

(1987)

1987 February 4

[DEMETRIADES, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDRONIKOS THEODOSSIOU IACOVOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE,

Respondents

(Case No. 59/84)

Administrative act—Executory act—Informatory or advisory act—Decision turning down an application under the provisions of Order 188/82 for a duty free importation of a motor car, which the applicant had not actually imported but intended to purchase—Such decision is of an informatory or advisory nature

Customs and Excise—Duty free importation of motor cars—Order 188/82—The proviso to such order—Power of Minister of Finance to grant relief to those repatriated before 1 1.1982 5

The applicant challenges by means of this recourse the decision, whereby his application for permission to import a car, which he intended to purchase, free of import duty was rejected 10

Held, dismissing the recourse. (1) The question whether the decision complained of is of an executory nature can be examined by the Court *ex proprio motu*.

(2) As the applicant in this case had not actually imported any car the decision complained of does not amount to an executory act, but is only of an informatory or advisory nature (*Yiangou v The Republic* (1987) 3 C.L.R. 27 applied) 15

(3) The applicant, who was repatriated before the 1 1 1982, may apply to the Minister of Finance for relief under the proviso to Order 188/82.

Recourse dismissed. 20
No order as to costs.

Cases referred to

Yiangou v. The Republic (1987) 3 C.L.R. 27;

Razis and Another v. The Republic (1982) 3 C.L.R. 45;

New Paphos Estates Ltd. v. The Municipality of Paphos, (1982) 3 C.L.R. 413, 25

Georgiou v The Republic (1982) 3 C.L.R. 828;

Strongliots v The Improvement Board of Ay Napa, (1985) 3 C L R 1085,
Mavronichis v The Republic (1985) 3 C L R 2301

Recourse.

5 Recourse against the refusal of the respondent to grant applicant relief from import duty of a car to be imported by him as a repatriated Cypriot

A Magos, for the applicant
 M Photiou, for the respondent

Cur adv. vult

10 DEMETRIADES J read the following judgment The applicant prays, by this recourse, for a declaration that the decision of the Director of Customs and Excise, dated the 7th December, 1983, whereby his application for the relief from import duty of a car to be imported by him was dismissed, is null and void and of no legal
 15 effect.

The facts of the case are, briefly, as follows

The applicant was born in Cyprus and in 1964 he emigrated to South Africa. He returned to Cyprus on the 25th December, 1979, for permanent settlement At the time of his arrival in Cyprus, or
 20 shortly thereafter, he did not import any car

On the 3rd November, 1982, the applicant, relying on the provisions of the Order published under Notification 188/82, submitted an application to the Director of the Department of Customs and Excise for permission to import a car free of import
 25 duty, which he intended to purchase. His application was rejected and he was informed so by letter dated the 29th December, 1982, whereupon he filed Recourse No. 97/83.

During the hearing of that recourse, it transpired, upon an advice by the Attorney-General, that Order under Notification 188/82
 30 could be applied to cases of Cypriots who had returned to Cyprus before the publication of the Order, provided that they satisfied the other conditions of such Order. As a result, the application of the applicant was reconsidered and a new decision was communicated to him by letter dated the 7th December, 1983, rejecting his
 35 claim on the ground that his application was not made within a reasonable time from his return, as provided by the Order.

The latter decision is the subject-matter of this recourse.

The Order of the Council of Ministers, under Notification 188/82, which was published in Supplement No. III Part I of the Official Gazette of the Republic, dated the 11th June, 1982, reads as follows:

«Μηχανοκίνητα οχήματα των κλάσεων 87.02.11 και 87.02.19 εισαγόμενα υπό Κυπρίων οι οποίοι κατόπιν μονίμου εγκαταστάσεως εις το εξωτερικόν δια συνεχή περίοδον τουλάχιστον 10 ετών επανέρχονται και εγκαθίστανται μονίμως εν τη Δημοκρατία νοουμένου ότι η εισαγωγή γίνεται εντός ευλόγου χρονικού διαστήματος από της αφίξεώς των κατά την κρίσιν του Διευθυντού»

Νοείται περαιτέρω ότι ο Υπουργός Οικονομικών κέκτηται εξουσίαν όπως παραχωρή ατέλειαν εις Κυπρίους επαναπατρισθέντας προ της 1.1.1982 οι οποίοι δεν πληρούν τους ανωτέρω όρους».

(«Motor vehicles under Tariff Headings 87.02.11 and 87.02.19 imported by Cypriots who after permanent settlement abroad for a continuous period of at least 10 years return and settle permanently in the Republic provided the importation takes place within a reasonable time from their arrival at the discretion of the Director:

Provided further that the Minister of Finance is empowered to grant relief from import duty to Cypriots repatriated before 1.1.1982 who do not satisfy the above conditions.»).

It was not disputed that the applicant satisfied the other conditions of the Order. What was in dispute is whether the applicant satisfied the condition of «importation within a reasonable time» from his arrival provided by the above order.

Counsel for the applicant argued that the applicant could not apply for relief before the publication of Notification 188/82 because there was no provision in the legislation in force at the time of his arrival entitling him to do so and that, therefore, the words «reasonable time» should be construed to mean, in the circumstances of his case, as «reasonable time after publication of the Order».

Counsel for the respondent, on the other hand submitted that the words «reasonable time» in the Order refer to the time of the applicant's arrival for settlement in Cyprus and that the sub judge decision was reasonably open to the Director of Customs and Ex-
5 cise

Before proceeding to make any pronouncement on the issue before me, I consider it necessary to make reference to a very recent decision of the Appeal Court During the hearing of Revisional Appeal No 617 (*Yiangou v The Republic*), the question arose
10 as to whether an application submitted by the appellant in that case to the Director of Customs and Excise for permission to import a car, which was to be purchased by her, free of duty, amounted to an executory act, in view of the fact that the appellant had not
15 actually imported any car, but wanted to know what the stand of the respondent would be on the matter The Full Bench of this Court held, in dismissing the appeal, that the letter of the respondent informing her that she was not entitled to the duty-free importation of a car did not constitute an executory act but was merely
20 an expression of opinion by the Director The judgment of the Court was delivered on the 20th January, 1987 (not yet reported)*

Although this point has not been raised in the present proceedings, it is one of the matters that can be taken up by the Court ex proprio motu (see *Razis and Another v The Republic*, (1982) 3
25 C L R 45, 49-50, *New Paphos Estates Ltd v The Municipality of Paphos*, (1982) 3 C L R 413, 417, *Georghiou v The Republic*, (1982) 3 C L R 828, 835, *Strongiliotis v The Improvement Board of Ayia Napa*, (1985) 3 C L R 1085, 1090)

The facts of the present case are in line with *Yiangou v The Republic*, (supra), in fact they are almost identical In view of that
30 decision, I hold that the sub judge decision does not amount to an executory act but is only informative or advisory and as such it cannot become the subject of a recourse under Article 146 of the Constitution

Before concluding, however, I wish to observe that under the
35 proviso to the Order, the Minister of Finance is empowered to grant relief to Cypriots repatriated before the 1st January, 1982, and, the applicant, whose case falls within the proviso, may apply

*Reported in (1987) 3 C L R 27

to the Minister for relief under such proviso (*see, also, Mavronichis v. The Republic*, (1985) 3 C.L.R. 2301, 2317).

In the result, this recourse fails and it is hereby dismissed with no order as to costs.

Recourse dismissed. 5
No order as to costs.