

1986 November 15

[KOURRIS. J]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

CHRISTAKIS ROTSIDES,

*Applicant,*



THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF INTERIOR,

*Respondent.*

(Case No. 976/85).

Firearms—Cancellation of registration of, on grounds of public interest—The Firearms Law 38/74, s. 11(3)—Shotgun found to be a repeater—Cancellation justified.

Recourse for annulment—Hierarchical recourse—The Firearms Law 38/74, section 33—The hierarchical recourse thereunder is not by way of completion or confirmation of the decision in question, but by way of review by higher authority—Therefore its existence is no bar to a recourse for annulment. 5

Time within which to file a recourse—Letter expressing intention to cancel registration of shotgun, unless adjustments of its mechanism are carried out—Second letter informing applicant of decision to cancel the registration—Not confirmatory of first letter—Time did not begin to run as from communication of the first letter. 10 15

Recourse for annulment—Parties—Recourse directed against wrong person, that is the Minister of Interior, whereas the power to take the sub judice decision was vested and exercised by the Chief of Police—Ground for dismissing the recourse. 20

On 26.6.84 the applicant submitted an application for the registration of a single barrel shotgun "Marlin

Goose". The officer in charge ascertained that it was a "repeater" and advised the applicant to make certain adjustments to its mechanism and bring it back to check such adjustments. The applicant agreed, whereupon a certificate of registration was issued to him.

As the applicant did not bring it back for checking, the police expert on firearms examined the shotgun and found that it was a "repeater" gun, whose import and possession was prohibited by s. 3(1)(3) of the Firearms Law, 38/74.

As a result the Chief of Police by letter dated 26.6.85 informed the applicant of the findings of the expert and called upon him to make the necessary adjustments, otherwise he would cancel the certificate of registration.

As the applicant did not comply, the Chief of Police cancelled the registration of the said shotgun for reasons of public interest in virtue of s. 11(3) of the Firearms Law 38/74.

Hence the present recourse. Counsel for the respondents raised the following preliminary objections, namely that the Court has no jurisdiction to try this case on account of applicant's failure to challenge the decision by a hierarchical recourse as provided in section 33 of Law 38/74, that the recourse is out of time as time began to run from the communication of the decision contained in the letter of 26.6.85, the sub judice decision being confirmatory of the decision of 26.6.85, and that the recourse was brought against the wrong person, namely the Minister of Interior.

It must, also, be noted that in the course of the hearing a police expert on firearms gave evidence to the effect that the shotgun in question is a "repeater", whereas the applicant did not call any expert evidence, but relied on the decision in *Christodoulou v. The Republic*, 1 R.S.C.C. 1 in which a "repeating" gun is described.

*Held, dismissing the recourse:* (1) The hierarchical recourse provided by s. 33 of Law 38/74 is not by way of confirmation or completion of the decision in question, but by way of review by higher authority. It follows that it is no bar to a recourse before this Court.

(2) The letter of the 26.6.85 merely expresses the intention of the Chief of Police to cancel the registration of the shotgun in question. The decision to cancel such registration was taken on 12.9.85. It follows that the objection that this recourse is out of time fails. 5

(3) This recourse fails because it is directed against the wrong person, as by virtue of s. 11(3) of Law 38/74 the power to cancel a certificate of registration in respect of a gun is vested in the Chief of Police.

(4) The evidence of the Police expert stands uncontradicted. The gun described in *Christodoulou*, supra is one of the repeating guns in existence and it does not follow that only guns which are similar to the one described in that case are repeaters. In the circumstances the Chief of Police, acting for reasons of public interest, could cancel the registration in virtue of s. 11(3) of the Firearms Law 38/74. 10 15

(5) The argument that the Chief of Police should have revoked the act of registration is untenable as the Law speaks of cancellation. 20

*Recourse dismissed.*  
*Costs against applicant.*

**Cases referred to:**

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

*Pelides v. The Republic and Another*, 3 R.S.C.C. 13; 25

*Petrolina Ltd. v. The Municipal Committee of Famagusta*  
(1971) 3 C.L.R. 420.

**Recourse.**

Recourse against the decision of the Chief of Police to cancel the certificate of registration of applicant's shotgun under No. LL 15828. 30

*C. Clerides*, for the applicant.

*Cl. Theodoulou (Mrs.)*, Senior Counsel of the Republic,  
for the respondent.

*Cur. adv. vult.* 35

KOURRIS J. read the following judgment. This is a recourse which challenges the validity of the Chief of Police to cancel the certificate of registration of the shotgun of the applicant under No. LL 15828.

5 The applicant on 26th June, 1984, submitted an application for the import of a single barrel shotgun "Marlin Goose" make and an import licence was granted to him. On the same day he presented the shotgun to the Limassol Police Station for registration and the officer in charge for  
10 the registrations of shotguns having examined the gun he ascertained that it was a "repeater" and he advised the applicant to make certain adjustments to its mechanism so as to come within the class of shotguns eligible for registration and bring it back to check if the adjustments have  
15 been effected. The applicant agreed, whereupon the police officer had issued a certificate of registration under No. LL 15828.

As the applicant did not present the shotgun to the said police officer for checking purposes the police on 7th May, 20 1985, found out that the applicant did not effect the required alterations whereupon the police took the shotgun to the police expert of firearms who, having examined it on 29th May, 1985, ascertained that it was a "repeater" gun whose import and possession was prohibited by s. 3  
25 (1)(e) of the Firearms Law 38 of 1974. The Chief of Police addressed a letter to the applicant dated 26th June, 1985, informing him of the findings of the firearms expert and calling upon him to make the necessary adjustments to his gun otherwise he would cancel the certificate of  
30 registration in respect of the shotgun (Appendix Γ).

As the applicant failed to comply with the directions contained in the letter of 26th June, 1985 the Chief of Police cancelled the certificate of registration in respect of the said gun by virtue of s. 11(3) of the Firearms Law No. 38 of  
35 1974 for reasons of public interest and communicated his decision to the applicant by letter of same date (Appendix Δ).

In respect of this decision the applicant filed the present recourse maintaining that the decision is contrary to the pro-

visions of section 3(1)(e) of Law 38/74, that no matter of public interest arises and that since the gun was lawfully imported and lawfully registered the respondents had no right to cancel the certificate of registration but to revoke the administrative act with regard to the said gun. Further, counsel for the applicant in his reply to the written address to the respondents disputed that the shotgun is a "repeater".

Counsel for the respondents raised certain preliminary objections which I propose to deal with before entering into the merits of the case.

The first point is that the Court has no jurisdiction to try the case because the applicant failed to make a hierarchical recourse as provided under s. 33 of Law 38/74. I do not agree with counsel for the applicant because, in the present case, the hierarchical recourse is not by way of confirmation or completion of the act or decision in question, in which case no recourse is possible to this Court until such confirmation or completion has taken place. It is by way of review by higher authority in which case a provision for such review is not a bar to a recourse before the Court. See *Pelides v. The Republic and Another*, 3 R.S.C.C., p. 13 which was followed in the case of *Petrolina Ltd. v. The Municipal Committee of Famagusta* (1971) 3 C.L.R. 420.

Another point is that the applicant has no legitimate interest because he failed to file his application within the 75 days period. Counsel alleged that the decision of the Chief of Police was communicated to the applicant by his letter of 26th June, 1985 (Appendix Γ) and that in the letter of 12th September, 1985 (Appendix Δ) the Chief of Police was merely confirming his decision contained in the letter of 26th June, 1985. Again, I do not agree with this submission. A mere perusal of the said letters reveals that the Chief of Police in his letter of 26th June, 1985, warned the applicant that he would cancel the certificate of registration of his shotgun unless the applicant made certain adjustments to the shotgun. He merely expressed his intention to cancel the certificate if the applicant did not make the alterations on his shotgun. In the letter, however, of

12th September, 1985, the Chief of Police decided to cancel the certificate of registration because the applicant failed to make the necessary adjustments to his shotgun. The relevant part reads as follows:-

5           «Σας πληροφορώ ότι σύμφωνα με τις εξουσίες που μου παρέχει το άρθρο 11(3) του Περί Πυροβόλων Όπλων Νόμου αρ. 38 του 1974 με την παρούσα ακυρώνω για λόγους δημοσίου συμφέροντος, το πιστοποιητικό εγγραφής του κυνηγετικού όπλου με αρ. εγγραφής 10           ΛΛ. 15828, που είναι εγγεγραμμένο στο όνομά σας»

(I beg to inform you that according to the powers vested in me by s. 11(3) of the Firearms Law 38/74 I hereby cancel, for reasons of public interest, the certificate of registration of the shotgun under registration No. LL. 15828, which is registered in your 15           name).

Therefore, this point also fails.

The third objection raised is that the recourse was brought against the wrong person. I agree with counsel 20           for the applicant on this point because by virtue of s.11(3) it is the Chief of Police who has power to cancel a certificate of registration in respect of a gun. It follows, that the Minister of the Interior could not be made a party as he has not and could not have exercised any competence 25           under the section. Therefore, the recourse fails but, I propose to examine the merits of the case if it were held that the recourse was brought against the proper party.

The only oral evidence given in this case was the evidence of Police Inspector Sakkadas who is attached to the 30           Crime Laboratory, Nicosia and he is a Firearms and Ammunition Identification Expert and this, in view of the fact that counsel for the applicant in his reply to the written address of counsel for the respondents disputed that the shotgun in question was a repeater. He testified that the gun is 35           a single-barrel and it is a repeating, but not automatic shotgun. Two cartridges are loaded in the shotgun one in the chamber and the other in the magazine. When one presses the trigger, a cartridge is fired and then one has to move the bolt action system by hand to empty the cham-

ber and then press the bold action again in order to bring the cartridge which is in the magazine in the chamber of the gun and be ready to be fired.

He also said that the mechanism of the said gun is not the same or substantially the same with other ordinary single or double barrel shotguns. 5

Counsel for the applicant disputed that the gun is a repeater not by calling expert evidence but relying on the case of *Christodoulou v. Republic*, 1 R.S.C.C. 1, in which a repeating gun is described which is different from the shotgun in question. 10

With due respect to counsel for the applicant his contention is untenable because there are various types of repeating guns and the gun described in the *Christodoulou* case is one of the repeating guns in existence. It does not follow that only guns which are similar as the gun described in the *Christodoulou* case are repeaters. Whether a gun is repeater or not it depends on the expert evidence and the only expert evidence before the Court is that of Police Inspector Sakkadas which stands uncontradicted and I accept it and I am satisfied that the gun in question is a repeating shotgun. 15  
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It appears from the narration of the facts hereinabove that the applicant failed to comply with the letter of the Chief of Police dated 26th June, 1985, and he kept in his possession a shotgun whose import and registration was prohibited by law. In these circumstances, the Chief of Police, acting for reasons of public interest could cancel the certificate of registration of the said gun. I am of the view that the Chief of Police acted in accordance with the law and not unlawfully as alleged by the applicants and, therefore, the decision is not unlawful and contrary to the provisions of s. 11(3) of Law 38/74. 25  
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The relevant legal provision empowering the Commander of Police to cancel the registration of a firearm is section 11(3) of the Firearms Law, 1974 (Law 38/74) which reads as follows: 35

«(3) Ο Αρχηγός της Αστυνομίας, δύναται καθ' οιονδήποτε χρόνον δια λόγους δημοσίου συμφέροντος να

5 ακυρώση οιονδήποτε πιστοποιητικόν εγγραφής δι' εγ-  
γράφου ειδοποιήσεως εις τον κάτοχον αυτού, επί τη  
τοιαύτη δε ακυρώσει ο κάτοχος του πιστοποιητικού ο-  
φείλει να επιστρέψη τούτο πάραυτα εις τον Αρχηγόν  
της Αστυνομίας και εάν παραλείψη να πράξη τούτο  
είναι ένοχος αδικήματος και, επί τη καταδίκη του, υ-  
πόκειται εις χρηματικήν ποινήν μη υπερβαίνουσαν τας  
εκατόν λίρας.»

10 (“(3) The Commander of Police may at any time  
for reasons of public interest cancel any certificate of  
registration by written notice to the possessor thereof,  
and upon such cancellation the possessor of the cer-  
tificate must return it immediately to the Commander  
15 of Police and if he fails to do so he is guilty of an  
offence and, upon his conviction, he is subject to a  
fine not exceeding one hundred pounds.”)

I do not think that the argument of counsel for the  
applicant that the respondents should have revoked the  
administrative act can stand because the law speaks of  
20 cancellation of the certificate of registration.

In view of the above premises the recourse is dismissed  
with costs against the applicant. Costs to be assessed by  
the Registrar.

25 *Recourse dismissed with costs  
against applicant.*