1988 September 30

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

STELIOS PANAYIOTOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF FINANCE,
1. THE DIRECTOR OF CUSTOMS,

Respondents.
(Case No. 616/87).

Customs and Excise Duties—Motor vehicles, duty free importation of by incapacitated persons—Whether the respondent is entitled to seek, in addition to the report of the medical board, the opinion of the Technical Examiner of the Office of Examiners of Drivers—Question determined in the affirmative—The nature of the decision in respect of the question whether the disability is such as to bring the person concerned within the exemption.

The facts of this case sufficiently appear in the judgment of the Court.

Recourse dismissed.
No order as to costs.

Cases referred to:

Tsangaris v. The Republic (1975) 3 C.L.R. 518;

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

Florides v. The Republic (1987) 3 C.L.R. 1770;

Anastassiou v. The Republic (1988) 3 C.L.R. 1300;

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

Recourse.

Recourse against the decision of the respondents whereby applicant's application for the importation of a duty free car for disabled persons was rejected.

Chr. Pourgourides, for the applicant.

S. Georghiades, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

A. LOIZOU P. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that the decision of the respondents, dated the 5th May 1987, by which his application for the importation of a duty free car for disabled persons was rejected, is null and void and of no legal effect whatsoever.

The applicant applied on the 13th October 1986 (Appendix 1) for relief from import duty for a car for a disabled person. His application was sent along with applications of other persons to the Chairman of the Medical Board for their opinion by letter dated the 6th November 1986 in which the respondent Director of Customs informed them that the applicant had applied to his Department for relief from import and excise duty and asked the Board to give its opinion, "whether the physical condition of each of the persons (there were others besides the applicant referred to in that letter) justifies or renders necessary the use of a specially converted vehicle suitable for use by disabled persons as well as what adaptations ought to be made to it" to the Chairman of the Medical Board in question for their opinion. The Medical Board in question consisted of Dr. G. Savvides, Senior Specialist Orthopaedic Surgeon, Dr. Papanastassiou, Senior Specialist Surgeon and Dr. Eliades, Principal Medical Officer Nicosia. In their report dated the 6th February 1987 (Appendix 3) the following findings are given:

"Λόγω Πολιομυελίτιδας σε ηλικία 2 ετών έχει επηρεασθεί το δεξιό κάτω άκρο το οποίο παρουσιάζει τώρα πάρεση ήτοι αδυναμία της ραχιαίας και πελματιαίας κάμψης του δεξιού άκρου ποδός.

Παρουσιάζει πτώση του δεξιού άκρου ποδός καθώς επίσης ελαφριά αδυναμία του δεξιού τετρακεφάλου και μερική ατροφία των μυών της δεξιάς κνήμης.

Το αριστερό κάτω άκρο και αμφότερα τα άνω άκρα κατά φύση."

And in English it reads:

"Due to Poliomyelitis contracted at the age of two his right lower leg has been affected and it presents now paresis, that is weakness of the dorsiflexion and plantarflexion of the right foot.

It presents footdrop of the right foot as well as waisting of the right quadricepts and partial atrophy of the muscles of the right knee.

The left lower limb and both upper limbs normal."

The applicant was then referred to Mr. Eracleous, a Senior Technical Examiner in the Office of Transport Branch of Examiners for Drivers. In his report, dated the 6th April 1987, (Appendix 4) he says that on the basis of the report of the Medical Board dated the 6th February 1987 he examined the applicant and ascertained that the physical condition permits him to drive a vehicle without any restriction.

The applicant is fifty years of age married with five children aged between seventeen and twenty six. He is the holder of a driving licence since 1960 and apparently for the last 26 years he was driving vehicles not specially converted to meet his alleged disability and that he could drive such ordinary vehicles. In fact

his driving licence was the regular one without the restrictions that are imposed usually on disabled persons by the appropriate office that issues driving licences.

The applicant relies on two grounds of law in support of his application. The first one is that the respondents failed to carry out a due inquiry and the second is that they have acted under a misconception of fact or law. I shall take them in that order.

It is the case for the applicant that the whole matter is governed by the provisions of Class 01.09 of the 4th Schedule of the Customs Duties and Excise Law 1978-1979 by virtue of which the decision is taken by the Director of Customs after obtaining the opinion of a Medical Board. Nowhere in the Law is mentioned that the Director of Customs may take into consideration or obtain the opinion of the Senior Technical Examiner before deciding whether the disability of a person justifies or requires the use of a vehicle converted for use by a disabled person.

It was further argued that the said Senior Technical Examiner is not in a position to say whether the disability of a person requires the use of a specially converted vehicle as the matter is purely medical one and that if the respondents were not enlightened, and indeed they were not by the Medical Report, they should inquire further with the Medical Board rather than ask the said Technical Examiner to look into the matter.

Learned counsel for the applicant, though referring to the principle established by case law that an organ which has power under the Law to decide on a given subject may seek the opinion of another organ regarding matters of his competence (*See Tsangaris v. The Republic* (1975) 3 C.L.R.518), yet submitted in the present case that the opinion of the Senior Technical Examiner should not have been sought on a matter which is purely a medical one and that if any opinion could be sought from the said examiner it should be confined only to technical matters such as the necessary adaptations of the vehicle used by an invalid required and not for a medical matter.

In my view the question whether a persons' disability is such as to bring him within the provisions of Class 01.09 of the 4th Schedule is a mixed matter of Medical and Technical opinion. As regards the question whether the opinion of the Senior Technical Examiner could be obtained or not, I had the occasion to deal with it in the case of *Markides v. The Republic* (1985) 3 C.L.R. 1393, where at page 1399 I had this to say:

"Whatever the legal position is where there is no interference with the exercise of administrative discretion by a person or organ having no competence in the matter under the relevant legislation, there is, under the General Principles of Administrative Law, no objection to the administration on its own free will to subject its administrative discretion to forms and limitations, not imposed and not provided for by the law, as a choice of means to form an opinion. In such a case what it cannot do thereafter is to ignore arbitrarily such opinions as same would constitute proof of inconsistent and arbitrary and therefore wrong exercise of discretionary power. The competent administrative organ may, however, do so by giving reasons for that.

Though it may be said that in the present case there was nothing to suggest clearly that the respondent Minister was binding himself to accept the opinion of the Senior Technical Examiner etc., yet it was in the form of further opinion and as part of the wider inquiry carried out by him in the matter. It is obvious that the ascertainment of the extent of invalidity of a person is not enough. It has to be correlated to the interference with safe driving and the requirement of any adaptation that a vehicle need to meet same (see *Miltiadou* case (1983) 3 C.L.R. 590). Such self-binding of the administration, is not contrary to the General Principles of Adminsitrative Law. (See Stassinopoulos, the Law of Administrative Acts, 1951, p. 333. Conclusions from the Case Law of the Greek Council of State, 1929-1959, p. 193 and Decisions of the Greek Council of State 738/1933, 934/1933, 1062/1951."

The aforesaid approach was followed by me in the case of *Andreas Florides v. Republic* (1987) 3 C.L.R. 1770 and *Ioannis Anastassiou v. The Republic* (1988) 3 C.L.R. 1300. The aforesaid approach was also adopted by Savvides J. in the case of *Tooulis v. The Republic* (1985) 3 C.L.R. 2478.

No doubt the respondents carried out a proper inquiry in the matter. They could inquire and seek the opinion of the said Examiner as they did. Consequently for all the aforesaid reasons the first ground of Law relied upon, on behalf of the applicant, fails.

The second ground relied upon by the applicant namely that of misconception of fact and/or law is based on the fact that the respondents reached the decision that the applicant is in a position to drive an ordinary vehicle without any restriction which is wrong. The applicant, it is claimed, constitutes a public danger when he drives an ordinary vehicle; he cannot stop the vehicle within the distance that a normal person would do. As regards the misconception of law the point raised is that the respondents did not take into consideration the question whether the applicant can drive a vehicle safely. The question being not whether the applicant may drive a short distance but whether the applicant can drive, if he can at all, as a normal driver an ordinary vehicle. If he cannot then he must use a specially converted vehicle.

The facts of the case as appearing from the material before me do not suggest any misconception of fact or law.

For all the above reasons the recourse fails and the sub-judice decision is confirmed. In the circumstances, however, there will be no order as to costs.

Recourse dismissed.
No order as to costs.