

1984 March 24

[TRIANTAFYLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MICHALAKIS SAVVA,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF FINANCE,

Respondent.

(Case No. 303/80).

Administrative Law—Inquiry—Due inquiry—An indispensable prerequisite for the validity of administrative action—Refusal of application for permit to import a duty-free motor vehicle—Applicant not asked to undergo an examination, regarding his disability, by a Government Medical Board as envisaged by the relevant legislative provisions—Sub judice refusal annulled for lack of due inquiry. 5

The applicant who was deaf and dumb from birth applied to the respondent to be granted a permit to import a duty-free motor vehicle. The respondent turned down his application on the ground that it could not be granted on the basis of the legislative provisions governing such a matter. Hence this recourse. The applicant, however, was not asked by the respondent to undergo an examination regarding his disability by a Government Medical Board, as envisaged by the relevant legislative provisions. 10
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Held, that due inquiry is an indispensable prerequisite for the validity of administrative action; that the failure of the respondent Ministry to have the applicant examined by a Government Medical Board amounts to lack of due inquiry in a manner rendering fatally defective the exercise of the relevant powers 20

of the respondent; accordingly the sub judice decision must be annulled.

Sub judice decision annulled.

Cases referred to.

- 5 *Constantinou v. Republic* (1984) 3 C.L.R. 1548;
 Photiades & Co. v. The Republic, 1964 C.L.R. 102 at p. 112;
 Nicolaidis v. Republic (1965) 3 C.L.R. 585;
 HjiLouca v. Republic (1966) 3 C.L.R. 854;
 Georghiades v. Republic (1967) 3 C.L.R. 653;
- 10 *Philippos Demetriou & Sons Ltd. v. Republic* (1968) 3 C.L.R. 444;
 Constantinou v. Republic (1969) 3 C.L.R. 190;
 Economou v. Republic (1970) 3 C.L.R. 420;
 Fisentzides v. Republic (1971) 3 C.L.R. 80;
- 15 *Ioannides v. Republic* (1972) 3 C.L.R. 318;
 Tourpeki v. Republic (1973) 3 C.L.R. 592;
 Nicolaou v. Minister of Interior (1974) 3 C.L.R. 189;
 Kyriacou v. Republic (1975) 3 C.L.R. 37;
 Constantinidou v. Republic (1973) 3 C.L.R. 86;
- 20 *HadjiYiorki v. Republic* (1977) 3 C.L.R. 144;
 Antoniou v. Republic (1978) 3 C.L.R. 308;
 Ioannides v. Republic (1979) 3 C.L.R. 227;
 HadjiPaschali v. Republic (1980) 3 C.L.R. 101;
 Mikellidou v. Republic (1981) 3 C.L.R. 461;
- 25 *Karageorghis v. Republic* (1982) 3 C.L.R. 435;
 Messaritis v. Republic (1983) 3 C.L.R. 238.

Recourse.

- 30 Recourse against the dismissal, by the respondent of applicant's application for a permit to import a duty-free motor vehicle.

C. *Loizou*, for the applicant.

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

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment. By means of the present recourse the applicant complains against the decision of the respondent Ministry of Finance to dismiss, on the 5th July 1980, his application for a permit to import a duty-free motor vehicle. 5

The applicant is deaf and dumb from birth and a graduate of the School for the Deaf in Nicosia. 10

The applicant's driving licence is endorsed with certain conditions because of his said disability.

On the 20th July 1980 he applied to the Ministry of Finance to be granted the permit in question as a disabled person but his application was dismissed on the ground that it could not be granted on the basis of the legislative provisions governing such a matter. 15

The said provisions, as well as relevant to them case-law, have just been referred to in the judgment delivered by me today in the case of *Constantinou v. The Republic* (case No. 302/80)* and to that extent such judgment has to be read together with the present one. 20

The applicant in this case, like the applicant in the *Constantinou* case, *supra*, was not asked by the respondent to undergo an examination regarding his disability by a Government Medical Board, as envisaged by the aforementioned legislative provisions and, thus, its sub judice decision was reached without due inquiry, in a manner rendering fatally defective the exercise of the relevant powers of the respondent. 25 30

That due inquiry is an indispensable prerequisite for the validity of administrative action has been stressed at least as far back as *Photos Photiades and Co. v. The Republic*, 1964 C.L.R. 102, 112 and has been reiterated, year after year, in case-law of our Supreme Court (see, for example, *Nicolaides v. The Republic*, (1965) 3 C.L.R. 585, *HjiLouca v. The Republic*, 35

* Reported in (1984) 3 C.L.R. 1548.

- (1966) 3 C.L.R. 854, *Georghiades v. The Republic*, (1967) 3 C.L.R. 653, *Philippos Demetriou and Sons Ltd. v. The Republic*, (1968) 3 C.L.R. 444, *Constantinou v. The Republic*, (1969) 3 C.L.R. 190, *Economou v. The Republic*, (1970) 3 C.L.R. 5 420, *Fisentzides v. The Republic*, (1971) 3 C.L.R. 80, *Ioannides v. The Republic*, (1972) 3 C.L.R. 318, *Tourpeki v. The Republic*, (1973) 3 C.L.R. 592, *Nicolaou v. The Minister of Interior*, (1974) 3 C.L.R. 189, *Kyriacou v. The Republic*, (1975) 3 C.L.R. 37, *Constantinidou v. The Republic*, (1976) 3 C.L.R. 86, *Hadjiyorki v. The Republic*, (1977) 3 C.L.R. 144, *Antonioni v. The Republic*, 10 (1978) 3 C.L.R. 308, *Ioannides v. The Republic*, (1979) 3 C.L.R. 227, *HadjiPaschali v. The Republic*, (1980) 3 C.L.R. 101, *Mikelidou v. The Republic*, (1981) 3 C.L.R. 461, *Karageorghis v. The Republic*, (1982) 3 C.L.R. 435 and *Mesaritis v. The Republic*, 15 (1983) 3 C.L.R. 238.

In the light of all the foregoing I have reached the conclusion that, as the failure of the respondent Ministry to have the applicant examined by a Government Medical Board amounts to lack of due inquiry, the sub judice decision of the respondent 20 has to be annulled.

I will not, however, make an order as to the costs of this case.

*Sub judice decision annulled.
No order as to costs.*