

1986 March 22

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

MAROULLA TSANGARI,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE,

Respondent.

(Case No. 12/85).

*Customs and Excise Duties—Motor vehicles, importation of—
Incapacitated persons —Exemption from import duty—
The Customs and Excise Duties Laws, 1978-1981—Sec-
tion 11 and Order 221/79 of the Council of Ministers—
The organ vested with competence to determine the enti- 5
tlement of an applicant to exemption is the Director of the
Department of Customs—The power of the Minister of
Finance is only to decide the extent of the exemption.*

*Administrative Law —Competency —Lack of —Ground of
annulment. 10*

This recourse is directed against the decision of the Mi-
nister of Finance, whereby applicant's application for the
duty free importation of a motor-vehicle suitable for an
invalid was rejected.

Held, annulling the sub judice decision: (1) The relevant 15
legislative provisions are section 11 of the Customs and
Excise Duties Laws and the Fourth Schedule thereto, as
amended by Order 221/79 of the Council of Ministers.

(2) In the light of section 11(1) and paragraph (b) of
the proviso in Order 221/79, this Court is inclined to the 20

view that the competent organ to determine the entitlement of the applicant to exemption is the Director of the Department of Customs and that the Minister of Finance is only empowered to decide the extent of the relief in the light of the financial means of the applicants.

(3) As it is well settled that lack of competence is a ground of annulment, the sub judice decision has to be annulled.

Sub judice decision annulled.

No order as to costs.

Cases referred to:

Miltiados v. The Republic (1983) 3 C.L.R. 590;

Kalli v. The Republic (1984) 3 C.L.R. 443;

Constantinou v. The Republic (1984) 3 C.L.R. 1548;

Ioannou v. The Republic (1985) 3 C.L.R. 31;

Markides v. The Republic (1985) 3 C.L.R. 1393;

Tooulis v. The Republic (1985) 3 C.L.R. 2478;

Kyriacou v. The Republic (1985) 3 C.L.R. 2414;

Diakos v. The Republic (1985) 3 C.L.R. 2334;

Hadjianastassiou v. The Republic (1982) 3 C.L.R. 672;

Antoniades v. The Chairman and Members of the Municipal Council of Paphos (1982) 3 C.L.R. 844;

Andronikou v. The Republic (1983) 3 C.L.R. 209;

Paraskeva v. The Municipal Committee of Larnaca (1984) 3 C.L.R. 54.

Recourse.

Recourse against the refusal of the respondent to allow applicant to import free of customs duty a motor vehicle suitable for invalid persons.

A. Skordis, for the applicant.

S. Georgiades, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

5 TRIANTAFYLLIDES P. read the following judgment. This recourse has been made against the refusal of the respondent Minister of Finance to allow the applicant to import free of customs duty a motor-vehicle suitable for an invalid.

10 She submitted for this purpose an application on the 28th April 1984 and, in accordance with the relevant procedure, she produced later a Medical Board certificate, dated 14th September 1984, and a Social Welfare Report, dated 12th July 1984.

15 The applicant was informed by the respondent, on the 17th November 1984, that her application could not be granted because the use by her of a vehicle specially converted for use by an invalid was not justified.

20 Counsel for the applicant has submitted that the sub judice decision was reached by the respondent Minister of Finance without competence because the only organ which was competent to decide about the applied for exemption from customs duty was the Director of the Department of Customs.

25 Counsel for the respondent agreed with this contention of counsel for the applicant, but before deciding on this matter I had to hear further arguments from counsel for the parties, because in some cases which had come previously before the Supreme Court it had appeared to be assumed that the competent organ was the Minister of Finance (see, inter alia, *Miltiadous v. The Republic*, (1983) 3 C.L.R. 590, *Kalli v. The Republic*, (1984) 3 C.L.R. 443, *Constantinou v. The Republic*, (1984) 3 C.L.R. 1548, *Ioannou v. The Republic*, (1985) 3 C.L.R. 31, *Markides v. The Republic*, (1985) 3 C.L.R. 1393 and *Tooulis v. The* 35

Republic, case No. 514/83, determined on 12th November 1985 and not reported yet).*

The relevant legislative provisions are section 11 of the Customs and Excise Duties Laws, 1978 - 1981, and the
 5 Fourth Schedule to such Laws, as amended by an Order made by the Council of Ministers on the 14th September 1979 (see No. 221, in the Third Supplement, Part I, to the Official Gazette of that date).

As under subsection (1) of the aforesaid section 11 the
 10 Director of the Department of Customs has competence to decide about the conditions to be imposed in relation to the duty free importation of goods by certain categories of persons, and as in paragraph (b) of the proviso in the
 15 aforementioned Order of the Council of Ministers it is stated expressly that the Director of the Department of Customs is the competent organ to grant an exemption from customs duty to a disabled person who is holding only a learner driver's driving licence, I am inclined to the view
 20 that in the present instance the decision about the entitlement of the applicant to exemption from customs duty had to be reached by the Director of the Department of Customs and that the Minister of Finance was only empowered to decide about the extent of the exemption in the light of the financial means of the applicant, as provided for by
 25 the said Order.

I have followed in this respect the approach adopted recently by Stylianides J. in *Kyriacou v. The Republic* (case No. 414/85, determined on 22nd November 1985 and not reported yet)** and by Loris J. in *Diakos v. The Republic*
 30 (case No. 797/85, determined on 20th December 1985 and not reported yet).***

In the light of the foregoing I have reached the conclusion that the sub judice decision in the present case has
 35 been reached by the Minister of Finance without competence under the relevant legislative provisions.

* Reported in (1985) 3 C.L.R. 2478.

** Reported in (1985) 3 C.L.R. 2414.

*** Reported in (1985) 3 C.L.R. 2334.

It is well settled that lack of competence is a ground for annulment (see, inter alia, in this respect, *Hadjianastassiou v. The Republic*, (1982) 3 C.L.R. 672, *Antoniades v. The Chairman and Members of the Municipal Council of Paphos*, (1982) 3 C.L.R. 844, *Andronikou v. The Republic*, (1983) 3 C.L.R. 209 and *Paraskeva v. The Municipal Committee of Limassol*, (1984) 3 C.L.R. 54). 5

Consequently the present recourse succeeds and the sub judice decision of the Minister of Finance has to be annulled. 10

I shall not, however, make any order as to the costs of this case.

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