returned to the company in question with a note thereon made by the appropriate officer of the Ministry in these terms: "Please give reasons why the locally made ones are not suitable". 10 15

On September 5, 1975, the appellants in reply told the appropriate officer that the information sought ought to have been sought from the various Departments of the Government viz., the Chemistry Laboratory, with regard to the quality, and the Department of Supervision of Industries with regard to the price. On their part they added, according to their estimates the gloves which they were importing covered 50% of the total consumption; and that only the buyers can explain why they prefer the imported gloves. 20

The protection, however, of the rubber gloves industry was under consideration since 1972, and the only company in Cyprus D & K Latex and Rubber Products which was manufacturing gloves addressed a letter to the Ministry of Commerce and Industry seeking protective measures for the said industry and setting out the reasons for such government protection. Apparently, the appropriate officer of the Ministry sought further information by the said company D & K Latex and Rubber Products, and on December 19, 1973, the chairman, of the said company in reply, in support of his argument said, *inter alia*, that protective measures should have been taken because "regarding rubber gloves, rubber latex has gone up from £220.— to £600.—. Rubber gloves from all countries have gone up in price. Rubber gloves from England have gone from 27sh.—28sh. Vassos Eliades the agent of these gloves 25 30 35

\* Reported in (1976) 3 C.L.R. 293.

offers 10% free, plus the devaluation of the pound, makes these gloves cheaper than last year's prices ..... Obviously the prices of gloves are purposely reduced, to force the local production to keep prices down whilst products without local competition are allowed to go up. If these importers succeed in their scheme and force us to stop production of gloves, then I am sure they will increase their prices, to whatever they like in the very near future."

Finally the chairman said: "We propose to the Ministry of Commerce and Industry to stop at once all imports of balloons and enforce a custom duty of at least 50% on rubber gloves."

On September 16, 1974, the chairman of the said company, addressed a letter to Mr. Gl. Clerides, the Acting President of the Republic at the time, informing him that in 1969 he started manufacturing rubber gloves, toy balloons, feeding bottles and teats. Because he was facing fierce competition from the importers of similar goods he requested him to intervene and introduce measures viz., imposition of import duty on the rubber gloves. He then complained that he was told by a senior employee of the Ministry that there was no need to introduce any measures, because he thought that the importers would have no money to import such goods now. Finally he added that before the recent troubles in Cyprus eight persons were working earning their living from the said factory which now is shut; and that with the prospects the Ministry was giving him it would stay shut, and thousands of pounds and five years' hard work would go down the drain, unless there was positive help from the Government.

On November 14, 1974, the director of the said company was informed that his letter was sent to the Ministry of Commerce and Industry; and on November 7, 1974, he addressed a new letter to Mr. Clerides informing him that he had received a letter from the Ministry of Commerce and Industry from which he was advised that his case was still being considered. He then added that meanwhile rubber gloves were allowed to be imported not only duty free, but 15% cheaper because of the devaluation of the sterling; and balloons were still allowed to be imported by anybody in any quantity and in any quality.

On May 16, 1975, the Minister of Commerce and Industry published in the Official Gazette (Notification No. 102 Supple-

ment No. 3), an order restricting and regulating the importation of rubber gloves by adding same, together with other commodities, to the list contained in the basic Orders of 1968-74. This was done because it was thought necessary for the public interest.

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The publication of this order in the Official Gazette was preceded by a communiqué of the Ministry of Commerce and Industry released through the Public Information Office on May 15, 1975, the date upon which the order was also issued. In the said communiqué it was explained that "this measure was considered necessary for the protection of the local production and industries and falls within the announced wider policy of the Government for reactivation of local industries." In addition, the interested importers were advised how they should go about applying for import licences. A list of controlled commodities which included rubber gloves was set out therein. It should also be added that the whole problem was considered by the Ministry concerned and a memorandum running into six pages containing a thorough study of the problem was prepared by one of its officers.

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The conclusions reached are contained in paragraphs 7 and 8 of the said memorandum which reads:

"From what has already been set out it may be stated summarily that D & K which is the only industry of its kind in Cyprus, can satisfy the local market (a) from the point of view of quantity by the better exploitation of its existing mechanical equipment and if necessary its expansion. Here we should note that the used mechanical equipment is made locally with the guidance of the Director of D & K. (b) From the price point of view, since in fact the prices of the local products are lower than the prices of the imported ones. Also D & K by its contribution to the gross national product, the engagement of labour force, the improvement of the balance of trade and the saving, in consequence thereof of foreign exchange, etc., plays a not negligible role in the general economy of the land.

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From the aforesaid the conclusion may be drawn that although the local industry may survive by the protection given at present, some form of increased protection if given, that is the imposition of import duty on the rubber

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gloves, is necessary so that the beneficial results on the general economy of the country derived from the functioning of this local industry, become bigger.

5 '8. Suggestion. In view of the aforesaid conclusion, it is submitted that an import duty of about 25% (preferential and general) be imposed on the gloves imported from abroad."

10 That the Minister of Commerce and Industry had discretionary powers, in the public interest, to restrict and regulate the importation of goods into the Republic had not been challenged by either side, and section 3(1) of the Imports (Regulation) Law, (Law 49 of 1962) (as amended by Law 7 of 1967) says that:

15 "Whenever it becomes necessary in the public interest, to restrict and regulate the importation of goods for the encouragement of local production and manufacture, the improvement of the balance of trade, compliance with international obligations or the development of the economy of the Republic, the Minister may, by Order published in the Official Gazette of the Republic, restrict and regulate  
20 the importation of the goods specified in the Order."

I now turn to section 4(1) which reads:

"Where under the provisions of any Order a licence is required, the licence shall be in the prescribed form.

(2) The Minister may, in his discretion:

- 25 (a) grant or refuse such licence;  
(b) make such licence subject to such conditions as he may deem fit."

Section 2, the definition section, lays down that:

30 "'Minister' means the Minister of Commerce and Industry and includes any officer of his Ministry authorised in writing to act on his behalf for any of the purposes of this Law other than those of section 3."

35 The learned trial Judge having observed that *exhibits* 4-15 show that the reasons for which the *sub judice* decision was taken was the protection of a local industry for the manufacture of rubber gloves, in dismissing the recourse, said:

“ As stated time and again, it is not necessary that every material factor taken into consideration should be specifically mentioned in the decision itself, but there is ample material in the file to show that it is a duly reasoned decision taken after a proper, in the circumstances, inquiry. The discretion under section 4 was correctly exercised in reaching the *sub judice* decision and the respondent exercised such powers within the proper limits. The material in the file and the letter by which the said decision was communicated to him (*Exh. 4*), shows that the individual case of the applicants was considered together with general policy considerations, and as stated in the case of *Zittis v. The Republic* (1973) 3 C.L.R. p. 37 at p. 45, ‘this was a course which was reasonably open to the respondents’.

The application was not refused on the strength of *Exhibit 11*, but it was examined on its merits as shown by *Exhibit 1*, the note of the respondent thereon dated the 13th August, 1975, the letter of the applicants (*Exh. 2*) in reply thereto and then, the decision and its communication to the applicants.”

On appeal counsel argued with force (a) That the trial Court erroneously reached the conclusion that the administrative authority’s discretion was correctly exercised in reaching the *sub judice* decision, and that such discretion was exercised within proper limits as it was a “course which was reasonably opened to the respondents”; and (b) that the appropriate authority acted beyond the reasonable limits of the administrative methods in the exercise of its discretion.

We think we would reiterate, what has been said in other cases, that in a modern State it is often found desirable to subject specified activities to some form of governmental control. The purpose of such control will vary. Sometimes, a control is imposed for the purpose of collecting revenue; sometimes the type of activity may be such that it is desirable in the public interest to restrict the number of persons who exercise it. In practice one of the commonest methods whereby control can be imposed is the licence, and a company like any other importer who desires to carry on the business of importation, is required



to secure a licence from the Ministry of Commerce and Industry which is the licencing authority under the provisions of section 4(1) of Law 49/62. The import licences are usually granted in pursuance of protectionist policies. One, therefore, should  
5 remember that inspite of the fact that the Minister has a discretion under the law to refuse or grant a licence to a company—in the public interest, the trend of the authorities in Cyprus is that once a discretionary power is exercised, such exercise must be for the purposes for which it was given. As long as the  
10 discretion is exercised in a lawful manner the Supreme Court will not interfere with the exercise of such discretion by substituting its own discretion for that of the authority's concerned, even if in exercising its own discretion on the merits, the Court would have reached a different conclusion. (See *Jacovos*  
15 *L. Jacovides v. The Republic* (1966) 3 C.L.R. 212 at pp. 219–220).

But a discretion, in our view, is exercised in a lawful manner, if in its exercise all material considerations have been taken into account, due weight is given to material facts, and has not been  
20 based on a misconception of law or fact. A defective exercise of a discretion may, therefore, amount to an excess or abuse of power: (See *Impalex Agencies Ltd. v. The Republic (Minister of Commerce and Industry)* (1970) 3 C.L.R. 361, 375). There is no doubt that the Minister in exercising his discretionary  
25 powers, under the provisions of Law 49/62, has power to impose controls which are thought to be in the public interest; and in so far as it necessarily involves detriment to some class of persons in the public interest, they should suffer such detriment. The law had conferred discretion on the Minister with the intention  
30 that it should be used to promote the policy and object of the legislation; and the policy and objects of the law must be determined by constructing the law as a whole: (See *Impalex Agencies Ltd. v. The Republic (supra)* at p.p. 375, 376.) In other words, there is a duty that even a discretion must be  
35 exercised in a certain manner and the defective exercise of discretion may amount to excess or abuse of powers. (*Constantinou v. Republic* (1966) 3 C.L.R. 793).

It is true, of course, that in *Zittis v. The Republic* (1973) 3 C.L.R. 37, it was said that the legitimate interest of the applicant was not adversely affected in a material manner. Triantafyllides  
40 P., dealing with the complaint of the applicant, that the Ministry

of Commerce and Industry, refused to allow him to import potatoes at the time when the importation of potatoes in Cyprus was not free, had this to say at p. 45:

“ A related submission of applicant’s counsel has been that the importation of potatoes by the applicant should not have been disallowed completely, in the course of implementing a general policy, but that there ought to have been examined, in relation to the particular case of the applicant, the possibility of allowing the importation of potatoes on certain conditions: This is a matter which was within the discretionary powers of the respondent and I am of the view that in reaching the *sub judice* decision the respondent exercised such powers within their proper limits; the letter dated the 18th July, 1969, (*Exhibit 3*), by which the said decision was communicated to the applicant, shows that the individual case of the applicant was considered together with general policy considerations, and this was a course which was reasonably open to the respondent.”

Turning now to the complaint of counsel for the appellants it seems to us that even the Chairman of the company himself was suggesting to the administrative authorities that an amount of import duty ranging from 25%-50% should have been imposed on gloves for the protection of the industry; and an absolute prohibition for imports regarding the balloons. The question, therefore, is whether the absolute prohibition for importing gloves in Cyprus, was beyond the outer limits of the discretionary powers, of the administration. The reasonableness or unreasonableness of the exercise of discretionary power has been dealt with by Professor S.A. de Smith in his text book “Judicial Review of Administrative Action” Third Edition, at pp. 303-304. Under the heading “Unreasonable Exercise of a Discretionary Power”, the learned Professor said:

“ It has often been asserted in judicial dicta and academic literature that all statutory powers (or at least all statutory powers directly impinging on private rights) must be exercised reasonably; and inasmuch as powers are conferred subject to an implied requirement that they be exercised reasonably, an authority failing to comply with this obligation acts unlawfully or *ultra vires*.”

In Greece Economou deals also with the review of the Judicial

Control of Discretion, and in his well-known text book “Ο Δικαστικός Έλεγχος τῆς Διακριτικῆς Ἐξουσίας” (Judicial Control of Discretionary Powers), under the heading “Τὰ ἄκρα ὄρια ὀρθότητος ἐνεργείας” said in Greek at p. 181:

5 “Ο δικαστικός ἔλεγχος τῆς διακριτικῆς ἐξουσίας ἔχει νομολογιακῶς ἐπεκταθῆ ἐπὶ πλείστων ὄσων περιπτώσεων καθ’ ἅς ἡ Διοίκησης ἐνεργεῖ κατὰ τρόπον ὅστις ἀντιβαίνει εἰς τὸ περὶ Δικαίου συναίσθημα γενικῶς καὶ τὰς ἀρχὰς τὰς συγκεκριμέναις πλέον, ἀγαθῆς ἢ χρηστῆς ἢ καλῆς ἢ εὐρύθμου Διοικῆσεως εἰδικώτερον, κατὰ τὴν ὡσαύτως ποικίλλουσαν ὀρολογίαν τῆς Νομολογίας. Εἰς τὰς περιπτώσεις αὐτὰς ὁ Διοικητικός δικαστὴς ἐλέγχει τὴν ὀρθότητα τῆς μεθόδου διοικητικῆς δράσεως, ὡς χαρακτηριστικῶς συμβαίνει εἰς τὰς ἀκολουθούς ομάδας διοικητικῶν πράξεων:.....(ἦτοι).

15 3. Ἐπὶ διοικητικῶν πράξεων ἐπιλογῆς πλείονων ἐξ ἴσου νομίμων λύσεων ἐκρίθη ὅτι συντρέχει ὑπέρβασις τῶν ἄκρων ὀρίων τῆς διακριτικῆς ἐξουσίας, ὡσάκις ἡ Διοίκησης προέκρινε τὴν ἐπαχθεστέραν λύσιν ἀντὶ τῆς ἐπιεικεστέρας. Ἐν προκειμένῳ ἡ ἐπιείκεια, ὑπὸ τὴν ἔννοιαν τῆς φιλαγάθου ἐπιμετρήσεως τῶν ἀντιτιθεμένων συμφερόντων ἐπὶ τῶ σκοπῷ ὅπως ἡ διοικητικὴ πράξις παράσχη τὴν μεγίστην δυνατὴν προστασίαν εἰς τὸν βαρύτερον ὑπὸ τοῦ Νόμου πληττόμενον<sup>1</sup> ἀποτελεῖ ἔννοιαν στενωτέραν τῆς ὀρθῆς χρήσεως τῆς διακριτικῆς εὐχερίας, διὰ τοῦτο δὲ καὶ ὑπακτέαν, ὡς εἶδος εἰς γένος, ἐν τῇ κατηγορίᾳ τῶν ἄκρων ὀρίων.....

20 Εἰς ἀπάσας τὰς ἀνωτέρω περιπτώσεις ἡ ἐλεγχόμενη ὀρθότης κρίσεως τῶν διοικητικῶν ὀργάνων ἀναφέρεται εἰς τὸν δικαιότερον ἢ ἐπιεικέστερον τρόπον καθ’ ὃν ἔδει νὰ ἐνεργήσῃ ἡ Διοίκησης, κατὰ τὰς ἐχούσας ἰσχὺν νόμου ἀρχὰς τῆς καλῆς Διοικῆσεως καὶ δὴ τὰς τοιαύτας τῶν ἄκρων ὀρίων.”

And in English it reads:

35 “The judicial control of the administrative discretion has been by case-law extended to most cases where the administration acts in a way contrary to the sense of justice generally and in particular the by now settled principles of good or honest or proper or regular administration according to varying terminology of the case-law. In

1. <sup>1</sup>Ἰδὲ Μ. Δ. Στασινοπούλου: Ἐιθ’ ἀνωτέρω σ. 346.

these cases the administrative Judge checks the correctness of the method of the administrative action as characteristically happens in the following groups of administrative acts:..... (viz.)

3. In the case of administrative acts when there is a choice between equal lawful solutions, it was decided that there is excess of the outer limits of the discretionary power whenever the administration had chosen the more onerous solution instead of the more equitable one. In this case equity in the sense of the benevolent assessment of the conflicting interest aiming at the granting of the greater possible protection to him who is most adversely affected by the Law, constitutes a concept narrower than that of the proper use of the administrative discretion and for this reason falls as a class within the genus, in the category of the outer limits....

In all the aforementioned cases the control of the correctness of the administrative organs refers to the more just and equitable way which the administration ought to have acted, according to the principles of good administration which have the force of law and particularly those relating to the outer limits.”

With this in mind and having considered carefully the able arguments of both counsel, and looking at the general scope and objects of our Law, we have reached the conclusion that although the Minister has a discretion to grant or not to grant an import licence, nevertheless, such a discretion has to be exercised properly and not in a defective manner. Once, therefore, the Minister under the Law, and in accordance with the Principles of administrative law had a choice between more than one, but equally lawful solutions, in choosing the more onerous solution, instead of the more equitable one, has acted, in our view, in excess of the limits of his discretionary powers.

Applying the principle enunciated by Economou, we think that the refusal of the Minister was taken in a defective manner, because as we said earlier, in the exercise of his discretionary powers he could have chosen the less onerous one, viz., to grant the permit and impose conditions, that is to say, by restricting and regulating the quantity of the imported rubber gloves or

granting a licence but subject to conditions as he may deem fit, or indeed resort to the imposition of import duty on rubber gloves as has been suggested by the applicant company in this case.

5 For all these reasons, we find ourselves in agreement with counsel for the appellants that the decision of the Minister was made in a defective manner and was contrary to the law and in abuse of power. We would, therefore, set aside the decision of the Minister and allow the appeal.

10 Appeal allowed. No order as to costs.

*Appeal allowed. No order as to costs.*