

1986 August 6

[TRIANAFYLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANTONIS STYLIANOU ZAMBAS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF FINANCE,

Respondent.

(Case No. 658/84).

Customs and Excise Duties -- Motor Vehicles, importation of by Cypriots -- Exemption from import duty -- Order 188/82, of the Council of Ministers -- «Permanent settlement abroad» -- It implies a permanent home -- Residence for studies not sufficient.

Early in September, 1972 the applicant went to Greece (Thessaloniki), where he stayed until 1977, when he went to Canada. Whilst in Thessaloniki, the applicant was working and studying. On 30.9.82 the applicant returned to Cyprus for resettlement. His application for duty free importation of a motor car was dismissed on the ground that his stay in Thessaloniki was of a temporary nature. Hence the present recourse. 5 10

Held, dismissing the recourse: (1) The notion of permanent settlement abroad for the purposes of Order 188/82 of the Council of Ministers excludes residence abroad for studies and entails having a permanent home. Ordinary residence is not sufficient.

2) In the light of the material before this Court the sub judice decision was reasonably open to the Director of Customs. 15

*Recourse dismissed.
No order as to costs.*

Cases referred to:

Rossides v. Republic (1984) 3 C.L.R. 1482; 20

Matsas v. Republic (1985) 3 C.L.R. 54.

Recourse.

Recourse against the dismissal, by the respondent, of applicant's application for the free of customs duty importation of a motor vehicle as a repatriated Cypriot.

5 A. Magos, for the applicant.

N. Charalambous, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

10 TRIANTAFYLIDIS P. read the following judgment. By means of the present recourse the applicant challenges, in effect, the decision of the Director of the Department of Customs and Excise, who comes under the respondent Ministry of Finance, to dismiss his application for the free of customs duty importation of a motor vehicle. The said decision was communicated to the applicant by
15 a letter dated the 25th September 1984.

It appears that in September 1972 the applicant went to Thessaloniki, in Greece and, then early in 1977, he went to Canada from where he returned to Cyprus on the 30th September 1982, for the purpose of permanent resettlement here.

20 While he was in Thessaloniki the applicant was working but, also, studying and he was awarded a Degree in Economics.

As it appears from the aforesaid letter of the 25th September 1984 the reason for refusing his application in question was that his stay abroad in Thessaloniki was treated, by the Director of
25 Customs, as being of a temporary nature and, therefore, his permanent settlement abroad did not last for a period of at least ten years, as required under the relevant legislative provision (see Order No. 188, in the Third Supplement, Part I, to the Official Gazette of the 11th June 1982).

30 There were taken into account in this connection the facts that the applicant had left Cyprus in 1972 as a student, that he had enrolled in a school of higher education in Thessaloniki, that he obtained a student's identity card for use in relation to public means of communications in Greece and that he had been
35 receiving as a student an allowance from the Ministry of Social Insurance in Greece. Consequently, the period of time during which the applicant was in Thessaloniki was treated not as a period

of permanent settlement but as a stay of a temporary nature for purposes of studies.

The sole issue which has to be determined in the present case is whether, on the basis of the particular circumstances of this case, it was correctly decided by the Director of Customs that the stay of the applicant in Thessaloniki was of a temporary, and not of a permanent, nature. 5

Useful reference, in this respect, may be made to, inter alia, the cases of *Rossides v. The Republic*, (1984) 3 C.L.R. 1482, 1486, and *Matsas v. The Republic*, (1985) 3 C.L.R. 54, 58-62, from which there emerges that the notion of «permanent settlement» abroad, for the purposes of Order 188/82, is taken to exclude residence abroad for purpose of studies and that «permanent settlement» entails having a permanent home and not being only ordinarily resident. 10 15

In the light of the particular facts of the present case I am of the view that it was reasonably open to the Director of Customs to reach the conclusion, on a proper application of Order 188/82, that the stay of the applicant in Thessaloniki, where he studied and worked, was of a temporary nature, and not a permanent settlement there. 20

In the result present recourse fails and it is accordingly dismissed; but with no order as to its costs.

Recourse dismissed.
No order as to costs. 25