

1987 July 22

[PIKIS J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANASTASIOS SKOUROS,

*Applicant,*

v

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF FINANCE,

*Respondent*

*(Case No 414/86)*

5 *Customs and excise — Motor vehicles, importation of by invalid persons — The relief from import duty — The Customs and Excise Duties Law 18/78, section 11(2) and Order 221/79 — The regulation tying the relief to applicant's «financial position» — Not ultra vires enabling law — Gross income of applicant correctly considered — Notion of «financial position» is not confined to income, but to applicant's overall financial situation — Contribution by spouse to applicant's family obligations — A relevant consideration in assessing his financial position*

10 *Constitutional Law — Equality — Constitution, Art 28 — Invalid persons — Importation of motor vehicles — Relief from import duty made dependent on applicant's financial position — Such dependence does not violate principle of equality*

15 *Constitutional Law — Right to decent existence — Constitution, Art 9 — Benefit to disabled persons as regards import duty for cars adapted to their needs tied to their financial position — No violation of Art 9*

*Constitutional Law — Subsidiary legislation — Legislature entitled to delegate authority for its enactment to the Council of Ministers*

20 *Though the Minister of Finance acknowledged that applicant was an invalid for the purposes of classification 01 09 of the 4th Table of the Customs and Excise Duties Law 18/78, he dismissed applicant's application to import free of duty or at a reduced rate a car adapted to his needs, on account of applicant's financial position*

25 *It must be noted that according to the provisions of the relevant classification as amended on 14 9 79 by RAA 221/79, total or partial relief from import duty was made dependent on «the financial situation of the*

applicant» In the interests of uniformity of treatment the Minister evolved guidelines based on the income of individual applicants It is, however, clear that in this case the Minister took into consideration applicant's capital assets as well

Held, *dismissing the recourse* (1) Regulations 221/79 are not, as submitted by counsel for applicant, *ultra vires* section 11(2) of Law 18/78 Indeed, the Council of Ministers is not only expressly empowered to add and delete classifications, but more pertinently to alter or otherwise amend existing classification The power is wide enough to include competence to amend the prerequisites of total or partial relief

(2) It has long been settled that the legislature may delegate authority to the Council of Ministers to enact subsidiary legislation and, therefore, applicant's submission to the contrary cannot be accepted

(3) The principle of equality safeguarded by Art 28 of the Constitution is in no way breached by making a distinction between disabled persons depending on their financial position

(4) The right to decent existence safeguarded by Art 9 of the Constitution is not violated by tying the benefit to the financial circumstances of the applicant

(5) The relevant criteria, which refer to income, must be construed, in the absence of any indication to the contrary, as referring to gross income, moreover, the notion of «financial situation» is not confined to income, but to his overall financial situation The contribution of a spouse to applicant's family obligations is a relevant consideration

*Recourse dismissed*  
*No order as to costs*

*Cases referred to*

*Police v Hondrou*, 3 R S C C 82

**Recourse.**

Recourse against the refusal of the respondent to approve applicant's claim to import free of duty or at a reduced rate a car adapted to an invalid's needs

*C. Hadjipieras*, for the applicant.

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

*Cur. adv. vult.*

- PIKIS J read the following judgment The recourse is directed against the refusal of the Minister of Finance to approve applicant's claim to import wholly free of duty or at a reduced rate a car adapted to an invalid's needs Whereas the Minister
- 5 acknowledged that applicant was an invalid for the purposes of classification 01 09 of the 4th Table of the Customs and Excise Law (18/78), nonetheless he dismissed the application on account of applicant's financial position found to be such as not to warrant any relief from import duty
- 10 The applicant is a secondary school teacher earning a gross salary of £770 97 cent (net of tax £552 or £564) and owns immovable property valued at £12,000 His wife too is in salaned employment, being a school employee, with an income of £414 46 cent per month The personal and family circumstances
- 15 of the applicant were the subject of a social inquiry report prepared by an officer of the Welfare Department There is no dispute about its contents A means test was conducted with a view to ascertaining the financial circumstances of the applicant, in accordance with the provisions of the relevant classification as
- 20 amended on 14 9 1979 by RAA 221/69, whereby total or partial relief from import duty is made dependent, in addition to a finding of disability, on a decision of the Minister of Finance based on an evaluation «of the financial situation of the applicant» In the interest of uniformity of treatment, the Minister evolved guidelines
- 25 based on the income of individual applicants, whereby persons in receipt of an income of over £700 - per month were not ordinarily granted any relief However, it is clear from the sub judice decision that the Minister did not base his decision solely on the guidelines but took into consideration, apart from th income of the
- 30 applicant, capital assets as well By the first ground upon which the decision is challenged, the applicant impugnes the validity of the regulations made in 1979 arguing that the amendment was ultra vires the law, notably, s. 11(2) of Law 18/78 It was contended that the law did not permit the Council of
- 35 Ministers, to whom authority was delegated, to make amendments to the 4th Table, to introduce a criteon relevant to the financial situation of disabled persons He contended the power to make amendments or modifications is, by the terms of the enabling law, limited to the degree of disability and matters related thereto. I
- 40 cannot subscribe to the submission that the power of the Council of Ministers is confined in the way suggested by counsel. Not only they are expressly empowered to add and delete classifications

but more pertinently they may alter or otherwise amend existing classifications or anyone of them. The power to alter and amend existing classifications is certainly wide enough to empower the body trusted with the competence to amend the prerequisites for total or partial exemption from import duty. Consequently, I cannot uphold the submission that the amendment of the classification made in 1979 was ultra vires the provisions of the enabling law, notably, s. 11(2) of Law 18/78. 5

Another objection to the validity of the amendment of the relevant classification is that it was impermissible for the legislature to delegate authority to the Council of Ministers to enact subsidiary legislation. It has long been settled there is no such constraint on legislative competence (*Police v. Hondrou\**). 10

Two other equally untenable submissions concern the constitutionality of the relevant classification, allegedly unconstitutional for breach (a) of the provisions of Art. 28.1 safeguarding equality before the law and the Administration, and (b) Art. 9 safeguarding a decent existence. There is nothing offensive in the classification to equality either before the law or the Administration. On the contrary, the classification aims to confer benefits on disabled persons reflecting their physical inequality to bodily able persons and may properly be regarded as a measure enacted in the spirit of Art. 28. The principle of equality is in no way breached by making a distinction between disabled persons depending on their financial situation. The object of Art. 28, as often proclaimed, is to guard against intrinsic not arithmetical inequality. 15  
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Respecting Art. 9, again I find no substance in the submission made. The decent existence of a disabled person is not threatened by tying the benefit conferred by the relevant classification to his financial circumstances. 30

Lastly, it was argued on behalf of the applicant that the decision is vulnerable to be set aside owing to a misapplication of the income criteria adopted by the Minister for the guidance of the Administration. The submission is that the income criteria relate exclusively to the income of the disabled person to the exclusion of any other member of his family and secondly that it relates to net as opposed to gross income. The relevant criteria refer to income 35

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\* 3 RSCC 82.

without classification and should, in the absence of any indication to the contrary, be construed as referring to gross income. Liability to pay tax is after all a personal and not a uniform consideration dependent, inter alia, on the income of the applicant as a whole and his obligations. Therefore, I cannot subscribe to the view that the guidelines were either misconceived or misapplied.

The notion of «financial situation» as relevant classification is not confined to the income of the disabled person but to his overall financial situation, including assets, liabilities, as well as family obligations. The contribution of a spouse to those obligations is a relevant consideration in the overall assessment of the financial situation of a disabled person.

I conclude it was reasonably open to the Minister to take the sub judice decision which is hereby confirmed pursuant to the provisions of Art. 146.4(a) of the Constitution. In the result the recourse is dismissed. Let there be no order as to costs.

*Recourse dismissed.*

*No order as to costs.*