

1988 July 25

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION.

ANDREAS CHINAS,

Applicant,

v.

1. THE MINISTER OF FINANCE,
2. THE DIRECTOR OF CUSTOMS AUTHORITY,

Respondents.

(Case No. 522/85).

5 *Contempt of Court—Annulling decision of an administrative act on ground of misconception of fact—Opens way of re-examination of case by administration—Since the annulling decision was not based on any positive finding of fact, it is not a contempt of Court, if, upon such reconsideration, the administration makes the same finding of fact, as that on which the annulled decision was based.*

The respondent turned down applicant's application for the duty free importation of a motor car.

10 The decision was annulled following a statement of counsel for the Director, acknowledging the correctness of the statement made in the address of applicant concerning the length of stay of the applicant abroad. Counsel stated that in his opinion the relevant facts had been wrongly interpreted by the Director.

15 As a result the Court annulled the said decision for misconception of fact. The application was re-examined. A similar decision was issued founded on the view that applicant's stay abroad was not permanent.

Hence these proceedings that the respondent be punished for contempt.

20 Held, dismissing the application: The annulling decision was not founded on a positive finding of fact. The original decision was annulled for misconception of fact and, thus, the way was opened for the re-examination of the case.

*Application dismissed.
No order as to costs.*

Cases referred to:

Ioannou v. The Republic (1986) 3 C.L.R. 1263.

Kyriacou and Others v. Minister of Interior (1988) 3 C.L.R. 643;

Pieris v. The Republic (1983) 3 C.L.R. 1054;

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

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Symeou v. The Republic (1987) 3 C.L.R. 332.

Application.

Application for the committal of the Director of Customs for disobedience of an order of the Court made on 11.4.86 under Article 146.4 (b) of the Constitution quashing a decision of the Director whereby he refused an application of the applicant for the importation of a duty free car.

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P. Angelides, for the applicant.

A. Evangelou, Senior Counsel of the Republic, for the respondent.

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Cur. adv. vult.

PIKIS J. read the following judgment. This is an application for the committal of the Director of Customs for disobedience of an order of the Court made on April 11, 1986, under article 146.4. (b) of the Constitution, quashing a decision of the Director whereby he refused an application of the applicant (the application was made under the Customs and Excise Duties Law under s.11 - Order 188/82, Third Supplement, Part II, Official Gazette of 11/6/82) for the importation of a duty -free car. The decision was annulled following a statement of counsel for the Director, acknowledging the correctness of the statement made in the address of applicant concerning the length of stay of the applicant abroad.

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On that account the Administration expressed readiness to re-examine the application for the importation of a duty - free car.

5 In answer to a question of the Court designed to elicit the error affecting the decision of the Director, counsel stated that in his opinion the relevant facts had been wrongly interpreted by the Director. Counsel made a further statement of no clear meaning to the effect that although the stay of the applicant in Egypt was temporary, nonetheless it does not justify "temporariness". In the event, both counsel joined in an application that the decision of
10 the Director be annulled. And so the Court ordered, holding that the substratum of the decision rested on an erroneous basis.

Re-examination resulted in a similar decision founded on the view that the stay of the applicant abroad did not qualify as permanent. The decision of the Director was founded, inter alia, on
15 the view of the law taken by his Court in *Ioannou v. Republic* (1986) 3 C.L.R. 1263.

Concurrently with the institution of the present proceedings the applicant challenged the validity of the new decision by recourse to the Supreme Court (Case No. 47/87).

20 In a decision given on 11.2.88, I ruled that the jurisdiction conferred by article 150 of the Constitution to punish for contempt, is not dependent on observance of the provisions of Ord. 42A of the Civil Procedure Rules requiring service of an endorsed copy of the judgment or order as an indispensable prerequisite for punishment for contempt. The appreciation of the law
25 espoused in the above decision was affirmed in a subsequent decision of the Full Bench - *Kyriacou and Others v. Minister of Interior* (1988) 3 C.L.R. 643. There is jurisdiction to punish for contempt for disobedience of an order or judgment annulling an
30 administrative act or decision.

The factual basis of the application is set forth in affidavit of the applicant wherein the charge is made that the Director in re-examining the application for the importation of a duty-free car

defied the factual basis of the decision of the Court of 11.4.86; in particular, that contrary to the substratum of the decision of the Court he felt free to treat the stay of the applicant abroad as not entitling him to the right claimed by his application. The Director of Customs does not, as can be gathered from his affidavit, sworn to in support of the opposition, admit disobedience of the order of the Court. On the contrary he alleges that he re-examined the request for the importation of a duty-free car and found that applicant did not satisfy the requirements of the law.

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Counsel for the Republic submitted that the application for contempt is premised on an inexistent fact, notably, that the Court confirmed by its judgment that the stay of the applicant abroad rendered him eligible under the law to import a duty - free car. I think he is right. Following the statement of counsel, particularly that of counsel for the Republic, the Court annulled the decision, subject matter of Recourse 522/85, for misconception of the facts, opening thereby the way for the re-examination of the case. The Court did not premise its judgment on any positive findings, such as would bind the Administration to accept as existent upon re-examination of the case. The subject is discussed at length in *Pieris v. Republic* (1983) 3 C.L.R. 1054. It is unnecessary, therefore, to explore further in this judgment the ambit of the obligation cast on the Administration by para. 5 of article 146 of the Constitution to give effect and act upon the judgment of the Court.

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The soundness of the reasons founding the new decision of the Administration, taken on 17.1.87, is not as such in issue in these proceedings. It will be the subject of review in a recourse pending before the Supreme Court, including the character of the decision and its justiciability in view of *Yiangou v. Republic*. (1987) 3 C.L.R. 27; (see, also *Symeou v. Republic* (1987) 3 C.L.R. 332).

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For the above reasons the application is dismissed.

Let there be no order as to costs.

Application dismissed.
No order as to costs.

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