

1980 May 27

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

MAMAS ELIA,

Appellant,

v.

THE POLICE,

Respondents.

(Criminal Appeal No. 4136).

Constitutional Law—Right to move freely throughout the territory of the Republic—“Liberty of movement”—Article 13.1 of the Constitution—Prohibition of circulation on alternate week-ends of private motor vehicles depending on whether their registration numbers are even or odd, respectively—Effected by means of an Order of the Council of Ministers made under Defence Regulations 55(1)(b) and 60(1)—Unconstitutional because it involves a restriction of the above right which is safeguarded by the said Article 13.1 of the Constitution—Article 2 of the Fourth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms. 5 10

Motor vehicles—Private motor vehicles—Prohibition of circulation on alternate week-ends depending on whether their registration numbers are even or odd, respectively—Unconstitutional as contravening Article 13.1 of the Constitution. 15

On August 24, 1979, the Council of Ministers made an Order (“Order 190/79”) under Defence Regulations 55(1)(b) and 60(1) by virtue of which there was prohibited, subject to certain exceptions of a limited nature, the circulation on alternate week-ends of private motor vehicles depending on whether their registration numbers were even or odd, respectively. The appellant who owns a car with an odd registration number, drove such car on September 8, 1979 which was part of a week-end on which only cars with even registration numbers were allowed to circulate; and following his conviction of the offence constituted under Order 190/79 was sentenced to pay a fine of £100. 20 25

Upon appeal counsel for the appellant contended that Order 190/79 was unconstitutional as contravening Article 13.1* of the Constitution.

5 *Held*, that this Court takes judicial notice of the fact that in
Cyprus during week-ends there does not function to an adequate
extent a system of public transportation, except in certain urban
areas, where it exists at only a rudimentary level; that, therefore,
the use of a private motor car is normally indispensable if a
10 citizen is not, in effect, to be restrained physically from moving
freely from one area of the Republic to another, or from one
area of a town to another, in so far as distances which cannot be
reasonably expected to be covered on foot, or by other means of
private conveyance, are concerned; that, in this respect, this
15 Court takes into account the situation in which the average
citizen finds himself as a result of the operation of Order 190/79;
that the average citizen cannot afford financially to have two
private motor cars, one with an even registration number and one
with an odd registration number, or to use, except in cases of
20 urgent need, a taxi for the purpose of moving from one area of
the country to another; that, therefore, the operation of Order
190/79 involves a restriction of the right to move freely through-
out the territory of the Republic, which is safeguarded by Article
13 of the Constitution; that such a restriction cannot be treated,
25 in the circumstances in which it has been imposed, as being
necessary for the purposes of defence or of public health or as a
punishment passed by a competent Court, so that its validity
could conceivably be covered by any of the exceptions provided
in the said Article 13; and that, accordingly, Order 190/79 is
30 unconstitutional as contravening Article 13.1 of the Constitution.

Appeal allowed.

Cases referred to:

Williams v. Fears, 45 L. Ed. 186 at p. 188;

Kent v. Dulles, 2 L. Ed. 2d 1204 at p. 1210;

Shapiro v. Thompson, 22 L. Ed. 2d 600 at pp. 612-613.

* Article 13.1 of the Constitution provides as follows:

"Every person has the right to move freely throughout the territory of the Republic and to reside in any part thereof subject to any restrictions imposed by law and which are necessary only for the purposes of defence or public health or provided as punishment to be passed by a competent court".

Appeal against conviction and sentence.

Appeal against conviction and sentence by Mamas Elia who was convicted on the 19th April, 1980 at the District Court of Nicosia (Criminal Case No. 19421/79) on one count of the offence of driving a private motor vehicle during the restricted hours of a weekend, contrary to sections 3, 4 and 6(3) of the Supplies and Services (Transitional Powers) (Continuation) Law, Cap. 175A and sections 2, 3, 4 and 7 of the Supplies and Services (Petroleum Control) (Restrictions and Control of Driving of Private Motor Vehicles) P.I. 190/79 as amended by P.I. 211/79 and regulations 55(1)(b), 60(1) and 94 of the Defence Regulations 1940–1946, as amended by Law 4/74, and was sentenced by Stavrinides, D.J. to pay £100.–fine

- A. *Triantafyllides* with *M. Cleopa* for the appellant. 15
 A. *M. Angelides*, Counsel of the Republic, for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. The appellant in this case was convicted by the District Court of Nicosia, on April 19, 1980, of the offence of driving his private motor car on September 8, 1979, contrary to an Order of the Council of Ministers, made on August 24, 1979, under Defence Regulations 55(1)(b) and 60(1) (No. 190, Third Supplement, Part I, to the Official Gazette of the Republic) and amended on September 7, 1979 (No. 211, Third Supplement, Part I, to the Official Gazette of the Republic); a later amendment of the said Order effected on December 21, 1979 (No. 302, Third Supplement, Part I, to the Official Gazette of the Republic) is not relevant for the purposes of the present case.

The aforementioned Order of the Council of Ministers will be referred to hereinafter in this judgment as “Order 190/79”.

By means of Order 190/79 there is prohibited, subject to certain exceptions of a limited nature, the circulation on alternate week-ends of private motor vehicles depending on whether their registration numbers are even or odd, respectively.

September 8, 1979, when the appellant drove his car with an odd registration number was part of a week-end on which only cars with even registration numbers were allowed to circulate;

and the prohibition in question extended from 17.00 hours Saturday till 05.00 hours on Monday next.

The validity of Order 190/79, under which the appellant was charged and convicted, has been challenged on a number of grounds, but we have decided that it is not necessary to deal with all of them since we have reached the conclusion that the said Order is unconstitutional as contravening Article 13.1 of the Constitution, which reads as follows:—

10 “1. Ἐκαστος ἔχει τὸ δικαίωμα ἐλευθέρως μετακινήσεως ἐντὸς τοῦ ἐδάφους τῆς Δημοκρατίας καὶ διαμονῆς εἰς οἰουδήποτε τμῆμα αὐτῆς ὑποκείμενος εἰς τοὺς ὑπὸ τοῦ νόμου ἐπιβαλλομένους, ἀναγκαίους δὲ κρινομένους μόνον διὰ τὴν ἄμυναν ἢ τὴν δημοσίαν ὑγείαν περιορισμούς ἢ οὖς προβλέπονται ὡς ποινὴ ἐπιβαλλομένη ὑπὸ τοῦ ἀρμοδίου δικαστηρίου.”

15 (“1. Every person has the right to move freely throughout the territory of the Republic and to reside in any part thereof subject to any restrictions imposed by law and which are necessary only for the purposes of defence or public health or provided as punishment to be passed by
20 a competent Court.”)

A similar provision is to be found in Article 19(1)(d) of the Constitution of India, which provides that:

“19(1) All citizens shall have the right—

.....
(d) to move freely throughout the territory of India;
.....”

25 Clause (5) of Article 19, above, provides that:

30 “(5) Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.”

(See Basu's Commentary on the Constitution of India, 5th ed., vol. 1, pp. 543, 544).

35 The “liberty of movement” is safeguarded, also, by means

of Article 2 of the Fourth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which reads as follows:-

“Article 2

1. Everyone lawfully within the territory of a State shall, within that territory have the right to liberty of movement and freedom to choose his residence. 5
2. Everyone shall be free to leave any country, including his own.
3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ‘ordre public’, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. 10
15
4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.” 20

In the United States of America the freedom of movement is considered to be one of the basic human rights:

In *Williams v. Fears*, 45 L. Ed. 186, Chief Justice Fuller stated (at p. 188):-

“Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any state is a right secured by the 14th Amendment and by other provisions of the Constitution.” 25
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In *Kent v. Dulles*, 2 L. Ed. 2d 1204, Mr. Justice Douglas said (at p. 1210):-

“The right to travel is a part of the ‘liberty’ of which the citizen cannot be deprived without due process of law under the Fifth Amendment. So much is conceded by the Solicitor General. In Angle-Saxon law that right was emerging at least as early as the Magna Carta. Chafee, 35

Three Human Rights in the Constitution of 1787 (1956), 171–181, 187 et seq., shows how deeply engrained in our history this freedom of movement is. Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values. See *Crandall v. Nevada* (US) 6 Wall 35, 44, 18 L ed 745, 747; *Williams v. Fears*, 179 US 270, 274, 45 L ed 186, 188, 21 S Ct 128; *Edwards v. California*, 314 US 160, 86 L ed 119, 62 S Ct 164. ‘Our nation’, wrote Chafee, ‘has thrived on the principle that, outside areas of plainly harmful conduct, every American is left to shape his own life as he thinks best, do what he pleases, go where he pleases.’ *Id.*, at 197.

Freedom of movement also has large social values.”

In *Shapiro v. Thompson*, 22 L. Ed. 2d 600, Mr. Justice Brennan said (at pp. 612–613):–

“This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement. That proposition was early stated by Chief Justice Taney in the *Passenger Cases*, 7 How 283, 492, 12 L Ed 702, 790 (1849):

‘For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States.’

We have no occasion to ascribe the source of this right to travel interstate to a particular constitutional provision. It suffices that, as Mr. Justice Stewart said for the Court in *United States v. Guest*, 383 US 745, 757–758, 16 L Ed 2d 239, 249, 86 S Ct 1170 (1966):

‘The constitutional right to travel from one State

to another occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.

..... (The) right finds no explicit mention in the Constitution. The reason, it has been suggested, is that a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created. In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Constitution.' ”

The above quotations show the fundamental and vital nature of the right to move freely throughout the territory of a Republic, such as our own.

It is correct that a legislative provision constitutes a restriction upon the freedom of movement only if it imposes restrictions upon the right of locomotion of a person physically (see Basu's Commentary, *supra*, p. 715); and we have not lost sight of this essential characteristic of the freedom of movement in deciding that it is being unconstitutionally infringed in the present case by Order 190/79.

In reaching the above conclusion we have judicially taken notice of the fact that in Cyprus during week-ends there does not function to an adequate extent a system of public transportation, except in certain urban areas, where it exists at only a rudimentary level; therefore, the use of a private motor car is normally indispensable if a citizen is not, in effect, to be restrained physically from moving freely from one area of the Republic to another, or from one area of a town to another, in so far as distances which cannot be reasonably expected to be covered on foot, or by other means of private conveyance, are concerned.

In this respect we have taken into account the situation in which the average citizen finds himself as a result of the operation of Order 190/79; and the average citizen cannot afford financially to have two private motor cars, one with an even registration number and one with an odd registration number, or to use, except in cases of urgent need, a taxi for the purpose of moving from one area of the country to another; because, had we taken into account not the average citizen, but those citizens belonging

to the more well off financial classes of society, then we would have, inevitably, to reach the conclusion that the application of Order 190/79 entails a discrimination between the fairly rich and all the others, contrary to Article 28 of the Constitution.

5 In the light of the above consequences of the application of
Order 190/79 for the average citizen we have reached, as already
stated, the conclusion that its operation involves a restriction
of the right to move freely throughout the territory of the
10 Republic, which is safeguarded by Article 13 of our Constitution;
and such a restriction can not be treated, in the circumstances
in which it has been imposed, as being necessary for the purposes
of defence or of public health or as a punishment passed by a
competent Court, so that its validity could conceivably be
covered by any of the exceptions provided in the said Article 13.

15 For all the foregoing reasons we find that the appellant in the
present case was convicted on the basis of legislation, namely
Order 190/79, which is unconstitutional and, therefore, his
conviction, and the sentence which was imposed upon him, have
to be set aside; and this appeal is allowed accordingly.

20 *Appeal allowed. Conviction and
sentence set aside.*