

1986 June 28

[LORIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

PANAYIOTIS KATSOURA,

Applicant,

v.

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

Respondent.

(Case No. 520/85).

5 *The Customs and Excise Duties Law 18/78—Fourth Schedule thereto, item 0.1, sub-heading 19—Order 188/82 of the Council of Ministers—Duty free importation of motor vehicle—The phrase “return and settle permanently in the Republic” in the said order—Physical presence in the Republic must be accompanied by an intention to settle permanently thereto—In determining the existence of such intention all the surrounding facts and circumstances together with applicant’s declarations should be examined—*
 10 *Residence is a fact from which such intention may be inferred.*

Domicil—Residence is a prima facie evidence of domicil.

Words and Phrases: “Return and settle permanently in the Republic” in Order 188/82.

15 The applicant challenges by means of this recourse the decision, whereby his application dated 27.12.84 for the importation of a duty-free car, pursuant to the provisions of sub-heading 19 of item 0.1 of the 4th Schedule to Law
20 18/78 and relevant Order of the Council of Ministers 188/82, was turned down on the ground that the said applica-

tion was not made "within a reasonable period of time" from the date of applicant's return to Cyprus, "which was established to be the 19th December 1980".

The relevant part of Order 188/82 confines the relief from import duty to "Motor Vehicles of categories 87.02.11 and 87.02.19 imported by Cypriots who, having permanently settled abroad for a continuous period of at least ten years return and settle permanently in the Republic, provided that the importation is made within a reasonable time from their arrival at the discretion of the Director".

The applicant maintained that although he returned to Cyprus on 19.12.80, he did not have the intention at the time of settling down in Cyprus. He further contended that he formed an intention of permanent settlement in Cyprus on 1.3.84 when he was appointed in Civil Defence, Ministry of Interior.

The fact is that from 19.12.80 up to 27.12.84 the applicant was residing in Cyprus. Throughout this period he left Cyprus for 17 days in 1981, 37 days in 1982; in 1983 he spent 98 days in Saudi Arabia working with J. & P. Company, 23 days in Greece and 8 days in Paris.

Held, dismissing the recourse: (1) Physical presence of the applicant in the Republic must be accompanied by an intention to settle permanently thereto. This intention will not only be proved by the declarations of applicant and in particular declarations made by him some four years after his arrival in Cyprus. All the surrounding facts and circumstances of the case have to be examined together with applicant's declarations; and, of course, residence is a fact and a necessary one from which intention may be inferred.

(2) Although "permanent settlement" is not equated with "domicil", it is useful to point out that residence is a prima facie evidence of domicil, that there is a presumption in favour of domicil which grows in strength with the length of residence and that residence may be so long that it will raise a presumption rebuttable only by actual removal to a new place. (A passage from Cheshire and North

—Private International Law, 10th Ed. p. 165 was cited by the Court with approval).

(3) In the circumstances of this case it was reasonably open to the respondent to reach the sub judice decision.

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Recourse dismissed.

No order as to costs.

Recourse.

Recourse against the refusal of the respondents to allow applicant to import a duty-free car as a repatriated Cypriot.

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A. S. Angelides, for the applicant.

St. Theodoulou, for the respondent.

Cur. adv. vult.

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LORIS J. read the following judgment. The applicant impugns, by means of the present recourse, the decision of the respondent Director of Customs dated 21.3.85 (vide Appendix "D" attached to the opposition) whereby the applicant was refused the importation of a duty-free car, as a repatriated Cypriot, pursuant to the provisions of sub-heading 19 of item 01 of the Fourth Schedule to the

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Customs and Excise Duties Law 1978 (Law No. 18 of 1978) as amended by the relevant Order of the Council of Ministers published in the Official Gazette of the Republic of 11.6.82 under No. 188/82 (vide C.G. 1783 of 11.6.82 Suppl. No. 3 Not. 188 at p. 885).

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The material part of Not. 188/82 reads as follows:

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«Μηχανοκίνητα οχήματα τῶν κλάσεων 87.02.11 και 87.02.19, εισαγόμενα ὑπὸ Κυπρίων, οἱ ὁποῖοι κατόπιν μονίμου ἐγκαταστάσεως εἰς τὸ ἔξωτερικὸν διὰ συνεχῆ περιόδου τοῦλάχιστον 10 ἐτῶν ἐπανέρχονται καὶ ἐγκαθίστανται μονίμως ἐν τῇ Δημοκρατίᾳ νοουμένου ὅτι ἡ εἰσαγωγή γίνεται ἐντὸς εὐλόγου χρονικοῦ διαστήματος ἀπὸ τῆς ἀφίξεως των κατὰ τὴν κρίσιν τοῦ Διευθυντοῦ·

Νοεῖται περαιτέρω

Η απαλλαγή καλύπτει μόνον ένα όχημα δι' έκαστην οικογένειαν.»

(English Translation)

“Motor vehicles of categories 87.02.11 and 87.02.19 imported by Cypriots who, having permanently settled abroad for a continuous period of at least 10 years, return and settle permanently in the Republic, provided that the importation is made within a reasonable time from their arrival at the discretion of the Director: 5 10

Provided further

The relief covers only one vehicle for each family.”

It is clear that the aforesaid Order covers only motor-vehicles of the categories therein mentioned,

“Imported by Cypriots who: 15

- (a) having permanently settled abroad for a continuous period of at least 10 years,
- (b) return and settle permanently in the Republic, provided that such importation is made within a reasonable time from their arrival...”. 20

The sub judice decision of the respondent which was communicated to the applicant by letter of the Director of the Department of Customs & Excise, dated 21.3.85 (vide Appendix “D” attached to the opposition) clearly turns down the claim of the applicant for the importation of a duty-free car, as a repatriated Cypriot, on the single ground, that the application for importation of such a vehicle was not made “within a reasonable period of time from the date of your return for settlement, which was established to be the 19 December, 1980.” 25 30

It was submitted by learned counsel for applicant that the sub judice decision implies that the respondent having inquired into the matter was satisfied in the first place that the applicant “having permanently settled abroad for

a continuous period of at least 10 years" has been repatriated.

5 Having given to the sub judge decision my best consideration I must say that I am inclined to agree with the aforesaid submission of learned counsel for applicant; this is the only inference that I can draw from the sub judge decision although I must add that there is no sufficient material before me allowing judicial scrutiny on the aforesaid matter which is not actually the issue in the present case.

10 The issue, as I was able to comprehend it, is confined to the reasonableness of period of time that has elapsed from the date of the return of the applicant for settlement in Cyprus and the date of his application for the importation of a duty-free car which is the 27th December 1984
15 (vide Appendix "B" attached to the opposition).

An interwoven issue is the date of the return of applicant for settlement in Cyprus; on this particular issue there are divergent views; the respondent having considered the material before him, which is contained in the several
20 appendices in the file, has decided (vide Appendix "D") that the date for the return of applicant for settlement in Cyprus was the 19th December, 1980. Consequently the respondent rejected the application of 27.12.84 for the importation by applicant of duty-free car, as such importation could only be made within a reasonable time and respondent considered the period of almost 4 years (19.12.80
25 - 27.12.84) that elapsed, quite unreasonable.

The applicant maintains that although he returned to Cyprus actually on the 19th December, 1980, he did not
30 have the intention at the time of settling down in Cyprus. In his sworn affidavit dated 14.3.86, which was filed after his written address in reply, alleges inter alia that his arrival to Cyprus on 19.12.80 had nothing to do with his permanent settlement in Cyprus; he maintains that he formed
35 an intention for permanent settlement in Cyprus on 1.3.84 when he was appointed in Civil Defence, Ministry of Interior (vide Appendix "Γ" attached to the opposition).

Learned counsel for applicant submitted that in the

circumstances the period of about 10 months (i.e. 1.3.84 - 27.12.84) was a reasonable time within which to apply for the importation of a duty-free car as a repatriated Cypriot.

The facts of this case are very briefly as follows: 5

The applicant left Cyprus in 1966 with a view to studying in England. In 1968 he worked in Greece with several employers up to May 1980 (vide Appendix "B" attached to the opposition) studying Law in the meantime. Amongst his employers was "Olympiaki Airlines" from where he was dismissed illegally in August 1972; thereafter he worked with several other employers in Greece, including inter alios Alitalia Airlines (1973), T.W.A. Airlines (1975), K.L.M. Airlines 1976 - 1977, Saudia Airlines (1978 - 1980). 10

The applicant after obtaining his diploma in Law from Athens University in 1979, returned to Cyprus on 19.12.1980. 15

It is his allegation that he did not return to Cyprus with intention to settle permanently here; he maintains that he came to Cyprus in order to visit his parents who were of poor-health and at the same time to explore possibilities of finding a job. 20

The fact remains that from the time of his said arrival in Cyprus (on 19.12.1980) he was residing in Cyprus up to 27.12.1984 (the time he submitted his application for the importation of a duty-free car) and he is still so residing. 25

Throughout this period of almost four years, he left Cyprus only for 17 days in 1981 and 37 days in 1982; in 1983 he spent 98 days in Saudi Arabia working with J. & P. Company, 23 days in Greece and 8 days in Paris. 30

The respondent having taken into consideration the above facts as well as all other facts and statements of the applicant, contained in the various documents, which are appendices before me, reached at the sub judice decision turning down the request of the applicant, dated 27.12.84, for the importation of duty-free car, holding that the applicant re- 35

turned and permanently settled in the Republic on 19.12. 1980 and therefore he did not submit his application within a reasonable period of time from the day of his said return for settlement in Cyprus.

5 Learned counsel for applicant submitted, as already stated earlier on in the present judgment, that the mere return of the applicant to Cyprus is not enough; it must be accompanied by permanent settlement in the Republic, and such a settlement, he maintained should include not only residence
10 but intention as well, with a view to settling permanently in the Republic.

 Having carefully considered this submission I hold the view that physical presence of the applicant in the Republic must be accompanied by an intention to settle permanently
15 thereto. But this intention will not only be proved by the declarations of the applicant and in particular declarations made by him some four years after his arrival to Cyprus. All the surrounding facts and circumstances of the case have to be examined together with the declarations of the
20 applicant in connection with his intention to settle permanently in the Republic; and of course residence in Cyprus is a fact, and a necessary one, from which intention may be inferred.

 Owing to the reference of learned counsel for applicant
25 (vide his written address in reply) to the intention necessary for the acquisition of a new "domicil", although I am not prepared to equate "permanent settlement" required by the Order under consideration, with "domicil", I feel duty bound to point out "that a person's residence in a country
30 is prima facie evidence that he is domiciled there. There is a presumption in favour of domicil which grows in strength with the length of the residence. Indeed, a residence may be so long and so continuous that, despite declarations of a contrary intention, it will raise a presumption that is rebuttable only by actual removal to a new place..." (Cheshire & North—Private International Law 10th ed. p. 165).
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 From the data, referred to earlier on in the present judgment, placed before the respondent by the applicant himself, as well as from the lengthy residence of the applicant

in Cyprus after his return on 19.12.1980 till the date of the submission of his application on 27.12.1984, I hold the view that it was reasonably open to the respondent Director of Customs and Excise to reach at the sub judice decision, the reasoning of which can be amply supported by the extracts of the administrative file attached to the present recourse. 5

In the result present recourse fails and is accordingly dismissed; in the circumstances there will be no order as to costs. 10

Recourse dismissed.
No order as to costs.