

1984 December 22

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KYRIAKOS G. ROSSIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE AND/OR
THE DIRECTOR OF CUSTOMS AND EXCISE,

Respondents.

(Case No. 282/82),

Customs and Excise Duties Law, 1978 (Law 18 of 1978)—“Permanent residence abroad” in the 4th Schedule, sub-heading 19 of item 01 to the Law—Does not include residence abroad for studies.

Residence—Permanent resident abroad—In the 4th Schedule, sub-heading 19 of item 01, to the Customs and Excise Duties Law, 1978 (Law 18 of 1978)—Does not include residence abroad for studies—Domicil—A legal concept whereas, permanent residence a question of fact.

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The sole issue in this recourse was whether residence abroad for studies fell within the meaning of “permanent residence abroad” in the 4th Schedule of the Customs and Excise Duties Law, 1978 (Law 18/78) sub-heading 19 of item 01*.

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Held, that residence in a certain country as a student for educational purposes, however long, cannot be termed as “temporary residence”; and that it cannot qualify as “permanent residence” or, as referred to in England, “Ordinary residence” as it lacks the element of permanency.

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* Item 01 reads as follows:

“Motor vehicles of Tariff Headings 87.02.11 and 87.02.19 imported by Cypriots who after permanent residence abroad for a continuous period of at least ten years, return and take up permanent residence in the Republic”.

5 *Held*, further, that as regards the requirement of permanent residence abroad, no reference is made to domicile and the test applied to establish whether the applicant was permanently resident or not was not as strict as that applicable to cases of domicile; and that as correctly put forward, domicile is a legal concept whereas residence, permanent residence, is a question of fact.

Application dismissed.

Cases referred to:

- Razis v. Republic* (1979) 3 C.L.R. 127 at p. 135;
 10 *In re Gape Deceased, Verrey v. Gape* [1952] 1 Ch. 743 at p. 749;
Brokelmann v. Barr [1971] 3 All E.R. 29.

Recourse.

Recourse against the refusal of the respondents to allow the duty-free importation of applicant's vehicle.

- 15 *I.N. Avraamides*, for the applicant.
S. Georghiades, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

20 MALACHTOS J. read the following judgment. The applicant by the present recourse seeks a declaration of the Court that the act and/or decision of the respondent not to allow the duty-free importation of the vehicle of the applicant (Cyprus registration MV 520), in accordance with subheading 19 of Item 01 of the 4th Schedule to the Customs and Excise Duties Law
 25 (Law 18 of 1978), is null and void and of no legal effect whatsoever.

The relevant facts of the case, as stated in the application, and which have not been disputed, are briefly as follows:

30 The applicant is a Cypriot citizen born in Nicosia. On the 8th September, 1969, after he graduated the Pancyprian Gymnasium, he went to London for studies. He enrolled at the Westham College of Further Education as a student. He graduated as a Chartered Accountant in or about July 1977. He was subsequently employed by various companies in England
 35 and during the last two years before his return to Cyprus

he was self-employed. While in London he purchased on or about 28th February, 1980, a BMW saloon car (Model 520 RHD), under registration No. EYE 469V, chassis No. 5047796.

On the 6th September, 1980, he returned to Cyprus intending to reside permanently in Cyprus. On the same day he temporarily imported the aforesaid vehicle for a period of three months, until the 5th December, 1980. Thereafter, the period was extended several times and, finally, on the 30th June, 1980, it was extended until the 5th September, 1981. On the 30th June, 1980, the applicant was also granted a permit (valid until the 5th September, 1981) "to convert to home use" the said vehicle provided that—

- (a) the relevant duties were paid; and
- (b) the registration permit was obtained from the Department of Inland Transport prior to the payment of the duties.

Nothing was done by the applicant and on the 10th September, 1981, the vehicle was placed in a bonded warehouse.

On the 13th November, 1981 the vehicle was reimported, for a further period until the 12th January, 1982. Also on the 13th November, 1981, the applicant applied for duty-free facilities in respect of his vehicle, as he claimed to be a repatriated Cypriot intending to take up permanent residence in Cyprus, who had lived abroad for a period not less than 10 years. The vehicle was subsequently registered under Cyprus registration No. MV 520. On the 21st January, 1982, he was again granted permission, valid until the 30th April, 1982, "to convert to home use" the said vehicle provided the duties were paid.

As it appears from the address on behalf of the applicant, the respondent on the 16th May, 1982, refused to allow him the duty-free importation of the vehicle and as a result the applicant filed the present recourse.

The grounds of law upon which the present application is based may be summarised as follows:

1. The respondents acted under a misconception of law, and
2. The respondents acted in excess and/or abuse of power and in an arbitrary manner.

The main and basic argument put forward on behalf of the applicant is that the respondent misconstrued the relevant provision of the 4th Schedule of the Customs and Excise Duties Law (Law 18 of 1978), sub-heading 19 of Item 01. This provision reads as follows:

“Motor vehicles of Tariff Headings 87.02.11 and 87.02.19 imported by Cypriots who after permanent residence abroad for a continuous period of at least ten years, return and take up permanent residence in the Republic.

The relief covers—

- (a) only vehicles which were in the possession of the said Cypriots for a period of not less than one year; and
- (b) only one vehicle for each family”.

Counsel for applicant submitted that the Director of Customs wrongly and arbitrarily added to the meaning of the word residence a proviso that “periods of residence abroad for studies or temporary employment are excluded”. A prerequisite, he argued, for offering duty free facilities to repatriated Cypriots is not the acquisition of “domicil” abroad which requires proof of “animus” i.e. an intention to live permanently abroad for ever and which, of course, could not include periods of living abroad for the purpose of studies. He also submitted that the mere fact that the applicant was living abroad for at least ten years is, by itself, alone, sufficient to bring him within the ambit of the Law and that the respondent by introducing non existing requirements or restrictions into the provisions of the law, has acted arbitrarily and in excess and/or abuse of powers.

I must say that I entirely disagree with this contention of counsel for applicant. As regards the requirement of permanent residence abroad, no reference is made to domicil and the test applied to establish whether the applicant was permanently resident or not, was not as strict as that applicable to cases of domicil. As correctly put forward, domicil is a legal concept whereas residence, permanent residence, is a question of fact.

The applicant during the greater part of the period he was abroad was undoubtedly a student, a fact which is admitted.

And residence in a certain country, as a student, for educational purposes, however long, cannot be termed as anything more than "temporary residence". It cannot qualify as "permanent residence", or, as referred to in England, "ordinary residence", as it lacks the necessary element of permanency. 5

Ample authority as to what ordinary residence is can be found in the case of *Panos Razis v. The Republic* (1979) 3 C.L.R. 127, where the legal principles concerning the definition of residence were fully expounded. As stated at page 135 on the construction of the words "ordinarily resident" to be found 10 in section 2 of Annex D to the Treaty of Establishment:

"The terms 'residence' and 'ordinary residence' are not defined in the Treaty and accordingly have their ordinary dictionary meaning. 'Residence' describes the country where an individual lives and 'ordinary residence' is 15 generally speaking equivalent to habitual residence and is used in contradistinction to casual or occasional residence. These terms are used in Tax Acts and also are to be found in section 18(1)(b) of the Matrimonial Causes Act, 1950, in relation to the qualification of residence and 'ordinary 20 residence' by a wife for a period of three years immediately preceding the commencement of proceedings for divorce for the purpose of giving to the Court jurisdiction in the matter. The question whether an individual is 'ordinarily 25 resident' in this country or not, has to be decided by examining his pattern of life over a period of years and in this respect as stated in *Pinson on Revenue Law*, 10th Edition, p. 166, 'the concept of ordinary residence resembles domicile more than residence' ". 30

In *re Gape Decd., Verey v. Gape* [1952] 1 Ch. 743 at 749 it is stated: 30

"As has been observed during the course of the argument, the intention permanently to reside in a particular country is one of the two essential characteristics of domicile. It has been emphasized as an essential condition or characteristic 35 time and again in these Courts, and I find it impossible to suppose that the judges, in referring to that characteristic, were doing other than stating something which was to the lawyer both definite and precise. If a synonym be required, I would say that the condition of 40 taking up permanent residence in England was another

5 way of saying: making England your permanent home; that is to say, residing in England with the intention of continuing to reside there until you die. It is, in other words, another way of referring to the characteristic essential to domicile”.

And, further down on the same page:

10 “You cannot take up a permanent residence at any particular point of time, unless at the time you take up residence you intend that it should be permanent, that is, that you should go on living there for your natural days”.

And at pages 751–2:

15 “The expression ‘take up’ suggests volition and intention and even more so does the word ‘permanent’, for it postulates a decision to live in a place for the rest of one’s life, as opposed to living there temporarily or for a fixed period of time and no longer”.

See also Vol. 1 of Dicey & Morris “The Conflict of Laws” (10th Ed.) at page 141–143; and *Brokelmann v. Barr* [1971] 3 All E.R. 29.

20 So, clearly, this contention of the applicant that he was permanently resident in England must fail. Moreover, as regards the period after 1977 when he finished his studies, until 1980 when he returned to Cyprus, during which he was employed, even if we assume that he was permanently resident in England,
25 he would still not qualify for duty free facilities under the law as the ten years prerequisite would not be fulfilled.

In the circumstances, this recourse fails and is hereby dismissed.

There will be no order as to costs.

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Recourse dismissed with no order as to costs.