

1987 February 7

[FIKIS J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CONSTANTINOS SYMEOU,

Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF FINANCE AND/OR
THE DIRECTOR OF CUSTOMS AUTHORITIES,

Respondents

(Case No 271/86)

Customs and Excise—Motor vehicles, importation of by Cypriots—Exemption from import duty—The Customs and Excise Duties Laws, 1978-1981—Order 188/82—The three prerequisites for obtaining the benefit thereunder—Repatriation must succeed in point of time not only settlement abroad, but stay thereat for a continuous period of ten years

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Executory act—Advisory or informatory act—Customs and Excise—Import duty—An executory act relating to it can only come into being on importation of the goods in question

On 7 6 85 the applicant submitted an application as a repatriated Cypriot for the importation of a car duty free. The application was turned down and as a result the present recourse was filed. The applicant emigrated to the United Kingdom in 1936. He returned to Cyprus in 1969, presumably to test whether he would make Cyprus his home again. In 1973 he resettled in Cyprus, but in 1975 went back to U.K. He resettled in Cyprus on 23 9 77, but in 1981 he once again resettled in U.K. On 12 4 85 he returned to Cyprus for permanent settlement.

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The question that arises in this case is whether the permanent stay abroad for a continuous period of ten years need precede repatriation in order for one to qualify for the benefit under Order 188/82.

Held, dismissing the recourse (1) The literal construction of the expression in the said Order « after permanent settlement abroad for a continuous period of 10 years, returns and settles permanently in the Republic »

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5 suggests that resettlement must succeed in point of time not only settlement abroad but stay thereat for a continuous period of ten years. In this respect the word «after» examined in juxtaposition to the requirement of return and resettlement is of special relevance. Therefore the recourse should be dismissed.

(2) In any event the sub-judice decision is of an advisory or informatory nature because under the Customs and Excise Duties Laws an executory decision with regard to import duty can only come into being on the importation of goods and the applicant in this case had not imported the car.

10 *Recourse dismissed*
No order as to costs

Cases referred to

Rossides v The Republic (1984) 3 C L R 1482

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

15 *Mavronychis v The Republic* (1985) 3 C L R 2301

Constantinides v The Republic (1986) 3 C L R 822

Ioannou v The Republic (1986) 3 C L R 1236

Michael v The Republic (1986) 3 C L R 2067

Kourtellis v The Republic (1986) 3 C L R 2079

20 *Yiangou v Republic* (1987) 3 C L R 27

Recourse.

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

P Papageorgiou, for the applicant

25 *S Georghiades, Senior Counsel of the Republic*, for the respondents

Cur adv vult

PIKIS J read the following judgment: This is yet one more case turning on the interpretation of the order of 11/6/81* whereby

30 Regulatory Administrative Act No 188/82 made under s 11(2) of the Customs and Excise Duties Laws 1978-1981

repatriates who satisfied certain conditions are allowed to import a car free of duty. The 1982 order replaced an earlier one with the same theme, modifying the conditions necessary to qualify for the benefit. Unlike previous decisions of the Supreme Court on the interpretation of the 1982 order, the present case does not touch on the quality of settlement abroad to qualify as permanent, or the duration of such settlement. These prerequisites for acquisition of the benefit were comprehensively discussed and settled in a number of first instance cases*.

The following three prerequisites must be satisfied in order to acquire the right given by the order:-

- (a) Permanent settlement abroad;
- (b) for a continuous period of 10 years; and
- (c) repatriation.

Moreover, the importation must be made within a reasonable time after resettlement, a factor signifying the nexus that must exist between importation and resettlement.

A wholly different question arises in this case, namely, whether permanent stay abroad for a continuous period of 10 years need precede repatriation in order to qualify for the benefit. So far as I am aware, this issue was not raised for consideration in any previous case and falls to be decided in the present proceedings. Exposition of the facts of the case will, I believe, illuminate the problem in its true dimension.

Applicant emigrated to the United Kingdom as far back, as 1936. As may be gathered from the facts, applicant returned to Cyprus in 1969, presumably to test whether he could make Cyprus his home again. Between 1969 and 1973 he lived between Cyprus and the United Kingdom; on average, he stayed in Cyprus for about 7 months a year. In 1973 he resettled in Cyprus and stayed in the

**(See, inter alia, Rossides v. Republic (1984) 3 C.L.R. 1482; Matsas v. Republic (1985) 3 C.L.R. 54; Mavronychis v. Republic (1985) 3 C.L.R. 2301; Constantinides v. Republic (1986) 3 C.L.R. 822; Ioannou v. Republic (1986) 3 C.L.R. 1263; Michael v. Republic (1986) 3 C.L.R. 2067; Kourtellis v. Republic (1986) 3 C.L.R. 2079.*

country until 3/9/75 when he went back to the United Kingdom. He resettled in Cyprus on 23/9/77. Until 1980 he stayed mostly in Cyprus, visiting England occasionally from time to time. Seemingly, he resettled in the United Kingdom in 1981 where he
 5 stayed until 12/4/85 when he returned to Cyprus with a view to permanent settlement. In between he kept visiting Cyprus for variable periods of time. Following his last repatriation he submitted, on 7/6/85, application for the importation of a car free of duty. In his application he specified 12/4/85 as the date of his
 10 repatriation.

On a literal construction of the provisions of the 1982 order resettlement in Cyprus must, in order to entitle the repatriate to the benefits of the order, succeed in point of time not only permanent
 15 settlement abroad but stay thereat for a continuous period of 10 years. This is the natural effect of the pertinent provisions of the order, that is, «... after permanent settlement abroad for a continuous period of 10 years, returns and settles permanently in the Republic...». The order postulates continuous stay abroad for
 20 a period of 10 years before settlement as a prerequisite for the acquisition of the benefit given by the law. Of especial relevance is the word «after» examined in juxtaposition to the requirement of return and resettlement. The accrual of the right is dependent on *resettlement after a continuous stay abroad for no less than 10*
 25 *years*. On examination of the facts the inescapable inference is that although applicant was permanently settled in the United Kingdom before his repatriation, he was not abroad for a continuous period of 10 years prior to return to Cyprus. During the preceding 10 years applicant had for lengthy periods of time his home and was permanently settled in Cyprus. His recourse must
 30 consequently be dismissed.

Moreover, his recourse is doomed to failure for another reason untouched upon by the parties. The sub judge decision is not executory but of an advisory or inforamatory character. Under the relevant provisions of the Customs and Excise Duties Law, an
 35 executory decision with regard to the payment of import duty, can only come into being on the importation of the goods. The sub judge decision does not define in any binding sense the liability of the applicant to import duty. It merely reflects the views of the Administration about applicants' rights under the 1982 order and

as such is not justiciable. The point was emphatically made in a recent decision of the Full Bench of the Supreme Court*, deciding that an executory decision with regard to the payment of import duty can only emerge on the importation of the goods and in connection with their clearance. The 1982 order itself ties the conferment of the benefit to the importation of the goods within a reasonable time after repatriation. The order does not bestow an absolute right but one directly related to the time of importation of the goods

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The recourse fails. Let there be no order as to costs

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Recourse dismissed
No order as to costs

* *Yangou v Republic (1987) 3 CLR 27*